



ACCC Report

# Annual Report

2016–17

Australian Competition and Consumer Commission and  
the Australian Energy Regulator



Australian  
Competition &  
Consumer  
Commission



AUSTRALIAN  
ENERGY  
REGULATOR

# ANNUAL REPORT

2016–17

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29 August 2017

The Hon Scott Morrison MP  
Treasurer  
Parliament House  
CANBERRA ACT 2600

Dear Treasurer

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

This report covers operations for the year ended 30 June 2017. The ACCC and AER have obligations under section 171 and section 44AAJ of the *Competition and Consumer Act 2010* to provide an annual report to the responsible Minister within 60 days of the end of the financial year. Accordingly, we provide you with a copy of this report.

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

Rod Sims  
Chairman, ACCC

Paula Conboy  
Chair, AER



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# Part 1

## Year in review





## Introduction

This has been an amazing year. We have had our first criminal cartel prosecution; we have won two cases in the High Court; there have been many important cases against large companies for misleading consumers on fundamental issues; many unfortunately high-profile product safety matters; the Harper changes were put before the parliament; the court upheld our seminal fixed-line services review decision ... I could go on and on.

In addition, the Commonwealth Government gave us much more to do. The Government has directed us to conduct inquiries into the competitiveness, trading practices, and transparency of the Australian dairy industry; residential mortgage products; Northern Australia insurance; the supply of retail electricity and the competitiveness of retail electricity prices; and the supply of and demand for wholesale gas in Australia, as well as to publish regular information on the supply and pricing of gas for three years. While a great compliment to the ACCC; these inquiries will both stretch and test us.

### Protecting consumers

Strong consumer rights, guaranteed by Australian Consumer Law, create confident consumers and promote competition based on merit. Consumer protection activity in 2016-17 saw the ACCC institute 19 new consumer protection and business protection-related court proceedings, accept 14 consumer protection related s. 87B undertakings, and receive payment for 11 infringement notices from nine traders.

Litigated consumer protection matters in 2016-17 resulted in penalties of more than \$16.2 million, the largest being a penalty of \$6 million imposed on Reckitt Benckiser for claims about certain Nurofen products.

The ACCC also took action against numerous education providers in 2016-17 for misleading and unconscionable conduct in relation to VET-FEE HELP courses. Thousands of Australians were lumbered with crippling debts and no qualification, and considerable amounts of taxpayers money was spent for very little return. We also estimate that Get Qualified Australia received between \$750 and \$8500 from around 5000 Australians, none of whom received a qualification. Our court action in this matter is continuing.

## Product safety

Products which do not comply with Australian safety standards are in breach of Australian Consumer Law. Standards may also be modified due to emerging issues. Following more than 100 injuries and at least 36 house fires across Australia since 2010 and three reported deaths overseas, Australia adopted a new standard for decorative alcohol-fuelled devices (also known as ethanol burners) in July 2017. An interim ban on the burners commenced across Australia in December 2016. The new standard seeks to mitigate the safety concerns associated with the burners.

The mandatory recall of Infinity cables has entered its fourth year, with an estimated 54 per cent of 4300 km of faulty cable identified. This is the one of the largest and most complex recalls the ACCC has been involved in, and one of our most important as the risk to homes with Infinity cables remains until the cable is removed. We urge all Australians who have had electrical work carried out on their houses in the past decade to check whether Infinity cabling was used and, if so, have it removed by a qualified electrician.

Other product safety issues we have been involved in include the Thermomix voluntary recall. We have alleged the company misled customers about their consumer guarantee rights, failed to comply with mandatory reporting requirements for injuries arising from the use of the appliances, made false representations and engaged in misleading conduct regarding the safety of the TM31 model, and made false and misleading statements about its 2014 recall. The case is continuing.

## Truth in advertising

Truth in advertising is, and remains, a fundamental tenet of Australian consumer law. For Australian consumers, it is an expectation that what they are told and what they are sold is what they have paid for. It is therefore disappointing not only that ACCC enforcement activities are required to support the principle of truth in advertising, but that some of Australia's most 'trusted' brands have been found to have misled consumers.

In addition to the Nurofen case I have already mentioned, penalties of \$400 000 were handed down against Dulux Group in November 2016 for making false or misleading representations about the temperature reducing characteristics of two paint products, InfraCOOL and Weathershield Heat Reflect. Both were sold with claims that they could reduce the internal temperature of a house. Both were untrue.

Action commenced in June 2016 against H.J. Heinz Company Australia Ltd (Heinz) in relation to its Little Kids Shredz products. The Shredz products' packaging features prominent images of fresh fruit and vegetables and statements such as "99% fruit and veg". In fact, one Shredz product contains 68.7 per cent sugar, significantly higher than that of natural fruit and vegetables such as an apple which contains around 10 per cent sugar. The case was in court at time of publication.

'Flushable' wipes continue to be a concern for the ACCC, a result of claims by companies like Kimberly-Clark and Pental that the products were able to "break down in sewerage system or septic tank". We allege the claims create the perception that the product is biodegradable when sewerage and water companies have clearly indicated that they are not. In this instance, the consumer does not bear a direct burden from what we allege are false claims; rather, the claim makes the product more attractive to the consumer.

In March 2017 the ACCC instituted proceedings in the Federal Court against German company Audi Aktiengesellschaft (Audi AG), its Australian subsidiary Audi Australia Pty Ltd (Audi Australia), and their owner, German company Volkswagen Aktiengesellschaft (VWAG).

The ACCC alleges that Audi AG and Audi Australia engaged in misleading or deceptive conduct, made false or misleading representations and engaged in conduct liable to mislead the public in relation to certain diesel vehicle emission claims, and that VWAG was knowingly concerned in this conduct. This proceeding follows earlier proceedings brought against VW Australia and VWAG in respect to similar claims about VW vehicles. They will be heard together.

Extended warranties are a common way for companies to boost their bottom lines without offering much to consumers in the way of actual protection, the main reason being that Australian Consumer Law rights provide such wide protection. This became clear when the ACCC conducted an industry-wide survey of extended warranty selling practices. Following our investigations, the ACCC accepted undertakings from retailers and insurers which the ACCC considered had misled consumers by insufficiently disclosing or misrepresenting the degree of overlap and differences between extended warranty rights and rights and remedies automatically available under the ACL. Consumer guarantee proceedings were also instituted against companies such as Apple which have refused consumer guarantee rights to consumers using third-party repairers. The issue of third-party repairers has also arisen as a significant issue in the New Car Retailing Market Study.

## Indigenous consumers

Protecting Indigenous consumers became a priority for the ACCC in 2016. The ACCC has an active Indigenous-focused Facebook page called 'Your Rights Mob' and produces targeted video content in response to identified issues in Indigenous communities such as scams. Indigenous communities were also a target of misleading and deceptive VET-FEE schemes; the ACCC's work in this area directly benefited Indigenous communities.

## Private health insurance

Following public consultations it became clear the industry was poorly communicating policy changes to policy holders. The financial result was bill shock for many and inadequate cover leading to reduced access to healthcare. In response, the ACCC released *Communicating changes to private health insurance benefits* in October 2016 to better educate the industry on its obligations when communicating with its customers.

In early 2017 the ACCC undertook an investigation into the hearing aid industry and selling practices which were financially driven rather than consumer focussed. The ACCC put the industry on notice and released a public report to encourage industry to reconsider commissions, disclosures and sales practices in the context of the ACL. Guidance material was also published to assist consumers to make an informed choice when purchasing hearing aids.

## Agriculture

The ACCC hit its stride in its agriculture engagement in the last financial year. The ACCC released a market study into the cattle and beef industry in March 2017 aimed at increasing competition among buyers of cattle and reducing the potential for anti-competitive conduct in the industry. The ACCC also commenced a 12-month inquiry into the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry.

The ACCC's work in agriculture has increased substantially since the appointment of a commissioner with extensive agriculture experience, Mick Keogh, in February 2016. An important milestone was the commencement of the revised Horticulture Code of Conduct on 1 April 2017. The purpose of the Code is to redress the power imbalance between growers

and traders by ensuring there is transparency in the relationship between growers and traders so that they each have a clear understanding of the terms they are trading under. The major advance under the Code was the development of horticulture produce agreements which establish basic trading considerations such as when payments will be made. The Code also requires all parties to deal with each other in good faith.

Action was commenced in the Federal Court in April 2017 alleging Murray Goulburn engaged in unconscionable conduct and made false or misleading representations to farmers in its southern milk region between June 2015 and April 2016 about the average farm gate milk price (FMP) it expected to pay them for the 2015–16 financial year.

## Competition enforcement

Anti-competitive behaviour takes many forms, from the formation of cartels resulting in price fixing or market sharing agreements to agreements or other conduct which is for the purpose or which has the effect or likely effect of substantially lessening competition. In 2016–17 the ACCC was involved in 12 new competition enforcement interventions, covering medical, building and construction, shipping and transportation, financial services and more. Information on the cases concluded and continuing can be found in appendix 9.

Despite widespread awareness of the illegality of cartel behaviour, and our success when prosecuting cases, cartel cases remain an important feature of the ACCC's work.

A major milestone was achieved when in July 2016 Japan-based global shipping company Nippon Yusen Kabushiki Kaisha (NYK) pleaded guilty in the Federal Court to criminal cartel conduct. This is the first criminal charge laid by the CDPP against a corporation under the criminal cartel provisions of the Act. In August 2017 the Federal Court imposed a penalty of \$25 million—the second highest penalty imposed in ACCC history. In handing down his decision, Justice Wigney stated the fine “incorporates a global discount of 50 per cent for NYK's early plea of guilty and past and future assistance and cooperation, together with the contrition inherent in the early plea and cooperation: meaning that but for the early plea and past and future cooperation, the fine would have been \$50 million”.

In May 2017 the ACCC instituted proceedings against Ramsay Health Care Australia for alleged anti-competitive conduct involving misuse of market power and exclusive dealing in the Coffs Harbour region. The ACCC alleges Ramsay took action to preserve its position in day surgery services in the Coffs Harbour region by making threats to reduce or withdraw individual surgeons' access to operating theatres at Baringa Hospital if they were involved in a competing day surgery facility. We alleged that the surgeons suspended their plans to establish a competing day surgery facility because of these threats. The case was continuing at time of publication, but highlights the scope of ACCC concerns regarding anti-competitive behaviour.

In June 2017 High Court found that price fixing agreements entered into between Air New Zealand Ltd (Air NZ), PT Garuda Indonesia Ltd (Garuda), and other international airlines, which occurred between 2002 and 2006, breached Australia's competition law. This was a long and complicated case which commenced against Air NZ in 2009 and Garuda in 2010. The ACCC alleged Air NZ and Garuda colluded with other airlines on charges for fuel, security, insurance surcharges and a customs fee for the carriage of air freight from origin ports in Hong Kong (both airlines), Singapore (Air NZ) and Indonesia (Garuda) to destination ports in Australia. Under the law as it then stood, the ACCC was required to establish that the conduct occurred in a ‘market in Australia’. The High Court unanimously dismissed the appeals by each airline and held that all aspects of the market, including the presence of customers in Australia, need to be considered in deciding whether a market is ‘in Australia’. At time of publication, penalties had yet to be decided by the Federal Court.

A multi-year court battle ended in December 2016 when the ACCC won a High Court appeal regarding Flight Centre's attempt to induce three international airlines to enter into price-fixing arrangements between 2005 and 2009 in relation to airfares offered online by the airlines that were cheaper than those offered by Flight Centre. The ACCC argued that Flight Centre and the airlines are competitors, a position the High Court endorsed. The ramifications of this case are large. It provides important guidance for the future application of competition laws in Australia to other situations where competing offers are made directly to consumers by both agents and their principals. It is likely to be particularly relevant when businesses make online sales in competition with their agents.

Following lengthy investigations and court proceedings, the Federal Court ordered ANZ to pay penalties of \$9 million and Macquarie Bank to pay penalties of \$6 million in December 2016 for attempted cartel conduct in 2011 in relation to the benchmark rate for the Malaysian ringgit.

Cartel behaviour is a particularly insidious anti-competitive behaviour. It limits price competition and the ability of new entrants to enter the market. In response, over the past three years we have invested significant resources to build a substantial team of specialist criminal cartel investigators and a number of briefs of evidence have been provided to the Commonwealth Director of Public Prosecutions (CDPP) for prosecution.

## Petrol monitoring

Three petrol market studies were released in 2016–17 covering the Cairns (May 2017), Armidale (November 2016) and Launceston (July 2016) markets. The studies build on the first market study into the Darwin market (November 2015). These petrol market studies seek to explain why petrol prices are higher in certain regional locations and where the profits are being made along the petrol supply chain.

## Merger reviews

The ACCC considered 288 mergers of which 33 were subject to a public review during the year. Significantly, and in accordance with our stated objectives, we cleared 88 per cent of mergers without the need for a public review (well above the target of 70 per cent). The ACCC unconditionally cleared 23 mergers that underwent a public informal review and two were approved subject to undertakings.

While the number of mergers considered by the ACCC has declined marginally over the past year, down from 319 in 2015–16, those mergers that have undergone a public review have been increasingly complex and, in many cases, have been more contentious compared with previous years. A statement of issues was released in relation to 13 of the publicly reviewed mergers. While the ACCC did not oppose outright any mergers, it is significant to note that eight reviews were discontinued either because the transactions did not proceed or because the parties withdrew their request for clearance. In all eight of these matters we released a statement of issues identifying issues of significant concern or that may raise concerns.

Consistent with its role in assisting the Australian Competition Tribunal in its assessment of merger authorisation applications, in 2016–17 the ACCC assisted the Tribunal in relation to Tabcorp Holdings Limited's application for merger authorisation to acquire all of the shares in Tatts Group Limited. The net public benefit test applied by the Tribunal requires a weighing of the likely detriments and benefits to the public, which is different to the substantial lessening of competition test which the ACCC applies in its informal merger clearances.

In June 2017, the Tribunal granted conditional authorisation to Tabcorp for the proposed acquisition on the basis that the proposed acquisition was likely to result in substantial public benefits and no material detriment. The ACCC has sought judicial review of the Tribunal's decision on three points of law.

## Electricity, banking and insurance studies

At the request of the Government, the ACCC is conducting inquiries into the supply of retail electricity and the competitiveness of retail electricity prices in the National Electricity Market (the final report is due 30 June 2018); an inquiry into prices charged or proposed to be charged by Authorised Deposit-taking Institutions affected by the Major Bank Levy between May 2017 and June 2018; an inquiry into the supply of home, contents and strata insurance in Northern Australia (reporting on 30 November 2020).

Inquiries conducted by the ACCC involve extensive analysis of the market and its price drivers. From a consumer perspective, ACCC inquiries usually involve broad public consultations, including public forums which act as important information-gathering tools. That the inquiries have been given to the ACCC is further confirmation of the faith the Australian Government has in our ability to deliver robust investigations.

## Understanding gas markets

In April 2017 the Treasurer directed the ACCC to hold an inquiry into improving the transparency of gas supply in Australia. The ACCC will submit interim reports no less frequently than every six months and provide information to the market as appropriate, with a final report due by 30 April 2020. This will build on the considerable work the ACCC and AER have undertaken to identify issues in the market which have resulted in significant energy price rises over the past few years.

## New car study

For most Australians, buying a new car represents the second largest purchase they will ever make but growing evidence suggested to us that consumer guarantees and legal protections are not being respected by the industry. In response, in June 2016 we commenced a market study into the new car retailing industry. Public forums attested to issues beyond the buying process in relation to consumer guarantees, such as proprietary software and security devices which limited the ability of third parties to carry out repairs and servicing on modern cars, and the accuracy of fuel economy information to consumers. These issues were all assessed in the Draft Report released in August 2017.

## Collective bargaining

In 2016–17, the ACCC authorised 13 collective bargaining arrangements and allowed one collective bargaining notification on net public benefit grounds. Collective bargaining can create efficiencies in the negotiation process and enable small business to negotiate better terms and conditions with larger businesses than they could achieve on their own.

However, in some cases collective bargaining may reduce or distort competition which was why, in March 2017, the ACCC denied authorisation to Bendigo and Adelaide Bank, the Commonwealth Bank, NAB and Westpac. The applicant banks were seeking to collectively bargain with Apple and collectively boycott Apple Pay over access to the Near-Field

Communication controller in iPhones, and reasonable access terms to the App Store. On balance, the ACCC was not satisfied that the likely public benefits from the arrangement outweighs the likely public detriments.

## Telecommunications

Few enabling technologies are more important to the modern world and economic development than telecommunications; few years have been more challenging for a regulator like the ACCC, tasked as we are with promoting competition and protecting consumers.

In March 2017 the Federal Court rejected Telstra's application for judicial review of the fixed-line services final access determinations we made in October 2015. The ruling means the one-off uniform decrease of 9.4 per cent in access prices will stand until 30 June 2019. To put the ruling into common language, it means the remaining users of Telstra's network won't pay higher costs due to a shrinking customer base on the copper network as others migrate to the NBN. The ruling will make a financial difference to many Australians.

The past year also included a declaration of the wholesale superfast broadband access service (SBAS) to allow retail service providers to access non-NBN superfast access networks to supply retail services to end users; a declaration of the wholesale asymmetric digital subscriber line (ADSL) service for a further five years and will lead to a more competitive retail sector, which is likely to deliver greater choices for end users in the form of better prices; and a draft decision proposing not to declare a wholesale domestic mobile roaming service.

Our highly publicised draft mobile roaming decision followed a review of more than 130 submissions to the ACCC's discussion paper. The ACCC examined the incentives for mobile network operators to upgrade their networks or invest in expanding coverage in regional areas both with and without declaration. On 2 June 2017, Vodafone sought judicial review of the draft decision, and this case is currently before the courts. The ACCC expects to make a final decision in late 2017.

Our work in telecommunications included a market study into the sector, examining barriers to efficient economic outcomes, scheduled to report in early 2018.

Following a steady and increasing number of complaints in relation to broadband services in Australia, in April the ACCC was directed by the Government to implement a fixed broadband performance monitoring and reporting program. This will involve the ACCC publishing information about the speed at which services typically operate, and other metrics relevant to measuring broadband performance and applications consumers commonly use. The ACCC expects to provide its first report by the end of 2017. The program seeks to monitor broadband speeds in 4000 households across Australia.

## Water

Markets are the most efficient mechanism we know of to allocate scarce resources for their most productive uses. Water is a perfect example of such a resource. The ACCC's role is to increase confidence in emerging water markets and ensure the efficient operation of the water charge and market rules to meet the current requirements in the sector. We seek to do this by increasing transparency, promoting efficiency and increasing protections for customers while also reducing the regulatory burden in the implementation of water charge rules. Signals from the Murray-Darling Basin indicate end users (typically irrigators) have modified their behaviour to become more efficient water users; complaints about the market have also declined in the past year.

## Scams

The ACCC received 155 035 scam reports in 2016—an increase of 47 per cent compared to 2015. Despite the considerable increase in reports, financial losses to scams have decreased by 2 per cent, with \$83.6 million reported lost. Dating and romance and investment scams remain the most costly, with losses of \$25.5 million and \$23.6 million respectively. Hacking scams increased fourfold, from \$700 000 in 2015 to \$2.9 million in 2016. Losses due to computer prediction software and sports investment scams decreased by 68 per cent from \$5.5 million in 2015 to \$1.8 million in 2016. In 2016 the ACCC's key disruption activities focused on relationship scams and working with intermediaries, including the banks and social media platforms to bolster their scam prevention efforts. The ACCC continued writing to potential victims of relationship scams, with over 2834 letters sent to potential scam victims in 2016. Of those that were sent a letter, 74 per cent stopped sending money within six weeks.

## Global recognition

The ACCC is the standard-bearer of competition advocacy in Australia. But we are also a global leader and serve as a role model internationally. In March 2017, our role in elevating competition policy to the national economic agenda was recognised by the World Bank and International Competition Network (ICN). The award "Levelling the playing field through competitive neutrality or by elevating competition policy to the economic policy agenda" highlighted our work.

## Corporate activity

In the past financial year the ACCC finalised its enterprise agreement. This was an extremely difficult process given the Government's bargaining rules. The agreement reached is certainly not ideal, but the majority "yes" vote is a tribute to our staff's appreciation of the importance of the work they do.

## Looking forward: much to do

We have an exciting year ahead. We will deliver final reports or bring down vital interim or draft reports in at least six of our seven current inquiries or market studies; we have several criminal cartel briefs with the Commonwealth Director of Public Prosecutions; our unfair contract terms work will get into full swing, as will our broadband speed monitoring enforcement and compliance work; Australian Consumer Law changes will become clearer, and hopefully higher penalties will be legislated; and, of course, the Takata airbag issues will continue to be a top priority ... and I have left so much out.

But I cannot leave out my gratitude to the staff of the ACCC and AER. Their effort and dedication over the past 12 months has been extraordinary. The ACCC and the AER continue to have an excellent reputation and the respect of the Australian community; this is all due to our staff. On behalf of all the ACCC Commissioners and AER Board members I would like to thank each and every one of you.



## Finance and staffing snapshot

The ACCC received an unqualified audit report on the 2016-17 financial statements from the Australian National Audit Office. These statements can be found in part 5 from page 241-284.

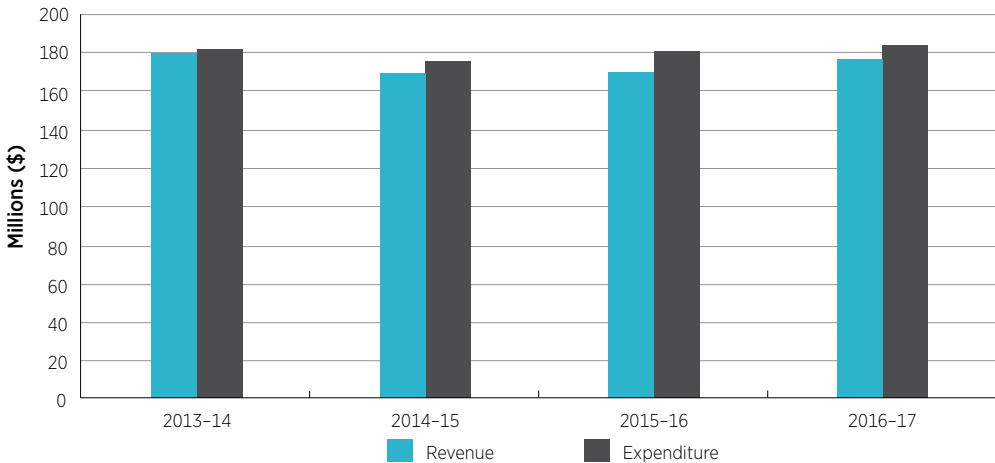
The agency reduced its operating deficit to \$1.7 million excluding depreciation and amortisation in 2016-17 compared to a \$5.5 million deficit in 2015-16.

The ACCC's net cost of services for 2016-17 was \$180.6 million (2015-16: 176.4 million), with revenue from Government of \$173.4 million (2015-16: 165.3 million).

Revenues from other sources were lower in 2016-17 by \$1.4 million or 25 per cent. 2015-16 included one-off project funding to conduct a gas inquiry resulting in the decrease in 2016-17.

In 2016-17, expenditure on ACCC activities increased by \$2.9 million. This mainly relates to an increase in legal settlements of \$4.7 million and an increase in contractors and consulting of \$5.2 million offset by a decrease in legal expenses of \$6 million and a decrease in salaries and wages of \$0.8 million. A comparison of revenue and expenditure trends over the last four years is illustrated in figure 1 below.

**Figure 1.1: ACCC Revenue and Expenditure**



Key financial results for ACCC for the financial years 2014-15 to 2016-17 are shown in table 1.1.

**Table 1.1: ACCC comparative financial results, 2014-15, 2015-16 and 2016-17**

	2016-17 \$'000	2015-16 \$'000	2014-15 \$'000
<b>Expenses</b>			
Employee benefits	102 979	103 731	97 372
Legal fees	20 782	26 769	24 533
Other expenses	61 044	51 448	54 627
<b>Total expenses</b>	<b>184 805</b>	<b>181 948</b>	<b>176 532</b>
<b>Own-source revenue</b>			
Other revenue	4 178	5 544	2 621
Gains	-	-	91
<b>Total own-source revenue</b>	<b>4 178</b>	<b>5 544</b>	<b>2 712</b>
<b>Net cost of services</b>	<b>180 627</b>	<b>176 404</b>	<b>173 820</b>
Revenue from Government	173 359	165 346	167 446
<b>Net operating surplus/(deficit)</b>	<b>(7 268)</b>	<b>(11 058)</b>	<b>(6 374)</b>
Changes in asset revaluation reserve	167	(48)	247
<b>Total comprehensive income</b>	<b>(7 101)</b>	<b>(11 106)</b>	<b>(6 127)</b>
<b>Operating cash balance</b>	<b>1 616</b>	<b>1 289</b>	<b>1 083</b>
Receivables	30 929	33 781	36 576
<b>Total assets</b>	<b>50 927</b>	<b>54 503</b>	<b>60 199</b>
<b>Total liabilities</b>	<b>59 417</b>	<b>59 234</b>	<b>57 117</b>
<b>Total equity</b>	<b>(8 490)</b>	<b>(4 731)</b>	<b>3 082</b>
<b>Administered fees and fines revenue</b>	<b>46 699</b>	<b>83 861</b>	<b>34 050</b>

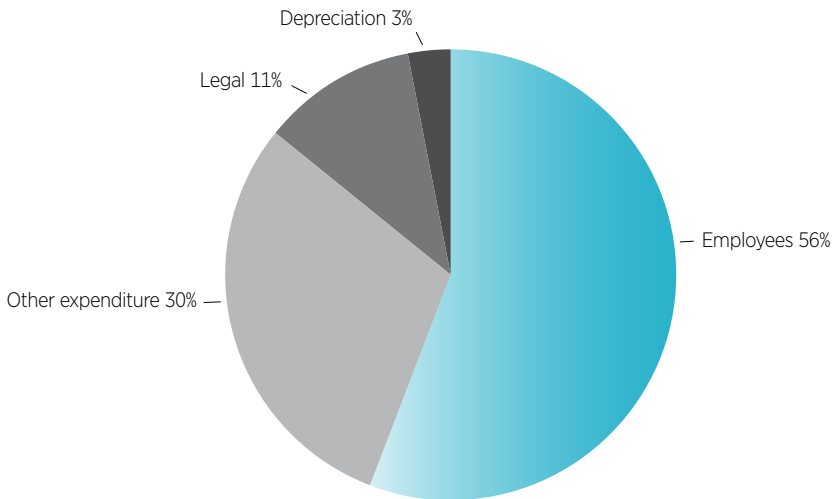
## Expenditure

The ACCC is a knowledge-based organisation and as such spends approximately 56 per cent of total expenditure on employee costs (2015-16: 57 per cent).

Legal expenditure is subject to volatility depending on the timing and outcome of litigation proceedings. Legal expenditure decreased by \$5.9 million or 22 per cent in 2016-17, compared to 2015-16.

Other expenses (excluding depreciation and amortisation) increased by \$9.8 million or 21 per cent in 2016-17. This is primarily due to an increase in legal settlements of \$4.7 million and an increase in consultancy and contractor expenses of \$5.2 million. Depreciation and amortisation has remained relatively consistent over the same period.

**Figure 1.2: ACCC expenditure, 2016-17**



## Operating statement

The ACCC recorded a comprehensive operating loss for 2016-17 of \$7.1 million, as compared to an operating loss of \$11.1 million in 2015-16. The decrease is largely due to an increase in revenue from government. The reported operating loss was a result of \$8.9 million in expenses for court costs awarded against the ACCC during 2016-17. The ACCC receives an operating budget of \$1 million per annum for court cost expenses incurred.

## Balance sheet

The ACCC's net assets as at 30 June 2017 totalled (\$8.5) million as compared to (\$4.7) million in 2015-16.

## Assets

Total assets as at 30 June 2017 were valued at \$50.9 million compared to \$54.5 million on 30 June 2016, representing a 6.6 per cent decrease. This decrease largely relates to a reduction in appropriation receivable consistent with the increase in legal settlements for the year.

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

## Liabilities

Total liabilities remained relatively consistent at \$59.4 million compared to \$59.2 million in 2015-16.

## Administered revenue

In 2016-17 the ACCC received \$46.7 million in administered revenue representing a decrease of \$37.2 million from 2015-16. This amount includes court-imposed fines and costs.

## Staffing summary

**Table 1.2: Average staffing level**

	Budgeted	Actual
2012-13	745	798
2013-14	802	788
2014-15	735	715
2015-16	739	752
2016-17	739	772



# Part 2

## Overview of the ACCC and AER

## About the ACCC and the AER

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

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

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

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

The responsible minister was the Treasurer, the Hon. Scott Morrison MP. The Hon. Michael McCormack MP, Minister for Small Business had responsibility for Australian Consumer Law policy.

## Role and functions

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

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

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

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

## Government expectations

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

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

The Statement of Expectations is available via the ACCC website.

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

In 2016-17 the ACCC also took on additional roles and responsibilities at the direction of Government, including:

- using inquiry powers to increase transparency in the gas market, including by identifying the use of market power and other obstructions to the efficient supply of gas to the households and businesses as part of a wide-ranging inquiry into the supply of and demand for wholesale gas in Australia
- the ACCC's inquiry into the retail supply of electricity and the competitiveness of retail electricity markets, which will look at the drivers of retail electricity prices over time and what can be done to improve customers' experience in acquiring electricity services
- undertaking regular inquiries into specific competition issues across the financial sector to assess whether competition is sufficient to drive the best outcomes for consumers. This includes an inquiry into residential mortgage products
- undertaking an inquiry into the supply of residential insurance building, contents and strata insurance products to consumers in Northern Australia and will monitor prices, costs and profits to address concerns about the high price of insurance in the region.

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

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

The AER's Statement of Intent (<http://www.aer.gov.au/publications/corporate-documents>) sets out the AER's work program in regulating energy networks and markets, and benchmarks that will measure its performance. The Statement also sets out how it aims to achieve principles of accountability and transparency, efficient regulation and effective engagement with stakeholders and other energy market bodies.

## Legislative framework

In addition to administering the Competition and Consumer Act, the ACCC has responsibilities under many other Acts and Rules, as does the AER. These are outlined in appendix 6 on page 296.



## Purpose

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

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

## Values

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

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

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

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

**Trustworthy:** We communicate honestly and directly and act respectfully.

## Organisational model

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

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

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

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

### Making decisions in the public interest

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

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

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

## Outcome and program structure

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

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

**Program 1.1:** Australian Competition and Consumer Commission.

**Program 1.2:** Australian Energy Regulator.

The details of the ACCC and AER strategies, deliverables and performance indicators are listed in our Annual Performance Statement (page 23 to 204).

## Organisational structure 2016–17

### Commissioners

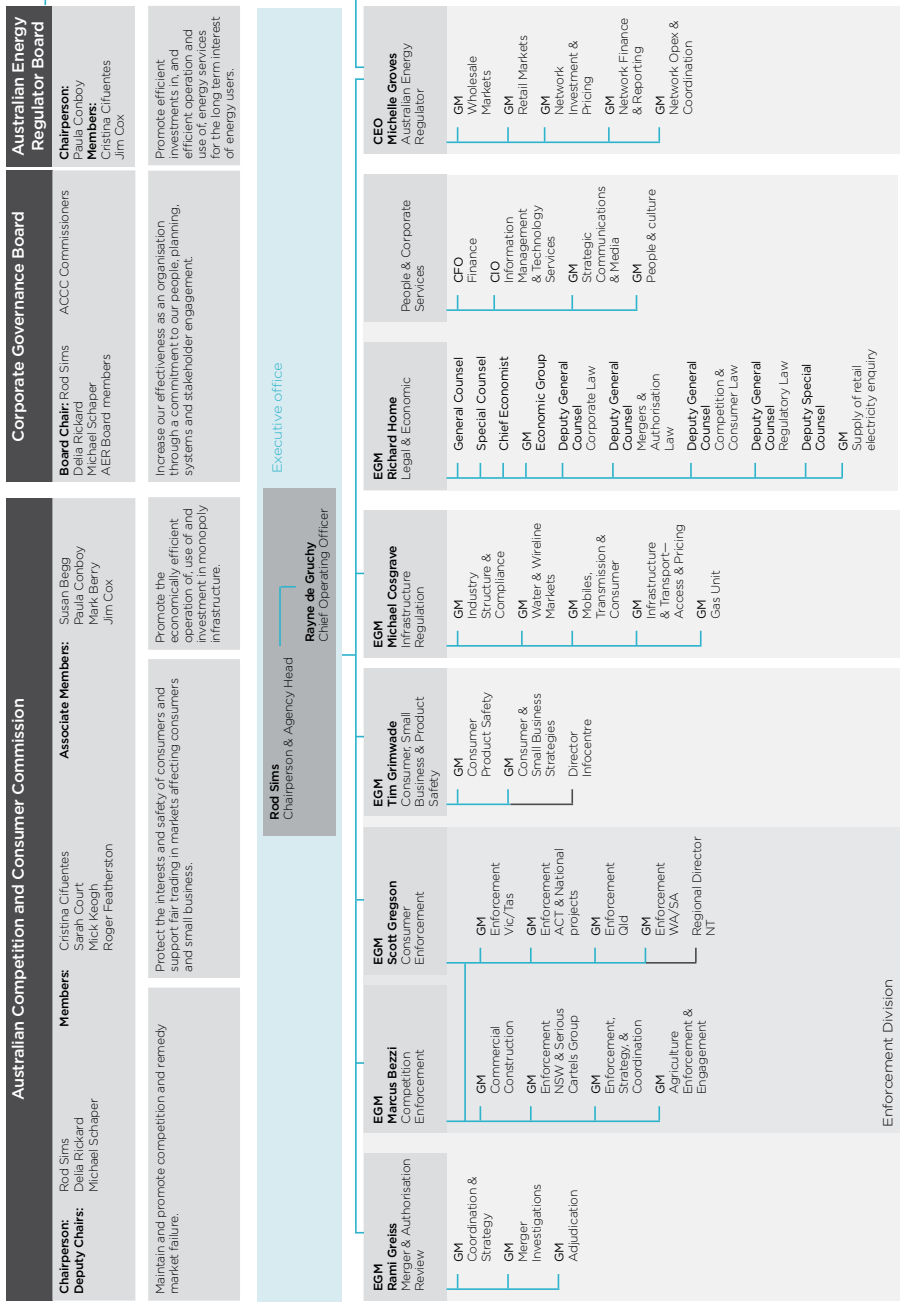
Chair	Rod Sims
Deputy chairs	Delia Rickard
	Michael Schaper
Members	Cristina Cifuentes
	Sarah Court
	Roger Featherston
Part-time Associate member*	Mick Keogh
Associate members	Paula Conboy
	Jim Cox
	Christopher Chapman
	Mark Berry
	Susan Begg

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

### Australian Energy Regulator

Chair	Paula Conboy
Members	Cristina Cifuentes
	Jim Cox

Figure 2.1: Organisational structure of the ACCC/AER (at 30 June 2017)



# Offices and contact details

## ACCC national office

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

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Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service: telephone 13 3677 or visit the website [www.relayservice.gov.au](http://www.relayservice.gov.au).

## AER national office

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Address	Level 35, The Tower, 360 Elizabeth Street Melbourne Central, Melbourne Vic 3000 telephone: 03 9290 1444
AER email	<a href="mailto:AERinquiry@aer.gov.au">AERinquiry@aer.gov.au</a>
AER website	<a href="http://www.aer.gov.au">www.aer.gov.au</a>

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## Regional offices

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Adelaide	Level 2, 19 Grenfell Street Adelaide SA 5000 telephone: (08) 8213 3444
Brisbane	Level 24, 400 George Street Brisbane Qld 4000 telephone: (07) 3835 4666
Darwin	Level 8, National Mutual Centre, 9-11 Cavenagh St Darwin NT 0800 telephone: (08) 8946 9666
Hobart	Level 2, 70 Collins Street (Cnr Collins and Argyle Streets) Hobart Tas 7000 telephone: (03) 6215 9333
Melbourne	Level 35, The Tower 360 Elizabeth Street Melbourne Central Melbourne Vic 3000 telephone: (03) 9290 1800
Perth	3rd floor, East Point Plaza 233 Adelaide Terrace Perth WA 6000 telephone: (08) 9325 0600

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Sydney Level 20, 175 Pitt Street  
Sydney NSW 2000  
telephone: (02) 9230 9133

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Townsville Suncorp Plaza Suite 2, Level 9, 61–73 Sturt Street  
Townsville Qld 4810  
telephone: (07) 4729 2666

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# Part 3

## Report on performance

# Performance reporting framework

This chapter reports on our performance for 2016–17 using the framework in both the 2016–17 ACCC Portfolio Budget Statements (PBS) (contained in the Treasury portfolio PBS) and the ACCC and AER Corporate Plan 2016–17. The ACCC and the AER jointly report against one outcome, with the ACCC reporting against Program 1.1 and the AER against Program 1.2, as shown in table 3.1.

**Table 3.1: Performance reporting framework**

<b>Drivers</b>	<i>Competition and Consumer Act 2010</i> (Cth) ACCC Portfolio Budget Statement ACCC and AER Corporate Plan 2016–17
<b>Outcome 1</b>	Lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation. These include enforcement, education, price monitoring and deciding access terms to infrastructure services.
<b>Program 1.1</b>	Australian Competition and Consumer Commission
<b>Program 1.2</b>	Australian Energy Regulator

## Purpose

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

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

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

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

Note: This purpose from the 2016–17 Corporate Plan is consistent with the objective in the 2016–17 PBS.

# Strategies to achieve our purpose

To achieve our purpose, we focus on these strategies:

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

## How we deliver the strategies that achieve our purpose

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

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

### Program 1.1 ACCC

#### Strategy 1: Maintaining and promoting competition

To maintain and promote competition, we:

<b>Deliverable 1.1</b>	Deliver outcomes to address harm to consumers and businesses resulting from anti-competitive conduct
<b>Deliverable 1.2</b>	Assess mergers to prevent structural changes that substantially lessen competition
<b>Deliverable 1.3</b>	Make decisions on authorisation, notification and certification trade mark applications in the public interest



## Strategy 2: Protecting the interests and safety of consumers and supporting fair trading in markets affecting consumers and small business

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

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

## Strategy 3: Promoting the economically efficient operation of, use of, and investment in infrastructure; and identifying market failure

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

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

## Program 1.2 AER

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

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

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

# Structure of Annual Performance Statement

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

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

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

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

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

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

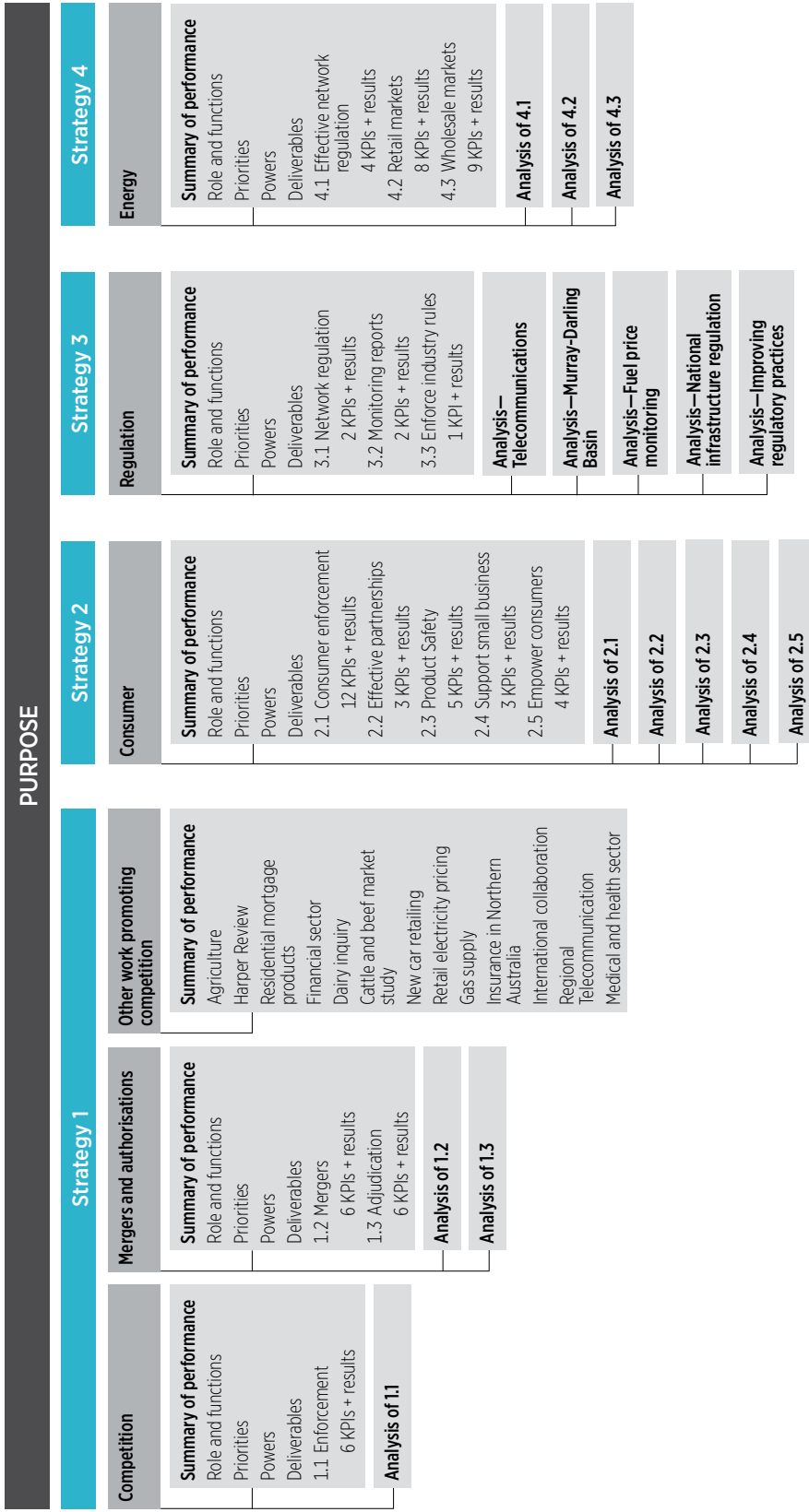
We have provided a 'Summary of performance' for each strategy. These sections:

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

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

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

Figure 3.1: Structure of Annual Performance Statement



# Regulator Performance Framework

In November 2016, the ACCC published its inaugural self-assessment (for 2015–16) under the Australian Government’s Regulator Performance Framework. The self-assessment is available on the ACCC website.<sup>1</sup>

The framework requires regulators to assess their performance against six key performance indicators:

1. Regulators do not unnecessarily impede the efficient operation of regulated entities
2. Communication with regulated entities is clear, targeted and effective
3. Actions undertaken by regulators are proportionate to the regulatory risk being managed
4. Compliance and monitoring approaches are streamlined and coordinated
5. Regulators are open and transparent in their dealings with regulated entities
6. Regulators actively contribute to the continuous improvement of regulatory frameworks.

These KPIs are concerned with how regulators administer regulation, with the aim of encouraging regulators to undertake their functions with the minimum impact necessary to achieve regulatory objectives. The framework does not seek to measure the performance of the ACCC in relation to the outcomes we achieve for Australian consumers and the economy.

The ACCC’s self-assessment drew heavily on the results of a survey of over 1000 of the ACCC’s business stakeholders conducted independently by market research firm ORC International. Results of the survey were published in conjunction with the ACCC’s self-assessment. We also relied on other evidence, such as quantitative performance data and descriptive information that provides stakeholders with a greater appreciation of the systems and processes the ACCC has in place to support our engagement with businesses.

The draft self-assessment report was reviewed and externally validated by the ACCC Performance Consultative Committee, which comprises 15 business, legal and consumer representatives who collectively cover the broad range of stakeholders that the ACCC engages with in undertaking its various functions.

The 2015–16 self-assessment found that the ACCC is generally achieving the six KPIs to a satisfactory or good standard across the entire organisation. However, we identified various areas where our performance could be improved and have implemented a range of strategies to enhance how we engage with regulated businesses and other stakeholders. This will contribute to minimising the burden imposed on businesses from regulation while still achieving our purpose of improving the welfare of all Australians by making markets work for consumers.

The ACCC’s self-assessment for 2016–17 will be published in November 2017.

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<sup>1</sup> See at: [www.accc.gov.au/publications/accc-regulator-performance-framework-self-assessment-report-2015-16](http://www.accc.gov.au/publications/accc-regulator-performance-framework-self-assessment-report-2015-16).

## Statement of preparation

I, as the accountable authority of the Australian Competition and Consumer Commission, present the 2016–17 financial year annual performance statements of the ACCC, as required under paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In my opinion, these annual performance statements are based on properly maintained records, accurately reflect the performance of the entity in the reporting period, and comply with ss. 39(2) of the PGPA Act.



Rod Sims

Chairman, ACCC

Program 1.1  
Australian Competition and  
Consumer Commission

# Strategy 1: Maintain and promote competition

## Summary of performance for enforcement actions to promote competitive markets

### Role and functions

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

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

- maintaining and promoting competition
- addressing market failures.

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

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

Our reporting on this strategy is in three sections:

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

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

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

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<b>Deliverable 1.1</b>	Deliver outcomes to address harm to consumers and businesses resulting from anti-competitive conduct.
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### Priorities

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

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

We revised and released our Compliance and Enforcement Policy in February 2016 and again in February 2017. Our 2016 and 2017 policies prioritise:

- cartel activity in government procurement
- anti-competitive agreements and practices between competitors
- misuse of market power
- competition issues in the agricultural, health and medical, and commercial construction sectors.

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

## Powers

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

## Performance indicators

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

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

**Table 3.2: Deliverable 1.1 performance indicators**

Performance indicator	Annual target	Result
Number of in-depth competition investigations completed	40	43
Percentage of initial competition investigations completed within 3 months	60%	75%
Percentage of in-depth competition investigations completed within 12 months	60%	65.1%
Number of competition enforcement interventions or market studies (court proceedings commenced, s. 87B undertakings accepted, publication of studies relating to competition in markets)	8	12
Percentage of competition enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy	80%	100%
Percentage of competition enforcement interventions in the priority areas, or demonstrating the priority factors, outlined in the Compliance and Enforcement Policy	100%	100%



## Factors affecting performance

The ACCC exceeded all of the annual targets set for competition enforcement investigations in 2016-17.

The ACCC achieved 12 new competition enforcement interventions in 2016-17 (target of 8), which improves on last year's result of 11. This result includes criminal cartel and complex anti-competitive conduct investigations such as the Nippon Yusen Kabushiki Kaisha (NYK) and Kawasaki Kisen Kaisha (K-Line) shipping company investigation. Subsequent charges were laid by the Commonwealth Director of Public Prosecutions (CDPP) in these matters. The CDPP is responsible for prosecuting criminal cartel offences. On 3 August 2017 the Federal Court imposed a fine of \$25 million on NYK. The K-Line matter is still before the court.

The ACCC completed 43 in-depth investigations in the period and completed initial investigations and in-depth investigations well within the target timeframes of three months and 12 months respectively.

All of the competition enforcement interventions were within the priority areas or demonstrated the priority factors as outlined in the Compliance and Enforcement Policy.

# Analysis of performance

## Stopping anti-competitive conduct

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

Our Compliance and Enforcement Policy governs our annual priorities in this area. This year our priorities under Deliverable 1.1 are:

- cartels
- anti-competitive agreements and practices
- misuse of market power
- competition and consumer issues in commercial construction
- competition and consumer issues in the agriculture sector
- competition in the health and medical sectors.

In 2016–17 the ACCC was involved in 18 court proceedings relating to competition enforcement.

These proceedings relate to competition matters in a range of industries including medical, building and construction, shipping and transportation, and financial services. A complete list of these proceedings is included in appendix 9.

Of the 18 competition enforcement proceedings:

- 13 cases were carried over from the previous year
- five new cases were commenced during the year
- four cases were finalised
- 14 cases remained ongoing at the end of the year.

We achieved significant outcomes in competition matters in 2016–17 in:

- NYK—\$25 million fine<sup>2</sup>
- Australia and New Zealand Banking Group Limited—penalties of \$9 million
- Macquarie Bank Ltd—penalties of \$6 million
- Yazaki Corporation—Federal Court finding of contraventions of the criminal cartel provisions. The penalty of \$9.5 million has been appealed by the ACCC.
- Prysmian Cavi e Sistemi S.r.l.—Federal Court finding of cartel conduct
- Flight Centre Limited—successful High Court appeal by the ACCC
- PT Garuda Indonesia Ltd and Air New Zealand—unanimous High Court dismissal of appeals by each airline, thereby ruling in favour of the ACCC
- petrol market studies in Launceston, Armidale and Cairns
- Co-operative Bulk Handling Limited—s. 87B undertaking to stop offering conditional grain receipt, storage and handling facilities
- Expedia.com and Booking.com—administrative resolutions to amend their contractual terms with Australian hotels and accommodation providers.

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<sup>2</sup> NYK was charged on 14 July 2016, on 18 July they pleaded guilty, a sentence hearing was held on 11 April 2017, and on 3 August 2017 NYK was convicted and fined \$25 million.

## Cartels

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

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

Companies and individuals, including cartel participants, help us to detect cartels. Under the ACCC Immunity and Cooperation Policy for Cartel Conduct, participants can apply for immunity from civil and criminal prosecution by reporting their own involvement in a cartel.

### **Example of enforcement action to remedy damage from a cartel: NYK and K-Line—criminal charges**

In July 2016, following an investigation by the ACCC, Japan-based global shipping company NYK pleaded guilty in the Federal Court to criminal cartel conduct. This is the first criminal charge laid by the CDPP against a corporation under the criminal cartel provisions of the Act.

This matter relates to alleged cartel conduct in connection with the international transportation of vehicles, including cars, trucks, and buses, to Australia between July 2009 and September 2012.

NYK is one of the world's largest shipping companies, with over 33 000 employees. As well as its headquarters in Tokyo it has offices in Europe, Africa, East Asia, South Asia, China, Oceania (including Australia), North America and South America. It also operates an Australian subsidiary, NYK Line (Australia) Pty Ltd.

In November 2016 the CDPP laid criminal charges against Japan-based company K-Line in respect of the same alleged cartel conduct. This is the second matter in which criminal charges have been laid against a corporation under the criminal cartel provisions of the Act.

K-Line is a global organisation with over 7000 employees. As well as its headquarters in Tokyo it has offices in Europe, Africa, North-East Asia, South-East Asia, Japan, North America, Central America, South America, India, the Middle East, and Oceania (including Australia). It also has an Australian subsidiary, K-Line (Australia) Pty Ltd.

Under the Act, the maximum fine for each criminal cartel offence by a corporation is the greatest of:

- \$10 million
- three times the total benefits that have been obtained by and are reasonably attributable to the commission of the offence
- if the total value of the benefits cannot be determined, 10 per cent of the corporation's annual turnover connected with Australia.

On 11 April 2017 a sentencing hearing was held in the Federal Court for the NYK matter. On 3 August 2017, the court convicted NYK of criminal cartel conduct and imposed a fine of \$25 million. Justice Wigney stated that the fine "incorporates a global discount of 50 per cent for NYK's early plea of guilty" and that "but for the early plea and past and future cooperation, the fine would have been \$50 million." In this case, the maximum penalty was calculated on the basis of 10 per cent of NYK's annual turnover in connection with Australia, in the 12 months prior to the commencement of the offence. On that basis, NYK's conduct attracted a maximum penalty of \$100 million.

Justice Wigney stated in his judgment the “cartel conduct of the sort engaged in by NYK warrants denunciation and condign punishment” because “it is ultimately detrimental to, or at least likely to be detrimental to, Australian businesses and consumers. The penalty imposed on NYK should send a powerful message to multinational corporations that conduct business in Australia that anti-competitive conduct will not be tolerated and will be dealt with harshly”.

The K-Line matter is still before the court.

### **Example of ACCC enforcement action to remedy damage from a cartel: ANZ and Macquarie Bank**

In December 2016 the Federal Court ordered Australia and New Zealand Banking Group Limited (ANZ) and Macquarie Bank Limited (Macquarie) to pay penalties of:

- \$9 million against ANZ in respect of its admission that it engaged in 10 instances of attempted cartel conduct in contravention of the Act
- \$6 million against Macquarie in respect of its admission that it engaged in eight instances of attempted cartel conduct in contravention of the Act.

The cartel conduct occurred on various dates in 2011, when traders employed by a number of banks in Singapore communicated via online chat rooms about daily submissions to be made to the Association of Banks in Singapore (ABS) in relation to the benchmark rate for the Malaysian ringgit (ABS MYR Fixing Rate).

During the relevant period, the ABS MYR Fixing Rate was derived from submissions made each day by a panel of banks. The ACCC alleged that the traders sought to influence the fixing rate published on the day by making arrangements with other banks to make high or low submissions to the ABS MYR Fixing Rate. The rate would ultimately affect settlement payments for MYR-denominated non-deliverable forward contracts (NDFs).

ANZ was a submitting bank for the MYR. Macquarie was not a submitting bank but often initiated discussions between traders and acted as a hub for or coordinator of submitting banks. ANZ and Macquarie customers included Australian companies.

The ACCC estimated that the annual MYR NDF turnover in Australia was approximately \$9 billion to 10 billion. Similar conduct has been investigated and sanctioned in other markets. The Australian Securities and Investments Commission (ASIC) is also engaged in litigation against several Australian banks regarding the setting of interest rate benchmarks.

## **Court cases**

The ACCC brought Federal Court proceedings against a number of businesses and related individuals for alleged cartel conduct in the supply of goods or services in Australia’s medical, building and construction, shipping and transportation, and financial services sectors.

The following cases were finalised in 2016–17. Refer to appendix 9 for details.

**Table 3.3: Cartel conduct proceedings finalised**

<b>Cartel conduct</b>	<b>Australia and New Zealand Banking Group Limited</b>		
	commenced	25 November 2016	Alleged attempted cartel conduct by ANZ traders and a Macquarie Bank trader to influence the fixing rate for Malaysian ringgit non-deliverable forward contracts
	concluded	14 December 2016	
	jurisdiction	Federal Court Sydney	
	outcome	Pecuniary penalty of \$9 million, and contribution of \$200 000 to ACCC costs	
<b>Macquarie Bank Limited</b>			
<b>Cartel conduct</b>	<b>Macquarie Bank Limited</b>		
	commenced	25 November 2016	As above
	concluded	14 December 2016	
	jurisdiction	Federal Court Sydney	
	outcome	Pecuniary penalty of \$6 million, and contribution of \$200 000 to ACCC costs	
<b>Cartel conduct</b>	<b>OLEX Australia Pty Ltd &amp; Ors</b>		
	commenced	4 December 2014	Alleged cartel and exclusionary conduct in the supply and acquisition of electrical cable throughout Australia
	concluded	10 March 2017	
	jurisdiction	Federal Court Melbourne	
	outcome	ACCC case dismissed	

The following cases were instituted in 2016–17.

**Table 3.4: Cartel conduct proceedings commenced**

<b>Cartel conduct</b>	<b>Australia and New Zealand Banking Group Limited</b>	
	<b>Macquarie Bank Limited</b>	
As above		
<b>Cartel conduct</b>	<b>Kawasaki Kisen Kaisha Ltd</b>	<b>Conduct</b>
	commenced	2 November 2016
	jurisdiction	Downing Centre Local Court Sydney
Alleged cartel conduct concerning the international shipping of cars, trucks and buses to Australia between 2009 and 2012		
<b>Cartel conduct</b>	<b>Nippon Yusen Kabushiki Kaisha</b>	<b>Conduct</b>
	commenced	14 July 2016
	jurisdiction	Federal Court NSW Criminal Division
Alleged cartel conduct concerning the international shipping of cars, trucks and buses to Australia between 2009 and 2012		

The following cartel cases were ongoing in 2016–17.

**Table 3.5: Cartel conduct cases ongoing**

<b>Cartel conduct</b>	<b>Air New Zealand Limited (appeal)</b>	<b>Conduct</b>
	commenced 17 May 2010 jurisdiction Federal Court Sydney	Alleged cartel conduct concerning price fixing of surcharges on air cargo services
<b>Cartel conduct</b>	<b>Nippon Yusen Kabushiki Kaisha</b>	<b>Conduct</b>
	commenced 14 July 2016 jurisdiction Federal Court NSW Criminal Division	Alleged cartel conduct concerning the international shipping of cars, trucks and buses to Australia between 2009 and 2012
<b>Cartel conduct</b>	<b>P.T. Garuda Indonesia Ltd (appeal)</b>	<b>Conduct</b>
	commenced 2 September 2009 jurisdiction Federal Court Sydney	Alleged cartel conduct concerning price fixing of surcharges on air cargo services
<b>Cartel conduct</b>	<b>Australian Egg Corporation Limited &amp; Ors (appeal)</b>	<b>Conduct</b>
	commenced 28 May 2014 jurisdiction Federal Court Adelaide	Alleged attempt to induce members of the corporation into an arrangement for the purpose of reducing the available egg supply
<b>Cartel conduct</b>	<b>Cascade Coal Pty Ltd &amp; Ors</b>	<b>Conduct</b>
	commenced 25 May 2015 jurisdiction Federal Court Sydney	Alleged bid rigging conduct involving mining exploration licences in the Bylong Valley, NSW
<b>Cartel conduct</b>	<b>Colgate-Palmolive Pty Ltd &amp; Ors</b>	<b>Conduct</b>
	commenced 12 December 2013 jurisdiction Federal Court Sydney	Alleged cartel and anti-competitive behaviour in supplying laundry detergent
<b>Cartel conduct</b>	<b>Oakmoore Pty Ltd, Palram Inc, Ampelite Pty Ltd &amp; Ors</b>	<b>Conduct</b>
	commenced 23 June 2016 jurisdiction Federal Court Brisbane	Alleged cartel conduct in the supply of polycarbonate roof sheeting to retailers in Australia
<b>Cartel conduct</b>	<b>Prysmian Cavi e Sistemi S.r.l.</b>	<b>Conduct</b>
	commenced 23 September 2009 jurisdiction Federal Court Adelaide	Alleged cartel conduct in relation to the allocation of projects supplying high-voltage or extra-high-voltage land or submarine cable

<b>Cartel conduct</b>	<b>Yazaki Corporation &amp; Australian Arrow Pty Ltd (appeal)</b>	<b>Conduct</b>
	commenced 13 December 2012	Alleged price fixing and market sharing in relation to the supply of wire harnesses to Toyota
	jurisdiction Federal Court Adelaide	

## Anti-competitive agreements and practices

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

### Example of action against anti-competitive conduct: Flight Centre

In December 2016 the ACCC won a High Court appeal in relation to an attempt by Flight Centre Limited (Flight Centre) to induce three international airlines to enter into price-fixing arrangements between 2005 and 2009. The arrangement concerned airfares offered online by the airlines that were cheaper than those offered by Flight Centre.

Flight Centre's conduct sought to eliminate differences in the airfares offered to customers. The ACCC was concerned about the potential effect of this conduct on competition and its ultimate impact on the prices available to consumers.

Importantly, the High Court found that Flight Centre and the airlines were competing in the market for the sale of international airline tickets, despite Flight Centre being an agent for each of the airlines.

The background to the High Court outcome was a Federal Court decision in favour of the ACCC in March 2014 ordering Flight Centre to pay penalties of \$11 million. Flight Centre successfully appealed in the Full Court of the Federal Court in July 2015. The ACCC then appealed to the High Court.

The High Court held the appeal and cross-appeal hearing in relation to penalty on 10 May 2017, and judgment was reserved.

### Court cases

The following cases were ongoing in 2016–17.

**Table 3.6: Anti-competitive agreements and practices proceedings instituted**

<b>Anti-competitive agreements and misuse of market power</b>	<b>Ramsay Health Care Australia Pty Ltd</b>
	commenced 1 May 2017
	jurisdiction Federal Court Sydney
	Alleged anti-competitive conduct involving misuse of market power and exclusive dealing in the day surgery market in the Coffs Harbour region

**Table 3.7: Anti-competitive agreements and practices proceedings ongoing**

<b>Anti-competitive agreements</b>	<b>Flight Centre Ltd (High Court appeal)</b>		
	commenced	9 March 2012	Alleged anti-competitive arrangements with three international airlines to eliminate differences in international airfares offered to customers
	jurisdiction	Federal Court Brisbane	
status	Appeal on issues		
<b>Anti-competitive agreements</b>	<b>Cement Australia Pty Ltd &amp; Ors (appeal)</b>		
	commenced	12 September 2008	Alleged conduct in contravention of s. 45 of the Act, relating to flyash contracts between Cement Australia and power stations in south-east Queensland
	jurisdiction	Federal Court Brisbane	
status	Awaiting judgment		
<b>Anti-competitive agreements</b>	<b>Construction, Forestry Mining and Energy Union (CFMEU)</b>		
	commenced	20 November 2014	Alleged secondary boycott conduct by the CFMEU, Mr John Setka and Mr Shaun Reardon in relation to Boral Resources (Vic) Pty Ltd and Alsafe Premix Concrete Pty Ltd in contravention of s. 45D.  Attempted contravention of s. 45E, and alleged undue harassment or coercion of Boral in contravention of s. 50 of the Act
	jurisdiction	Federal Court Melbourne	
status	Awaiting judgment		

## Undertakings

The following s. 87B undertaking was accepted in 2016–17. Details of competition enforcement s. 87B undertakings are in appendix 8.

**Table 3.8: Undertaking accepted in respect of anti-competitive agreements**

<b>Co-operative Bulk Handling Limited s. 87B undertaking dated 18 October 2016</b>	The ACCC accepted a court enforceable undertaking from Co-operative Bulk Handling Limited in relation to its supply of grain receiving, storage and handling services in Western Australia
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## Administrative resolutions

The following administrative resolutions for anti-competitive agreements were finalised in 2016–17.

**Expedia Inc (includes Expedia.com, Wotif.com, Hotels.com)**  
**2 September 2016**  
**and**  
**the Priceline Group (Booking.com)**  
**2 September 2016**

In September 2016 Expedia Group and Booking.com (part of the Priceline Group) agreed through an administrative resolution to remove parity requirements for room price, availability and conditions from their contracts with Australian accommodation providers from 2 September 2016 for a period of three years.

The ACCC had concerns that the contractual terms between accommodation providers and Booking.com and Expedia.com limited competition between the different online booking platforms. This resolution removes those clauses, which will enhance price competition between online booking platforms.

Parity clauses generally require accommodation providers to offer best price and availability to online travel sites, which is why consumers see the same prices offered across different online travel booking websites.

These changes extend to the largest online travel sites used in Australia for Australian accommodation, including Booking.com, Wotif.com, Hotels.com, and Expedia.com.

## Misuse of market power

Misuse of market power is prohibited under the Act. It occurs where a business with substantial market power in a market uses this power to:

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

### Example of action for misuse of market power: Pfizer

In February 2014, the ACCC instituted proceedings in the Federal Court against **Pfizer Australia Pty Ltd** (Pfizer) for alleged misuse of market power and exclusive dealing in relation to its supply of atorvastatin to pharmacies.

Atorvastatin is a pharmaceutical product used to lower cholesterol. Pfizer's originator brand of atorvastatin, Lipitor, was for a number of years the highest selling prescription medicine under the Pharmaceutical Benefits Scheme. Before the loss of patent protection in May 2012, Lipitor was prescribed to over one million Australians, with annual sales exceeding \$700 million.

The ACCC's allegations relate to offers made by Pfizer to pharmacies in early 2012 for the supply of Lipitor and Pfizer's own generic atorvastatin product. The ACCC alleged that Pfizer offered significant discounts and the payment of rebates previously accrued on sales of Lipitor, conditional on pharmacies acquiring a minimum volume of up to 12 months' supply of Pfizer's generic atorvastatin product.

The offers were first made before Pfizer's loss of patent protection for the atorvastatin molecule, when other suppliers of generic medicines were prevented from making competing offers to supply a generic atorvastatin product to pharmacies.

In February 2015, the Federal Court dismissed the ACCC case against Pfizer. The ACCC has appealed the decision. The Full Federal Court has reserved judgment, and the case is ongoing.

## Court cases

The following cases were ongoing in 2016–17.

**Table 3.9: Misuse of market power cases ongoing**

Misuse of market power	Pfizer Australia Pty Ltd (appeal)		
	commenced	13 February 2014	Alleged misuse of market power for the purpose of substantially lessening competition in relation to particular cholesterol-lowering products by offering to supply its originator brand of atorvastatin, Lipitor, and its own generic atorvastatin product to community pharmacies in early 2012
	jurisdiction	Federal Court Sydney	
	status	Judgment reserved	

Our case against Ramsay Health Care Australia Pty Ltd, mentioned under anti-competitive agreements, is also a misuse of market power matter.

## Commercial construction

In June 2017, as part of recommendations flowing from the Royal Commission into Trade Union Governance and Corruption, the ACCC established a Commercial Construction Unit within its Enforcement Division. The Commercial Construction Unit consists of investigators dedicated to investigating competition issues in the commercial construction industry around Australia. In order to undertake this work, the ACCC will receive additional funding of \$2 million extending into next financial year. The types of issues that may be investigated by the unit include cartel conduct, secondary boycotts and other anti-competitive behaviour involving construction industry participants, including industry trade unions.

## Competition issues in agriculture

The ACCC continued its work focusing on competition issues in the agriculture sector through the completion of a market study into the cattle and beef industry and contributions to reviews of mergers in the sector. The ACCC is also involved in undertaking regional workshops focusing on competition and fair trading in horticulture and viticulture industries, and conducting an inquiry into the competitiveness, trading practices, and transparency of the Australian dairy industry. Details of the work of the Agriculture unit are on page 58 under ‘Other work promoting competition’.

## Competition in the health and medical sectors

The ACCC continued to pursue competition issues in the health and medical sectors as part of its 2016–17 compliance and enforcement priorities.

In 2016–17, we identified competition and consumer issues in the health sector that we need to proactively address. This focus emerged from a number of allegations we received about attempts to limit access to products, patients, procedures or facilities. The effect of anti-competitive conduct by medical professionals can be significant, particularly in regional areas. The following case study of Ramsay Health Care Limited highlights the issues in this area.

## Court cases

### **Example of intervention to promote competition in medical services: Ramsay Health Care**

In May 2017, the ACCC instituted proceedings in the Federal Court against **Ramsay Health Care Australia Limited** (Ramsay) for alleged anti-competitive conduct involving misuse of market power and exclusive dealing in the Coffs Harbour region.

Ramsay operates Baringa Private Hospital and Coffs Harbour Day Surgery, the only private hospital and private day surgery facilities in the Coffs Harbour region. Coffs Harbour surgeons use operating theatres at Ramsay's facilities to perform surgical procedures on private patients.

The ACCC alleged that Ramsay became aware that a group of Coffs Harbour surgeons were planning to establish a competing private day surgery facility in Coffs Harbour. In response to this competitive threat, the ACCC alleges senior Ramsay executives told these surgeons that if they were involved with the proposed new day surgery they would have their access to operating theatre time at Baringa Hospital substantially reduced or withdrawn. The ACCC therefore alleged that Ramsay engaged in this conduct for the purpose of deterring or preventing a new entrant in the day surgery market in Coffs Harbour, or substantially lessening competition in that market.

The matter is currently before the Court. The ACCC is seeking pecuniary penalties, declarations, compliance program orders and costs.

# Strategy 1: Maintain and promote competition

## Summary of performance for merger and authorisation review

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

Our reporting on this strategy is divided into two sections:

- our competition enforcement function
- our merger and authorisation review function.

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

### Role and functions

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

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

The ACCC has received no applications for formal merger clearance to date. There have been a total of five applications to the Tribunal for merger authorisation. Two of these were withdrawn, three proceeded to a final Tribunal decision.

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

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

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

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<b>Deliverable 1.2</b>	Assess mergers to prevent structural changes that substantially lessen competition
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<b>Deliverable 1.3</b>	Make decisions on authorisation, notification and certification trade mark applications in the public interest
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## Priorities

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

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

## Powers

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

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

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

In response to an application for formal merger clearance, we may grant an applicant clearance that provides exemption from s. 50.

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

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

## Performance indicators

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

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

These performance indicators are from page 12 of the ACCC and AER Corporate Plan 2016–17. Additional performance indicators (those without a target) provide additional transparency on the volume of our work and on our timeliness.

**Table 3.10: Deliverable 1.2 performance indicators**

Performance indicators	Annual target	Result
Number of merger matters considered (externally driven)	N/A	288
Percentage of merger matters cleared without a public review (pre-assessed)	70%	88%
Number of merger matters involving Phase 1 only of public review (Phase 1 only of a public review means a statement of issues is not released) (externally driven)	N/A	15
Number of merger matters involving Phase 1 and Phase 2a of public review (externally driven)	N/A	16
Percentage of merger matters subject to Phase 1 only of public review that were finalised within 8 weeks (excluding time periods where information is outstanding)	50%	80%
Percentage of merger matters subject to Phase 2 of public review that were finalised within 20 weeks (excluding time periods where information is outstanding)	90%	94%

a Phase 2 involves release of a statement of issues and/or acceptance of a court enforceable undertaking to remedy competition concerns.

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

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

These performance indicators are from page 12 of the ACCC and AER Corporate Plan 2016–17. Additional performance indicators (those without a target) provide additional transparency on the volume of our work and on our timeliness.

**Table 3.11: Deliverable 1.3 performance indicators**

<b>Performance indicators</b>	<b>Annual target</b>	<b>Result</b>
Number of authorisation applications assessed (externally driven)	N/A	29
Number of exclusive dealing notifications assessed (externally driven)	N/A	407
Number of collective bargaining notifications assessed (externally driven)	N/A	1
Number of Certification Trade Marks assessed (externally driven)	N/A	37
Percentage of authorisation applications assessed within statutory timeframe(s) (excluding time periods where information is outstanding) <sup>a</sup>	100%	100%
Percentage of notifications assessed within statutory timeframe <sup>b</sup>	100%	100%

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

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

# Analysis of performance

## Assessing mergers

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

#### Merger reviews

In reviewing mergers, the ACCC aims to work efficiently, transparently and effectively, taking account of the commercial needs of the parties involved. We take a scaled approach to merger assessments whereby merger proposals are triaged to ensure that non-contentious mergers are dealt with expeditiously and information required from merger or other parties is tailored according to the complexity of the issues raised. The ACCC also seeks to inform the public, businesses and their advisers about the merger review process. We publish indicative timelines for assessments of proposed mergers under public consideration on our online mergers register, unless the merger is cleared after an initial assessment (that is, 'pre-assessed') or subject to a confidential review. Our approach to informal merger reviews is outlined in appendix 6.

We considered 288 matters under s. 50 of the Act in 2016–17—a decrease of 10 per cent on the 319 matters in 2015–16. Of the 288 mergers considered:

- 253 were assessed as not requiring a public or confidential review (pre-assessed)—a decrease of 12 per cent on the 287 pre-assessments in 2015–16
- 33 mergers were subject to a public review—an increase of 6 per cent on the 31 public reviews in 2015–16
- two mergers were subject to a confidential review.

Of the 33 public reviews and two confidential reviews that were conducted in 2016–17:

- we did not oppose outright any mergers that underwent a public informal review
- we expressed opposition to or concerns about two confidential mergers that did not ultimately proceed
- we accepted court enforceable undertakings in relation to two mergers to address competition concerns, resulting in these mergers being cleared subject to undertakings
- eight reviews were discontinued either because the transactions did not proceed or because the parties withdrew their request for clearance. In all eight of these matters we released a statement of issues identifying issues of concern or issues that may raise concerns
- we did not oppose, unconditionally, 23 mergers that underwent a public informal review. Of these, two were reviews of completed acquisitions where we discontinued the investigations.

We unconditionally cleared 66 per cent of mergers that underwent a public or confidential review. This figure increases to 96 per cent when all mergers (including pre-assessments) are included. In 11 matters we used our formal information-gathering powers under s. 155.



### **Example of a significant merger review resulting in a decision not to oppose: News Corporation and APN Australian Regional Media**

On 8 December 2016 the ACCC announced its decision not to oppose the proposed acquisition by News Corporation (News) of APN News & Media's Australian Regional Media division (ARM). Before the proposed acquisition, News and ARM were the two largest newspaper publishers in Queensland.

Our review considered whether the proposed acquisition would be likely to substantially lessen competition for the supply of local news and local advertising opportunities in five areas where News and ARM supplied free publications. We also considered the supply of news and information to readers in regional areas where the paid daily newspaper *The Courier Mail*, published by News, overlapped with several paid daily regional ARM newspapers.

The ACCC contacted over 600 interested parties about the acquisition. Most of them expressed minor or no concerns.

Our analysis indicated that, although News would own the vast majority of print newspapers in Queensland after the acquisition and have a strong online news presence, there was limited competition between the parties before the proposed acquisition. Further, a number of non-print alternatives would exist in each relevant market following the proposed acquisition.

Our conclusions were also informed by the declining readership and reduced advertising revenues of hard-copy publications, as readers and advertisers increasingly access digital news and digital advertising opportunities.

## **Statement of issues**

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

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

In 2016–17 we released a statement of issues in relation to 13 mergers, all published on our online mergers register.

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

**Table 3.12: Statement of issues released**

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**Statement of issues released 2016-17**

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APN Outdoor Group Limited—proposed merger with oOh!media Limited

Australian Grain Technologies Pty Ltd—proposed acquisition of InterGrain Pty Ltd

Tabcorp Holdings and Tatts Group—proposed merger

Caltex Australia Petroleum Pty Ltd—proposed acquisition of assets from Milemaker Petroleum

South32 Limited—proposed acquisition of Metropolitan Collieries Pty Ltd

PMP Limited—proposed merger with IPMG Group

DowDuPont Inc—proposed acquisition of El du Pont de Nemours and Company and The Dow Chemical Company

Link Administration Holdings Limited—possible acquisition of Superannuation Corporation Administration (trading as Pillar)

Aurizon Operations Limited—proposed acquisition of Glencore Rail (NSW) Pty Ltd—statement of issues

Pacific National—proposed acquisition of certain assets and interests of Glencore Rail—statement of issues

News Corporation—proposed acquisition of APN News & Media Limited's Australian Regional Media division

Seven West Media Limited—proposed acquisition of *The Sunday Times* publication and website from News Limited

The Borg Group—proposed acquisition of MDF manufacturing assets of Alpine MDF Industries Pty Ltd

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## Significant merger proposals withdrawn before reviews completed

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

- DYWIDAG-Systems International Group—proposed acquisition of Jennmar Australia
- The Borg Group—proposed acquisition of MDF manufacturing assets of Alpine MDF Industries Pty Ltd
- Aurizon Operations Limited—proposed acquisition of Glencore Rail (NSW) Pty Ltd
- Pacific National—proposed acquisition of certain assets and interests of Glencore Rail
- Link Administration Holdings Limited—possible acquisition of Superannuation Corporation Administration (trading as Pillar)
- Tabcorp Holdings and Tatts Group—proposed merger
- South32 Limited—proposed acquisition of Metropolitan Collieries Pty Ltd
- APN Outdoor Group Limited—proposed merger with oOh!media Limited.

