



Australian  
Competition &  
Consumer  
Commission

2007—08

**Annual report**

ACCC incorporating the AER

FOSTERING COMPETITIVE, EFFICIENT, FAIR AND INFORMED MARKETS





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ISSN 1327-4767

ISBN 978 1 921393 80 8

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Produced by the ACCC 09/08.



Australian  
Competition &  
Consumer  
Commission

GPO Box 3131  
Canberra ACT 2601

23 Marcus Clarke Street  
Canberra ACT 2601

tel: (02) 6243 1111  
fax: (02) 6243 1199

[www.accc.gov.au](http://www.accc.gov.au)

5 September 2008

The Honourable Chris Bowen MP, Assistant Treasurer  
Minister for Competition Policy and Consumer Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Minister

In accordance with subsections 44AAJ and 171(1) of the *Trade Practices Act 1974*, the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) are pleased to present you with the annual report, covering the operations for the year ended 30 June 2008.

Graeme Samuel  
Chairman, ACCC

Steve Edwell  
Chairman, AER

Peter Kell  
Deputy Chair, ACCC

Michael Schaper  
Deputy Chair, ACCC

Sarah Court  
Commissioner, ACCC

Stephen King  
Commissioner, ACCC

John Martin  
Commissioner, ACCC

Patrick Walker  
Commissioner, ACCC

Edward Willett  
Commissioner, ACCC  
Member, AER

Andrew Reeves  
Member, AER

# About this report

The structure of the report closely follows the outcome and output structure of the ACCC portfolio budget statement 2006–07.

## **Outcome one**

To enhance the social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets

The ACCC seeks to:

- > promote effective competition and informed markets
- > encourage fair trading and protect consumers
- > regulate infrastructure service markets and other markets where competition is restricted.

In reporting performance information this structure is aligned with the output groups:

## **Output 1.1.1**

Compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed

## **Output 1.1.2**

Competitive market structures and informed behaviour

In these chapters information is given on litigation and public settlements including court enforceable undertakings.

Summary resources tables for output groups are given on page 25.

Compliance with the requirements for annual reports of the Department of Prime Minister and Cabinet is shown on page iii.

This report includes the annual report of the Australian Energy Regulator, prepared in accordance with s. 44AAJ of the *Trade Practices Act 1974*. The AER is part of the ACCC. It is not a separate agency under the *Financial Management and Accountability Act 1997* or the *Public Service Act 1999*. The ACCC annual report includes the reporting requirements and financial accounts for the AER. The report on the AER's operations during the year is contained in part two of this report.

To obtain copies contact the ACCC on (02) 6243 1143.

For more information contact the director of publishing on (02) 6243 1148, or view the annual report on [www.accc.gov.au](http://www.accc.gov.au).



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Part one  
Overview of the ACCC



In exercising its powers and carrying out its responsibilities, the ACCC adheres to principles of independence, integrity, rigour, consistency, professionalism and transparency—all of which are deeply imbued in the culture of the ACCC.

We recognise that we are held to account by those who have entrusted us with these powers and responsibilities—the Australian community.

Graeme Samuel, Chairman



# Review

The year 2007–08 has been full of activity for the Australian Competition and Consumer Commission. The Australian Government's trust in the ACCC and the continuing relevance of the *Trade Practices Act 1974* have resulted in additional responsibilities and demands being placed upon the Regulator over the past 12 months. We are busier than ever before.

The government has emphasised the benefits of competition and the need for ongoing reform. Following the recent election, the ACCC now has, for the first time, a dedicated Minister for Competition Policy and Consumer Affairs. The government has also committed itself to making important reforms to the Trade Practices Act.

This year a significant proportion of staff resources and time was devoted to comprehensive reviews of the state of competition in two important areas of the economy—the petrol and grocery markets.

These inquiries were the first public price inquiries conducted by the ACCC under Part VIIA of the Act since 1996. They allowed the ACCC to test stakeholders' propositions and check the veracity of claims made in the public arena. In a public setting, the ACCC rigorously analysed all elements of the petrol and grocery markets in Australia.

The ACCC submitted its report of the inquiry into unleaded petrol in Australia to government on 14 December 2007. The report recommended that future action be directed towards increasing transparency in and improving the effectiveness of competition in the petrol market to benefit Australian consumers.

On 22 January 2008 the government directed the ACCC to inquire into the competitiveness of retail prices for standard grocery products. This inquiry generated as much debate within the community as the petrol review. During the inquiry the ACCC sifted through a vast amount of information and data, including internal documents obtained from the major industry players, and completed a significant econometric study of supermarket pricing in Australia. Inquiry hearings were held around Australia in metropolitan, rural and regional areas, allowing a transparent process that enabled all Australians to be better informed about the industry, pricing practices and why prices have risen.