### **Example of a significant merger review where the merger parties decided to terminate the transaction following preliminary competition concerns being raised**

On 19 May 2017, the ACCC discontinued its review of the proposed merger between **APN Outdoor Group Limited** and **oOh!media Limited** (the proposed merger) following an announcement by the merger parties that they were terminating the transaction in the light of the concerns expressed by the ACCC. The ACCC had released a statement of issues on 4 May 2017 in which it identified preliminary competition concerns about the merger, which would combine the two largest providers of out-of-home advertising services in Australia.

The ACCC's review focused on whether the proposed acquisition would be likely to substantially lessen competition in the market for out-of-home advertising. Out-of-home advertising reaches consumers on the move or in particular environments. It comprises various different categories, including large, high-impact banners and billboards; advertisements on bus shelters, in stations and on trains, taxis and buses; and advertisements at leisure centres, in public amenities and in shopping malls and supermarkets.

The ACCC took the view that out-of-home advertising has special characteristics that are not easily replicated by other advertising channels, including the fact that it has dominant visibility for its audience in their immediate location and is involuntary in the sense that it is 'inescapable' and cannot be switched off.

While recognising the significant recent growth in digital online advertising (such as on Google and Facebook), we concluded that the special characteristics of out-of-home advertising channels indicate that digital online advertising is not a close substitute.

The ACCC found that APN Outdoor Group and oOh!media are each other's closest competitors in out-of-home advertising. We identified three major preliminary concerns in our statement of issues:

- less competition in the market for the supply of out-of-home advertising services (leading to higher prices, reduced service levels and less innovation)
- higher barriers to entry and expansion, because of scale and bundling
- less competition in the market for leasing of out-of-home advertising sites (leading to lower site rents for landlords).

Other providers of out-of-home advertising focus on specific categories. The ACCC's preliminary view was that they would not provide sufficient competitive constraint on the merged entity.

## **Public competition assessments**

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

- We use public competition assessments to help the public to understand our analysis of the competition issues involved in certain merger reviews.

In 2016–17 we issued a public competition assessment for three merger reviews. We generally publish a public competition assessment on our online mergers register when:

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

**Table 3.13: Public competition assessments issued****Public competition assessments issued 2016–17**

Consortium comprising Brookfield, Qube and others—proposed acquisition of Asciano Limited  
 Metcash Ltd—proposed acquisition of Home Timber and Hardware Group  
 PMP Limited—proposed merger with IPMG Group

**Merger remedies**

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

In 2016–17 we accepted s. 87B undertakings to address competition concerns in relation to two mergers and enabled the acquisitions to be cleared subject to the undertakings.

**Metcash Ltd—proposed acquisition of Home Timber & Hardware**

On 21 July 2016 the ACCC announced it would not oppose a bid from Metcash to acquire rival hardware wholesaler Home Timber & Hardware (HTH) from Woolworths, after accepting a court enforceable undertaking from Metcash.

Woolworths conducted a sale process in respect of its HTH and Masters businesses, and Metcash was a bidder for HTH.

Metcash's Mitre 10 business is a wholesaler of hardware and home-improvement products to independent retailers, including those trading under Metcash's Mitre 10 and True Value Hardware brands. Metcash also offers support services to retailers trading under its brand banners. Metcash supplies products to about 325 Mitre 10 and True Value Hardware bannered retailers and about 500 non-bannered retailers.

HTH (previously operating as Danks) was a wholesaler of hardware and home improvement products to independent retailers, including those that operated under its brands Home Timber & Hardware, Thrifty-Link, Hardings Hardware and Hudson Building Supplies. HTH supplies over 400 bannered retail stores, comprising a mix of company-owned and independent businesses. It also supplies about 1000 non-bannered retailers.

The ACCC looked closely at the competition issues surrounding Metcash acquiring its only rival full-service wholesaler, and received a range of feedback from affected hardware retailers, many of which are small businesses. The review also took account of the indirect competitive constraint on Metcash's wholesale activities from the large national retailer Bunnings.

The purpose of the undertaking we accepted is to give independent retailers the ability to bypass Metcash by using buying groups or negotiating directly with manufacturers. It also intends to facilitate entry by any new wholesaler that may emerge. Metcash also undertook not to discriminate against independent hardware retailers in favour of its own stores.

Retailers trading under the Home Timber & Hardware, Thrifty-Link, True Value Hardware or Mitre 10 banners can decide to leave those brands and establish themselves as unbannered independent retailers. The undertaking prevents Metcash restricting independent hardware stores from acquiring products from non-Metcash sources.

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

# Analysis of performance

## Authorisations and notifications

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

### Authorisation applications

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

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

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

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

During 2016–17, we issued 27 final authorisation decisions, excluding minor variations, for arrangements involving a wide range of industries. Among them were aviation, financial services, agriculture, energy, waste services, transport and retailing.

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

#### **Example of public benefits not outweighing anti-competitive detriments: collective negotiation by banks**

On 31 March 2017 the ACCC issued a determination denying authorisation to Bendigo and Adelaide Bank, Commonwealth Bank, NAB and Westpac (the applicants), who sought authorisation on behalf of themselves and other card issuers to collectively negotiate with Apple on two issues:

1. to obtain access to Apple iPhone's embedded near-field communication (NFC) controller so that they could provide their own digital wallet apps using the NFC controller in Apple devices without relying on Apple Pay for mobile payment processing
2. to allow their digital wallet apps to be distributed from Apple's App Store without unreasonable prohibitions, unreasonable terms, or unreasonable delays from Apple.

The applicants also sought authorisation to enter into a limited and voluntary collective boycott in relation to Apple Pay during the collective negotiations.

Digital wallets are apps for mobile devices that perform some of the functions of a physical wallet, such as storing payment cards, processing mobile payments and, in some cases, storing other cards such as loyalty cards. The applicants could already offer digital wallets on iPhones, but their digital wallets could not bypass Apple Pay to directly access the NFC controller to make mobile payments. As a result, the applicants' digital wallet apps were limited to making mobile payments either via Apple Pay or by using external NFC hardware.

We considered that, if the proposed collective negotiations were successful, they would be likely to result in increased competition in mobile payment processing, a slight increase in competition in digital wallet apps, and reduced information asymmetry. On balance, however, we were not satisfied that these public benefits were likely to outweigh the anti-competitive detriment resulting from lessening of competition between payment cards and distortion of competition in the markets of mobile operating systems and mobile payment devices.

In particular, successful collective negotiations on NFC access would affect Apple's strategy for mobile payments and mobile operating systems more generally, which would also affect how Apple competes with Google. This could artificially alter the development of these dynamic high-technology markets, which are currently undergoing rapid innovation and change. In addition, we noted that multi-issuer digital wallets such as Apple Pay have the potential to increase competition between the issuers by making it easier for consumers to switch between cards at checkout and by limiting any additional lock-in effect of bank-specific digital wallet apps.

### **Example of anti-competitive detriments: agreement on insurance sales commissions**

On 9 March 2017, the ACCC denied authorisation to Aioi Nissay Dowa Insurance Company Australia Pty Ltd and 15 other insurance companies to agree to a cap of 20 per cent on commissions paid to car dealers who offer add-on insurance products when they sell a motor vehicle.

These insurance products may be connected to finance associated with the motor vehicle, such as consumer credit insurance, gap insurance, walk-away insurance and trauma insurance. Alternatively, they may relate to the vehicle itself, such as comprehensive insurance, extended warranty insurance and tyre-and-rim insurance.

The insurers' proposal followed a review by ASIC of sales of add-on insurance through motor vehicle dealerships. ASIC found that consumers are being sold expensive, poor-value products—products that give them very little to no benefit—in a sales environment with pressure selling, very high commissions and conflicts of interest.

We were not satisfied that the insurers' proposal would address the concerns identified by ASIC. Specifically, a commission cap was unlikely to:

- remove incentives to sell poor-value add-on insurance policies
- reduce the overall price paid by consumers for add-on insurance policies
- improve the quality of add-on insurance policies
- remove the risk of inappropriate sales practices in the car dealership channel
- ensure that consumers have access to adequate information to make an informed choice at the time of purchase.

We also considered that a collective agreement between insurers to cap the commissions that they pay to car dealerships would primarily benefit insurers at the expense of car dealerships, and provide minimal, if any, benefit to consumers.

We considered that public detriments were likely to arise from the conduct, such as a reduction in competition between insurers, and delayed implementation of effective reforms that properly address the market failures resulting in the consumer protection issues identified by ASIC.

## Exclusive dealing notifications

Notification is an alternative to authorisation for certain arrangements such as exclusive dealing. Like authorisation, the notification process provides protection from legal action under the Act if the conduct is in the public interest. However, the notification process is more common than authorisation for exclusive dealing conduct because it provides automatic legal protection from the lodgment date, or after 14 days in the case of third line forcing. The notification remains in place unless we revoke it. At any time, we can review the public benefit and detriment from the notified conduct to assess whether it should continue.

We assessed 536 exclusive dealing notifications, involving 407 separate matters, in 2016–17—18 per cent fewer than in the previous year.

## Collective bargaining arrangements

In 2016–17, we issued 13 determinations authorising collective bargaining arrangements and allowed notifications involving one collective bargaining arrangement. The collective bargaining arrangements we considered during the year included sugar cane supply, furniture retailing, digital wallets and concrete carting.

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

## Australian Competition Tribunal

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

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

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

### **Tabcorp Holdings Limited**

On 13 March 2017 Tabcorp Holdings Limited (Tabcorp) applied to the Australian Competition Tribunal (the Tribunal) for merger authorisation to acquire all of the shares in Tatts Group Limited (Tatts).

On 22 June 2017 the Tribunal made a determination granting Tabcorp authorisation to acquire shares in Tatts subject to the condition that Tabcorp give the ACCC an undertaking pursuant to s. 87B of the Act in the same form as the undertaking filed with the Tribunal dated 29 May 2017.

The ACCC applied to the Federal Court on 10 July 2017 for judicial review of the Tribunal's determination granting authorisation for Tabcorp's proposed acquisition of Tatts. The application is seeking clarification on three points of law which the ACCC considers are central to the Tribunal's assessment of the proposed acquisition.

## Other work assessing the public interest

The Trade Marks Act requires the ACCC to assess certification trade marks and rules before they can be registered by IP Australia. A certification trade mark (CTM) is used by businesses to indicate to consumers that a product or service has been certified as having particular attributes or being produced according to particular standards. Our role is important, as we ensure that competition and public interest issues are appropriately assessed. In particular, we consider the effectiveness of CTM rules in ensuring that the specified standards are met; that the rules do not unfairly exclude those that meet the requirements to use the mark; and that the certification bodies are competent to decide whether the requirements are and continue to be met. During 2016-17 the ACCC finalised 37 assessments of CTM applications.

### **Example of certification trade mark used to indicate the origin of products: prosecco wine**

On 16 May 2017 the ACCC issued a final assessment approving the registration of a CTM comprising the words 'CONEGLIANO VALDOBBIADENE—PROSECCO'. The mark is owned by Consorzio Tutela del Vino Conegliano Valdobbiadene Prosecco (the consortium) and is used to certify that the wine originates from the Conegliano Valdobbiadene area of Italy.

The term 'prosecco' has been used, and continues to be used, by Australian winemakers as the name of a variety of grape. In 2013 the Registrar of Trade Marks relied on this fact to uphold the Winemakers Federation of Australia's objection to the European Commission's application to register 'Prosecco' as a geographical indication in Australia.

Given the history around the use of 'prosecco' in Australia, the ACCC consulted with industry and government on the proposed CTM rules.

Registration of this CTM does not prevent Australian winemakers who use the prosecco grape variety from labelling their wine as prosecco. Rather, the CTM prevents use of the term 'CONEGLIANO VALDOBBIADENE—PROSECCO' in full without approval under the CTM rules.



# Strategy 1: Maintain and promote competition

## Other work promoting competition

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

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

Key matters where we sought to promote competition or worked to improve the competitive environment, either domestically or internationally, include the following.

### Agriculture sector engagement and enforcement

Addressing competition and consumer issues in the agriculture sector was one of our 2016–17 priorities.

The ACCC's Agriculture Unit undertook a range of activities to increase our engagement and enforcement activities in the agriculture sector. This included:

- conducting a market study of Australia's cattle and beef industry. Our final report on the market study (see page 60), released on 7 March 2017, included recommendations for improvements to cattle market reporting, the transparency and independence of carcass grading, competition among buyers of cattle, and measures aimed at reducing the potential for anti-competitive conduct in the industry
- releasing a report, *Perspectives in horticulture and viticulture: industry views on competition and fair trading issues*. This report outlines competition and fair trading issues raised in a series of regional workshops run by the ACCC throughout Australia in 2016
- commencing a 12-month inquiry into the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry. The inquiry involves extensive public consultation with farmers and businesses at all levels of the dairy supply chain. It is conducted under Part VIIA of the Act, which means the ACCC has power to compel the production of relevant information and documents. We are required to report the inquiry findings to the Treasurer by 1 November 2017
- assessing standard-form contracts across agricultural industries. The findings of this assessment were incorporated in the ACCC publication *Unfair terms in small business contracts*. The aim of this project was to educate and promote compliance with the new business-to-business unfair contract terms law, which commenced on 12 November 2016
- engaging with peak organisations to help educate growers and traders of horticultural produce about their rights and obligations under the revised Horticulture Code of Conduct, which came into effect on 1 April 2017
- engaging with farmers and others from the agriculture sector on their properties and at saleyards, wholesale markets, field days and other events across Australia
- conducting meetings of the ACCC Agriculture Consultative Committee

- investigating possible contraventions of the Act in various agriculture markets, including working with ACCC enforcement and merger teams on their investigations. This included matters in the dairy, horticulture, and cattle and beef industries. For details, refer to the outline on page 127 of the dairy industry case involving Murray Goulburn Cooperative Co. Limited.

## Harper review

The Competition Policy Review (Harper review), which delivered its final report in 2015, was the first major review of competition policy in Australia for 20 years. In 2016–17 we continued to engage with stakeholders as we supported and prepared for the implementation of legislative changes arising from the Harper recommendations. For details, refer to page 112.

## Residential mortgage products price inquiry

On 9 May 2017 the Treasurer, the Hon Scott Morrison MP, directed the ACCC to conduct an inquiry into residential mortgage products. As part of this inquiry, the ACCC can compel the banks affected by the major bank levy to explain any changes or proposed changes to fees, charges or interest rates in relation to residential mortgage products. The inquiry relates to prices charged until 30 June 2018. This inquiry will be the first task of the ACCC's new Financial Sector Competition Unit, which has funding of \$13.2 million over four years from 2017–18 and an additional \$1.2 million in 2017–18 for this inquiry.

A report will be delivered to the Treasurer at the conclusion of the inquiry.

## Financial sector

In addition to its inquiry into residential mortgage products, the ACCC is engaging with the Productivity Commission over the next year to look into competition issues in the financial sector. In 2016–17 we established a Financial Sector Competition Unit to undertake this task and conduct the required market studies.

This inquiry, along with other market studies—such as those of agriculture and new car retailing—continues the important role the ACCC plays in improving the transparency of Australia's markets.

## Dairy inquiry

The ACCC is conducting an inquiry into the competitiveness, trading practices, and transparency of the Australian dairy industry. On 27 October 2016, the Treasurer, the Hon Scott Morrison MP, issued a notice requiring the ACCC to hold an inquiry into the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry. Public forums took place in February and March 2017 in a variety of locations. Summaries of issues raised at those in Bunbury, Hahndorf and Burnie were published in April 2017. The ACCC must submit its report following the inquiry to the Treasurer before 1 November 2017.

## Cattle and beef market study

On 7 March 2017, the ACCC released the final report of its cattle and beef market study.

This study, which began on 5 April 2016, examined the dynamics of the cattle and beef industry in a context broader than the specific provisions of the Act, including competition and transparency issues, and impediments to efficiency at various stages of the supply chain.

It was a self-initiated study, which meant that the ACCC did not have powers to compel provision of information and documents; instead we relied on the voluntary provision of information by market participants and interested parties.

The report detailed issues that need to be addressed to improve competition along the domestic supply chain, including:

- lack of transparency and competitiveness in price reporting
- lack of trust in the cattle carcass grading system
- concerns about anti-competitive conduct in cattle sales.

The ACCC made 15 key findings and recommendations about improving transparency, competition and efficiency in the industry. For example, we recommended:

- that cattle processors publish prices offered for cattle, to reduce information asymmetry and increase producers' ability to compare offers
- that historical price data be made more accessible so that producers can make better informed decisions
- that the industry prioritise the introduction of objective carcass-grading technology, increase random auditing of grading results, provide more education about the grading process and develop an independent dispute resolution system
- more detailed reporting of purchases at saleyards and the introduction of a register that will disclose bidders' interests before auction, to increase transparency, reduce conflicts of interest and discourage anti-competitive behaviour.

The report advocated that industry take responsibility for implementing these changes, overseen by the Red Meat Advisory Council, and report progress annually to state, territory and federal agriculture ministers.

We are monitoring the progress of the industry in implementing the recommendations in the final report. We understand that some progress has already been made. In particular:

- Meat and Livestock Australia has updated its website to make it easier to compare historical prices of cattle
- AUS-MEAT, the industry body responsible for accrediting Australian abattoirs and overseeing meat standards, has provided workshops and training material to help producers understand the factors that directly influence the price paid for cattle in direct-to-abattoir sales
- Meat and Livestock Australia has announced that it will invest up to \$10 million to co-fund the installation of DEXA objective measurement systems in red meat processing plants, in response to requests to accelerate the adoption of the technology.<sup>3</sup>

We will continue to work with the Red Meat Advisory Council, seeking regular updates on the progress of all of the recommendations.

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<sup>3</sup> See: [http://www.mla.com.au/news-and-events/industry-news/\\$10-million-approved-for-dexa-installations/](http://www.mla.com.au/news-and-events/industry-news/$10-million-approved-for-dexa-installations/).

## New car retailing industry

### Market study

Each year we conduct a strategic review to determine the focus of our compliance and enforcement activities for the upcoming year. In the 2016 strategic review we determined that new car retailing, including responses by retailers and manufacturers to consumer guarantee claims, would be a priority area for the ACCC in 2016–17. We reflected this in our 2017 Compliance and Enforcement Policy.

On 17 June 2016 we announced that we would undertake a market study into the new car retailing industry. In 2016–17 this study examined whether industry practices are consistent with what we would expect from a competitive market. In particular, it looked at practices relating to:

- consumer guarantees, warranties and new cars
- fuel consumption, carbon dioxide (CO<sub>2</sub>) and noxious emissions, and car performance
- access to repair and service information and data.

The study explores the broad structure and operation of the new car retailing industry, assessing whether market characteristics—including new car buyer behaviours and expectations—are conducive to competition. It is informed by a range of enforcement, education and research projects focusing on key competition and consumer issues that may be present or emerging in the industry.

On 17 October 2016 the ACCC published its new car retailing industry market study issues paper and invited submissions from the public. Submissions, including consumer and small business responses to a streamlined questionnaire, were published on the ACCC's website in December 2016 ([www.accc.gov.au/newcars](http://www.accc.gov.au/newcars)).

On 13 December 2016 the ACCC hosted a new car retailing stakeholder forum in Melbourne. The forum was attended by representatives from industry (including manufacturers, dealers, repairers and parts retailers), consumer groups and relevant government departments and agencies.

To inform the study, we have continued to engage with key stakeholders to collect and discuss relevant matters, including attending workshop site visits.

The draft and final reports are due to be released in the second half of 2017. A roundtable will be held with key stakeholders following the release of the draft report.

### Action on consumer issues

We instituted proceedings against **Audi Aktiengesellschaft**, **Audi Australia Pty Ltd** and **Volkswagen Aktiengesellschaft** in respect of allegations of misleading representations in relation to diesel vehicle emission claims.

For details of ACCC cases, refer to page 84.

## Electricity supply and prices inquiry

In May 2017 the ACCC released an issues paper for its inquiry into retail electricity supply and prices in Queensland, New South Wales, Victoria, South Australia, Tasmania and the ACT. The paper set out the key issues that the ACCC will focus on during the inquiry. The ACCC sought submissions by the end of June from interested parties. We will hold public forums in a number of locations to speak with customers directly about their concerns and experiences. We will also engage with industry directly and use compulsory information-gathering powers as required to access information that is not publicly available.

Further information about the forums will be published on the ACCC's website in the coming months. The issues paper and terms of reference are available on our website.<sup>4</sup>

## Communications sector market study

In September 2016 the ACCC undertook a market study into the communications sector. The purpose of the market study is to ensure that the implications of developments in the communications sector are well understood, to identify issues that prevent relevant markets from delivering economically efficient and competitive outcomes in the interests of consumers, and to identify options, if required to address these issues. A draft report will be issued in October 2017 and a final report in early 2018.

## New role conducting gas inquiry

On 19 April 2017, the Treasurer directed the ACCC to hold an inquiry for improving the transparency of gas supply in Australia. The ACCC is required to monitor:

- the pricing and availability of offers to supply gas
- the volumes of gas supplied or available for current or future supply
- the pricing, volume and availability of gas for domestic supply compared to the pricing, volume and availability of gas for export
- the pricing, volume and availability of other goods or services, such as goods or services for drilling for, storing or processing gas, that enable, assist or facilitate the supply of gas or gas transportation services in Australia.

The ACCC will submit interim reports no less frequently than every six months and provide information to the market as appropriate, with a final report due by 30 April 2020.

### Contributions to gas market reform

At the same time, the ACCC will continue to work with Dr Michael Vertigan to refine longer term transparency measures to address the current opaqueness in the gas market and support longer term market stability in the domestic supply and consumption of gas. The scope of this work will cover the full supply chain, including producers, transporters and retailers. Aspects of this work follows from the ACCC's inquiry into east coast gas markets, conducted in 2015-16.

In April 2017 the ACCC provided a submission to the Gas Market Reform Group strongly supporting a proposed information disclosure and commercial arbitration framework for gas pipelines. The ACCC also provided submissions to the review of the gas pipeline coverage test in October and November 2016.

## Insurance in Northern Australia

In May 2017, the Australian Government directed the ACCC to hold an inquiry into the supply of residential building, contents and strata insurance products to consumers in Northern Australia. Official notice of the inquiry, including the terms of reference, was gazetted on 14 June 2017.

The ACCC's inquiry will explore in detail consumer, regulatory and competition issues identified in previous inquiries. It will focus in particular on cost drivers of insurance

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<sup>4</sup> See: <https://consultation.accc.gov.au/regulated-infrastructure/inquiry-into-retail-electricity-prices-and-supply/>.

premiums, and transaction costs and information issues experienced by consumers. The inquiry will also monitor the activities of the insurance industry in Northern Australia over three financial years to 30 November 2020, which will help inform its findings.

## Award-winning competition advocacy

In March 2017 the ACCC received an international award from the World Bank Group (WBG) and the International Competition Network (ICN) for its role in elevating competition policy to the national economic agenda.

The ACCC won the award for its advocacy work in promoting pro-competition measures when governments are privatising public assets. We have been advocating that, when privatising infrastructure assets, governments should not restrict future competition to these assets, and that infrastructure monopolies need appropriate upfront regulation.

The ACCC was awarded the top prize in the category 'Levelling the playing field through competitive neutrality or by elevating competition policy to the economic policy agenda'.

In giving the award to the ACCC, the ICN and WBG noted that:

*"...even in the absence of a formal mandate, the ACCC advocated for the inclusion of pro-competition measures in the privatization of the ports of Melbourne, Darwin as well as the Utah Point Bulk Handling Facility at Port Hedland. These measures strengthen pricing regimes as well as more transparent and competitive privatization procedures. The advocacy initiative of ACCC reduces the likelihood of monopoly pricing post privatization and ensures continued access to the ports".*

The Chairman of the ACCC accepted the prize at an ICN meeting in Portugal in May 2017.

## Medical and health sector

In 2016–17, after an ACCC investigation, several major IVF clinics agreed to make changes to claims published on their websites about their success rates for clinical pregnancy. The ACCC's investigation followed a complaint from the Australian Health Practitioner Regulation Agency.

The ACCC was concerned that website content from all major Australian IVF clinics made success rate comparisons without adequate disclosure about, or qualification of, the nature of the data or graphics used to make the claim.

Also, some IVF clinics used technical terms that may be misleading to consumers without further clarification or explanation. For example, some IVF clinics used 'clinical pregnancy rate' data to compare their success rates where that data reflected the clinic's success in creating an embryo rather than live births. These comparisons were sometimes accompanied by photographs of newborn babies.

The ACCC considered that this was likely to give consumers a misleading impression about the rate of live births achieved by the clinic.

As part of its investigation, the ACCC worked with the Fertility Society of Australia, the IVF industry's peak body, to improve industry-wide awareness of, and compliance with, the Australian Consumer Law. The Fertility Society of Australia is continuing to work with industry participants to improve transparency about success rate claims and comparisons.

## International collaboration on competition

The ACCC collaborates with international counterparts through forums such as the International Competition Network (refer to page 109) and the Competition Law Implementation Program in South-East Asia (refer to page 107).

# Strategy 2: Consumer protection and fair trading

## Summary of performance

### Protecting the interests and safety of consumers and supporting fair trading in markets affecting consumers and small business

#### Role and functions

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

The ACCC supports consumers and small business by:

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

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

We use educational campaigns to ensure that consumers and small businesses are fully aware of their rights and responsibilities under the *Competition and Consumer Act 2010* (the Act) and to encourage businesses to comply with the Act.

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

Our deliverables in this area are:

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



## Priorities

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

The ACCC's Compliance and Enforcement Policy sets out our priorities for the year and the factors we take into account when deciding whether to pursue matters.

There are some forms of conduct that are so detrimental to consumer welfare and the competitive process that we will always regard them as a priority. Our enduring priorities are:

- product safety issues which have the potential to cause serious harm to consumers
- conduct that impacts vulnerable and disadvantaged consumers (including elderly consumers and consumers who are newly arrived in Australia)
- protecting consumer rights of Indigenous consumers living in remote areas.

In addition to our enduring priorities, the ACCC's Compliance and Enforcement Policy prioritised the following areas in 2016 and 2017:

- consumer guarantees and representations made by large companies about express and extended warranties, including in the airline industry
- consumer issues in new car retailing, including responses by retailers and manufacturers to consumer guarantee claims
- consumer and competition issues in the health and medical sectors, including in private health insurance
- small business protection: industry codes of conduct, *Franchising Code of Conduct*, *Food and Grocery Code of Conduct*, revised *Horticulture Code of Conduct*
- disruption of scams, particularly those that rely on building deceptive relationships and cause severe and widespread consumer or small business detriment
- consumer and competition issues in the agriculture sector
- consumer issues arising from commission-based sales business models
- issues arising from the ACCC's monitoring of broadband speed and performance claims
- the effectiveness of recalls for unsafe consumer productions and supply of unsafe products in Australia by internet platform providers.

## Powers

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

We also have certain powers under industry codes and schemes.

## Performance indicators

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

This deliverable is about court or other actions we take, such as non-enforceable initiatives to enhance compliance, which protect consumers and small businesses from conduct

that harms them. With finite resources, we direct our efforts to those areas with the greatest harm, determining our priorities for action each year. As a strategic regulator with finite resources we look to intervention that can influence behaviour across industry and the economy.

These performance indicators are from the ACCC and AER Corporate Plan 2016-17, page 13.

**Table 3.14: Performance indicators for Deliverable 2.1**

<b>Performance indicators</b>	<b>Annual target</b>	<b>Result</b>
Number of in-depth ACL investigations completed	80	98
Percentage of in-depth ACL investigations that are in the priority areas outlined in the Compliance and Enforcement Policy	60%	70.1%
Percentage of initial ACL investigations completed within 3 months	80%	88.1%
Percentage of in-depth ACL investigations completed within 12 months	80%	80.6%
Number of ACL enforcement interventions or market studies (court proceedings commenced, s. 87B undertakings accepted, infringement notices paid, publication of studies relating to consumer or small business issues in markets)	40	48
Percentage of ACL enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy	60%	64.6%
Percentage of ACL enforcement interventions in the priority areas, or demonstrating the priority factors, outlined in the Compliance and Enforcement Policy	100%	100%
Number of emerging CCA market issues affecting consumers and small business that are identified, considered and advice developed	2	2
Number of new or revised business compliance resources (published guidance)	10	26
Number of times online business education resources have been accessed	600 000	1 388 770
Number of surveys and audits for CCA compliance, including in relation to product safety regulations	20	54
Percentage of business compliance projects that are in priority areas identified in the Compliance and Enforcement Policy	60%	100%

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

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

These performance indicators are from the ACCC and AER Corporate Plan 2016-17, page 14.

**Table 3.15: Performance indicators for Deliverable 2.2**

Performance indicators	Annual target	Result
Percentage of business compliance resources developed or updated in consultation with business, stakeholder groups and peak bodies	80%	81%
Number of business compliance projects that are delivered jointly with ACL regulators  (Business compliance projects may include one or more of the following to address an identified sector-based compliance risk: monitoring, surveillance, audits, research, stakeholder engagement, business compliance resources, consumer education resources)	5	10
Number of business compliance and consumer education projects that involve partnership or joint delivery with businesses, peak bodies, industry or consumer groups	5	6

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

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

These performance indicators are from the ACCC and AER Corporate Plan 2016-17, page 14-15.

**Table 3.16: Performance indicators for Deliverable 2.3**

Performance indicators	Annual target	Result
Percentage of product safety mandatory reports made by businesses of serious injury or death preliminary assessed by the ACCC within seven days	100%	86.6%
Percentage of recall notifications by businesses to the ACCC that, after assessment and engagement, can be published within 48 hours	80%	Note
Number of detailed assessments of emerging product safety hazards	40	82
Number of reviews of mandatory product safety standards completed	6	6
Number of new or updated published business compliance resources about responsible sourcing of consumer products	2	3

Note: This KPI cannot be reported using the new workflow system introduced on 1 August 2016. From 1 July 2017 the target will be revised to be 80 per cent of notified voluntary recalls to be published within seven calendar days of receipt, including assessment and any engagement with the supplier.

### Deliverable 2.4: Support a vibrant small business sector

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

These performance indicators are from the ACCC and AER Corporate Plan 2016–17, page 15.

**Table 3.17: Performance indicators for Deliverable 2.4**

Performance indicators	Annual target	Result
Number of small business Infocentre contacts served (Small business contacts are contacts through separate small business phone line and web forms)	12 000	13 372
Number of new or revised business compliance resources (published guidance) to empower small business	5	26
Number of CCA and ACL enforcement interventions with substantial benefits to small business sector	10	12

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

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

These performance indicators are from the ACCC and AER Corporate Plan 2016–17, page 15.

**Table 3.18: Performance indicators for Deliverable 2.5**

Performance indicators	Annual target	Result
Number of new or revised consumer education resources (published guidance)	10	45
Number of times online consumer education resources have been accessed	1.5 million	3.5 million
Number of Infocentre contacts served	150 000	264 462
Number of unique visits to the Scamwatch website	1.5 million	2 310 735*

\* Due to a change in the analytics tool used for the new Scamwatch website launched in July 2015, the annual figures reflect visits rather than unique visits.

## Factors affecting performance

The ACCC exceed all of the annual targets set for ACL enforcement investigations in 2016–17.

The ACCC completed 98 in-depth ACL investigations in the period and completed initial investigations and in-depth investigations within the target timeframes of three months and 12 months respectively. The ACCC achieved 48 new ACL enforcement interventions in 2016–17 (target of 40). All the interventions were within the priority areas and/or demonstrating the priority factors as outlined in the Compliance and Enforcement policy.

In 2016–17 we developed 81 per cent of business compliance resources in consultation with business, stakeholder groups and peak bodies, just above the target of 80 per cent. We consulted with these groups for major projects such as country of origin labelling, business to business unfair contract terms and the Horticulture Code of Conduct; however, it is not feasible to consult during the development of all resources. Some resources, such as webinars, are presented in a format on which it is impractical to consult; however, the content

used in webinars has often been drawn from sources such as published guidance that has already been developed in consultation with stakeholders.

We assessed 86.6 per cent of product safety mandatory reports made by businesses of serious injury or death with preliminary assessment within seven days, which was above the target. The allocation of additional resources to this work offset the staff time that was taken up by implementing a new recording and reporting system.

The Infocentre made a significant change to operations in October 2016 and ceased using the word 'complaint' to describe the information collected from telephone calls to the ACCC or provided in writing. This was in response to increasing difficulty meeting demand, particularly when a complaint handling service was expected. Consumers and small business are now encouraged to 'report' information that may represent a breach, and we may not provide a response. This has resulted in more reports received, and fewer requiring a response. The Infocentre is also starting a transition away from providing a telephone service for Scamwatch, which has reduced call volumes by 40 per cent compared to the same period last year.

# Analysis of performance

## Deliver priority consumer law outcomes

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

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

- institute court proceedings. This year, we commenced 19 new consumer protection- and business protection-related court proceedings
- accept court enforceable s. 87B undertakings where a breach, or a potential breach, might otherwise justify litigation. This year, we accepted 14 consumer protection-related s. 87B undertakings
- issue infringement notices. This year, we received payment for 11 infringement notices from nine traders, with penalties totalling \$115 200
- accept an administrative resolution. These generally involve a business agreeing to stop a particular type of conduct, compensate consumers and take other measures to ensure that the conduct does not recur. This year, we resolved a number of matters administratively, with five matters resolved through a formal administrative resolution.

The ACCC action relates to consumer issues in a range of businesses and priority areas including health and medical, vulnerable and disadvantaged consumers, Indigenous consumers and product safety.

A complete list of these proceedings is included in appendix 9.

We achieved significant outcomes in litigated consumer protection matters in 2016–17 in:

- Reckitt Benckiser—penalties of \$6 million
- Acquire Learning—penalties of \$4.5 million
- Valve Corporation—penalties of \$3 million
- Lifestyle Photographers—penalties of \$1.1 million
- Social-Lites, Elusion and The Joystick Company—penalties totalling \$175 000 against the companies and individual CEO and directors
- Jetstar Airways and Virgin Australia—penalties of \$545 000 and \$200 000 respectively
- Ozsale Pty Ltd—penalties of \$500 000
- Advanced Medical Institute—penalties of \$350 000
- Harrison Telecommunication Companies (SoleNet and Sure Telecom)—penalties of \$250 000.

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

- vulnerable and disadvantaged consumers
- Indigenous consumers
- consumer guarantees
- new car retailing
- health and medical including private health insurance
- small business
- scam disruption

- other consumer protection outcomes include those in relation to truth in advertising, online consumer issues, issues in telecommunications and energy and contempt of court action.

## Vulnerable and disadvantaged consumers

We actively address business practices that affect the interests of vulnerable and disadvantaged consumers, particularly where awareness of consumer rights is low. Where awareness of consumer rights is lower, there is more scope for opportunistic business practices. We address this through education about consumer rights and issues as well as enforcement action.

Consumer rights may be less known by people:

- who are elderly
- who are newly arrived in Australia or from a non-English-speaking background
- with a disability or illness
- with low reading, writing and numerical skills
- from a low socio-economic background
- who are homeless
- who are living in remote areas.

Protecting Indigenous consumers in remote areas is an enduring priority area for the ACCC which overlaps with the outcomes achieved in relation to vulnerable and disadvantaged consumers. This is further discussed on pages 72 to 74.

In 2016–17, we prioritised the protection of consumers with poor literacy or from Indigenous or non-English-speaking backgrounds. By concentrating our efforts, we can give these consumers extra confidence that their rights are being protected.

Vulnerable and disadvantaged consumers are often subject to unfair or high pressure sales tactics and misleading and deceptive conduct as well as unconscionable conduct. Unconscionable conduct is defined as conduct that is so harsh it goes against good conscience as judged against the norms of society.

### **Case study: Examples of the protection of vulnerable and disadvantaged consumers—VET FEE-HELP education and training courses**

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

Proceedings were instituted in 2015–16 by the ACCC, and in some matters the Commonwealth on behalf of the Department of Education and Training, in relation to:

- Unique International College Pty Ltd (Unique), which sells VET FEE-HELP diploma courses
- Phoenix Institute of Australia Pty Ltd (Phoenix), which sold VET FEE-HELP funded courses in New South Wales, Victoria, Queensland, the Northern Territory and Western Australia between January and October 2015. Community Training Initiatives Pty Ltd (CTI), which assisted Phoenix by providing administrative support and processing enrolment forms
- Cornerstone Investment Australia Pty Ltd trading as Empower Institute (Empower), which marketed and sold VET FEE-HELP funded courses to consumers in New South Wales, Western Australia, Victoria, Queensland and South Australia.

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

It is alleged that the colleges and brokers engaged in door-to-door or face-to-face marketing of VET FEE-HELP courses across various parts of Australia and made false or misleading representations that diploma courses were 'free' or government funded, engaged in unconscionable conduct and did not comply with door-to-door selling legislation when enrolling consumers into Commonwealth-funded VET FEE-HELP education and training courses.

It is also alleged that some private colleges and recruiters adopted a strategy and used sales tactics to target low socio-economic areas, including remote and regional communities and Indigenous consumers. In some cases, this included offering 'free' gifts or gifts that were 'free' if they did not earn more than approximately \$50 000 per annum. These gifts included laptops and tablets as an incentive to encourage consumers to sign up to courses. In fact, the laptops or tablets students received were on loan and to be repaid with their VET FEE-HELP debt.

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

The cases against Phoenix, Empower and AIPE are ongoing.

In May 2017, the Federal Court ordered Acquire to pay penalties of \$4.5 million for engaging in unconscionable conduct, making false or misleading representations and breaching the unsolicited consumer agreements provisions in the ACL. This was the second-highest penalty awarded under the ACL. In particular, Justice Murphy acknowledged 'the deliberateness of the contravening conduct, its nature in targeting vulnerable people, the losses suffered by the Commonwealth, and Acquire's status as a market leader, indicates a strong requirement for general and specific deterrence.'

The Court also made orders restraining Acquire from making representations about the uses or benefits of enrolling in a course without having a reasonable basis for doing so, that Acquire Learning undertake six-monthly reviews of its existing compliance program for a period of three years to ensure its effectiveness, and that Acquire pay \$100 000 towards the ACCC's costs.

Acquire cooperated with the ACCC's action, including by making admissions and agreeing joint submissions on penalty which were filed with the Court.

In June 2017, the Federal Court found that Unique made false or misleading representations and engaged in a pattern of behaviour that amounted to unconscionable conduct in breach of the ACL.

The Court found that the use of gifts, including laptops and tablets was part of a system of conduct used to 'supercharge the exploitation of the disadvantaged group that was being targeted (and also Unique's remarkable profits)'.

The matter is now listed for a hearing on penalties and other relief on a date to be determined.

In addition to these proceedings, in March 2017 the Australian Vocational Learning Centre Pty Ltd agreed in a court enforceable s. 87B undertaking to cancel enrolments and repay



VET FEE-HELP funding to the Commonwealth for students affected by certain marketing practices it admitted breached the ACL, following ACCC investigation.

This s. 87B undertaking follows on from the s. 87B undertaking the ACCC accepted from Careers Australia in May 2016 in relation to in relation to similar conduct.

## Court cases

The following cases were finalised in 2016–17.

**Table 3.19: Vulnerable and disadvantaged cases finalised**

<b>Vulnerable and disadvantaged consumers</b>	<b>Acquire Learning and Careers Pty Ltd</b>	<b>Conduct</b>
commenced	17 December 2015	The ACCC alleged that Acquire engaged in unconscionable conduct, making false or misleading representations and breaching the unsolicited consumer agreements provisions in the ACL by its conduct in telemarketing VET FEE-HELP diploma courses between July 2014 and March 2015.
concluded	30 May 2017	
jurisdiction	Federal Court Melbourne	
outcome	Pecuniary penalties of \$4.5 million	
	Declarations	
	Audits of compliance programs	
	Costs of \$100 000	
<b>Vulnerable consumers</b>	<b>NRM Corporation Pty Ltd and NRM Trading Pty Ltd t/a Advanced Medical Institute and Jacov Vaisman</b>	<b>Conduct</b>
commenced	21 December 2010	The ACCC alleged that, in promoting and supplying medical services and medications for men suffering from erectile dysfunction and premature ejaculation, AMI and NRM Corporation and NRM Trading Pty Ltd (NRM) engaged in unconscionable conduct.
concluded	1 December 2016	
jurisdiction	Federal Court Melbourne	
outcome	Federal Court fined NRM \$350 000 for contempt of court and imposed cost orders on an indemnity basis.	
	Earlier in July 2016, NRM's appeal was dismissed	
		The ACCC took contempt proceedings in August 2015. NRM has appealed various aspects of the April 2015 judgment. The appeal was dismissed in July 2016.

The following cases were instituted in 2016–17.

**Table 3.20: Vulnerable and disadvantaged cases instituted**

Vulnerable and disadvantaged consumers	Swishette Pty Ltd and Letore Pty Ltd	Conduct
commenced jurisdiction	30 March 2017 Federal Court Melbourne	The ACCC alleges that Swishette and Letore were directly or indirectly knowingly concerned in false, misleading and unconscionable conduct engaged in by Clinica Internationale Pty Ltd in relation to a program offering permanent residency to migrants between August 2012 and June 2013.
Vulnerable and disadvantaged	Get Qualified Australia Pty Ltd	Conduct
commenced jurisdiction	30 March 2017 Federal Court Melbourne 9 September 2016 Federal Court Melbourne On 27 June 2017, the Federal Court has found that Get Qualified Australia made false or misleading representations and engaged in unconscionable conduct in its supply of services to consumers seeking recognition of their prior learning to gain qualifications, in contravention of the ACL. Relief hearing to take place on a date to be fixed.	The ACCC alleged that Get Qualified Australia made false or misleading representations and engaged in misleading and unconscionable conduct in connection with its supply of services to consumers seeking recognition of their prior learning to gain qualifications.

The following cases were ongoing at the end of 2016–17.

Table 3.21: Vulnerable and disadvantaged cases ongoing

<b>Vulnerable and disadvantaged consumers</b>	<b>ACM Group Ltd</b>		<b>Conduct</b>
	commenced jurisdiction	2 June 2016 Federal Court Sydney	
<b>Vulnerable and disadvantaged consumers</b>	<b>Australian Institute of Professional Education Pty Ltd</b>		<b>Conduct</b>
	commenced jurisdiction	31 March 2016 Federal Court Sydney	
<b>Vulnerable and disadvantaged consumers</b>	<b>Cornerstone Investment Australia Pty Ltd t/a Empower Institute</b>		<b>Conduct</b>
	commenced jurisdiction	9 December 2015 Federal Court Sydney	
<b>Vulnerable and disadvantaged consumers</b>	<b>Phoenix Institute of Australia Pty Ltd &amp; Community Training Initiatives</b>		<b>Conduct</b>
	commenced jurisdiction	24 November 2015 Federal Court Sydney	

<b>Vulnerable and disadvantaged consumers</b>	<b>Unique International College Pty Ltd</b>		<b>Conduct</b>
	commenced jurisdiction	27 October 2015 Federal Court Sydney	
<b>Vulnerable and disadvantaged consumers</b>	<b>Clinical Internationale Pty Ltd (appeal)</b>		<b>Conduct</b>
	commenced jurisdiction	15 May 2015 Federal Court Melbourne Mr Radovan Laski, Swishette Pty Ltd and Letore Pty Ltd (companies controlled by Mr Laski) lodged an appeal against some of the orders that Mortimer J made on 23 March 2016, which included refund payments, penalties totalling \$1.025 million and disqualification orders against Mr Laski from managing corporations for five years.	

## Undertakings

The following s. 87B court enforceable undertakings were finalised in 2016–17. Details of the s. 87B undertakings are in appendix 8.

**Table 3.22: Undertakings regarding vulnerable and disadvantaged consumers finalised**

<b>Australian Vocational Learning Centre Pty Ltd s. 87B undertaking dated 22 March 2017</b>	The ACCC accepted a court enforceable undertaking from Australian Vocational Learning Centre Pty Ltd in relation to its marketing practices and enrolment of consumers in its VET FEE-HELP courses.
<b>Easy Meals by Flavour Makers Pty Ltd s. 87B undertaking dated 16 August 2016</b>	The ACCC accepted a court enforceable undertaking from Easy Meals by Flavour Makers Pty Ltd (Easy Meals) in relation to its conduct in the marketing and supply of its pre-packaged meals to consumers, particularly those with diabetic conditions.

## Consumers with disability

In 2016–17 the ACCC led a joint project with the other ACL regulators to provide information to consumers with disability, as well as businesses and not-for-profit organisations, in the newly introduced National Disability Insurance Scheme (NDIS) about their rights and obligations under the ACL.

In December 2016 the ACCC and ACL regulators released seven educational resources that seek to empower people with disability to use their consumer rights when buying goods and services under the NDIS and also educate new and existing businesses about their obligations under the ACL.

The resources are designed to cater to different levels of comprehension and literacy. The resources include an industry guide, a consumer guide, a fact sheet, an Easy English guide (translated into eight languages), stakeholder training PowerPoint presentations and two educational videos. The videos are available in a variety of accessibility formats, including closed captions, AUSLAN with audio descriptions and DVD.

## Indigenous consumers

In 2016–17 Indigenous consumer issues were elevated to an enduring priority. This is a significant change to our policy, recognising that Indigenous consumers, particularly those living in remote areas, continue to face challenges in asserting their consumer rights. This means that we will always prioritise our work in this area while challenges remain.

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

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

Unfortunately, Indigenous communities are often the target of unfair sales tactics.

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

The Do Not Knock informed (DNKi) project seeks to remind traders of their ACL obligations and empower consumers to enforce their consumer rights by reporting unlawful conduct to the ACCC. DNKi is a collaboration between the ACCC, the Queensland Office of Fair Trading, the Indigenous Consumer Assistance Network (ICAN) and Aboriginal shire councils.

In April 2016 the first DNKi Indigenous community signage project was launched in Wujal Wujal in northern Queensland. In May 2017 the project was rolled out in the Yarrabah community. We have plans to introduce the project to the Hope Vale community in July 2017.

Six months after the Wujal Wujal DNKi project launch, that community's justice group advised the ACCC that they had noticed a 'significant reduction' in the number of itinerant traders visiting that community. Also, they said that residents were much more confident to question trader activity.

In addition to the case study on page 72 involving VET FEE-HELP education and training courses and the protection of vulnerable and disadvantaged consumers (including some Indigenous consumers), the following case study highlights outcomes in relation to this enduring priority.

### **Case study: Examples of consumer protection issues affecting Indigenous consumers**

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

#### **'Free' offers to disadvantaged consumers**

In 2015 the ACCC took legal action against Expression Sessions, alleging that their representations to consumers were false or misleading.

We alleged that between 2012 and 2014 Expression Sessions, which sells photography packages, was offering customers a 'free' photo shoot or 'free' photographs, telling customers they would be able to receive photographs of their children at no cost and without entering into a contract. In fact, customers were not able to receive free photographs and were required to enter into a contract with Expression Sessions to purchase photographs.

Expression Sessions' customers were in many cases Aboriginal or Torres Strait Islander people or were financially disadvantaged. In addition, it appeared that some of the customers were in considerable financial distress or had a limited capacity to understand commercial contracts.

Expression Sessions failed to clearly advise its customers of the total price of their photographic products at the time the customers signed the contract.

We considered that Expression Sessions acted unconscionably by using unfair sales tactics, putting undue pressure on customers and failing to provide clear and accurate information about its contractual terms.

The judgment noted that Lifestyle's conduct involved 'a system of conduct in respect of a number of consumers, and potentially numerous individual consumers'.

In considering whether the proposed penalty was appropriate, it stated that Lifestyle's 'behaviour and use of unfair sales tactics was intentional and deliberate ... the acts or omissions arose out of an intentional exploitation of the characteristics of consumers, namely parents or grandparents ... the non-disclosure of price information at the time of the photo shoot was devised and directed by senior management ...'.

The Federal Court ordered by consent that Lifestyle pay a pecuniary penalty of \$1.1 million. The Court also ordered a declaration, injunctions, a corrective notice, refunds through the consumer redress scheme and payment of the ACCC's costs.

## Court cases

**Table 3.23: Cases finalised regarding Indigenous consumers**

Indigenous consumers	Lifestyle Photographers Pty Ltd t/a Expression Sessions	Conduct
	commenced	The ACCC alleged that Expression Sessions made false or misleading representations and engaged in misleading or deceptive and unconscionable conduct when selling photography products. Lifestyle entered into voluntary administration on 4 January 2016. On 29 December 2015, six days prior to entering into voluntary administration, Lifestyle was sold to a company called Easy Payments Pty Ltd, controlled by the respondent's director's wife, Mrs Zelda Baravykas.
	concluded	
	jurisdiction	
	outcome	
	Pecuniary penalty of \$1.1 million	
	Declarations that conduct unconscionable and contracts void ab initio	
	Injunctions	
	Corrective notice	
	Payment of ACCC's costs.	

## Consumer guarantees

Under the Australian Consumer Law, when a consumer buys products and services, those products and services come with automatic guarantees that they will work and do what the consumer expects them to do. If the consumer buys a product that does not perform as expected, they have consumer rights. If a business fails to deliver any of these guarantees, there are consumer rights for repair, replacement or refund; cancelling a service; or compensation for damages and loss. The ACCC has powers to enforce compliance with the ACL where businesses mislead consumers about their rights under consumer guarantees.

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

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

In 2016–17, under our Compliance and Enforcement Policy, the ACCC continued to focus on representations that large retailers make about express and extended warranties as well as consumer guarantee claims in relation to the airline industry.

### Case study: Example of action to prevent companies misleading consumers about extended warranties

In 2017, the ACCC conducted an industry-wide review of extended warranty selling practices including the content of extended warranty plan brochures provided to consumers at the point of sale. In particular, the ACCC was concerned with the conduct of some retailers overstating the benefits of buying an extended warranty, when consumers have the free protection of consumer guarantees under the ACL.

After further investigation, the ACCC accepted s. 87B undertakings from Domestic & General Services Pty Ltd (DGSP) which provides support services to retailers offering extended warranty products and Yoogalu Pty Ltd (Yoogalu) which is owned by the Harvey Norman Group and designed the extended warranty program sold at stores branded with the trademarks Harvey Norman®, Domayne® and Joyce Mayne®.

DGSP and Yoogalu were engaging in marketing practices that the ACCC considered could confuse and in some cases mislead consumers by insufficiently disclosing or misrepresenting the degree of overlap and differences between extended warranty rights and rights and remedies automatically available under the ACL.

The undertakings require each of DGSP and Yoogalu to:

- engage with retailers to revise extended warranty brochures to include additional information to assist consumers in comparing the features of the extended warranty being sold with the existing remedies available under the ACL
- provide ACL compliance training to those retailers
- develop and implement a program for monitoring retailers' extended warranty selling practices, including by mystery shopping, and if necessary take action to improve those practices.

The DGSP and Yoogalu s. 87B undertakings follow similar measures agreed with Lumley and Virginia Surety Company last year. As a result of these four s. 87B undertakings, all major Australian retailers that offer extended warranties to consumers of electronics, domestic appliances and white goods will receive compliance training and have their selling practices monitored. The s. 87B undertakings also require the retailers to provide regular reports to the ACCC on the implementation of their obligations.

Details of the s. 87B undertakings are provided in appendix 8.

## Court cases

The following proceedings were instituted in 2016–17.

**Table 3.24: Consumer guarantees proceedings instituted**

Misleading representations—consumer guarantees	Apple Pty Ltd and Apple Inc.	Conduct
	commenced 6 April 2017 jurisdiction Federal Court Melbourne	The ACCC alleges that Apple and Apple Inc made false, misleading or deceptive representations to consumers in-store, online and during telephone calls about consumers' rights in respect of defective Apple devices if those devices had been repaired by a 'third party'.



The following matters were ongoing at the end of 2016–17.

**Table 3.25: Consumer guarantees ongoing proceedings**

<b>Misleading representations—consumer guarantees</b>	<b>MSY Technology Pty Ltd</b>		<b>Conduct</b>
	commenced	1 December 2016	The ACCC alleges that MSY, MSY Group Pty Ltd and MSY Technology (NSW) Pty Ltd misrepresented consumers' rights to remedies for faulty products in contravention of the ACL.
	jurisdiction	Federal Court Sydney	
<b>Misleading representations—consumer guarantees</b>	<b>LG Electronics Australia Pty Ltd</b>		<b>Conduct</b>
	commenced	15 December 2015	The ACCC alleges that LG made false or misleading representations to consumers about their rights in relation to faulty LG products.
	jurisdiction	Federal Court Melbourne	
<b>Misleading representations—consumer guarantees</b>	<b>Valve Corporation Pty Ltd (appeal)</b>		<b>Conduct</b>
	commenced	10 December 2015	The ACCC alleges that Valve made false or misleading representations to consumers about their rights in relation to refunds concerning computer games sold by Valve through the online platform known as 'Steam'.
	jurisdiction	Federal Court Sydney	
		Pecuniary penalty of \$3 million	
		Injunction for three years	
		Publish a consumer rights notice	
		Establish a consumer law compliance program under the ACL for each Valve employee and maintain it for three years Pay ACCC costs as ordered.	
		The ACCC has filed a cross-appeal in relation to two findings. Valve has filed an appeal against the findings of the Court, penalties and other orders.	

### Undertakings

The following s. 87B undertakings were finalised in 2016–17. Details of the s. 87B undertakings are in appendix 8.

**Table 3.26: Consumer guarantees undertakings finalised**

<b>Yoogalu Pty Ltd s. 87B undertaking dated 11 May 2017</b>	The ACCC accepted a court enforceable undertaking from Yoogalu to revise its extended warranty drafting and selling practices.
<b>Domestic &amp; General Services Pty Ltd s. 87B undertaking dated 11 May 2017</b>	The ACCC accepted a court enforceable undertaking from Domestic & General Services to revise its extended warranty drafting and selling practices.
<b>Virginia Surety Company, Inc. s. 87B undertaking dated 7 November 2016</b>	The ACCC accepted a court enforceable undertaking from Virginia Surety Company, Inc. to revise its extended warranty drafting and selling practices.
<b>Ozsale Pty Ltd s. 87B undertaking dated 27 July 2016</b>	The ACCC accepted a court enforceable undertaking from Ozsale Pty Ltd in relation to terms and conditions displayed across its multiple online platforms. The terms and conditions included a number of false or misleading representations to consumers regarding their consumer guarantee rights.

### Infringement notices

The following infringement notice was paid in 2016–17.

**Table 3.27: Consumer guarantees infringement notices paid**

<b>Ozsale Pty Ltd 26 July 2016</b>	<b>One notice totalling \$10 800</b> The ACCC issued an infringement notice because it had reasonable grounds to believe that the terms and conditions displayed across all online sales platforms operated by Ozsale included a number of false or misleading representations about consumers' rights to remedies for faulty goods.
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## New car retailing

Consumer issues arising in relation to new car retailing is a priority area in the 2017 ACCC Compliance and Enforcement Policy. This also includes car retailers' and manufacturers' responses to consumer guarantee claims. More recently, the ACCC's focus in new car retailing has related to misleading or deceptive conduct and false and misleading representations made by car manufacturers about vehicle emission claims.

On 17 June 2016 we announced that we would be undertaking a market study of the new car retailing industry.

The market study's purpose is to gain a better understanding of how the industry operates while focusing on key issues that have come to the ACCC's attention. In particular, these are practices relating to:

- consumer guarantees and warranties
- fuel consumption, carbon dioxide (CO<sub>2</sub>) and noxious emissions, and car performance
- access to repair and service information and data.

The draft report was released on 10 August 2017 and the final report is due to be released in late 2017.

The following proceedings were instituted in 2016–17.

**Table 3.28: New car retailing proceedings instituted**

<b>Car retailing</b>	<b>Audi Aktiengesellschaft, Audi Australia Pty Ltd and Volkswagen Aktiengesellschaft</b>	<b>Conduct</b>
commenced jurisdiction	7 March 2017 Federal Court Sydney	The ACCC alleges that Audi Aktiengesellschaft (Audi AG) and its Australian subsidiary Audi Australia Pty Ltd (Audi Australia) engaged in misleading or deceptive conduct, made false or misleading representations and engaged in conduct liable to mislead the public in relation to certain diesel vehicle emission claims, and that their owner German company Volkswagen Aktiengesellschaft (VWAG) was knowingly concerned in this conduct.
<b>Car retailing</b>	<b>Volkswagen Aktiengesellschaft and Volkswagen Group Australia Pty Ltd</b>	<b>Conduct</b>
commenced jurisdiction	31 August 2016 Federal Court Sydney	The ACCC alleges misleading or deceptive conduct, false or misleading representations and conduct liable to mislead the public by Volkswagen in relation to diesel vehicle emission claims.

## Medical and health

In 2016–17 competition and consumer issues in the health and medical sector were an ACCC priority, including in relation to the private health industry.

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

In October 2016 we released our report on the private health industry, *Communicating changes to private health insurance benefits*. The report focused on how changes in private health insurance benefits affect, and are communicated to, consumers.

The ACCC found that that some insurers had poor practices around notifying consumers of cuts to their insurance coverage and benefits. These practices can lead to bill shock, inadequate cover and reduced access to healthcare. The report found examples of insurers:

- not notifying consumers of reductions in their coverage or benefits, including changes to insurers' arrangements with healthcare service providers
- using unclear, uninformative or misleading information to notify consumers of reductions in their insurance coverage or benefits.

Also, the ACCC found that complexity in the Australian private health insurance market continues to increase. This is making it harder for consumers to understand and react when insurers change their coverage or benefits.

In 2016–17 we began work on our 18th annual report to the Senate on anti-competitive practices in the private health insurance industry for the 2015–16 financial year (Private health insurance 2015–16 report). The focus of this year's report will be on providing an update on key consumer and competition developments and trends for 2015–16. In February 2017 we invited public submissions to the report. The report was published July 2017.

Our work in the area of health extends to investigating claims made by companies such as Reckitt Benckiser (Australia) Pty Ltd (in the following case study), and Elusion, Joystick and Social-Lites (in the case study on page 92). We also continued our work on representations made by health funds relating to their health insurance products with the institution of proceedings against NIB Health Funds Ltd.

### Case study: Reckitt Benckiser Australia Pty Ltd

In December 2016 the Full Federal Court ordered Reckitt Benckiser Australia Pty Ltd to pay a penalty of \$6 million for engaging in misleading or deceptive conduct in relation to advertising of its Nurofen Specific Pain products. This is the highest corporate penalty ever awarded for misleading conduct under the ACL.

The ACCC originally instituted proceedings in 2015 alleging that, between 2011 and 2015, Reckitt Benckiser had made representations on its website and product packaging that Nurofen Specific Pain products were each formulated to specifically treat a particular type of pain, when this was not the case.

In fact, each Nurofen Specific Pain product contains the same active ingredient—ibuprofen lysine 342 mg, which treats a wide variety of pain conditions—and is no more effective at treating the type of pain described on its packaging than any of the other Nurofen Specific Pain products.

In December 2015, following admissions by Reckitt Benckiser, the Federal Court found that Reckitt Benckiser had engaged in misleading or deceptive conduct and ordered Reckitt Benckiser to pay penalties totalling \$1.7 million.

In May 2016 the ACCC appealed the decision of the Federal Court in respect of the amount of the penalty. The ACCC submitted that, to send a strong deterrence message, a penalty of at least \$6 million was appropriate, taking into account the longstanding and widespread nature of the conduct and the substantial sales and profit that the company made by selling the product.

In December 2016 the Full Court ordered Benckiser to pay a revised penalty of \$6 million (up from \$1.7 million).

Following the Full Court's decision, Reckitt Benckiser applied for special leave to appeal to the High Court of Australia on a number of grounds, including that the Full Court had erred in its assessment of consumer loss and in finding that the original penalty was manifestly inadequate.

On 5 April 2017 the High Court dismissed Reckitt Benckiser's special leave application with costs.

## Court cases

The following cases were finalised in 2016–17.

**Table 3.29: Health and medical cases finalised**

<b>Elusion New Zealand Ltd</b>	See the case study on page 94 for details.
<b>Social-Lites Pty Ltd</b>	
<b>The Joystick Company Pty Ltd</b>	

The following proceedings were instituted in 2016–17.

**Table 3.30: Health and medical proceedings instituted**

<b>Misleading representations</b>	<b>NIB Health Funds Ltd</b>		
	commenced	30 May 2017	The ACCC alleges that NIB failed to notify members in advance of its decision to remove certain eye procedures from its 'MediGap Scheme' (MediGap Change) in 2015. Under the MediGap Scheme, members had previously been able to obtain these eye procedures without facing out-of-pocket costs when doctors participated in the scheme.
	jurisdiction	Federal Court Melbourne	

The following cases were ongoing at the end of 2016–17.

**Table 3.31: Health and medical cases ongoing**

<b>Misleading representations and unconscionable conduct</b>	<b>Medibank Private Ltd</b>		
	commenced	16 June 2016	The ACCC alleges that Medibank engaged in misleading and unconscionable conduct when it failed to notify Medibank members and members of its subsidiary brand, ahm, of its decision to limit benefits paid to members for in-hospital pathology and radiology services.
	jurisdiction	Federal Court Melbourne	

## Administrative resolutions

We continue to analyse selected industries to improve our understanding of industry practices and dynamics. In particular, in 2017 the ACCC is looking closely at misleading behaviour that may be driven by sales commissions, particularly in industries that enjoy a high level of trust and where commissions may not be expected, including the medical industry.

### Case study: Hearing aid industry

In 2016–17, the ACCC was alerted to potential consumer protection issues in the hearing aid industry through ABC Radio National's *Background Briefing* program, Have I got a hearing aid for you. To better understand the issues, the ACCC conducted enquiries with consumers and industry participants, including an online survey.

As part of its enquiries, the ACCC conducted an online survey through its public consultation hub and received 85 responses: 59 from consumers and 26 from industry. We contacted a number of survey respondents to obtain further information about their concerns. The ACCC also contacted the 10 largest hearing clinic operators to obtain information about their sales practices.

The ACCC identified that sales in the supply of hearing aids may be driven by commission-based sales models and other incentives rather than the consumer's needs. This often involved vulnerable consumers in what might have been considered a trusted healthcare relationship.

Not all clinics or clinicians engage in the concerning conduct that was brought to our attention however, sales models in the hearing aid industry are contributing to clinicians supplying hearing aids that are unnecessary or more expensive than a consumer needs, and this has the potential to cause widespread consumer detriment.

The ACCC put the industry on notice and released a public report to encourage industry to reconsider commissions, disclosures and sales practices in the context of the ACL. Guidance material was also published to assist consumers to make an informed choice when purchasing hearing aids.

We encouraged consumers and clinicians to contact the ACCC with any specific consumer protection concerns about the sale of hearing aids and will not hesitate to take further enforcement action.

The following administrative resolutions were finalised in 2016–17.

**Table 3.32: Health and medical administrative resolutions finalised**

<p><b>EBOS Group Ltd, on behalf of its subsidiary Symbion Pty Ltd, the owner of the Chemmart pharmacy franchise</b> <b>12 September 2016</b></p>	<p>The ACCC accepted an administrative undertaking on behalf of Chemmart in relation to representations about the effectiveness of a myDNA genetic test in identifying an individual's response to certain drugs.</p> <p>The ACCC was concerned that statements in Chemmart's catalogues, television infomercials, in-store brochures and other promotional materials about the myDNA test could give a false or misleading impression regarding the usefulness of the genetic test and the consumers for whom it may be appropriate.</p> <p>Chemmart withdrew all of the promotional materials containing the statements of concern to the ACCC. Chemmart also agreed to refrain from making any statements in the future about the myDNA test that have the potential to mislead consumers about the applicability and effectiveness of the test.</p>
<p><b>IVF clinics</b> <b>14 November 2016</b></p>	<p>Following an ACCC investigation, several major IVF clinics made changes to claims published on their websites about the success rate for clinical pregnancy.</p> <p>The ACCC was concerned that website content from all major Australian IVF clinics made success-rate comparisons without adequate disclosure about, or qualification of, the nature of the data or graphics used to make the claim. In addition, some IVF clinics used technical terms understood by industry participants but which may be misleading to consumers without further clarification or explanation.</p> <p>For example, some IVF clinics used 'clinical pregnancy rate' data to compare their success rates where that data reflected the clinic's success in creating an embryo, rather than live birth rates. These comparisons were sometimes accompanied by photographs of newborn babies. The ACCC considered that this was likely to lead to consumers being given a misleading impression about the rate of successful pregnancies achieved by the clinic.</p> <p>The ACCC's investigation followed a complaint from the Australian Health Practitioner Regulation Agency.</p> <p>As part of its review, the ACCC worked with the Fertility Society of Australia, the IVF industry's peak body, to improve industry-wide awareness of, and compliance with, the Australian Consumer Law. The Fertility Society of Australia is continuing to work with industry participants to improve transparency about success.</p>

## Small business

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

For further information in relation to the ACCC's enforcement outcomes in protecting small businesses under the 2016 and 2017 Compliance and Enforcement Policy, see page 127 under Deliverable 2.4: Support a vibrant small business sector. There is often overlap between the ACCC's consumer protection enforcement outcomes in relation to small business and competition and consumer issues in the agriculture sector (including in relation to industry codes). These outcomes are also included under Deliverable 2.4.

## Scam disruption

The ACCC plays an important role in educating Australians about how to protect themselves from scams. This remained a priority issue in 2016–17.

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

The ACCC actively targets scam activity and works on several fronts to prevent and minimise the harm that scams cause, including through ongoing education, communication and media stories, and disruption work and enforcement action where possible.

In May 2017 we released *Targeting scams*, which reported on scams activity in the calendar year 2016. In 2016 we received 155 035 scam-related contacts from consumers and small businesses, with reported financial losses totalling \$83 563 599. We also reviewed data from other jurisdictions that receive reports or detect scams to gain a clearer picture of the significance of losses caused by scam activity in Australia. Reports to the Australian Cybercrime Online Reporting Network (ACORN) revealed losses of over \$204 million.<sup>5</sup>

Additionally, various scam disruption programs operated by the ACCC and other agencies detect instances of Australians sending funds to high-risk jurisdictions. A combined estimate of losses to this unreported scam activity is \$11.5 million. Scamwatch and ACORN data in combination with losses detected through scam disruption work, indicates total scam losses of almost \$300 million.

### The little black book of scams

*The little black book of scams* is an ACCC publication that highlights a variety of popular scams that regularly target Australian consumers and small businesses.

In 2016–17 the ACCC released a new version of this publication, updated to reflect the latest scam data. The updated version is now available to the public to help educate them on avoiding scams.

*The little black book of scams* is recognised internationally as an important tool that helps consumers and small businesses to learn about scams. It has been used as a model overseas: in 2012 the Competition Bureau in Canada and the Metropolitan Police Service in the UK released their own versions of *The little black book of scams*.

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

## Australasian Consumer Fraud Taskforce

The ACCC is the chair of the Australasian Consumer Fraud Taskforce (ACFT). The ACFT is made up of over 20 government regulatory agencies and departments in Australia and New Zealand that work alongside private sector, community and non-government partners to prevent fraud. This coordinated response is the most effective approach to minimising consumer harm.

## National Consumer Fraud Week

National Consumer Fraud Week is an annual campaign run by the ACFT to raise awareness of scam activity within our community. In 2017 the focus of the campaign was on social media scams.

Using the theme 'Spot social media scams', the campaign encouraged users of social media to be particularly alert to dating and romance scams and fake trader scams. The aim was to raise awareness about the types of social scams that exist, how to identify and avoid scams, and actions that consumers can take if they have been scammed.

Every National Consumer Fraud Week campaign is supported by ACFT members and campaign partners. For the 2017 Fraud Week, ACFT members and campaign partners promoted the campaign by posting social media content, publicising online content, generating media coverage, developing images and discussing the campaign in their electronic newsletters.

## Scamwatch

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

Our Scamwatch website ([www.scamwatch.gov.au](http://www.scamwatch.gov.au)) received over 2.3 million visitors in 2016–17. We also distributed 15 Scamwatch radar email alerts on emerging scams to almost 59 000 subscribers as part of our free alert service.

We use our Scamwatch Twitter profile (@Scamwatch\_gov) to provide information to Australian consumers and businesses about scams that are targeting them. In 2016–17 we posted almost 230 tweets and retweets to our 14 000 followers.

## Scam disruption project

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

The project alerts at-risk individuals to the possibility that they may be a victim of a scam. The project uses financial intelligence to identify Australians who are sending funds to two high-risk jurisdictions and advises them they may have been targeted by a scam.

Since the program commenced, the ACCC has sent more than 8700 letters to potential scam victims.

Approximately 68 per cent of those who received our warning letters stopped sending money overseas within six weeks of receiving the letter.



## Court cases

The following case was finalised in 2016–17.

**Table 3.33: Scam cases finalised**

Scam	Sensaslim Australia Pty Ltd & Ors	Conduct
commenced	15 July 2011	The ACCC alleged that Sensaslim and several of its officers engaged in misleading and deceptive conduct and made false representations in relation to the identity of Sensaslim officers, the Sensaslim Spray and the business opportunities offered by Sensaslim.
concluded	24 November 2016	
jurisdiction	Federal Court Sydney	
outcome	Injunctions	
	Pecuniary penalty of \$3.55 million against Sensaslim.	
	Penalty of \$660 000 against Mr Peter Foster and permanent disqualification from managing corporation.	
	Penalty of \$75 000 against Mr Michael Boyle and 3-year disqualification from managing a corporation.	
	Penalty of \$55 000 against Mr Peter O'Brien and 10-year disqualification from managing a corporation.	
	Mr Foster and Mr O'Brien to pay ACCC costs.	
	Appeal by Mr Foster dismissed by Federal Court in November 2016.	

The following case was ongoing at the end of 2016–17.

**Table 3.34: Scam cases instituted**

Scam	ABG Pages Pty Ltd	Conduct
commenced	15 December 2016	The ACCC alleges that ABG Pages engaged in misleading or deceptive conduct, false or misleading representations, undue harassment and systemic unconscionable conduct in its dealings with small businesses that were actual or potential customers of its online business directory service.
jurisdiction	Federal Court Brisbane	
		For details see the case study on page 128.

## Product safety

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

The ACCC's product safety enforcement work is discussed further on page 124.

## Other work promoting consumer protection

### Truth in advertising

In 2015, truth in advertising was a priority area for the ACCC, with a focus on stopping consumers from being misled and ensuring honest traders were not put at a competitive disadvantage.

The ACCC has ongoing cases in this priority area but in 2016–17 we also prioritised matters where misleading claims are made by large business with the potential to result in greater consumer detriment from their actions, and the likelihood that conduct of larger businesses can influence the behaviour of other market participants. This action demonstrates these priority factors outlined in the 2017 Compliance and Enforcement Policy.

#### Case study: Truth in advertising

In December 2016 the ACCC instituted proceedings in the Federal Court against Kimberly-Clark Australia Pty Ltd (Kimberly-Clark) and separately against Pental Limited and Pental Products Pty Ltd (together Pental) alleging that they each made false or misleading representations in relation to 'flushable' wipes they marketed and supplied in Australia.

The companies marketed products as 'flushable', which suggests that the wipes are similar to toilet paper and are suitable to be flushed down the toilet. However, ACCC inquiries indicated that these products were not suitable to be flushed because they do not disintegrate like toilet paper. Australian water authorities face significant problems when non-suitable products are flushed down the toilet, as they contribute to blockages in household and municipal sewerage systems.

We were concerned that, by labelling these products as 'flushable', consumers would be led to believe that the products had similar characteristics to toilet paper, would break up or disintegrate in a time frame and manner similar to toilet paper, and are suitable to be flushed down the toilet, when this is not the case.

In the proceedings brought against Kimberly-Clark, the ACCC alleges that, between May 2013 and May 2016, Kimberly-Clark variously advertised its personal hygiene wipes, Kleenex Cottonelle Flushable Cleansing Cloths, as 'flushable', 'completely flushable', 'able to be flushed in the toilet', and able to 'break down in sewerage system or septic tank'.

On its FAQ website for flushable wipes for children, Kimberly-Clark also stated that the wipes would 'break up in the sewerage or septic system like toilet paper'.

The ACCC also alleges that Kimberly-Clark advertised that these products were made in Australia when that was not the case.

In the proceedings brought against Pental, the ACCC alleges that, between February 2011 and August 2016, Pental advertised its bathroom cleaning wipes, White King Power Clean Flushable Toilet Wipes (also called White King Flushable Bathroom Power Wipes) as a 'flushable toilet wipe' that disintegrated like toilet paper.

Pental's packaging and promotional materials included statements such as 'Simply wipe over the hard surface of the toilet ... and just flush away', and that its flushable wipes 'are made from a specially designed material, which will disintegrate in the sewage system when flushed, just like toilet paper'.

The ACCC alleges that, by making these representations, Kimberly-Clark and Pental engaged in misleading and deceptive conduct and made false or misleading representations, in contravention of the ACL.

In both proceedings, the ACCC is seeking declarations, pecuniary penalties, injunctions, corrective notices, compliance program orders and costs.

### **ACCC action concerning representations regarding toxic chemicals in e-cigarettes**

In 2017 the Federal Court ordered online retailers Social-Lites Pty Ltd (Social-Lites), Elusion New Zealand Limited (Elusion) and The Joystick Company Pty Ltd (Joystick) and their directors to pay pecuniary penalties for misleading representations and engaging in misleading conduct by making statements on their websites that their e-cigarette products did not contain the carcinogens or toxic chemicals found in conventional cigarettes.

The ACCC instituted separate proceedings against the companies in June and September 2016 in the Federal Court.

Independent testing commissioned by the ACCC found that the e-cigarette products sold by Social-Lites and Elusion did in fact contain carcinogens and toxic chemicals found in conventional cigarettes, including formaldehyde, acetaldehyde and acrolein.

Formaldehyde is classified by the World Health Organization International Agency for Cancer Research (IARC) as a Group 1A carcinogen, meaning there is sufficient evidence to show it is carcinogenic to humans. The IARC classifies acetaldehyde as a Group 2B carcinogen. That classification is applied to a chemical agent that has been evaluated as being possibly carcinogenic to humans. The World Health Organization classifies acrolein as a toxic chemical. It is also listed as a dangerous poison in Schedule 7 of the *Poisons Standard of the Therapeutic Goods Act 1989* (Cth).

The ACCC took these cases because of concerns that the representations related to consumers' health and that consumers are likely to base their purchasing decisions on these types of representations. Also, the ACCC was concerned that consumers had no easy way to validate the representations that the companies made.

The ACCC took action against Joystick and its director after the company failed to pay infringement notices issued by the ACCC in respect of its conduct. This reflects the ACCC's policy to consider litigation against businesses that do not pay infringement notices.

In May 2017 the Federal Court found that Social-Lites, Elusion and Joystick had breached the ACL by making false and misleading representations about the content of their e-cigarette products. The Federal Court also found that the directors of Joystick and Elusion, and the CEO of Social-Lites, were knowingly concerned in the contravening conduct of their respective companies. Following admissions made by each of the companies and individuals and joint submissions on penalties, the Federal Court ordered that:

- Joystick pay a pecuniary penalty of \$50 000 and its director pay a penalty of \$10 000
- Social-Lites pay a pecuniary penalty of \$50 000 and its CEO pay a penalty of \$10 000
- Elusion pay a pecuniary penalty of \$40 000 and its director pay a penalty of \$15 000.

The ACCC understands that this is the first time any regulator in the world has successfully taken action for false and misleading claims about the presence of carcinogens in e-cigarettes.

Since instituting proceedings, the ACCC has written to over 30 Australian e-cigarette suppliers reminding them of their ACL obligations—in particular, to ensure that information they provide to consumers is accurate.

## Court cases

The following cases were finalised in 2016–17.

**Table 3.35: Truth in advertising claims cases finalised**

<b>False and misleading conduct</b>	<b>Duluxgroup (Australia) Pty Ltd</b>	<b>Conduct</b>
commenced	5 December 2012	The ACCC alleged that Dulux made false, misleading or deceptive representations about the temperature reducing capabilities of its InfraCOOL and Weathershield Heat Reflect paints.
concluded	2 November 2016	
jurisdiction	Federal Court Perth	
outcome	Pecuniary penalty of \$400 000, undertaking to court, declarations, corrective notices in newspaper and on Dulux's webpage, and payment of 150 000 costs.	

The following truth in advertising claims cases were instituted in 2016–17.

**Table 3.36: Truth in advertising claims cases instituted**

<b>Credence claims</b>	<b>Kimberley-Clark Australia Pty Ltd</b>	<b>Conduct</b>
commenced	12 December 2016	The ACCC alleges that Kimberley-Clark made false or misleading representations in relation to 'flushable' wipes it marketed and supplied in Australia.  For details see the case study on page 91.
jurisdiction	Federal Court Sydney	
<b>Credence claims</b>	<b>Pental Limited &amp; Pental Products Pty Ltd</b>	<b>Conduct</b>
commenced	12 December 2016	The ACCC alleges that Pental made false or misleading representations in relation to 'flushable' wipes it marketed and supplied in Australia.  For details see the case study on page 91.
jurisdiction	Federal Court Sydney	

The following cases are ongoing.

**Table 3.37: Truth in advertising claims cases ongoing**

<b>Credence claims</b>	<b>HJ Heinz Company Australia Ltd</b>	<b>Conduct</b>
commenced jurisdiction	21 June 2016 Federal Court Adelaide	The ACCC alleges that Heinz used particular statements and images on certain products that represented to consumers that those products are of equivalent nutritional value to fruit and vegetables and are a healthy and nutritious food for children aged one to three years, when this is not the case.
<b>Credence claims</b>	<b>Snowdale Holdings Pty Ltd</b>	<b>Conduct</b>
commenced jurisdiction outcome	9 December 2013 Federal Court Perth In May 2016 Federal Court found that Snowdale made false or misleading representations that its eggs were 'free range', in contravention of the ACL. The Court has asked ACCC to reconsider the agreed position on appropriate penalty following the judgment in the matter of Reckitt Benckiser (Australia) Pty Ltd. Awaiting judgment on relief.	The ACCC alleges that Snowdale in WA made false, misleading or deceptive representations by the images and wording on their egg cartons and website in that the eggs supplied and labelled as 'free range' were produced by hens that were not able to move about freely on an open range each day.

## Undertakings

The following s. 87B court undertakings were finalised in 2016–17. Details of the s. 87B undertakings are in appendix 8.

**Table 3.38: Truth in advertising claims undertakings finalised**

<b>Anchor Foods Pty Ltd trading as Spencers Gourmet Trading</b> s. 87B undertaking dated 15 December 2016	The ACCC accepted a court enforceable undertaking from in Anchor Foods Pty Ltd trading as Spencers Gourmet Trading relation to false or misleading representations on the packaging of its 'Oregano' labelled products.
<b>Aldi Foods Pty Limited</b> s. 87B undertaking dated 8 November 2016	The ACCC accepted a court enforceable undertaking from Aldi Foods Pty Ltd in relation to false or misleading representations on the packaging of its 'Oregano' labelled products.
<b>Monde Nissin (Australia) Pty Ltd trading as Menora Foods</b> s. 87B undertaking dated 8 November 2016	The ACCC accepted a court enforceable undertaking from Monde Nissin (Australia) Pty Ltd trading as Menora Foods in relation to false or misleading representations on the packaging of its 'Oregano' labelled products.

## Infringement notices

The following infringement notices were paid in 2016–17.

**Table 3.39: Truth in advertising claims infringement notices paid**

<b>Hoyt Food Manufacturing Industries Pty Ltd</b> 2 March 2017	<b>One notice totalling \$10 800</b> The ACCC issued the infringement notice because it had reasonable grounds to believe that Hoyt had contravened the ACL by making false or misleading representations that its oregano product, 25 g variety 'Hoyts Oregano Leaves Rubbed' was only oregano, except for trace ingredients, when batch testing commissioned by the ACCC indicated that the product contained approximately 50 per cent olive leaf.
<b>Charles Tyrwhitt LLP OC 305896 (UK)</b> 15 September 2016	<b>One notice totalling \$10 800</b> The ACCC issued the infringement notice because it had reasonable grounds to believe that Charles Tyrwhitt had made a false or misleading representation in relation to the 'was' price of a men's 'slim fit non-iron micro-spot white' shirt in 'was/now' pricing on its website between February 2016 and March 2016, in breach of the ACL.
<b>Felton Grimwade &amp; Bosisto's Pty Ltd</b> 7 September 2016	<b>One notice totalling \$10 800</b> The ACCC issued the infringement notice because it had reasonable grounds to believe that Bosisto's had made a false or misleading representation in breach of the ACL by labelling its tea tree oil as 100 per cent pure, when that was not the case. The ACCC formed this view on the basis of testing it commissioned, which indicated that the Bosisto's tea tree oil product was not 100 per cent pure tea tree oil.

**The Smith's Snackfood Company Pty Ltd**  
**7 July 2016**

**One notice totalling \$10 800**

The ACCC issued an infringement notice because it had reasonable grounds to believe that Smith's made false or misleading representations on the packaging of a popular product it supplies. The representations were that the product had been approved or was suitable as a healthy option for school canteens. Smith's Sakata Paws Pizza Supreme Rice Snacks included a logo with the words 'Meets School Canteen Guidelines' and an image of a sandwich and an apple.

## Online consumer issues

Emerging systemic consumer issues in the online marketplace remained an ACCC priority in 2016-17.

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

We have been actively monitoring and engaging with businesses about online supply to make sure that they continue to comply with the consumer protections in the ACL, regardless of their geographic location or business model.

We have focused on:

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

## Supply of unsafe products by online retailers

In 2017, an ACCC priority is to work with internet platform providers to prevent the supply of unsafe products into Australia. The ACCC aims to form partnerships with internet platforms to ensure that unsafe products are removed from sale in the Australian marketplace.

The ACCC continues to work collaboratively with its international counterparts both bilaterally and through global and regional forums. Where relevant, the ACCC aligns its surveillance programs with global activities. The ACCC looks to opportunities to enter into memoranda of understanding and other reciprocal arrangements with its Organisation for Economic Co-operation and Development (OECD) partners to improve communication, information sharing and cooperation.

In 2014 we produced the *Consumer Product Safety Online* publication to educate suppliers about their obligations to comply with product safety laws. In addition to supplier guidance the ACCC commenced a project to educate consumers about their rights and responsibilities when purchasing products from offshore suppliers. We produced guidance on our website advising consumers to check that purchases meet mandatory Australian requirements. The online medium and the supply of safe products is an ongoing focus for the ACCC.

## Sharing economy

The sharing economy is a rapidly expanding part of the Australian economy. It is made up of businesses operating online platforms that facilitate the connection of suppliers of goods and services with consumers who generally need short-term use of those goods or services, such as cars or accommodation.

On 3 November 2016 the ACCC released guidance materials for participants in the sharing economy, which outlines their rights and obligations under the ACL. The materials include guidance for platform operators, service providers and sellers, as well as information for consumers on our website.

## Drip pricing

'Drip pricing' is a pricing strategy where consumers see a 'headline' price advertised but find that additional fees and charges have been added at the payment stage. Drip pricing is not transparent, may mislead consumers and makes it difficult for businesses to compete on a level playing field. Under the ACL, businesses must not use drip pricing.

Drip pricing conduct was a priority area in the ACCC's 2014 Compliance and Enforcement Policy. The ACCC took action in relation to consumer pricing issues across a number of industries.

The ACCC's drip pricing project concluded in early 2017 with two penalty decisions in the airline industry.

### Case study: Drip pricing by Jetstar and Virgin airlines in respect of online airfares

In March 2017 the Federal Court ordered Jetstar Airways Pty Ltd (Jetstar) to pay a \$545 000 penalty and Virgin Australia Airlines Pty Ltd (Virgin) to pay a \$200 000 penalty for breaches of the ACL in respect of drip pricing.

The ACCC commenced proceedings against Jetstar and Virgin in 2015. The ACCC alleged that, for specific advertised airfares, Jetstar and Virgin did not adequately disclose that consumers would be charged additional booking and service fees (\$8.50 and \$7.70 respectively) for bookings paid for using most credit cards or PayPal (Virgin also applied the fees to payments by debit card). The fees were only disclosed to consumers once they had moved through a number of stages of the booking process.

In November 2015 the Federal Court found that Jetstar had made false or misleading representations about specific advertised airfares on its website in 2013 and on its mobile site in 2014. The Court found that Virgin had made false or misleading representations about specific advertised airfares on its mobile site in 2014.

In 2017, when imposing the penalty against Jetstar, Justice Foster commented upon the importance of the use of penalties as a deterrent and noted that the penalty imposed on Jetstar was designed to discourage similar behaviour by others.

Foster J imposed the penalty on Virgin following joint submissions to the Court by Virgin and the ACCC.

## Online preselection issues

In June 2016 the ACCC received numerous complaints that airlines operating in Australia were preselecting one or more optional extras during the online booking process.

Where an option is preselected, the cost of that option—for example, travel insurance or a charity donation—is automatically added to the fare unless a customer notices the option is preselected and actively unticks it.



This ongoing consumer issue in the online marketplace was addressed through an administrative resolution with Virgin Australia Airways Ltd, Jetstar Airways Pty Ltd and Tigerair Australia airlines. Details of the administrative resolutions are on page 99.

### Fake online reviews

Fake online reviews and testimonials were a past priority area for the ACCC. More recently, the ACCC has prioritised action involving larger companies engaging in misleading and deceptive conduct in relation to reviews of their business on review websites which gives them a potential competitive edge in the market and has the potential to result in consumer detriment.

**Table 3.40: Fake online reviews cases instituted**

Fake online reviews— misleading or deceptive conduct	Aveling Homes Pty Ltd		Conduct
	commenced jurisdiction	9 March 2017 Federal Court Perth	The ACCC alleges that Aveling engaged in misleading conduct and false or misleading representations in relation to review websites Aveling created for its businesses: Aveling Homes and First Home Owner’s Centre.
Fake online reviews— misleading or deceptive conduct	Meriton Property Services Pty Ltd		Conduct
	commenced jurisdiction	24 November 2016 Federal Court Melbourne	The ACCC alleges that that Meriton engaged in misleading or deceptive conduct in connection with the posting of reviews of its properties on the TripAdvisor website. In particular that from November 2014 to October 2015, Meriton took steps to prevent guests it suspected would give a negative review from receiving TripAdvisor’s Review Express email to avoid them posting potentially negative reviews.

## Administrative resolutions

The following administrative resolutions for online preselection issues were finalised in 2016–17.

**Table 3.41: Administrative resolutions for online preselection issues**

The ACCC engaged with domestic airlines seeking their agreement to cease the practice of preselection. The ACCC was concerned that the 'opt-out' model meant that a number of consumers inadvertently paid for unwanted 'pre-ticked' extras.

<b>Jetstar Airways Pty Ltd</b> <b>2 December 2016</b>	After discussions with the ACCC, Jetstar agreed to stop the practice of preselecting checked baggage, seat selection, travel insurance and charity donations on its online booking platform from 1 July 2017.
<b>Tigerair Australia</b> <b>2 December 2016</b>	After discussions with the ACCC, Tigerair Australia announced that it had stopped the practice of preselecting travel insurance and baggage on its online booking platforms.
<b>Virgin Australia Airways Pty Ltd</b> <b>1 December 2016</b>	After discussions with the ACCC, Virgin Australia agreed to stop the practice of preselecting travel insurance on its online booking platform.

## Infringement notices

The following infringement notice for online drip pricing issues was paid in 2016–17.

**Table 3.42: Infringement notices paid online drip pricing**

<b>Palace Cinemas Pty Ltd</b> <b>4 July 2016</b>	<b>One notice totalling \$10 800</b> The ACCC issued an infringement notice to Palace Cinemas because it had reasonable grounds to believe that Palace Cinemas had breached the ACL by failing to prominently disclose the total single price, including the compulsory booking fee, for cinema tickets purchased using its online booking process.
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## Telecommunications and energy sectors

Misleading and deceptive conduct and false or misleading representations in the telecommunications and energy sectors have been past priority areas for the ACCC. More recently, the ACCC has taken enforcement action in relation to unconscionable conduct and false or misleading representations made in these utility industries due to these services being widespread and therefore the potential for large scale consumer detriment to arise.

## Court cases

The following case was finalised in 2016–17.

Unconscionable conduct in telecommunications sector	Harrison Companies Pty Ltd	Conduct
commenced	11 March 2016	The ACCC alleged that 11 corporations trading as SoleNet and Sure Telecom (the Harrison Companies) and their director Mr James Harrison engaged in unconscionable conduct in the supply of telecommunications services and undue harassment, in breach of the ACL.
concluded	2 March 2017	
jurisdiction	Federal Court Melbourne	
outcome	Finding that Harrison Companies engaged in unconscionable conduct Finding that Mr James Harrison was involved in the contraventions Finding that undue harassment was used in respect of four customers. SoleNet, Sure Telecom and Mr Harrison to pay penalties totalling \$250 000 as follows: <ul style="list-style-type: none"> <li>• three corporate respondents to pay \$50 000 each</li> <li>• four corporate respondents to pay \$12 500 each</li> <li>• Mr Harrison to pay \$50 000 and disqualified from managing a corporation for three years</li> </ul> Injunction restraining Mr Harrison for two years. Refunds to customers whose contracts were transferred without express written consent. Payment of the ACCC's costs.	

## Undertakings

The following s. 87B court enforceable undertakings were finalised in 2016–17. Details of the s. 87B undertakings are in appendix 8.

**Table 3.43: Telecommunications undertakings finalised**

<b>Optus Mobile Pty Ltd s. 87B undertaking dated 1 June 2017</b>	The ACCC accepted a court enforceable undertaking from Optus Mobile Pty Ltd (Optus) in relation to alleged misrepresentations about the amount and period of validity of data, calls and texts provided with certain prepaid products and services.
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## Infringement notices

The following infringement notices were paid in 2016–17.

**Table 3.44: Telecommunications and energy infringement notices paid**

<b>Sprint Telco Pty Ltd</b> <b>8 June 2017</b>	<b>One notice totalling \$10 800</b> The ACCC issued the infringement notice because it had reasonable grounds to believe that Sprint Telco made a false or misleading representation to a consumer during a telemarketing call in October 2016, in which the consumer was transferred from Telstra Corporation Limited (Telstra) to Sprint Telco.
<b>Lumo Energy Australia Pty Ltd</b> <b>1 June 2017</b>	<b>One notice totalling \$10 800</b> The ACCC issued the infringement notice because it had reasonable grounds to believe that Lumo had contravened the ACL by making a false or misleading representation about energy discounts. Lumo made a representation on its website in February 2017 that consumers, including those outside of Victoria, could save 33 per cent off their total electricity bill and 17 per cent off their total gas bill if they switched to Lumo.  In fact, these discounts were only available to residents of Victoria. Maximum discounts for electricity were substantially less in other states. In addition, Lumo does not offer gas outside Victoria.
<b>Lumo Energy Australia Pty Ltd</b> <b>16 February 2017</b>	<b>One notice totalling \$10 800</b> The ACCC issued the infringement notice because it had reasonable grounds to believe that Lumo had contravened the ACL by making representations to a number of consumers that the Australian Energy Regulator (AER) was responsible for increases to Lumo’s retail gas tariffs when the rise was due to a commercial pricing decision made by Lumo.

## NBN speed claims and monitoring

See ‘ACCC to monitor Australia’s broadband performance’ on page 155.

## Non-compliance with court orders and contempt of court

The ACCC must take contempt of court action when it considers that court orders, obtained for the protection of consumers, have been breached. Contempt of court action is a criminal offence punishable by imprisonment and/or a fine.

## Court cases

The following cases were finalised in 2016–17.

**Table 3.45: Non-compliance with court orders cases finalised**

<b>Misleading representations</b>	<b>Dhruv Chopra</b>	<b>Conduct</b>
commenced	4 November 2016	The ACCC filed proceedings for contempt on 14 December 2015 alleging that Mr Hann had breached injunctions ordered by the Court in May 2012 by being involved in a business selling household cleaning products and claiming that some of the money from the sale of those goods would be donated to charity and recruiting a person to sell and distribute products in connection with that business.
concluded	28 June 2017	
jurisdiction	Federal Court Melbourne	
outcome	Mr Chopra sentenced to imprisonment for three months (one month to be served immediately and the balance suspended on conditions set by the Court. Payment of ACCC costs.	
<b>Contempt of court and vulnerable consumers</b>	<b>Laurence Glynne Hann</b>	<b>Conduct</b>
commenced	5 December 2015	The ACCC filed proceedings for contempt on 14 December 2015 alleging that Mr Hann had breached injunctions ordered by the Court in May 2012 by being involved in a business selling household cleaning products and claiming that some of the money from the sale of those goods would be donated to charity and recruiting a person to sell and distribute products in connection with that business.
concluded	17 May 2017	
jurisdiction	Federal Court Melbourne	
outcome	Mr Hann sentenced to imprisonment for a period of five months with: <ul style="list-style-type: none"> <li>• two weeks to be served in any event</li> <li>• the rest of the sentence suspended on condition that Mr Hann refrain from contravening any of the 28 May 2012 orders for a period of two years.</li> </ul> Mr Hann ordered to pay the ACCC's costs on an indemnity basis.	

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**Contempt of court  
and vulnerable  
consumers**

**NRM Corporation Pty Ltd and NRM Trading  
Pty Ltd t/a Advanced Medical Institute**

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commenced	20 August 2015	On 20 August 2015, the ACCC filed contempt proceedings against NRM for their alleged failure to comply with Justice North's orders in relation to statements made by NRM in the promotion or supply of sexual dysfunction products.  On 17 December 2015, Justice Moshinsky found NRM guilty of contempt and decided not to consider the issue of penalty for NRM's contempt of court until the appeal process had concluded. NRM's appeal was dismissed on 22 July 2016.
concluded	17 December 2016	
jurisdiction	Federal Court Melbourne	
outcome		

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# Analysis of performance

## Working with partners

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

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

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

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

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

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

### Australian partnerships

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

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

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

## Education and Information Advisory Committee

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

This year the committee has been involved in:

- the campaign to raise awareness among older men of the dangers of unsafe use of ladders. The campaign aims to reduce injuries over time by influencing a positive behavioural change
- the national EIAC campaign to raise awareness of the dangers of unstable furniture and televisions and encourage parents to secure them
- the 14-week campaign which ran over summer 2016–17 to raise awareness of safety during summer holiday activities
- communicating with consumers with disability about their rights in preparation for the rollout of the NDIS. The ACCC also worked with the National Disability Insurance Agency and many stakeholders in the disability sector on this project
- leading an EIAC project to bring together five ACL regulator education materials and align these with the new National Consumer and Financial Literacy Framework for Australian schools for years five to 10. These resources will help teachers to identify how they can incorporate these resources into their curriculum programs. The resources can be accessed via the ACL website.

## Compliance and Dispute Resolution Advisory Committee

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

Research conducted by the ACCC suggested non-compliance with the mandatory standard for household cots in the online sector. In 2016–17, in conjunction with a dedicated CDRAC working group, the ACCC coordinated an Integrated Product Safety Strategy for Household Cots through CAANZ to conduct surveillance and testing activities for cots supplied online. A number of non-compliant cots were identified through the strategy, and suppliers have recalled those products.

## Policy and Research Advisory Committee

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

The committee has participated in a number of national projects to improve policy coordination and research activities and supports the operation of CAANZ.

## Consumer product safety

Since the introduction of the harmonised national product safety system, the ACCC has continued to strengthen relationships with state and territory counterparts. We interact on a formal basis through CAANZ and its subject matter committees.



## Product Safety Operations Group

PSOG is a key forum through which the ACCC and state and territory fair trading agencies collaborate on a range of emerging product safety issues. It was established in September 2016 to replace the Product Safety Consultative Committee. It meets via teleconference on a monthly basis.

The group is made up of representatives of product safety regulators from all Australian states and territories. The Queensland Office of Fair Trading chairs the group.

We have also worked in partnership with other federal agencies to deliver and coordinate actions that ensure better safety outcomes. We build relationships with organisations including the Department of Immigration and Border Protection and the Australian Border Force, the Department of Health, the Department of Infrastructure and Regional Development, Kidsafe, the Royal Life Saving Society, various industry associations, Standards Australia and state and territory fire safety agencies. In 2016–17 we worked closely with suppliers of products containing lithium coin cell (that is, button) batteries to develop a voluntary industry code to improve safety of these products. We also continued to work closely with state and territory electrical safety regulators and industry on the Infinity cable recall (see page 117).

## Consumer Consultative Committee

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

Its current members are the Adult Multicultural Education Service, the Australian Communications Consumer Action Network, Brotherhood of St Laurence, CHOICE, Consumer Action Law Centre, the Consumers Health Forum, the Council on the Ageing, Financial Counselling Australia, the Indigenous Consumer Assistance Network, the Public Interest Advocacy Centre and the Youth Action and Policy Association NSW.

In 2016–17 Consumer Consultative Committee members continued to inform the ACCC's consumer protection work by:

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

Members also actively assisted the ACCC in developing the National Consumer Congress program.

Examples of the way in which the ACCC engages in partnership with small business to enhance the effectiveness of our compliance and enforcement initiatives are described on page 104.

## Asia-Pacific Region and other international partnerships

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

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

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

## Regional engagement

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

Our regional engagement activities in 2016–17 included participation in the following events:

- 6th ASEAN Competition Conference, Bangkok
- 9th Seoul International Competition Forum and the East Asian Top Level Competition Officials Meeting, Seoul
- Product Safety Buyers Training, Ningbo and Guangzhou, China
- 12th Annual Seoul International Conference on the Electricity Market
- Asia Pacific Energy Regulators Forum, Seoul
- Institute of South East Asian Studies / Competition Commission of Singapore symposium on 'e-commerce and competition law in ASEAN', Singapore
- Malaysia Competition Commission Annual Conference and 7th ASEAN Competition Conference, Kuala Lumpur
- a forum on competition law, SMEs and the retail sector in Chang Mai, Thailand
- a series of seminars on ACCC activities for officials of the Taiwan Fair Trade Commission, Taipei
- various regional capacity-building workshops.

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

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

- the Competition Law Implementation Program (CLIP)
- PSOG (previously the Product Safety Consultative Committee)
- The Australasian Consumer Fraud Taskforce.

### **Competition Law Implementation Program**

Throughout 2016–17 we continued to partner with our ASEAN counterparts to strengthen cooperation among regional competition authorities in support of enhanced regional economic interaction and development.

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

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

In 2016–17 we expanded our program of CLIP activities in response to increased demand from ASEAN countries. We provided significant support to ASEAN to build its capacity to enforce competition laws and to promote a 'competition-aware' region.

The second phase of CLIP remains focused on delivering practical, hands-on capacity-building assistance, drawing on the experience we have developed over 40 years of competition law enforcement in Australia. In addition to delivering workshops and supporting secondment programs, our staff have spent time working alongside officials in Cambodia, Laos, Myanmar and the Philippines to build individual and organisational capacity to develop, promote and enforce competition laws.

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

## International engagement

In 2016–17 we were involved in numerous international forums, including:

- international regulators dealing with investigations and merger assessments
- organisations that deal with product safety
- the International Competition Network
- the OECD
- the International Consumer Protection Enforcement Network (ICPEN).

### ***Engagement with international regulators***

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

We regularly engage and exchange information with other regulators internationally on investigations and merger assessments. In 2016–17 we:

- received and responded to, or made requests to agencies in Belgium, Brazil, Canada, Chile, China, Colombia, Denmark, France, Germany, Hong Kong, India, Israel, Italy, Japan, Kenya, Korea, Malaysia, Mongolia, the Netherlands, New Zealand, Pakistan, Peru, Singapore, South Africa, Spain, Sweden, Taiwan, Thailand, Ukraine, the United Kingdom, the United States and Vietnam
- hosted study visits by officials or delegations from Canada, China, Malaysia, Korea, Bhutan, Taiwan, Vietnam, New Zealand, Japan, the Philippines and Indonesia
- prepared reports and made presentations on Australian competition, consumer and regulatory law developments at many international events
- hosted staff on secondment from competition authorities of Indonesia, the Philippines and Vietnam, as well as staff from the Independent Electricity System Operator (Canada) to the AER
- seconded experts to Myanmar, Cambodia and Laos to assist in the development and implementation of their respective competition laws (funded under the ASEAN–Australia–New Zealand Free Trade Agreement)
- seconded expert staff to the ASEAN Secretariat in Jakarta.

### ***Product safety***

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

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

For more information on our product safety work this year, see page 115.

### ***International Competition Network***

The ACCC collaborates with international counterparts through forums such as the International Competition Network (ICN). The ICN provides competition authorities with a specialised yet informal venue for maintaining regular contacts and addressing practical competition concerns. Our ongoing work within the ICN in 2016–17 included:

- co-chairing two working groups and performing the Horizontal Coordinator role
- presenting at a number of ICN conferences and teleseminars
- organising and presenting at international workshops and teleseminars on competition issues, including mergers, cartels and unilateral conduct
- leading consultation on future ICN work on the topic of competitive effects of vertical restraints
- contributing significantly to preparations for, and participating in, the 2016 Cartel Workshop
- contributing to a scoping study for future cartel work; work to improve engagement by younger agencies in the work of the ICN; and work to improve coordination between the five working groups and the ICN's Steering Group
- playing an active role in the Merger Working Group to update and revise the Merger Remedies Guide and the Recommended Practices for Merger Notification and Review Procedures and for Merger Analysis.

Throughout the year we continued to expand our capacity-building assistance to countries in South-East Asia through the Competition Law Implementation Program (see further information on page 107).

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

With an increasing number of cross-border transactions occurring globally and many of these requiring review by the ACCC, we continued to engage closely with other agencies on merger review of cross-border transactions.

### ***Organisation for Economic Co-operation and Development***

We continued to provide input to the OECD through a variety of fora.

We also work with the OECD to improve regulatory practice and policy.

In 2016–17 we:

- continued to advocate for international cooperation in competition investigations and proceedings
- contributed to several papers on competition issues that impact on Australia and the region and attended two meetings of the OECD Competition Committee
- attended two meetings of the OECD Regulatory Policy Committee, which included roundtables examining best practice principles for the governance of regulators and how productivity and economic growth potential can be unlocked through better regulatory policies
- participated in the OECD Committee on Consumer Policy and face-to-face meetings of the OECD Working Party on Consumer Product Safety
- participated in a coordinated international campaign to promote the safety of corded internal window coverings

- coordinated an international online product safety sweep to assess the extent to which banned consumer goods are available for sale online. A total of 25 countries participated, inspecting over 1800 products online.

### ***International Consumer Protection Enforcement Network***

ICPEN comprises consumer protection authorities from over 60 countries. Its main objective is to protect consumers' economic interests around the world, share information about cross-border commercial activities that may affect consumer welfare, and encourage global cooperation among law enforcement agencies.

This year we continued our long engagement with ICPEN, presenting at conferences, co-chairing the Intelligence Steering Group, as a member of the network's Advisory Group and as the ICPEN Webmaster.

Other ICPEN work over the year included:

- gathering intelligence on consumer protection priority areas and emerging issues from members and preparing the twice-yearly intelligence report
- participating in the annual ICPEN online product safety sweep. This year, the sweep focused on the role of online reviews and endorsements and the policies made available to participants. Fifteen countries participated in the coordinated sweep, reviewing 956 websites.

#### **Case study: Redevelopment of the ICPEN website and members' extranet**

During the year the ACCC, in its role as ICPEN Webmaster, agreed to lead a project work group to develop a proposal to refresh ICPEN's public-facing website ([www.icpen.org](http://www.icpen.org)) and member extranet to deliver a contemporary, secure and sustainable digital presence for the future.

The ICPEN website is used by staff of member organisations and promotes ICPEN's mandate by sharing information and collaborating on consumer protection enforcement matters.

The ACCC successfully secured the necessary funding from ICPEN members and engaged a leading Australian web development firm specialising in the open source website platform Drupal.

The redeveloped [www.icpen.org](http://www.icpen.org) site was relaunched on 3 July 2017 and will make it easier for consumers to find advice when they are seeking to lodge national and international transaction disputes.

However, the biggest benefit is realised in the addition of a secure member's extranet area, where information about misleading, deceptive and fraudulent commercial practices can be quickly shared amongst international enforcement authorities.

## **Legislative developments and government liaison**

### **Legislative developments**

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

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

See page 132 for information about the ACCC's work to support small businesses to comply with the new law.

### **Country of origin labelling**

The Country of Origin Food Labelling Information Standard 2016 commenced on 1 July 2016. It establishes a new system for country of origin labelling of food products sold in Australia. The Standard requires certain foods offered or suitable for retail sale in Australia to carry country of origin labelling identifying where the food was 'made', 'grown', 'produced', or 'packed'. Businesses that sell or supply food suitable for retail sale in stores, markets, online or from vending machines have up to two years to transition to the revised labelling requirements before they become mandatory on 1 July 2018.

The labelling requirements for food products will vary depending on whether the food is classified as a 'priority' or 'non-priority' food and whether the food was grown, produced, made or packed in Australia or in another country.

The Standard sets out three broad country of origin labelling options for food, each with its own mandatory requirements:

- three component standard mark—a graphic and text-based label which is mandatory for priority food items grown, produced or made in Australia.
- two component standard mark—a graphic and text-based label which is mandatory for most priority food items packed in Australia. It may also be used for imported priority foods that contain Australian ingredients
- country of origin statement—a text-only label which is used for non-priority food items. Imported priority foods must also, as a minimum, carry a country of origin statement in a clearly defined box.

Further, on 1 September 2016 the Assistant Minister for Industry, Innovation and Science introduced the Competition and Consumer Amendment (Country of Origin) Bill 2016 to amend the ACL's 'safe harbour defences' for country of origin claims.

The safe harbour defences provide certainty to businesses that, if they satisfy certain criteria, their country of origin claim will not be considered to be false, misleading or deceptive. The amendments remove the 50 per cent production cost test for 'made in' claims and clarify what amount of transformation is required to constitute a 'substantial transformation'.

The bill was passed by parliament on 8 February 2017 and received Royal Assent on 22 February 2017.

On 24 April 2017 the ACCC published its updated guidance on country of origin labelling.

### **Competition and Consumer Amendment (Payment Surcharges) Act 2015**

The *Competition and Consumer Amendment (Payment Surcharges) Act 2015* (Cth) took effect for large merchants on 1 September 2016. A large merchant is one that satisfies two or all of the following thresholds:

- consolidated gross revenue for financial year ending 30 June 2015 of \$25 million or more
- value of consolidated gross assets at 30 June 2015 of \$12.5 million or more
- 50 or more employees (whether full-time, part-time, casual or otherwise) at 30 June 2015.

The amendment will apply to all other merchants from 1 September 2017.

These amendments have the effect of prohibiting merchants from applying a surcharge to payments by credit card that exceeds the merchant's cost of acceptance for that card system. This prohibition applies to EFTPOS (debit and prepaid), MasterCard (credit, debit and prepaid), Visa (credit, debit and prepaid) and the American Express companion card systems.

In the lead up to 1 September 2016 the ACCC raised awareness of the forthcoming prohibition by engaging with many large businesses to ensure they are aware of their obligations and publishing guidelines and information. The ACCC is responsible for ensuring that businesses comply with these obligations.

### ***Horticulture Code of Conduct review***

The final independent review of the Horticulture Code of Conduct was released in February 2016. During 2016–17 the ACCC collaborated with an interdepartmental committee of Australian Government agencies to develop the government response to the review's recommendations, and made a submission on how the code should be amended. The amended Horticulture Code of Conduct came into effect on 1 April 2017. There is a 12-month transition period before some changes take effect. Key changes include:

- an end to grandfathering of pre-code contracts
- the addition of penalties for key provisions
- the addition of an obligation to act in good faith.

The ACCC is working with relevant horticulture market participants to ensure that growers and traders of horticultural produce are aware of their rights and obligations under the amended code.

### ***Competition Policy Review (Harper review)***

The ACCC made a number of submissions on the government's proposed changes to the Act that followed a comprehensive review of Australia's competition laws (the Harper review).

On 1 December 2016 the first Harper review bill, the Competition and Consumer Amendment (Misuse of Market Power) Bill 2016, was introduced into parliament to amend the misuse of market power provisions in s. 46 of the Act. The bill was referred to the Senate Economics Legislation Committee for inquiry. On 10 January 2017 the ACCC made a short submission to the inquiry. The committee recommended that the bill pass with minor amendments and that a review of its impact should take place at least five years after the bill is implemented. On 14 August 2017 the bill was passed by the Senate and on 15 August 2017 the bill was passed by the House of Representatives.

The government introduced the second Harper review bill, the Competition and Consumer Amendment (Competition Policy Review) Bill 2017, on 30 March 2017. The bill aims to simplify, clarify and strengthen a range of the Act's provisions, including:

- those relating to cartels—confining the application of the provisions to cartel conduct affecting competition in Australian markets; and changing the scope of the joint venture exceptions to more appropriately exempt legitimate joint ventures
- introducing a prohibition on concerted practices which substantially lessen competition that have the purpose, effect or likely effect of substantially lessening competition
- increasing penalties for secondary boycotts in line with other competition law penalties
- extending the ACCC's s. 155 powers to cover contraventions of s. 87B undertakings and merger determinations
- increasing the penalty for non-compliance with a s. 155 request and giving the ACCC the ability to seek a civil compliance order for a party to comply
- providing for a 'reasonable search' defence to a breach of s. 155
- providing the ACCC with a new power to issue class exemptions (where a class exemption has been issued, businesses will not need to make individual applications to the ACCC for authorisation or notification)
- changes to the collective bargaining notification process to make it more flexible for small businesses

- amending the National Access Regime under Part IIIA of the Act to ensure that it better addresses the economic problem of an enduring lack of effective competition in markets for nationally significant infrastructure services.

The ACCC is currently preparing guidance on some of the key changes arising from these amendments.

### ***Information standard for free-range eggs***

On 31 March 2016 Commonwealth, state and territory consumer affairs ministers directed CAANZ to develop a national information standard for free-range eggs for consideration by the Legislative and Governance Forum on Consumer Affairs at a later date.

On 14 November 2016, the Minister for Small Business, the Hon. Michael McCormack MP, announced public consultation on the draft text of a national information standard (NIS) for free-range egg labelling. As well as the NIS, the government consulted on a draft explanatory statement. The consultation closed on 9 December 2016.

The information standard was registered on 26 April 2017 and will come into effect after a 12-month transition period. It prohibits the use of the words 'free range' on packaging for eggs (for example, on cartons) unless the eggs were laid by hens that:

- had meaningful and regular access to an outdoor range during the daylight hours of the laying cycle
- were able to roam and forage on the outdoor range
- were subject to a stocking density of 10 000 hens or fewer per hectare and the actual outdoor stocking density must be prominently disclosed.

The NIS will also prohibit unpackaged eggs being represented as 'free range' unless in addition to all the factors above:

- there is a sign containing the words 'free range' which is prominently displayed
- the sign prominently discloses the actual outdoor stocking density.

The government has foreshadowed that it will introduce a bill into parliament to amend the ACL to provide a safe harbour defence for those complying with the standard. If the parliament provides a safe harbour defence, it can be expected that, if a producer can demonstrate that they have complied with the NIS, they will have an absolute defence against misleading or deceptive conduct for use of the words 'free range'. Egg producers would still have to comply with the ACL in relation to all other representations.

The ACCC is in the process of updating its public enforcement guidance to reflect the standard. If the parliament provides a safe harbour defence, the ACCC will update its guidance again.

### ***Sugar Code of Conduct***

The Competition and Consumer (Industry Code–Sugar) Regulations 2017 (the Sugar Code of Conduct) came into effect on 5 April 2017. The code governs certain conduct by growers, mill owners and marketers relating to the supply of cane and on-supply of sugar, including by way of an obligation upon the parties to act in good faith and establishing a process for pre-contractual arbitration. The code also contains a provision relating to grower choice of marketing entity for the sugar produced from the cane supplied by the grower.



## Policy developments

### ***Australian Consumer Law Review***

The Australian Consumer Law Review commenced in June 2015 and has considered the effectiveness of the current law. The Australian Consumer Law final report was released on 19 April 2017. The ACCC provided advice and support to the ACL review secretariat in the development of the final report, alongside Treasury and state and territory counterparts.

The final report recommended 19 legislative proposals, four non-legislative actions and seven items for future investigation. The key proposals include:

- specifying that consumers are entitled to a refund or replacement without proving a 'major failure'
- clarifying that multiple non-major failures can amount to a major failure
- introducing a requirement that traders must ensure the safety of a product before it enters the market
- applying unfair contract terms protections to certain insurance products.
- In its consumer law enforcement and administration study, the Productivity Commission (PC) separately examined the multi-regulator enforcement and administration arrangements underpinning the ACL. The PC released the *Consumer Law Enforcement and Administration: Productivity Commission research report* on 12 April 2017. It concluded that the multi-regulator model is working reasonably well and made a number of findings and recommendations in areas of, for example, product safety and enforcement tools and remedies.
- The ACCC, its state and territory counterparts, and other Commonwealth agencies are currently considering each of the final report's proposals and findings and developing recommendations on next steps. These recommendations will be presented to consumer affairs ministers in August 2017.

### ***Product safety***

The ACCC provides product safety policy advice to the Minister for Small Business. This includes advice on regulating new and emerging product hazards and reviewing existing product safety regulations.

# Analysis of performance

## Consumer product safety

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

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

In 2016 the ACCC's priority under Deliverable 2.3 was the effectiveness of actions that suppliers take to recall unsafe consumer products. In 2017 the ACCC's priority is working with internet platform providers to prevent the supply of unsafe products into Australia.

In May 2016 we commenced an audit program to examine the effectiveness of voluntary recalls being conducted by businesses who had supplied Infinity cable. We reviewed the progress of and recall strategies employed by 20 businesses. We found that the majority of businesses were delivering the agreed recall remediation plan. Due to the size of the Masters (now Woolworths) recall, we engaged an independent auditor to review that recall. The auditor reported positively, estimating that Woolworths was on track to complete the remediation of Infinity cable by December 2018.

We also continued our work on:

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

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

## Emerging hazards

The ACCC applies a risk-based approach to product safety. We receive and assess information about product safety issues from diverse sources, including reports, mandatory reporting, global recalls, media and the health system. Product safety issues with potential for serious or widespread harm to consumers are given priority.

When we receive a report about an unsafe consumer product, the report is risk assessed and prioritised, taking into account the severity and potential severity of any reported harm or injury. Case-specific factors are also taken into consideration. These factors include whether related reports have already been made to us which might indicate an emerging trend or hazard. Our responses may include:

- encouraging the voluntary recall of goods (reassessing the effectiveness of the recall strategy if the goods are already subject to recall)
- raising awareness or reminding consumers about hazards through social media, the Product Safety Australia website and campaigns
- negotiating voluntary changes to packaging, labelling or product design
- working with industry to encourage safe sourcing and supply

- introducing or reviewing mandatory safety standards and bans
- referring a matter for enforcement consideration.

If our safety assessment indicates issues relevant to other regulators we will take appropriate steps to share information, as permitted by law. Likewise we may also assist with consumer safety responses to complement the work of other regulators. For example our participation in the Heads of Workplace Safety Authorities national working group for management of asbestos assists with the delivery of a seamless national approach to asbestos in consumer and other products.

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

We consider each option against the priority of achieving the best safety outcome for consumers.

## Voluntary recalls

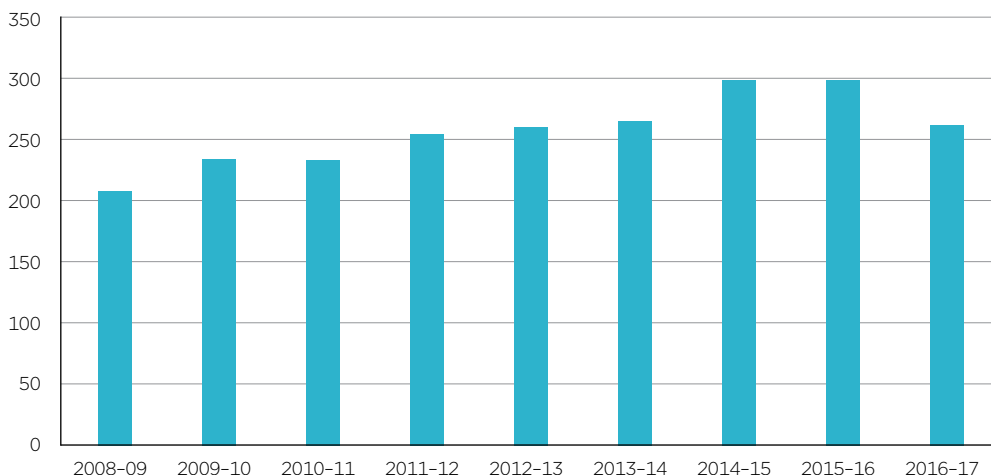
Voluntary recalls continue to be the main solution that businesses adopt when removing unsafe consumer products from the market. We support the effectiveness of voluntary recalls through the Recalls webpage on the Product Safety Australia website. When a recall is notified, we promote it via social media to increase exposure of the recall to relevant audiences. In 2016–17 the most successful re-posting of a recall was for some Bonds baby items that lacked required safety warning labels. Our organic Facebook post to promote the recall reached 834 140 consumers. The next two highest performers were recalls of Mazda liftgate stay dampers (467 486 people reached) and Dometic WAECO portable fridge freezers (326 403 people reached).

Suppliers must advise the Commonwealth Minister within two days of commencing voluntary recall action. To ensure that consumers receive the earliest notice of a recall that may affect them, we have aimed to publish 80 per cent of voluntary recalls within 48 hours of agreeing to legally correct wording with a supplier. From 2017–18 this target will be revised to be 80 per cent of voluntary recall notifications to the ACCC to be published in seven calendar days or less, including assessment and engagement with suppliers. Much of our time on voluntary recalls is spent assisting businesses to develop appropriate messaging to include in their recall notifications to ensure that consumers understand the risk of continuing to use a recalled product.

During the year we published a total of 592 recall notifications—264 related to general consumer goods, 240 to motor vehicles, 52 to food and 36 to therapeutic goods.

When we receive the notification of voluntary recall (on behalf of the Minister) we assess the risk and hazard that the product presents to consumers against the recall strategy that the supplier proposes to ensure the recall is effective. If we are unable to reach agreement on a matter we may escalate the matter for further investigation. On one occasion this year we recommended that the Minister issue a safety warning notice under the Australian Consumer Law. This was to alert consumers that a voluntary recall of Polaris youth quad bikes did not cover the full extent of potentially unsafe models. A safety warning notice is not punitive, it is a protective measure. In this case the supplier extended the recall shortly after the Minister issued the notice.

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



### ***Effectiveness of voluntary recalls***

This year we reviewed our voluntary recall monitoring processes. As forecast in the ACCC and AER 2015-16 annual report, we also reviewed the recall reporting obligations of suppliers that are engaged in active recalls to ensure that reporting frequency and duration remained proportional to risk. We also completed the audit program we commenced in May 2016, which reviewed the effectiveness of the Infinity cable recall.

We prepared guidance for small business on the importance of tracking and traceability of consumer products and communicating and advertising a recall. These publications will be released in early 2017-18. Based on Australian Bureau of Statistics advice, we will also publish versions of these guides in Vietnamese, simplified Chinese, Italian, Greek and Arabic, to help us to reach the discount variety retail sector and small online sellers.

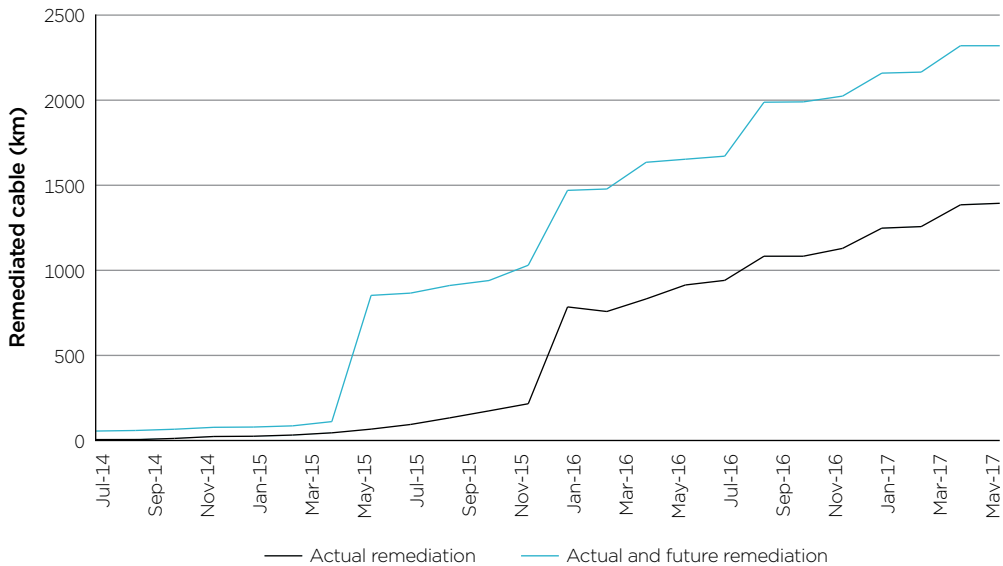
In October 2016 we completed some further work on our risk approach and commissioned the Commonwealth Scientific and Industrial Research Organisation (CSIRO) to help us review the data we hold about incidents and injuries so that we can scope the feasibility of a data-driven approach to product safety priorities.

### ***Recall audits of Infinity cable suppliers***

Our audit process commenced with an internal review of our past accounting of recall progress. This included review of records received from the Infinity Cable Company liquidator and amounts that suppliers nominated they were recalling when they first notified their recalls.

The objectives of our audit program were to:

- confirm that the methodology, figures and records that the ACCC holds are as complete and correct as possible
- determine if each voluntary recall is being undertaken in compliance with the relevant recall strategy
- identify any factors that aid or inhibit the effectiveness of the recall
- identify any factors that impact on businesses that are undertaking the recall
- make recommendations for next steps and identify lessons learned
- provide an evidence base for advice to the ACCC and the Minister about actions needed, if any, to improve the effectiveness of the recalls.

**Figure 3.3: Infinity cable recall performance**

## Mandatory reports

If a business becomes aware that a product it supplied has caused serious injury or death, it must report this to the ACCC. We rely on timely mandatory reporting to quickly identify product safety issues and assess whether further action is needed. Mandatory reports do not necessarily indicate that the relevant product is defective or at fault. We will consider many factors before responding, including:

- the reasonable and foreseeable use or misuse of the product
- any vulnerabilities associated with the injured party
- any inherent product hazards
- the age of the product
- the product's use instructions and whether they have been followed
- the nature of the injury
- how the supplier intends to respond.

If our preliminary assessment identifies a safety concern, we will then undertake a more detailed assessment. This may include seeking advice from suppliers about their quality assurance programs and safety testing. Where needed, we will commission product testing.

We received 3007 mandatory reports in 2016–17. We referred 1482 reports to other regulators and assessed 1525 ourselves. We conducted a preliminary assessment of 86.6 per cent of reports relating to serious injury or death within seven days.

This year we also reviewed the performance of the mandatory reporting provisions which were introduced with the ACL on 1 January 2011.

In the six-and-a-half year period from commencement of the ACL until our review date in early June 2017, the ACCC had received approximately 17 000 mandatory reports. On average 2600 reports have been received each year.

Our review identified that the majority of reporting is being undertaken conservatively by suppliers. In the majority of cases the reports do not describe an incident involving serious injury or illness as defined in the ACL. Further, many reports describe circumstances that

the legislation may not intend to capture. Details of actual reports cannot be released, but equivalent examples are feeling unwell from over-consumption of food or alcohol, a cut from picking up broken glass, or a chipped tooth from consuming a hard candy.

Despite these issues, information received via mandatory reporting plays an important role in identifying emerging product safety hazards. Many voluntary product recalls are initiated through discussion of consumer injuries reported under the provisions. Such discussions often identify the likelihood of issues with similar products in supply chains which can be addressed proactively before further injuries occur.

As a result of the recent ACL review, a CAANZ subcommittee will be considering our findings to inform the preparation of new guidance for suppliers about how to undertake mandatory reporting in compliance with the ACL provisions. New guidance will provide businesses with confidence about when reporting is needed, and will reduce the burden on businesses that may be over-reporting in a precautionary way.

## Consumer product safety standards

The ACCC makes recommendations to the Commonwealth minister responsible for consumer product safety about amending or developing product safety regulations to deal with products that have the potential to harm consumers. The ACCC consults with relevant stakeholders, including industry groups, consumer groups and other government agencies, in order to consider the impact on business and consumers and improve our policy formulation and decision-making.

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

### Case study: Example of interim ban—decorative alcohol-fuelled devices

On 16 March 2017 the Minister for Small Business, the Hon. Michael McCormack MP, imposed a national interim ban on certain decorative alcohol-fuelled devices, also known as ethanol burners, because of the risk of injury to consumers from uncontrolled fires.

Alcohol-fuelled devices are designed for domestic use and are used primarily to improve the ambience of the home. There are three common types of alcohol-fuelled devices: those that require installation in a fixed position, those that are freestanding, and those that are designed to sit on top of furniture, such as tables. They produce a flame using alcohol such as methylated spirits or ethanol in liquid or gel form. They are especially dangerous when being refuelled because the flame is sometimes invisible and the fuel can explode if poured on an open flame or hot surface.

Since 2010 there have been reports of at least 113 separate incidents related to decorative alcohol-fuelled devices resulting in an estimated 105 consumer injuries. Of the 113 incidents, at least 36 resulted in house fires. Injuries include second- or third-degree burns requiring intensive care, skin grafts, operations, lengthy hospital stays and physiotherapy.

The national interim ban came into effect on 17 March 2017. It applies to decorative alcohol-fuelled devices designed for domestic use producing a flame, primarily for decorative purposes, excluding each of the following:

- those with a power output of more than 4.5 kW
- those that require installation in a fixed position
- those that are designed for food warming

- those that meet the minimum dry weight (8 kg) and footprint (900 m<sup>2</sup>)—and, if these requirements are met, have a removable fuel tank (with warning) or come with a fuel container with a flame arrester (with warning).

The national interim ban was in force for an initial period of 60 days and was extended for two further periods of 30 days. The national interim ban ended on 14 July 2017.

The ACCC has completed its investigation into a solution to address the hazards posed by decorative alcohol-fuelled devices. In June 2017 we recommended to the Minister that he make a mandatory safety standard for decorative alcohol-fuelled devices to come into force when the national interim ban ends.

### ***Reviewed product safety standards***

In July 2016 we completed the review of the interim ban for self-balancing scooters. The review resulted in the introduction of the mandatory standard for self-balancing scooters, which includes various battery and battery control system requirements.

In March 2017 we completed the review of the mandatory safety standard for elastic luggage straps. The updated mandatory standard requires suppliers to label luggage straps with a revised warning statement advising consumers not to overstretch straps and to keep their face and body out of the rebound path.

In March 2017 we also completed the review of the mandatory safety standard for portable soccer goals. After review it was determined that the current mandatory standard is addressing the hazard adequately, and the Minister for Small Business endorsed the status quo.

In April 2017 we completed the review of the mandatory standard for children's nightwear. The updated mandatory standard adopts the most recent version of the Australian/New Zealand Standard AS/NZS 1249:2014 Children's nightwear and limited daywear having reduced fire hazard.

In May 2017 we completed the review of the mandatory standard for babies' dummies. The updated mandatory standard adopts the most recent version of the Australian Standard AS 2432:2015 Babies' dummies and also adopts the European Standard EN 12586:2007+A1:2011 Child use and care articles—Soother holder—Safety requirements and test methods. The adoption of international standards, where appropriate, aligns with the government's Industry, Innovation and Competitiveness Agenda, under which the government adopts the principle that, if a system, service or product has been approved under a trusted international standard or risk assessment, Australian regulators should not impose any additional requirements unless there is a good and demonstrable reason to do so.

## **Consumer product safety compliance**

### **Strategies**

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

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

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

### Market surveillance of consumer products

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

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

During 2016-17 we conducted 1263 inspections of wholesalers, retailers and online suppliers against 29 mandatory safety standards, bans or product types. Inspections resulted in suppliers withdrawing eight product types from sale.

Non-compliance identified in market surveillance activities resulted in 27 non-compliant product types being voluntarily recalled by suppliers.

Recalled products include bean bag covers (non-compliance with mandatory safety standard), vehicle recovery straps (non-compliance with mandatory safety standard), vehicle jacks (non-compliance with mandatory safety standard), children's nightwear (non-compliance with mandatory safety standard), child car restraints (non-compliance with mandatory safety standard), children's toys (non-compliance with mandatory safety standard), and Infinity cable (unsafe product).

### Consumer product safety education

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

We continued to provide guidance to industry on existing and new product safety regulations. We also prepared guidance for small businesses and industry stakeholders affected by the Infinity cable recall.

Reaching new audiences on social media is a challenge we try to meet. This year we tried a few different approaches.

We trialled some paid Facebook promotions to see if we could extend the organic reach of our Facebook posts. We tried this for our Infinity cable and button battery safety videos and were pleased with the result. We reached 567 191 people with the Infinity cable video and 467 043 people with the button battery video. We commenced promotion of the button battery video on 28 February to coincide with the last day of summer or 'Summer's Day', in memory of Summer Steer, the Queensland child who tragically died following ingestion of a button battery.

We also used Twitter to promote our safety messaging and product safety recalls. Comparison of the Twitter and Facebook reaches shows that interest generally varies by topic, which reflects the difference audiences of each channel. The most popular recalls for the Twitter audiences were the Samsung Galaxy Note 7 (8590 impressions), the Mercedes Benz front passenger airbag (7226 impressions), Kambrook essentials microwave oven (6582 impressions), Techtronic AEG chainsaw (6147 impressions), Radio Systems AC plug adaptor (5907 impressions) and Kogan drome quadcopter (5775 impressions).



Throughout the year we also added product safety messages to Facebook posts to coincide with popular culture dates and events. For example, on international Star Wars Day on the 4th of May, which plays on the famous phrase 'May the force be with you', we posted a 'May the 4th be with you' message.

The post presented a fictitious product recall of an R5 astromech droid from the Star Wars movie.

It proved successful for a number of reasons. We had almost 14 000 reactions on Facebook, exceeding our modest goals, as did the reach. Twitter also received above average numbers of retweets and likes.

Facebook statistics revealed that more men engaged with the post than average (currently men are only 35 per cent of our Facebook page fans).

Both Facebook and Twitter favour rich-content posts. The GIF video included in our post was instantly recognisable, and tied in well with our role in publishing product safety recalls.

### Ladder safety—September 2016

Each year in Australia, over 1500 people aged 65 years and over are hospitalised after falling from a ladder. Nearly two-thirds of those injuries occurred in or around their home. In 2016 the ACCC participated in the national EIAC campaign 'Ladder safety matters', which encouraged older Australian men to stop and think about safety before they use a ladder.

### Safe Summer—November 2016

The Safe Summer campaign was a social media campaign aimed at holidaymakers and consumers who are buying gifts for Christmas or using products for summertime activities. It encouraged consumers and holidaymakers to stay safe during summer by checking for unsafe products, using other products safely and heeding product safety warnings. Consumers were advised to check that Christmas gifts are suitable for the age of the child and do not present choking hazards or contain accessible batteries.

### Toppling furniture and televisions—April 2017

Each year, toppling furniture and TVs cause hundreds of serious injuries to children, and around two deaths of young children. The ACCC participated in the national EIAC campaign to raise awareness of the dangers of unstable furniture and televisions, which made use of educational material previously developed by the ACCC, combined with new content developed with the committee. A key element of the campaign was a safety video we produced in 2016: *Toppling furniture safety—anchor it and protect a child*.

#### ***National Toppling Furniture Strategy***

To take a coordinated approach to the problem of toppling furniture and televisions, a National Toppling Furniture Strategy was also developed in collaboration with state and territory consumer safety regulators to engage with industry and develop a suite of safety initiatives with multiple stakeholder involvement.

The ACCC and other members of EIAC launched the strategy in April 2017. It will continue throughout the remainder of 2017.

The cornerstone of the strategy is the Best practice guide for furniture and television tip-over and prevention, developed by the National Retail Association in coordination with the ACCC and announced by NSW Fair Trading under the EIAC education initiative on 3 April 2017.

The strategy involves engagement with industry to promote widespread adoption of the guide and an information kit for suppliers to assist with staff training. It incorporates printed

point-of-sale posters and postcards. In addition, the strategy implemented paid social media educational material and other targeted media content and surveillance activities.

The guide urges suppliers to supply anchor devices, as defined by the guide, with any tall furniture and large televisions at the point of sale. It also recommends that manufacturers apply the Australian safety standards to ensure that all furniture, including freestanding furniture, is as stable as possible so that it can accommodate top-heavy loading with TVs and other household items. The guide urges retailers to display in-store signage and provide warnings in assembly instructions, on packaging and on the product. It also recommends that retail staff be trained to talk to customers about the hazards of unstable furniture.

The ACCC and Health Canada are also taking a lead role in developing consumer education materials for the OECD, which has made toppling furniture its product safety priority for 2017. OECD members will jointly launch the campaign beginning with a week of intensive social and print media activity in November 2017, involving jurisdictions from around the world.

### ***National safety strategy for consumer products containing button batteries***

In September 2016, along with our co-regulators, we launched the National Strategy for Improving the Safety of Button Battery Consumer Products. The strategy promises two years of concerted action to reduce the risks posed by button batteries.

Button batteries are used in a broad range of household products such as remote controls for appliances and electronics, computers and calculators, garage door openers, flameless candles, toys and games, cameras, torches and book lights, kitchen scales, and musical greeting cards. They are also used in clothing and accessories, including key fobs and children's jewellery.

The strategy includes:

- national market surveillance, which commenced in November 2016, to identify and negotiate recalls of unsafe button battery products
- promotion of compliance with the voluntary code
- work with the medical fraternity to improve the identification and treatment of button battery incidents
- an exploration of the case for a mandatory standard if the abovementioned measures fail to deliver sufficiently safe consumer outcomes.

The ACCC produced a video, Button battery safety in the home, to educate parents and carers and give them practical advice to reduce children's exposure to button batteries.

At the same time, industry also launched a voluntary (non-statutory) industry code for button batteries to assist businesses. The voluntary code was developed by industry with the ACCC's assistance. It encourages the supply of consumer products with secure battery compartments, safer packaging and labelling.

### ***Recent industry action: button battery voluntary code and product recalls***

Since the introduction of the voluntary code in September 2016, suppliers have reported on the following safety improvements in place or underway:

- inclusion of warnings and emergency treatment advice on product packaging
- cancellation of button battery powered items from product lines
- full encasement of batteries in novelty and disposable items
- firm attachment of button and coin batteries to the musical circuit boards of musical greeting cards
- redesign of some 'tea light' candles to introduce secure battery compartments
- changes from the use of coin cell batteries to AAA or AA batteries or solar power

- redesign and retooling of office and stationery products to include secure battery compartments.

Since 1 July 2016 suppliers have undertaken 18 voluntary recalls (covering approximately 36 items, including minor style variations) following identification of button-battery hazards. This is significantly more than the number of similar recalls undertaken in the 2015–16 financial year (12 recalls covering approximately 29 items, including minor style variations).

## Product safety enforcement

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

### Case study: Example of product safety enforcement action—children’s nightwear

In August 2016 the Federal Court ordered Ozsale Pty Ltd (Ozsale) to pay penalties of \$500 000 for breaches of the ACL relating to safety issues with five children’s nightwear garments sold by Ozsale which did not comply with the applicable mandatory Australian standard.

Ozsale is a membership-based online retailer that sells clothing it purchases as excess inventory from mostly overseas suppliers.

The ACCC instituted proceedings against Ozsale in December 2015. The ACCC alleged that Ozsale sold over 200 non-compliant garments to Australian consumers and had over 11 000 non-compliant garments available for supply to Australian consumers. Of particular concern were the Orange Superhero Pyjamas, because the fabric type and the length of the cape made them particularly dangerous.

The ACCC also alleged that:

- three garments had no fire hazard warning at all
- two garments had fire hazard labelling that did not comply with the standard
- one of these garments was non-compliant due to composition and design failures.

The Federal Court declared that Ozsale had contravened the ACL with respect to each of the five garments and ordered an injunction restraining Ozsale, for three years, from supplying children’s nightwear garments that are subject to a safety standard unless the garment complies with the safety standard. In addition to penalties, Ozsale was ordered to implement a compliance program and make a contribution of \$50 000 to the ACCC’s costs.

Ozsale recalled the garments that were the subject of these allegations.

### Case study: ACCC action concerning non-compliance with mandatory fire risk standard

In November 2016 the ACCC accepted a court enforceable undertaking from Philip Morris Ltd (Philip Morris) in relation to the supply of Choice Signature Bold and Choice Signature Classic cigarettes (the Choice cigarettes) which did not comply with the mandatory Reduced Fire Risk Standard (the RFR Standard).

Under the RFR Standard, cigarettes sold in Australia must self-extinguish when left unattended. Before the RFR Standard was adopted, discarded cigarettes and related products started over 4500 fires and killed an average of 14 people each year. Cigarettes that do not meet the RFR standard also pose a significant risk in the Australian environment in that they can cause bushfires and associated injury and damage.

Between 1 September 2015 and 14 October 2015, Philip Morris supplied 306 000 packs of Choice cigarettes that did not comply with the RFR Standard.

Philip Morris self-reported its supply of non-compliant cigarettes to the ACCC after its test results confirmed the Choice cigarettes did not comply with the RFR Standard. It initiated a voluntary recall on 17 October 2015.

Philip Morris has also agreed to donate \$300 000 to the NSW Rural Fire Service.

## Court cases

We finalised the following cases in 2016–17.

**Table 3.46: Product safety cases finalised**

Product safety	Ozsale Pty Ltd t/a Buynvite	
commenced	8 December 2015	The ACCC alleged that, between July 2014 and October 2015, Ozsale sold children's nightwear which did not comply with the mandatory Australian safety standard and made a false or misleading representation about the fire risk of one garment. For details see the case study on page 122.
concluded	29 August 2016	
jurisdiction	Federal Court Sydney	
outcome	Pecuniary penalties of \$500 000.	
	Declaration.	
	Injunction for three years.	
	Compliance program	
	Contribution of \$50 000 to the ACCC's costs.	

We instituted the following cases in 2016–17.

**Table 3.47: Product safety cases instituted**

Product safety	Thermomix In Australia Pty Ltd	
commenced jurisdiction	16 June 2017 Federal Court Melbourne	The ACCC alleged that that Thermomix misled customers about their consumer guarantee rights, failed to comply with mandatory reporting requirements for injuries arising from the use of the appliances, made false representations and engaged in misleading conduct regarding the safety of the TM31 model, and made false and misleading statements about its 2014 recall.

### Undertakings

The following s. 87B court enforceable undertakings were finalised in 2016–17. Details of the s. 87B undertakings are in appendix 8.

**Table 3.48: Product safety undertakings finalised**

<b>Philip Morris Ltd s. 87B undertaking dated 23 November 2016</b>	The ACCC accepted a court enforceable undertaking from Philip Morris Ltd not to supply cigarettes that do not meet the mandatory Reduced Fire Risk Standard.
<b>Zen Sensation Pty Ltd s. 87B undertaking dated 23 November 2016</b>	The ACCC accepted a court enforceable undertaking from Zen Sensation Pty Ltd not to supply cigarettes that do not meet the mandatory Reduced Fire Risk Standard.

# Analysis of performance

## Support small business

### Deliverable 2.4: Support a vibrant small business sector

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

In 2016–17, a priority under our Compliance and Enforcement Policy was ensuring small businesses receive the protections of:

- industry codes of conduct, including the Franchising Code of Conduct, the Food and Grocery Code of Conduct and the Horticulture Code of Conduct
- the new unfair contract terms law.

To support the priority, we:

- enforced provisions of the ACL that relate to small business
- provided information, education and services to small businesses
- developed partnerships to help us better engage with and inform small businesses
- enforced codes of conduct
- allowed collective bargaining in certain circumstances in the public interest.

Our new Agriculture Unit, established in 2015–16, is:

- undertaking engagement
- undertaking market studies such as the study into cattle and beef industry
- an inquiry into the Australian dairy industry
- investigations and enforcement in the agriculture sector
- working with peak horticulture grower and trader organisations on education campaigns
- working with the newly convened ACCC Agriculture Consultative Committee to establish an information platform for farmers and small agribusinesses.

### Court cases

The following cases were instituted in 2016–17 in relation to issues in the agriculture sector.

#### *Agriculture cases instituted*

Unconscionable conduct in dairy industry	Murray Goulburn Cooperative Co. Ltd	Conduct
commenced jurisdiction	28 April 2017 Federal Court Melbourne	The ACCC alleges that Murray Goulburn engaged in unconscionable conduct and made false or misleading representations to farmers in its southern milk region between June 2015 and April 2016 about the average farm gate milk price it expected to pay them during 2015–16.

## Enforcement activities

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

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

### **Case study: Example of action to protect small businesses against breaches of Australian Consumer Law**

In December 2016 the ACCC instituted proceedings against **ABG Pages Pty Ltd** (ABG Pages) and **Michelle McCullough**. We allege that the company and Ms McCullough engaged in misleading or deceptive conduct, making false or misleading representations, undue harassment and systemic unconscionable conduct in its dealings with small businesses that were actual or potential customers of its online business directory service.

Since 2009, ABG Pages has offered an online business directory service to a range of customers, including small businesses. The businesses pay for ad listings, display ads and other services. However, the ACCC alleges that the service has little, if any, value. A number of small businesses have paid significant amounts of money to ABG Pages for advertising they did not want because ABG did not allow them to cancel their contracts. The ACCC received numerous complaints from small businesses about ABG Pages.

The ACCC alleges that ABG Pages breached the ACL by:

- falsely representing that large businesses purchased their directory services
- using high-pressure sales tactics to sell listings in its online business directory
- misleading businesses into entering one or more contracts
- refusing to cancel contracts which customers did not want and did not intend to enter into
- refusing to accept customers' attempts to cancel contracts
- misleading businesses about the total duration and the total price of contracts
- misleading businesses into entering into second or subsequent contracts for additional listings
- unduly harassing three customers by repeatedly contacting them for payments.

The ACCC alleged that this conduct was part of a system of unconscionable conduct by ABG Pages.

The ACCC is seeking penalties, declarations, injunctions, a disqualification order against Ms McCullough, findings of fact, corrective notices and costs.

Under the ACL, small businesses are protected against unfair contract terms such as those contained in ABG Pages' contracts. Also, businesses must not make claims about their services that are incorrect or misleading and they cannot accept payment where they know they have not provided the services they undertook to perform. Under our priorities in 2016–17, our focus remains on protection of small business against these types of breaches.

## Court cases

The following cases were finalised in 2016–17.

**Table 3.49: Small business cases finalised**

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



Table 3.50: Small business cases instituted

Franchising	Geowash Pty Ltd	Conduct
commenced jurisdiction	31 May 2017 Federal Court Perth	The ACCC proceedings will allege that Geowash made false or misleading representations and engaged in unconscionable conduct in breach of the ACL, and also failed to comply with the good-faith obligation in the Franchising Code of Conduct.
Franchising	Ultra Tune Australia Pty Ltd	Conduct
commenced jurisdiction	19 May 2017 Federal Court Sydney	The ACCC alleged that in 2015 Ultra Tune: <ul style="list-style-type: none"> <li>failed to act in good faith in its dealing with a prospective franchisee and failed to provide documents the Franchising Code of Conduct specifies must be provided before accepting a non-refundable payment</li> <li>made false or misleading representations about the franchise site, in breach of the ACL</li> <li>failed to provide marketing fund financial statements and audit reports to its franchisees for three financial years.</li> </ul>
Franchising	Morild Pty Ltd	Conduct
commenced jurisdiction	21 September 2016 Federal Court Perth	The ACCC alleged: <ul style="list-style-type: none"> <li>Pastacup's current franchisor, Morild, and former director, Mr Stuart Bernstein, acted in breach of the Franchising Code of Conduct in that Morild did not disclose to potential franchisees that Mr Bernstein had directed and managed two previous Pastacup franchisor companies that became insolvent</li> <li>Mr Bernstein was knowingly concerned in Morild's conduct.</li> </ul>

## Undertakings

The following s. 87B court enforceable undertakings were finalised in 2016–17. Details of the s. 87B undertakings are in appendix 8.

**Table 3.51: Small business undertakings finalised**

<b>Sensis Pty Ltd s. 87B undertaking dated 11 May 2017</b>	The ACCC accepted a court enforceable undertaking from Sensis Pty Ltd following an investigation of its online automatic renewal and cancellation processes, which were represented in a false or misleading manner to small business customers.
<b>Young Sang &amp; Co. (Aust.) Pty Ltd s. 87B undertaking dated 14 September 2016</b>	The ACCC accepted a court enforceable undertaking from a Melbourne-based fruit and vegetable wholesaler, Young Sang & Co. (Aust.) Pty Ltd, for breaches of the Horticulture Code of Conduct.

## Infringement notices

The following infringement notices were paid in 2016–17.

**Table 3.52: Small business infringement notices paid**

<b>Domino's Pizza Enterprises Ltd 4 May 2017</b>	Two notices totalling \$18 000 The ACCC issued the infringement notices against Domino's as it had reasonable grounds to believe that Domino's had failed to comply with the requirement in the Franchising Code of Conduct to provide franchisees with both an annual marketing fund financial statement and an auditor's report within the time limits prescribed under the Code.
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## Public warning notice

The following public warning notice was issued in 2016–17.

**Table 3.53: Public warning notices issued**

Unsolicited goods	Lux International Sales ApS	Conduct
	<p>The public warning notice alleges that LuxStyle:</p> <ul style="list-style-type: none"> <li>• sent unsolicited goods to Australian consumers</li> <li>• demanded payment for the unsolicited goods</li> <li>• continued to make demands for payment to consumers who refused to pay</li> <li>• threatened to refer (and in some instances actually referred) the matter to debt a collection agency.</li> </ul>	<p>In March 2017 the ACCC alleged that online retailer Lux International Sales ApS, a company based in Denmark that trades under the name LuxStyle, advertised its products on social media, directing potential customers to a website that did not display prices unless the consumer entered a mailing address and an email address. Consumers have complained that, even though they did not proceed to order or purchase the goods and simply closed down the website window after viewing the price of the product, LuxStyle then posted the goods to consumers along with an invoice demanding payment and followed this up with subsequent invoices if consumers did not pay.</p> <p>Consumers reported that, on some occasions where they did not pay, LuxStyle referred the matter to Australian-based debt collectors.</p>

## Extending unfair contract term protections to small business

The *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015* (Cth) received Royal Assent on 12 November 2015. The law gives small businesses protections against unfair contract terms offered by other (usually larger) firms. This law supplements the existing law on unfair contract terms for consumers. The protections came into effect on 12 November 2016, following a 12-month transition period. The ACCC, ASIC and state and territory offices of fair trading are responsible for enforcing the law.

The law applies to standard form contracts between businesses where one of the businesses employs fewer than 20 people and the contract is worth up to \$300 000 in a single year or \$1 million if the contract runs for more than a year. Standard form contracts provide little or no opportunity for the responding party to negotiate the terms—they are offered on a ‘take it or leave it’ basis.

To promote compliance with the new law, the ACCC reviewed 46 standard form contracts across the advertising, agriculture, franchising, independent contracting, retail leasing, telecommunications and waste management industries to identify problematic terms.

The ACCC engaged with some of Australia’s largest businesses, including Australia Post, News Limited, Optus and Scentre Group (Westfield). As a result of the review, a range of businesses agreed to amend or remove contract terms that may have raised concerns under the new law.

The ACCC's *Unfair terms in small business contracts: a review of selected industries* report was released on 10 November 2016. The report provides an industry-by-industry breakdown of the common terms of concern identified during the review.

During the 12-month period leading up to the law's commencement, the ACCC also developed a range of online guidance materials and undertook educational activities to ensure that businesses were aware of their rights and obligations and to promote a fair operating environment for small business.

## Country of Origin labelling

The Country of Origin Food Labelling Information Standard 2016 commenced on 1 July 2016. It provides for a two-year transition period to allow businesses time to change their labels to comply with the new law before it becomes mandatory on 1 July 2018.

The standard applies to food sold or offered for retail sale in Australia. Under the standard's new country of origin labelling requirements, most foods grown, produced or made in Australia must carry or display a graphic and text label (known as a standard mark), which comprises the 'Australian made, Australian grown' kangaroo logo, a bar chart that shows the proportion of Australian ingredients in the food, and a statement indicating whether the food was grown, produced or made in Australia.

On 1 July 2016 the ACCC released industry guidance on the standard, including content on our website and a guide to assist businesses to comply with the standard. Our website guidance has been updated to reflect amendments to the standard that occurred at the end of 2016. We have also produced an online education module and a short factsheet to assist businesses to understand the new law.

In March 2017 the ACCC participated in a number of country of origin food labelling forums in Adelaide, Townsville, Brisbane, Armidale, Sydney and Melbourne to raise business awareness of the standard. The forums were hosted by the Department of Industry, Innovation and Science.

On 22 June 2017 the ACCC's Deputy Chair, Dr Michael Schaper, together with representatives from peak industry bodies, hosted a webinar that discussed key tips and potential traps for businesses transitioning to the new food labelling requirements. The prerecorded presentation was done in partnership with the Australian Food and Grocery Council (AFGC) and Voice of Horticulture. The AFGC is a peak industry body representing manufacturers and suppliers in the food and grocery sector. Voice of Horticulture is a member-based organisation that represents horticulture growers and businesses. Over 185 people streamed the presentation when it went live. The video presentation is available on our YouTube channel.

In February 2017 the ACL's country of origin safe harbour defences were also amended. The amendments changed the criteria that a business must satisfy to claim a 'safe harbour'. If a business is able to meet the conditions of a safe harbour, they will have an automatic defence against allegations that they have contravened the ACL by making that country of origin claim. To assist businesses to understand when they can safely make a country of origin claim, the ACCC released an updated guide for businesses and two short educational videos.

## Small business information, education and services

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

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

To help small businesses to understand their rights and obligations under the ACL, we provide them with information, education and services.

Our main tools for communicating with small business are:

- our website (which includes a link to a dedicated page for small businesses) and an online small business complaint form
- the Infocentre small business hotline (1300 302 021)
- the ACCC's Information Network subscription services for small businesses, which provides information about enforcement action, new guides, events and changes to the Act. These include the:
  - Small Business Information Network (6643 subscribers)
  - Franchising Information Network (2513 subscribers)
  - Agriculture Information Network (1149 subscribers)
  - Oil Code Information Network (548 subscribers)
  - Cartels Information Network (717 subscribers)
  - Communications Information Network (1049 subscribers)
- targeted publications, mobile apps, online education modules and videos
- face-to-face and online education and compliance sessions.

### Online education programs

The ACCC continues to promote three free online education programs:

- The ACCC hosts an online education program for small businesses covering the major aspects of the Act and the ACL. New modules have been added to this education program to reflect legislative changes. This year there were almost 8200 users of the program, bringing the total number of users since the program's launch in April 2013 to over 32 500.
- The ACCC funds a franchise pre-entry program administered by Griffith University. More than 1900 people enrolled in this ACCC-sponsored program during 2016–17, bringing the total number of enrolments since the program's launch in July 2010 to over 12 500.
- The ACCC hosts an online education program for tertiary students studying subjects that touch on the Act or ACL—for example, law, commerce and marketing. Nearly 40 000 users have accessed this program since its launch in 2013.

### Small business webinar

On 8 June 2017 in partnership with ASIC, the Australian Taxation Office, the Fair Work Ombudsman and the Australian Small Business and Family Enterprise Ombudsman, we ran a live webinar for small businesses. The webinar provided useful information on how these agencies are working to level the playing field for small business, together with information on the resources available and initiatives of each agency to assist small business. Over 1224 people registered to receive a recording of the webinar and 257 people watched the webinar live. A video of the webinar is available on our YouTube channel.

## Speeches, presentations and publications

ACCC staff gave more than 71 speeches and presentations to small business audiences and attended many expos and other events.

We published two editions of *Small business in focus*—a twice-yearly summary of our activities in the small business and franchising sectors and update on industry codes.

## Infocentre

The Infocentre serves the small business hotline (1300 302 021) as well as a dedicated web form for small business. The web form encourages small businesses to submit reports about possible breaches of the Act. Enquiries from small business generally concern rights and responsibilities under the Act and the industry codes we regulate, and questions about accessing ACCC guidance materials.

Small business contacts are submitted through other telephone lines and web forms too. When a small business calls our general enquiries line, they will select from the small business options to ensure their call goes to one of our highly trained staff members.

## Partnerships for small business

### Small Business and Franchising Consultative Committee

The Small Business and Franchising Consultative Committee is a forum where industry and government can discuss competition and consumer law concerns related to the small business and franchising sectors.

Membership of the committee includes industry representatives, legal professionals, small business and franchising advocates and academics. It is chaired by our Deputy Chair, Dr Michael Schaper. Committee meetings are held at least twice a year.

This year the committee met on 14 October 2016 and 5 May 2017. Topics discussed in detail with committee members in these meetings included:

- current enforcement and compliance work of the ACCC
- business-to-business unfair contract terms
- excessive payment surcharges
- country of origin labelling
- the ACL review.

### Small business commissioners

In 2016–17 we continued to work with the four state small business commissioners from Western Australia, South Australia, New South Wales and Victoria, as well as the newly appointed Queensland Small Business Champion, and the Australian Small Business and Family Enterprise Ombudsman, on a range of matters. The group meets several times a year and discusses the types of complaints that each of the commissioners has received, small business initiatives, and new and proposed laws affecting small businesses.

### Regulators group on small business issues

A range of Australian Government agencies have small business roles and responsibilities. The Federal Regulatory Agency Group—a cross-government group comprising the ACCC, ASIC, the Australian Taxation Office and the Fair Work Ombudsman and chaired by the Australian Small Business and Family Enterprise Ombudsman—was established to improve regulatory coordination on small business matters.

The group meets quarterly to discuss ways to more collaboratively engage with and educate small businesses. Its activities have led to initiatives such as the (now annual) joint regulator webinar for small businesses and 'fix-it squads' (rapid-design groups made up of small business operators and intermediaries and representatives from federal, state and local government, all working together to examine and solve small business problems).

## Codes of conduct

An ACCC priority for 2016–17 was ensuring that small businesses receive the protections of industry codes of conduct.

We are responsible for promoting and enforcing compliance with five mandatory prescribed industry codes—the Franchising Code of Conduct, the Horticulture Code of Conduct, the Oil Code of Conduct, the Port Terminal Access (Bulk Wheat) Code of Conduct and the Unit Pricing Code—and one voluntary prescribed industry code, the Food and Grocery Code of Conduct. For more information on the codes, see [www.accc.gov.au/business/industrycodes](http://www.accc.gov.au/business/industrycodes).

We use a structured process to actively assess reports we receive of misconduct in relation to industry codes, and we escalate matters for investigation where appropriate.

### Food and Grocery Code of Conduct

The Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015 (the Food and Grocery Code of Conduct) came into effect on 3 March 2015. The Code governs certain conduct by grocery retailers and wholesalers in their dealings with suppliers. It requires that these parties act in good faith and that supply agreements be in writing. It also contains a dispute resolution procedure.

Coles, Woolworths, Aldi and About Life are signatories to the Code.

During the year, the ACCC dealt with complaints under the Food and Grocery Code of Conduct, investigated potential breaches and conducted compliance checks on Coles, Woolworths and Aldi. The main issue arising out of the compliance checks was a failure to comply with the code's requirements for product delisting, including not providing reasons for delisting, and delisting notices that were effective immediately or gave a short period of notice. The supermarkets were advised that they would have to improve the way they notify suppliers when delisting their products to avoid breaching the code.

We will continue to monitor complaints under the Code, conduct compliance checks and investigate potential breaches.

### Horticulture Code of Conduct

The Horticulture Code of Conduct is a mandatory industry code under s. 51AE of the Act and is enforced by the ACCC. The code aims to improve the clarity and transparency of trading arrangements between growers and traders in the horticulture sector.

In February 2017 the government announced that it would remake the Horticulture Code of Conduct. The new code took effect on 1 April 2017.

The ACCC is providing guidance and has commenced an education campaign to educate the industry in relation to their rights and obligations under the code and to encourage compliance with the law.

We have prepared guidance materials for industry to help it adjust to the changes to the Code, including:

- updated website guidance on the Code with answers to common questions
- example horticulture produce agreements to cover a grower's trading relationships with both merchants and agents

- two factsheets highlighting some of the major changes to the Code
- a short video that features Commissioner Mick Keogh giving an overview of the changes to the Code
- a suite of industry articles on key provisions of the code for peak industry bodies to include in their publications and newsletters.

We will continue to develop further guidance materials in consultation with industry.

We have also attended several events held by the industry and given presentations to peak industry bodies promoting the new Horticulture Code of Conduct.

## Franchising Code of Conduct

The Franchising Code of Conduct aims to regulate the conduct of franchising participants and ensure that prospective franchisees are sufficiently informed before buying into a franchise. It also provides for a cost-effective and formal dispute resolution scheme for franchisees and franchisors.

The ACCC administers and enforces the Code and checks franchisors' compliance with it.

The ACCC undertook a number of investigations of alleged breaches of the Code by franchisors during the period. As discussed earlier, the ACCC has instituted proceedings in the Federal Court against:

- Ultra Tune Australia Pty Ltd, a national motor vehicle repair franchisor, for a number of alleged failures to comply with the Franchising Code of Conduct and for alleged breaches of the ACL
- Geowash Pty Ltd, a WA-based hand car wash franchisor, for a number of alleged failures to comply with the Franchising Code and for alleged breaches of the ACL.

Following the issuing of infringement notices, Domino's Pizza Enterprises Ltd paid penalties for alleged non-compliance with the Franchising Code of Conduct.

On 21 June 2017 the ACCC published a factsheet to inform the franchising sector about the Franchising Code of Conduct. The factsheet includes updated guidance materials and information about the rights and obligations of franchisees and franchisors.

## Oil Code of Conduct

The Oil Code of Conduct regulates the conduct of wholesalers and fuel resellers who are involved in the sale, supply or purchase of declared petroleum products, such as unleaded petrol and diesel.

Following the Department of the Environment and Energy's review of the code, some minor technical amendments were made to the Code. The ACCC's website guidance has been updated to reflect these changes.

## Industry code compliance checks

The ACCC administers and enforces the Franchising Code of Conduct and conducts checks on franchisor compliance with the code's obligations. We identify potential breaches of the code and take enforcement action where appropriate to support our objective of promoting a fair operating environment for small businesses.

In 2016-17 we issued five notices under s. 51ADD of the Act to franchisors to check their level of compliance with the Franchising Code of Conduct and three notices to traders to check their level of compliance with the Food and Grocery Code of Conduct. A s. 51ADD notice requires the addressee to give information or produce documents to the ACCC that they are required to keep, generate or publish under an industry code of conduct. These traders were either selected because they had a history of Code-related complaints or



were randomly selected from industries that appear to generate a disproportionate volume of complaints.

Since 1 January 2011 we have served 111 s. 51ADD notices to monitor compliance with industry codes under the Act. The majority of traders have been found to be compliant with the relevant code. Where compliance issues have been identified, these concerns have largely been addressed administratively.

We will continue to conduct industry disclosure compliance checks in 2017–18.

### Voluntary codes of conduct

We support voluntary industry initiatives to develop codes that promote good business practices consistent with the Act. Effective codes potentially increase consumer protection and reduce regulatory burdens for business. Our Guidelines for developing effective voluntary industry codes of conduct are available on our website.

During 2016–17 we provided guidance to a number of parties in response to queries relating to voluntary codes. Parties included the Australian Environmental Pest Managers Association (about two codes of practice for termite management during construction), the Department of Health, the Department of the Environment and Energy and the Department of Agriculture and Water Resources.

## Allowing collective bargaining in the public interest

### Other decisions relating to small business

We can approve collective bargaining arrangements—whereby two or more competing businesses jointly negotiate with a supplier or a customer over terms, conditions and prices—where we are satisfied that the arrangement provides an overall public benefit. Without ACCC approval, such arrangements may contravene the Act.

Working together, small businesses might be able to negotiate better terms and conditions with large businesses than they could achieve on their own. Potential benefits include sharing the time and cost of negotiating contracts, coordinating ordering and/or delivery, accessing new marketing opportunities from combining volume, and gaining better access to information.

There can also be benefits for the business the group negotiates with, such as reduced negotiation costs, more certainty of supply and savings from aligning transport and distribution.

To assist small businesses to consider whether collective bargaining would suit their circumstances, we issued a guide for small businesses and farmers. The aim of the guide is to provide some basic information about what collective bargaining and collective boycotts are, some issues to take into account if small businesses are thinking of working together, and an outline of our approval process.

During 2016–17 we considered 16 collective bargaining proposals under the authorisation and notification provisions of the Act. The proposals we considered involving small businesses included those from cane growers, concrete cartage business operators, and retailers of furniture.

**Table 3.54: Overview of authorisations 2016–17**

Total authorisations decided (excluding minor variations)	27
Small business authorisations decided (excluding minor variations)	4

We also received and assessed more than 536 exclusive dealing notifications, a significant number of which involve small businesses—for example, to facilitate their participation in promotional and reward schemes or as part of a franchise supply arrangement.

# Analysis of performance

## Empower consumers

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

The ACCC's educative function is central to our role in protecting the interests and safety of consumers, because awareness and information are the tools that empower people to understand and exercise their rights as consumers. Our educational and publicity campaigns help consumers to make smart choices even in complex or difficult markets.

Deliverable 2.5 applies beyond what is generally understood to be the scope of consumer issues. Whenever we take on new responsibilities, identify new issues or focus on new priorities, our activities generally progress, in order, through:

- engaging with the relevant industry
- developing guidance materials on rights and responsibilities
- educating consumers and/or small business
- looking out for potential breaches of the relevant regulations
- investigating and taking action on breaches.

These activities may overlap.

To empower consumers by increasing their awareness of their rights, we:

- develop and distribute information materials targeted to particular groups
- publicise our enforcement actions
- conduct public education campaigns on specific issues
- operate the ACCC contact centre (the Infocentre) to respond directly to enquiries and reports on consumer issues and to gather information about current trends to inform our educational work
- gather and analyse intelligence on current trends and emerging issues relating to consumer rights.

### Distributing consumer information

In 2016–17 we distributed targeted and general information through our website and Facebook, Twitter and YouTube channels to help consumers and small business. For example:

- we used the new, improved Product Safety Australia website which incorporates the old Recalls website to provide a user-friendly, single-entry point to national, state and territory product safety and recalls information
- we published voluntary recalls through social media channels to extend their reach to affected consumers
- we identified popular culture events (for example, Mother's Day and International Star Wars Day) to use as opportunities to engage with our audience on social media and promote product safety messages
- we engaged with influencers and other third parties on campaigns such as members of the Consumer Consultative Committee and Australasian Consumer Fraud Taskforce.

## Publicising enforcement activities

We seek to maximise the effect of ACCC court cases and other enforcement actions by publicising them in accordance with the ACCC's Media Code of Conduct. In many instances, we conduct consumer education and business compliance initiatives alongside enforcement activities, each reinforcing the message of the other. The penalties and reputational damage that follow a court judgment are not only powerful deterrents to other traders but also highlight to consumers how they can use their rights.

In 2016–17 we publicised enforcement actions by:

- issuing media releases for enforcement interventions
- organising regular media appearances for the ACCC Chairperson and Commissioners in which they offered consumer tips and advice as well as discussing the actions more broadly
- engaging on social media
- using actions we have taken as examples in speeches, at conferences and at other events
- sharing our results via our email lists
- preparing content for industry on our court outcomes.

## Campaigns

We conduct campaigns, including in our broader priority areas, to educate and empower consumers on specific issues, and we put on events to promote and discuss consumer issues with a range of stakeholders.

For examples of our targeted campaigns in 2016–17, see:

- 'Scam disruption' on page 88
- 'Working with partners' on page 104
- 'Consumers with disability' on page 78.

As well as conducting issue-based campaigns, we use our involvement in various consumer forums to raise awareness about particular aspects of consumer law. In 2016–17 these opportunities included the annual National Consumer Congress, the Ruby Hutchison Memorial Lecture, and meetings of the ACCC Consumer Consultative Committee.

### National Consumer Congress

The 2017 National Consumer Congress was held in Melbourne on 15 March. This event was themed 'Consumer protection in a changing world'. It was attended by about 185 delegates from consumer organisations, government, academia and the legal sector. Panels and keynote speakers discussed a number of issues, including the availability and use of consumer data, the publishing of complaints data, reforms relating to financial services, housing rights for tenants and reforms introducing competition in human services.

This high-profile annual event is a valuable opportunity for us to generate interest in and raise awareness of issues relating to consumer empowerment.

### Ruby Hutchison Memorial Lecture

The Ruby Hutchison Memorial Lecture is held annually and is co-hosted by the ACCC and CHOICE. Ruby Hutchison was the founder of the Australian Consumers' Association, which is now known as CHOICE. The lecture was held on 14 March 2017 and was attended by approximately 160 guests. The 2017 lecture was presented by Fairfax's senior economics journalist Jessica Irvine. Titled 'Consumer rights in the new economy', Ms Irvine's lecture

covered what can be done to protect people during some of the most vulnerable periods in their lives—particularly in relation to aged care, tenancy and childcare services.

### Bannerman Competition Lecture

The ACCC and the Business Law section of the Law Council of Australia hosted the annual Bannerman Competition Lecture in Melbourne on 16 February 2017.

The Bannerman lecture is named in honour of Ronald Bannerman AO, the first and only Commissioner of Trade Practices and the inaugural chairman of the ACCC's forerunner, the Trade Practices Commission. The lecture provides an annual forum for an eminent speaker to reflect on competition and consumer law in Australia and to deliver new ideas and perspectives, which the community can debate.

The 2017 Bannerman Competition Lecture was delivered by the Honourable Stephen Gageler AC, Justice of the High Court of Australia, and was titled *Chapter Four—trade and commerce and the Australian Constitution*. Justice Gageler successfully defended the Commonwealth in the 2012 tobacco plain packaging case, and this year he was appointed a Companion of the Order of Australia.

### Consumer Consultative Committee

The Consumer Consultative Committee brings consumer engagement and empowerment issues to our attention and provides a forum for us to inform, discuss issues and seek feedback on the effectiveness of our consumer empowerment activities. See details under 'Working with partners' (Deliverable 2.2) on page 104.

## Infocentre

The ACCC Infocentre is the initial contact point for enquiries and reports about competition, consumer and fair trading issues. These contacts are received by telephone, by letter and through forms on our websites.

The majority of contacts are:

- reports about scams
- reports made by consumers seeking information about consumer guarantees
- reports about business conduct that may breach the Act.

Infocentre officers record information they receive from businesses and consumers in the ACCC database. This data is used across the ACCC for investigation, analysis and reporting purposes.

The Infocentre manages the process to escalate reports for investigation and possible enforcement action. All reports are assessed against the law and the ACCC Compliance and Enforcement Policy and, where appropriate, they are escalated for further assessment or investigation. The Compliance and Enforcement Policy supports Infocentre officers in informing customers of current and enduring priorities.

Where contacts are beyond the jurisdiction of the ACCC or cannot be individually addressed, Infocentre officers refer customers to appropriate services or agencies and educate the consumer or business on the options available to them.

For reports and enquiries, the emphasis is on consumer rights, business obligations and the role of the ACCC.

## Responding to enquiries and reports

Our contact statistics for 2016–17 are:

- 264 462 contacts served by telephone and received in writing
- 55 103 web form responses sent (or otherwise completed)
- 750 letter responses made
- 84 074 calls answered.

Our service level statistics for 2016–17 are:

- 25 per cent of calls answered within the service level
- 93 per cent of written responses sent within 15 working days.

This represents a significant improvement on last year's results for written responses following some positive change in 2016–17. A new service level objective will soon be recommended for telephone calls to ensure we have a less aspirational goal in place but can still provide consumers and small businesses with timely guidance and responses to reports.

## Escalation of investigations

The reports we receive may go through a series of increasingly intensive investigations.

An initial investigation is the first stage of a detailed assessment. It may result in escalation to an in-depth investigation. Alternatively, the matter may be resolved administratively or no further action may be taken.

The most serious matters may become in-depth investigations. Depending on the seriousness of the conduct, we may use our coercive investigative powers and resolve the matter by using court enforceable undertakings or infringement notices or by initiating legal action.

We analyse the information contained in our database to establish trends, identify issues for further inquiry and develop compliance responses.

**Table 3.55: Actions**

Category	2015-16	2016-17
Contacts received (phone, email and letters)	340 042	405 382
Contacts recorded in the database	207 090	234 913
Under-assessments commenced	590	485
Initial investigations commenced	427	259
In-depth investigations commenced	167	79
Litigation	19*	24*

\* Litigation commenced in period (i.e. new proceedings)

**Table 3.56: Small business and franchising contacts**

Category	2015-16	2016-17
About a small business matter	15 071	13 375
About a franchise matter	931	607
About an online trader or e-commerce	6 126	12 994

**Table 3.57: Top 10 industries, excluding scams, for complaints and enquiries**

<b>Industry</b>	<b>2016-17</b>
Non-store retailing	2101
Other personal services	1808
Electrical, electronic and gas appliance retailing	1635
Car retailing	1395
Clothing retailing	478
Other administrative services	442
Furniture retailing	442
Other telecommunications services	422
Internet search providers and web search portals	368
Pharmaceutical, cosmetic and toiletry goods retailing	332

**Table 3.58: Top categories of consumer and competition conduct for complaints and enquiries**

<b>Conduct</b>	<b>2016-17</b>
<b>Fair trading and consumer protection, including ACL</b>	
18—Misleading or deceptive conduct	19 072
54—Guarantee as to acceptable quality	18 123
36—Wrongly accepting payment	5 276
60—Guarantee as to due care and skill	3 676
29(1)(i)—False representation price	2700
29(1)(a)—False representations goods—standard, quality, value, grade, composition, style,etc.	1 818
56-57—Guarantee relating to the supply of goods by description, sample or demonstration	1 711
29(1)(b)—False representations re: services—standard, quality, value or grade	1 617
40—Assertion of right to payment for unsolicited goods or services	1 389
55B(1)—Payment surcharges must not be excessive	1 323
122-128—Recall of consumer goods	887
55—Guarantee as to fitness for any disclosed purpose etc.	850
<b>Effective competition and informed markets, Parts IV and IVB of the Act</b>	
Codes	551
Exclusive dealing	388
Misuse of market power	374

Table 3.59: Geographical location of contacts recorded in the national database

Location	ACL		Scams		Consumer protection		Restrictive trade practices		Industry codes		Other	
	2016-17	2016-17	2016-17	2016-17	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17	2015-16	2016-17
NSW	17 303	47 475	54 094	64 778	473	429	218	118	5 587	3 348		
Qld	14 137	36 003	42 564	50 140	438	297	217	121	4 608	2 462		
Vic	28 632	31 946	40 375	60 578	396	360	204	145	3 974	2 764		
WA	5 564	14 248	20 075	19 812	171	137	94	92	1 607	1 072		
SA	4 340	13 593	15 030	17 933	126	95	59	35	1 406	825		
ACT	1 910	4 668	5 798	6 578	80	62	14	14	586	376		
Tas	1 316	3 566	4 376	4 882	41	33	15	3	333	218		
NT	561	1 622	1 637	2 183	13	15	3	1	170	102		
Overseas or not specified	783	5 608	4 301	6 391	41	12	12	2	535	294		



## Intelligence

The ACCC continually invests in intelligence gathering and analysis to inform strategic enforcement and compliance priorities.

We continue to perform trend analysis on complaints to identify new issues and threats. Regular analysis not only provides a safety net for complaints assessment but also enhances our intelligence and industry knowledge and helps us identify new priority areas.

In 2016-17 our intelligence activities included:

- gathering information received through the Infocentre from businesses and consumers and analysing it as outlined above under 'Infocentre'
- working with state and territory consumer agencies to further develop all ACL regulators' intelligence capabilities and enhance cooperation, including through the Compliance and Dispute Resolution Advisory Committee
- engaging with our intelligence counterparts overseas to inform our understanding of emerging consumer and competition issues that are likely to affect Australia.

For reporting on our international engagement, see page 108.

# Strategy 3: Promoting efficient investment in, operation of and use of infrastructure

## Summary of performance

### Promoting the economically efficient operation of, use of, and investment in infrastructure; and identifying market failure

#### Role and functions

As some key infrastructure is provided by only one or a few suppliers, efficient access to that infrastructure may be limited, thereby undermining competition and investment. This matters because appropriate economic regulation and the efficient provision of infrastructure contribute to the efficiency and productivity of the overall economy.

The ACCC is the national regulator of natural monopoly infrastructure facilities in a number of industries. We apply regulation and access conditions to promote effective competition in upstream and downstream markets and deliver benefits in the long-term interests of end users—in effect, of all Australians.

Our role encompasses price regulation, monitoring, and enforcement of industry-specific rules in a number of key infrastructure sectors, including telecommunications, rail, water, ports and airports.

Our objective is to promote the long-term interests of end users through competition and efficient investment in key infrastructure services. To do this we regulate access to bottleneck infrastructure and the pricing for monopoly services. We also monitor and report on the price and quality of goods and services in these monopoly markets and, where relevant, business compliance with industry-specific laws.

In pursuing this objective our key functions include:

- regulating access to monopoly services that businesses need to compete in upstream or downstream markets
- regulating access prices where competitive pressures on a supplier are not sufficient to produce efficient prices
- monitoring and enforcing compliance with industry-specific laws for telecommunications services and rural water services in the Murray-Darling Basin
- monitoring and reporting on the prices and quality of particular goods and services to inform industry and consumers about the effects of market conditions
- advocating for competitive, well-functioning markets and efficient regulatory outcomes, including via contributions to law reform and policy processes.

We also review our practices and regulatory frameworks on an ongoing basis to ensure they remain fit for purpose by drawing on internal expertise, consulting with industry and other regulators domestically and internationally, and holding an annual regulatory conference.

We carry out these functions across a range of sectors, including:

- telecommunications
- water
- fuel
- rail
- gas
- bulk wheat export facilities
- airports
- container stevedoring
- postal services.

## Deliverables

Our deliverables in this area are:

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

## Priorities

Our infrastructure regulation priorities for 2016–17 were:

- undertaking access, pricing and regulatory coverage assessments across key infrastructure sectors, including rail and telecommunications
- promoting competition and efficiency in sectors undergoing major reform and/or transitioning to new market structures, including telecommunications and water markets
- enforcing and promoting compliance with industry-specific compliance regimes in telecommunications and water
- assessing the implications of emerging competition issues in telecommunications markets
- advocating for appropriate regulation of monopoly infrastructure, including in areas where there are efficiency concerns independent of competition concerns
- undertaking price monitoring and reporting activities across different sectors, including petrol, airports, container stevedoring and telecommunications.

## Powers

Our powers and responsibilities to regulate infrastructure arise under several different legislative and administrative frameworks. These include:

- the National Access Regime in Part IIIA of the *Competition and Consumer Act 2010* (the Act) (rail)
- industry-specific access regimes in the Act (communications)
- price monitoring directions from governments (airports, container stevedoring, petrol)
- price notification provisions (post, air services)

- rules and directions made by ministers in markets where competition is newly emerging or may not be working efficiently (rural water, gas, electricity, the northern Australian residential insurance market) or there is a deregulatory agenda (wheat, ports).

## Performance indicators

### Deliverable 3.1: Deliver network regulation that promotes competition in the long-term interests of end-users

This deliverable is about the ACCC using its regulatory powers to facilitate access to bottleneck infrastructure and competitive pricing for that access.

**Table 3.60: Performance indicators for Deliverable 3.1**

Performance indicators	Annual target	Result
Number of major regulatory decisions	3	6
Percentage of regulatory decisions completed within statutory timeframes (including 'stop the clock' and timeframe extension provisions in the CCA)	100%	100

### Deliverable 3.2: Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

This deliverable is about keeping a close watch on the price and quality of goods and services available in markets that may be inefficient because they are highly concentrated or developing.

**Table 3.61: Performance indicators for Deliverable 3.2**

Performance indicators	Annual target	Result
Number of annual monitoring reports	4	7
Number of reports on monitoring of unleaded petroleum products	4	7

### Deliverable 3.3: Improve the efficient operation of markets by enforcing industryspecific competition and market rules

This deliverable is about the ACCC using its powers to enforce industry-specific rules that promote competitive, efficient markets.

**Table 3.62: Performance indicators for Deliverable 3.3**

Performance indicators	Annual target	Result
Number of investigations into potential breaches of rules	5	19

# Analysis of performance

## Telecommunications

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

The ACCC's work in the telecommunications sector contributes to all three of the deliverables for Strategy 3, as it encompasses regulation, monitoring and enforcement.

We are responsible for the economic regulation and monitoring of the communications sector. Our role is to provide effective telecommunications regulation that will protect, strengthen and supplement competitive market processes to improve the efficiency of the economy and increase the welfare of Australians.

Access regulation reduces barriers for competing operators that seek to enter and compete in downstream markets and invest in new infrastructure. As a result of regulating access to monopoly wholesale communications services, new entrants are often able to grow and innovate. Consumers then benefit in terms of both price and service quality.

In addition to the Competition and Consumer Act, we have responsibilities under the following Commonwealth legislation:

- *Broadcasting Services Act 1992*
- *Copyright Act 1968*
- *National Broadband Network Companies Act 2011*
- *Radiocommunications Act 1992*
- *Telecommunications (Consumer Protection Services Standards) Act 1999*
- *Telecommunications Act 1997*.

This year our priorities relating to telecommunications were:

- undertaking access declaration and determination assessments for a range of telecommunications services, including non-NBN broadband services and a wholesale mobile roaming service
- initiating an in-depth market study into current and emerging trends impacting competition and efficiency in the supply of telecommunications services
- promoting Australian Consumer Law (ACL) compliance by NBN and retail service providers regarding broadband speeds
- continuing to administer and monitor compliance with key aspects of the structural reforms of fixed-line telecommunications (including the Telstra structural separation undertaking).

## Access to telecommunications networks and services

In regulating the telecommunications sector, we aim to establish reasonable access terms that:

- balance the interests of infrastructure owners, users and the broader public
- achieve any-to-any connectivity<sup>6</sup>
- encourage efficient investment in, and use of, infrastructure
- promote competition for the long-term benefit of consumers and businesses.

### Declaration of telecommunications services

The telecommunications access regime contained in the Act supports the development of a competitive telecommunications industry by allowing services to be ‘declared’—a process that determines which services are regulated by the ACCC. Once declared, a service must be supplied, on request, to other providers.

The ACCC can declare a service by:

- holding a public inquiry and allowing access providers, access seekers and consumers to comment
- accepting a special access undertaking from the provider of a service that effectively declares a particular service.

There is another method for declaring a service, which applies only to NBN corporations (such as NBN Co). Where NBN Co supplies or intends to supply a service and publishes a standard form of access agreement for that service on its website, that service is declared.

### ***Decision to declare superfast broadband access***

The ACCC declared the wholesale superfast broadband access service (SBAS) on 29 July 2016. The SBAS allows retail service providers to access non-NBN superfast access networks to supply retail services to end users.<sup>7</sup>

Networks covered by the declaration include the fibre-to-the-basement (FTTB) networks operated by TPG subsidiary AAPT, and Telstra’s fibre networks in South Brisbane and Velocity estates.<sup>8</sup> The SBAS does not include services that are, or soon will be, subject to other access regulations under Part XIC of the Act (for example, the NBN). It also excludes some services supplied exclusively to business, government and charity customers within the CBD of a capital city where competition appears effective.

The ACCC declared the SBAS because economic and potential technological barriers to entry mean that all superfast broadband networks are likely to display monopoly characteristics. The declaration also promotes regulatory consistency, allowing retailers to compete on their merits regardless of the technology used, when the underlying network was constructed or who operates it.

We expect that the declaration will facilitate entry and competition in superfast broadband retail markets and deliver long-term benefits to consumers.

<sup>6</sup> Any-to-any connectivity refers to the principle that a person using a telephone service should be able to communicate with another person on a similar telephone service irrespective of the network each person is using.

<sup>7</sup> Superfast access networks refers to access networks that provide a downstream data rate normally above 25 megabits per second (Mbps).

<sup>8</sup> Telstra Velocity estates are housing estates served by a fibre access network operated by Telstra.

### ***Decision to declare wholesale asymmetric digital subscriber line***

On 3 February 2017 the ACCC decided to continue declaration of the wholesale asymmetric digital subscriber line (ADSL) service for a further five years. We consider that continued declaration of the wholesale ADSL service on a national basis will promote the long-term interests of customers during the transition to the NBN. Continued regulated access to the service will lead to a more competitive retail sector, which is likely to deliver greater choices for end users, in the form of better prices. There was a broad level of industry support for the ACCC's approach.

The wholesale ADSL service is a point-to-point service that enables retail service providers to deliver high-speed fixed-line broadband internet services to their customers, using another network provider's equipment. The wholesale ADSL service was first declared in February 2012, and the current access determination will remain in place until it expires on 30 June 2019.

### ***Draft decision not to declare wholesale domestic mobile roaming***

The ACCC's inquiry has explored whether the difference in geographic coverage between Australia's mobile networks is leading to reduced competition or inefficient outcomes and whether declaring a domestic mobile roaming service would be in the long-term interests of end-users. Domestic mobile roaming allows consumers to access mobile services through another operator's network when outside the coverage area of their own service provider's network.

On 5 May 2017 the ACCC released a draft decision proposing not to declare a wholesale domestic mobile roaming service. The ACCC's preliminary finding is that the national retail mobile market is currently exhibiting signs of reasonably effective competition. Given this, there is insufficient evidence to suggest that declaration of a mobile roaming service in regional and rural areas would further lower prices or improve services, given the higher costs in servicing these areas.

The ACCC received over 130 submissions to its October 2016 discussion paper on the issue with many submissions from regional groups concerned about coverage. The ACCC examined the incentives for mobile network operators to upgrade their networks or invest in expanding coverage both with and without declaration.

On 2 June 2017, Vodafone sought judicial review of the inquiry. The ACCC is proceeding with its inquiry and expects to make a final decision later in 2017.

### ***Updated guidelines on declaration of telecommunications services***

Under Part XIC of the Act, a carriage service, or service that facilitates the supply of a carriage service, can be declared. Once a service is declared, an access seeker can then obtain access to that service. There is no general right of access without declaration.

On 11 August 2016 the ACCC finalised a guideline for the Part XIC declaration provisions for telecommunications services. This guideline provides information about the processes for declaring a service, including an explanation of the differences between how an NBN service and non-NBN services can be declared. The guideline also outlines the key concepts we apply in considering whether to declare a service, including the long-term interests of end users test.

The guideline is an update to an earlier guide released in July 1999. It reflects changes to Part XIC that have altered the ways in which services can be declared, and provides discussion and more recent examples to illustrate how the ACCC will generally consider issues in deciding whether to declare a service.

## Determinations of terms and conditions

### ***Final prices for non-NBN high-speed internet services***

The ACCC determined prices for the superfast broadband access service (SBAS) and the local bitstream access service (LBAS) on 26 May 2017. These are wholesale services provided on 'non-NBN' fixed line superfast broadband networks including those operated by Telstra (South Brisbane and Velocity estates fibre networks), TPG, Vocus, LBN Co, Opticomm, and OPENetworks.

The decisions specify the price and non-price terms for the supply of the SBAS and LBAS to retail service providers, in the absence of a commercial agreement. The final decision links LBAS and SBAS prices to NBN prices, while at the same time seeking to avoid setting prices below the reasonable costs for SBAS and LBAS providers. It also seeks to ensure that regulation is proportionate to the size of the non-NBN superfast broadband sector as a whole and networks within it.

The prices are expected to help drive better service performance for retail customers of superfast broadband providers as they will allow retail service providers to buy greater amounts of aggregation at a lower average price. The decisions run to 28 July 2021.

### ***Court upholds ACCC prices for fixed-line services***

On 28 March 2017 the Federal Court dismissed Telstra's application for judicial review of the fixed-line services final access determinations (FADs) the ACCC made in October 2015. These FADs specified price and non-price terms of access to Telstra's declared fixed-line telecommunications services for the period 1 November 2015 to 30 June 2019.

In making the FADs, the ACCC had made adjustments within its pricing model in recognition of the arrangements Telstra had entered into with NBN Co regarding migration of its customers to the NBN, the leasing of its fixed-line assets to NBN Co, and the corresponding payments Telstra would receive over the regulatory period.

Telstra had challenged the FADs on the grounds that, in making these adjustments, the ACCC had allegedly made various legal errors that meant that the FADs should be set aside by the Court.

In its judgment, the Court found that it was open to the ACCC to make the adjustments that it made, and that it had not made any reviewable errors. It concluded that Telstra's grounds for review were impermissible attacks on the merits of the ACCC's decision, and that the ACCC had demonstrated consideration of all the matters it is required to take into account when making FADs.

The 2015 FADs will continue until 30 June 2019. The Act requires us to commence an inquiry to replace these FADs 18 months before their expiry and ending six months before expiry.

## Industry analysis, monitoring and reporting

### **Communications sector market study**

In September 2016 the ACCC commenced a market study into the communications sector. The purpose of the market study is to ensure that the implications of developments in the communications sector are well understood, to identify issues that prevent relevant markets from delivering economically efficient and competitive outcomes in the interests of consumers, and to identify options, if required, to address these issues.



The key themes the ACCC is seeking to explore include:

- the impact of changes in consumer trends and preferences on the provision of communications services
- the growth in demand for data, largely driven by over-the-top (OTT) services such as Netflix, and the impact of this growth on network investment and data traffic management
- industry consolidation, the transition to the NBN, and concerns about competition, pricing, and consumer expectations
- the convergence of mobile and fixed-line networks
- availability and competition in the supply of intermediate inputs, including internet interconnection, access to dark fibre, and domestic and international transmission
- the emergence of new technologies and delivery platforms.

We received more than 1100 submissions by consumers, businesses and smaller service providers, and held a successful stakeholder forum in Sydney on 4 July 2017.

The views and insights from consultation and the stakeholder forum will assist in further refining the ACCC's views. We expect to release the draft report in October 2017 and a final report in early 2018.

### Annual reports on telecommunications competition

The ACCC's annual telecommunications reports on prices and competition in the telecommunications sector were tabled in parliament and published on the ACCC website on 8 March 2017. Key findings of this year's reports include:

- consumer demand for streaming services, cloud services, and increasingly content-rich websites and social media applications is driving growth in data consumption
- data downloads have increased 52 per cent for fixed broadband and 69 per cent for mobiles.

Accompanying this increase in data consumption, prices for telecommunications services have fallen overall by 1.5 per cent, while prices for internet services have increased by 2.7 per cent on average. This means that, while some consumers may be paying more, they are also getting much more in terms of data allowances.

Other findings include that competition is proving resilient to industry consolidation and the transition to new cost structures. Retail market shares have remained stable, while wholesale shares have moved as competitive carriers migrate services to the NBN and mobile virtual network operators swap over to other mobile networks.

### Quarterly reports on the NBN wholesale market

The ACCC continued to release its quarterly reports on the NBN wholesale market. These reports provide a detailed view of the size and structure of emerging NBN wholesale access markets as NBN services become more widely available. The reports do not provide a view over the structure of emerging retail markets, however, as retail service providers can choose to acquire NBN access services or resell services offered by NBN access seekers.

Reports were issued on 29 July 2016, 2 November 2016, 2 February 2017 and 3 May 2017.

### Review of record-keeping rules

In May and June 2017 the ACCC reviewed the ongoing need for the Telstra Exchange Facilities Record Keeping Rule (RKR), reaching the view that it should expire on 14 July. This RKR was originally implemented in 2008 following a number of complaints from access seekers concerning delays in obtaining access to Telstra exchanges.

The RKR required Telstra to report monthly on a number of metrics in relation to access to its exchanges, including the number of exchanges with queued access seekers and exchanges that are 'capped' (out of space).

After considering submissions from stakeholders and other developments, including the rollout of the NBN, the ACCC determined that this RKR was no longer necessary.

In June 2017 the ACCC commenced a public inquiry into whether the NBN Services in Operation RKR (and associated disclosure direction) should be extended, varied or allowed to expire. This RKR requires NBN Co to provide information on the number of wholesale access virtual circuit (AVC) services in operation, the amount of connectivity virtual circuit (CVC) capacity being acquired and average CVC utilisation over the NBN. The disclosure direction requires NBN Co to provide the ACCC with extracts from the NBN RKR for publication by the ACCC in the *NBN Wholesale Market Indicators Report*.

The ACCC sought views from interested parties as to whether additional information should be included in the NBN RKR and disclosure direction—specifically, whether expanded rules could include more detailed AVC and CVC reporting and whether reporting could be more frequent.

### Quarterly reporting of access agreements

Carriers or carriage service providers (CSPs) who supply declared (regulated) services must lodge quarterly reports with the ACCC regarding all new, varied, cancelled and in-force access agreements in relation to declared services. These quarterly reports assist the ACCC in monitoring industry developments and fulfilling its responsibilities under Parts XIB and XIC of the Act.

During 2016–17, seven more parties provided reports on their access agreements than in the previous year. The increase is attributable to a review of non-reporting declared service suppliers conducted in 2015–16 and the ACCC decision to declare the superfast broadband access service in July 2016. The ACCC found that compliance was generally consistent with the requirements of the CCA. Where quarterly reports were not fully compliant, we worked constructively with carriers to resolve any deficiencies for future reporting.

## Enforcement and compliance

### ACCC to monitor Australia's broadband performance

On 7 April 2017, the government announced funding for the ACCC to implement a fixed broadband performance monitoring and reporting program. This will involve the ACCC publishing information about the speed at which services typically operate, and other metrics relevant to measuring broadband performance and applications consumers commonly use. The ACCC expects to be able to provide its first report by the end of the 2017 calendar year.

The program will use hardware-based devices to perform remote testing of around 4000 households to determine typical speeds on NBN services at various points throughout the day, including busy periods.

As at 30 June the ACCC was in the process of appointing an independent third-party testing provider to measure and report to the ACCC on the broadband performance of various broadband services, technologies, speed plans and geographical areas. On 19 June 2017 we also called for volunteers to sign up for the program.

## Guiding principles for advertising broadband speeds

On 10 February 2017 the ACCC published principles to help guide internet service providers marketing broadband speeds, including how to make a clear statement on the typical speeds consumers can expect during busy hours. These principles are:

- consumers should be provided with accurate information about typical busy period speeds that the average consumer on a broadband plan can expect to receive
- wholesale network speeds or theoretical speeds taken from technical specifications should not be advertised without reference to typical busy period speeds
- information about the performance of promoted applications should be accurate and sufficiently prominent
- factors known to affect service performance should be disclosed to consumers
- performance information should be presented in a manner that is easily comparable by consumers, for example by adopting standard descriptive terms that can be readily understood and recognised
- retail service providers should have systems in place to diagnose and resolve broadband speed issues.

We have undertaken targeted consultation with stakeholders on implementation of the principles and will publish further guidance later in the 2017 calendar year.

## Investigations

We investigated 12 allegations of potential contraventions of the Act and of the Telecommunications Act specific to telecommunications markets.

These included complaints of misuse of market power under the telecommunications-specific anti-competitive conduct provisions in Part XIB of the Act. These complaints related to concerns that vertically integrated telecommunications providers refused to provide certain wholesale telecommunications services on appropriate terms, which it was alleged affected competition in downstream markets.

We also investigated allegations of non-compliance with the 'level playing field' provisions in parts 7 and 8 of the Telecommunications Act, which restrict owners of certain superfast telecommunications networks from using those networks to provide services directly to retail consumers. Additionally, we investigated allegations of misleading and deceptive conduct under the ACL.

The investigations were progressed and resolved consistent with the ACCC's compliance and enforcement policy.

In March 2017 the Federal Court ordered the corporations trading as SoleNet and Sure Telecom (the SoleNet/Sure Telecom companies) and Mr James Harrison to pay penalties totalling \$250 000 and be restrained from carrying on a business or supplying services in connection with telecommunications for a period of two years. The Court also disqualified Mr Harrison from managing corporations for three years, and ordered consumer refunds and payment of the ACCC's costs.

These penalties followed a finding by the Court in December 2016 that the SoleNet/Sure Telecom companies had engaged in unconscionable conduct in connection with the supply of telecommunications services. This included customers being transferred from one SoleNet/Sure Telecom company to another without their knowledge or informed consent, and being subject to unjustified demands for payment of early termination or cancellation fees.

## Contributing to structural reform

The telecommunications sector in Australia is continuing a period of structural reform, as provision of wholesale services transitions to the new NBN. Key pillars of this reform include:

- NBN Co's special access undertaking (SAU)—this is the key element of the regulatory framework that governs the price and non-price terms and conditions upon which NBN Co will supply its services to access seekers until 2040. The ACCC accepted NBN Co's SAU in December 2013.
- Telstra's structural separation undertaking (SSU) and migration plan—together these outline how Telstra will progressively stop supplying telephone and broadband services over its networks and migrate those services to the NBN.
- The ACCC has various roles as this transition occurs, including ensuring that the new monopoly NBN services are provided efficiently and support competition in retail markets, and that competition, efficiency and good outcomes for consumers are not compromised during the period of transition.

### Assessment of variation of NBN Co's access arrangements

The ACCC issued a draft decision to reject NBN Co's proposed variation to its SAU on 28 March 2017. While the ACCC agreed with the overall approach that NBN Co had taken to incorporate its multi-technology mix (MTM)<sup>9</sup> technologies into the SAU, we took the preliminary view that certain proposed changes would not promote the long-term interests of end users and were not reasonable. These included:

- changes to service definitions that would allow future technologies introduced by NBN Co to be covered by the SAU without a further SAU variation
- removing 'Network Boundary Point' from service definitions, which creates uncertainty for access seekers, especially in relation to maintenance responsibilities
- locking in provisions relating to 'co-existence' and 'remediation' for fibre-to-the-node (FTTN) and FTTB services, which would allow NBN Co to provide services at lower data rates in certain circumstances for the remainder of the SAU term.

The ACCC considered that amendments to the proposals could be made to address its concerns. On 22 June 2017, NBN Co withdrew its proposed variation to the SAU and simultaneously lodged a revised version with the ACCC. Key revisions include:

- re-instatement of the 'network boundary point' definition
- removal of the term 'any other telecommunications network' from the definition of 'NBN Co Network', and
- refinement of the 'co-existence' and 'remediation' clauses and limiting the period in which the provisions apply to Module 1 of the SAU.

The ACCC published the revised variation on 27 June 2017 and invited submissions from interested parties by 4 August 2017.

### Determination on NBN revenue controls

Under the NBN Co SAU, the ACCC must make annual determinations specifying the amount of revenue that NBN Co is allowed to earn for each financial year. On 23 June 2017, the ACCC issued its final determination report accepting NBN Co's submission on its revenue controls for 2015–16.

<sup>9</sup> Multi-technology mix (MTM) refers to the fibre-to-the-node, fibre-to-the-basement and hybrid-fibre coaxial access networks used by NBN Co.

## Improvements to customer migration

On 20 July 2016 the ACCC approved a variation to Telstra's migration plan. The variation reflects improvements resulting from Telstra's and NBN Co's experience to date in migrating end users to the MTM NBN.<sup>10</sup> These changes provide greater assurance and certainty to end users that they will not prematurely lose their voice and broadband services before migrating to the NBN. The changes will also give retail service providers more time to complete their migration activities, to promote a more seamless experience for customers as they move to the NBN.

## Telstra's involvement in the NBN rollout

In September 2016 the ACCC released a report on the competition implications of Telstra's involvement in the rollout of the NBN. Under service delivery agreements between NBN Co and Telstra, Telstra will supply network activation and assurance services, and network planning, design, construction, and construction management services.

As set out in the report, the ACCC raised concerns that the agreements may give Telstra a 'head start' in connecting customers to NBN hybrid-fibre coaxial (HFC) broadband services, preferential service activation and/or repair of NBN broadband services for its own customers, and greater insight than its competitors into the NBN rollout. NBN Co and Telstra had also agreed a number of measures to mitigate the potential risks to competition.

Telstra subsequently commenced reporting to the ACCC each quarter on the number of new HFC connections. This provides visibility as to whether out-of-the-ordinary demand for Telstra HFC services is emerging in areas subject to HFC works. NBN Co has also commenced reporting each quarter to NBN access seekers on operational outcomes where Telstra is the service delivery partner.

NBN Co also advised the ACCC that it is supplementing its rollout reporting to access seekers to provide additional guidance on NBN construction progress in rollout areas subject to the NBN Co-Telstra HFC delivery agreement. As a result of this measure, all of the reporting measures recommended by the ACCC in its assessment of the NBN Co-Telstra service delivery agreements will have been implemented.

The ACCC continues to work with NBN Co and Telstra to establish suitable arrangements for monitoring the implementation of the agreements.

## Telstra's compliance with structural separation undertaking

The ACCC must monitor and report to the Minister for Communications and the Arts each financial year on Telstra's compliance with its structural separation undertaking (SSU) obligations. The report, tabled on 27 April 2017, is part of the structural reform of the telecommunications industry.

The latest report shows that there has been a reduction in the number of breaches reported by Telstra during the year. The most common SSU compliance issue continues to be Telstra's failure to prevent the unauthorised disclosure of wholesale customer's confidential or commercially sensitive information. These breaches arise from incidents of inadvertent disclosure.

The ACCC also identified two additional breaches of Telstra's price equivalence and transparency obligations, relating to delays by Telstra in updating its rate card after the ACCC fixed-line services and domestic transmission capacity service determinations. Telstra disputes that these instances are breaches of the SSU.

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<sup>10</sup> Multi-technology mix (MTM) refers to the fibre-to-the-node, fibre-to-the-basement and hybrid-fibre coaxial access networks used by NBN Co.

Telstra generally complied with its migration plan obligations during the reporting period. Telstra reported minor breaches related to scheduled disconnections that did not occur within the required timeframes; delays in the notification of disconnection schedules; copper services being supplied to previously disconnected premises; and the connection of services that were not permitted under the 'cease sale' obligations or within the order stability period.

## Review of Telstra's information security remediation

On 4 October 2016 the ACCC announced Telstra's completion of an information security remediation program, concluding a long-running project to achieve compliance with its SSU.

Following commencement of the SSU in 2012, Telstra reported a series of information security issues. These issues related to commitments to prevent the disclosure of sensitive wholesale customer information to Telstra's retail businesses. The issues largely arose from Telstra's legacy IT systems not being designed to deliver the outcomes required under the SSU. To meet its obligations, Telstra subsequently undertook a lengthy and complex program of remediation.

As part of this process, the ACCC engaged an independent expert consultant, Ovum, to conduct a thorough review of the remediation project. This led to Telstra conducting a further due diligence review of its remediation project that adopted a more rigorous approach to testing IT systems and identified a small number of additional issues to be remediated.

## Participation in industry working groups

The ACCC is an observer or participant on a number of industry working groups set up to address practical issues that arise as part of the industry reform. These groups include the quarterly NBN Fire Alarm and Lift Phone Roundtable meetings convened by the Department of Communications and the Arts. The roundtable comprises stakeholders from the fire alarm industry, the elevator industry, NBN Co and the telecommunications industry.

During 2016-17 we also attended NBN Co's public information on migration briefings as an observer. NBN Co is responsible for funding an information and education campaign to inform consumers about the migration of copper services to the NBN.

We have also taken part in the Service Continuity Assurance Working Group, which includes NBN Co, Telstra, Optus, Communications Alliance and relevant government agencies. The purpose of the working group is to help resolve issues that may affect people's ability to rely on their telephones and internet as services are disconnected from Telstra's legacy networks and migrated to the NBN.

The ACCC is also an observer on the following Communications Alliance working groups set up to consider migration issues:

- Copper Migration Working Committee, which considers the roles of different stakeholders involved in the migration of consumers to the NBN
- NBN Over-the-top Services Transition Working Group, which considers the migration of services that operate over legacy networks, such as monitored medical alarms, monitored fire alarms and monitored lift phones
- NBN FTTN/B and HFC Migration Processes Working Committee, which considers the processes to follow in migrating a service onto the NBN FTTN/B and HFC networks
- NBN Fibre Access Transfer Working Committee, which considers the processes to follow in transferring an active NBN service between retail service providers.

During the year, these working groups finalised an industry code for transferring NBN services between retail service providers and further developed the industry guideline for NBN migration processes with a view to incorporating further NBN technologies.

## Assistance and collaboration with other government agencies

We have contributed to, or been asked by government to provide advice or assistance on, a range of projects affecting regulation of telecommunications. In our contributions we seek to promote competitive outcomes, including the efficient use of infrastructure and the long-term interests of consumers.

### Support for greater access to data

The ACCC provided a submission to the inquiry by the Productivity Commission (PC) on data availability and use. The PC's final report was tabled in parliament on 8 May and made wide-ranging recommendations on changes to how data should be used across the economy, with a strong emphasis on the benefits to competition and consumers from these reforms. The PC's proposals include the introduction of a new right that would allow consumers to direct service providers to supply data about the consumer to a nominated third party, such as a comparison website or alternative service provider.

The ACCC provided a high-level submission to the PC's draft report in January 2017. Our submission expressed support for the data transferability proposal and a role proposed for the ACCC. We noted the potential for the PC's recommendations to support greater competition between service providers and better outcomes for consumers.

### Advice on allocation limits for unsold 700 MHz spectrum

Following a request from the Minister for Communications and the Arts on 5 October 2016, the ACCC provided advice on the appropriate allocation limits for an auction of two 15 MHz parcels of unsold 700 MHz digital dividend spectrum.

We recommended that the Minister impose an allocation limit on the unsold 700 MHz auction such that no person or specified group of persons would be able to hold more than two 20 MHz parcels in the 700 MHz band as a result of the auction.

Allocation limits are an important tool to ensure that competition considerations are taken into account in spectrum auctions. In this case, allocation limits are necessary to prevent the monopolisation of the spectrum and to help ensure that the results of the auction are in the long-term interests of end users.

The auction of the unsold 700 MHz spectrum occurred in April 2017, with the ACCC's recommended allocation limits imposed.

### New MoU with Australian Communications and Media Authority

The ACCC and the Australian Communications and Media Authority signed a revised memorandum of understanding (MoU) on 15 December 2016. The MoU sets out a framework for engagement and consultation between the agencies, with key guiding principles. The document was developed with a view to reinvigorating consultation between the two agencies and demonstrates the agencies' commitment to effective engagement and the benefits of collaboration. It replaces an MoU from 1999.

# Analysis of performance

## Murray-Darling Basin water markets

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**Deliverable 3.1** Deliver network regulation that promotes competition in the long-term interests of end-users

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**Deliverable 3.2** Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

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**Deliverable 3.3** Improve the efficient operation of markets by enforcing industry specific competition and market rules

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The ACCC's work in the rural water market sector in the Murray-Darling Basin (the Basin) contributes to all three of the Strategy 3 deliverables, as it encompasses regulation, monitoring and enforcement.

The *Water Act 2007* (Cth) aims to promote efficient water markets and sustainable use and management of water resources and water service infrastructure in the Basin. It was introduced because of concerns about the impact of irrigation on the environment, over-allocation of water and increasing water scarcity.

Our role helps to ensure that efficient water markets function in the Basin. This is important because water markets are a key way to allocate water—a scarce but vital resource—between competing uses, in a way that ensures it moves to its most productive use.

Under the Water Act, we are responsible for regulating and monitoring a range of water charges. We also monitor and enforce compliance with water market and charge rules made under the Water Act. The rules:

- protect irrigators' opportunities to transform their irrigation right held against an irrigation infrastructure operator into a separately held water access entitlement (transformation arrangements)
- regulate the maximum fee that an operator can impose on an irrigator who terminates their access to an irrigation network
- require infrastructure operators, water authorities and government departments to publish their regulated charges
- restrict an infrastructure operator from imposing different charges for the same infrastructure service, in some circumstances
- allow the ACCC or another accredited regulator to set the regulated charges of specific water infrastructure operators.
- This year our priority relating to water markets was increasing confidence in the operation of emerging water markets by providing advice on water charge rules and ensuring the efficient operation of the water charge and market rules to meet the current requirements in the sector.

The following section discusses our outcomes in this priority area and other significant areas.

## Regulating access terms, conditions and prices

### Advice on water charge rules

Under the Water Act, the ACCC is required to provide advice to the Minister for Agriculture and Water Resources on the making, amending or revoking of water charge rules and water market rules. In December 2014 the Minister requested that we provide advice on possible amendments to the water charge rules. The water charge rules regulate charges imposed on



rural water users in the Murray-Darling Basin and related matters. They have been in place for over six years. On 21 September 2016 the ACCC provided its final advice to the Minister on proposed amendments to the water charge rules. Our advice focused on ways to increase transparency, promote efficiency and increase protections for customers while also reducing the regulatory burden in the implementation of water charge rules.

On 15 November 2016 the Minister published the ACCC's advice and announced his intention to remove the requirement for some infrastructure operators to prepare network service plans. The Minister continues to consider the remainder of the advice.

### Advice on the water trading rules amendments

The ACCC published its advice to the Murray-Darling Basin Authority (MDBA) on proposed amendments to the Basin Plan water trading rules on 24 November 2016.

The water trading rules regulate matters relevant to the trade of tradeable water rights and apply to Basin water resources. The MDBA is required to obtain and have regard to advice from the ACCC when making or amending the water trading rules. The MDBA's request for advice and publication of the ACCC's advice forms part of its wider public consultation on proposed amendments to the Basin Plan 2012.

## Monitoring activities

### Water monitoring report

The ACCC monitors regulated water charges, transformation arrangements and compliance with rules made under the Water Act across the Basin. We report annually on the monitoring results.

We are required under ss. 94 and 99 of the Water Act to monitor regulated water charges, transformation arrangements, and compliance with the water charge and market rules in the Basin, and to give a report on the results of this monitoring to the Minister. The ACCC publicly released its seventh such annual report on 21 June 2017.

This year's report highlights that operators and customers in the Basin are responding to the effects of structural changes in a variety of ways. Infrastructure operators have been upgrading existing services or offering new services. Customers are using market mechanisms in innovative ways to adjust their water holdings and access to infrastructure, signalling greater confidence in using markets.

In total, 35 gigalitres of irrigation rights were transformed in 2015-16, the lowest annual volume since monitoring began in 2009-10. Terminations of water delivery rights were lower in 2015-16 than in previous years. Termination fees were levied for 60 per cent of the total volume terminated, which is a significant increase from previous years.

Overall numbers of complaints and enquiries received by the ACCC in relation to rural water matters fell from 36 in 2014-15 to 18 in 2015-16. However, the number of complaints and enquiries from irrigators increased (from eight to 13), returning to levels in previous years.

## Enforcing water industry-specific laws

We enforce the water market and charge rules made under the Water Act. We pursue a risk-based approach aimed at fostering a culture of compliance among regulated stakeholders in the Basin rural water sector. Our aim is to minimise the risk of stakeholders' policies and practices causing harm to water users or impeding the functioning of water markets.

Our 2016-17 compliance agenda prioritised initiatives that contributed to the efficient operation of water markets and reduced barriers to trade. During 2016-17 we received around seven water-related queries and complaints and undertook preliminary investigations. Our approach is to promote compliance with the legal requirements by industry participants. Through our compliance and enforcement activities, we have raised awareness of the rights and responsibilities of water infrastructure operators and their customers under the water rules. As a result of this, we have seen a decrease in the overall level of complaints and improvements in the ability of water users to access water markets without unreasonable delay or cost.

### Contravention of the water charge rules

In October 2016 the ACCC accepted an administrative resolution from Murrumbidgee Irrigation after it admitted to a breach of the water charge infrastructure rules. Murrumbidgee Irrigation failed to include certain water service charges in its schedule of charges between 2011 and 30 June 2016. We accepted an administrative resolution rather than a penalty due to the limited detriment to Murrumbidgee Irrigation's customers. We also noted Murrumbidgee Irrigation's cooperation in the investigation and promptness in rectifying its schedule of charges.

The administrative resolution of this breach requires Murrumbidgee Irrigation to revise and audit its internal systems and procedures to prevent any recurrence of the breach and to ensure ongoing compliance with the water charge rules more broadly.

Murrumbidgee Irrigation is one of the largest irrigation infrastructure operators in the Murray-Darling Basin, servicing 3200 properties and delivering around 640 000 ML of water in New South Wales.

## Assistance and collaboration with other government agencies

In April 2017 the ACCC made a submission in response to the issues paper prepared by the PC for its inquiry into national water reform and assessment of progress against the National Water Initiative.

Also, as an observer, we participate in the MDBA facilitated Trade Working Group and Trade Operators Panel, both of which discuss interstate water trade issues in the Basin. We also participate in the Trading Rules Working Group, which considers matters relating to the Basin Plan water trading rules.

The ACCC is also a member of the National Water Information X-Change, facilitated by the Department of Agriculture and Water Resources. The group involves the participation of all the Commonwealth agencies with water-related responsibilities, which have been members of the Interagency Working Group on Water Information (coordinated by the Bureau of Meteorology).

# Analysis of performance

## Fuel price monitoring

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**Deliverable 3.2** Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

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The ACCC's work in fuel price monitoring contributes to Deliverable 3.2.

We monitor the downstream petroleum industry, including the refining, importing, wholesale and retail sectors, as directed by the Minister under Part VIIA of the Act. Our role in this sector has changed focus in recent years given the high level of community concern over fuel prices and the degree of competition in retail fuel markets in metropolitan and regional locations. We keep abreast of industry developments and provide timely information and advice to government and the public through our monitoring and reporting role in this sector.

Our fuel monitoring program has three broad objectives:

- to comply with the current ministerial direction by analysing prices, costs and profits in the downstream petroleum industry
- to improve consumer awareness about the petrol industry
- to focus on areas where competition may be less effective and on industry conduct that we may need to consider more closely.

### Implementation of fuel monitoring arrangements

In December 2014 the then Minister for Small Business, the Hon. Bruce Billson MP, gave the ACCC a new direction<sup>11</sup> to monitor prices, costs and profits of unleaded petroleum products in Australia for three years, and report at least four times per year. These arrangements enable us to undertake more timely and targeted monitoring and analysis of particular topics and fuel markets that are of concern to consumers.

This year, our priorities relating to fuel price monitoring were to undertake detailed petrol market studies on selected regional markets and provide quarterly reports on the Australian petroleum industry.

Four petrol market studies have been completed since we received the new monitoring direction. The first report, on the Darwin petrol market, was released in November 2015, followed by reports on the Launceston, Armidale and Cairns petrol markets in 2016–17.

The ACCC will review the lessons learned from these petrol market studies and report on the findings in 2017–18.

#### Petrol market studies

##### *Launceston*

The ACCC released its second market study, on the Launceston petrol market, on 20 July 2016. It found that, if the Launceston market were more competitive, motorists could expect savings of 4 to 5 cents per litre (cpl) on a sustainable basis.

The report noted that petrol prices in Launceston were significantly higher than prices in the five largest cities (Sydney, Melbourne, Brisbane, Adelaide and Perth) in the last five years. Launceston motorists paid on average around 12 cpl more for petrol than motorists in the

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11 The direction is available at <https://www.accc.gov.au/regulated-infrastructure/fuel/acccs-fuel-monitoring-role#monitoring-australia-s-unleaded-petrol-industry>.

five largest cities. The three main factors leading to higher prices in Launceston were higher transport costs, higher operating costs and higher retail margins and profits. There was also relatively weak retail competition in Launceston.

A discount arrangement between the Royal Automobile Club of Tasmania and United Petroleum in early 2016 resulted in increased competition and lower prices for consumers. The ACCC found that greater price transparency combined with discounting initiatives can lead to direct benefits to consumers.

### **Armidale**

The ACCC released its third petrol market study on 21 November 2016, revealing that a lack of competition led to consistently high prices in the Armidale petrol market.

The report noted that petrol prices in Armidale were significantly higher than those in the five largest cities and in smaller surrounding towns such as Glen Innes. Between 2012–13 and 2013–14 Armidale motorists paid on average around 8 cpl more for E10 (regular unleaded petrol (RULP) with up to 10 per cent ethanol) than motorists in the five largest cities paid for RULP.

The main reasons for the higher prices in Armidale were higher transport costs, higher retail operating costs per litre and, importantly, higher retail margins and profits associated with this small and relatively concentrated market. The report noted that the recent entrance of an active discounter led to average petrol prices in Armidale decreasing relative to those in nearby Glen Innes.

### **Cairns**

The ACCC released its fourth petrol market study on 30 May 2017, on the Cairns petrol market. The report identified that: there are high transport costs for supply of petrol into Cairns; wholesale operating costs and margins are higher than in many other markets because of the relatively small size of the Cairns market; retail operating costs per litre are high in Cairns; and retail margins are also high in Cairns.

The report observed that profits per site in Cairns were around 38 per cent higher than the Australian average. It noted that weak retail competition in Cairns appeared to be a prime cause of higher retail margins and profits.

Like the ACCC's other regional petrol market studies, this report observed that increased transparency and promotion of vigorous and effective price competition can lead to lower retail petrol prices.

## **Quarterly petrol monitoring reports**

During 2016–17 the ACCC published four quarterly petrol monitoring reports, which provided analysis and commentary on a number of topics. These included movements in:

- average prices in the five largest cities and around 190 regional locations
- gross indicative retail differences (the difference between retail prices and published wholesale prices) in the five largest cities
- international crude oil and refined petrol, diesel and automotive LPG (autogas) prices.

The reports also provided analysis of issues such as price differentials between regional locations and capital cities, and petrol price cycles, as well as reporting on developments in the industry and ACCC activities over the quarter.

We found that usage of fuel price apps and websites increased significantly in 2016, from around 4 million hits in the December quarter 2015 to around 21 million hits in the December quarter 2016, providing improved transparency in the petrol market. These services, along

with the ACCC's web-based information on recent petrol prices in the five largest cities, including consumer 'buying tips', are helping motorists to pick the best times to buy fuel and the cheapest locations.

## Informing stakeholders

The ACCC's fuel-related web pages, continued to be some of the most visited pages on our website. In 2016-17 the petrol price cycle webpage received 310 185 page views, making it the second most viewed page on the ACCC website for the year. We continued to make pricing information available to consumers to improve transparency about price movements. Commentary on retail market conditions through media releases and other media engagement complements the information in our general petrol market reporting and the release of findings from selected petrol market studies.

In November 2016 and May 2017 the ACCC hosted half-yearly meetings of the Fuel Consultative Committee. We provided updates on our recent fuel-related activities, including the progress of our quarterly monitoring reports and petrol market studies, recent enforcement outcomes and merger assessments, and monitoring of the implementation of the undertaking given by Informed Sources to the ACCC in December 2015 to resolve proceedings relating to petrol price information sharing.

Members of the committee provided updates on a range of matters, including developments in the Australian downstream fuel supply chain, views on ACCC fuel monitoring activities, implementation of the FuelCheck arrangements in New South Wales, the increased availability of fuel price information via the internet and apps, and the impact of government regulation.

# Analysis of performance

## National infrastructure regulation—rail, gas, wheat export, airports, stevedoring and financial markets

<b>Deliverable 3.1</b>	Deliver network regulation that promotes competition in the long-term interests of end-users
<b>Deliverable 3.2</b>	Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

Beyond those covered in the sections above, the ACCC has industry regulation responsibilities in a number of major infrastructure sectors of the economy. These include:

- rail
- gas
- bulk wheat export facilities
- airports and air services
- container stevedoring<sup>12</sup>
- financial markets
- postal services.

Our work in these areas contributes to deliverables 3.1 and 3.2, as it encompasses both regulation and monitoring.

In some instances the government has asked us to regulate or monitor these sectors because suppliers of these services are monopolies or only face limited competition. This means that they do not have the same incentives to deliver high-quality services or keep prices down as they would in a more competitive industry. Regulation can produce better outcomes for consumers by requiring suppliers to offer their services in a manner that is more reflective of a competitive industry. For other sectors, monitoring helps to inform government about whether regulation is required and may act as a deterrent to firms taking advantage of market power.

In the rail sector our responsibilities include assessing and administering undertakings given by the Australian Rail Track Corporation (ARTC) which set out terms of access to rail infrastructure.

This year we have been given new functions to monitor and report on gas markets.

In relation to wheat export facilities, our responsibilities include monitoring and assessing compliance with the Port Terminal Access (Bulk Wheat) Code of Conduct (the Wheat Ports Code), and making determinations on whether a port terminal service provider is exempt from requirements under the Code. We also assess and approve capacity allocation systems of terminal operators.

<sup>12</sup> We have a role under Part X of the Act in relation to international liner cargo shipping. There are limited exemptions from certain provisions of the Act for “registered international liner cargo shipping conferences”, and the ACCC is responsible for investigating complaints about conference agreements. The ACCC has rarely been called upon to perform this role.

In relation to Australia's four major airports, we monitor and publish information about prices, costs, profits and quality of aeronautical services and facilities. We also monitor the prices, costs, profits and quality of car parking services at those airports.<sup>13</sup>

In the container stevedoring industry we monitor the performance, including prices, costs and profits, of container terminal operators at the ports of Adelaide, Brisbane, Fremantle, Melbourne and Sydney. We report to the government and the public on our findings.

We also have a developing role in relation to financial markets. We have participated in working groups of the Council of Financial Regulators to review competition in clearing and settlement of Australian cash equities. We have also been given a role to monitor and report on northern Australian insurance markets.

Our involvement in regulating postal services involves assessing notifications from Australia Post for proposed increases in the price of its reserved monopoly services, including the basic postage rate. Australia Post did not make an application to the ACCC during 2016–17. A further role involves inquiring into disputes about the terms and conditions on which Australia Post provides bulk mail services to users. No disputes were notified during 2016–17.<sup>14</sup>

This year our priorities relating to these infrastructure sectors were:

- assessing a replacement access undertaking for the Hunter Valley rail network
- participating in gas market reform processes, and taking on new functions conferred by government
- monitoring and enforcing compliance with the Wheat Ports Code.
- advocating for competitive or effective regulatory outcomes where infrastructure or assets are privatised.

The following section discusses our outcomes in the priority areas and other activities.

## Rail

The ACCC assesses and monitors compliance with access undertakings by rail providers regarding rail track infrastructure. To date, only ARTC has rail access undertakings in place with the ACCC. ARTC has one access undertaking for its Hunter Valley rail network in New South Wales and one for its national interstate rail network.

### Revised access arrangements for Hunter Valley rail network

On 29 June 2017 the ACCC consented to a variation of the Hunter Valley access undertaking (HVAU). This followed an extensive process of assessment and consultation on proposed replacements of and revisions to the undertaking accepted by the ACCC in 2011.

<sup>13</sup> We also have a role in assessing notifications by Airservices Australia of proposed increases in prices for terminal navigation, en route navigation, and aviation rescue and fire-fighting services. Under the Act, we can decide whether to object to proposed price increases. No application was made to the ACCC in 2016–17 in respect of these services. Similarly, we have a role to assess proposed price increases by Sydney Airport for regular public transport air services operating wholly within New South Wales. After assessing the proposed increases we can decide whether to object or not object. No such application was made to the ACCC in 2016–17.

<sup>14</sup> In past years the ACCC issued an annual report of its analysis of Australia Post's regulatory accounts, to determine whether Australia Post may have used revenue from its reserved services to cross-subsidise its non-reserved services. Reserved services are services for which Australia Post has a statutory monopoly; non-reserved services are services it provides in competition with other businesses. Australia Post is required, under a formal record keeping rule, to keep certain records and provide these to the ACCC if requested, to enable a cross-subsidy assessment to be undertaken. However, following several reports concluding that no cross-subsidy had occurred between reserved and non-reserved services, in 2015 we reviewed the need for continued reporting. This report has accordingly not been prepared since 2015–16.

The HVAU relates to the Hunter Valley rail network operated by ARTC in New South Wales. The network is predominantly used to transport coal from the region's mines to the Port of Newcastle for export, but is also used to transport coal to a number of domestic customers, as well as providing passenger and non-coal freight services across the Hunter Valley.

On 9 December 2016 ARTC submitted a proposed undertaking—the 2017 HVAU—to replace the 2011 HVAU, which expired on 30 June 2017. In April the ACCC issued a draft decision not to accept the proposed replacement, prompting ARTC to withdraw it from the ACCC's consideration in May 2017. The ACCC's draft decision noted that ARTC's proposed rate of return and approach to calculating weighted average mine life did not reflect the regulatory and commercial risks faced by ARTC. The draft decision also gave detailed feedback to assist ARTC in developing a revised undertaking.

On 6 June 2017, ARTC applied to vary its 2011 HVAU, submitting that its application had 'the support of the majority of Hunter Valley Coal Producers'. The variation sought to specify a rate of return 0.78 per cent higher than that considered appropriate by the ACCC in its draft decision on the 2017 HVAU. It also specified a remaining mine life of 23 years and a revised expiry date of 31 December 2021. Following further industry consultation, ARTC submitted a revised variation application on 16 June incorporating finalised access charges.

The ACCC consented to ARTC's revised variation application, accepting that the higher rate of return and other elements of the variation were accepted by stakeholders in order to maintain regulatory certainty and to avoid an unplanned and rushed transition to an alternative regulatory regime.<sup>15</sup>

In the decision, the ACCC acknowledged and shared stakeholder concerns that the outcome illustrates significant issues with the current regulatory framework for the Hunter Valley rail network. The ACCC understands that ARTC will commence good faith negotiations with stakeholders to develop a further variation application to incorporate certain matters outstanding from the ACCC's 2017 HVAU draft decision.

## ARTC annual compliance assessment 2014

The HVAU requires ARTC to submit documentation to the ACCC for the purposes of assessing whether it has met revenue obligations in the undertaking. On 31 March 2017 the ACCC released its final determination on ARTC's compliance with its regulated financial model for the 2014 calendar year. The determination concluded that ARTC had complied with the model in almost all respects. It also found that ARTC had over-recovered \$23.4 million in revenue during the year, which must be refunded to users pursuant to the regulatory arrangements.

## Gas

### New role conducting gas inquiry

On 19 April 2017, the Treasurer directed the ACCC to hold an inquiry for improving the transparency of gas supply in Australia. The ACCC is required to monitor:

- the pricing and availability of offers to supply gas
- the volumes of gas supplied or available for current or future supply
- the pricing, volume and availability of gas for domestic supply compared to the pricing, volume and availability of gas for export

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<sup>15</sup> That is, if the ACCC had not consented to the application, regulation of the Hunter Valley rail network would have transferred to the Independent Pricing and Regulatory Tribunal of New South Wales.



- the pricing, volume and availability of other goods or services, such as goods or services for drilling for, storing or processing gas, that enable, assist or facilitate the supply of gas or gas transportation services in Australia.

The ACCC will submit interim reports no less frequently than every six months and provide information to the market as appropriate, with a final report due by 30 April 2020.

### Contributions to gas market reform

At the same time, the ACCC will continue to work with Dr Michael Vertigan to refine longer term transparency measures to address the current opaqueness in the gas market and support longer term market stability in the domestic supply and consumption of gas. The scope of this work will cover the full supply chain, including producers, transporters and retailers. Aspects of this work follow from the ACCC's inquiry into east coast gas markets, conducted in 2015-16.

In April 2017 the ACCC provided a submission to the Gas Market Reform Group strongly supporting a proposed information disclosure and commercial arbitration framework for gas pipelines. The ACCC also provided submissions to the review of the gas pipeline coverage test in October and November 2016.

## Bulk wheat export facilities

### Bulk wheat ports monitoring report

The ACCC released its first bulk wheat ports report on 15 December 2016. The report examined the nature and concentration of export activity and capacity allocation at Australia's bulk wheat port terminals. In particular, the ACCC was seeking to make sure that vertically integrated owners of bulk export port infrastructure did not secure an increasing and disproportionate share of bulk wheat exports as a result of their ownership of bottleneck infrastructure.

The report found that, in general, owners of port terminals did not appear to be obstructing access by competing exporters or receiving a disproportionate share of port terminal capacity. However, due to lower than average export volumes and spare port terminal capacity across Australia, the provisions of the Wheat Ports Code (and the effect of code exemptions) were not fully tested in 2015-16.

The report also noted how access seekers had benefited from new ports across the country, with greater competition on price and service in a number of port zones, and greater flexibility from port operators.

### Wheat code exemptions

The ACCC issued draft determinations proposing to exempt Riordan Grain Services and Semaphore Container Services Pty Ltd from certain requirements of the Port Terminal Access (Bulk Wheat) Code of Conduct. These determinations were issued on 22 June 2017.

The draft decision on Riordan Grain Services states that Riordan's operations at the Port of Geelong compete with the dominant providers of bulk wheat port terminal services in Victoria, Emerald and GrainCorp. As such, in the absence of full regulation under the code, Riordan will continue to face strong competition for bulk wheat volumes from Emerald's and GrainCorp's terminals.

In relation to Semaphore, the ACCC noted that it will continue to face strong competition for bulk wheat volumes from Viterra, the dominant provider of bulk wheat port terminal services in South Australia, and competition from LINX Cargo Care's Port Adelaide facility.

The ACCC released its final determinations in July 2017.

## Airports and air services

### Airport monitoring report

The ACCC released its airport monitoring report for 2015–16 on 6 March 2017. All four airports monitored—Sydney, Melbourne, Perth and Brisbane—received an overall weighted rating of ‘good’ for their quality of service for the year.

The report noted that the airports are collecting substantially more aeronautical revenue per passenger than a decade ago. The ACCC estimated that, over the past decade, these airports have collected \$1.57 billion more in revenue from airlines than they would have collected if average prices were held constant in real terms. The higher aeronautical charges have been used both to cover increasing costs per passenger and to grow airports’ profit margins.

The report also noted that profit margins for both car parking and aeronautical services remain very high. Notably, Sydney Airport reported profit (EBITDA) margins of 73.1 per cent for car parking and 46.7 per cent for aeronautical services.

The report also commented on developments in relation to the proposed new airport in Western Sydney. It noted that a second international airport competing with Sydney Airport would yield significant benefits to both consumers and airlines.

## Container stevedoring

### Container stevedoring monitoring report

The ACCC has monitored the container stevedoring industry since 1998–99 under a direction from the Australian Government. We currently monitor the prices, costs and profits of container stevedores at five Australian container ports. In 2015–16 four container stevedores were covered by the ACCC’s monitoring program. Patrick Terminals and DP World Australia operate at the four largest ports—Melbourne, Sydney, Brisbane and Fremantle. Hutchison Ports Australia operates in Brisbane and Sydney. We also monitor Flinders Adelaide Container Terminal as the sole operator at the Port of Adelaide.

The ACCC’s 2016 container stevedoring monitoring report, released in November 2016, found that increased competition in container stevedoring has pushed prices to their lowest level in 17 years. Industry margins and rates of return on assets were also at the lowest level recorded by the monitoring program, while productivity on the wharves remained at close to record levels.

The report observed that, as a result of substantial investments by new entrants, there is now infrastructure in place to support a third stevedore in each of the three largest container ports in Australia. This will provide additional choice to shipping lines.

## Financial markets

### Cash equities

The ACCC continued its work with the Council of Financial Regulators (CFR) on the reviews of competition in clearing and settlement of Australian cash equities.

In October 2016 the CFR released policy statements for the finalised review of competition in clearing. These policy statements include provisions concerning access to monopoly clearing and settlement services, which are proposed to be supported by a rule-making power for

ASIC and the RBA and an arbitration power for the ACCC. The Treasury is anticipated to introduce the relevant legislation to enact the proposed changes in 2017–18.

The ACCC also worked with the CFR to develop a plan and a consultation paper for the CFR's review of competition in settlement. The consultation paper was released by the CFR in March 2017 and submissions closed on 20 April 2017. The aim is to have this review completed ahead of the proposed legislative amendments being introduced into parliament, thereby allowing any additional amendments to be included with the proposed changes to clearing.

### Insurance in northern Australia

In May 2017, the Australian Government directed the ACCC to hold an inquiry into the supply of residential building, contents and strata insurance products to consumers in Northern Australia. Official notice of the inquiry, including the terms of reference, was gazetted on 14 June 2017.

The ACCC's inquiry will explore in detail consumer, regulatory and competition issues identified in previous inquiries. It will focus in particular on cost drivers of insurance premiums, and transaction costs and information issues experienced by consumers. The inquiry will also monitor the activities of the insurance industry in Northern Australia over three financial years to 30 November 2020, which will help inform its findings.

## Competition advocacy

In March 2017 the ACCC received an international award from the World Bank and the International Competition Network (ICN) for its role in elevating competition policy to the national economic agenda.

The ACCC won the award for its advocacy work in promoting pro-competition measures when governments are privatising public assets. We have been advocating that, when privatising infrastructure assets, governments should not restrict future competition to these assets, and that infrastructure monopolies need appropriate up-front regulation.

The ACCC was awarded the top prize in the category 'Levelling the playing field through competitive neutrality or by elevating competition policy to the economic policy agenda'. The Chairman of the ACCC accepted the prize at an ICN meeting in Portugal in May 2017.

## Access dispute over charges at the Port of Newcastle

The ACCC has a role under Part IIIA of the Act to arbitrate access disputes where a service has been 'declared'. When an access seeker and the provider cannot agree on the terms and conditions of access to the declared service, either party may request the ACCC to arbitrate the dispute.

The ACCC was notified of a third-party access dispute between Glencore Coal Assets Australia Pty Ltd (Glencore) and Port of Newcastle Operations Pty Ltd (PNO) in relation to the shipping channel service at the Port of Newcastle. Glencore notified the ACCC of the access dispute on 4 November 2016 and requested that we arbitrate.

The notification relates to the level of access charges and access terms set by PNO for users of the shipping channel service at the port, which was declared under Part IIIA of the Act by the Australian Competition Tribunal in June 2016.

## Regulatory guidance

### Guidelines on Part IIIA access undertakings

On 11 August 2016 the ACCC released Part IIIA access undertaking guidelines. The guidelines provide information about our processes for assessing access undertaking applications. The guidelines also discuss how to draft an access undertaking and the types of provisions that applicants may consider including in their proposed undertakings. The material in the guidelines is based on the provisions in Part IIIA and the ACCC's experience to date of assessing Part IIIA access undertakings.

### Deferral of arbitration and backdating of determinations guidelines

On 26 May 2017 the ACCC released for public comment draft revised guidelines on the deferral of arbitrations and the backdating of determinations under Part IIIA of the CCA. The guidelines were originally made to satisfy a requirement of the *Trade Practices Amendment (National Access Regime) Act 2006*, and are due to sunset on 1 October 2017. The ACCC is reviewing the existing arrangements ahead of remaking the instrument.

### Regulatory approach to price notifications

The ACCC released a revised statement of regulatory approach to assessing price notifications under Part VIIA of the Act on 27 March 2017. The statement replaces the 2009 version.

# Supporting our performance—improving regulatory practices

Each year we seek to review and improve the way we apply regulatory practices. In 2016–17 we improved regulatory practices through a range of activities, including through those described here.

## Regulatory Economic Unit

The ACCC Regulatory Economic Unit increases the quality of economic analysis available to the ACCC/AER and promotes the consistent use of economic principles across the different sectors that we regulate. Its economic specialists provide advice across the ACCC/AER, as well as researching and developing best practice regulatory techniques and contributing to economic discussion, debate and training on regulatory issues.

## Industry engagement

The ACCC consults extensively as part of its regulatory processes, and has also established a number of forums for ongoing engagement with industry participants and other regulators, both nationally and internationally. These forums cover the range of regulatory functions that the ACCC performs and the variety of industry sectors with which we are involved.

The ACCC also participates in international activities in order to be at the forefront of developments in regulatory practice.

### Utility Regulators Forum

The Utility Regulators Forum is coordinated by the ACCC and comprises the ACCC/AER and state/territory and New Zealand economic regulators. Its meetings are an important vehicle for sharing regulatory practice.

The forum meets every six months. The most recent meeting was held in Darwin in May 2017.

### ACCC/AER Infrastructure Consultative Committee

The Infrastructure Consultative Committee facilitates discussions on the broad issues of infrastructure and infrastructure regulation. Its members were selected to reflect the diversity of infrastructure interests. They include representatives from the energy, telecommunications, water, rail, ports, and airports sectors.

The committee meets every six months, most recently on 29 May 2017. At this meeting the ACCC updated participants on the new infrastructure related inquiries the ACCC has been directed to conduct. A number of developments, including the decision to build a new Sydney airport were discussed.

The committee also provides an opportunity for industry representatives to give updates on issues affecting their sectors. For the ACCC and AER this is an important source of feedback from stakeholders in infrastructure sectors.

## OECD Network of Economic Regulators

The ACCC participates in the OECD Network of Economic Regulators (NER) Forum. ACCC Commissioner Cristina Cifuentes sits on the board of the Bureau of the NER, with seven representatives from other international regulators. The purpose of the NER Forum is to share learning on regulatory issues and develop best practices. Issues discussed at the most recent forum include building regulatory policy systems, stakeholder engagement, the role of regulators in the governance of infrastructure, and safeguarding regulators against undue influence.

## ACCC/AER Regulatory Conference

The ACCC and AER host an annual regulatory conference, which brings together industry participants, policy-makers, academics and regulators from around the world to consider the latest ideas about regulatory theory and practice.

The 2016 ACCC/AER Regulatory Conference was held in Brisbane on 4-5 August 2017 and was attended by more than 400 delegates. It provided an opportunity for local and international experts to discuss current and emerging issues affecting all regulated infrastructure sectors. The conference theme was 'The future of economic regulation: does the conventional wisdom still apply?'. The aim of this was to examine whether the traditional thinking about how and why to regulate was still applicable in light of the sweeping changes occurring in energy, communications and other key sectors. Issues covered included how regulation should address possible market power of non-vertically integrated monopoly infrastructure, regulation of OTT services and the future of the electricity industry.



Program 1.2  
Australian Energy  
Regulator



# Strategy 4: Promote efficient investment in, operation of and use of energy services

## Summary of performance

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

### Role

Strategy 4 is the Australian Energy Regulator (AER) strategy, which reflects the objectives of the national energy legislation. This strategy is important because it is about ensuring consumers pay no more than necessary for a safe, reliable and secure supply of energy. The AER operates under the *Competition and Consumer Act 2010* to promote a competitive, innovative and flexible energy sector with appropriate consumer protections. The AER seeks to

- provide effective network regulation, in particular relating to the natural monopoly infrastructure elements of the supply chain (energy networks)
- build consumer confidence in retail energy markets and support efficient wholesale energy markets through its compliance and enforcement regime.

In 2016–17 we regulated energy markets and networks in eastern and southern Australia, as well as networks in the Northern Territory.

Our functions include:

- setting the amount of revenue that network businesses can recover from customers' use of regulated energy networks (electricity poles and wires, and gas pipelines), and ensuring that networks comply with electricity and gas laws and rules
- wide-ranging responsibilities in retail energy markets, including:
  - operating the Energy Made Easy comparator website ([www.energymadeeasy.gov.au](http://www.energymadeeasy.gov.au))
  - promoting compliance with, and enforcing, retail energy laws and rules
  - authorising or exempting new market entrants
  - approving retailers' policies for dealing with customers in hardship
  - administering the national Retailer of Last Resort (RoLR) scheme
  - reporting on retailer performance and market activity
- monitoring wholesale electricity and gas markets to ensure compliance with legislation and rules, taking enforcement action where necessary
- publishing information on energy markets, including the annual *State of the energy market* report.

## Deliverables

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

## Priorities

The AER's priorities for 2016–17 were:

- delivering regulatory outcomes to promote efficient investment in energy network services that customers value, including preparing for the application of the National Electricity Law in the Northern Territory
- building consumer confidence in energy markets.

## Powers

The AER applies the following laws, regulations and rules, which together make up the national energy legislation and rules:

- National Electricity Law
- National Electricity Regulations
- National Electricity Rules
- National Energy Retail Law
- National Energy Retail Regulations
- National Energy Retail Rules
- National Gas Law
- National Gas Regulations
- National Gas Rules.

From 2017–18 the AER will receive additional funding to ensure we are equipped to meet the challenges of our expanded roles and functions. This will strengthen our ability to make Australian energy consumers better off, now and in the future.

## Performance indicators

### Deliverable 4.1: Provide effective network regulation

This deliverable is about regulation that promotes economically efficient investment in, and efficient operation and use of, energy network services for the long-term interests of consumers. Such regulation also supports competition in upstream and downstream markets.

**Table 3.63: Performance indicators for Deliverable 4.1**

<b>Performance indicator</b>	<b>Annual target</b>	<b>Outcome</b>
Number of revenue reset determinations for electricity networks and gas pipelines and distribution networks completed	3	3
Percentage of revenue reset determinations for electricity networks and gas pipelines and distribution networks completed within statutory timeframes	100%	67*
Number of annual tariff approval applications assessed	26	26
Number of annual benchmarking and performance reports for electricity networks	2	2

\* The revised proposal from AusNet Services contained a significant amount of material, including consultancy reports. In order to consider the new material submitted by AusNet Services the AER revised the release date of the final decision from 31 January 2017 to 28 April 2017

### **Deliverable 4.2: Build consumer confidence in retail energy markets**

This deliverable is about ensuring that consumer confidence—which is essential to effective participation in markets—is strong enough to drive competitive outcomes and innovation. We seek to empower consumers in retail energy markets through activities to raise awareness and understanding of their rights and choices.

**Table 3.64: Performance indicators for Deliverable 4.2**

<b>Performance indicator</b>	<b>Annual target</b>	<b>Outcome</b>
Number of annual reports on compliance in, and performance of, retail energy markets	2	2
Number of retailers' hardship policies and proposed amendments assessed	N/A (externally driven)	3
Percentage of retailers' hardship policies and proposed amendments assessed within 12 weeks of receiving all relevant information	100%	67%
Number of retail authorisations/exemptions assessed	N/A (externally driven)	8 authorisations 9 individual exemptions
Percentage of retail authorisations/exemptions applications assessed within 12 weeks of receiving all relevant information	100%	100%—authorisations 89%—exemptions
Support the timely transfer of affected customers in the event of a retailer failure	N/A (externally driven)	1 electricity RoLR event (Urth Energy)
Number of formal energy retail enforcement interventions (court proceedings commenced, s. 288 (NERL) undertakings accepted, infringement notices issued)	N/A (externally driven)	2 s. 288 undertakings accepted 21 infringement notices paid
Percentage of new/replacement offers published on Energy Made Easy website within 48 hours of receipt from retailers	100%	100%

### **Deliverable 4.3: Support efficient wholesale energy markets**

This deliverable is about conducting monitoring activities that allow the AER to assess whether the market is operating efficiently and, where we identify issues, to take action to prevent further detriment. Targeted enforcement action encourages broad compliance across the market.

**Table 3.65: Performance indicators for Deliverable 4.3**

<b>Performance indicator</b>	<b>Annual target</b>	<b>Outcome</b>
Number of quarterly compliance reports on wholesale markets and networks	4	4
Percentage of quarterly compliance reports published within six weeks of the end of the quarter	100%	50% (see text)
Audit the compliance systems of selected energy businesses, and report on outcomes	2	0 (see text)
Number of weekly electricity and gas monitoring reports	104	94
Percentage of weekly reports published within 12 business days of the end of the relevant week	75%	70%
Number of reports on extreme price events in wholesale electricity and gas markets	N/A (externally driven)	25
Percentage of reports on extreme price events in wholesale electricity and gas markets published within statutory timeframes	100%	68%
Number of targeted reviews of compliance with the national energy rules	4	2
Publish the State of the energy market report	Yes	Yes

## Factors affecting performance

The AER's focus in 2016–17 reflected challenges posed by our operating environment and market conditions. In particular, we completed a number of regulatory reviews of energy networks and commenced the framework and approach papers for the next round of energy network decisions. We undertook this work concurrently with preparations for and responses to the South Australian and Victorian/ACT matters in the Australian Competition Tribunal (the Tribunal). SA Power Networks has also sought judicial review in the Full Federal Court of the Tribunal's decision. We sought judicial review in the Full Federal Court of the Tribunal's decisions on the New South Wales and ACT networks. These ongoing appeals processes absorbed significant resources during the year.

Recent developments and policy reviews on wholesale energy markets led us to direct resources to those processes, with the aim of improving market efficiency. Much activity related to upstream gas markets and the impacts of a changing generation fleet on power system security in the electricity market.

Reprioritisation of our wholesale and retail market branch resources throughout the year meant that we missed some target deadlines for producing this work—for example, the percentage of retail authorisation/applications assessed within 12 weeks. Similarly, resourcing constraints limited the extent to which we could update and proactively promote the AER's energy price comparator website, Energy Made Easy, and other resources for consumers.

Our wholesale market branch resources were necessarily diverted from recurrent matters to focus on high-priority events in the wholesale electricity and gas markets. These included a major South Australian blackout and several high-price, high-impact events during the 2016–17 summer.

Energy markets are undergoing significant change and require a flexible approach to managing resources. Future challenges include the emergence of new products, services and technologies that are changing the way consumers produce, buy and use energy. Innovative ideas are allowing the development of new business models that are reshaping the energy market. We are aware of, and engaging with, these challenges.

## AER reporting

This annual report meets the AER's formal reporting requirements under the *Public Governance, Performance and Accountability Act 2013* and s. 44AAJ of the Competition and Consumer Act. The AER publishes a separate annual report (available on the AER website) to provide more detail on its performance indicators, as well as information on activities, staff and expenditure.

# Analysis of performance

## Provide effective network regulation

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**Deliverable 4.1** Provide effective network regulation

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The AER's role in network regulation falls into two broad categories. First, we determine the amount of revenue that network businesses can recover from customers' use of regulated energy networks (electricity poles and wires, and gas pipelines). Second, we undertake broader oversight of regulated networks. Some roles (such as annual tariff approvals) recur regularly; the timing of others (such as assessing cost pass-throughs, reviewing contingent projects, and resolving connection and other disputes) is unpredictable.

### Network revenue decisions

One of the 2016–17 priorities for the AER strategy was to deliver regulatory outcomes to promote efficient investment in energy network services that customers value. During the year we regulated electricity networks and covered gas pipelines in all jurisdictions other than Western Australia. Notably, we began preparing for our first regulatory determination for the Northern Territory electricity distributor Power and Water Corporation, publishing preliminary framework and approach papers in March 2017.

The regulatory framework requires network businesses to periodically submit (usually every five years) regulatory proposals (electricity) and access arrangements (gas) for the AER's approval. We assess the proposals with regard to legislative criteria, taking account of issues raised in consultation. This process takes around 30 months, when the framework and approach stage is included. Network businesses can appeal our decisions to the Tribunal.

In determining allowable revenues, we account for the efficient costs of providing network services, allowing an adequate return on capital to network owners. We undertake extensive consultation in making network revenue determinations. In electricity reviews we publish a framework and approach, then an issues paper, draft decision and final decision. In gas reviews we publish a draft decision and final decision. Additionally we hold public forums and consult with network businesses and other stakeholders, including consumer representatives, governments and investment groups. The Consumer Challenge Panel advises us on issues important to consumers. We also consult with state and territory consumer representative groups.

In 2016–17 we completed three electricity network revenue determinations (final decisions) and progressed a further 11 processes (see following table). In making our decisions we applied new incentive schemes (with benefit sharing with consumers), adopted a more flexible approach to estimating rates of return, strengthened consultation requirements, and placed greater emphasis on benchmarking to assess electricity network proposals.

## Regulatory reviews in 2016–17

Jurisdiction	Business	Determination period	Status
<b>Electricity transmission networks</b>			
Qld	Powerlink	1 July 2017– 30 June 2022	Final determination released 28 April 2017
Vic	AusNet Services	1 April 2017– 31 March 2022	Final determination released 28 April 2017
NSW	TransGrid	1 July 2018– 30 June 2023	Proposals received 31 January 2017
SA	ElectraNet	1 July 2018– 30 June 2023	Proposal received 28 March 2017
Vic-SA	Murraylink interconnector	1 July 2018– 30 June 2023	Proposal received 31 January 2017
Tas	TasNetworks	1 July 2019– 30 June 2024	Preliminary framework and approach released 10 March 2017
<b>Electricity distribution networks</b>			
NSW	Essential Energy Ausgrid Endeavour Energy	1 July 2019– 30 June 2024	Preliminary framework and approach released 10 March 2017
ACT	ActewAGL	1 July 2019– 30 June 2024	Preliminary framework and approach released 10 March 2017
NT	Power and Water Corporation	1 July 2019– 30 June 2024	Preliminary framework and approach released 10 March 2017
Tas	TasNetworks	1 July 2019– 30 June 2024	Preliminary framework and approach released 10 March 2017  TasNetworks distribution decision for 2017–19 (2-year decision) released 28 April 2017
<b>Gas transmission pipelines</b>			
Vic	APA Victorian Transmission Systems	1 January 2018– 31 December 2022	Proposal received 3 January 2017
Qld	Roma (Wallumbilla) to Brisbane Pipeline	1 July 2017– 30 June 2022	Proposal received 1 September 2016



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## Gas distribution networks

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Vic	Australian Gas Networks (Victoria and Albury)	1 January 2018-31 December 2022	Proposal received 3 January 2017
	Multinet Gas		
	AusNet Services		

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## Regulatory process improvements

We are progressively strengthening the regulatory framework for energy networks. Some recent improvements are outlined below.

### *Demand management and innovation*

- During 2016-17, we developed a new demand management incentive scheme and innovation allowance mechanism. The scheme's objective is to incentivise electricity distribution businesses to undertake efficient expenditure on non-network options for demand management. The innovation allowance aims to encourage research and development in demand management projects that may potentially reduce network costs in the longer term.
- We invited submissions to inform the development of a robust, best-practice scheme and allowance mechanism. Consultation closed on 24 February 2017. This was followed up with a 'Demand Management Options Day' workshop on 6 April 2017. We will publish the final scheme and allowance mechanism in November 2017.

### *Ring-fencing*

- On 30 November 2016 we published our final ring-fencing guideline for electricity distribution businesses, supported by an explanatory statement. Electricity distribution network businesses must comply with the guideline as soon as reasonably practicable and no later than 1 January 2018.
- The purpose of ring-fencing is to separate the competitive and regulated parts of network businesses to protect the long-term interests of consumers. The guideline supports the development of competitive markets for energy services and efficient investment in network and customer services. We are now working with the sector to facilitate the implementation of ring-fencing requirements by network businesses.

### *Data management*

- We continued to refine our database for collecting, storing and reporting on the large volumes of information received from network businesses.

## Consumer Challenge Panel

The Consumer Challenge Panel (CCP) advises the AER on whether network businesses' proposals are in the long-term interests of consumers; and on the effectiveness of network businesses' engagement activities with their customers and how this is reflected in the development of their proposals.

Recruitment for the second CCP commenced in August 2016 through an open tender process. The new CCP includes 11 experienced and highly qualified individuals with consumer, regulatory or energy experience and expertise who help bring a consumer perspective to the AER's decision-making processes. Five previous members from the inaugural panel were retained, and six new members were appointed.

## Appeals against regulatory decisions

Network businesses, consumer groups and others participating in our processes can apply to the Tribunal for a limited merits review of our regulatory decisions. A successful review must demonstrate that addressing the grounds of review would lead to a 'materially preferable outcome in the long-term interests of consumers'. If the Tribunal finds that the AER has erred, it can substitute its own decision or remit the matter to the AER to remake the decision. A network business, consumer or party that has lodged a submission to the AER's process may also apply to the Federal Court for judicial review of the AER decision or the Tribunal decision.

### New South Wales and ACT networks

In May 2015 the New South Wales (electricity and gas) and ACT (electricity) distribution networks applied to the Tribunal for a limited merits review of our regulatory decisions for those networks made in April and June 2015. The grounds for review focused on rate of return issues and the use of operating expenditure benchmarks. The Public Interest Advocacy Centre also applied for a Tribunal review of our decisions on the New South Wales electricity distribution networks, contending that the revenues we allowed were too high.

On 26 February 2016 the Tribunal handed down its decisions. While it did not accept the revenues proposed by the businesses, it remitted the decisions on operating expenditure to the AER to reconsider using a broader range of modelling and benchmarking; a bottom-up review of operating costs (electricity networks only); and the transition to a new method for estimating return on debt (all networks). The Tribunal substituted an alternative value of gamma (relating to tax imputation credits) for all networks.

The AER appealed the Tribunal decisions to the Full Federal Court. On 24 May 2017 the Full Federal Court handed down its judgment on the matter. It upheld the AER's appeal in relation to the Tribunal's decision on income tax costs but upheld the Tribunal's findings in relation to the networks' operating expenses and the cost of debt. The AER is currently considering the judgment, next steps and any implications for these and other network revenue determinations.

### SA Power Networks

SA Power Networks was granted leave in May 2016 to seek merits review of the AER's November 2015 revenue decision on the network. The South Australian Council of Social Service (SACOSS) also sought leave to appeal this decision, but leave was not granted. The Tribunal conducted the merits review hearing in August 2016. The Tribunal did not accept any of SA Power Networks' grounds of review. SAPN appealed the Tribunal decision to the Full Federal Court. The Full Federal Court heard this matter in May 2017. The Court has reserved its judgment. SA Power Networks has also sought judicial review in the Full Federal Court of the Tribunal's decision. This matter has been stayed pending completion of the Full Federal Court's decision in relation to the AER's application for judicial review of the Australian Competition Tribunal decisions.

### Victoria electricity and ACT gas distribution network

The Victorian electricity distribution networks and the ACT gas distribution network sought merits review of the AER's May 2016 revenue decisions. The Tribunal conducted the merits review hearing in November 2016. The Tribunal has extended the time to make its determination in relation to these reviews until August 2017. Judicial review of these decisions was sought in addition to applications for merits review. The matter has been stayed pending completion of the Full Federal Court's decision in relation to the AER's application for judicial review of the Australian Competition Tribunal decisions.

## Oversight of network regulation

The AER's role in network regulation extends beyond making network decisions and approving access arrangements; we also have a wide range of broader regulatory oversight roles.

### Tariff assessments and tariff structure statements

The AER conducts annual reviews of tariffs for electricity distribution services and gas pipeline charges to ensure that they do not breach revenue or pricing limits and that they reflect underlying costs.

In 2016–17 we reviewed and approved tariff applications from 14 electricity distribution businesses and 11 gas transmission and distribution businesses. The proposals related to prices applying in 2017–18. In Victoria the proposals apply in the 2017 calendar year.

In 2016–17 we commenced our new role in assessing tariff structure statements for electricity distribution network businesses. The statements provide for network tariffs that better reflect the costs of supplying electricity to consumers. Pricing reforms will provide better signals to consumers on the timing of their consumption and their investment in new appliances and technology. The reforms will also provide incentives for more efficient network investment. Approved tariff structure statements have been published for all distributors, apart from the Power and Water Corporation in the Northern Territory, which was not part of this first round of assessments. Power and Water's tariff structure statement will be considered as part of its first revenue determination process under the national framework in 2018.

### Cost pass-throughs

We assess applications by network businesses to pass through to customers costs arising from events outside their control that were not anticipated when their regulatory decisions were made.

Before approving a pass-through, we must consider the efficiency of the expenditure and actions to mitigate costs. In 2016–17 we approved cost pass-through applications for:

- Jemena to recoup unpaid distribution charges associated with a retailer insolvency event
- the return to customers of reductions in costs relating to ElectraNet providing network support
- AusNet Services to pay an annual easement land tax to the Victorian Government.

### Incentive schemes

We operate incentive schemes for network businesses to improve their performance. We also administer the schemes and monitor compliance.

#### ***Electricity transmission incentives***

The AER's service target performance incentive scheme for electricity transmission networks encourages the network businesses to maintain or improve service reliability in a way that customers value. The scheme promotes network development that supports efficient wholesale electricity prices.

In March 2017 we completed our review of how the seven transmission networks in the national electricity market (NEM) performed against the scheme for the 2016 calendar year. The businesses received incentive rewards totalling \$57 million.

An amended scheme will first apply to upcoming determinations for the Victorian and Queensland networks covering the period 2017–22.

### ***Electricity distribution incentives***

Our service target performance incentive scheme for electricity distribution networks encourages them to maintain or improve performance to benefit end users. It aims to ensure efficiencies are not achieved at the expense of service performance. We review businesses' performance against the scheme annually.

In March 2017 we completed our review of how the 13 distribution networks in the NEM performed against the scheme for the 2016 financial year. The businesses received incentive rewards totalling around \$33 million.

We also assess expenditure by distribution businesses under the demand management innovation allowance (DMIA). Victorian businesses report DMIA on a calendar year basis, while non-Victorian businesses report on a financial year basis. For the 2015-16 and 2016 reporting year, the businesses claimed \$6 million expenditure on DMIA in total. This represents 16 per cent of the total innovation allowance available under the scheme.

### ***Victorian fire reduction incentives***

The AER administers the f-factor scheme—a scheme introduced by the Victorian Government to provide incentives for Victorian distribution networks to reduce the risk of fire starts from electricity infrastructure and to reduce the risk of loss or damage caused by fire starts.

All Victorian distribution network service providers reported better results (fewer fire starts) than the relevant benchmark targets in 2016. The rewards ranged from \$70 000 for Jemena to \$3.42 million for AusNet Services in this period. The total of rewards to all distributors was \$5.875 million for their 2016 results.

A new scheme was introduced by the Victorian Government in December 2016. Under this new scheme, each fire start will be weighted by a 'geography factor' and a 'time factor (fire risk)'. The risk factor of each fire start—known as ignition risk units (IRU)—will be determined by applying these two weighting factors. The overall IRU scores for all fire starts within a financial year will be measured against the benchmark IRU target. This will be applied after 2018.

### **Complaints and dispute resolution**

A customer who is dissatisfied with a connection offer from a distribution network business may request a review by the AER. In 2016-17 we received requests relating to 10 electricity connection disputes, of which nine were resolved and one is still under investigation. The connection charges of four customers were substantially reduced.

We also investigate customer and stakeholder complaints and advise the complainants of our findings. If we find that a distribution business has breached its regulatory obligations, we use our enforcement powers to ensure future compliance.

### **Performance reporting**

The AER uses regulatory information notices to collect performance information from regulated network businesses. To support transparency and ensure stakeholders can access information affecting their interests, we publish the non-confidential information we receive.

In 2016-17 we published data on the operational and financial performance of electricity distribution networks in New South Wales, Queensland, South Australia, Tasmania, Victoria and the ACT for 2015-16.

In November 2016 we released our annual benchmarking reports for electricity network businesses on their relative efficiency over 2006-15. We also published economic

benchmarking and category analysis regulatory information notice responses from the businesses for 2015–16.

## Policy input

We engage in policy reviews and rule changes relating to our network regulation role. We made submissions to a number of Australian Energy Market Commission (AEMC) and Council of Australian Governments (COAG) Energy Council policy reviews and rule change processes in 2016–17, including on:

- the Victorian declared wholesale gas market
- the information disclosure and arbitration framework
- an independent review of the future security of the national electricity market (preliminary report)
- the contestability of energy services (consultation paper)
- replacement expenditure planning arrangements (consultation paper)
- the distribution market model (approach paper)
- participant derogations for New South Wales and ACT distributor revenue smoothing
- improving accuracy of customer transfers (draft determination)
- the market participant suspension framework (draft determination)
- a review of limited merits review (consultation paper)
- a rate of return guideline review (consultation paper).

## Network exemptions

The AER can exempt small electrical networks such as those in apartment buildings, shopping centres and industrial parks from registering with the Australian Energy Market Operator (AEMO). These networks, often referred to as ‘embedded networks’, are subject to a simplified regulation regime administered by the AER, covering safety, metering, dispute resolution, network charging and access to retail competition.

Anyone who owns, operates or controls a small network can register as an exempt network service provider. We maintain a register on our website of the holders of network exemptions. Since commencing the register in 2012 we have processed around 3200 registrations.

On 1 December 2016 we published a revised version of the Network service provider registration exemption guidelines as part of the Power of Choice reforms. The changes to the guideline addressed such issues as who must appoint and who must pay for the new embedded network manager accredited service provider. This new role is intended to increase retail competition for customers in embedded networks by accurately identifying and recording embedded network customers in wholesale market systems.

## Network planning and expansion

We monitor and enforce the compliance of electricity network businesses in applying regulatory investment tests for proposed new investment. We also have a role in resolving disputes over how the tests are applied.

In June 2016 we submitted a rule change proposal to improve transparency in the planning of network replacement expenditure.

The impetus for the rule change proposal has been recent growth in replacement expenditure as a proportion of all network investment, and the increasing viability of non-network alternatives to like-for-like replacement. On 11 April 2017 the AEMC published a draft rule determination on the proposed rule change. The draft rule requires electricity network service providers to include information on all planned network asset retirements and certain de-ratings in their annual planning reports. It also extends the current regulatory investment test framework for electricity transmission and distribution networks to include replacement expenditure.

The AEMC is continuing its consultation on the proposed rule change. Its response to the draft rule determination is due in July 2017. We will continue to work with the AEMC to progress this rule change in 2017-18.

# Analysis of performance

## Build consumer confidence in retail energy markets

### Deliverable 4.2

Build consumer confidence in retail energy markets

This deliverable aligns with one of the AER's priorities for 2016–17: to build consumer confidence in retail energy markets.

The AER regulates retail energy markets in Queensland, New South Wales, South Australia, Tasmania (electricity) and the ACT. The National Energy Retail Law (Retail Law) and National Energy Retail Rules (Retail Rules) set out consumer protections and obligations on energy retailers, including how offers are marketed and the help provided to customers experiencing financial hardship. We:

- maintain an energy price comparator website ([www.energymadeeasy.gov.au](http://www.energymadeeasy.gov.au)) for residential and small business customers
- monitor and enforce compliance (by retailers and distributors) with obligations in the Retail Law and Retail Rules
- oversee retail market entry and exit by assessing applications from businesses looking to become energy retailers, granting exemptions from the requirement to hold a retailer authorisation, and administering the national Retailer of Last Resort scheme to protect consumers and the market if a retailer fails
- report on the performance of the market and energy businesses (including information on energy affordability)
- approve customer hardship policies that energy retailers must implement for customers facing financial hardship and looking for help to manage their bills.

We do not set retail energy prices; rather, we guide and inform energy consumers so they can understand the range of energy offers available, make informed choices about those offers and be aware of their rights and responsibilities when dealing with energy providers. Our Energy Made Easy website is a key vehicle for providing this information in jurisdictions where the Retail Law operates.

We also produce publications (including new publications for consumers and consumer advocates) and web information on areas of the Retail Law.

## Supporting consumers

### Energy Made Easy

Our Energy Made Easy website ([www.energymadeeasy.gov.au](http://www.energymadeeasy.gov.au)) includes a price comparator that shows all offers generally available to consumers, an electricity use benchmarking tool that allows households to compare their electricity use with that of similar-sized households in their area, and consumer information.

In 2016–17, Energy Made Easy had more than 600 000 visits. More than 15 000 offers were published over the period, with approximately 3500 electricity and 400 gas offers available at any one time.

## Retail pricing information guideline

We publish the Retail pricing information guideline, which mandates how retail energy prices are presented. The guideline aims to help customers compare energy prices and make informed choices. It also gives direction to energy retailers about providing information for our price comparator website, Energy Made Easy. In 2016--17 we conducted regular reviews to monitor retailer compliance with the guideline.

## Hardship policies

Energy retailers must have a policy to help residential customers with payment difficulties to manage their bills. We assess retailers' hardship policies against the requirements in the Retail Law and monitor compliance with the policies. In 2016-17 we approved three new hardship policies.

## Minimum disconnection amount

Rule 116(1) of the National Energy Retail Rules (Retail Rules) prohibits retailers from disconnecting a customer's premises for non-payment of a bill where the amount outstanding is less than an amount approved by the AER and the customer has agreed to repay that amount. This is one of a suite of consumer protections in the Retail Law and Retail Rules that assist customers who are having difficulty paying their energy bills. Other protections include the requirement for retailers to offer payment plans or hardship assistance.

In 2016--17 we conducted a review of the minimum disconnection amount, and in March 2017 we decided to maintain it at \$300 (GST inclusive). This will prevent customers incurring significant debt before seeking assistance and will stop more debt accruing before the collection cycle starts, allowing customers to avoid exacerbating payment and financial difficulties.

## Engaging with consumers

### Customer Consultative Group

Our Customer Consultative Group helps us understand consumer and small business concerns on retail energy issues. It meets at least three times in a calendar year.

In February 2017, following the expiry of the CCG's membership, the AER reconstituted the group. After calling for expressions of interest and reviewing applications, the AER appointed 12 new members. These applicants were considered to offer a broad range of knowledge and experience and provide good jurisdictional representation.

The AER held two CCG meetings in 2016-17. It will hold two meetings in the second half of 2017, so it will comply with the aim of meeting three times in a calendar year. Topics discussed at the group's meetings in November 2016 and March 2017 included:

- the AER's annual retail performance and compliance reports
- the AER's sustainable payment plans frameworks
- consumer research being undertaken by CCG members and the AER
- the AER's work with the Australia and New Zealand Energy and Water Ombudsman Network on expanding dispute resolution services for customers of exempt sellers
- recent activity in the wholesale electricity and gas markets.



## Stakeholder engagement framework

The AER's stakeholder engagement framework is a public document that sets out the principles that guide our stakeholder engagement. It provides a structure for stakeholders' needs and interests to be consistently, transparently and meaningfully considered in all our activities.

We published a proposed revised version of the framework for consultation in June 2017. We are proposing to retain our four engagement principles (clear, accurate and timely communication; accessibility and inclusivity; transparency; and measurability) along with a brief explanation of the broad activities we undertake to implement them. We are proposing a shorter and more focused engagement framework document that more clearly outlines our purpose, how engagement helps our stakeholders, and how engagement fits in with our wider regulatory approach.

## Other engagement

- During 2016–17 the AER participated in the following forums and workshops to promote better consumer understanding of the energy framework and their rights and obligations, and to allow stakeholders to raise any issues of concern.
- We engaged with consumers and stakeholders throughout our network determinations. This included public forums on our issues papers and draft determinations and as part of the process of assessing tariff structure statements.
- We participated in a number of events aimed at raising consumer awareness of our Energy Made Easy website, as well as promoting our new consumer resources—such as translated and 'easy English' fact sheets and animated videos—to key stakeholder groups. The events included hosting stalls at the SACOSS annual vulnerability and affordability conference (Adelaide, November 2016); Financial Counselling Australia's annual conference (Gold Coast, May 2017); and the Adelaide Home Show (April 2017).
- We engaged extensively with consumers, their representatives and other retail energy stakeholders in developing and reviewing AER guidelines and contributing to retail market policy issues. This engagement included:
  - membership of the Queensland Council of Social Service steering committee for its project (funded by the Energy Consumers Association) to research energy issues experienced by Queensland tenants
  - participation in the SACOSS workshop 'Consumer Protection Framework: Rights and Responsibilities'
  - participation in the Essential Services Commission of South Australia forum on small-scale electricity and water networks
  - participation in Energy Consumers Australia's 2017 'Foresighting' forum
  - submission on the AEMC's regulatory arrangements in embedded networks
  - submission on consumer protections for behind-the-meter electricity supply (consultation paper)
  - submission on stand-alone energy systems in the electricity market (consultation paper)
  - drafting a rule change to strengthen protections for customers requiring life-support equipment.

## Retail market entry and exit

The Retail Law requires a party selling energy 'to a person for premises' to either hold a national retailer authorisation or be exempt from that requirement. We are responsible for granting those authorisations and for the Retail Law's exempt selling regime. An authorisation allows a party to sell electricity or gas to any consumers in jurisdictions where the Retail Law operates.

### Authorisations

A business must apply to the AER for an authorisation to sell energy. It must demonstrate appropriate capacity and suitability to perform as a retailer. We produce guidance for, and work closely with, potential new energy sellers during the application process to make sure they are aware of their obligations.

When we receive an application, we publish it on our website and seek submissions from interested parties before deciding whether to grant an authorisation. We granted electricity retailer authorisations in 2016–17 to:

- Positive Energy TM Pty Ltd, 9 June 2017
- Sustainable Savings Pty Ltd, 28 April 2017
- Online Power and Gas Pty Ltd, 16 December 2016
- Energy Locals Pty Ltd, 22 July 2016.

We granted gas retailer authorisations to:

- Weston Energy Pty Ltd, 9 September 2016
- WINconnect Pty Ltd, 29 July 2016
- Savant Energy Power Networks Pty Ltd, 15 July 2016.

We refused an authorisation application from Ultium Energy Pty Ltd (24 January 2017) on the grounds that it did not satisfy the entry criteria and did not provide all of the information required to make an application assessment.

### Exemptions

Some energy sellers may be exempt from the requirement to obtain authorisation to sell electricity and gas. There are three types of exemptions.

- Deemed exemptions—for small-scale selling arrangements where the costs of registration would outweigh the benefits of increased regulation. A person covered by a deemed exemption need not apply to or register with the AER. Conditions generally apply.
- Registrable exemptions—for defined classes of energy-selling activities that need regulatory oversight, usually because of scale and market impact. These exemptions apply to a particular person or company for a particular site. They must be registered with the AER. As at 30 June 2017 there were approximately 3000 published registrable class exemptions.
- Individual exemptions—for specific situations where the activity is not covered by a deemed or registrable exemption. In 2016–17 we granted eight individual exemptions. Six of these were from businesses retrofitting existing sites to create embedded networks. All but one of these were for residential sites. We refused a retrofit application for a shopping centre, as the applicant did not provide all the information required for this type of application, including evidence of mitigation of customer detriment.

Our Exempt selling guideline outlines the classes of deemed and registrable exemptions that apply, as well as the process for obtaining an individual exemption.

## Retailer of Last Resort

The AER manages the Retailer of Last Resort (RoLR) scheme. If an energy retailer fails, its customers are transferred to another retailer so that they continue to receive electricity and/or gas supply. In 2016–17 we:

- oversaw an electricity RoLR event for Urth Energy Pty Ltd. Customers of the failed retailer in Queensland, New South Wales and South Australia were transferred to default RoLRs
- appointed ActewAGL Retail as the default RoLR for gas customers connected to the Shoalhaven gas network in New South Wales.

The AER maintains a RoLR plan and conducts RoLR exercises with plan participants. Because of the Go Energy RoLR events in 2015–16 and the Urth Energy RoLR event in 2017, no exercise was required in 2016–17.

## Compliance and enforcement

We employ various tools to monitor and enforce compliance with the Retail Law and Retail Rules. They include:

- a self-reporting framework under which businesses must notify us within a given timeframe if they breach provisions
- a proactive monitoring program
- intelligence from our regular liaison with energy ombudsman schemes and consumer representatives
- complaints we receive directly.

Our Compliance and enforcement statement of approach sets out how we go about these functions.

### Enforcement action

The AER can respond to breaches by:

- accepting an administrative resolution
- seeking a court enforceable undertaking
- issuing an infringement notice of up to \$4000 for an individual or \$20 000 for a body corporate. We can issue an infringement notice if we have reason to believe that a business has contravened a civil penalty provision. Payment of an infringement notice penalty is not an admission of guilt, but finalises the matter
- starting court action with a civil penalty of up to \$20 000 for an individual or \$100 000 for a body corporate for each breach.

### *Infringement notices*

In 2016–17, 21 infringement notices were paid by retailers and distributors for allegedly failing to meet obligations under the Retail Law and Rules.

Twelve of these related to a failure by distributors to provide customers registered as using life-support equipment with the required four days' notice of planned interruptions to energy supply. For these:

- Ausgrid paid penalties of \$160 000
- Endeavour paid penalties of \$20 000
- Ergon paid penalties of \$20 000
- Energex paid penalties \$40 000.

Origin Energy LPG Limited paid a penalty of \$20 000 for allegedly submitting inaccurate information and data to the AER relating to the total number of residential customers on standard retail contracts for the supply of gas.

IPower Pty Limited and IPower 2 Pty Limited, trading as Simply Energy, paid a penalty totalling \$60 000 for allegedly failing to obtain explicit informed consent from customers before entering them into (or extending) gas and electricity contracts.

Property company Stockland Corporation Ltd paid penalties totalling \$100 000 for allegedly selling electricity at a shopping centre in New South Wales and at four sites in Queensland, including two retirement villages, without holding a retail authorisation or exemption. Stockland also provided an administrative undertaking as part of the resolution of the matter.

### **Undertakings**

In 2016–17 the AER accepted two court enforceable undertakings for alleged breaches of the Retail Law and Rules.

- Energy Intelligence, the company that provided energy management for one of the Stockland properties for which infringement notices were issued (see above), gave an undertaking to improve its internal processes and to appoint a compliance officer with specific responsibilities in relation to energy.
- Ausgrid gave an undertaking to ensure compliance with its life-support obligations under the Retail Rules.

### **Compliance checks**

The AER periodically releases compliance checks for industry to highlight obligations and to emphasise the importance of effective compliance processes and systems. We may become aware of issues that require guidance through retailers' reports on their compliance with the Retail Law and Rules, or through discussions with ombudsman schemes.

In 2016–17, we issued three compliance checks relating to the obligations on retailers when billing customers. The compliance checks provide information on the required content on an energy bill; resolving customer complaints and processes for dealing with incorrect charges.

### **Stakeholder forums**

We held retailer forums in November 2016 and April 2017. The April 2017 forum provided retailers with an update on the performance of the retail energy market and highlighted some of our key work on improving consumer engagement. Retailers gave presentations about innovative approaches they are implementing to improve customer payment strategies.

### **Retail compliance report**

In November 2016 we published our annual retail compliance report. The report covered compliance monitoring and enforcement activity in 2015–16 and priority areas for the coming year.

The report noted that, while the number of reported breaches from businesses was lower, the compliance issues were similar to those of previous years. Major issues included:

- life-support customers not receiving the required notice before their energy supply was interrupted
- customers being placed on contracts without providing explicit informed consent.

## Amendments to compliance procedures and guidelines

We are responsible for energy market regulation, including ensuring compliance with the Retail Law, the Retail Rules and the applicable national regulations. Our Compliance procedures and guidelines support this function. We updated these in June 2017 (with a commencement date of 1 July 2017) to incorporate new rules introduced by the AEMC and refine the reporting framework. We also released a *Practice guide for compliance audits* to further supplement the information on compliance audits in the guidelines.

In jurisdictions that have adopted the Retail Law, the Compliance procedures and guidelines establish a self-reporting framework that requires businesses to report any potential non-compliance with certain obligations under the Retail Law and Retail Rules, and a process for the management of compliance audits under the Retail Law.

In effect, the Compliance procedures and guidelines enable us to:

- monitor the extent to which retailers and distributors have complied with key obligations under the Retail Law and Retail Rules
- identify emerging or systemic compliance issues that may warrant further action
- set out our approach to using the compliance audit powers.

## Life-support rule change

On 28 February 2017 the AER submitted a rule change request to the AEMC, proposing changes to Part 7 of the Retail Rules relating to the protection of customers whose premises require energy for the purposes of life-support equipment. The changes aim to:

- simplify the registration of premises where life support equipment is required
- clarify retailer and distributor obligations by introducing processes to confirm the need for life-support equipment and timeframes to provide information to customers to facilitate confirmation.

## Performance monitoring and reporting

We released our fourth annual retail market performance report (for 2015–16) on 22 November 2016. The report covers states and territories where the Retail Law applies. It consolidated quarterly data on customer service and complaints, energy bill debt, payment plans, hardship programs, energy concessions and disconnections. It also reported on energy affordability.

In addition to a performance report, each quarter we publish key market and retail performance data on a range of indicators, including data on customer switching levels, customers experiencing payment difficulties, customer hardship, disconnections and reconnections, and complaints.

# Analysis of performance

## Support efficient wholesale energy markets

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**Deliverable 4.3**Support efficient wholesale energy markets

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### Wholesale market functions

The AER has responsibilities in wholesale electricity and gas markets in jurisdictions other than Western Australia and the Northern Territory. The markets are:

- the National Electricity Market (NEM)—an \$11.7 billion per year spot market in eastern and southern Australia, in which over 300 generators compete to dispatch electricity
- spot markets for gas in Adelaide, Sydney, Brisbane and Victoria, in which 359 petajoules are traded each year; and gas supply hubs at Wallumbilla (Queensland) and Moomba (South Australia).

We monitor these markets to:

- ensure market participants comply with the underpinning legislation and rules
- detect irregularities and wider harm issues.

We report on these issues to strengthen market transparency and confidence. We draw on our monitoring work to support our compliance and enforcement activity; to advise the COAG Energy Council, the AEMC and other bodies on wholesale market issues; and to assist the ACCC—for example, advising on mergers.

### Wholesale market monitoring and reporting

We draw on our market monitoring role to publish weekly market reports, as well as special reports relating to significant price events.

In 2016–17 the AER acquired a new role in monitoring the effectiveness of competition in the NEM, focusing on identifying features that impact on the market's efficient functioning. We will monitor the markets on a regular and systematic basis and report at least every two years on performance, including whether there is effective competition and any features that may be detrimental to competition. The first report will cover the closure of Hazelwood Power Station. We will also advise on the results of our market monitoring to the COAG Energy Council.

#### Significant event reporting

We publish a report whenever the spot price for electricity exceeds \$5000 per megawatt hour, or if an ancillary service price exceeds \$5000 per megawatt hour for a sustained period. The reports identify factors contributing to the high prices, such as rebidding, network issues, changes to demand, and generator availability. We also report on significant price variations for gas.

During 2016–17 we published 25 reports on high-price electricity events, the largest number in a reporting year since the inception of the AER. The events included:

- high electricity prices in South Australia in July and December 2016 and February 2017
- high electricity prices in New South Wales in November 2016 and February 2017
- high electricity prices in Queensland in January and February 2017

- high frequency control ancillary services (FCAS) prices in South Australia in September, August and October 2016.

The complexity and unusual quantum of events meant that the statutory timeframe for some reports was not met.

## Weekly reports on wholesale energy markets

We publish weekly reports on:

- activity in the national electricity market, including detailed analysis of extreme prices (those greater than three times the weekly average price in a region and above \$250 per megawatt hour, or those below -\$100 per megawatt hour) as they occur
- activity in the Victorian gas market; in the short-term gas trading markets operating in Adelaide, Sydney and Brisbane; and at the Wallumbilla and Moomba gas supply hubs.
- We aim to publish the reports within 12 business days of the end of the relevant week. In 2016–17 we released 70 per cent of our reports within that timeframe. This result was affected by the complexity of market conditions during the year and the large number of reports on high price events we had to prepare.

## State of the energy market

On 30 May 2017 we published our 10th *State of the energy market* report, covering developments in all jurisdictions in which the AER has regulatory responsibilities.

This flagship report provides independent and reliable information to policymakers, industry and the Australian community about what is happening in wholesale electricity and gas markets, the transmission and distribution networks and the rapidly evolving retail sector. It draws on a range of sources, including our internal monitoring and intelligence, regulatory reviews of energy networks, and external resources. It uses non-technical language to consolidate this material, highlighting trends and key issues across the electricity and gas industries. Our stakeholder surveys and other engagement provide consistently positive feedback on the report.

The 10th edition covers a period of intense energy market activity, spanning calendar year 2016 and the early months of 2017.

We update some of the report's data series, including on spot and financial market activity, every quarter on our website at [www.aer.gov.au](http://www.aer.gov.au).

## Wholesale market compliance and enforcement

Our Compliance and enforcement statement of approach sets out how we monitor compliance, how we respond to potential breaches, and factors we may consider when deciding whether to take enforcement action.

We take a risk-based approach to target and prioritise our monitoring and compliance activity. The risk assessment involves analysing and ranking each obligation to determine its compliance risk, taking into account both the impact and the probability of a breach. We commenced a comprehensive review of the electricity and gas rules throughout the year, reviewing over 5000 provisions and updating our risk assessment and approaches to monitoring.

## Enforcement action

The AER can issue an infringement notice of up to \$4000 for an individual or \$20 000 for a body corporate if it has reason to believe that a business has contravened a civil penalty provision. Payment of an infringement notice penalty is not an admission of guilt but finalises the matter.

In 2016–17 we issued infringement notices to two generation businesses for failing to follow dispatch instructions from AEMO. Both notices were to companies in the EnergyAustralia group (in December 2016). An investigation of compliance with dispatch instructions by EnergyAustralia's Mount Piper units was resolved administratively via a voluntary reporting arrangement. Under this arrangement, EnergyAustralia will provide the AER with a monthly report on compliance with dispatch instructions for a six-month period.

We issued an infringement notice to AGL Hydro Partnership for failing to ensure that the scheduled generating unit at its Somerton Power Station was able to comply with dispatch offers submitted to AEMO on 13 January 2016.

We reviewed compliance by CS Energy with an enforceable undertaking it gave us in June 2016 in relation to our investigation into compliance with dispatch instruction obligations. The undertaking is in place until June 2018.

## Compliance reviews

During the year we targeted a number of compliance issues in wholesale energy markets.

In gas, we continued our focus on ensuring that participants comply with the information requirements of the National Gas Bulletin Board, which aims to make gas production and pipeline flows transparent.

We also conducted a detailed review of participants and AEMO's action on 1 October 2017 when an electrical fault caused gas flows from the Longford gas plant to stop for a number of hours potentially impacting system security on the eastern seaboard. We made recommendations relating to further improvements to the timely provision of information.

In electricity, we concluded a technical audit of Origin Energy's Uranquinty Power Station. The focus of these audits is on the obligations of participants to implement and maintain generator performance standards compliance programs. We concluded that Origin's approach in this area for Uranquinty is consistent with the requirements of subclauses 4.15(b) and (c) of the Electricity Rules. The AER prioritises investigating compliance during significant market events. During 2016–17 there were a number of major events in the electricity market.

- On 28 September 2016, South Australia experienced a state-wide blackout. The blackout was triggered by a severe weather event damaging transmission and distribution electricity assets. The consequential reduction in output from some wind farms and loss of the Heywood interconnector resulted in all remaining customer load and electricity generation in South Australia tripping off. Supplies to most customers were restored within 24 to 48 hours.
- In the early hours of 1 December 2016, the South Australian region separated from the rest of the NEM. At the time, a planned outage of one of the Heywood to Mortlake 500 kilovolt lines by AusNet Services was underway. A fault near the Heywood substation tripped the remaining lines, tripping the Heywood interconnector. Power was restored to affected customers within an hour, and South Australia re-joined the NEM later that morning.
- On 8, 9 and 10 February, Queensland, South Australia and New South Wales all had high price events. These events coincided with load-shedding in South Australia (8 February) and industrial curtailment in New South Wales (10 February).



We are investigating all aspects of the September 2016 black system event against the requirements of the National Electricity Rules. This includes reviewing material gathered and reports prepared by other entities (including AEMO) to determine whether those involved satisfied all applicable obligations.

We are also conducting a targeted assessment of potential compliance issues associated with the 1 December 2016 event and the high price events of February 2017.

We undertook a targeted compliance review of electricity distributors' practices with respect to upgrading meters where customer consumption levels change and a new meter is required. During 2017–18 we will undertake a targeted compliance review of electricity retailers' practices with respect to upgrading meters where customer consumption levels change and a new meter is required.

### Quarterly compliance reports

We publish quarterly reports on our compliance monitoring and enforcement activities in wholesale gas and electricity markets. The reports summarise the results of investigations (including special reports on significant market or power system events), compliance audits, targeted compliance reviews and rebidding inquiries undertaken during the quarter.

In 2016–17 we published four compliance reports. Due to competing resource priorities, two were released outside our target timeframe of six weeks from the end of the relevant quarter.

### Rebidding and technical parameters guideline

Under the NER, the AER must publish a Rebidding and technical parameters guideline that specifies the amount of information to be provided to AEMO when rebidding, how the AER will exercise its ability to request additional information to substantiate and verify rebid reasons, and how other participants can access that information. The guideline also provides guidance to participants about the AER's approach to compliance with the bidding and rebidding of technical parameters.

In February 2017, we amended the guideline to reflect market developments and the commencement of 'false or misleading' and 'ramp rate' rule changes.

### Compliance bulletin on dispatch instructions, offers and bids

We aim to work cooperatively with NEM participants to help them understand their obligations under the national energy framework and to help them achieve compliance with those obligations. We updated Compliance bulletin No 1 'Compliance with dispatch instructions, offers and bids' in July 2016 to inform market participants of our broad understanding of, and enforcement approach to monitoring and enforcing compliance with, dispatch instructions issued by AEMO. It takes into account the AER's Compliance and enforcement statement of approach and incorporates the Federal Court decision in *Australian Energy Regulator v Snowy Hydro Ltd (No 2)* [2015] FCA 58.

## Wholesale energy market development

We draw on our regulatory and monitoring work to advise the COAG Energy Council, the AEMC and other bodies on wholesale market issues and to advocate solutions. To the extent that resourcing allows, we engage in policy reviews and rule change processes by sharing information, making submissions and participating in forums.

During 2016–17 we participated in several processes, including the Finkel Review and an inquiry into modernising Australia's electricity grid.

## Future security of the national electricity market—Finkel review

In March 2017 the AER made a submission to the Finkel review of the future security of the NEM. We agreed with the preliminary report that the NEM faces challenges in delivering security and reliability. Most notably there are challenges associated with greater reliance on variable renewable energy and with the types of services required to deliver security and reliability.

We submitted that these challenges are not insurmountable and that the NEM has many strengths that can deliver outcomes in the interests of consumers. The NEM is founded on the principle that reliance on competitive markets, where feasible, will deliver the best outcomes for consumers in terms of price and innovation.

## Inquiry into modernising Australia's electricity grid

In May 2017 the AER made a submission to the House of Representatives Standing Committee on the Environment and Energy inquiry into modernising Australia's electricity grid. We highlighted the work the AER is undertaking to ensure that the regulatory framework is meeting the opportunities and challenges of technological changes. We also provided views on the role that additional interconnection could play in meeting a range of goals, such as reducing wholesale prices in some states.

## Energy dispatch

As part of the AER's work to strengthen its external communications, we began publishing a regular newsletter, Energy Dispatch, in June 2017. Some responses to the 2016 AER stakeholder surveys suggested that we could build on recent improvements to further strengthen our communication and engagement practices. The newsletter's target audience includes industry, government consumer representatives and the media. Its purpose is to increase knowledge and understanding of the AER's everyday work and highlight key decisions or submissions. It will also point to interesting research and articles in other publications.

AER staff participated in a competition to name the newsletter.

## International activity

The AER is a founding member of the Energy Intermarket Surveillance Group (EISG), the peak and only international group coordinating and sharing skills between energy market surveillance and enforcement bodies. It is a not-for-profit organisation, with 22 member agencies representing 17 electricity markets in North America, Latin America, South-East Asia, Australia and New Zealand.

In 2016–17 we participated in two meetings of the group, at which energy market monitoring agency representatives discussed electricity market monitoring, compliance and design issues. We also seconded a staff member from the market monitor of Ontario as part of an ongoing arrangement among EISG members.



# Part 4

## Management and accountability

# Senior leadership

The ACCC's senior leadership comprises members of the Commission (appointed by the Governor-General) and Senior Executive Service (SES) employees.

Senior leadership of the AER comprises the AER Board and SES employees who are engaged exclusively on energy matters.

Details of the leadership structure are in figure 2.1 on page 20.

## Australian Competition and Consumer Commission

The ACCC has a chair, two deputy chairs, three full-time members and four associate members, one of whom is part-time. Their names and appointment terms are shown in table 4.1.

**Table 4.1: Terms of appointment—current ACCC members at 30 June 2017**

Position	Name	Appointed until
Chair	Rod Sims	31 July 2019
Deputy chairpersons	Delia Rickard	27 July 2022
	Michael Schaper	29 May 2018
Members	Cristina Cifuentes	29 May 2018
	Sarah Court	30 April 2018
	Roger Featherston	12 June 2019
Associate member, part-time*	Mick Keogh	22 February 2021
Associate members	Paula Conboy	30 September 2019
	James Cox	25 June 2020
	Susan Begg	16 June 2019

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

## Biographies—ACCC

### Chair

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#### Mr Rod Sims



Rod Sims was appointed Chairman of the Australian Competition and Consumer Commission in August 2011 for a five-year term and was reappointed for a further three-year term until 2019.

Rod has extensive business and public sector experience. Immediately prior to his appointment to the ACCC, he was the Chairman of the Independent Pricing and Regulatory Tribunal of New South Wales, Commissioner on the National Competition Council, Chairman of InfraCo Asia, Director of Ingeus Limited, and a member of the Research and Policy Council of the Committee for Economic Development of Australia. Rod was also a Director of Port Jackson Partners Limited, where he advised the CEOs and boards of some of Australia's top 50 companies on commercial corporate strategy over many years. Rod relinquished all of these roles on becoming Chairman of the ACCC.

Rod is also a past Chairman of the New South Wales Rail Infrastructure Corporation and the State Rail Authority and has been a director of a number of private sector companies. During the late 1980s and early 1990s, Rod worked as the Deputy Secretary in the Commonwealth Department of the Prime Minister and Cabinet responsible for economic, infrastructure and social policy and the Cabinet Office. He also worked as a Deputy Secretary in the Department of Transport and Communications.

Rod Sims holds a first-class honours degree in commerce from the University of Melbourne and a Master of Economics from the Australian National University.

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## Deputy chairs

### Ms Delia Rickard



Delia Rickard was appointed to the position of Deputy Chair of the Australian Competition and Consumer Commission in June 2012 for a period of five years. In July 2017 she was re-appointed for a further five years.

Delia brings extensive public service experience in the area of consumer protection.

She takes a particular interest in the ACCC's consumer protection work and plays an active role in the Commission's product safety work as well as its consumer protection compliance and enforcement work and scam disruption.

Immediately prior to her appointment to the ACCC, Delia held a range of senior positions at the Australian Securities and Investments Commission (ASIC). She led much of ASIC's consumer protection work covering areas such as financial literacy, dispute resolution schemes; e-payments and industry self-regulation. She was responsible for developing the first National Financial Literacy Strategy and chaired several Organisation for Economic Co-operation and Development financial literacy sub-committees. She also led ASIC's role in the implementation of the government's Super Choice policy and was the founding chair of ASIC's Corporate Social Responsibility program.

Delia is a former head of the ACCC's then Consumer Protection Branch and was a member of the secretariat to the Wallis inquiry into the regulation of Australia's financial system.

She is a trustee of the Jan Pentland Foundation—an organisation dedicated to providing scholarships for those who want to work as financial counsellors—and a judge for the annual MoneySmart Week awards. She is also a pro bono director of Fairtrade Australia New Zealand and chair of Good Shepherd's Advisory Committee on Financial Inclusion Action Plans.

In the January 2011 Australia Day Awards Delia was awarded the Public Service Medal for her contribution to consumer protection and financial services.

Delia is a member of the ACCC's Enforcement Committee, Adjudication Committee, Communications Committee and Enforcement Committee—Strategic Compliance. She is also Co-chair of the ACCC's Consumer Consultative Committee.

Delia holds a Bachelor of Arts and a Bachelor of Law from the University of New South Wales.

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**Dr Michael Schaper**

Dr Michael Schaper's work has a special focus on small business, franchising, industry associations and business liaison with the national competition and consumer protection regulator. Michael was first appointed a Commissioner of the ACCC in July 2008.

A previous president of the Small Enterprise Association of Australia and New Zealand, he has also previously served as Small Business Commissioner for the Australian Capital Territory, chairperson of the ACT Small & Micro-Business Advisory Council and a director of the International Council for Small Business. In 2009 he received the 'National Small Business Champion Award' from the Council of Small Business Organisations of Australia. Michael is also a Fellow of the Institute of Public Accountants, and a divisional councillor with the Australian Institute of Company Directors.

Michael has previously managed a community small business centre; been an adviser to government at both state and federal level; and held lecturing, professorial and dean roles at a number of Australian universities. He is currently an Adjunct Professor with Curtin University and a senior honorary research fellow at the University of Western Australia, and chairs the advisory board of Griffith University's Asia-Pacific Centre for Franchising Excellence. He holds a PhD and a Master of Commerce, as well as a Bachelor of Arts. His latest books are *Competition law and SMEs in the Asia-Pacific*; *Entrepreneurship and small business: Asia-Pacific*; and *Governments, SMEs and entrepreneurship development*. Dr Schaper is a member of the ACCC's enforcement and adjudication committees.

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**Members**

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**Ms Cristina Cifuentes**

Cristina Cifuentes was appointed a Commissioner of the ACCC in May 2013 for a five-year term.

Cristina has a breadth of experience in both the public and private sectors across public policy, finance and utility regulation, including positions at the Reserve Bank of Australia, the New South Wales Treasury and the Australian Securities Commission. She served as the state part-time member of the AER between 2010 and 2013. She was a member of the New South Wales Independent Pricing and Regulatory Tribunal between 1997 and 2006.

Cristina is chair of the ACCC's Communications Committee and Infrastructure Committee. She oversees the ACCC's regulatory role in relation to key infrastructure in areas such as telecommunications, wheat ports, rail, and water. She is also the Commonwealth member of the AER Board, which has responsibility for regulating the national electricity and gas markets.

Before becoming an ACCC Commissioner, Cristina held a number of directorships including with the Hunter Water Corporation and First State Super Trustee Corporation.

Cristina holds a first-class honours degree in law and a degree in economics.

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**Ms Sarah Court**


Sarah Court was appointed a Commissioner of the ACCC in April 2008 and was reappointed for a further five year term in 2013. She is also an Associate Commissioner of the New Zealand Commerce Commission.

Sarah is a full-time commissioner, and a former senior executive lawyer and director with the Australian Government Solicitor. She brings to her role extensive experience in Commonwealth legal work, including restrictive trade practices, consumer protection and law enforcement litigation.

Sarah oversees the ACCC's enforcement and litigation program and is chair of the Enforcement Committee and the Legal Committee. She takes an active role in the Commission's enforcement and compliance work and engages closely with investigating teams and lawyers on Commission policies and enforcement investigations. Sarah also sits on the Merger Review Committee, the Adjudication Committee and the Infrastructure Committee.

Sarah holds a Bachelor of Arts (Jurisprudence) and a Bachelor of Law (Honours) from the University of Adelaide as well as a Graduate Diploma in Legal Practice from the Australian National University.

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**Mr Roger Featherston**


Roger Featherston was appointed a Commissioner of the ACCC in June 2014.

Roger is a full-time Commissioner who brings a wealth of experience from his previous roles as a lawyer in the private and public sectors. Roger was formerly a partner at Mallesons Stephen Jaques, leading the firm's competition law team and advising a broad spectrum of commercial and governmental clients on competition law and enforcement issues, consumer protection, informal merger clearances, access and pricing issues, and telecommunications matters.

In addition to this extensive private sector experience, Roger acted for the former Trade Practices Commission early in his career and, for the two years before his appointment, acted as Special Counsel at the ACCC advising on a range of major competition and consumer protection matters.

Roger is a life member and former Chairman of the Business Law Section of the Law Council of Australia, and a member and former Chairman of the Competition and Consumer Law Committee of the Law Council of Australia.

Roger is chair of the ACCC's Mergers Committee and Adjudication Committee. He is also a member of the ACCC's Enforcement Committee and Communications Committee.

Roger holds a Bachelor of Laws (Honours) and a Bachelor of Economics from the Australian National University.

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## Mr Mick Keogh



Mick Keogh was appointed as a Commissioner of the ACCC in February 2016 for a five year term.

The ACCC has established an Agriculture Unit that contains additional staff to conduct investigations and engagement in rural and regional areas with funding provided through the Agricultural Competitiveness White Paper.

Mick plays a key role in the work of the Agriculture Unit, which identifies competition and fair trading issues in agriculture markets and engages with a range of key industry groups. He oversees the ACCC's agriculture work program and chairs the ACCC's Agriculture Board and Agriculture Consultative Committee. Mick also plays a key decision making role on agriculture matters across the work of the ACCC.

Mick has a long and diverse history of involvement with the agriculture sector, which has included periods of employment as a farm manager, a university researcher, an agribusiness consultant and an agriculture policy advisor.

In 2003 Mick was appointed Executive Director of the Australian Farm Institute, an independent policy research institute that conducts research into strategic policy issues of importance to Australian agriculture. Mick continues to undertake this role.

In 2011 Mick was appointed Chairperson of the Australian Government panel which reviewed drought support measures. He was also Chairman of the Australian Government's National Rural Advisory Council from 2012 to 2015.

Additionally, Mick remains involved in family farming interests in southern New South Wales.

Mick was awarded the Order of Australia Medal for services to agriculture in 2015. He holds bachelors and masters degrees in wool and pastoral science, both obtained at the University of New South Wales.

## Australian Energy Regulator

The Chair of the AER Board is Paula Conboy. The board of the AER has two members.

**Table 4.2: Terms of appointment—current AER members at 30 June 2017**

Chair	Paula Conboy	30 September 2019
Members	Cristina Cifuentes	29 May 2018
	Jim Cox	25 June 2020

## Biographies—AER

### Chair

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#### Ms Paula Conboy



On 21 July 2014, Paula Conboy was appointed as the full-time state/territory member and AER Chair for a five-year period from 1 October 2014.

Paula has over 20 years' experience in public utility regulation in Australia and Canada. She has held roles at the Industry Commission, Sydney Water Corporation and Ontario electricity distribution utility PowerStream Inc. Most recently she was a full-time member of the Ontario Energy Board in Canada from March 2010, where she oversaw policy development and adjudicated applications for cost of service, performance-based regulation, mergers and acquisitions, and leave to construct electricity and gas networks. She was an active member of CAMPUT: Canada's Energy and Utility Regulators and chaired its 2013 annual conference. She is also a mentor with the International Confederation of Energy Regulators' Women in Energy initiative.

Paula holds Bachelor of Science and Master of Science degrees in agricultural economics from the University of Guelph and conducted her thesis research at La Trobe University.

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### Members

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#### Ms Cristina Cifuentes

Cristina is appointed as the Commonwealth's appointee to the Board of the AER.

See ACCC members for a full biography.

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#### Mr Jim Cox



On 23 May 2017 Jim Cox was reappointed as a full-time state/territory member of the AER Board for a further three-year term. Jim was initially appointed in an acting capacity in September 2013 and confirmed in the role for three years from 26 June 2014.

Jim has held positions with the Reserve Bank of Australia, the Department of the Prime Minister and Cabinet and the Social Welfare Policy Secretariat of the Department of Social Security. He was a principal economist at the Office of EPAC between 1986 and 1989, and between 1989 and 1992 was a consultant to the New South Wales Cabinet Office. Jim was Principal Adviser to the Government Pricing Tribunal of New South Wales from 1992 and was a member of the Independent Pricing and Regulatory Tribunal (IPART) from January 1996 to September 2013. He was Acting Chairman of IPART during 2004, 2009–10 and 2011 and a visiting fellow at Monash University during 1985.

Jim assisted the New Zealand Government with social policy changes during the early part of 1991 and has written extensively on economic and social policy issues. This work has been published by, among others, the New Zealand Business Roundtable and the Centre for Independent Studies.

He was awarded the Public Service Medal in the Australia Day honours list in 2011 for outstanding public service to IPART.

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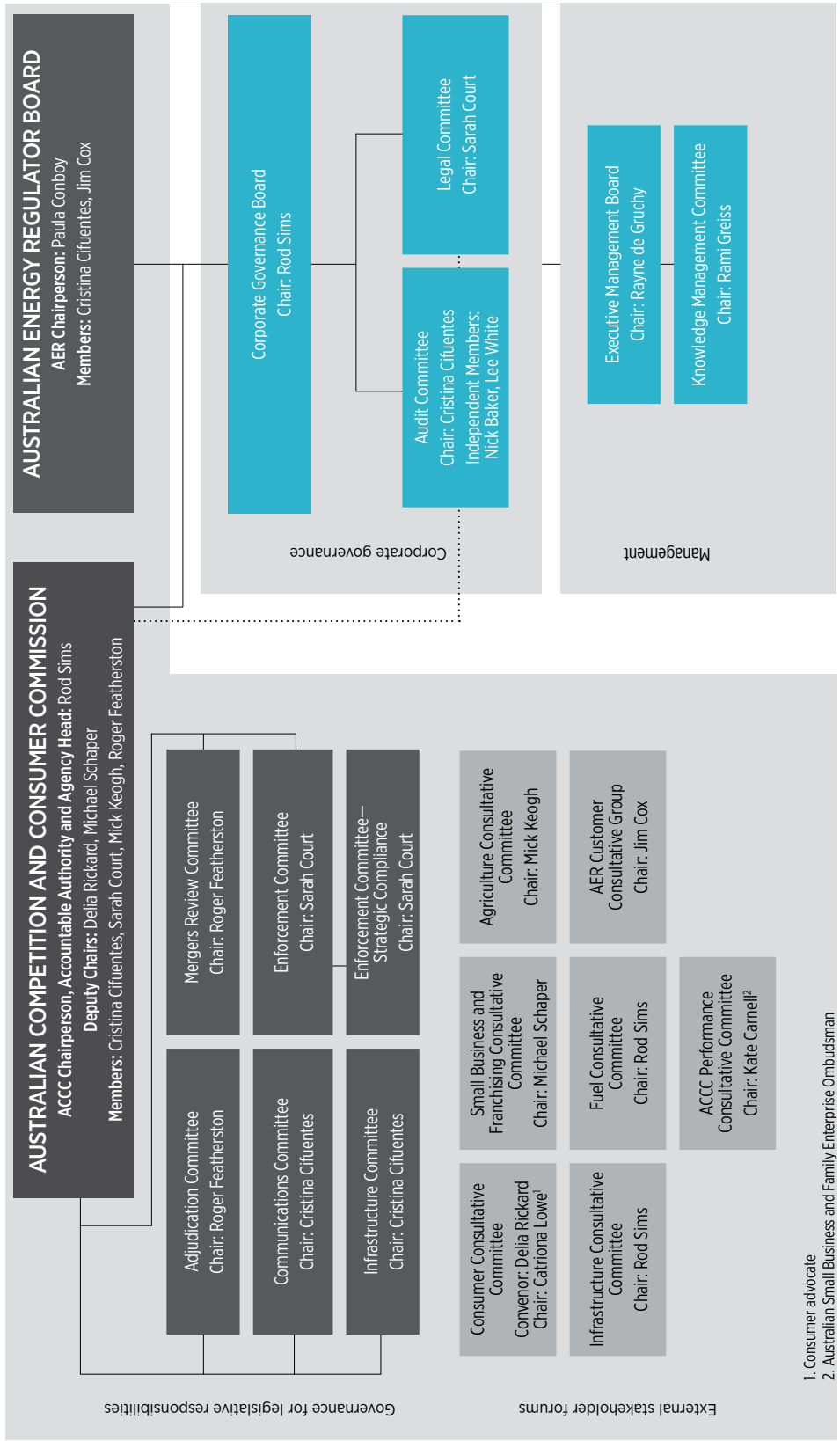
# Managing the ACCC

## Committees

The ACCC makes statutory decisions through the Commission, aided by specialist subject matter committees (see table 4.3) composed of sub-groups of Commissioners. The AER makes its decisions through its board. The agencies are governed and their administration overseen by corporate governance committees.

The ACCC and AER governance structure is shown in figure 4.1.

Figure 4.1: ACCC and AER governance structure



1. Consumer advocate  
2. Australian Small Business and Family Enterprise Ombudsman

**Table 4.3: Subject matter committees of the ACCC—roles and membership**

<b>Adjudication Committee</b>	Roger Featherston (Chair), Sarah Court, Delia Rickard, Michael Schaper, Rod Sims, Mick Keogh (for agriculture issues)—considers authorisation applications, notifications and certification trade marks and refers recommendations to the Commission for decision; meets weekly.  The Adjudication Committee sits as a division of the Commission under s. 19 of the <i>Competition and Consumer Act 2010</i> (Cth) (the Act) in respect of certain non-merger matters under Part VII of the Act.
<b>Communications Committee</b>	Cristina Cifuentes (Chair), Roger Featherston, Delia Rickard, Rod Sims, Mick Keogh (for agriculture issues)—considers telecommunications industry regulatory issues and refers recommendations to the full Commission for decision; meets fortnightly.
<b>Enforcement Committee</b>	Sarah Court (Chair), Roger Featherston, Delia Rickard, Michael Schaper, Rod Sims, Mick Keogh (for agriculture issues)—oversees ACCC actions to ensure compliance with and enforcement of the Act and refers recommendations to the Commission for decision; meets weekly.
<b>Enforcement Committee—Strategic Compliance</b>	Sarah Court (Chair), Delia Rickard, Michael Schaper, Rod Sims, Mick Keogh (for agriculture issues)—considers emerging compliance issues and the ACCC's response, including engagement with industry stakeholders and media communication; meets fortnightly.
<b>Infrastructure Committee</b>	Cristina Cifuentes (Chair), Sarah Court, Jim Cox, Mick Keogh (for agriculture issues), Michael Schaper, Rod Sims—oversees access, price monitoring, transport and water regulatory issues; meets fortnightly.
<b>Mergers Review Committee</b>	Roger Featherston (Chair), Sarah Court, Rod Sims, Mick Keogh (focused on agriculture issues)—considers merger reviews and refers certain recommendations to the Commission for decision; meets weekly.

## Corporate governance

The corporate governance of the ACCC and AER provides oversight of the agency's planning, performance, financial management, resource management and accountability.

The ACCC's corporate governance framework consists of two types of committees:

- corporate governance committees
- management committees.

## Corporate governance committees

### Corporate Governance Board

The Corporate Governance Board meets 10 times each year (generally on a monthly basis) and sits at the apex of the governance structure. All ACCC Commissioners and AER Board members are part of the Corporate Governance Board. The Audit Committee and Legal Committee support its work. The Corporate Governance Board, aided by these committees and by senior management committees, is well equipped to oversee our strong corporate and financial performance.

Responsibilities include:

- strategy setting and corporate planning
- internal budgets and resource management
- performance monitoring and reporting
- agency accountability.

Members: Rod Sims (Chair), ACCC deputy chairs, Commissioners, AER Chair and board members.

### Audit Committee

The Audit Committee meets quarterly and acts as a source of independent advice and assurance to the Accountable Authority (the Chairman) through the Corporate Governance Board on the financial reporting, performance reporting, risk oversight and management and system of internal control of the ACCC and AER. Its responsibilities are to review, report to and provide advice on:

- accounting policies, procedures and external financial disclosure
- internal financial controls and reporting
- internal budget process, aligning budget allocations with the external budget
- internal and external audit functions
- systems and procedures for performance reporting
- compliance with applicable laws, regulations and guidelines
- effective oversight and management of risk, including an appropriate fraud and corruption prevention and detection control plan
- the adequacy of the agency's governance arrangements.

Members: Cristina Cifuentes (Chair), Nick Baker (independent member), Lee White (independent member).

### Legal Committee

The Legal Committee meets monthly and oversees the ACCC's and AER's processes and systems to:

- manage and forecast the pipeline of investigations and cases and the resulting legal and related expenditure
- monitor the use and procurement of external legal services
- assist and advise the Corporate Governance Board accordingly.

The committee reviews legal and enforcement resource implications and provides greater accountability around the tracking and forecasting of legal expenditure over the life of ACCC and AER investigations and court proceedings. This committee also reviews the agency's compliance with external obligations such as the Legal Services Directions 2017, and ACCC and AER input into policy processes affecting agency legal services.

Members: Sarah Court (Chair), Chief Operating Officer, senior managers.

## Management committees

Supporting the corporate governance committees, the ACCC has a number of management committees that operate to ensure the effective management of the organisation.

### Executive Management Board

The Executive Management Board manages the organisation in line with the expectations and limitations set by the Accountable Authority (the Chairman) and the Corporate Governance Board.

Members: Chief Operating Officer (Chair), Chairman, Executive General Managers, Chief Information Officer, Chief Financial Officer, General Manager People and Culture, General Manager Strategic Communications.

### Information and Knowledge Management Committee

The Information and Knowledge Management Committee provides advice on information and knowledge management along with the enabling ICT to aid in decision-making that ensures the ACCC's alignment and compliance with the ACCC's strategic direction, government policies, Australian law and legal standards.

Members: Executive General Manager Merger and Authorisation Review (Chair), Chief Information Officer, senior management from AER, Enforcement Division and Infrastructure Regulation Division, staff from Merger and Authorisation Review, Legal and Economic, Consumer, Small Business and Product Safety, People & Corporate Services divisions, one external independent advisor.

## Corporate and business plans

The ACCC and AER Corporate Plan 2016–17 meets the requirements of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and our obligations under the Regulator Performance Framework. Our Corporate Plan is available on the ACCC website. We will continue to refine our corporate and business plans to best share our performance with parliament and the community. This annual report describes the outcomes against both the portfolio budget statements and the Corporate Plan.

## Internal audit and assurance

The ACCC's internal audit function provides assurance that we are meeting our obligations and adds value to the management and governance of our operations.

The agency's Internal Audit plan was substantially revised in 2015, creating a forward program for the 2015–19 financial years. This plan is reviewed annually with the oversight of the Audit Committee and is approved by the Corporate Governance Board.

The following internal audits were conducted during 2016–17:

- physical and personnel security
- divisional budget-setting processes and practices
- evidence handling
- external legal funding process
- PGPA Act compliance.



Other assurance activities conducted in 2016–17 included:

- Business Continuity Plan and framework review completed
- Business Continuity Plan test exercise
- Fraud Control Plan review completed
- Security Threat and Risk Assessment for Melbourne accommodation facilities
- Security Risk Assessment.

## Risk management

Risk management is a key element of our strategic planning, decision-making and business operations.

In accordance with the PGPA Act, the Commonwealth Risk Management Policy and Australian National Audit Office (ANAO) and Comcover better practice guides, the ACCC has a risk management framework to support the effective management of organisational risk.

This framework covers the agency's strategic risks, as well as agency-wide and operational risks that sit across and within the agency's business units.

The framework, which was substantially reviewed in 2015, includes risk management policies and guidelines that communicate accountabilities, responsibilities and expectations of all employees in ensuring the management of risk across the organisation.

The ACCC and AER aim for best practice in controlling all risks by identifying priority exposures, addressing them through improvement strategies and contingency planning, and monitoring and reviewing ongoing risk.

## Business continuity

Business continuity management strengthens business resilience, lessening the likelihood of incidents that may adversely affect ACCC and AER operations, and minimising the impact if such incidents occur.

During 2016–17 the agency completed a substantial review of its business continuity framework and plan to ensure that it remains contemporary and able to support the ACCC's and AER's continued operations. This review included a test exercise in December 2016. Following this review, the revised Business Continuity Plan was finalised and communicated throughout the organisation. Ongoing reviews and testing will ensure the plan continues to meet the business continuity needs of the agency.

## Fraud control

The ACCC and AER has a Fraud Control Plan for 2017–19 that directs the agency's approach to fraud prevention, detection, investigation, reporting and data collection procedures that meet our specific needs and comply with the PGPA Act and the Commonwealth Fraud Control Guidelines. This plan was revised in 2016 and finalised for the next three years.

The ACCC and AER had one reported instance of possible fraud in 2016–17. The Fraud Control Officer conducted a preliminary internal investigation then engaged an external investigator to conduct an independent fraud investigation. The independent fraud investigation found no evidence of either internal or external fraud.

# Environmental performance

## Mandatory environmental reporting

The ACCC is required to report annually on its environmental performance under the *Environment Protection and Biodiversity Conservation Act 1999*, and has nominated to report on the organisation's performance internally on an annual basis.

The agency adheres to the Energy Efficiency in Government Operations Policy, the Australian Government ICT Sustainability Plan 2010–2015, and the National Packaging Covenant, using recommended key performance indicators (KPIs) to meet requirements.

## Environmental performance

The ACCC remains committed to the development of best practice in environmental sustainability and performance. Our environmental policy includes strategies to improve sustainability and performance consistent with the Australian Government ICT Sustainability Plan 2010–2015 and better practices outlined by the ANAO.

We maintained our steady progress in environmental policy performance in 2016–17 by achieving 11 of 17 KPIs, or 65 per cent, with key improvements to data collection and recording methods increasing accuracy in reporting. Our overall performance has improved by more than 47 per cent since the inception of the reporting program in 2011–12, when only three of 17 KPIs were met.

# Ethical standards

## Conflicts of interest

The ACCC and AER are proud of their ethical standards and ensure there is continued public confidence in their integrity and that of their staff. Given that we often investigate misrepresentation of information or unconscionable business conduct and determine charges that impact on cost of living, it is vital that we maintain the trust of the Australian people, government and businesses.

To maintain confidence in our integrity, the ACCC and AER have strict procedures to identify and properly manage any personal interests that may cause an actual or perceived conflict of interest.

As statutory office holders, Commissioners and board members are held to high standards of conduct. These standards arise from the high ethical standards we set ourselves and are backed by legislation, codes of conduct and the common law.

ACCC members must provide the Chairperson with an annual statement of material personal interests and not participate in matters in which they, or a member of their direct family, may have a real or perceived conflict of interest. ACCC members are also required to disclose interests not previously declared at Commission and committee meetings. AER Board members are required to disclose conflicts of interest at a board meeting.

During 2016–17 the ACCC and AER implemented an updated conflict of interest policy. The policy provides for all conflict of interest action to be recorded using a suite of online forms. Conflict of interest action requires a self-assessment and, where a conflict is identified,

disclosure of the conflict and a plan to manage the conflict. The policy also provides for reporting on completion of the conflict of interest to senior management.

As a general rule, ACCC Commissioners, AER Board members and staff cannot accept gifts and hospitality, because acceptance could compromise, or be seen to compromise, the organisation's integrity. In limited circumstances, employees are able to accept gifts such as chocolates or wine if they are related to their participation at a conference or received from a foreign delegation. To ensure transparency, a \$50 minimum threshold is in place for formal declarations. This allows us to display a high level of integrity and ethical behaviour in our day-to-day work.

## Values and code of conduct

The ACCC and AER are committed to driving a respectful culture throughout the organisation and upholding and promoting the behaviours specified in the Australian Public Service (APS) Values and Code of Conduct.

Employees learn about the APS Values and Code of Conduct in corporate induction sessions, and additional awareness training is incorporated into leadership programs.

Alleged misconduct by employees may be dealt with under the APS Code of Conduct. In 2016–17, the ACCC/AER did not investigate any potential breaches of the code.

## External scrutiny

As an Australian Government agency, the ACCC and the AER are held to account for their activities by a variety of external bodies, including:

- courts
- tribunals
- parliament
- agencies with administrative oversight, including the Commonwealth Ombudsman.

These bodies have the power to review our decisions or work, investigate them and either uphold the decision of the ACCC or AER or order or recommend that the ACCC or AER make changes if necessary. Each year the ACCC reports on its interaction with these bodies to ensure transparency on external scrutiny.

## Judicial decisions

On 7 October 2015, the ACCC made final access determinations (FADs) in respect of seven fixed line services supplied by Telstra Corporation Limited (Telstra). On 5 November 2015, Telstra filed an application for judicial review of all of the relevant FADs. Telstra was seeking an order quashing or setting aside these regulatory decisions. On 28 March 2017 the Court dismissed Telstra's application.

## Administrative Appeals Tribunal

There were no decisions by the Administrative Appeals Tribunal in respect of decisions made by the ACCC or AER in 2016–17.

## Office of the Merit Protection Commissioner

One application for review was made to the Office of the Merit Protection Commissioner in 2016–17, which upheld the ACCC's decision.

## Office of the Australian Information Commissioner

No requests for freedom of information review concerning the ACCC were lodged with the Office of the Australian Information Commissioner in 2016–17.

## Privacy Commissioner

The Privacy Commissioner did not investigate any complaints about the ACCC/AER in 2016–17.

## Australian Competition Tribunal

The Australian Competition Tribunal (the Tribunal) reviewed two decisions of the ACCC or AER in 2016–17. It made one decision in respect of related energy decisions made by the AER.

In October 2015 the AER made a decision which set the maximum amount of revenue that SA Power Networks (SAPN) could recover from consumers over a five-year period (the 2015 revenue determination). SAPN sought merits and judicial review in the Tribunal and the Federal Court respectively. The South Australian Council of Social Service also applied to the Tribunal to review the AER's revenue determinations, but leave was not granted.

On 28 October 2016 the Tribunal handed down its decision. The Tribunal did not accept any of the grounds of appeal raised by SAPN, dismissing SAPN's application and affirming the AER's decision. On 25 November 2016, SAPN filed an application for judicial review of the Tribunal's determination in relation to the value of imputation credits, the cost of debt and labour cost escalation. The Full Court heard this matter in May 2017. The Court's decision is currently reserved.

Applications for leave and review of the AER's electricity distribution determinations for CitiPower, Powercor, United Energy, Jemena and AusNet Services; and review of the AER's gas distribution determination for ActewAGL were lodged on 17 June 2016. The merits review hearings concluded in November 2016. The Tribunal has extended the time for making its decision until August 2017.

In April and June 2015, the AER made five decisions which set the maximum amount of revenue that electricity and gas distribution businesses in New South Wales and the Australian Capital Territory could recover from consumers over a five-year period (the 2015 revenue determinations). The five distribution businesses sought limited merits review of the 2015 revenue determinations in the Tribunal.

On 26 February 2016 (for electricity) and 3 March 2016 (for gas) the Tribunal handed down its decisions to set aside the 2015 revenue determinations for the New South Wales and ACT electricity and gas businesses. The Tribunal remitted the decisions to the AER, directing it to remake its decisions in relation to the rate of return on debt that could be earned by the businesses, the value of imputation credits and the allowances made for operating expenditure.

On 24 March 2016, the AER filed five applications for judicial review in respect of each of these Tribunal determinations. The Full Federal Court handed down its decisions on 24 May 2017. The Court allowed the appeal in relation to the value of imputation credits but upheld the Tribunal's findings in relation to operating expenditure and the cost of debt.

## Parliamentary scrutiny

The ACCC appeared before the House of Representatives Standing Committee on Economics on 24 October 2016 as part of the committee's review into the ACCC's Annual Report 2014-15. Topics covered included competition in the financial services sector and the effects test in s. 46 of the Act. The Committee's report following the review was tabled on 21 November 2016.

The Independent Review into the Future Security of the National Electricity Market was completed in June 2016, with the final report delivered to the Council of Australian Governments (COAG) Energy Council. The review made a number of recommendations directly relevant to the AER's work and how it functions as the regulator. COAG is now considering the recommendations from the review.

From 2017-18 the AER will receive additional funding which will ensure it is equipped to meet the challenges of its expanded roles and functions.

## Freedom of information

Agencies operating under the *Freedom of Information Act 1982* must publish information for the public as part of the Information Publication Scheme. This requirement has replaced the former requirement to publish a statement in the annual report. Each agency's website must include a plan that shows the information it publishes in accordance with the scheme's requirements. See the ACCC's freedom of information website for our plan.

## Service charter

The ACCC and AER each have service charters stating the standard of service you can expect to receive from us.

Our service charters also set out:

- what you should do if you wish to complain about a business or market issue
- what you should do if you wish to complain about your dealings with us
- what we ask of you.

The service charters are available from the ACCC and AER websites respectively.

## Attracting and selecting capable people

During 2016-17 the government directed the ACCC and AER to undertake a number of new assignments. Resourcing both these and normal business functions required a substantial movement of existing employees and the engagement of new people. The scope of this recruitment was possibly the largest the agency has undertaken and required a holistic, organisation-wide approach and innovative recruitment methods. The recruitment campaign

facilitated over 100 recruitment outcomes and established a merit pool of suitable people that support future recruitment needs.

Throughout 2016–17 we actively worked to increase the number of women in our senior leadership positions, and our numbers of people with a disability and people from Indigenous backgrounds. Our entry-level programs (graduates, interns and specialised diversity programs) made significant progress, increasing the representation of talented Indigenous and disabled people.

## Performance management

During 2016–17 the ACCC and AER piloted a new approach to performance management based on continuous feedback and no ratings. Three branches were supported by an external facilitator as they trialed a new program which focused on establishing goals relating to team, work and self. Early evaluations of the program indicated more effective performance conversations and improvements in team relationships. The lack of performance ratings associated with the new program was seen as a benefit by managers and employees as it allowed for a stronger focus on conversations on how employees are developing and how they do their work. Following the success of the pilot, the ACCC and AER will roll out the new program over the next 18 months.

# Supporting our people

## Developing the skills and abilities of our workforce

We are committed to investing in the development of our people, running an extensive program of learning and development, both formal and on the job. This includes discipline-specific knowledge, such as the continuous learning and education program for legal professionals, and more general skills through leadership programs, personal and professional development programs, rotational programs and more. We also provide studies assistance for employees to support higher learning.

### Leadership activities

The ACCC and AER continued to support the development of leaders across the organisation through in-house leadership programs aimed at the APS and executive levels. These programs are continually reviewed to ensure that the content presented reflects the evolving needs and culture of the ACCC and AER. Employees were also presented with opportunities to attend leadership programs conducted by external providers such as the Australian Public Service Commission and the Australia and New Zealand School of Government.

### Negotiation and stakeholder engagement

Following the inaugural self-assessment against the Australian Government's Regulator Performance Framework, the ACCC and AER identified a need for further training in the area of negotiation and stakeholder engagement. A tender process was undertaken to explore what training was available in this area and ensure that ACCC employees were receiving high-quality, cost-effective training to equip them with practical skills and strategies for enhanced engagement with external stakeholders.

## E-learning catalogue

The Learning and Development Unit continued to enhance the e-learning offerings available to employees. All internal seminars are now recorded and turned into e-learning programs to allow greater opportunity for employees to access information on demand. We continue to develop induction programs for new employees, and new products that support record keeping and governance have been added to the induction experience.

## Employment law

To assist managers in understanding their employment law obligations, the ACCC partnered with the Australian Government Solicitor to deliver sessions to managers covering managing complex health issues, managing unsatisfactory performance and obligations under the *Public Interest Disclosure Act 2013*.

## Unconscious bias

Unconscious bias training was an initiative identified in our 'Building inclusion: advancing gender balanced leadership' strategy. In 2017, workshops have been delivered to Executive Level 2 (EL2) and SES staff across the agency.

This training supports the building of a diverse and agile workforce and inclusive culture necessary to leverage the knowledge, skills and attributes of our people. The workshops have raised awareness of where bias comes from, how it influences us, and how it impacts the decisions we make and the culture we create.

## Indigenous cultural awareness training

Indigenous cultural awareness training was a commitment of our Reconciliation Action Plan. Throughout 2016–17 training sessions have been delivered to APS, EL and SES staff across the agency. The sessions were designed to raise awareness and provide for a greater understanding of the challenges Indigenous Australians have faced in the past and present, including the consumer issues dealt with by the ACCC.

## Learning and development summary

Training and development costs in 2016–17 were \$1 352 561.

Approximately 40 per cent of the budget was held centrally to support organisation-wide development programs. The remaining 60 per cent was devolved for divisions to address specific needs relating to technical skills.

A key element of our learning program is our Studies Assistance Scheme. The scheme provides assistance for employees undertaking postgraduate studies. The key areas of study are economics, law and business. Study assistance for employees can include leave and full or partial reimbursement of tuition fees for approved courses.

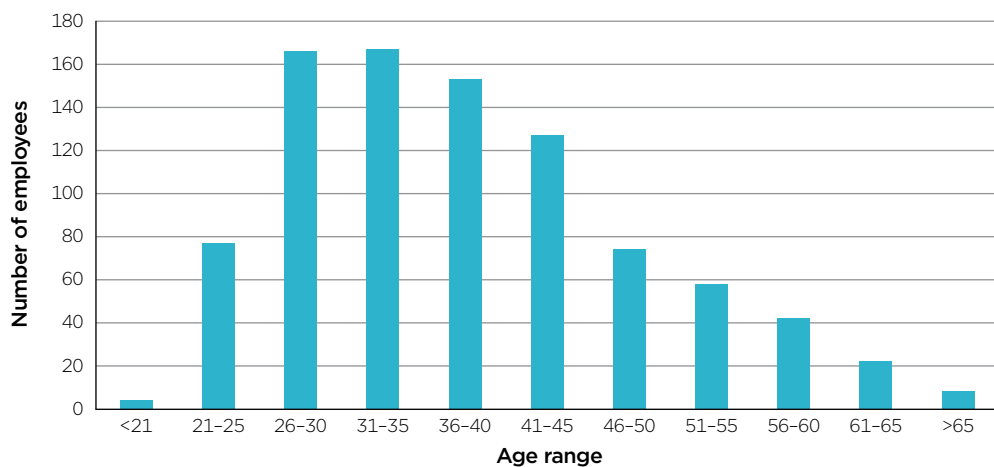
During the year 65 employees were supported to study. We reimbursed \$199 752 in fees for employees to attend lectures and tutorials.

**Table 4.4: Attendance at courses, seminars and learning activities— 2014-15, 2015-16 and 2016-17**

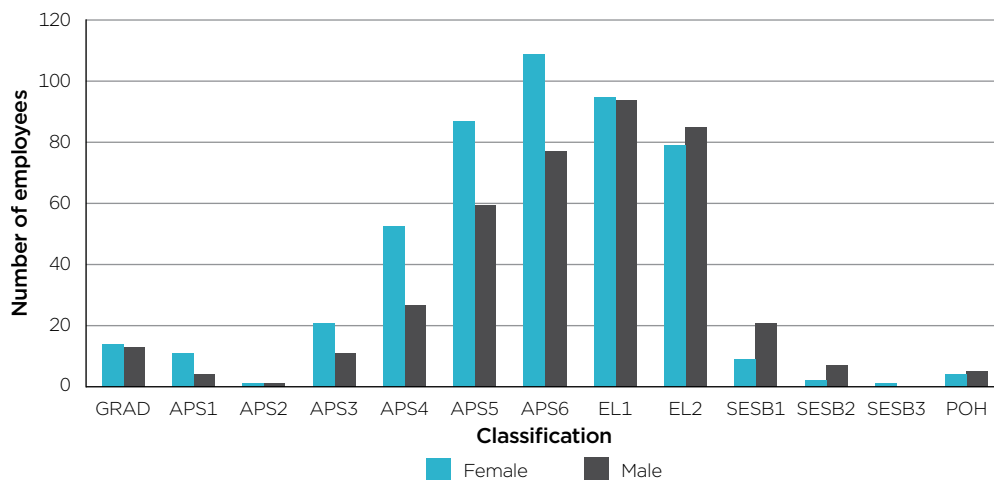
Type	Number of attendees		
	2014-15	2015-16	2016-17
Operating skills and knowledge	918	2055	2393
Legal skills and knowledge	675	607	716
Applying the Act	60	139	299
Economics and regulatory	243	110	199
Leadership, supervision and management	589	335	487

## Our staffing profile

**Figure 4.2: Age profile of ACCC staff at 30 June 2017**



**Figure 4.3: Gender profile of ACCC staff at 30 June 2017**



Note: POH are Public Office Holders



**Table 4.5: Staff turnover according to separation type, 2016–17**

Separation	Classification	Number of staff
External transfer or promotion	Non-SES	20
	SES	1
Retirement	Non-SES	1
	SES	3
Contract expired	Non-SES	29
Resignation	Non-SES	72
	SES	1
Redundancy	Non-SES	5
	SES	0
Other	Non-SES	8
<b>Total</b>		<b>140</b>

## Improving the work environment

### Action on mental health

During 2016–17 a new workplace contact officer (WCO) policy was introduced. The policy provided for an increase in the number of WCOs and more emphasis on supporting the mental health of employees. All WCOs undertook a two-day mental health first aid (MHFA) training course leading to accreditation with MHFA Australia. WCOs also received training in organisational policies related to employee conduct and communication skills.

To broaden awareness of common mental health twelve half-day sessions were held during the year. The sessions included: an overview of more common mental health disorders, mental health first aid principles, organisational risk factors which adversely impact on mental health and managerial strategies to address the risk factors.

### Rehabilitation management

In May 2017, our Rehabilitation Management System and active compensation cases were audited. We received a 100 per cent conformance rating. This was an excellent outcome following a 76 per cent conformance rating in 2015–16.

## Consultative committees

Following the introduction of the ACCC Enterprise Agreement 2016–2019, the Employee Council was established to replace the Workplace Relations Committee. The Employee Council consists of three SES and 14 employee members and meets quarterly to discuss issues regarding conditions of employment, improvements to policies and procedures, and a range of other workplace issues. The Employee Council met in March, April and June and has reviewed 21 policies that were revised for the new enterprise agreement.

The Health and Safety Committee is a joint management and staff committee established in accordance with the *Workplace Health and Safety Act 2011* to facilitate:

- consultation and cooperation between the agency and employees on work health and safety matters
- continuous improvement in managing these matters by the agency.

Appendix 3 details workplace health and safety programs and outcomes for the year.

## Making the most of our diversity

The ACCC/AER recognises and embraces the benefits of a diverse workforce and the role of diversity within the Australian community. The Diversity Reference Group provides a support mechanism for ensuring that all aspects of diversity are represented across the agency. We have multicultural; disability; Aboriginal and Torres Strait Islander; and lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) champions. The LGBTIQ champion heads the Ally Network, which forms part of the ACCC/AER's ongoing commitment to a policy of zero tolerance of discrimination and bullying within the workplace. The Ally Network consists of 100 employees at all levels of the organisation and raises awareness of LGBTIQ issues.

In 2016–17 the ACCC/AER Reconciliation Action Plan 2016–18 (RAP) was approved by Reconciliation Australia. The RAP recognises the importance of the Aboriginal and Torres Strait Islander peoples as one of the ACCC's and AER's key stakeholders and outlines initiatives to raise awareness of ACCC and AER functions in Aboriginal and Torres Strait Islander communities, with a view to improving their consumer experience. The RAP also commits the ACCC to increasing the number of Aboriginal and Torres Strait Islander employees.

In 2016–17 we signed up to the Australian Public Service Commission's Indigenous Employment Services memorandum of understanding, which provides access to a variety of employment services and support networks for Indigenous employment. We employed six interns through the CareerTrackers Indigenous internship program and two interns through the Indigenous Australian Government Development Program. A candidate of the Australian Government Indigenous Graduate Recruitment Program was successfully inducted into the 2017 ACCC and AER Graduate Program. An ACCC employee completed a secondment with Jawun, a not-for-profit organisation that manages secondments from corporate and government partners to Indigenous organisations.

Gender diversity and flexibility have also been a focus for 2016–17. A significant number of our employees work under flexible work arrangements. Flexible work practices, including part-time, job sharing, and compressed work hours, enable our employees to balance their unique and changing needs during different life and career stages. In 2016–17 we reviewed and updated our policies, with a particular focus on improving our participation rates in flexible work practices.

**Table 4.6: Workplace diversity profile at 30 June 2017**

	Total number	Female	ATSI	CLDB	PWD
SES and ACCC/AER members	49	16		1	
APS1	15	11	5		
APS2	2	1			
APS3	32	21	2	7	2
APS4	80	53	2	16	2
APS5	148	88	2	33	3
APS6	188	110	2	47	6
EL1	191	96	1	22	4
EL2	166	80	2	16	1
GRAD	27	14	2	4	5
<b>Totals</b>	<b>898</b>	<b>490</b>	<b>18</b>	<b>146</b>	<b>23</b>
Proportion of the total (%)		54.6%	2.0%	16.3%	2.6%

ATSI = people from Aboriginal or Torres Strait Islander backgrounds; CLDB = 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. All the classifications are self-identified.

## Disability employment

The ACCC/AER continued its commitment to the National Disability Strategy 2010-2020, which sets out a 10-year national policy framework to improve the lives of people with a disability, promote participation and create a more inclusive society. Our 2017 graduate cohort includes four graduates who were selected through the RecruitAbility scheme, an initiative of the Australian Public Service Commission that aims to attract and develop applicants with a disability.

In 2016-17 we engaged one intern through the Stepping Into disability program, a paid internship scheme operated by the Australian Network on Disability, which finds placements for university students with a disability. One employee was recruited through Disability Employment Services, which helps people with a disability find employment.

## Disability reporting

Since 1994, Commonwealth non-corporate entities have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007-08, reporting on the employer role was transferred to the Australian Public Service Commission's State of the Service Report and the APS Statistical Bulletin. These reports are available at [www.apsc.gov.au](http://www.apsc.gov.au). From 2010-11, entities have no longer been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by the National Disability Strategy 2010-2020, which sets out a 10-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high-level two-yearly report will track progress against each of the six outcome areas of

the strategy and present a picture of how people with disability are faring. The first of these reports was published in late 2014, and can be found at [www.dss.gov.au](http://www.dss.gov.au).

## Enterprise agreement

The ACCC/AER negotiated a revised enterprise agreement and a majority of employees who voted in the ballot agreed to accept it. The ACCC Enterprise Agreement 2016–2019 came into effect in December 2016.

## Employment agreements

### Senior executive remuneration

Remuneration for ACCC and AER members is determined by the Remuneration Tribunal in accordance with:

- the *Remuneration Tribunal Act 1973*
- Determination 2016/19, Remuneration and Allowances for Holders of Full-Time Public Office
- Determination 2015/20, Remuneration and Allowances for Holders of Part-Time Public Office.

Tables 4.7 and 4.8 set out the nature and amount of remuneration for ACCC and AER members.

**Table 4.7: Remuneration of members of the ACCC at 30 June 2017**

Full-time	Position	Base salary	Total remuneration of office
	Chair	\$511 800	\$731 140
	Deputy Chair	\$383 860	\$548 360
	Member	\$329 020	\$470 020
Part-time	Position	Base salary	Total remuneration of office
	Associate Member	\$251 600*	\$290 346

\* Associate members who are state or territory members of the AER and other associate members who may serve on an ad hoc basis are paid a daily fee if and when they attend Commission meetings.

**Table 4.8: Remuneration of members of the AER at 30 June 2017**

Full-time	Position	Base salary	Total remuneration of office
	AER Chair	\$365 570	\$522 240
	AER Board Member	\$285 930	\$391 680

## Determinations

SES employees are subject to individual determinations covering remuneration, leave and a range of other employment conditions. Determinations are made in accordance with the *Public Service Act 1999*.

## Common law contracts and Australian Workplace Agreements

No employees are covered by common law contracts or Australian Workplace Agreements.

**Table 4.9: Number of employees covered by each industrial instrument at 30 June 2017**

	<b>ACCC Enterprise Agreement 2011-2014</b>	<b>Individual flexibility agreements</b>	<b>Section 24 determinations</b>
APS1	15	0	0
APS2	2	0	0
APS3	32	0	0
APS4	80	0	0
APS5	148	2	0
APS6	188	6	0
EL1	191	14	0
EL2	165	37	1
SES B1	0	0	30
SES B2	0	0	9
SES B3	0	0	1
GRAD	27	0	0

**Table 4.10: Salary ranges for APS employees at 30 June 2017**

	<b>ACCC Enterprise Agreement 2011-2014</b>	<b>Section 24</b>
APS1	\$46 175-\$51 037	-
APS2	\$52 255-\$57 945	-
APS3	\$59 516-\$64 241	-
APS4	\$66 340-\$72 028	-
APS5	\$73 992-\$78 457	-
APS6	\$81 903-\$91 799	-
EL1	\$101 761-\$112 619	-
EL2	\$117 975-\$138 256	\$159 144
SES 1	-	\$180 327-\$197 760
SES 2	-	\$240 545-\$262 650
SES 3	-	\$323 520
L1	\$64 241-\$126 588	-
L2	\$133 776-\$141 794	-
GRAD	\$57 945-\$66 340	-

**Table 4.11: Performance pay**

	<b>SES B1</b>	<b>SES B2</b>	<b>SES B3*</b>	<b>ACCC*</b>
Number who received bonus	28	9	1	38
Total bonus	\$369 393	\$198 180	-	\$567 573
Average bonus	\$13 193	\$22 020	-	\$15 340
Range	\$2 931-\$16 085	\$18 963-\$26 717	-	\$2 931-\$26 717

As at 30 June 2017 the ACCC had only one Senior Executive Service Band 3 employee; therefore these details have been omitted to protect privacy.

# Enhanced business systems and online presence

In August 2016, we implemented a workflow and case management solution for our product safety and recalls areas to complete their core triage, assessment, and recalls business processes from the receipt of a matter through to resolution. This coincided with the launch of a new and improved Product Safety Australia website. The new site combines the old productsafety.gov.au and recalls.gov.au websites into a single entry point to national, state and territory product safety and recalls information. Other features of the website include:

- it is organised by product category so users can quickly find the safety information, recalls, bans and standards for the products they are interested in
- it explains to users what they should do if they have a recalled product. Consumers can contact the regulator responsible for the recall directly from the new site
- users can report an unsafe product to the ACCC by completing a simple web form
- users can sign up for email alerts on the latest recalled products, including the ability to choose the products they want alerts for (such as a specific make of car)
- suppliers can provide required reports to the ACCC and other regulators directly from the site.

Throughout the year the work on our workflow and case management solution has focused on our merger and authorisation business area. Initially this will provide the capability to assess and manage applications for authorisation and notifications, and administer the ACCC's functions in assessing certification trade marks and export agreements. Also in progress is work to update the ACCC's and AER's public registers available on the ACCC web site.

## Workplace flexibility

In 2016-17 we prepared for the September 2017 move of our Melbourne office. As well as meeting our whole-of-government requirements, the new premises will be a more collaborative and flexible work space tailored specifically for the ACCC and AER. It will also be flexible and adaptable over the lease period and will be supported by mobile technology such as laptop devices, better collaboration tools and document management capability, to support a more mobile workforce both in the office and away from the office. The work done in designing our new Melbourne office will form a template as our other office leases come up for renewal.

## Knowledge management

The ACCC continues to implement its knowledge management strategy as an important step towards more effectively using and growing the expertise of the organisation. In 2016-17 a number of communities of practice were established. These communities are centred on high-interest knowledge topics and provide a ready means for staff to share and grow their expertise. For the coming year, with the organisation taking on new areas of responsibility, the primary focus of knowledge management will be on staff development initiatives. These initiatives will improve the induction of new staff, and capture existing knowledge as staff move to different roles within the organisation.

An important foundation of knowledge management is the documents and records that store much of our knowledge. In 2016–17 the ACCC commenced a comprehensive analysis of its document and records management system. We undertook a market assessment to arrive at a shortlist of prospective solutions and are now working with that shortlist to arrive at our preferred solution. It is anticipated this will be in place towards the end of 2017–18.

## Supporting the National Competition Council

We entered into a memorandum of understanding (MOU) with the National Competition Council (NCC) in 2014. Under the MOU we provide secretariat services to the NCC, including advice and support in relation to NCC recommendations, decisions and reports, and administrative services. The MOU is available on the ACCC website.

Details on the NCC’s activities during 2016–17 are in its own annual report.

The 2017–18 government budget announced two additional functions for the NCC:

- support the implementation of the Intergovernmental Agreement on Competition and Productivity-enhancing Reforms, announced by COAG on 9 December 2016
- assist with the implementation and assessment of state and territory performance under the new National Housing and Homelessness Agreement.

## Improving specialist services

### Legal and economic services

Our Legal and Economic Division provides specialist legal and economic services. The division comprises two groups: the Legal Group and the Economic Group. The Legal and Economic Division is also the division responsible for the retail electricity inquiry.

The Legal Group consists of general and special counsel, and four core units that provide in-house legal services to specific business areas. It assists the ACCC and AER to make legally informed decisions and manage litigation, including by facilitating, as an informed purchaser, external litigation services. It also assists in managing the agency’s corporate legal obligations.

The Economic Group consists of the Chief Economist and two core units that provide in-house strategic economic advice and related services to specific business areas. It aims to facilitate the consistent use of economic principles in decision-making, increase the quality of economic analysis and contribute to economics-related learning and development initiatives. It is committed to strengthening the quality of economic analysis in the organisation and to maximising the influence of economic ideas.

In 2016–17 the Legal and Economic Division also established a Strategic Data Analysis Unit, which provides expert quantitative analytical support across the agency.

The division’s objectives are directed at increasing ACCC and AER effectiveness, and providing expert advisory services and assistance to help the agency achieve its strategies and deliverables. The division aims to provide its legal and economic services efficiently, and assists the agency in obtaining value for money from its external legal and economic service providers. It also invests in projects to improve organisational effectiveness and improve the



capability of the agency in making high-quality decisions, through its contributions to legal and economic discussion, guidance and training.

During 2016–17, there were a number of initiatives to improve the effectiveness of the Legal and Economic Division and enhance organisational capabilities. Activities included:

- developing and providing an internal legal and economic training program to improve capability to investigate and litigate competition matters
- instigating a Strategic Data Analysis Unit to provide quantitative analysis advice, complementing the work of the Economic Group in particular
- coordinating a network of quantitative data analysts from across the agency, to share skills and initiate targeted training to improve analytical capabilities
- contributing to Commonwealth legal coordination initiatives, including through participation in the Commonwealth's General Counsel Working Group and the Australian Government Legal Network and through providing submissions to the Attorney-General's Department Secretary's Review of Commonwealth Legal Services
- ensuring that processes focus on value for money from external legal services providers
- coordinating processes for evaluating internal and external legal work
- developing and implementing training on strategic use of litigation technology to improve the efficiency of investigations and litigation where there are high numbers of documents
- upgrades to our case document review and electronic discovery preparation software, including innovative litigation technology tools to assist in the strategic management of cases and to make investigation and litigation exercises much more efficient, where they entail many thousands of documents
- launching a comprehensive suite of e-learning videos on litigation technology tools covering a range of topics which make it easy for staff to get up to speed on a specific aspect of the technology very quickly at any time from their own desktop
- renewing the Legal Document Management Services panel following an open request for tender process. The panel provides document processing services, primarily the processing of electronic and hard copy material for import into our software and gives us access to competitive providers who are highly regarded in the industry, along with updated requirements which better suit our needs
- coordinating the 14th annual Competition Law and Economics Workshop in conjunction with the University of South Australia School of Law
- coordinating the annual ACCC/AER Regulatory Conference, which more than 400 delegates attended
- organising the Utility Regulator's Forum, held twice yearly, which involves all state and Commonwealth economic regulators, as well as the New Zealand Commerce Commission
- hosting a Women in Economics Network event in Melbourne.

## Legal services

The Legal Group consists of four core units:

- the Competition and Consumer Law Unit, which provides legal services to our Enforcement and Consumer Division and Small Business and Product Safety Division
- the Merger and Authorisation Law Unit, which provides legal services to our Merger and Authorisation Review Division
- the Regulatory Law Unit, which provides legal services to our Infrastructure Regulation Division and the AER

- the Corporate Law Unit, which deals with corporate in-house issues, strategic development initiatives, legal technology services and freedom of information requests.

General and special counsel provide additional high-level independent strategic advice on complex major issues across all areas of the ACCC and AER.

The roles of in-house lawyers include providing legal advice, specialist drafting of legal documents and helping to prepare and manage litigation. Our in-house lawyers also manage external lawyers who are engaged where additional resources are needed, or as required under the Legal Services Directions. In-house lawyers are located in most ACCC offices to ensure that specialist legal services are available to staff at all times.

## Legal technology services

The Legal Technology Services Unit within the Legal and Economic Division specialises in the technological aspects of case management, including the electronic management and analysis of evidence and case material and its production to the court and third parties. The unit is also responsible for national coordination of the ACCC's evidence management and managing the Legal Document Management Services panel.

### Economic advice

The Economic Group comprises two units:

- the Regulatory Economic Unit, which provides economic services to our Infrastructure Regulation Division and the AER
- the Competition and Consumer Economic Unit, which provides economic services to our Enforcement and Consumer Division, Small Business and Product Safety Division and Merger and Authorisation Review Division

Our Chief Economist provides additional high-level independent strategic economic advice on complex major issues across all areas of the ACCC and AER.

Economic Group specialists provide economic advice and research support on strategic projects, and develop and educate staff to improve understanding of the application of economic techniques to competition and regulatory issues.

### Data analysis

The Strategic Data Analysis Unit provides quantitative advice and support across the ACCC and AER. Strategic data analysts work on key inquiries and matters where the use of data and analysis is critical.

# Effective communication

We focus significantly on communicating with all our audiences and stakeholders and have a significant media and online presence. In 2016–17 our websites had a combined total of 26 052 415 page views.

## Our approach to engagement

The ACCC/AER is applying a strategic approach to tailoring messages and using communication channels to increase our connection with:

- consumers and groups representing various interests, including vulnerable and disadvantaged consumers
- small to medium businesses and the associations that represent them
- journalists who can help to spread compliance and consumer rights messages and publicise successful legal action that will deter illegal conduct
- infrastructure industries and regulated industries
- our state and territory counterparts and other relevant regulators
- legal and business support professionals
- international forums and groups.

Our aim is to inform and educate so that consumers and small businesses feel confident to exercise their rights and businesses have the knowledge and skills to comply with the law. We also give information to large businesses, their suppliers and consumers so they can understand the ACCC's and AER's roles in infrastructure and the measures we take to ensure competition and fair trading.

The channels the ACCC and AER use to engage the target groups include:

- the ACCC website, [www.accc.gov.au](http://www.accc.gov.au), and associated websites dedicated to product safety, product recalls, scams, the Australian Energy Regulator, energy price comparison and freedom of information
- mainstream and social media
- the ACCC Infocentre telephone lines: a general enquiries and complaints line and specific numbers for:
  - Indigenous consumers
  - small businesses
  - unit pricing
  - energy price comparison
- education guides, DVDs, online learning modules, webinars and interactive apps
- information translated into languages other than English
- face-to-face education outreach for small businesses and compliance
- speeches by the Chairperson, Commissioners and AER Board members
- guides and publications on a wide range of topics.

## Communicating our messages

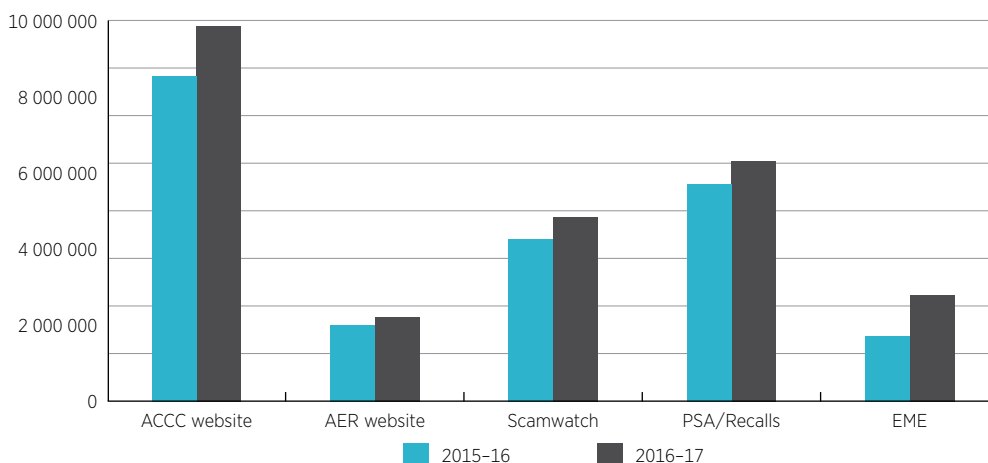
The Strategic Communications Branch develops strategies and works with the operational areas of the ACCC and AER to inform consumers, business, media and government about our role and work. As well as working daily on media issues, the branch liaises with business areas to ensure that our information is clear and easy to understand, targeted to audience needs and readily accessible.

The Strategic Communications Branch is leading the change to a 'digital first' approach to communication by using the ACCC and AER websites as the default channels.

### Online communications

#### ACCC and AER websites

Figure 4.4: Website page view growth between 2015-16 and 2016-17



#### Social media

The Strategic Communications Branch works with the operational areas of the ACCC and AER to provide social media governance and guidance. It also manages social media accounts on Facebook, YouTube, Twitter and LinkedIn.

Two of the largest referrers of traffic to the ACCC website are Facebook and Twitter. This demonstrates the effectiveness of our cross-platform communication strategies.

We have three Facebook pages:

- ACCC Consumer Rights—building awareness of consumer issues and responding to simple enquiries and comments. It had 55 825 'likes', adding 18 953 in 2016-17. We posted to the page 120 times, potentially reaching 12 920 130 users.
- ACCC Product Safety—sharing product safety news, tips and recalls. It had 38 906 'likes', adding 8473 in 2016-17. There were 666 posts to the page, potentially reaching 9 658 271 users.
- ACCC—Your Rights Mob Tiwi Islands—delivering targeted consumer protection messages for Indigenous Australians in the Tiwi Islands. It had 4754 'likes', adding 666 in 2016-17. There were 90 posts to the page, potentially reaching 353 546 users.

We maintain three Twitter accounts:

- @acccgovau—promoting ACCC news, activities and tips and responding to queries. It had 14 075 followers, adding 3915 in 2016–17. There were 471 tweets from the account, seen 1 155 235 times
- @ACCCprodsafety—sharing recalls and product safety news and tips. It had 7496 followers, adding 1016 in 2016–17. There were 660 tweets from the account, seen 1 045 912 times
- @Scamwatch\_gov—alerting social media users to new scams and providing tips on how to avoid being scammed. It had 14 046 followers, adding 2834 in 2016–17. There were 147 tweets from the account, seen 1 577 550 times.
- The ACCC and Product Safety YouTube channels host videos on a range of topics for use on other social media sites and the ACCC website. Videos on the ACCC channel were viewed 230 369 times, adding 56 743 views in 2016–17. Videos on the Product Safety channel were viewed 231 558 times, adding 2618 views in 2016–17.

Our LinkedIn company page engages small businesses and other professionals on a range of consumer and competition issues, promotes campaigns, events and consultations, and positions us as an employer of choice. It has 6415 followers, adding 1411 in 2016–17. There were 50 posts to the account, potentially reaching 707 080 users.

### ***News releases and speeches***

In 2016–17 the ACCC issued 277 news releases and the AER issued 44.

The Chairperson and Commissioners/Board members undertook more than 100 public speaking engagements. Through the speeches program, we engage with many stakeholder groups, from local communities, small business associations and industry and professional groups through to the boards of multinational corporations.

### ***Reports and guides***

The ACCC and AER are required to produce a number of reports to parliament and ministers. In addition we prepare specific, more detailed guides for consumers, businesses and industries on a range of competition and consumer issues. We continue to favour digital production and distribution over hard copy for these reports and guides, but provide hard copies for disadvantaged and hard to reach audiences.

In 2016–17:

- our online publications received 756 743 page views, up from 648 507 in 2015–16.
- our *Little black book of scams*—a guide to detecting and avoiding scams—continued to be popular, especially with the elderly and vulnerable audiences. We distributed 137 085 copies of the publication during the period, many through police stations, aged care facilities, and consumer affairs and fair trading organisations.

## Transforming corporate support

### **Finance and corporate services**

The Finance Branch is responsible for all ACCC financial matters and asset management. Our Corporate Operations and Property Management teams maintain our offices and plan and coordinate moves and office fit-outs.

## Assets management

Assets managed by the ACCC include:

- buildings, including fit-outs and leasehold improvements
- infrastructure, plant and equipment, including office equipment, furniture and fittings and computer equipment
- intangibles, including computer software.

A stocktake and an independent fair value assessment of our buildings, infrastructure, plant and equipment was undertaken to confirm the validity and value of our asset portfolio.

## Purchasing

The ACCC supports the participation of small and medium-sized enterprises (SMEs) in the Australian Government procurement market through:

- the Small Business Engagement Principles (outlined in the government's Industry Innovation and Competitiveness Agenda), such as communicating in clear, simple language and presenting information in an accessible format
- the use of the Commonwealth Contracting Suite for low-risk procurements valued under \$200 000
- electronic systems or other processes used to facilitate on-time payment performance, including the use of payment cards.

We use Australian Government resources and spend public money in accordance with the requirements of the PGPA Act and the Commonwealth Procurement Rules.

Responsibility for procurement lies with the financial delegates in each business unit, who have support from a central procurement team. The team advises on risk management, probity, specification development and contract management. Low-risk procurements (valued at less than \$80 000) are managed by business units. Procurements of \$80 000 or more and whole-of-government and panel arrangements are managed by both the business unit and the central procurement team, ensuring that we comply with the Commonwealth Procurement Rules.

## Tenders

We advertise all tender opportunities through the AusTender website, [www.tenders.gov.au](http://www.tenders.gov.au). All tenders undertaken in 2016-17 were carried out in accordance with the Commonwealth Procurement Rules. Information on contracts and consultancies awarded by us is also available on the AusTender website.

Information on procurements expected to be undertaken in the coming year is included in the ACCC's annual procurement plan. This plan is updated as and when circumstances change.

## Consultancy contracts

During 2016-17, the ACCC/AER entered into 62 new consultancy contracts involving actual expenditure of \$4.9 million. In addition, there were 10 ongoing consultancy contracts involving actual expenditure of \$0.4 million.

The ACCC and AER engage consultants where we lack specialist expertise or when independent research, review or assessment is required. Consultants typically investigate or diagnose a defined issue or problem; carry out reviews or evaluations; or provide independent advice, information or creative solutions to assist ACCC or AER decision making.

Before engaging consultants, we take into account the skills and resources that are required for the task, the skills that are available internally and the cost-effectiveness of engaging external expertise.

The decision to engage a consultant is made in accordance with the PGPA Act and related regulations, including the Commonwealth Procurement Rules. In 2016–17, we engaged 62 consultants through open tender or limited tender (including through panel arrangements).

**Table 4.12: Consultancy trend data**

	2014–15	2015–16	2016–17
Number of new consultancies	62	56	62
Expenditure on new consultancies	\$2.7 million	\$2.9 million	\$4.9 million
Number of ongoing consultancies	10	13	10
Expenditure on ongoing consultancies	\$2.5 million	\$1.2 million	\$0.4 million

### Exempt contracts

The ACCC had no exempt contracts for the financial year.

## Grant programs

Neither the ACCC nor the AER administers grant programs.

## Financial performance

Our financial statements, both administered and departmental, are in part 5 of this report. A financial reporting summary, including information about revenue and expenditure, an operating statement and a staffing summary, appears in part 1.

Our outcome summary in appendix 1 contains a resource summary.

## Developments that have affected or may affect our operations or financial results

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

# Part 5

## Financial statements







## INDEPENDENT AUDITOR'S REPORT

To the Treasurer

### Opinion

In my opinion, the financial statements of the Australian Competition and Consumer Commission for the year ended 30 June 2017:

- (a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Australian Competition and Consumer Commission as at 30 June 2017 and its financial performance and cash flows for the year then ended.

The financial statements of the Australian Competition and Consumer Commission, which I have audited, comprise the following statements as at 30 June 2017 and for the year then ended:

- Statement by the Accountable Authority and Chief Financial Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement;
- Administered Schedule of Comprehensive Income;
- Administered Schedule of Assets and Liabilities;
- Administered Reconciliation Schedule;
- Administered Cash Flow Statement; and
- Notes to the financial statements, comprising a Summary of Significant Accounting Policies and other explanatory information.

### Basis for Opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Australian Competition and Consumer Commission in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* to the extent that they are not in conflict with the *Auditor-General Act 1997* (the Code). I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### Accountable Authority's Responsibility for the Financial Statements

As the Accountable Authority of the Australian Competition and Consumer Commission, the Chairman is responsible under the *Public Governance, Performance and Accountability Act 2013* for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under that Act. The Chairman is also responsible for such internal control as the Chairman determines is necessary to enable the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Chairman is responsible for assessing the Australian Competition and Consumer Commission's ability to continue as a going concern, taking into account whether the entity's operations will cease as a result of an administrative restructure or for any other reason. The Chairman is also responsible for disclosing matters related to going concern as applicable and using the going concern basis of accounting unless the assessment indicates that it is not appropriate.

## Auditor's Responsibilities for the Audit of the Financial Statements

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office



Kristian Gage  
Executive Director

Delegate of the Auditor-General  
Canberra

24 August 2017

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### Overview

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**AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**  
**STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER**

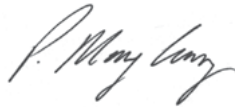
In our opinion, the attached financial statements for the year ended 30 June 2017 comply with subsection 42(2) of the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)*, and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the non-corporate Commonwealth entity will be able to pay its debts as and when they fall due.



Rod Sims  
Chairman and Accountable Authority

23 August 2017



Peter Maybury  
Chief Financial Officer

23 August 2017

# AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

## Statement of Comprehensive Income

for the period ended 30 June 2017

	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
<b>NET COST OF SERVICES</b>				
<b>Expenses</b>				
Employee benefits	1.1A	102,979	103,731	97,749
Suppliers	1.1B	67,440	68,287	78,330
Depreciation and amortisation	3.2A	5,372	5,553	5,600
Finance costs	1.1C	45	59	78
Write-down and impairment of assets	1.1D	14	22	-
Settlement of litigation		8,955	4,296	-
<b>Total expenses</b>		<b>184,805</b>	<b>181,948</b>	<b>181,757</b>
<b>Own-Source Income</b>				
<b>Own-source revenue</b>				
Sale of goods and rendering of services	1.2A	1,208	1,145	3,698
Rental income	1.2B	1,002	1,003	-
Other revenue	1.2C	1,968	3,396	91
<b>Total own-source revenue</b>		<b>4,178</b>	<b>5,544</b>	<b>3,789</b>
<b>Net (cost of) services</b>		<b>(180,627)</b>	<b>(176,404)</b>	<b>(177,968)</b>
Revenue from Government	1.2D	173,359	165,346	172,368
<b>Surplus/(Deficit) attributable to the Australian Government</b>		<b>(7,268)</b>	<b>(11,058)</b>	<b>(5,600)</b>
<b>OTHER COMPREHENSIVE INCOME</b>				
<b>Items not subject to subsequent reclassification to net cost of services</b>				
Changes in asset revaluation surplus		167	(48)	-
<b>Total other comprehensive income</b>		<b>167</b>	<b>(48)</b>	<b>-</b>
<b>Total comprehensive income/(loss) attributable to the Australian Government</b>		<b>(7,101)</b>	<b>(11,106)</b>	<b>(5,600)</b>

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

## AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

### Statement of Financial Position

as at 30 June 2017

	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
<b>ASSETS</b>				
<b>Financial assets</b>				
Cash and cash equivalents	3.1A	1,616	1,289	2,000
Trade and other receivables	3.1B	30,929	33,781	22,768
<b>Total financial assets</b>		<b>32,545</b>	35,070	24,768
<b>Non-financial assets</b>				
Leasehold improvements	3.2A	9,433	10,502	7,786
Plant and equipment	3.2A	3,109	4,017	4,623
Computer software	3.2A	3,268	3,403	3,234
Other non-financial assets	3.2B	2,572	1,511	967
<b>Total non-financial assets</b>		<b>18,382</b>	19,433	16,610
<b>Total assets</b>		<b>50,927</b>	54,503	41,378
<b>LIABILITIES</b>				
<b>Payables</b>				
Suppliers	3.3A	8,128	7,340	8,131
Other payables	3.3B	11,241	11,783	9,957
<b>Total payables</b>		<b>19,369</b>	19,123	18,088
<b>Provisions</b>				
Employee provisions	6.1A	30,129	30,194	26,792
Other provisions	3.4A	9,919	9,918	5,274
<b>Total provisions</b>		<b>40,048</b>	40,112	32,066
<b>Total liabilities</b>		<b>59,417</b>	59,235	50,154
<b>Net assets</b>		<b>(8,490)</b>	(4,732)	(8,776)
<b>EQUITY</b>				
Contributed equity		75,011	71,624	75,011
Reserves		4,085	3,918	3,967
Retained surplus/(Accumulated deficit)		(87,586)	(80,273)	(87,754)
<b>Total equity</b>		<b>(8,490)</b>	(4,731)	(8,776)

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

## AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

### Statement of Changes in Equity

for the period ended 30 June 2017

	2017 \$'000	2016 \$'000	Original Budget \$'000
<b>CONTRIBUTED EQUITY</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	71,624	68,331	71,624
<b>Adjusted opening balance</b>	<b>71,624</b>	<b>68,331</b>	<b>71,624</b>
<b>Transactions with owners</b>			
<b>Contributions by owners</b>			
Equity injection - appropriations	1,400	1,300	1,400
Departmental capital budget	1,987	1,993	1,987
<b>Total transactions with owners</b>	<b>3,387</b>	<b>3,293</b>	<b>3,387</b>
<b>Closing balance as at 30 June</b>	<b>75,011</b>	<b>71,624</b>	<b>75,011</b>
<b>RETAINED EARNINGS</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	(80,273)	(69,215)	(82,154)
Adjustment for prior period	(45)	-	-
<b>Adjusted opening balance</b>	<b>(80,318)</b>	<b>(69,215)</b>	<b>(82,154)</b>
<b>Comprehensive income</b>			
Surplus/(Deficit) for the period	(7,268)	(11,058)	(5,600)
<b>Total comprehensive income</b>	<b>(7,268)</b>	<b>(11,058)</b>	<b>(5,600)</b>
<b>Closing balance as at 30 June</b>	<b>(87,586)</b>	<b>(80,273)</b>	<b>(87,754)</b>
<b>ASSET REVALUATION RESERVE</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	3,918	3,966	3,967
<b>Adjusted opening balance</b>	<b>3,918</b>	<b>3,966</b>	<b>3,967</b>
<b>Comprehensive income</b>			
Other comprehensive income	167	(48)	-
<b>Total comprehensive income</b>	<b>167</b>	<b>(48)</b>	<b>-</b>
<b>Closing balance as at 30 June</b>	<b>4,085</b>	<b>3,918</b>	<b>3,967</b>



## AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

### Statement of Changes in Equity

for the period ended 30 June 2017

<b>(cont)</b>	<b>2017</b>	2016	Original Budget
	<b>\$'000</b>	\$'000	\$'000
<b>TOTAL EQUITY</b>			
<b>Opening balance</b>			
Balance carried forward from previous period	<b>(4,731)</b>	3,082	(6,563)
Adjustment for prior period	<b>(45)</b>	-	-
<b>Adjusted opening balance</b>	<b>(4,776)</b>	3,082	(6,563)
<b>Comprehensive income</b>			
Surplus/(Deficit) for the period	<b>(7,268)</b>	(11,058)	(5,600)
Other comprehensive income	<b>167</b>	(48)	-
<b>Total comprehensive income</b>	<b>(7,101)</b>	(11,106)	(5,600)
<b>Transactions with owners</b>			
<b>Contributions by owners</b>			
Equity injection - appropriations	<b>1,400</b>	1,300	1,400
Departmental capital budget	<b>1,987</b>	1,993	1,987
<b>Total transactions with owners</b>	<b>3,387</b>	3,293	3,387
<b>Closing balance as at 30 June</b>	<b>(8,490)</b>	(4,731)	(8,776)

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

#### **Accounting Policy**

##### Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

##### Restructuring of Administrative Arrangements

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

## AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

### Cash Flow Statement

for the period ended 30 June 2017

	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
<b>OPERATING ACTIVITIES</b>				
<b>Cash received</b>				
Appropriations		175,547	173,988	178,565
Sale of goods and rendering of services		1,516	1,527	3,947
Net GST received		6,238	6,674	6,608
Other		2,341	2,727	-
<b>Total cash received</b>		<b>185,642</b>	<b>184,916</b>	<b>189,120</b>
<b>Cash used</b>				
Employees		102,473	102,536	101,275
Suppliers		76,571	76,964	84,398
Section 74 receipts transferred to OPA		4,871	4,718	3,947
Settlement of litigation		8,418	350	-
<b>Total cash used</b>		<b>192,333</b>	<b>184,568</b>	<b>189,620</b>
<b>Net cash from/(used by) operating activities</b>		<b>(6,691)</b>	<b>348</b>	<b>(500)</b>
<b>INVESTING ACTIVITIES</b>				
<b>Cash used</b>				
Purchase of non-financial assets		2,387	2,135	2,887
<b>Total cash used</b>		<b>2,387</b>	<b>2,135</b>	<b>2,887</b>
<b>Net cash from/(used by) investing activities</b>		<b>(2,387)</b>	<b>(2,135)</b>	<b>(2,887)</b>
<b>FINANCING ACTIVITIES</b>				
<b>Cash received</b>				
Contributed equity		9,405	1,993	3,387
<b>Total cash received</b>		<b>9,405</b>	<b>1,993</b>	<b>3,387</b>
<b>Net cash from/(used by) financing activities</b>		<b>9,405</b>	<b>1,993</b>	<b>3,387</b>
<b>Net increase/(decrease) in cash held</b>		<b>327</b>	<b>206</b>	<b>-</b>
Cash and cash equivalents at the beginning of the reporting period		1,289	1,083	2,000
<b>Cash and cash equivalents at the end of the reporting period</b>	3.1A	<b>1,616</b>	<b>1,289</b>	<b>2,000</b>

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

## AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

### Administered Schedule of Comprehensive Income

for the period ended 30 June 2017

	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
<b>NET COST OF SERVICES</b>				
<b>Expenses</b>				
Impairment and repayment of fees and fines	2.1A	7,364	5,632	-
<b>Total expenses</b>		<b>7,364</b>	<b>5,632</b>	<b>-</b>
<b>Income</b>				
<b>Revenue</b>				
<b>Non-taxation revenue</b>				
Fees and fines	2.2A	46,699	83,861	40,000
<b>Total non-taxation revenue</b>		<b>46,699</b>	<b>83,861</b>	<b>40,000</b>
<b>Total income</b>		<b>46,699</b>	<b>83,861</b>	<b>40,000</b>
<b>Net (cost of)/contribution by services</b>		<b>39,335</b>	<b>78,229</b>	<b>40,000</b>
<b>Surplus/(Deficit)</b>		<b>39,335</b>	<b>78,229</b>	<b>40,000</b>
<b>Total comprehensive income/(loss)</b>		<b>39,335</b>	<b>78,229</b>	<b>40,000</b>

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

# AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

## Administered Schedule of Assets and Liabilities

as at 30 June 2017

	Notes	2017 \$'000	2016 \$'000	Original Budget \$'000
<b>ASSETS</b>				
<b>Financial assets</b>				
Cash and cash equivalents	4.1A	1	1	-
Trade and other receivables	4.1B	6,848	7,683	5,252
<b>Total financial assets</b>		<b>6,849</b>	<b>7,684</b>	<b>5,252</b>
<b>Total assets administered on behalf of Government</b>		<b>6,849</b>	<b>7,684</b>	<b>5,252</b>
<b>Net assets/(liabilities)</b>		<b>6,849</b>	<b>7,684</b>	<b>5,252</b>

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

## AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

### Administered Reconciliation Schedule

for the period ended 30 June 2017

	2017 \$'000	2016 \$'000
<b>Opening assets less liabilities as at 1 July</b>	<b>7,684</b>	(5,748)
<b>Adjusted opening assets less liabilities</b>	<b>7,684</b>	(5,748)
<b>Net (cost of)/contribution by services</b>		
Income	<b>46,699</b>	83,861
Expenses	<b>(7,364)</b>	(5,632)
<b>Transfers (to)/from the Australian Government</b>		
Appropriation transfers to Official Public Account		
Transfers to Official Public Account	<b>(40,169)</b>	(64,798)
<b>Closing assets less liabilities as at 30 June</b>	<b>6,849</b>	7,684

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

#### **Accounting Policy**

##### ***Administered Cash Transfers to and from the Official Public Account***

Revenue collected by the Commission for use by the Government rather than the Commission is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Commission on behalf of the Government and reported as such in the schedule of administered cash flows and in the administered reconciliation schedule.

## AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

### Administered Cash Flow Statement

for the period ended 30 June 2017

	Notes	2017 \$'000	2016 \$'000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Fines and costs		39,944	75,611
Other fees		230	233
<b>Total cash received</b>		<b>40,174</b>	<b>75,844</b>
<b>Cash used</b>			
Refund of fees and fines		5	11,045
<b>Total cash used</b>		<b>5</b>	<b>11,045</b>
<b>Net cash from/(used by) operating activities</b>		<b>40,169</b>	<b>64,799</b>
<b>Cash to Official Public Account</b>			
Appropriations		(40,169)	(64,798)
<b>Total cash to Official Public Account</b>		<b>(40,169)</b>	<b>(64,798)</b>
Cash and cash equivalents at the beginning of the reporting period		1	-
<b>Cash and cash equivalents at the end of the reporting period</b>	4.1A	<b>1</b>	<b>1</b>

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

## OVERVIEW

The Commission is an Australian Government controlled not-for-profit entity.

### The Basis of Preparation

The financial statements are general purpose financial statements and are required by section 42 of the *Public Governance, Performance and Accountability Act 2013*.

The financial statements have been prepared in accordance with:

- a) *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015* (FRR) for reporting periods ending on or after 1 July 2015; and
- b) Australian Accounting Standards and Interpretations - Reduced Disclosure Requirements issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The financial statements are presented in Australian dollars.

### Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in these statements the Commission has made assumptions or estimates in the following areas that have the most significant impact on the amounts recorded in the financial statements:

- the fair value of leasehold improvements and property, plant and equipment is assessed at market or depreciated replacement cost as determined by an independent valuer and is subject to ongoing assessment by the valuer and management between formal valuations.
- leave provisions involve assumptions based on the expected tenure of existing staff, patterns of leave claims and payout, future salary movements and future discount rates. The Commission has used the Australian Government shorthand method to estimate the present value of long service leave liabilities.

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next reporting period.

### New Accounting Standards

Prior to the signing of the statements by the Accountable Authority and Chief Financial Officer, no new, revised or amending standards or interpretations were issued that would have a material effect on the Commission's financial statements in the current reporting period.

### Taxation

The Commission is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

## Related Parties

The Commission is an Australian Government controlled entity. Related parties to this entity are Key Management Personnel including the Portfolio Minister and Executive, and other Australian Government entities.

Significant transactions with related parties can include:

- the payments of grants or loans;
- purchases of goods and services;
- asset purchases, sales transfers or leases;
- debts forgiven; and
- guarantees.

Giving consideration to relationships with related entities, and transactions entered into during the reporting period by the Commission, it has been determined that there are no related party transactions to be separately disclosed.

## Regulatory Charging

Annual carrier licence charges are imposed under the *Telecommunications (Carrier Licence Charges) Act 1997* on participating telecommunication carriers under cost recovery arrangements to recover the costs incurred by the Commission, the Australian Communications and Media Authority (ACMA) and the Australian Government in regulating the telecommunications industry. ACMA undertakes the regulatory charging activity, recovering the Commission's costs on behalf of the Commonwealth. The Commission does not receive any monies direct from external parties. The departmental costs incurred by the Commission are met out of appropriation funding. The Commission's costs being recovered by ACMA in 2016-17 total \$13,641,023 (2016: \$15,106,662) refer to *Telecommunications (Carrier Licence Charges) Act 1997 Determination* under paragraph 15(1)(b) No.1 of 2017. This cost includes a component of depreciation expense \$0.5m (2016: \$0.6m) which is not appropriation funded.

The Determination enforcing the above activity is available at <https://www.legislation.gov.au/Details/F2017L00656>

The Cost Recovery Impact Statement for the above activity is available at <http://www.acma.gov.au/theACMA/About/Corporate/Accountability/cost-recovery-impact-statements-acma>.

## Reporting of Administered activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules and related notes.

Except where otherwise stated, administered items are accounted for on the same basis and using the same policies as for departmental items, including the application of Australian Accounting Standards.

## Events After the Reporting Period

### Departmental

Nil

### Administered

Nil



## 1.1 Expenses

	2017 \$'000	2016 \$'000
<b>1.1A: Employee benefits</b>		
Wages and salaries	79,366	76,825
Superannuation		
Defined contribution plans	7,828	7,231
Defined benefit plans	6,178	7,368
Leave and other entitlements	8,596	11,249
Separation and redundancies	522	352
Other employee benefits	489	706
<b>Total employee benefits</b>	<b>102,979</b>	<b>103,731</b>

### Accounting Policy

Accounting policies for employee related expenses is included in the People and relationships section.

<b>1.1B: Suppliers</b>		
<b>Goods and services supplied or rendered</b>		
Legal expenses	20,782	26,769
Consultants and contracted services	13,478	8,263
Information technology and communications	8,948	9,549
Property operating expenses	4,131	4,083
Travel expenses	3,994	3,418
Employee related expenses	1,772	1,136
Information management expenses	1,875	1,894
Other administration expenses	1,232	1,089
<b>Total goods and services supplied or rendered</b>	<b>56,212</b>	<b>56,201</b>
Goods supplied	1,621	1,568
Services rendered	54,591	54,632
<b>Total goods and services supplied or rendered</b>	<b>56,212</b>	<b>56,201</b>
<b>Other suppliers</b>		
Operating lease rentals		
Minimum lease payments	10,435	10,809
Workers compensation premiums	793	1,277
<b>Total other suppliers</b>	<b>11,228</b>	<b>12,086</b>
<b>Total suppliers</b>	<b>67,440</b>	<b>68,287</b>

## 1.1B: Suppliers (cont)

### Leasing commitments

The Commission in its capacity as lessee has operating lease commitments for office space and a small number of motor vehicles. Most lease payments for office space are subject to annual increases of between 3% and 5% per annum. Some leases are subject to minimum lease payment market reviews. The current terms of the office space leases will expire between 2017 and 2029 with many leases containing extension options. There are no purchase options available to the Commission.

	2017 \$'000	2016 \$'000
<b>Commitments for minimum lease payments in relation to non-cancellable operating leases are payable as follows:</b>		
Within 1 year	13,246	14,060
Between 1 to 5 years	46,333	39,908
More than 5 years	37,571	16,404
<b>Total operating lease commitments</b>	<b>97,150</b>	<b>70,372</b>

#### Accounting Policy

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets. The Commission has no finance leases.

### 1.1C: Finance costs

Unwinding of discount	45	59
<b>Total finance costs</b>	<b>45</b>	<b>59</b>

#### Accounting Policy

All borrowing costs are expensed as incurred.

### 1.1D: Write-down and impairment of assets

Impairment on financial instruments	-	4
Impairment of property, plant and equipment	14	18
<b>Total write-down and impairment of assets</b>	<b>14</b>	<b>22</b>

## 1.2 Own-Source Revenue

	2017 \$'000	2016 \$'000
<b>Own-Source Revenue</b>		
<b>1.2A: Sale of goods and rendering of services</b>		
Rendering of services	1,208	1,145
<b>Total sale of goods and rendering of services</b>	<b>1,208</b>	<b>1,145</b>

### Accounting Policy

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- a) the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- b) the probable economic benefits associated with the transaction will flow to the Commission.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

### 1.2B: Rental income

Operating lease		
Sublease rent	1,002	1,003
<b>Total rental income</b>	<b>1,002</b>	<b>1,003</b>

### Subleasing rental income commitments

The Commission in its capacity as lessee has two operating subleases for office space (2016:2). These subleases in Sydney and Canberra are effectively non-cancellable. Each lease has annual rental increases of between 3-4% and the lease terms will expire in three to five years.

### 1.2C: Other revenue

Project revenue	1,874	3,302
Resources received free of charge		
Remuneration of auditors	94	94
<b>Total other revenue</b>	<b>1,968</b>	<b>3,396</b>

### Accounting Policy

#### *Resources Received Free of Charge*

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition.

	2017 \$'000	2016 \$'000
<b>1.2D: Revenue from Government</b>		
Appropriations		
Departmental appropriations	<b>173,359</b>	165,346
<b>Total revenue from Government</b>	<b>173,359</b>	165,346

#### Accounting Policy

##### *Revenue from Government*

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

## Income and Expenses Administered on Behalf of the Government

This section analyses the activities that the Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

### 2.1 Administered - Expenses

	2017 \$'000	2016 \$'000
<b>2.1A: Impairment and repayment of fees and fines</b>		
Impairment of receivables	7,364	5,632
<b>Total impairment and repayment of fees and fines</b>	<b>7,364</b>	<b>5,632</b>

## Income and Expenses Administered on Behalf of the Government

This section analyses the activities that the Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

### 2.2 Administered - Income

	2017 \$'000	2016 \$'000
<b>Revenue</b>		
<b>Non-Taxation Revenue</b>		
<b>2.2A: Fees and fines</b>		
Fines and costs	46,469	83,629
Authorisation fees	161	132
Notifications	69	101
<b>Total fees and fines</b>	<b>46,699</b>	<b>83,861</b>

#### Accounting Policy

All administered revenues are revenues relating to ordinary activities performed by the Commission on behalf of the Australian Government. As such, administered appropriations are not revenues of the individual entity that oversees distribution or expenditure of the funds as directed.

Revenue is generated from fines and costs applied by the courts, or by agreement between the Commission and the defendant. It is recognised when awarded by the courts, or when agreement has been executed.

The court costs awarded against the Commission are recorded as a departmental expense.

Authorisation and notification fees are applied when required under the relevant legislation, and are recognised upon payment.

Administered fee revenue is recognised at its nominal amount due less any allowance for bad or doubtful debts. Collectability of debts is reviewed at the end of the reporting period. Allowances are made when collection of the debt is judged to be less rather than more likely.

## Financial Position

This section analyses the Commission's assets used to conduct its operations and the operating liabilities incurred as a result.

Employee related information is disclosed in the People and Relationships section.

### 3.1 Financial Assets

	2017 \$'000	2016 \$'000
<b>3.1A: Cash and cash equivalents</b>		
Cash on hand or on deposit	1,616	1,289
<b>Total cash and cash equivalents</b>	<b>1,616</b>	<b>1,289</b>

#### Accounting Policy

Cash is recognised at its nominal amount. Cash and cash equivalents are deposits in bank accounts.

<b>3.1B: Trade and other receivables</b>		
<b>Goods and services receivables</b>		
Goods and services	607	398
<b>Total goods and services receivables</b>	<b>607</b>	<b>398</b>
<b>Appropriations receivables</b>		
Appropriation receivable	28,836	32,171
<b>Total appropriations receivables</b>	<b>28,836</b>	<b>32,171</b>
<b>Other receivables</b>		
Statutory receivables	1,486	1,212
<b>Total other receivables</b>	<b>1,486</b>	<b>1,212</b>
<b>Total trade and other receivables (gross)</b>	<b>30,929</b>	<b>33,781</b>
<b>Less impairment allowance</b>	-	-
<b>Total trade and other receivables (net)</b>	<b>30,929</b>	<b>33,781</b>

Credit terms for goods and services were within 30 days (2016:30 days).

#### Accounting Policy

##### Loans and Receivables

Trade receivables, loans and other receivables that have fixed or determinable payments and that are not quoted in an active market are classified as 'loans and receivables'. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Financial assets are assessed for impairment at the end of each reporting period.

### 3.2 Non-Financial Assets

#### 3.2A: Reconciliation of the opening and closing balances of property, plant and equipment and intangibles

	Leasehold improvements \$'000	Plant and equipment \$'000	Computer software <sup>1</sup> \$'000	Total \$'000
<b>As at 1 July 2016</b>				
Gross book value	13,204	5,456	11,211	29,871
Accumulated depreciation, amortisation and impairment	(2,702)	(1,439)	(7,808)	(11,949)
<b>Total as at 1 July 2016</b>	<b>10,502</b>	<b>4,017</b>	<b>3,403</b>	<b>17,922</b>
Additions				
Purchase	1,673	485	317	2,475
Internally developed	-	-	799	799
Depreciation and amortisation	(2,742)	(1,379)	(1,251)	(5,372)
Disposals				
Other disposals/writedowns (gross book value)	-	(150)	(82)	(232)
Other disposals/writedowns (accumulated depreciation)	-	136	82	218
<b>Total as at 30 June 2017</b>	<b>9,433</b>	<b>3,109</b>	<b>3,268</b>	<b>15,810</b>

#### Total as at 30 June 2017 represented by

Gross book value	14,877	5,791	12,327	32,995
Accumulated depreciation, amortisation and impairment	(5,444)	(2,682)	(9,059)	(17,185)
<b>Total as at 30 June 2017</b>	<b>9,433</b>	<b>3,109</b>	<b>3,268</b>	<b>15,810</b>

1. The carrying amount of computer software includes \$0.8m purchased software and \$2.5m internally generated software.

The carrying value of leasehold improvements, plant and equipment and intangibles (computer software) were reviewed at 30 June 2017. No indicators of impairment were found.

Leasehold improvements and plant and equipment assets may be sold or disposed in 2017-18 coinciding with the termination of some lease arrangements.

No property, plant and equipment are held under finance lease.



## 3.2 Non-Financial Assets

### Accounting Policy

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Assets are initially measured at their fair value plus appropriate transaction costs.

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 amounts which were recognised in the transferor's accounts immediately prior to the restructuring.

### Asset recognition threshold

Purchases of property, plant and equipment are recognised initially at cost in the statement of financial position, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make good' provisions in property leases taken up by the Commission where an obligation to restore the property to its original condition exists. These costs are included in the value of the Commission's leasehold improvements with a corresponding provision for 'make good'.

### Revaluations

Following initial recognition at cost, property, plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

All revaluations were conducted in accordance with the revaluation policy stated at Note 7.4. A full revaluation was undertaken at 30 June 2015. A materiality review has been conducted to assess whether materiality is evident between carrying amounts and fair value at 30 June 2017. No significant material differences between the carrying amounts and fair value was identified.

### Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Commission using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates for each class of depreciable asset are based on the following useful lives:

Asset class	2017 and 2016
Leasehold improvements	Lesser of lease or 15 years
Furniture and fittings	10 years
Office equipment	5 years
Computer hardware	3 to 5 years
Computer software	3 to 7 years

### Impairment

All assets were assessed for impairment at 30 June 2017. 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.

An impairment loss of \$0.01m (2016:\$0.02m) for property, plant and equipment was recognised in the Statement of Comprehensive Income.

The recoverable amount of an asset is the higher of its fair value less costs of disposal and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the entity were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

### Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use.

## Accounting Policy (cont)

### *Intangibles*

The Commission's intangibles comprise purchased and internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses. These assets are carried at cost above the capitalisation threshold of \$10,000. Below this amount they are expensed in the year of purchase.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the Commission's software are 3 to 7 years (2016: 3 to 7 years).

All software assets were assessed for indications of impairment as at 30 June 2017.

### **Contractual commitments for the acquisition of property, plant and equipment and intangible assets**

The Commission has contractual commitments for the acquisition of leasehold improvements of \$3.8m (2016: \$1.0m), property plant and equipment of \$2.4m (2016: \$0.01m) and commitments for intangible assets of \$1.0m (2016: \$0.3m).

## 3.2 Non-Financial Assets

	2017 \$'000	2016 \$'000
<b>3.2B: Other non-financial assets</b>		
Prepayments	2,370	1,390
Leasehold rights	202	121
<b>Total other non-financial assets</b>	<b>2,572</b>	<b>1,511</b>

No indicators of impairment were found for other non-financial assets.

### 3.3 Payables

	2017 \$'000	2016 \$'000
<b>3.3A: Suppliers</b>		
Trade creditors and accruals	8,128	7,340
<b>Total suppliers</b>	<b>8,128</b>	<b>7,340</b>

Settlement is usually made within 30 days.

<b>3.3B: Other payables</b>		
Lease incentives	3,451	4,278
Superannuation	110	150
Operating lease payment increases	5,218	5,346
Wages and salaries	1,085	621
Unearned income	1,220	1,259
Salary sacrifice payable	157	129
<b>Total other payables</b>	<b>11,241</b>	<b>11,783</b>

## 3.4 Other Provisions

### 3.4A: Other provisions

	Provision for litigation \$'000	Provision for onerous leases \$'000	Provision for restoration \$'000	Total \$'000
<b>As at 1 July 2016</b>	<b>3,946</b>	<b>3,915</b>	<b>2,056</b>	<b>9,918</b>
Additional provisions made	4,483	-	-	4,483
Amounts used	(3,946)	(385)		(4,331)
Amounts reversed	-	(29)	(167)	(196)
Unwinding or change of discount rate	-	5	40	45
<b>Total as at 30 June 2017</b>	<b>4,483</b>	<b>3,506</b>	<b>1,929</b>	<b>9,919</b>

The Commission currently has 11 agreements (2016:11) for the leasing of premises which have provisions requiring it to restore the premises to their original condition at the conclusion of the lease. The Commission has an onerous lease contract for premises (2016:1). Prior to 30 June 2017, a court judgement had been handed down requiring the Commission to pay court costs to a number of respondents. The Commission has made a provision to reflect the present value of these obligations.

## Assets and Liabilities Administered on Behalf of the Government

This section analyses the assets used to conduct operations and the operating liabilities the Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

### 4.1 Administered - Financial Assets

	2017 \$'000	2016 \$'000
<b>4.1A: Cash and cash equivalents</b>		
Cash on hand or on deposit	1	1
<b>Total cash and cash equivalents</b>	<b>1</b>	<b>1</b>
<b>4.1B: Trade and other receivables</b>		
<b>Other receivables</b>		
Fines and costs	16,423	19,843
<b>Total other receivables</b>	<b>16,423</b>	<b>19,843</b>
<b>Total trade and other receivables (gross)</b>	<b>16,423</b>	<b>19,843</b>
<b>Less impairment allowance</b>	<b>(9,575)</b>	<b>(12,160)</b>
<b>Total trade and other receivables (net)</b>	<b>6,848</b>	<b>7,683</b>

Credit terms for fines and costs were within 30 days or as stipulated by court judgements (2016:30 days).

#### Reconciliation of the Impairment Allowance

##### Movements in relation to other receivables

<b>Opening balance</b>	<b>12,160</b>	11,642
Amounts written off	<b>(9,949)</b>	(5,063)
Amounts recovered and reversed	-	(51)
Increase/(Decrease) recognised in net cost of services	<b>7,364</b>	5,632
<b>Closing balance</b>	<b>9,575</b>	12,160

#### Accounting Policy

##### Loans and Receivables

Where loans and receivables are not subject to concessional treatment, they are carried at amortised cost using the effective interest method. Gains and losses due to impairment, derecognition and amortisation are recognised through profit or loss.

## Funding

This section identifies the Commission's funding structure.

### 5.1 Appropriations

#### 5.1A: Annual appropriations ('recoverable GST exclusive')

##### Annual Appropriations for 2017

	Annual Appropriation <sup>1</sup> \$'000	Adjustments to appropriation <sup>2</sup> \$'000	Total appropriation \$'000	Appropriation applied in 2017 (current and prior years) \$'000	Variance <sup>3</sup> \$'000
<b>Departmental</b>					
Ordinary annual services	173,359	4,871	178,230	175,168	3,062
Capital Budget <sup>4</sup>	1,987	-	1,987	2,039	(52)
Other services					
Equity Injections	1,400	-	1,400	7,418	(6,018)
<b>Total departmental</b>	<b>176,746</b>	<b>4,871</b>	<b>181,617</b>	<b>184,625</b>	<b>(3,008)</b>

1. No portion of the 2016-17 annual appropriations have been withheld under section 51 of the PGPA Act and quarantined for administrative purposes.

2. Adjustment to the ordinary annual services appropriation is to recognise PGPA Act s74 receipts.

3. The Commission applied prior year equity injection appropriations to make cash settlements of litigation costs under Litigation Contingency Funding arrangements. The underspend in ordinary annual services funding is largely contributable to the underspend on external legal expenses.

4. Departmental Capital Budgets are appropriated through Appropriation Acts (No.1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts.

**5.1A: Annual appropriations ('recoverable GST exclusive') (cont)**

Annual Appropriations for 2016

	Annual Appropriation <sup>1</sup> \$'000	Adjustments to appropriation <sup>2</sup> \$'000	Total appropriation \$'000	Appropriation applied in 2016 (current and prior years) \$'000	Variance <sup>3</sup> \$'000
<b>Departmental</b>					
Ordinary annual services	165,346	4,718	170,064	178,019	(7,955)
Capital Budget <sup>4</sup>	1,993	-	1,993	1,941	52
Other services					
Equity Injections	12,896	-	12,896	-	12,896
<b>Total departmental</b>	<b>180,235</b>	<b>4,718</b>	<b>184,953</b>	<b>179,960</b>	<b>4,993</b>

1. No portion of the 2015-16 annual appropriations have been withheld under section 51 of the PGPA Act and quarantined for administrative purposes.

2. Adjustment to the ordinary annual services appropriation is to recognise PGPA Act s74 receipts.

3. The Commission applied the remaining Appropriation Act (No. 1) 2014-15 funding that was unspent at 30 June 2015 in addition to current year ordinary annual services appropriations to meet the operational funding requirements of the Commission in 2015-16. The equity injection appropriation includes \$11.596m which relates to Litigation Contingency Funding to settle court costs awarded against the Commission. During 2015-16 only \$0.350m was required to settle court costs.

4. Departmental Capital Budgets are appropriated through Appropriation Acts (No.1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts.



### 5.1B: Unspent annual appropriations ('recoverable GST exclusive')

	2017 \$'000	2016 \$'000
<b>Departmental</b>		
Appropriation Act (No. 4) 2013-14	11,596	11,596
Appropriation Act (No. 2) 2014-15	-	2,700
Appropriation Act (No. 1) 2015-16	-	14,051
Appropriation Act (No. 2) 2015-16	1,300	1,300
Appropriation Act (No. 3) 2015-16	-	2,524
Appropriation Act (No. 4) 2015-16	6,878	11,596
Appropriation Act (No. 1) 2016-17	18,267	-
Appropriation Act (No. 2) 2016-17	942	-
Appropriation Act (No. 3) 2016-17	991	-
Supply Act (No.2) 2016-17	458	-
<b>Total departmental</b>	<b>40,432</b>	<b>43,767</b>

On the 17 June 2016 the balance of *Appropriation Act (No.4) 2013-14* (\$11,595,539) was withheld by the Finance Minister in accordance with s51 of the *Public Governance Performance and Accountability Act 2013*. The appropriation remains legally available.

In addition to the unspent appropriations disclosed above, at 30 June 2017 the Commission had cash and cash equivalents of \$1.616m (2016: \$1.289m).

### 5.1C: Special appropriations ('recoverable GST exclusive')

Authority	Type	Purpose	2017 \$'000	2016 \$'000
PGPA Act, 2013 s.77, Administered	Refund	To provide an appropriation where an Act or other law requires or permits the repayment of an amount received by the Commonwealth and the Finance Minister is satisfied that, apart from this section, there is no specific appropriation for the repayment.	5	11,045
<b>Total special appropriations applied</b>			<b>5</b>	<b>11,045</b>

## 5.2 Special Accounts

### Services for Other Entities and Trust Moneys

	2017 \$'000	2016 \$'000
<b>Administered</b>		
<b>Balance brought forward from previous period</b>	54	54
<b>Total increases</b>	20	-
<b>Available for payments</b>	74	54
<b>Total decreases</b>	20	-
<b>Total balance carried to the next period</b>	54	54

1. Appropriation: *Public Governance, Performance and Accountability Act 2013 section 78*
2. Establishing Instrument: *Financial Management and Accountability (Establishment of Special Account for Australian Competition and Consumer Commission) Determination 2011/02*
3. The purpose of the account is:
  - (a) amounts to be held on trust or otherwise for the benefit of a person other than the Commonwealth;
  - (b) amounts received in the course of the performance of functions that relate to the purpose of the *Services for Other Entities and Trust Moneys - Australian Competition and Consumer Commission Special Account*;
  - (c) amounts received from any person for the purposes of the *Services for Other Entities and Trust Moneys - Australian Competition and Consumer Commission Special Account*; and
  - (d) amounts to be held on trust or otherwise for the benefit of a person other than the Commonwealth.
4. The total balance carried to the next period is cash held in the Commission's bank account.

## People and relationships

This section describes a range of employment and post employment benefits provided to our people and our relationships with other key people.

### 6.1 Employee Provisions

	2017 \$'000	2016 \$'000
<b>6.1A: Employee provisions</b>		
Leave	29,871	29,947
Separations and redundancies	258	247
<b>Total employee provisions</b>	<b>30,129</b>	<b>30,194</b>

#### Accounting policy

Liabilities for short-term employee benefits and termination benefits expected within twelve months of the end of the reporting period are measured at their nominal amounts.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

#### Leave

The liability for employee benefits includes provision for annual leave and long service leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the Commission's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The liability for long service leave has been calculated using the Australian Government short hand method. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

#### Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The Commission recognises a provision for termination when it has committed to the terminations and having informed those employees affected that the terminations will be carried out.

#### Superannuation

The Commission's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), the PSS accumulation plan (PSSap), or other superannuation funds held outside the Australian Government.

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap and other superannuation funds are defined contribution schemes.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in the Department of Finance's administered schedules and notes.

The Commission makes employer contributions to the employees' defined benefit superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The Commission accounts for the contributions as if they were contributions to defined contribution plans. The liability for superannuation recognised as at 30 June represents outstanding contributions.

## 6.2 Key Management Personnel Remuneration

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity. The Commission has determined the key management personnel to be the members of the Corporate Governance and Executive Management Boards. Key management personnel remuneration is reported in the table below:

	2017 \$'000
Short-term employee benefits	6,769
Post-employment benefits	936
Other long-term employee benefits	633
Termination benefits	165
<b>Total key management personnel remuneration expenses</b>	<b>8,503</b>

The total number of key management personnel that are included in the above table is 21.

The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the entity.

## Managing uncertainties

This section analyses how the Commission manages financial risks within its operating environment.

### 7.1 Contingent Assets and Liabilities

At 30 June 2017, the Commission has matters before the Courts alleging breaches of the *Competition and Consumer Act 2010*. These cases are at various stages of completion.

Due to the inherent uncertainty of litigation it was not possible to estimate the value of case outcomes. Accordingly, the Commission has no quantifiable contingent assets or liabilities arising from court action to report.

#### Departmental

In the event of an unfavourable judgement by the Courts, the Commission stands to be liable for court costs. If it had been possible to estimate the amounts of eventual payments these would have been reported as departmental contingent liabilities.

The contingent liability of \$0.1m recognised in the notes to the 2015-16 Financial Statements was realised during 2016-17.

The Commission is in possession of a bank guarantee in the amount of \$0.1m. This bank guarantee is a contingent asset which would be exercised in the event of a default by a subleasee. It is not expected that this bank guarantee will be exercised and it is due to expire 30 September 2021.

#### Administered

In the event of favourable judgement by the Courts, the Commission stands to gain by way of penalties or costs awarded. If it had been possible to estimate the amounts of eventual gains these would have been reported as administered contingent assets.

The three contingent assets recognised in the notes to the 2015-16 Financial Statements, totalling \$5.1m, were extinguished during 2016-17 through realisation (\$4.8m), expiration (\$0.2m) and re-measurement (\$0.1m).

#### Accounting Policy

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

## 7.2 Financial Instruments

	2017 \$'000	2016 \$'000
<b>7.2A: Categories of financial instruments</b>		
<b>Financial Assets</b>		
<b>Loans and receivables</b>		
Cash and cash equivalents	1,616	1,289
Trade and other receivables	607	398
<b>Total loans and receivables</b>	<b>2,223</b>	<b>1,687</b>
<b>Total financial assets</b>	<b>2,223</b>	<b>1,687</b>
<b>Financial Liabilities</b>		
<b>Financial liabilities measured at amortised cost</b>		
Trade creditors	8,128	7,340
Unearned income	1,220	1,259
<b>Total financial liabilities measured at amortised cost</b>	<b>9,348</b>	<b>8,599</b>
<b>Total financial liabilities</b>	<b>9,348</b>	<b>8,599</b>
<b>7.2B: Net gains or losses on financial assets</b>		
<b>Loans and receivables</b>		
Impairment	-	(4)
<b>Net gains/(losses) on loans and receivables</b>	<b>-</b>	<b>(4)</b>
<b>Net gains/(losses) on financial assets</b>	<b>-</b>	<b>(4)</b>

## 7.2: Financial Instruments (cont)

### Accounting Policy

#### Financial Assets

The Commission classifies its financial assets as loans and receivables.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition. Financial assets are recognised and derecognised upon trade date.

#### Effective Interest Method

Income is recognised on an effective interest rate basis except for financial assets that are recognised at fair value through profit or loss.

#### Financial Assets at Fair Value Through Profit or Loss

Financial assets are classified as financial assets at fair value through profit or loss where the financial assets:

- have been acquired principally for the purpose of selling in the near future;
- are derivatives that are not designated and effective as a hedging instrument; or
- are parts of an identified portfolio of financial instruments that the entity manages together and has a recent actual pattern of short-term profit-taking.

Assets in this category are classified as current assets.

Financial assets at fair value through profit or loss are stated at fair value, with any resultant gain or loss recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest earned on the financial asset.

#### Impairment of Financial Assets

Financial assets are assessed for impairment at the end of each reporting period.

*Financial assets held at amortised cost* - if there is objective evidence that an impairment loss has been incurred for loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the Statement of Comprehensive Income.

*Financial assets held at cost* - if there is objective evidence that an impairment loss has been incurred, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows

discounted at the current market rate for similar assets.

#### Financial Liabilities

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities. Financial liabilities are recognised and derecognised upon 'trade date'.

#### Financial Liabilities at Fair Value Through Profit or Loss

Financial liabilities at fair value through profit or loss are initially measured at fair value. Subsequent fair value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

#### Other Financial Liabilities

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs. These liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective interest basis.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

## 7.3 Administered - Financial Instruments

	2017 \$'000	2016 \$'000
<b>7.3A: Categories of financial instruments</b>		
<b>Financial assets</b>		
<b>Loans and receivables</b>		
Cash on hand or on deposit	1	1
Fines and costs receivable	6,848	7,683
<b>Total loans and receivables</b>	<b>6,849</b>	7,683
<b>Total financial assets</b>	<b>6,849</b>	7,683
<b>7.3B: Net gains or losses on financial assets</b>		
<b>Loans and receivables</b>		
Impairment	(7,364)	(5,632)
<b>Net gains/(losses) on loans and receivables</b>	<b>(7,364)</b>	(5,632)
<b>Net gains/(losses) on financial assets</b>	<b>(7,364)</b>	(5,632)



## 7.4 Fair Value Measurement

### 7.4A: Fair value measurement

#### Fair value measurements at the end of the reporting period

	2017 \$'000	2016 \$'000
<b>Non-financial assets</b>		
Leasehold improvements	9,433	10,502
Plant and equipment	3,109	4,017

No non-financial assets were measured on a non-recurring basis at 30 June 2017 (2016:Nil)

#### Accounting Policy

The above table provides an analysis of assets and liabilities that are measured at fair value. The remaining assets and liabilities disclosed in the statement of financial position do not apply the fair value hierarchy.

The different levels of the fair value hierarchy are defined below.

Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities that the entity can access at measurement date.

Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3: Unobservable inputs for the asset or liability.

The ACCC engaged the service of the Jones Lang LaSalle Public Sector Valuations (JLL) to conduct a materiality review carrying amounts for all non-financial assets at 30 June 2017. An annual assessment is undertaken to determine whether the carrying amount of the assets is materially different from the fair value. Comprehensive valuations are carried out at least once every three years with the previous valuation conducted at 30 June 2015. Australian Valuation Solutions has provided written assurance to the ACCC that the models developed are in compliance with AASB 13: Fair Value Measurement.

The methods utilised to determine and substantiate the unobservable inputs are derived and evaluated as follows:

Physical depreciation and obsolescence - assets that do not transact with enough frequency or transparency to develop objective opinions of value from observable market evidence have been measured utilising the Depreciated Replacement Cost approach. Under the Depreciated Replacement Cost approach the estimated cost to replace the asset is calculated and then adjusted to take into account physical depreciation and obsolescence. Physical depreciation and obsolescence has been determined based on professional judgement regarding physical, economic and external obsolescence factors relevant to the asset under consideration. For all leasehold improvement assets, the consumed economic benefit / asset obsolescence deduction is determined based on the term of the associated lease.

The ACCC's policy is to recognise transfers into and transfers out of fair value hierarchy levels as at the end of the reporting period.

## 8.1 Budgetary Reporting

Explanations of major variances between the actual amounts presented in the financial statements and the corresponding original budget amounts.

### Departmental

#### Suppliers

The variance in supplier expense is predominantly driven by underspends on contractors and consultants (\$4.2m), underspends on external legal expenditure (\$3.4m) and anticipated increased property and other operating costs relating to the search for a new Melbourne office and IT projects that did not finalise in 2016-17 (\$2.3m).

The contractor and consultancy budget in 2016-17 factored in additional funding relating to the AER program (\$7.9m) as there was no increase in the average staffing level cap to facilitate the additional work.

External legal expenditure is volatile, as it is based on the number and complexity of litigations which are at various stages of completion.

Consistent with the supplier expense variance is the difference between budget and actual cash used for supplier payments and a more favourable trade and other receivables position at 30 June 2017.

#### Employee benefits

The underspend on contractors and consultants disclosed above is more than fully offset by employee expenses, being \$5.2m higher than the original budget. Correlating with this is the employee provision result, which is \$3.3m over budget. During 2016-17 the Commission had an increase in the total number of employees and a 3% pay rise for staff under the new Enterprise Agreement. The original budget had anticipated a smaller staffing profile.

#### Settlement of Litigation

The \$8.9m settlement of litigation expense is court costs incurred during 2016-17. These amounts have been paid (\$4.4m), or are payable (\$4.5m) by the Commission, to respondents in reimbursement of their legal expenses for cases where the Federal Court has ruled in their favour. The Commission utilised mostly equity appropriations to make payments of these unanticipated costs, including making payment of the settlement of litigation costs accrued in 2015-16 (\$4.0m).

#### Administered Activities

The Commission uses a historical average to budget for fees and fines revenue due to the complexity and uncertainty in predicting the future outcome of litigation. The resulting variance between budget and actual fees and fines is a favourable \$6.7m in 2016-17. However, the budget did not anticipate impairments for overdue debtor balances of \$7.4m resulting in a final administered outcome that is not materially different to the budget (\$0.7m). The final receivables balance is difficult to estimate as it is the balance as at the reporting date which is a factor of the penalties and court costs imposed as well as debtors' ability to pay and the timing of their payments. Two post balance date adjusting events for favourable outcomes from court proceedings increased the receivables balance by \$4.5m. The final result is a receivables balance of \$1.6m above budget.

#### Affected line items

*Supplier expenses,*

*Trade and other receivables,*

*Suppliers cash used.*

*Employee benefits,*

*Employee provisions.*

*Settlement of litigation expense,*

*Other provisions,*

*Settlement of litigation cash used,*

*Contributed equity cash received.*

*Fees and fines revenue,*

*Impairment of fees and fines,*

*Trade and other receivables.*



# Part 6

## Appendixes



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# Appendix 1: Agency and outcome resource statements

Table A1.1: Agency resource statement, 2016–17

		Actual available appropriations for 2016–17 \$'000	Payments made in 2016–17 \$'000	Balance Remaining \$'000
		(a)	(b)	(a–b)
<b>Ordinary annual services<sup>1</sup></b>				
Departmental appropriation		196 792	177 534	19 258
<b>Total ordinary annual services</b>	<b>A</b>	<b>196 792</b>	<b>177 534</b>	<b>19 258</b>
<b>Other services<sup>2</sup></b>				
<b>Departmental non-operating</b>				
Equity injections		28 592	7 418	21 174
<b>Total other services</b>	<b>B</b>	<b>28 592</b>	<b>7 418</b>	<b>21 174</b>
<b>Special accounts</b>				
Opening balance		54	-	54
Non-appropriation receipts to special accounts		20	20	-
<b>Total special account</b>	<b>C</b>	<b>74</b>	<b>20</b>	<b>54</b>
<b>Total net resourcing and payments for ACCC (A+B+C)</b>		<b>225 458</b>	<b>184 972</b>	<b>40 486</b>

1 *Supply Act (No. 1) 2016–17, Appropriation Act (No. 1) 2016–17 and Appropriation Act (No.3) 2016–17* including the departmental capital budget (\$1.987 million), prior year departmental appropriation and s. 74 retained receipts.

2 *Supply Act (No. 2) 2016–17, Appropriation Act (No. 2) 2016–17 and Appropriation Act (No. 2) 2015–16 and Appropriation Act (No. 4) 2015–16 and Appropriation Act (No. 4) 2013–14.*

**Table A1.2: Budget expenses and resources for Outcome 1 2016–17**

Outcome 1: Lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation, including enforcement, education, price monitoring and determining the terms of access to infrastructure services.	<b>Budget expenses 2016-17 \$'000</b>	<b>Actual expenses 2016-17 \$'000</b>	<b>Variation 2016-17 \$'000</b>
	<b>(a)</b>	<b>(b)</b>	<b>(a-b)</b>
<b>Program 1.1: Australian Competition and Consumer Commission</b>			
Departmental expenses			
Departmental appropriation <sup>1</sup>	136 446	137 610	(1 164)
Expenses not requiring appropriation in the Budget year	5 676	5 372	304
<b>Total for Program 1.1</b>	<b>142 122</b>	<b>142 982</b>	<b>(860)</b>
<b>Program 1.2: Australian Energy Regulator (AER)</b>			
Departmental expenses			
Departmental appropriation <sup>1</sup>	40 764	41 823	(1 059)
<b>Total for Program 1.2</b>	<b>40 764</b>	<b>41 823</b>	<b>(1 059)</b>
<b>Outcome 1 Totals by appropriation type</b>			
Departmental expenses			
Departmental appropriation <sup>1</sup>	177 210	179 433	(2 223)
Expenses not requiring appropriation in the Budget year	5 676	5 372	304
<b>Total expenses for Outcome 1</b>	<b>182 886</b>	<b>184 805</b>	<b>(1 919)</b>

1 Departmental Appropriation combines ordinary annual services (Appropriation Acts Nos. 1, 3 and 5) and retained receipts under s. 74 of the *PGPA Act 2013*.

**Table A1.3: Average staffing level**

	<b>2015-16</b>	<b>2016-17</b>
Averaging staffing level (number)	739	739



# Appendix 2: Staffing

## Staffing

Table A2.1 and table A2.2 provide details of the ACCC/AER staffing complement in 2016–17.

**Table A2.1: APS staff employed by classification and location (at 30 June 2017)**

Actual Classification	Adelaide	Brisbane	Canberra	Darwin	Hobart	Melbourne	Perth	Sydney	Townsville	Total
POH	1		3			2		3		9
SESB3			1							1
SESB2			3			4		2		9
SESB1		2	10			14	1	3		30
EL2	9	9	49	1		76	2	20		166
EL1	8	12	59	1	1	85	3	20	2	191
APS6	11	14	46	3	1	80	6	26	1	188
APS5	5	9	53		3	52	6	18	2	148
APS4	3	3	33	2	1	22	3	12	1	80
APS3	1	3	20	1		4		2	1	32
APS2			1				1			2
APS1		2	3			8	1	1		15
GRAD	2	2	7			10	1	4	1	27
<b>Total</b>	<b>40</b>	<b>56</b>	<b>288</b>	<b>8</b>	<b>6</b>	<b>357</b>	<b>24</b>	<b>111</b>	<b>8</b>	<b>898</b>

Table A2.2: APS staff employed by gender and location (at 30 June 2017)

	Adelaide	Brisbane	Canberra	Darwin	Hobart	Melbourne	Perth	Sydney	Townsville	Total
<b>Ongoing</b>										
Female full-time	12	22	103	6	2	128	9	43	5	330
Male full-time	18	14	110	2	3	154	8	37	2	348
Female part-time	6	13	40		1	33	3	16	1	113
Male part-time	2	1	4			14		2		23
<b>Non-ongoing</b>										
Female full-time	1	1	8			8	1	3		22
Male full-time		2	10			8	1	4		25
Female part-time		2	8			8	2	1		21
Male part-time		1	2			2		2		7
<b>Public Office Holder</b>										
Female full-time	1		1			1		1		4
Male full-time			2			1		1		4
Male part-time								1		1
<b>Total</b>	<b>40</b>	<b>56</b>	<b>288</b>	<b>8</b>	<b>6</b>	<b>357</b>	<b>24</b>	<b>111</b>	<b>8</b>	<b>898</b>

# Appendix 3: Work health and safety

## Work health and safety management

The ACCC/AER has continued to enhance HR policies, guidelines and practices to meet the requirements of the *Work Health and Safety Act 2011* (Cth) and the Work Health and Safety Regulations 2011 (Cth).

## Health and safety activities

The ACCC/AER is committed to the health and wellbeing of its workers. This commitment is reflected in a variety of actions taken during 2016–17:

- Two further measures were implemented to improve the capacity of managers and employees to deal with mental health issues. The measures were the establishment of an enhanced Workplace Contact Officer network and training for managers in mental health first aid principles.
- Influenza Vaccination: this program provides all employees with access to fully funded vaccinations at the workplace or offsite as arranged by the employee. In 2016–17 approximately 40 per cent of staff participated in the program.
- A new Employee Assistance Program (EAP) provider was engaged. The EAP provides employees and their immediate families with access to a free professional counseling service for both personal or employee related matters. The new EAP provider also provides access to a range of wellbeing information through its online portal.
- Healthy Lifestyle Reimbursement: the healthy lifestyle reimbursement scheme supports healthy lifestyle choices by eligible employees. In 2016–17, approximately 700 claims were reimbursed at an average claim value of \$260.
- ACCC/ AER Ally Network: the Ally Network is made up of 99 employees at all levels who have chosen to show their support for the LGBTIQ community. The network reflects the ACCC/AER's commitment to an inclusive workplace free from discrimination or bullying.
- A new guideline was developed to address the risks associated by employees working in remote locations or engaging in long distance road travel. The development of the guideline was informed by the experiences of ACCC employees in Darwin and Townsville who regularly visit remote indigenous communities as part of their work delivering consumer protection and empowerment to these communities.

## Health and safety outcomes

### Comcare premiums

The ACCC's Comcare premium for 2016–17 was 0.79 per cent of payroll. This rate is well below the overall scheme rate of 1.72 per cent.

### Compensation claims

There were no new compensation claims accepted by Comcare from the ACCC/AER during 2016–17. The ACCC/AER had seven open compensation claims at the end of the 2016–17 financial year.

## Non-compensable cases

The ACCC/AER supports employees suffering from non-compensable physical and psychological injuries or illnesses to maintain or resume attendance at work. During 2016–17, this assistance was provided to five employees.

## Incident statistics

There were 29 reports of incidents of an injury or a 'near miss' involving employees in 2016–17 including one notifiable incident. The notifiable incident was reported to Comcare but no further action was required from the ACCC/AER.

## Investigations, directions and notices

The ACCC received no notices under the *Work Health and Safety Act 2011*, and did not conduct any investigations during 2016–17.

## Appendix 4: Advertising and market research

Under s. 311A of the *Commonwealth Electoral Act 1918*, the ACCC must report annually on its use of advertising agencies, market research organisations, polling organisations, direct mail organisations and media advertising agencies.

The reporting requirement seeks information on payments of more than \$13 000 GST inclusive, that the ACCC made to such agencies in 2016–17. Payments over this threshold are listed in table A4.1.

**Table A4.1: Advertising and market research of more than \$13 000 in 2016–17**

<b>Date</b>	<b>Description of advertising and market research services</b>	<b>Advertising and market research firm</b>	<b>Amount \$</b>
March to September 2017	Market research into ACCC consumer and small business perceptions	Colmar Brunton Social Research Pty Ltd	120 065
August to November 2016	Consumer survey relating to new car retailing	Colmar Brunton	37 985
April to June 2017	Market research into product safety	Roy Morgan Research	24 472
May to June 2017	Market research into consumer awareness and use of safety features on prams and strollers	Australian Survey Research Group Pty Ltd	19 979
May to June 2017	Digital advertising for the 2017 National Consumer Fraud Week	Dentsu Mitchell Media Australia	44 892
May 2016	Digital advertising for the 2016 National Consumer Fraud Week	Dentsu Mitchell Media Australia	22 000

# Appendix 5: Ecologically sustainable development

## How the ACCC's activities and administration of legislation accord with principles of ecologically sustainable development

The ACCC administers legislation that ensures lawful competition, consumer protection, and regulated national infrastructure markets and services. At all times, the ACCC pursues its outcomes and objectives in a manner that provides the maximum benefit to the maximum number of consumers with the least impact on resources and the environment.

## How the ACCC's outcome contributes to ecologically sustainable development

In achieving its outcome, the ACCC employs decision-making which, in line with s. 3A of the *Environment Protection and Biodiversity Conservation Act 1999*, factors in the economic, environmental, social and equitable considerations over both the short and long term.

## ACCC activities that affect the environment

To ensure the ACCC is able to effectively administer legislation and regulated national infrastructure markets and services, it has established offices at nine locations around Australia. The ACCC's work aims to foster competitiveness and fairness, leading to more efficient and sustainable markets. The ACCC operates in line with the Energy Efficiency in Government Operations Policy (EEGO) and ICT Sustainability Plan 2010–15, ensuring it remains committed to environmental sustainability and performance.

## Measures taken to minimise the effect of activities on the environment

The ACCC is committed to reducing the environmental impact of its activities in a range of areas.

### Property

- optimising environmental opportunities through refurbishment and new building projects
- reducing fitout size and using sustainable materials where possible, and reusing or recycling office furniture
- replacing halogen and fluorescent lighting with efficient, low energy LED lighting when opportunities arise
- reprogramming operating duration of supplementary air conditioning to reduce energy and water consumption
- installing programmable and efficient office lighting including motion sensors in new fitouts.

## Information technology

- retaining main servers on offsite location, reducing onsite energy consumption
- using power-saving modes for ICT equipment when not in use
- using LCD computer screens
- reducing PC numbers and programming automatic shut down after hours
- increasing use of ISO 14001 accredited printers for external printing services where appropriate
- reducing printer numbers and improving printing efficiency in accordance with government requirements
- using duplex printing and photocopying as a default setting on all printers and multi-function devices.

## Travel

- using information and communication technology as an alternative to business travel
- servicing vehicles in accordance with manufacturers' specifications
- using E10 fuels for lease vehicles where possible.

## Workplace efficiencies

- placing emphasis on electronic records and electronic working arrangements, including reviewing lengthy reports and papers online rather than printing on paper
- promoting access to ACCC publications electronically rather than in print.

## Purchasing and procurement

- purchasing 100 per cent recycled content copy paper
- recycling all fluorescent tubes
- procuring office equipment with low energy consumption and 65 per cent recycled content packaging
- procuring environmentally friendly toilet consumables and cleaning products.

## Waste management

- improving its waste segregation practices including paper, co-mingled recycling, general waste, e-waste and in some offices organic waste
- recycling paper and cardboard products, including pulping classified waste and providing use-again office envelopes
- disposing of toner cartridges through a recycling outlet
- disposing of mobile phones and batteries through a recycling outlet.

## Information and education

- establishing an environmental inbox for staff to submit ideas and encouraging staff to help identify/contribute to organisational environmental and sustainable initiatives, and formation of a champions network to help drive and promote initiatives
- providing staff with biannual environmental reports highlighting targets achieved
- collaborating regularly with building management to identify initiatives and participate in environmental activities such as Earth Hour.

## Mechanisms for reviewing and increasing the effectiveness of measures

The ACCC environmental policy puts in place strategies towards better environmental and sustainable practices. The ACCC utilises a process of informal, continuous review of the various measures it employs to reduce the environmental impact of its activities.

Where further efficiencies are identified in the course of business, the ACCC endeavours to put in place the measures required to realise these efficiencies. All of the above is done in accordance with both the applicable funding and environmental guidelines available to the ACCC.



# Appendix 6: Competition and Consumer Act 2010 and other legislation

## Competition and Consumer Act and key legislation

*Airports Act 1996* (Cth)

*Australian Postal Corporation Act 1989* (Cth)

*Competition and Consumer Act 2010* (Cth)

National Electricity Law and Rules

National Gas Law and Rules

National Energy Retail Law and Rules

*Telecommunications Act 1997* (Cth)

*Water Act 2007* (Cth)

Water Market Rules 2009 (Cth)

Water Charge (Termination Fees) Rules 2009 (Cth)

Water Charge (Infrastructure) Rules 2010 (Cth)

Water Charge (Planning and Management Information) Rules 2010 (Cth)

## Lawful competition and informed markets

**Table A6.1: Parts of the Competition and Consumer Act 2010 dealing with competition**

IV	Cartel conduct: price fixing; output restrictions; bid rigging; allocating customers, suppliers or territories  Other anti-competitive conduct: boycotts; agreements substantially lessening competition; anti-competitive disclosure of pricing and other information; misuse of market power; exclusive dealing; resale price maintenance; mergers substantially lessening competition
VI	Enforcement and remedies for anti-competitive conduct
VII	Authorisations and notifications
XIA	The Competition Code

### Enforcement

The ACCC investigates cartel and other types of anti-competitive conduct—which are illegal for all businesses in Australia.

### Court cases

The ACCC takes court action where, after considering all aspects of a matter, we see it as the best way to achieve our enforcement and compliance objectives. We are more likely to litigate where we see the conduct as particularly bad, where we are concerned about likely future behaviour or where the party involved fails to resolve the matter satisfactorily.

The ACCC may refer matters involving criminal cartel offences to the Commonwealth Director of Public Prosecutions for possible criminal prosecution.

For individuals, the cartel offence is punishable by imprisonment of up to 10 years and/or fines up to \$360 000 per contravention. Corporations found guilty of a cartel offence may be fined up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater).

In relation to civil cartel prohibitions and other forms of anti-competitive conduct, the ACCC may initiate court action for contraventions of the *Competition and Consumer Act 2010*.

To enforce the civil provisions of the *Competition and Consumer Act 2010* relating to anti-competitive conduct, the ACCC can seek:

- declarations of contraventions
- findings of facts
- injunctions
- damages and compensation
- community service orders
- probation orders
- divestiture orders
- disqualification of a person from managing corporations
- adverse publicity orders
- corrective advertising, public notices and disclosure
- penalties of up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater) for companies; and \$500 000 for individuals.

### ***Enforceable undertakings***

The ACCC often resolves alleged breaches of the Act by accepting court enforceable undertakings from the business involved. In these undertakings, which we record on a public register, the business usually agrees to:

- make good the harm they have caused
- accept responsibility for their actions
- establish or review and improve their compliance programs and culture.

If the business later breaches the undertaking, we seek to have it enforced in the Federal Court of Australia.

We may also use court enforceable undertakings where we have competition concerns with a proposed merger or acquisition. In an enforceable undertaking a merger party may agree to action that addresses concerns about a substantial lessening of competition, allowing the merger or acquisition to go ahead.

The ACCC maintains a public register of enforceable undertakings.

### ***Administrative resolution***

In some cases—for example, where we assess the potential risk of harm to competition or consumer detriment from particular conduct as low—we may accept an administrative resolution. Administrative resolutions generally involve the business agreeing to stop the conduct, compensate those who suffered, and take other measures needed to prevent future recurrences.

## ***Education and advice***

We believe that preventing a breach of the Act is better than acting after a breach has occurred. Therefore, the ACCC runs regular educational campaigns to inform and advise consumers and businesses about their rights and obligations under the Act and to encourage compliance. Our campaigns aim to educate both big and small businesses.

The ACCC publishes targeted and general information, including tips and tools, to encourage businesses to comply with the Act. We use a wide range of channels to disseminate this information. We also liaise extensively with business, consumer and government agencies about the Act and our role in its administration.

## **Mergers**

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

To assist business, the ACCC has an informal clearance process that enables parties that are planning a merger to seek the ACCC's view on whether a proposed acquisition is likely to have the effect of substantially lessening competition. Businesses may also apply to the ACCC for formal clearance of acquisitions which, if granted, provides statutory exemption from s. 50.

There is no legislation underpinning the informal process; rather, it has developed over time so that merger parties can seek the ACCC's view before they complete a merger.

The ACCC assesses mergers that come to our attention where they potentially raise concerns under s. 50. These mergers are generally notified by the merger parties via a request for informal clearance. Alternatively, the ACCC may become aware of a proposed or a completed acquisition by monitoring media reports, from complaints or through referrals from Australian and overseas regulators.

We use the information available to us to determine whether a public review is required. Where we are satisfied that there is a low risk of a substantial lessening of competition based on an initial assessment, we may decide that a public review of the merger is unnecessary. These mergers are described as being 'pre-assessed'. A significant proportion of the mergers we assess are pre-assessed. Clearing mergers by pre-assessment enables the ACCC to respond quickly where there are no substantive competition concerns.

Both public and confidential mergers can be pre-assessed, without conducting a public review, on the basis of the information from the parties, other information before us and in some cases information from targeted inquiries (in the case of non-confidential mergers).

Where pre-assessment is not considered suitable or possible, the ACCC conducts a public review for non-confidential mergers.

## **Authorisations and notifications**

The Act primarily aims to prevent conduct that damages or is likely to damage competition. However, if markets are not working efficiently and they are failing to maximise welfare, some restrictions on competition may be allowed in the public interest.

Authorisation provides businesses with statutory immunity from legal action to engage in potentially anti-competitive arrangements. Where businesses consider proposed conduct is likely to result in a public benefit, they can apply to the ACCC for an authorisation. If the ACCC is satisfied that the public benefit will outweigh the public detriment, it can authorise the proposed arrangement or conduct.

The ACCC can authorise:

- anti-competitive arrangements, including cartel provisions (such as price fixing, controlling output, sharing markets or collective bargaining) and exclusionary provisions (such as an agreement to limit or restrict the supply or acquisition of goods or services to particular people)
- disclosures of pricing and other information in the banking sector
- a secondary boycott, where two or more parties prevent a third party such as a potential customer or supplier from doing business with a target
- exclusive dealing (where a person trading with another imposes restrictions on the other's freedom to choose with whom, in what or where they deal)
- resale price maintenance (where the supplier specifies a minimum price below which goods or services may not be resold)
- dual-listed company arrangements that affect competition.

Notification is an alternative to authorisation for certain arrangements. Like authorisation, the notification process provides protection from legal action under the Act if the conduct is in the public interest.

However, notification can be a more streamlined procedure than authorisation. It can only be used for:

- collective bargaining (where two or more competitors get together with a supplier or a customer to negotiate terms, conditions and prices)
- exclusive dealing
- private price disclosures to competitors outside the ordinary course of business.

Both the notification and authorisation processes are public. The ACCC publishes the applications, public submissions and ACCC decisions on the public register on our website.

## Fair trading and consumer protection

**Table A6.2: Parts of the *Competition and Consumer Act 2010* (including the Australian Consumer Law) dealing with fair trading and consumer protection**

<i>Competition and Consumer Act 2010</i>	
IVB	Industry codes of conduct—the franchising, horticulture, oil and unit pricing codes are mandatory codes prescribed under Part IVB
<i>Australian Consumer Law—Schedule 2 to the <i>Competition and Consumer Act 2010</i></i>	
Chapter 2	General protections: misleading or deceptive conduct; unconscionable conduct; unfair contract terms
Chapter 3	Specific protections: unfair practices: unsolicited supplies; pyramid selling; pricing; consumer guarantees; unsolicited consumer agreements; lay-by agreements; product safety and information
Chapter 4	Criminal conduct relating to fair trading and consumer protection
Chapter 5	Enforcement and remedies for contraventions of the Australian Consumer Law

## Enforcement

To enforce the civil provisions of the *Competition and Consumer Act 2010* (including the Australian Consumer Law) relating to fair trading and consumer protection, the ACCC can seek:

- declarations of contraventions
- findings of facts
- injunctions
- damages and compensation, including for non-party consumers
- community service orders
- probation orders
- disqualification of a person from managing corporations
- adverse publicity orders
- corrective advertising, public notices and disclosure
- penalties of up to \$1.1 million for companies and \$220 000 for individuals, per contravention.

## Court enforceable undertakings

To protect consumers and resolve matters under investigation, we can accept enforceable undertakings where a breach, or a potential breach, might otherwise justify litigation.

Under an enforceable undertaking, a company or an individual will generally agree to:

- remedy the harm caused by the conduct
- accept responsibility for their actions
- establish or review and improve their compliance programs and culture.

The ACCC may seek:

- corrective advertising in the print and electronic media
- refunds to affected customers
- community service remedies
- industry-wide education programs funded by the company providing the undertaking.

## Infringement notices

Where we believe that a breach of the Act requires a more formal sanction than an administrative resolution but we consider that a resolution is possible without going to court, we can issue an infringement notice.

## Administrative resolutions

In some cases—for example, where we assess the potential risk as low—we may accept an administrative resolution.

Depending on the circumstances, administrative resolutions can range from a commitment by a trader in writing to a signed agreement between the ACCC and a trader setting out detailed conditions.

Administrative resolutions generally involve the trader agreeing to stop the offending conduct, compensate those adversely affected and take other measures necessary to ensure that the conduct does not recur. If a trader re-offends after they have accepted an administrative resolution, we are likely to resolve the new matter differently.

## Infrastructure services and markets where competition is limited

**Table A6.3: Parts of the *Competition and Consumer Act 2010* dealing with regulated industries and prices surveillance**

IIIA	Access to the services of essential national infrastructure facilities such as rail tracks and grain port terminals
VIIA	Price inquiries and surveillance in relation to industries or businesses as directed by the Australian Government
X	Limited exemptions for anti-competitive conduct in relation to international liner cargo shipping
XIB	Anti-competitive conduct in telecommunications
XIC	Access to services for telecommunications

### Regulation

The ACCC or AER have regulatory responsibilities in relation to a number of key infrastructure services in the economy, including energy, telecommunications, rail, water, fuel, bulk wheat export, postal services, ports and airports. As the infrastructure in each of these sectors is generally provided by one or a small number of suppliers, regulation by the ACCC/AER will promote the economically efficient operation, use and investment in Australia's key infrastructure. The effect of competition and investment will therefore enhance community welfare and promote the long-term interest of Australian consumers.

The ACCC/AER regulates access to monopoly infrastructure services and the price for that access.

The AER regulates the electricity and gas industries. The AER sets the amount of revenue that network businesses can recover from customers for using networks (electricity poles and wires and gas pipelines) that transport energy. The AER regulates the costs of electricity network services in eastern and southern Australia, and electricity networks in the Northern Territory. The AER regulates access prices for covered pipelines in jurisdictions other than Western Australia. The AER also monitors the wholesale electricity and gas markets to ensure suppliers comply with the National Electricity Law and Rules and the National Gas Law and Rules.

The AER also has monitoring and enforcement roles and functions under the National Energy Retail Law and the National Energy Retail Rules in the ACT, Tasmania, South Australia, New South Wales and from 1 July 2015, Queensland. These functions include authorising retailers to sell energy and administering the national retailer of last resort scheme aimed at protecting customers and the market in the event of a retail business failure.

## Legislative amendments in 2016–17

### Amendments to the *Competition and Consumer Act 2010*

#### *Statute Update Act 2016—commenced 21 October 2016*

- This act amends paragraphs 10.68(2)(a) and 10.68(2)(b) of the *Competition and Consumer Act 2010* to substitute dollar amounts with penalty units. It also amends sections 90A(9) and 93A(8) of the *Competition and Consumer Act 2010* to substitute 'evidence' with 'prima facie evidence'.

***Competition and Consumer Amendment (Country of Origin) Act 2017—commenced 23 February 2017***

- This act alters the definition of substantial transformation as it applies to the safe harbour provisions of the ACL by simplifying the tests used to justify a country of origin 'made in' claim by clarifying what substantial transformation means and removing the '50 per cent production cost' test.

**Amendments to the Competition and Consumer Regulations 2010**

***Treasury Laws Amendment (Professional Standards Schemes) Regulations 2017—commenced 25 May 2017***

- The regulations prescribe a number of new professional standards schemes that have capped civil liability for misleading or deceptive conduct under the *Competition and Consumer Act 2010* which are listed in the Competition and Consumer Regulations 2010.

**Telecommunications legislation**

***Amendments to the Telecommunications Act 1997***

Enhancing Online Safety for Children Amendment Act 2017—commenced 23 June 2017

- The Act makes several minor, consequential amendments to the *Telecommunications Act 1997* to reflect the new title of the head Act and title of the statutory office and some necessary transitional and savings provisions.

***Determinations made under the Telecommunications Act 1997***

Telecommunications (Service Provider—Identity Checks for Prepaid Mobile Carriage Services) Determination 2017—commenced 7 April 2017

- Determination under ss. 99(1) of the *Telecommunications Act 1997*.
- This instrument sets out the regulatory framework for the supply of prepaid mobile services by carriage service providers and repeals the Telecommunications (Service Provider—Identity Checks for Prepaid Mobile Carriage Services) Determination 2013.

Telecommunications (Approving Body) Determination 2017—commenced on 28 February 2017

- Determination under ss. 410(1) of the *Telecommunications Act 1997*.
- This instrument determines that the Joint Accreditation System of Australia and New Zealand is an approving body for the purposes of s. 410 of the *Telecommunications Act 1997*.

Telecommunications (Carrier Licence Charges) Act 1997—Determination under paragraph 15(1)(b) No. 1 of 2017—dated 1 June 2017

- Determination under se. 5(1)(b) of the *Telecommunications (Carrier Licence Charges) Act 1997*.
- This instrument determines that the proportion of the ACCC's costs for the 2015–16 financial year that is attributable to the ACCC's telecommunications functions and powers is \$13 641 023.

Telecommunications (Fibre-ready Facilities—Exempt Real Estate Development Projects) Instrument 2016—3 December 2016

- Instrument made under paragraphs 372K(1)(b), (c), (d), (e) and (f) of the *Telecommunications Act 1997*.
- This instrument exempts real estate development projects situated outside of a NBN fixed line rollout region from the requirements to install fibre-ready pit and pipe under

Part 20A of the Act, provided the project satisfies certain other conditions relating to the average size of the street frontages and utility infrastructure.

## Amendments to Record Keeping Rules

Telstra Exchange Facilities Record Keeping Rule (RKR)

- The record keeping rule requires Telstra to report monthly on a number of metrics in relation to access to its exchanges including the number of exchanges with queued access seekers and exchanges that are 'capped' (out of space).
- Following a review of the rule in June 2017, the ACCC allowed the RKR to expire on 14 July 2017.

NBN services in operation (NBN SIO) record keeping rule (RKR).

- This rule requires NBN Co to provide information on the number of wholesale Access Virtual Circuit (AVC) services in operation, the amount of Connectivity Virtual Circuit (CVC) capacity being acquired and average CVC utilisation over the NBN.
- In June 2017 the ACCC commenced a public inquiry into whether the NBN Services in Operation RKR (and associated Disclosure Direction) should be extended, varied or allowed to expire. The review is ongoing.

## Water Legislation

### *Amendments to the Water Act 2007*

Water Amendment (Murray-Darling Basin Agreement) Regulations 2017—commenced 23 May 2017

- The Regulations amend the Murray-Darling Basin Agreement (the Agreement) to allow the Murray-Darling Basin Authority to prepare a high-level corporate plan to fulfil the requirements of the *Public Governance Performance and Accountability Act 2013* (PGPA Act), the PGPA Rule and the Act, while maintaining a detailed work plan under the Agreement for operational purposes.

### *Water Determinations under the Water Charge (Infrastructure) Rules 2010*

- Nil.

## Wheat Legislation

### *Amendments to the Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014*

- Nil.

## National Electricity Law and National Gas Law

### Amendments to National Electricity Law and National Gas Law Rules

#### *National Electricity (South Australia) (Australian Energy Regulator—Wholesale Market Monitoring) Amendment Act—commenced 15 December 2016*

- Provides the AER with power to monitor the markets on a regular and systematic basis and report at least every two years on performance, including whether there is effective competition and any features that may be detrimental to competition.



### ***Statutes Amendment (National Electricity and Gas Laws—Information Collection and Publication) Act 2016—commenced 15 December 2016***

- Amends the NEL and NGL to ensure the AER has sufficient and clear powers to collect and publish data necessary to benchmark the performance of electricity and gas NSPs.
- Clarifies that the AER must prepare performance reports if required by the NER or the NGR. It also clarifies that performance reports published by the AER, (Regulatory Information Instrument) may deal with the financial or operational performance of a NSP in relation to the efficiency of the network service provider in providing the services.

It places the onus of claiming confidentiality of information requested in a Regulatory Information Instrument on the NSP, and importantly, information provided to the AER in response to a Regulatory Information Instrument, which is not subject to an express claim of confidentiality under the new process, is not regarded as being confidential.

### **National Electricity Rules**

#### ***National Electricity (South Australia) (Australian Energy Regulator—Wholesale Market Monitoring) Amendment Act—commenced 15 December 2016***

- Provides the AER with power to monitor the markets on a regular and systematic basis and report at least every two years on performance, including whether there is effective competition and any features that may be detrimental to competition.

### ***Statutes Amendment (National Electricity and Gas Laws—Information Collection and Publication) Act 2016—commenced 15 December 2016***

- Amends the NEL and NGL to ensure the AER has sufficient and clear powers to collect and publish data necessary to benchmark the performance of electricity and gas NSPs.
- Clarifies that the AER must prepare performance reports if required by the NER or the NGR. It also clarifies that performance reports published by the AER, (Regulatory Information Instrument) may deal with the financial or operational performance of a NSP in relation to the efficiency of the network service provider in providing the services.

It places the onus of claiming confidentiality of information requested in a Regulatory Information Instrument on the NSP, and importantly, information provided to the AER in response to a Regulatory Information Instrument, which is not subject to an express claim of confidentiality under the new process, is not regarded as being confidential..

### **National Gas Rules**

- Retailer insolvency costs and pass through arrangements—commenced 9 February 2017.
- Retailer-distributor credit support requirements—commenced 9 February 2017.
- DWGM-AMDQ allocation—Schedule 1 commenced 25 October 2016.
- Rate of Return Guidelines review (gas)—commenced 20 October 2016.
- Enhanced information for gas transmission pipeline capacity trading—commenced 6 October 2016.

### **National Energy Retail Rules**

Improving the accuracy of customer transfers (retail)—Schedule 2 commenced 2 February 2017.

## New standard

### ***Country of Origin Food Labelling Information Standard 2016—commenced 1 July 2016***

- The Information Standard changes Australia's country of origin food labelling laws and applies to all food sold or offered for retail sale in Australia. The Information Standard has a two year transition period, during which businesses can continue to comply with existing country of origin food labelling requirements or can adopt labelling in accordance with the Information Standard. The Information Standard requirements will become mandatory on 1 July 2018.

Under the Information Standard, most foods that are produced, grown, made or packed in Australia will need to display a label with the kangaroo in a triangle symbol (only if they were produced, grown or made in Australia), a statement indicating that the food was grown, produced, made or packed in Australia and the minimum proportion, by ingoing weight, of Australian ingredients, indicated by a percentage amount and shown in a bar chart. The ACCC will educate business on the application of the Information Standard and how to comply with it, take enforcement action where appropriate and conduct market surveillance.

## Amendments to standards

### ***Consumer Goods (Bean Bags) Safety Standard Amendment 2015; Consumer Protection Notice No.4 of 2015—commenced 14 July 2015***

- The instrument makes minor and machinery changes to the Consumer Goods (Bean Bags) Safety Standard 2014 to permit goods complying with that standard to be sold from the date this instrument is registered and allow goods complying with the superseded standard to be sold up to 1 July 2016.

### ***Australian Consumer Law Safety Standard (Protective Helmets for Motor Cyclists) Revocation Notice 2015—made 20 November 2016.***

This Notice revokes *Trade Practices Act 1974—Consumer Protection Notice No. 9 of 1990—Consumer Product Safety Standard: Protective Helmets for Motor Cyclists.*

## New ban order

### ***Australian Consumer Law Imposition of Interim Ban on Hoverboards that do not meet Specific Safety Requirements—Consumer Protection Notice No. 3 of 2016—commenced on 19 March 2016***

- This instrument prohibits the supply of hoverboards that do not meet certain specific safety requirements set out in International Electrotechnical Commission (IEC) standards, IEC 62133 and IEC 60335-1 or Underwriters Laboratories Inc (UL) standard, UL 2272.
- Consumer Protection Notice No. 1 of 2016—Safety warning notice (Hoverboards)—made 12 January 2016.
- Consumer Protection Notice No. 2 of 2016—Hoverboards s. 132J Notice (Certification)—made 18 March 2016.
- Consumer Protection Notice No. 4 of 2016— Hoverboards interim ban conference notice—made 18 March 2016.
- Consumer Protection Notice No. 5 of 2016—Extends the interim ban on hoverboards that do not meet specific safety requirements by 30 days—made 5 May 2016.
- Consumer Protection Notice No. 6 of 2016—Extends the interim ban on hoverboards that do not meet specific safety requirements by 30 days—made 13 June 2016.

# Appendix 7: Information required under the Competition and Consumer Act 2010

## Section 171(2) reporting requirements

Section 51(1) of the *Competition and Consumer Act 2010* provides that conduct that would normally contravene the law may be permitted if it is specifically authorised under other Australian, state or territory legislation. Section 171(2) of the law requires this report to list all such laws.

### Exceptions under Australian, state and territory legislation

Below is a list of the legislation that allows such conduct or provides for regulations to be made authorising particular conduct. The list includes legislation which the ACCC has been notified of or has otherwise become aware of.

#### **Commonwealth**

*Australian Postal Corporation Act 1989*

*Banking Act 1959*

*Competition and Consumer Act 2010* (ss. 173 and 151DA)

*Customs Act 1901*

*Financial Sector (Business Transfer and Group Restructure) Act 1999*

*Insurance Act 1973*

*Life Insurance Act 1995*

*Liquid Fuel Emergency Act 1984*

*Payment Systems (Regulation) Act 1998*

*Social Security (Administration) Act 1999*

*Stronger Futures in the Northern Territory Act 2012*

*Telecommunications Act 1997*

#### **Australian Capital Territory**

*Cemeteries and Crematoria Act 2003*

*Competition Policy Reform Act 1996*

*Financial Management Act 1996*

*Government Procurement Act 2001*

*Health Act 1993*

*Insurance Authority Act 2005*

*Racing Act 1999*

*Road Transport (Public Passenger Services) Act 2001*

*Territory Records Act 2002*

## **New South Wales**

*Australian Jockey and Sydney Turf Clubs Merger Act 2010*

*Betting and Racing Act 1998*

*Casino Control Regulation 2009*

*Coal Industry Act 2001*

*Competition Policy Reform (New South Wales) Act 1995*

*Electricity Generator Assets (Authorised Transactions) Act 2012*

*Gaming Machines Act 2001*

*Health Services Act 1997*

*Hunter Water Act 1991*

*Industrial Relations (Ethical Clothing Trades) Act 2001*

*Industrial Relations Act 1996*

*James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*

*Land and Property Information NSW (Authorised Transaction) Act 2016*

*Liquor Act 2007*

*Major Events Act 2009*

*NSW Self Insurance Corporation Act 2004*

*Passenger Transport Act 2014*

*Point to Point Transport (Taxis and Hire Vehicles) Act 2016*

*Protection of the Environment Operations Act 1997*

*Rice Marketing Act 1983*

*Sporting Venues Authorities Act 1996*

*Thoroughbred Racing Act 1996*

*Totalizator Act 1997*

*Waste Avoidance and Resource Recovery Act 2001*

*Waste Avoidance and Resource Recovery Amendment (Container Deposit Scheme) Act 2016*

## **Northern Territory**

*Competition Policy Reform (Northern Territory) Act 1996*

*Consumer Affairs and Fair Trading Act 1990*

*Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations 1996*

*Electricity Reform Act 2000*

*Environmental Protection (Beverage Containers and Plastic Bags) Act 2011*

*Liquor Act 1978*

*Water Supply and Sewerage Services Act 2000*

## **Queensland**

*Competition Policy Reform (Queensland) Act 1996*

*Gladstone Power Station Agreement Act 1993*

*Racing Act 2002*

*Sugar Industry Act 1999*

*Transport Operations (Passenger Transport) Act 1994*

## **South Australia**

*Authorised Betting Operations Act 2000*

*Authorised Betting Operations Regulations 2001*

*Competition Policy Reform (South Australia) Act 1996*

*Cooper Basin (Ratification) Act 1975*

*Roxby Downs (Indenture Ratification) Act 1982*

## **Tasmania**

*Competition Policy Reform (Tasmania) Act 1996*

*Electricity Reform Act 2012*

*Electricity Supply Industry Act 1995*

*Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*

*Gaming Control Act 1993*

*Rail Company Act 2009*

*TOTE Tasmania (Sale) Act 2009*

*Water and Sewerage Corporation Act 2012*

## **Victoria**

*Access to Medicinal Cannabis Act 2016*

*Gambling Regulation Act 2003*

*Gas Industry (Residual Provisions) Act 1994*

*Health Services Act 1988*

*Legal Profession Uniform Law Application Act 2014*

*Liquor Control Reform Act 1998*

*Outworkers (Improved Protection) Act 2003*

*Owner Drivers and Forestry Contractors Act 2005*

*State Owned Enterprises Act 1992*

## **Western Australia**

*Competition Policy Reform (Western Australia) Act 1996*

*Electricity Corporations Act 2005*

*Electricity Industry (Wholesale Electricity Market) Regulations 2004*

*Electricity Industry Act 2004*

*Energy Coordination Act 1994*

*North West Gas Development (Woodside) Agreement Act 1979*

*Owners-Drivers (Contracts and Disputes) Act 2007*

## Section 171(3) reporting requirements

### Time taken to make final determinations and decisions

#### ***Final determinations on access disputes under section 44V***

The ACCC made no determinations on access disputes under s. 44V in 2016–17.

#### ***Decisions on access undertaking applications and access code applications***

##### Rail

On 29 June 2017, the ACCC consented to the Australian Rail Track Corporation's (ARTC's) application to vary the 2011 Hunter Valley Access Undertaking (HVAU).

The ACCC's decision means that the term of operation of the 2011 HVAU is now extended to 31 December 2021, with some modifications. Specifically:

- a reduced rate of return, being a real pre-tax rate of return of 5.38 per cent and a nominal pre-tax rate of return of 7.91 per cent, to be applied from 1 July 2016
- an increased remaining mine life, being 23 years as at 1 July 2016
- a commitment to submit a further variation to address a number of matters that remain unresolved from ARTC's previous application for a replacement HVAU. The time taken to make decisions on applications under ss. 44PA(1).

#### ***The time taken to make decisions on applications under subsection 44PA(1)***

No decisions were made on applications under ss. 44PA(1).

### Notices under ss. 155 and 155A

#### ***General description of matters for which notices were given***

Notices were issued in the course of investigations into conduct potentially in contravention of restrictive trade practices provisions, industry codes and consumer and small business protection provisions of the *Competition and Consumer Act 2010* and/or *Trade Practices Act 1974*.

#### **Types of notices issued**

- 135 notices under s. 155(1)(a) and (b) (requiring the addressee to furnish information in writing and to produce documents)
- 11 notices under s. 155(1)(a) (requiring the addressee to furnish information)
- 45 notices under s. 155(1)(b) (requiring the addressee to produce documents)
- 36 notices under s. 155(1)(c) (requiring the addressee to appear in person and give evidence).

#### **Notices issued under s. 155A of the Competition and Consumer Act 2010**

Three notices were issued under s. 155A of the *Competition and Consumer Act 2010*.

## Challenges to the validity of notices

### Search warrants issued or signed

No search warrants were issued by a judge under s. 135Z or signed by a judge under s. 136.

Two search warrants were issued by a magistrate under s. 154X (Part XIX). No search warrants were signed by a magistrate under s. 154Y.

There were no challenges to the validity of search warrants.

### Entry to premises

There were 916 entries onto premises under s. 133B or 133C, Division 6 of Part XI. There were four entries to premises under Part XIX.

### Complaints received by the Commission

Details on the number of complaints received by the ACCC in 2016–17, a summary of the kinds of complaints received and how they were dealt with and a general description of the major matters investigated are on page 144 to 148.

### Substantiation notices issued

Five substantiation notices were issued pursuant to ss. 219(2)(a) and (c) of the *Competition and Consumer Act 2010* requiring each of the addressees provide a written signed statement or produce documents substantiating or supporting their claims about electronic cigarette products.

### Audit notices issued

Eight notices under s. 51ADD (requiring the addressee to give information or produce documents) were issued in 2016–17. Five of these notices were issued to franchisors to check their level of compliance with the Franchising Code and three notices were issued to traders to check their level of compliance with the Food and Grocery Code of Conduct.

### Intervention in proceedings

The ACCC intervened in one matter in 2016–17. That matter was *Port of Newcastle Operations Pty Ltd v Australian Competition Tribunal* [2017] FCAFC 124. The matter was an application by Port of Newcastle Operations Pty Ltd (PNO) for judicial review of a decision made by the Australian Competition Tribunal (the Tribunal) on 16 June 2016.

On 13 May 2015 Glencore Coal Pty Ltd (Glencore) made an application to the National Competition Council (NCC) under Part IIIA of the *Competition and Consumer Act 2010* (Cth) (the Act) recommending that the service at the Port of Newcastle be declared. On the recommendation of the NCC the Minister decided not to declare the Port of Newcastle a service under Division 2 of Part IIIA of the Act. Glencore applied to the Tribunal for review of the Minister's decision and the Tribunal made an order setting aside the decision of the Minister.

The Tribunal included a judge of the Federal Court and accordingly PNO's judicial review application was heard by the Full Court under section 20(2) of the *Federal Court of Australia Act 1976*. The ACCC decided to intervene on questions of law. Under s. 87CA of the Act, the ACCC may, with leave of the Court, intervene in any proceeding instituted under the Act. The Commonwealth separately intervened.

On 16 August 2017 the Federal Court ordered that the application for judicial review be dismissed. On 12 September 2017 PNO filed a special leave application to the High Court of Australia.

# Appendix 8: Undertakings accepted and infringement notices paid in 2016–17

Undertakings accepted by the ACCC are available in full on the undertakings public register on the ACCC website.

## Strategy 1 Maintain and promote competition

### Competition and Consumer Act 2010 s. 87B undertakings

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#### **Competition and Consumer Act 2010**

#### **To promote vigorous lawful competition and informed markets**

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Anti-competitive agreements and practices

#### **Co-operative Bulk Handling Limited**

s. 87B undertaking dated 17 October 2016

The ACCC has accepted a court enforceable undertaking from Co-operative Bulk Handling Limited (CBH) in relation to its supply of grain receival, storage and handling services in Western Australia.

CBH is a cooperative, 100 per cent owned by its 4200 grower members in Western Australia.

The ACCC considers that between 2013 and 2016, CBH engaged in exclusive dealing conduct that had the effect, or likely effect, of substantially lessening competition in the West Australian grain transport market. The conduct involved CBH:

- requiring growers to opt out of its integrated Grain Express service within seven days of the grower delivering each parcel of grain to a CBH receival site
- designating 31 (reduced to 30 in January 2015) of its up-country storage sites as 'Grain Express Only' sites so that those sites were not available to users of CBH's unbundled Non Grain Express services, and
- the price for the Non Grain Express service was set above the price of the Grain Express service (excluding transport charges) in most situations, with the price differential amounting to, in effect, a charge to opt out of the Grain Express service.

The ACCC considered that, in combination, the effect of these requirements was that growers and marketers would not, except to a limited extent, use the Non Grain Express services and acquire grain transport services from a competitor of CBH.



In 2016, CBH began offering new services for growers and marketers who use its storage and handling network including:

- 'CBH Site Select'—a service that will allow marketers to buy grain delivered to a CBH receival site and arrange a transport provider other than CBH to transport the grain to port or domestic customers, and
- 'CBH Integrated'—a fully integrated service managed by CBH from receival point to export or domestic markets

To address the ACCC's concerns, CBH has undertaken to the ACCC that in offering its Site Select and CBH Integrated services it will, for the four harvest seasons commencing from the 2016–17 season:

- offer the Site Select service at all CBH receival sites that CBH opens with the exception of 11 designated Integrated Only sites and any new Integrated Only sites CBH builds
- allow growers and marketers up until 1 February in each season to opt their grain out of the CBH Integrated service (provided the receival site is not a designated Integrated Only site), and
- price its Integrated and unbundled Site Select services as outlined in the undertaking and will only change its fees and charges for these services in accordance with the terms of the undertaking.

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Merger remedy

**Metcash Limited proposed acquisition of Home Timber and Hardware Group**

s. 87B Undertaking dated 20 July 2016

The ACCC did not oppose Metcash Limited's proposed acquisition of Home Timber and Hardware Group after accepting an undertaking from Metcash. The undertaking placed obligations on Metcash to not restrict hardware stores that it supplies from purchasing goods from other suppliers, and to not discriminate against hardware stores that it supplies that compete with hardware stores in which it holds an interest.

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Merger remedy

**Qube Holdings Limited proposed acquisition of a 50 per cent shareholding in Australian Amalgamated Terminals Pty Ltd**

s. 87B Undertaking dated 23 November 2016

The ACCC did not oppose Qube Holdings' proposed acquisition of a 50 per cent shareholding in Australian Amalgamated Terminals Pty Ltd (AAT) after accepting an undertaking from Qube and AAT. The undertaking places obligations on AAT and Qube (as relevant) not to discriminate between users of AAT port terminals, not prevent or hinder access to AAT terminals, to ring fence terminal users' confidential information, and to comply with price and non-price dispute resolution processes.

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Resale price maintenance

Withdrawal of undertaking due to business cessation

**Peter McInnes Pty Ltd**

s. 87B undertaking dated 20 October 2015

On 15 April 2014 the ACCC accepted an undertaking from Peter McInnes Pty Ltd ACN 000 445 269. The undertaking was given by Peter McInnes in relation to the ACCC's concerns that Peter McInnes had engaged in conduct that constituted or was likely to constitute resale price maintenance, on four occasions, by inducing or attempting to induce retailers not to sell KitchenAid stand mixers supplied to them by Peter McInnes at a price less than the recommended retail price specified by Peter McInnes.

The undertaking required Peter McInnes to:

- refrain from engaging in resale price maintenance for two years
- write to all of its KitchenAid stand mixer customers informing them that they are free to set their own minimum prices for products supplied to them by Peter McInnes
- issue directions to its employees that they should refrain from expressing to those customers any hostility or criticism about the customers discounting below the recommended retail price, and
- implement and maintain a compliance program.

On 4 August 2015 Peter McInnes Pty Ltd advised that it had sold its business and is no longer operating. Peter McInnes Pty Ltd subsequently sought withdrawal of its undertaking. As Peter McInnes Pty Ltd is no longer operating, the ACCC has provided its consent to withdraw the undertaking.

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Anti-competitive agreements and practices

**Eureka Operations Pty Ltd trading as Coles Express**

s. 87B undertaking dated 15 December 2015

On 19 August 2014, the ACCC instituted proceedings in the Federal Court against Informed Sources and five petrol retailers (BP Australia Pty Ltd, Caltex Australia Petroleum Pty Ltd, Woolworths Ltd, 7-Eleven Stores Pty Ltd and Coles Express).

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

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

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

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

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**BP Australia Pty Ltd, Caltex Australia Petroleum Pty Ltd, Woolworths Ltd, 7-Eleven Stores Pty Ltd, Informed Sources (Australia) Pty Ltd**

s. 87B undertaking dated 22 December 2015

On 19 August 2014, the ACCC instituted proceedings in the Federal Court against Informed Sources and five petrol retailers (BP, Caltex, Woolworths, 7-Eleven and Eureka Operations Pty Ltd trading as Coles Express).

On 15 December 2015, as outlined above, the ACCC accepted a court enforceable undertaking from Eureka Operations Pty Ltd t/as Coles Express in which Coles Express agreed to terminate its agreement with Informed Sources at the expiration of its current contract and to not enter into a similar petrol price information exchange service for the next five years. As a result, the ACCC consented to orders by the Federal Court that the proceedings be discontinued against it.

On 22 December 2015 the ACCC accepted an undertaking from:

- BP Australia Pty Ltd (BP)
- Caltex Australia Petroleum Pty Ltd (Caltex)
- Woolworths Ltd (Woolworths)
- 7-Eleven Stores Pty Ltd (7-Eleven), and
- Informed Sources (Australia) Pty Ltd (Informed Sources).

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

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

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

The Federal Court also ordered, by consent, that the proceedings against BP, Caltex, Woolworths, 7-Eleven and Informed Sources be discontinued.

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

### Competition and Consumer Act 2010 s. 87B undertakings accepted

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#### *Australian Consumer Law*

#### **'To encourage fair trading, protection of consumers and product safety'**

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##### Product safety

##### **Ozsale Pty Limited**

s. 87B undertaking dated 27 July 2016

The ACCC has accepted a court enforceable undertaking from Ozsale Pty Limited (Ozsale) in relation to Terms & Conditions displayed on its websites, including Ozsale.com.au, OO.com.au, BuyInvite.com.au, DealsDirect.com.au and TopBuy.com.au.

Ozsale has also paid a penalty of \$10 800 following the issue of one Infringement Notice by the ACCC.

Ozsale is an unlisted Australian company which owns and operates the above mentioned websites. The websites operate as online stores offering consumers access to clearance-style sales for a range of products.

The ACCC was concerned that the Terms and conditions displayed on Ozsale's websites included a number of false or misleading representations to consumers regarding their consumer guarantee rights.

Ozsale has accepted that its conduct is likely to have given rise to the ACL concerns identified by the ACCC. To address the ACCC's concerns, Ozsale has provided the ACCC with a s. 87B undertaking that it will:

- publish a single refunds and remedies policy to be used across all online sales platforms operated by Ozsale that accurately reflects consumers' relevant rights and remedies under the ACL
  - implement a compliance program, including compliance training and a complaints handling procedure, in order to minimise the risk of future contraventions and ensure its awareness of the ACL, and
  - implement a mystery shopper program in order to increase awareness of, and minimise the risk of Ozsale breaching, its ACL obligations.
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Vulnerable and disadvantaged consumers

### **Easy Meals by Flavour Makers Pty Ltd**

s. 87B undertaking dated 16 August 2016

The ACCC has accepted a court enforceable undertaking from EasyMeals by Flavour Makers Pty Ltd (EasyMeals) in relation to false or misleading representations and a failure to provide the required documents when entering into unsolicited consumer agreements, which is conduct that was likely to contravene the ACL.

EasyMeals sells 'pre-packaged, shelf stable meals' to customers, and promotes its products through its website ([www.easymeals.net.au](http://www.easymeals.net.au)) and telemarketing.

EasyMeals purchases consumer contact details from third party marketing companies who use online surveys to gather those details.

In its five years of operation, EasyMeals has serviced approximately 120 000 customers and has 10 000 active customers.

From October 2014 to July 2015, during telephone calls to consumers, EasyMeals made false or misleading representations about the uses or benefits of the meals it supplies—namely that the meals are suitable for all diabetics, when, in fact, the suitability of the meals for diabetics depends upon the individual diabetic, their diet and the severity of their condition.

From July 2015 to March 2016, EasyMeals caused false or misleading representations to be made on its website and on third party websites that consumers could obtain a free EasyMeals meal by providing their contact details or entering a competition, when the consumer could only obtain a free EasyMeals meal if they purchased a meal from EasyMeals first.

From October 2014 to March 2016, EasyMeals contacted consumers, who had previously provided their details to third party marketing companies for the purpose of obtaining a free meal from EasyMeals, by telephone for the purpose of negotiating the sale of an EasyMeals meal(s) to the consumer. On each occasion that EasyMeals negotiated the sale of an EasyMeals meal(s) to a consumer in this manner, EasyMeals entered into an unsolicited consumer agreement, and when doing so, failed to provide an agreement document that included:

- all the terms of the agreement
- a notice on the front page of the agreement document that conspicuously and prominently informed the consumer of their right to terminate the agreement, and
- an accompanying notice that may be used by the consumer to terminate the agreement.

To address the ACCC's concerns, EasyMeals provided the ACCC with a s. 87B Undertaking that it will comply with the ACL, specifically in relation to:

- representations about the suitability of its products for persons suffering diabetes
- representations that consumers can obtain a free meal by providing EasyMeals, or a third party, their contact details if the consumer can only obtain a free meal by purchasing a meal from EasyMeals beforehand, and
- the documentary requirements when entering into unsolicited consumer agreements, and
- publish a corrective notice on its website indicating that it has contravened sections 29(1)(g), 29(1)(i) and 79 of the ACL, and
- implement an ACL compliance program.

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Small business and Horticulture Code of conduct

**Young Sang & Co. (Aust.) Pty Ltd**

s. 87B undertaking dated 14 September 2016

The ACCC has accepted a court enforceable undertaking from Young Sang & Co. (Aust.) Pty Ltd (Young Sang). Young Sang has admitted that it breached the Horticulture Code of Conduct (the Code) and s. 51ACB of the Act.

Young Sang operates a wholesale horticulture business out of the Melbourne Wholesale Fruit, Vegetable and Flower Markets and trades in tomatoes, eggplant, capsicum and zucchini.

- Young Sang acts as an agent for a number of Queensland based horticulture produce growers.

During 2015, Young Sang:

- traded in horticulture produce with all of its growers without Horticulture Produce Agreements (HPAs), and
- failed to prepare, publish and make publicly available its terms of trade.

To address the ACCC's concerns, Young Sang provided the ACCC with a s. 87B Undertaking that it will:

- not engage with growers without HPAs or terms of trade; send a letter to all growers who it traded with since 2015 attaching a copy of the undertaking, its terms of trade and a draft HPA where applicable
  - place a corrective notice on its website for 90 days, and
  - implement and regularly review a code compliance program.
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**Monde Nissin (Australia) Pty Ltd trading as Menora Foods**

s. 87B undertaking dated 8 November 2016

The ACCC has accepted a court enforceable undertaking from Monde Nissin (Australia) Pty Ltd trading as Menora Foods (Menora) in relation to claims about its oregano product, following an investigation into breaches of the ACL.

Menora is a food marketing and distribution company. Menora distributes products under the Menora brand and other brands. Menora distributes oregano to a number of retailers and food services across Vic, NSW, WA and SA. Menora's oregano sales volume in 2015 was 61 480 units.

From 1 October 2015 to 1 March 2016, Menora made representations through statements on the packaging of its oregano product that the product contained only oregano, other than possible traces of tree nuts, peanuts, wheat, sesame seeds and soy. Test results indicate the substantial presence of olive leaves in the product.

The ACCC raised its concerns regarding the sale of Menora's oregano product with Menora. In response, Menora:

put a hold on all oregano in its supply chain, and proposed to obtain an independent certificate of analysis certifying that its current oregano is unadulterated.

To address the ACCC's concerns, Menora has offered the ACCC a court enforceable undertaking that it will, for a period of three years:

- not represent that a product it supplies or offers for supply is only oregano unless the product contains only oregano, other than traces of tree nuts, peanuts, wheat, sesame seeds and soy
- annually, obtain written evidence which confirms a laboratory has tested one sample of the product supplied and represented by Menora as only oregano and found it contains only oregano, other than traces of tree nuts, peanuts, wheat, sesame seeds and soy
- establish and implement a process for annual testing of the composition of random samples of herb or spice products supplied by Menora, other than oregano
- retain for three years the test results obtained and if requested, provide the ACCC with a copy of those test results
- not represent any of its herb or spice products are of a certain standard, quality, value, grade or composition without a reasonable basis for making such a representation
- ensure that a regular practical training course on consumer law compliance will be provided to all employees whose duties could result in them being concerned with conduct that may contravene Part 3-1 of the ACL
- notify retailers and consumers of the alleged conduct and the resolution agreed with the ACCC, and
- publish on Menora's website a corrective notice.

**Amendment**

With the consent of Menora, the first page of the undertaking was amended on 21 November 2016 to clarify the background to this matter.

### **ALDI Foods Pty Ltd**

s. 87B undertaking dated 8 November 2016

The ACCC has accepted a court enforceable undertaking from ALDI Foods Pty Limited (ALDI) in relation to representations on its Stonemill branded oregano product, following an investigation into breaches of the ACL.

ALDI is a global supermarket chain and operates over 400 stores in New South Wales, Queensland, Victoria, South Australia and Western Australia. ALDI is the sole retailer of the Stonemill oregano in Australia. In 2015 it sold 126 809 units of Stonemill oregano.

During 2015, ALDI made representations through statements on the packaging of its Stonemill branded oregano product that the product contained 100 per cent oregano. These statements included the text 'Oregano' on the front of the package and the ingredients list on the back of the package which says 'Ingredients: Oregano (100%)'. Tests results indicated the Stonemill branded oregano product contained ingredients other than oregano and the substantial presence of olive leaves.

In response to concerns raised by the ACCC, ALDI:

- commissioned its own independent testing of its oregano product
- removed its Stonemill oregano and mixed herb products from its shelves
- offered refunds to consumers
- put a notice in store and on its website apologising to customers
- stated it will now ensure that all of its oregano is certified pure oregano, and
- reviewed its supply arrangement, and has engaged an additional core range supplier for oregano.
- ALDI also offered the ACCC a court enforceable undertaking that it will for a period of three years:
  - annually, obtain written evidence from a laboratory, which confirms that the laboratory has tested one sample of the product supplied and represented by ALDI as only oregano and found that each sample only contained oregano,
  - establish and implement a process for annual testing of the composition of random samples of herb or spice products supplied by ALDI, other than oregano, and
  - retain the test results obtained, and if requested, provide the ACCC with a copy of those test results.



### **Zen Sensation Pty Ltd**

s. 87B undertaking dated 23 November 2016

The ACCC has accepted a court enforceable undertaking from Zen Sensation (Zen) in relation to the supply of TS Blue and TS Gold cigarettes which did not comply with the mandatory Reduced Fire Risk Standard (the RFR Standard). Zen has admitted that this supply was likely to contravene s. 106(1) of the ACL. The undertaking also relates to Zen's claims about the compliance of those cigarettes with the RFR Standard. Zen has also admitted that these claims were likely to contravene the ACL.

Zen was an importer and wholesaler of TS branded cigarettes, which were manufactured overseas under its instructions. Zen has stopped importing and supplying cigarettes and does not currently intend to enter that market again.

To comply with the RFR Standard, cigarettes are manufactured such that, when lit and left unattended, they go out by themselves. Some batches of TS Blue and TS Gold cigarettes failed laboratory testing for compliance with the RFR Standard, while others passed. All TS cigarettes, including the non-compliant cigarettes, were supplied in packets which stated that they complied with the RFR Standard (the compliance statement).

Zen supplied a total of 20 million TS Blue cigarettes and 4.5 million TS Gold cigarettes. The number of non-compliant cigarettes that Zen supplied is unknown. The manufacturer did not keep records which might have allowed the number of non-compliant cigarettes to be identified. Zen did not arrange laboratory testing of any TS cigarettes before being contacted by the ACCC. Zen voluntarily recalled all TS cigarettes.

To address the ACCC's concerns, Zen has provided the ACCC with a s. 87B undertaking that it will not supply cigarettes unless:

- the manufacturer keep records of how and when the cigarettes are manufactured
  - each packet of the cigarettes includes a batch number that can be matched to those records
  - samples of the cigarettes are laboratory tested for compliance with the RFR Standard before being supplied and at least every six months after that, and
  - Zen keeps records of the manufacturing, batch numbers and test results for at least three years after supplying the cigarettes.
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### **Philip Morris Ltd**

s. 87B undertaking dated 23 November 2016

The ACCC has accepted a court enforceable undertaking from Philip Morris Ltd (PML) in relation to the supply of Choice Signature Bold and Choice Signature Classic cigarettes (the Choice cigarettes) which did not comply with the mandatory Reduced Fire Risk Standard (the RFR Standard).

PML has admitted that this supply was likely to contravene s. 106(1) of the ACL. The undertaking also relates to PML's claims about the compliance of those cigarettes with the RFR Standard. PML has admitted that these claims were likely to contravene the ACL.

PML is an importer and wholesaler of various brands of cigarettes, including Marlboro, Peter Jackson, Alpine and Longbeach. In September 2015 it launched two new brand variants, the Choice cigarettes. To comply with the RFR Standard, cigarettes are manufactured such that, when lit and left unattended, they go out by themselves. In laboratory testing, sample Choice cigarettes failed to comply with the RFR Standard.

Due to a number of oversights, PML did not test the Choice cigarettes until after a number of the non-compliant cigarettes had already been sold to consumers. PML has since changed its inventory system to ensure that cigarettes cannot be supplied to retailers until they have passed testing. PML supplied a total of 306 000 non-compliant Choice cigarette packets, of which 192 000 packets were successfully recalled. The non-compliant cigarettes were available at retail from 1 September 2015 to 14 October 2015. All the non-compliant cigarettes were supplied in packets which featured a statement that they complied with the RFR Standard.

To address the ACCC's concerns, PML provided the ACCC with a s. 87B undertaking that it will, for a period of three years:

- ensure that no cigarettes are supplied that do not comply with the RFR Standard
- ensure that no cigarettes are supplied without samples first passing laboratory testing for compliance with the RFR Standard.

PML will also make a donation of \$300 000 to the NSW Rural Fire Service.

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### **Anchor Foods Pty Ltd trading as Spencers Gourmet Trading**

s. 87B undertaking dated 15 December 2016

The ACCC has accepted a court enforceable undertaking from Anchor Foods Pty Ltd trading as Spencers Gourmet Trading (Spencers) in relation to claims about its oregano product, following an investigation into possible breaches of the ACL.

Spencers is incorporated in Australia and is based in Western Australia. It specialises in the sale of grocery foods and in particular herbs and spices. Spencers is a distributor of oregano in Australia and supplies to major retailers in Western Australia. Its oregano sales volume in 2015 was 100 000 units. During the relevant period, Spencers acquired its oregano from Spice Masters Australia Pty Ltd.

In 2015, Spencers made representations through statements on the packaging of its oregano product that the product contained only oregano. These statements included the text 'Oregano' on the front of the package and the text on the back of the package which says 'Closely related to marjoram, oregano is a small perennial (*Origanum vulgare*), native to the Mediterranean region where it has been cultivated since ancient times..'. However, test results indicated the substantial presence of olive leaves in the Spencers oregano product.

The ACCC raised its concerns regarding the Spencers' oregano product with Spencers. In response, Spencers stated it had:

- issued a public statement apologising to consumers
- offered a refund or replacement product to consumers
- contacted its supplier to trace the adulterated batch of product
- began a detailed review of the supply chain for all Spencers herb and spice products
- worked with supermarket retailers to trace and recover suspected adulterated batches, and
- developed a testing regime where Spencers works with suppliers to conduct routine testing.

To address the ACCC's concerns, Spencers has offered the ACCC a court enforceable undertaking that it will, for a period of three years:

- annually, obtain written evidence from a laboratory, which confirms that the laboratory has tested one sample of the product supplied and represented by Spencers as only oregano and found each sample was a product containing only oregano
- establish and implement a process for annual testing of the composition of random samples of herb or spice products supplied by Spencers, other than oregano, and
- retain the test results obtained, and if requested, provide the ACCC with a copy of those test results.

### **Australian Vocational Learning Centre Pty Ltd**

s. 87B undertaking dated 22 March 2017

The ACCC has accepted a court enforceable undertaking from Australian Vocational Learning Centre Pty Ltd (AVLC) in relation to its marketing practices and enrolment of consumers to its VET FEE-HELP courses.

AVLC is a provider of vocational education and training courses to consumers. Since 2014, it has provided VET FEE-HELP accredited Diploma courses in marketing, business, management and accounting.

The ACCC was concerned, and AVLC has admitted, that between 1 July 2014 and 30 April 2015 (the relevant period), AVLC, through the conduct of certain marketing agents:

- engaged in misleading or deceptive conduct and made false or misleading representations to certain consumers by falsely representing that VET FEE-HELP courses offered by AVLC were:
  - free or free unless the consumer's income was of an amount which they were unlikely to earn on completion of a course, or at all
  - government funded or paid for by the government, and/or
  - specifically for low income individuals
- engaged in unconscionable conduct with respect to some consumers by:
  - pressuring certain consumers into enrolling in courses that were not suitable for their education levels and personal backgrounds
  - appearing to target disadvantaged and vulnerable consumers, including Indigenous consumers in rural areas and those with low levels of literacy and numeracy skills
  - failing to adequately explain the nature of the debt incurred by consumers when enrolling in AVLC VET FEE-HELP courses, and
  - entered into unsolicited consumer agreements with some consumers without disclosing certain information required for such agreements, such as the consumer's right to terminate the agreement within a cooling off period.

During the relevant period, AVLC received and processed approximately 225 students for enrolment in AVLC's courses under the VET FEE-HELP scheme. Approximately 195 of these students were subsequently enrolled and incurred a debt to the Commonwealth. AVLC received a total of \$2 173, 730 from the Commonwealth in relation to these students.

Of these students, AVLC has since cancelled 30 student enrolments and repaid or partially repaid to the Commonwealth amounts totalling \$225 940 in relation to these cancellations.

To address the ACCC's concerns, AVLC provided the ACCC with a s. 87B undertaking that it will:

- implement a consumer redress program under which consumers who may have been misled may approach AVLC to have their enrolment and debt cancelled
- inform potentially affected consumers by mail and email, on its website and at its campus about the consumer redress program and the steps to be taken by a consumer should they wish to make a claim under the program
- establish and implement an ACL compliance program, including training for staff and regular reviews, and
- not engage in the conduct of concern in the future.

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#### Online consumer issues

##### **Sensis Pty Ltd**

s. 87B undertaking dated 11 May 2017

The Australian Competition and Consumer Commission (ACCC) has accepted a court enforceable undertaking from Sensis Pty Ltd (Sensis) following an investigation into its automatic renewal and cancellation processes.

Sensis provides print and online advertising and marketing services to Australian businesses including under the Yellow and White Pages brands.

From at least January 2015 to August 2016, Sensis represented on its website that its Yellow Pages and White Pages bundled print directory and online packages had a monthly fee with a 12 month minimum contract period, but failed to adequately disclose that:

- these bundled packages automatically renewed for a further 12 months unless cancelled by the customer, and
- the customer may be charged a cancellation fee equal to the remaining cost of the contract if they tried to cancel an automatically renewed contract after a certain date.

The ACCC also considered that Sensis failed to adequately disclose these automatic renewal and cancellation terms in certain communications to customers both during and after the contracting process.

To address the ACCC's concerns, Sensis has provided a court enforceable undertaking which includes an acknowledgement that its conduct may have contravened the Australian Consumer Law prohibitions on misleading conduct, and has undertaken to:

- refund affected customers who have not already been refunded by Sensis
- publish a corrective notice on the Website
- maintain changes to its contracting systems and processes to minimise the risk of customers being misled
- appoint an internal compliance officer to ensure appropriate training, to monitor compliance with Sensis' contracting processes, and report any compliance issues to Sensis' senior management, and
- appoint a suitability qualified independent external party ('reviewer') to review Sensis' compliance with the undertaking and report any deficiencies to Sensis' senior management and, where required, the ACCC.

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## Consumer guarantees

### **Domestic and General Services Pty Ltd**

s. 87B undertaking dated 11 May 2017

The ACCC has accepted a court enforceable undertaking from Domestic & General Services Pty Ltd (DGSP). This follows the ACCC's review of extended warranty selling practices and engagement with participants in the extended warranty industry.

DGSP is a company incorporated in New South Wales, Australia. It provides administrative, claims management and other services to retailers who offer their own extended warranty products to consumers who purchase electronics, domestic appliances and white goods.

The ACCC is concerned about marketing practices that have occurred in the extended warranty industry, including the content of extended warranty plan brochures provided to consumers at the point of sale.

Specifically, the ACCC is concerned about the following practices which have the potential to confuse or in some cases mislead consumers:

- Insufficient disclosure of:
  - the degree of overlap between some contractual rights obtained by purchasing an extended warranty and the rights and remedies already available to consumers under the Australian Consumer Law (ACL), in the event that goods are faulty, and
  - the contractual rights that go beyond those rights available under the consumer guarantees.

The use of representations to the effect that:

- the extended warranty provides some benefits which may overlap with the consumer guarantees—in circumstances where those benefits do overlap
- extended warranty rights are additional to rights and remedies available to consumers under the ACL—in circumstances where those features overlap with those ACL rights and remedies, and
- the price of the extended warranty does not include any cost attributable to the rights and remedies available to consumers under the ACL—in circumstances where certain costs may have been for rights that overlap with the rights and remedies already available under the consumer guarantees.

In response to the ACCC's invitation to participate in the industry wide outcome, DGSP provided the ACCC with a s. 87B undertaking that it will:

- revise extended warranty brochures to include information which will allow a consumer to compare the features of the extended warranty against the rights and remedies available for free under the ACL
- provide ACL compliance training materials to retailers who sell extended warranties administered by DGSP, and
- develop and implement with retailers a program for monitoring and if necessary improving retailers' extended warranties selling practices.

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## Consumer guarantees

### **Yoogalu Pty Ltd**

s. 87B undertaking dated 11 May 2017

The ACCC has accepted a court enforceable undertaking from Yoogalu Pty Ltd (Yoogalu). This follows the ACCC's review of extended warranty selling practices and engagement with participants in the extended warranty industry.

Yoogalu is a company incorporated in New South Wales, Australia. It is part of the Harvey Norman group of companies.

Yoogalu was involved in planning, designing and creating 'Product Care'. 'Product Care' is an extended warranty product which consumers can add to purchases of certain electronic goods, domestic appliances or white goods at shopping complexes and online stores branded with the trade marks Harvey Norman, Domayne and Joyce Mayne (Franchisees).

The ACCC is concerned about marketing practices that have occurred in the extended warranty industry, including the content of extended warranty plan brochures provided to consumers at the point of sale.

Specifically, the ACCC is concerned about the following practices which have the potential to confuse or in some cases mislead consumers:

- Insufficient disclosure of:
  - the degree of overlap between some contractual rights obtained by purchasing an extended warranty and the rights and remedies already available to consumers under the Australian Consumer Law (ACL), in the event that goods are faulty, and
  - the contractual rights that go beyond those rights available under the consumer guarantees.

The use of representations to the effect that:

- the extended warranty provides some benefits which may overlap with the consumer guarantees—in circumstances where those benefits do overlap
- extended warranty rights are additional to rights and remedies available to consumers under the ACL—in circumstances where those features overlap with those ACL rights and remedies, and
- the price of the extended warranty does not include any cost attributable to the rights and remedies available to consumers under the ACL—in circumstances where certain costs may have been for rights that overlap with the rights and remedies already available under the consumer guarantees.

Yoogalu provided the ACCC with a s. 87B undertaking that it will:

- provide Franchisees with new 'Product Care' brochures that include information which will allow a consumer to compare the features of the extended warranty against the rights and remedies available for free under the ACL
  - provide to Franchisees ACL compliance training specific to extended warranties, and
  - continue a program for monitoring and if necessary improving Franchisees' extended warranties selling practices.
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Misleading representations—  
truth in advertising

### **Optus Mobile Pty Ltd**

s. 87B undertaking dated 1 June 2017

The ACCC has accepted an undertaking from Optus Mobile Pty Ltd (Optus) in relation to alleged misrepresentations about the amount and period of validity of data, calls and texts provided with certain prepaid products and services.

Optus is a supplier of telephone and internet services to consumers in Australia and offers various prepaid mobile broadband devices, prepaid mobile phones and prepaid mobile plans for sale (together, the Optus Prepaid Products).

Beginning in 2013, Optus advertised various promotions that offered consumers a certain amount of data, calls and/or texts valid for a specified period of time (the inclusions) from when they either activated or recharged the SIM card that was supplied with the purchase of an Optus Prepaid Product.

From 2015, Optus decided to change the inclusions that were provided upon activation or recharge of the SIM card supplied with the Optus Prepaid Products. These changes included reducing the inclusions, and/or reducing the length of time before the inclusions would expire. In some instances the inclusions were increased but the expiry period was reduced.

Consumers who purchased one of the Optus Prepaid Products before the implementation of these changes, but activated the SIM card after the changes, received the reduced inclusions and/or shorter expiry period. Optus did not notify these consumers about the changes or advise them that they should activate their SIM card before a certain date in order to receive the full inclusions and expiry that they purchased. These consumers therefore received less inclusions and/or a shorter expiry period than they were promised.

To address the ACCC's concerns, Optus provided the ACCC with a s. 87B undertaking that:

- for a period of three years it will not, in trade or commerce, reduce the amount of data and/or other inclusions advertised as available upon activation of a prepaid SIM card (including a prepaid SIM card bundled with another product) unless certain conditions have been met
  - it will contact affected consumers and provide them with a credit
  - in recognition of the loss to those consumers whom Optus is unable to provide redress, Optus will donate any money it is unable to refund to an appropriate organisation to be agreed with the ACCC
  - it will publish notices in Optus and third party stores, and on the Optus website, informing affected consumers that they may be entitled to a credit
  - it will update its compliance program and an internal staff template to ensure Optus considers its obligations under the ACL before updating or implementing similar promotions in the future.
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## Infringement notices paid

Category	Trader	Date paid and amount
Consumer online	Palace Cinemas Pty Ltd	4 July 2016 one notice totalling \$10 800
Consumer health	The Smith's Snackfood Company Pty Ltd	7 July 2016 one notice totalling \$10 800
Product safety	Ozsale Pty Limited	26 July 2016 one notices totalling \$10 800
Truth in advertising	Felton Grimwade & Bosisto's Pty Ltd	7 September 2016 one notice totalling \$10 800
Truth in advertising	Charles Tyrwhitt LLP OC 305896 (UK)	15 September 2016 one notice totalling \$10 800
Truth in advertising	Lumo Energy Australia Pty Ltd	16 February 2017 one notice totalling \$10 800
Truth in advertising	Hoyt Food Manufacturing Industries Pty Ltd	2 March 2017 one notice totalling \$10 800
Franchising	Domino's Pizza Enterprises Ltd	4 May 2017 two notices totalling \$18 000
Truth in advertising	Lumo Energy Australia Pty Ltd	1 June 2017 one notice totalling \$10 800
Vulnerable consumer issues	Sprint Telco Pty Ltd	8 June 2017 one notice totalling \$10 800

## Section 288 National Energy Retail Law undertakings

Notification to Life Support Customers	<p><b>Ausgrid</b></p> <p>s. 288 undertaking dated 28 April 2017</p> <p>The AER has accepted an undertaking from Ausgrid relating to rules 90A and 125(2)(d) of the National Energy Retail Rules.</p> <p>The undertaking provides for Ausgrid to improve its systems and processes for managing its life support obligations.</p>
Sale of electricity without a retail exemption or authorisation	<p><b>Energy Intelligence</b></p> <p>s. 288 undertaking dated 26 August 2016</p> <p>The AER has accepted an undertaking from Energy Intelligence relating to sections 88 and 298 of the National Energy Retail Rules.</p> <p>The undertaking provides that Energy Intelligence will ensure that any client it assists in the operation or creation of an embedded network holds, or is in the process of obtaining, a valid retail exemptions. Assurances will be sought and provided in writing.</p> <p>The undertaking further provides for Energy Intelligence to appoint a compliance officer to report any non-compliance to the AER.</p>

## Infringement notices paid under National Energy Retail Law and Rules

Trader	Date paid and amount
Ausgrid	19 July 2016 Three notices totalling \$60 000
Energex	19 July 2016 One notice totalling \$20 000
SA Power Networks	19 July 2016 Two notices totalling \$40 000
Stockland	13 September 2016 Five notices totalling \$100 000
Endeavour Energy	19 December 2016 One notice totalling \$20 000
Ergon Energy	19 December 2016 One notice totalling \$20 000
SA Power Networks	19 January 2016 Four notices totalling \$80 000
Simply Energy	24 January 2017 Three notices totalling \$60 000
Origin Energy LPG Limited	4 April 2017 One notice totalling \$20 000
Ausgrid	7 June 2016 Five notices totalling \$100 000

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

#### Water Act 2007 section 163 undertakings

No undertakings were accepted under s. 163 of the *Water Act 2007*.

#### Water Act 2007 section 156 infringement notices

No infringement notices were issued under s. 156 of the *Water Act 2007*.

#### Water Act 2007—Administrative actions

In October 20016, the ACCC accepted an administrative resolution from Murrumbidgee Irrigation after it admitted to a breach of the Water Charge (Infrastructure) Rules 2010. Murrumbidgee Irrigation had not included its Home Garden Licence charge on its schedule of charges, since 2011.

## Australian Energy Regulator

### Section 59A National Electricity Law undertakings

#### National Electricity Law and National Gas Law

Pricing in NSW and the ACT fro8

As a result of the Australian Competition Tribunal's decision in Public Interest Advocacy Centre Limited and Ausgrid [2016] ACompT 1, it was not clear what network charges would apply from 1 July 2016 or how the ACT and NSW service providers should meet their 2016–17 pricing compliance obligations.

#### **Ausgrid, Endeavour Energy and ActewAGL**

The undertakings for these businesses established 'revenue targets' for 2017–18, by applying two years of CPI to revenue targets from their 2015–16 pricing proposals. These revenue targets were established to facilitate implementation of the tariff structure statements.

#### **Essential Energy**

The undertaking for Essential Energy established 'revenue targets' for 2017–18, by applying one year of CPI to forecast revenue for 2016–17. This revenue target was established to facilitate implementation of its tariff structure statement.

#### **Jemena Gas Networks (JGN)**

JGN's undertaking required prices for 2017–18 to be derived according to the tariff variation mechanism in its access arrangement. The undertaking specified the X factor (and CPI adjustment) to be inputted into the tariff variation mechanism.

All five distribution network services business also gave undertakings which provide for all non-price components of the distribution determinations and access arrangement (e.g. connections policies, classification of services, provision of alternative control services and reference service agreements) to be maintained.

#### *Infringement notices paid under National Electricity Law and Rules*

<b>Trader</b>	<b>Date paid and amount</b>
AGL Hydro Partnership	13 January 2017 One notice totalling \$20 000
Energy Australia	13 January 2017 Two notices totalling \$40 000

# Appendix 9: Litigation matters, review proceedings and tribunal proceedings in 2016–17

## ACCC

### Strategy 1 Maintain and promote competition

#### Litigation concluded and judgments in 2016–17

Cartel	<b>Australia and New Zealand Banking Group Ltd</b>	
	commenced	25 November 2016
	concluded	14 December 2016
	jurisdiction	Federal Court Sydney
	outcome	Pecuniary penalty of \$9 million, and contribution of \$200 000 to ACCC costs.

Cartel	<b>Macquarie Bank Ltd</b>	
	commenced	25 November 2016
	concluded	14 December 2016
	jurisdiction	Federal Court Sydney
	outcome	Pecuniary penalty of \$6 million, and contribution of \$200 000 to ACCC costs.

Cartel	<b>Olex Australia Pty Ltd</b>	
	commenced	4 December 2014
	concluded	10 March 2017
	jurisdiction	Federal Court Melbourne
	outcome	ACCC case dismissed.

#### Litigation continuing at the end of 2016–17

Cartels	<b>Australian Egg Corporation Limited &amp; Ors (appeal)</b>	
	commenced	28 May 2014
	jurisdiction	Federal Court Adelaide

Cartels	<b>Cascade Coal Pty Ltd &amp; Ors</b>	
	commenced	28 May 2014
	jurisdiction	Federal Court Sydney

Anti-competitive agreements and practices	<b>Cement Australia Pty Ltd &amp; Ors (Appeal)</b>	
	commenced	12 September 2008
	jurisdiction	Federal Court Brisbane

Cartels	<b>Colgate-Palmolive Pty Ltd &amp; Ors</b> commenced   12 December 2013 jurisdiction   Federal Court Sydney
Secondary boycotts	<b>Construction Forestry Mining and Energy Union (CFMEU)</b> commenced   20 November 2014 jurisdiction   Federal Court Melbourne
Anti-competitive agreements and practices	<b>Flight Centre Ltd Flight Centre Ltd (High Court appeal)</b> commenced   9 March 2012 jurisdiction   Federal Court Brisbane outcome   Successful High Court appeal by the ACCC. Case ongoing. Penalty to be decided in 2017.
Cartel	<b>Nippon Yusen Kabushiki Kaisha</b> commenced   14 July 2016 jurisdiction   Federal Court NSW Criminal Division
Cartel	<b>Oakmoore Pty Ltd, Palram Inc, Ampelite Pty Ltd &amp; Ors</b> commenced   23 June 2016 jurisdiction   Federal Court Brisbane
Misuse of market power and exclusive dealing	<b>Pfizer Australia Pty Ltd (appeal)</b> commenced   13 February 2014 jurisdiction   Federal Court Sydney
Cartels	<b>Prysmian Cavi E Sistemi S.R.L.</b> commenced   23 September 2009 jurisdiction   Federal Court Adelaide outcome   ACCC's case against Nexans SA dismissed. Case against other respondents ongoing.
Cartels	<b>P.T. Garuda Indonesia Ltd (appeal)</b> commenced   2 September 2009 jurisdiction   Federal Court Sydney
Cartels	<b>Yazaki Corporation &amp; Australian Arrow Pty Ltd (appeal)</b> commenced   13 December 2012 jurisdiction   Federal Court Adelaide outcome   Pecuniary penalty of \$9.5 million has been appealed by the ACCC. Case ongoing.

## Litigation commenced in 2016–17

Cartel	<b>Australia and New Zealand Banking Group Ltd</b> commenced   25 November 2016 concluded   14 December 2016 Details as above in Litigation concluded
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Cartel	<b>Kawasaki Kisen Kaisha Ltd</b>
	commenced   2 November 2016
	jurisdiction   Downing Centre Local Court Sydney
Cartel	<b>Macquarie Bank Ltd</b>
	commenced   25 November 2016
	concluded   14 December 2016
	Details as above in Litigation concluded
Cartel	<b>Nippon Yusen Kabushiki Kaisha</b>
	commenced   14 July 2016
	jurisdiction   Federal Court NSW Criminal Division
Anti-competitive agreements	<b>Ramsay Health Care Australia Pty Ltd</b>
	commenced   1 May 2017
	jurisdiction   Federal Court Sydney

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

### Litigation concluded in 2016–17

Vulnerable consumers	<b>Acquire Learning &amp; Careers Pty Ltd</b>
	commenced   17 December 2015
	concluded   30 May 2017
	jurisdiction   Federal Court Melbourne
	outcome   Declarations, pecuniary penalty of \$4.5 million, audits of compliance programs, ACCC costs of \$100 000.
Truth in advertising—False and misleading	<b>Dulux Group Australia Pty Ltd</b>
	commenced   5 December 2012
	concluded   2 November 2016
	jurisdiction   Federal Court Perth
	outcome   Pecuniary penalty of \$400 000, undertaking to court, declarations, corrective notices in newspaper and on Dulux's webpage, and payment of 150 000 costs.

False and misleading—health and medical	<b>Elusion New Zealand Ltd</b>	
	commenced	20 June 2016
	concluded	3 May 2017
	jurisdiction	Federal Court Perth
	outcome	Pecuniary penalty of \$40 000 against ENZ, John Burden to pay \$15 000, declarations, injunctions, publication orders, compliance orders, and contribution from ENZ and Burden of \$5000 each towards ACCC costs.
Unconscionable conduct in telecommunications sector	<b>Harrison Telecommunication companies &amp; James Harrison</b>	
	commenced	4 April 2016
	concluded	2 March 2017
	jurisdiction	Federal Court Melbourne
	outcome	Pecuniary penalties totalling \$250 000 James Harrison to pay \$50 000, disqualification order for three years, consumer refunds and payment of ACCC costs.
Drip pricing	<b>Jetstar Airways Pty Ltd</b>	
	commenced	19 June 2014
	concluded	7 March 2017
	jurisdiction	Federal Court Sydney
	outcome	Pecuniary penalty of \$545 000, declarations, each party to bear its own costs.
Indigenous consumers	<b>Lifestyle Photographers Pty Ltd t/a Expression Sessions</b>	
	commenced	18 September 2015
	concluded	20 December 2016
	jurisdiction	Federal Court Sydney
	outcome	Pecuniary penalty of \$1.1 million, declarations and contracts void ab initio, injunction, corrective notice and payment of ACCC costs.
Vulnerable consumers	<b>NRM Corporation Pty Ltd, NRM Trading Pty Ltd, Jacov Vaisman t/a Advanced Medical Institute Pty Ltd (appeal)</b>	
	commenced	21 December 2010
	concluded	22 July 2016
	jurisdiction	Federal Court Melbourne
	outcome	Full Federal Court upheld finding of unconscionable conduct. Appeal dismissed.



Product safety	<b>Ozsale Pty Ltd</b>	
	commenced	8 December 2015
	concluded	29 August 2016
	jurisdiction	Federal Court Sydney
	outcome	Pecuniary penalties of \$500 000 declarations, injunction, compliance program and contribution of \$50 000 to the ACCC costs.
False and misleading	<b>Reckitt Benckiser (Australia) Pty Ltd</b>	
	commenced	4 March 2015
	concluded	5 April 2017
	jurisdiction	High Court
	outcome	Reckitt Benckiser to pay a revised penalty of \$6 million (up from \$1.7 million) . High Court dismissed Reckitt Benckiser's special leave application with costs.
Scam	<b>Sensaslim Australia Pty Ltd &amp; Ors</b>	
	commenced	15 July 2011
	concluded	24 November 2016
	jurisdiction	Federal Court Sydney
	outcome	Appeal by Mr Foster dismissed by Federal Court.
False and misleading—health and medical	<b>Social-Lites Pty Ltd</b>	
	commenced	20 June 2016
	concluded	4 May 2017
	jurisdiction	Federal Court Brisbane
	outcome	Pecuniary penalty of \$50 000 against Social-Lites, Lee O'Hare to pay \$10 000, declarations, injunctions, publication orders, compliance orders, and contribution from Social-Lites and O'Hare of \$5000 each towards ACCC costs.
False and misleading	<b>Taxsmart Group Pty Ltd</b>	
	commenced	20 June 2013
	concluded	6 February 2017
	jurisdiction	Federal Court Melbourne
	outcome	Costs issue resolved.

False and misleading—health and medical	<b>The Joystick Company Pty Ltd</b>	
	commenced	9 September 2016
	concluded	4 May 2017
	jurisdiction	Federal Court Melbourne
	outcome	Pecuniary penalty of \$50 000 against TJSC Pty Ltd, Alexander McDonell to pay \$10 000, declarations, compliance orders and contribution from TJSC and McDonell of \$5000 each towards ACCC costs.
Drip pricing	<b>Virgin Australia Airways Pty Ltd</b>	
	commenced	19 June 2014
	concluded	7 March 2017
	jurisdiction	Federal Court Sydney
	outcome	Pecuniary penalty of \$200 000, declarations, each party to bear its own costs.
Small business	<b>Woolworths Ltd</b>	
	commenced	10 December 2015
	concluded	8 December 2016
	jurisdiction	Federal Court Sydney
	outcome	ACCC case dismissed.
<b>Litigation continuing at the end of 2016–17</b>		
Vulnerable and disadvantaged consumers	<b>ACM Group Ltd</b>	
	commenced	2 June 2016
	jurisdiction	Federal Court Sydney
Vulnerable and disadvantaged consumers	<b>Australian Institute of Professional Education Pty Ltd</b>	
	commenced	31 March 2016
	jurisdiction	Federal Court Sydney
Vulnerable and disadvantaged consumers	<b>Cornerstone Investment Australia Pty Ltd t/a Empower Institute</b>	
	commenced	9 December 2015
	jurisdiction	Federal Court Sydney
Vulnerable and disadvantaged consumers	<b>Clinica Internazionale Pty Ltd &amp; Anor (appeal)</b>	
	commenced	15 May 2015
	jurisdiction	Federal Court Melbourne
		Institution of proceedings against related companies Swishette Pty Ltd and Letore Pty Ltd.
False or misleading representations	<b>H.J. Heinz Company Australia Ltd</b>	
	commenced	21 June 2016
	jurisdiction	Federal Court Adelaide

Consumer guarantees	<b>LG Electronics Australia Pty Ltd</b> commenced   15 December 2015 jurisdiction   Federal Court Melbourne
Health and medical	<b>Medibank Private Ltd</b> commenced   15 June 2016 jurisdiction   Federal Court Melbourne
Vulnerable and disadvantaged consumers	<b>Phoenix Institute of Australia Pty Ltd &amp; Anor</b> commenced   24 November 2015 jurisdiction   Federal Court Sydney
Credence claims	<b>Snowdale Holdings Pty Ltd</b> commenced   9 December 2013 jurisdiction   Federal Court Perth
Vulnerable and disadvantaged consumers	<b>Unique International College Pty Ltd</b> commenced   27 October 2015 jurisdiction   Federal Court Sydney
Consumer guarantees	<b>Valve Corporation Pty Ltd (appeal)</b> commenced   28 August 2014 jurisdiction   Federal Court Sydney
False or misleading representations	<b>We Buy Houses Pty Ltd and Rick Otton</b> commenced   2 March 2015 jurisdiction   Federal Court Sydney

### Litigation commenced in 2016–17

Small business scams	<b>ABG Pages Pty Ltd</b> commenced   15 December 2016 jurisdiction   Federal Court Brisbane
Misleading representations	<b>Apple Pty Ltd and Apple Inc</b> commenced   6 April 2017 jurisdiction   Federal Court Melbourne
Car retailing	<b>Audi Aktiengesellschaft, Audi Australia Pty Ltd and Volkswagen Aktiengesellschaft</b> commenced   7 March 2017 jurisdiction   Federal Court Sydney
Consumer online	<b>Aveling Homes Pty Ltd</b> commenced   9 March 2017 jurisdiction   Federal Court Perth
Consumer guarantees and Contempt of court	<b>Dhruv Chopra</b> commenced   4 November 2016 jurisdiction   Federal Court Melbourne

Franchising	<b>Geowash Pty Ltd</b> commenced   31 May 2017 jurisdiction   Federal Court Perth
Vulnerable and disadvantaged consumers	<b>Get Qualified Australia Pty Ltd</b> commenced   9 September 2016 jurisdiction   Federal Court Melbourne
Credence claims	<b>Kimberly-Clark Australia Pty Ltd</b> commenced   12 December 2016 jurisdiction   Federal Court Sydney
Misleading representations	<b>MSY Technology Pty Ltd</b> commenced   1 December 2016 jurisdiction   Federal Court Sydney
Consumer online	<b>Meriton Property Services Pty Ltd</b> commenced   24 November 2016 jurisdiction   Federal Court Melbourne
Franchising	<b>Morild Pty Ltd</b> commenced   21 September 2016 jurisdiction   Federal Court Perth
Unconscionable conduct in dairy industry	<b>Murray Goulburn Cooperative Co. Ltd</b> commenced   28 April 2017 jurisdiction   Federal Court Melbourne
Misleading representations	<b>NIB Health Funds Ltd</b> commenced   30 May 2017 jurisdiction   Federal Court Melbourne
Credence claims	<b>Pental Limited &amp; Pental Products Pty Ltd</b> commenced   12 December 2016 jurisdiction   Federal Court Sydney
Vulnerable and disadvantaged	<b>Swishette Pty Ltd and Letore Pty Ltd</b> (part of the Clinica Internationale case) commenced   30 March 2017 jurisdiction   Federal Court Melbourne
Product safety	<b>Thermomix In Australia Pty Ltd</b> commenced   16 June 2017 jurisdiction   Federal Court Melbourne
False and misleading health and medical	<b>The Joystick Company Pty Ltd</b> commenced   9 September 2016 jurisdiction   Federal Court Melbourne
Industry codes	<b>Ultra Tune Australia Pty Ltd</b> commenced   19 May 2017 jurisdiction   Federal Court Sydney

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Car retailing

**Volkswagen Aktiengesellschaft and Volkswagen Group  
Australia Pty Ltd**

commenced | 31 August 2016  
jurisdiction | Federal Court Sydney

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## Other proceedings

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Non-compliance with statutory  
notice—Contempt of court

**Dhruv Chopra**

commenced | 4 November 2016  
concluded | 28 June 2017  
jurisdiction | Federal Court Melbourne  
outcome | Mr Chopra sentenced to imprisonment for three months (one month to be served immediately and balance suspended on conditions set by court, payment of ACCC costs.

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Non-compliance with statutory  
notice—Contempt of court

**Laurence Glynn Hann**

commenced | 15 December 2015  
concluded | 17 May 2017  
jurisdiction | Federal Court Melbourne  
outcome | Mr Hann sentenced to imprisonment for a period of five months and ordered to pay the ACCC's cost on an indemnity basis.

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Vulnerable consumers

**NRM Corporation Pty Ltd, NRM Trading Pty Ltd t/a Advanced  
Medical Institute Pty Ltd**

commenced | 20 August 2015  
concluded | 2 December 2016  
jurisdiction | Federal Court Melbourne  
outcome | NRM companies found guilty of contempt fined \$350 000.

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## Public warning notices

There was one public warning notice issued in 2016–17 in relation to Lux International Sales ApS.

## Disqualification orders

There was one disqualification order issued during 2016–17.

### James Harrison

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The ACCC alleged that 11 corporations trading as SoleNet and Sure Telecom (the Harrison Companies) and their director James Harrison engaged in unconscionable conduct in the supply of telecommunications services and undue harassment, in breach of the ACL.	commenced	4 April 2016
	concluded	2 March 2017
	jurisdiction	Federal Court Melbourne
	outcome	Disqualified from managing a corporation for a period of three years.

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## Administrative resolutions 2016–17

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Anti-competitive agreements and practices	Expedia Inc. (includes Expedia.com, Wotif.com, Hotels.com) Priceline Group (Booking.com)	2 September 2016
Medical and health	EBOS Group Ltd, on behalf of its subsidiary Symbion Pty Ltd, the owner of the Chemmart pharmacy franchise	12 September 2016
Medical and health	IVF Clinics	14 November 2016
Drip pricing online disclosure issues	Virgin Australia Airways Pty Ltd	1 December 2016
Drip pricing online disclosure issues	Jetstar Airways Pty Ltd	2 December 2016
Drip pricing online disclosure issues	Tigerair Australia	2 December 2016

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

### Litigation concluded during 2016–17

Communications – judicial review	<b>Telstra Corporation Limited ACN 051 775 556 v Australian Competition and Consumer Commission &amp; Ors</b>
	commenced   5 November 2015
	concluded   28 March 2017
	jurisdiction   Federal Court
	outcome   Court dismissed Telstra's application for judicial review on all grounds, finding that the ACCC had not made a reviewable error in its Final Access Determination for Fixed Line Services.

### Litigation commenced in 2016–17

Communications—judicial review	<b>Vodafone Hutchison Australia v Australian Competition and Consumer Commission under the ADJR Act</b>
	commenced   2 June 2017
	jurisdiction   Federal Court Sydney
	Judicial review of the ACCC's draft decision to not declare the domestic mobile roaming service and the ACCC's conduct in holding a public inquiry.
	First case management hearing was held on 30 June 2017. Hearing is scheduled for 27 and 28 September 2017.

# AER

## Litigation continuing at the end of 2016–17

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Judicial review of Australian Competition Tribunal decision in relation to AER electricity distribution determinations and gas distribution access arrangement	<b>Ausgrid</b> Endeavour Energy Essential Energy ActewAGL Distribution Jemena Gas Networks (NSW) commenced   24 March 2016 jurisdiction   Full Federal Court  On 24 May 2017 the Full Federal Court handed down its judgment on these matters.  As at 30 June, the AER is considering the judgment, next steps and any implications for these and other network revenue determinations.
Judicial review of AER gas distribution access arrangement	<b>Jemena Gas Networks (NSW)</b> commenced   1 July 2015 jurisdiction   Federal Court  Judicial review of this decision was sought in addition to an application for merits review.  The matter has been stayed pending completion of the Full Federal Court's decision in relation to the AER's application for judicial review of the Australian Competition Tribunal decision.
Judicial review of AER electricity distribution determinations	<b>Ausgrid</b> Endeavour Energy Essential Energy ActewAGL Distribution commenced   28 May 2015 jurisdiction   Federal Court  Judicial review of these decisions was sought in addition to applications for merits review.  These matters have been stayed pending completion of the Full Federal Court's decision in relation to the AER's application for judicial review of the Australian Competition Tribunal decisions.
Judicial review of Australian Competition Tribunal decision in relation to AER electricity distribution determination	<b>SA Power Networks</b> commenced   25 November 2016 jurisdiction   Full Federal Court  The Full Federal Court heard this matter in May 2017. The Court has reserved its judgment.

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Judicial review of AER electricity distribution determination

**SA Power Networks**

commenced | 22 July 2016  
jurisdiction | Federal Court

Judicial review of this decision was sought in addition to applications for merits review.

The matter has been stayed pending completion of the Full Federal Court's decision in relation to the AER's application for judicial review of the Australian Competition Tribunal decisions.

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Judicial review of AER electricity distribution determinations

**CitiPower**

Powercor  
United Energy  
Jemena  
AusNet Services

commenced | 22 June 2016  
jurisdiction | Federal Court

Judicial review of these decisions was sought in addition to applications for merits review.

The matter has been stayed pending completion of the Full Federal Court's decision in relation to the AER's application for judicial review of the Australian Competition Tribunal decisions.

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Judicial review of AER gas distribution access arrangement

**ActewAGL Distribution**

commenced | 22 June 2016  
jurisdiction | Federal Court

Judicial review of this decision was sought in addition to an application for merits review.

The matter has been stayed pending completion of the Full Federal Court's decision in relation to the AER's application for judicial review of the Australian Competition Tribunal decisions.

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Judicial review of AER electricity transmission determination

**AusNet Transmission Services**

commenced | 18 May 2017  
jurisdiction | Federal Court

Judicial review of this decision was sought in addition to the application for merits review.

The matter has been stayed pending completion of the Full Federal Court's decision in relation to the AER's application for judicial review of the Australian Competition Tribunal decisions.

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## Australian Competition Tribunal matters

The merits review hearings in relation to SA PowerNetworks concluded on 5 August 2016. The Tribunal handed down its decisions on 28 October 2016.

Applications for leave and review of AER electricity distribution determinations in relation to CitiPower, Powercor, United Energy, Jemena and AusNet Services were lodged on 17 June 2016. The merits review hearings concluded on 25 November 2016. The Tribunal has extended the time for making a decision until 27 October 2017.

An application for leave and review of the AER gas distribution access arrangement in relation to ActewAGL Distribution was lodged on 17 June 2016. The merits review hearings concluded on 25 November 2016. The Tribunal has extended the time for making a decision until 27 October 2017.

An application for leave and review of the AER's electricity transmission determination in relation to AusNet Transmission Services was lodged on 18 May 2017.

# Appendix 10: Draft and final decisions in relation to regulated industries in 2016–17

## AER

### Electricity transmission decisions

- Draft decision: AusNet Services transmission determination 2017–22, July 2016
- Draft decision: Powerlink transmission determination 2017–22, September 2016
- Decision: Approved a network support pass through for ElectraNet, November 2016
- Decision: Approved the cost allocation method for TransGrid, January 2017
- Final decision: Powerlink transmission determination 2017–22, April 2017
- Final decision: AusNet Services transmission determination 2017–22, April 2017
- Decision: Approved a negative cost pass through for AusNet Services for Easements tax change, May 2017

### Electricity distribution decisions

- Decision: Approved demand management incentive scheme expenditure for 2015 and 2014–15, July 2016
- Decision: Energex—Ring fencing waivers 2016, August 2016
- Draft decision: TasNetworks distribution determination 2017–19, September 2016
- Decision: Approved annual tariffs for 2017 for Victorian businesses, November 2016
- Decision: Approved annual tariffs for 2017–18 for Power and Water Corporation, February 2017
- Final decision: TasNetworks distribution determination 2017–19, April 2017
- Decision: Approved annual tariffs for 2017–18 for Queensland, South Australia, New South Wales and ACT businesses, May 2017
- Decision: Victoria F-factor scheme determination 2016–20, June 2017
- Decision: Approved annual tariffs for 2017–18 for TasNetworks, June 2017
- Decision: SA Power Networks—Ring fencing waiver 2017, June 2017

### Gas transmission and distribution decisions

- Decision: Approved a cost pass through for Jemena Gas Networks for unpaid distribution charges, September 2016
- Decision: Approved a cost pass through for AusNet Services for gas mains replacement, September 2016
- Decision: Approved annual tariffs for 2017 for Victorian businesses and AGN (Albury), November 2016
- Decision: Approved annual tariffs for 2017–18 for Central Ranges Gas Network, ActewAGL, April 2017
- Decision: Approved annual tariffs for 2016–17 for South Australia businesses, May 2017
- Decision: Approved annual tariffs for 2017–18 for Jemena Gas Networks, June 2017

## Retail energy market decisions

### *Electricity retailer authorisations*

- Granted Energy Locals an electricity retailer authorisation, July 2016
- Granted Online Power and Gas (OPG) an electricity retailer authorisation, December 2016
- Granted Sustainable Savings an electricity retailer authorisation, April 2017
- Granted Positive Energy TM Pty Ltd an electricity retailer authorisation, June 2017
- Refused Ultium Energy an electricity retailer authorisation, January 2017

### *Gas retailer authorisations*

- Granted Savant Energy Power Networks (Gas) a gas retailer authorisation, July 2016
- Granted WINconnect Pty Ltd (Gas) a gas retailer authorisation, July 2016
- Granted Weston Energy Pty Ltd a gas retailer authorisation, September 2016

### *Individual exemptions*

- Granted Australian Unity Retirement Living Services (residential retrofit) (NSW) an individual exemption for the sale of electricity, June 2017
- Granted Stucco Co-operative an individual exemption for the sale of electricity, November 2016
- Granted Energize Energy Pty Ltd an individual exemption for the sale of electricity, September 2016
- Granted Couran Point Services Pty Ltd (Stradbroke Island) an individual exemption for the sale of electricity, November 2016
- Granted The Body corporate for Freshwater Point CTS 35855 an individual exemption for the sale of electricity, February 2017
- Refused Charter Hall Holdings Pty Ltd (Brickworks Marketplace) an individual exemption for the sale of electricity, December 2016
- Granted Park Avenue at South Bank an individual exemption for the sale of electricity, December 2016
- Granted Lend Lease Property Management (Australia) Pty Limited (Macarthur Square Shopping Centre) an individual exemption for the sale of electricity, March 2017
- Granted The Body Corporate of The Waratah Main Beach CTS 16570 an individual exemption for the sale of electricity, June 2017

### *Retailer of last resort*

- Appointed a default Retailer of Last Resort for gas customers connected to the Shoalhaven gas network, March 2017

### *Hardship policies*

- Approved a hardship policy for Sumo Power Pty Ltd, August 2016
- Approved a hardship policy for Energy Locals, October 2016
- Approved a hardship policy for OC Energy, March 2017

## Telecommunications

- Decision to allow the Telstra exchange facilities record keeping rule (RKR) to expire, 28 June 2017
- Final decision on pricing determinations for the declared superfast broadband access services (SBAS) and the local bitstream access service (LBAS), 26 May 2017
- Draft decision proposing not to declare a wholesale domestic mobile roaming service, 5 May 2017
- Draft decision on annual Long Term Revenue Constraint Methodology (LTRCM) for 2015–16, 28 April 2017
- Draft decision to reject NBN Co's proposed variation to its Special Access Undertaking (SAU), 28 March 2017
- Final decision on the wholesale asymmetric digital subscriber line (ADSL) service declaration, 3 February 2017
- Final decision to declare the wholesale superfast broadband access service (SBAS), 29 July 2016
- Decision to approve Telstra's proposed variation to the Migration Plan, 20 July 2016

## Transport

### Rail

- Final decision to vary the 2011 Hunter Valley Access Undertaking (the 2011 HVAU) submitted by the Australian Rail Track Corporation (ARTC) (June 2017 variation), 29 June 2017
- Draft Decision on the 2017 HVAU submitted by ARTC, 20 April 2017
- Final decision on ARTC's compliance with its regulated financial model for the 2014 calendar year, 31 March 2017
- Final decision to vary the 2011 HVAU submitted by ARTC (extension of term to 30 June 2017), 23 November 2016

### Wheat export port terminal services

- Draft Determination Riordan Grain Services, Port of Geelong—Exemption assessment of a bulk wheat port terminal facility under the Port Terminal Access (Bulk Wheat) Code of Conduct 22 June 2017
- Draft Determination Semaphore Container Services, Port of Geelong—Exemption assessment of a bulk wheat port terminal facility under the Port Terminal Access (Bulk Wheat) Code of Conduct 22 June 2017

# Appendix 11: Major regulatory reports and reviews in 2016–17

## AER

### Reports

- Compliance Check—contract price variations, July 2016
- Transmission service standards compliance reports 2015 for ElectraNet, Directlink and TransGrid, July 2016
- Prices above \$5000/MWh—7 July 2016 (SA)
- Prices above \$5000/MWh—13 July 2016 (SA)
- Prices above \$5000/MWh—14 July 2016 (SA)
- FCAS prices above \$5000/MW—11 August 2016 (SA)
- FCAS prices above \$5000/MW—1 September 2016 (SA)
- FCAS prices above \$5000/MW—16 September 2016 (SA)
- AER Annual Report 2015–16, October 2016
- ACCC and AER Annual Report 2015–16, October 2016
- FCAS prices above \$5000/MW—18 October 2016 (SA)
- AER annual report on the performance of the retail energy market 2015–16, November 2016
- AER National Energy Retail Law annual compliance report 2015–16, November 2016
- Distribution network service providers 2016 benchmarking report, November 2016
- Transmission network service providers 2016 benchmarking report, November 2016
- Prices above \$5000/MWh—18 November 2016 (NSW)
- Prices above \$5000/MWh—1 December 2016, 12.16 am event (SA)
- Prices above \$5000/MWh—1 December 2016, 10.30 am (SA)
- Roll forward model (distribution) amendment, December 2016
- Prices above \$5000/MWh—13 January 2017 (QLD)
- Prices above \$5000/MWh—14 January 2017 (QLD)
- Prices above \$5000/MWh—2 February 2017 (QLD)
- Prices above \$5000/MWh—6 February 2017 (NSW and QLD)
- Prices above \$5000/MWh—8 February 2017 (SA)
- Prices above \$5000/MWh—9 February 2017 (NSW)
- Prices above \$5000/MWh—9 February 2017 (SA)
- Prices above \$5000/MWh—10 February 2017 (NSW/QLD)
- Prices above \$5000/MWh—11 February 2017 (QLD)
- Prices above \$5000/MWh—12 February 2017 (Qld)
- Significant price variation report—21 November 2016 (Adelaide STTM), March 2017
- State of the Energy Market, May 2017
- Overview of annual compliance reports by gas distribution and transmission pipelines for 2015–16, June 2017
- Quarterly compliance report: national electricity and gas laws, August 2016, November 2016, March 2017, June 2017

- Economic Benchmarking RIN information and Category Analysis RIN information, October 2016, November 2016, June 2017
- Compliance Check—billing complaints and incorrect charges, June 2017
- Compliance Check—calculating and basis for bills, June 2017
- Compliance Check—bill content, frequency and payment method, June 2017
- Electricity reports, weekly
- Gas reports, weekly

### Guidelines and other consultation

- Electricity ring-fencing guideline, November 2016
- Network service provider registration exemption guideline, December 2016
- AER Sustainable Payment Plans Framework, July 2016
- Review of the Minimum Disconnection Amount, March 2017
- AER Compliance Procedures and Guidelines, June 2017

## Telecommunications

### Reports

- Telstra's compliance with its structural separation undertaking (SSU) for 2015–16, 27 April 2017
- Price changes for telecommunications services in Australia for 2015–16, 8 March 2017
- Competition in the Australian telecommunications sector for 2015–16, 8 March 2017
- NBN Wholesale Market Indicators Report for the March quarter 2017, 3 May 2017
- NBN Wholesale Market Indicators Report for the December quarter 2016, 2 February 2017
- NBN Wholesale Market Indicators Report for the September quarter 2016, 2 November 2016
- NBN Wholesale Market Indicators Report for the 30 quarter 2016, 29 July 2016

### Guidelines and other consultation

- Commenced public inquiry into whether to whether the NBN Services in Operation RKR (and associated Disclosure Direction) should be extended, varied or allowed to expire, June 2017
- Published principles to help ensure internet service providers' claims about broadband speeds are not misleading under the Australian Consumer Law, 10 February 2017
- Finalised a guideline for the Part XIC declaration provisions for telecommunication services, 11 August 2016
- Draft guidelines for the Part XIC declaration provisions for telecommunications services, 1 June 2016

## Fuel

### Reports

- Report on the Australian petroleum market—March quarter 2017, 30 June 2017
- Report on the Australian petroleum market—December quarter 2016, 22 February 2017
- Report on the Australian petroleum market—September quarter 2016, 28 November 2016
- Report on the Australian petroleum market—June quarter 2016, 22 August 2016
- Report on the Cairns petrol market, 30 May 2017
- Report on the Launceston petrol market, 20 July 2016
- Report on the Armidale petrol market, 21 November 2016

## Transport

### Reports

- Airport monitoring report for 2015–16, 6 March 2017
- Container stevedoring report for 2015–16, no. 18, 7 November 2016
- Bulk wheat ports monitoring report 2015–16, 15 December 2016

### Guidelines and other consultation

- Draft Part IIIA deferral of arbitrations and backdating of determinations guidelines, 26 May 2017
- Revised statement of regulatory approach to assessing price notifications under Part VIIA of the CCA, 27 March 2017
- Part IIIA access undertaking guidelines, 11 August 2016

## Water

- Water Monitoring Report 2015–16, 21 June 2017
- Advice to the Murray-Darling Basin Authority (MDBA) on its proposed amendments to the Basin Plan water trading rules, 24 November 2016
- Review of the Water Charge Rules Final advice published, 17 November 2016



# Appendix 12: Mergers in 2016–17—major assessments

All publicly reviewed merger decisions for 2016–17 were published on the ACCC website at [www.accc.gov.au/mergers](http://www.accc.gov.au/mergers).

## Public merger reviews resolved by court enforceable undertakings

During 2016–17, the ACCC accepted undertakings in the following reviews:

- Metcash Ltd—proposed acquisition of Home Timber and Hardware Group
- Qube Holdings Limited—proposed acquisition of 50 per cent interest in Australian Amalgamated Terminals Pty Ltd

## Notable merger reviews—not opposed

- Consortium comprising Brookfield, Qube & Others—proposed acquisition of Asciano Limited
- Seven West Media Limited—proposed acquisition of *The Sunday Times* publication and website from News Limited
- News Corporation—proposed acquisition of APN News & Media Limited's Australian Regional Media division—ARM
- PMP Limited—proposed merger with IPMG Group
- Caltex Australia Petroleum Pty Ltd—proposed acquisition of assets from Milemaker Petroleum
- DowDuPont Inc—proposed acquisition of El du Pont de Nemours and Company and The Dow Chemical Company

# Appendix 13: Significant authorisation and notification decisions in 2016–17

## Authorisations

In 2016–17, the ACCC issued 27 decisions (excluding minor variations). Copies of all authorisation decisions for 2016–17 were published on the ACCC website at [www.accc.gov.au/publicregister](http://www.accc.gov.au/publicregister).

### Notable authorisations granted

- Infant Nutrition Council Limited—Revocation and Substitution—A91506 and A91507

### Notable authorisations denied

- Council Solutions & Ors—Authorisation—A91520
- Bendigo and Adelaide Bank & Ors—Authorisation—A91546 and A91547
- British American Tobacco Australia Limited & Ors—Authorisation—A91550
- Aoi Nissay Dowa Insurance Company Australia Pty Ltd & Ors—Authorisation—A91556 and A91557

## Collective bargaining notifications

In 2016–17, the ACCC granted authorisation for 13 collective bargaining arrangements.

In 2016–17, one collective bargaining notification was also allowed to stand.

Copies of all collective bargaining authorisations and notifications are available from the ACCC's website at [www.accc.gov.au/publicregister](http://www.accc.gov.au/publicregister).

Notable collective bargaining decisions:

- Queensland Cane Growers Organisation Ltd—Authorisation—A91558
- Murray Billing Transport & Ors—Authorisation—A91571 and A91572
- CAUDIT—Collective Bargaining Notifications—CB00328-CB00402 and CB00404-CB00431

## Exclusive dealing notifications

In 2016–17, the ACCC assessed 536 exclusive dealing notifications involving 407 separate matters. Copies of all notifications are available from the ACCC's website at [www.accc.gov.au/publicregister](http://www.accc.gov.au/publicregister). Notable examples are listed below.

- Port of Townsville Limited & Far North Queensland Ports Corporation Limited—Notifications—N99117 and N99118
- EFTPOS Payments Australia Limited—Notification—N99571

## Appendix 14: Correction of material errors in previous annual reports

Nil

# Glossary and abbreviations

AAT	Administrative Appeals Tribunal
ABA	Australian Bulk Alliance
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ACMA	Australian Communications and Media Authority
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
AGS	Australian Government Solicitor
APS	Australian Public Service
ARFF	aviation rescue, fire fighting
ARTC	Australian Rail Track Corporation
ASIC	Australian Securities and Investments Commission
AUSTRAC	Australian Transaction Reports and Analysis Centre
AWG	Australian Writers' Guild Limited
BBM	building block model
CA	Communications Alliance
CCA	<i>Competition and Consumer Act 2010</i>
CCEU	Competition and Consumer Economic Unit
CCG	Customer Consultative Group
CEO	chief executive officer
COAG	Council of Australian Governments
cpl	cents per litre
CPM	carbon price mechanism
DBCDE	Department of Broadband, Communications and the Digital Economy
DEHP	diethylhexyl phthalate
DNSP	distribution network service providers
DSP	demand side participation
DTCS	Domestic Transmission Capacity Service
EDRMS	Electronic Document Record Management System
EL	executive level
ESCv	Essential Services Commission of Victoria
ESV	Energy Safe Victoria
FADs	final access determinations
FCC	Franchising Consultative Committee
FiT	feed-in tariff

FMA Act	<i>Financial Management and Accountability Act 1997</i>
FOI	Freedom of Information
FTTH	fibre-to-the-home
HFC	hybrid fibre coaxial
HVAU	Hunter Valley Access Undertaking
ICPHSO	International Consumer Product Health and Safety Organization
ICPEN	International Consumer Protection and Enforcement Network
IMTS	Information Management and Technology Services Branch
IPS	Information Publication Scheme
IPTV	internet protocol television
LBAS	local bitstream access service
LCS	local carriage service
LPG	liquefied petroleum gas
LSS	line sharing service
LTPA	long-term pricing agreement
MDB	Murray-Darling Basin
MDBA	Murray-Darling Basin Authority
MIP	market impact parameter
Mogas	motor gasoline
MPS	mobile premium services
MTAS	mobile terminating access service
NBN	National Broadband Network
NBN Co	NBN Co Limited
NEM	National Electricity Market
NER	National Electricity Rules
NGR	National Gas Rules
NPP	new policy proposal
NSP	Network Service Plan
OECD	Organisation for Economic Co-operation and Development
OSP	Operational Separation Plan
PBS	portfolio budget statements
PPD	paraphenylene diamine
POH	Public Office Holder
PSCC	Product Safety Consultative Committee
PSM	People Services and Management Branch
PSTN	public switched telephone network
PSTN	OA public switched telephone network originating access

PSTN	TA public switched telephone network terminating access
RBP	Roma to Brisbane transmission pipeline
RDB	Regulatory Development Branch
RFI	request for information
RoLR	retailer of last resort
RTC	reconnecting the customer
SAU	special access undertaking
Section 87B	court enforceable undertaking made under s. 87B of the <i>Competition and Consumer Act 2010</i>
SES	Senior Executive Service
SSU	structural separation undertaking
STPIS	service target performance incentive scheme
STTM	short term trading market
TCP	telecommunications consumer protection
TGP	terminal gate price
TIO	Telecommunications Industry Ombudsman
TN	terminal navigation
TNSP	transmission network service providers
TPA	<i>Trade Practices Act 1974</i>
TSLRIC+	total service long-run incremental cost plus an allocation of indirect overhead costs
ULLS	unconditioned local loop service
VOIP	voice over internet protocol
WACC	weighted average cost of capital
WCIR	Water Charge (Infrastructure) Rules 2010
WCPMIR	Water Charge (Planning and Management Information) Rules 2010
WCTFR	Water Charge (Termination Fees) Rules 2009
WLR	wholesale line rental
WMR	Water Market Rules 2009

# Compliance index

## List of requirements

This schedule provides, for the purposes of paragraph 17AJ(d), the list of requirements to be included in a non-corporate Commonwealth entity's annual report for a reporting period. The schedule is prepared for ss. 46(3) of the *Public Governance, Performance and Accountability Act 2013*.

PGPA Rule Reference	Part of Report	Description	Requirement	Page number
<b>17AD(g)</b>	<b>Letter of transmittal</b>			
<b>17AI</b>		A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with s. 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	iii
<b>17AD(h)</b>	<b>Aids to access</b>			
<b>17AJ(a)</b>		Table of contents.	Mandatory	v
<b>17AJ(b)</b>		Alphabetical index.	Mandatory	367
<b>17AJ(c)</b>		Glossary of abbreviations and acronyms.	Mandatory	357
<b>17AJ(d)</b>		List of requirements.	Mandatory	360–366
<b>17AJ(e)</b>		Details of contact officer.	Mandatory	ii, 21
<b>17AJ(f)</b>		Entity's website address.	Mandatory	ii
<b>17AJ(g)</b>		Electronic address of report.	Mandatory	ii
<b>17AD(a)</b>	<b>Review by accountable authority</b>			
<b>17AD(a)</b>		A review by the accountable authority of the entity.	Mandatory	2–14
<b>17AD(b)</b>	<b>Overview of the entity</b>			
<b>17AE(1)(a)(i)</b>		A description of the role and functions of the entity.	Mandatory	16
<b>17AE(1)(a)(ii)</b>		A description of the organisational structure of the entity.	Mandatory	19–20
<b>17AE(1)(a)(iii)</b>		A description of the outcomes and programmes administered by the entity.	Mandatory	16, 19
<b>17AE(1)(a)(iv)</b>		A description of the purposes of the entity as included in corporate plan.	Mandatory	24–26

<b>17AE(1)(b)</b>	An outline of the structure of the portfolio of the entity.	Portfolio departments—mandatory	Not applicable
<b>17AE(2)</b>	Where the outcomes and programmes administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, include details of variation and reasons for change.	If applicable, Mandatory	Not applicable
<b>17AD(c)</b>	<b>Report on the Performance of the entity</b>		
	<b>Annual performance Statements</b>		
<b>17AD(c)(i); 16F</b>	Annual performance statement in accordance with paragraph 39(1)(b) of the Act and s. 16F of the Rule.	Mandatory	23–204
<b>17AD(c)(ii)</b>	<b>Report on Financial Performance</b>		
<b>17AF(1)(a)</b>	A discussion and analysis of the entity's financial performance.	Mandatory	11–14
<b>17AF(1)(b)</b>	A table summarising the total resources and total payments of the entity.	Mandatory	11–14
<b>17AF(2)</b>	If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results.	If applicable, Mandatory.	Not applicable
<b>17AD(d)</b>	<b>Management and Accountability</b>		
	<b>Corporate Governance</b>		
<b>17AG(2)(a)</b>	Information on compliance with s. 10 (fraud systems)	Mandatory	iii, 217–218
<b>17AG(2)(b)(i)</b>	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	iii, 217–218
<b>17AG(2)(b)(ii)</b>	A certification by accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the entity are in place.	Mandatory	iii, 217–218



<b>17AG(2)(b)(iii)</b>	A certification by accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity.	Mandatory	iii, 218
<b>17AG(2)(c)</b>	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	213-222
<b>17AG(2)(d) - (e)</b>	A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to non-compliance with Finance law and action taken to remedy non-compliance.	If applicable, Mandatory	Not applicable

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#### External Scrutiny

<b>17AG(3)</b>	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	220-222
<b>17AG(3)(a)</b>	Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity.	If applicable, Mandatory	220-222
<b>17AG(3)(b)</b>	Information on any reports on operations of the entity by the Auditor-General (other than report under s. 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, Mandatory	220-222
<b>17AG(3)(c)</b>	Information on any capability reviews on the entity that were released during the period.	If applicable, Mandatory	220-222

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#### Management of Human Resources

<b>17AG(4)(a)</b>	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	223-235
<b>17AG(4)(b)</b>	Statistics on the entity's APS employees on an ongoing and non-ongoing basis; including the following: <ul style="list-style-type: none"> <li>• statistics on staffing classification level</li> <li>• statistics on full-time employees</li> <li>• statistics on part-time employees</li> <li>• statistics on gender</li> <li>• statistics on staff location</li> <li>• statistics on employees who identify as Indigenous.</li> </ul>	Mandatory	225-228 286-287
<b>17AG(4)(c)</b>	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under ss. 24(1) of the <i>Public Service Act 1999</i> .	Mandatory	229-231

<b>17AG(4)(c)(i)</b>	Information on the number of SES and non-SES employees covered by agreements etc. identified in paragraph 17AD(4)(c).	Mandatory	229-231
<b>17AG(4)(c)(ii)</b>	The salary ranges available for APS employees by classification level.	Mandatory	229-231
<b>17AG(4)(c)(iii)</b>	A description of non-salary benefits provided to employees.	Mandatory	229
<b>17AG(4)(d)(i)</b>	Information on the number of employees at each classification level who received performance pay.	If applicable, Mandatory	229
<b>17AG(4)(d)(ii)</b>	Information on aggregate amounts of performance pay at each classification level.	If applicable, Mandatory	229
<b>17AG(4)(d)(iii)</b>	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, Mandatory	229
<b>17AG(4)(d)(iv)</b>	Information on aggregate amount of performance payments.	If applicable, Mandatory	229

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#### **Assets Management**

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<b>17AG(5)</b>	An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities.	If applicable, mandatory	238-240
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#### **Purchasing**

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<b>17AG(6)</b>	An assessment of entity performance against the Commonwealth Procurement Rules.	Mandatory	238-240
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#### **Consultants**

<b>17AG(7)(a)</b>	A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST).	Mandatory	238-240
<b>17AG(7)(b)</b>	A statement that "During [reporting period], [specified number] new consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]".	Mandatory	238-240

<b>17AG(7)(c)</b>	A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged.	Mandatory	238–240
<b>17AG(7)(d)</b>	A statement that “Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.”	Mandatory	238–2450

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#### **Australian National Audit Office Access Clauses**

<b>17AG(8)</b>	If an entity entered into a contract with a value of more than \$100 000 (inclusive of GST) and the contract did not provide the Auditor-General with access to the contractor’s premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	If applicable, Mandatory	238–240
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#### **Exempt contracts**

<b>17AG(9)</b>	If an entity entered into a contract or there is a standing offer with a value greater than \$10 000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.	If applicable, Mandatory	238–240
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#### **Small business**

<b>17AG(10)(a)</b>	A statement that “[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance’s website.”	Mandatory	239
<b>17AG(10)(b)</b>	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	239

<b>17AG(10)(c)</b>	If the entity is considered by the Department administered by the Finance Minister as material in nature—a statement that “[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury’s website.”	If applicable, Mandatory	Not applicable
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**Financial Statements**

<b>17AD(e)</b>	Inclusion of the annual financial statements in accordance with ss. 43(4) of the Act.	Mandatory	243-284
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**17AD(f)**      **Other Mandatory Information**

<b>17AH(1)(a)(i)</b>	If the entity conducted advertising campaigns, a statement that “During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity’s website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance’s website.”	If applicable, Mandatory	294
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<b>17AH(1)(a)(ii)</b>	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, Mandatory	Not applicable
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<b>17AH(1)(b)</b>	A statement that “Information on grants awarded to [name of entity] during [reporting period] is available at [address of entity’s website].”	If applicable, Mandatory	240
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<b>17AH(1)(c)</b>	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	227-228
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<b>17AH(1)(d)</b>	Website reference to where the entity’s Information Publication Scheme statement pursuant to Part II of FOI Act can be found.	Mandatory	222
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<b>17AH(1)(e)</b>	Correction of material errors in previous annual report	If applicable, mandatory	294
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<b>17AH(2)</b>	Information required by other legislation	Mandatory	366
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Cumulative list of all Commonwealth, state and territory laws that the Commission knows about that authorise things for the purposes of ss. 51(1) of this Act or ss. 51(1) of the Competition Code (as defined in s. 150A).	308–311
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