The ACCC will investigate competition issues stemming from the grocery inquiry, including supply arrangements affecting independent supermarkets and suppliers as well as restrictive agreements in leases.

## Legislative changes

During 2007–08 the government announced a suite of significant and far-reaching reforms to the competition provisions of the Trade Practices Act. Proposed amendments include changes to the Act's misuse of market power and predatory pricing provisions, refreshing the anti-competitive agreement provisions, the creation of a provision dealing with creeping acquisitions and the introduction of criminal sanctions for serious cartel conduct.

During 2007–08 the ACCC became responsible for some functions relating to water resources in the Murray-Darling Basin. Under the *Water Act 2007* the ACCC now advises on regulatory design and will enforce compliance with the water market and water charge rules currently being developed.

During 2007–08 the Australian Energy Regulator, part of the ACCC, continued to work closely with jurisdictional regulators to ensure that the economic regulation of distribution network functions was smoothly transferred to the national framework. The AER assumed responsibility for the economic regulation of electricity distribution networks from 1 January 2008. Gas transmission and distribution functions were transferred to the AER from the ACCC and state regulators (except Western Australia, which is due to follow by October 2008) on 1 July 2008 following the commencement of the National Gas Law. The new national framework for gas and electricity retail regulation is currently being developed. It is anticipated that the AER will be responsible for non-price retail functions by January 2010.

## Enforcement and compliance outcomes

In 2007–08 the ACCC successfully completed its litigation against Visy Industries Holdings, with the Federal Court of Australia ordering the highest penalties awarded to date in a cartel case, a total of \$38 million. This again brought to public attention the seriousness and impact of cartel conduct on Australian consumers and business.

The ACCC's enforcement record did not stop there. Forty-two cases instituted by the ACCC were concluded during the year. ACCC court action stopped:

- > retail price agreements and/or other collusive conduct in the supply of specialist medical and dental services, funeral services, retail liquor, abalone fishing, wood preservative chemicals and education
- > resale price maintenance in respect of bicycles, consumer electronic goods, electronic navigation products and watercraft
- > misleading or deceptive conduct in respect of organic eggs, internet service provider services, electronic products, motor vehicles, mobile phone telemarketing, access to essential services, snack foods, telecommunications services, rugs and manchester, fruit juice labelling and marketing, petrol reselling and lottery scams.

The new fast track procedures in the Federal Court were used by the ACCC in six separate instances of litigation, and allowed us to respond quickly to breaches of the product safety and consumer protection provisions of the Trade Practices Act. Four cases instituted following the granting of immunity under the ACCC's 2005 immunity policy were also successfully concluded during the year.

Over the past five years the ACCC has strategically moved towards a more sophisticated analytical, informed and proactive enforcement model rather than the more traditional complaint-driven model. The ACCC has done substantial work to help consumers and businesses successfully navigate 'environmentally friendly' claims made about hundreds of products, ranging from food and automobiles to energy. The ACCC has reviewed those claims, published an issues paper and worked with consumers and industry to develop guidelines.

The increasing number of Infocentre helpline contacts reflects the community's greater awareness of the ACCC. The Infocentre served more than 65 000 telephone inquiries and 20 000 emails during 2007–08, an increase of 24 per cent over figures for 2006–07. Complaints about small business decreased during 2007–08, with compliance activities directed towards small and micro businesses assisting them to understand their rights and comply with their responsibilities under the Trade Practices Act.

Refinements to the ACCC website, [www.accc.gov.au](http://www.accc.gov.au), helped consumers and business research crucial information about ACCC decisions, as well as providing educational material on consumer protection, fair trading and anti-competitive practices. The ACCC produced 382 news releases and distributed over 950 000 publications for business, industry and consumers in print, electronic and multimedia formats. The most popular publications produced were *Keeping Baby Safe* and the *Little Black Book of Scams*. Other outreach activities included working with the media, Mitsubishi management and the Department of Defence to ensure retrenched workers and outgoing employees of these two organisations were warned about potential scams and false business opportunities.

The SCAMwatch website remains an invaluable tool for advising consumers and small business about current scams, the methods used to entice consumers to hand over their money and how to avoid becoming a victim of organised crime. Fifteen SCAMwatch alerts warned consumers and business about such things as lottery scams, fake prize scams targeting the Chinese community and a medical directory scam aimed at doctors surgeries and clinics.

The ACCC is being challenged in the courts more often than in the past. Two related cases are currently before the Federal Court regarding applications to overturn the use of the ACCC's information-gathering powers on the grounds of jurisdiction and burden.

The ACCC remains vigilant in protecting the integrity of its investigation and litigation processes. This year four criminal proceedings resulted in convictions and, in one case, imprisonment. The ACCC instituted proceedings in one matter, alleging a contravention of s. 155(5) of the Act. The ACCC will continue to take a firm line whenever it determines that parties have not been truthful in the course of investigations or have failed to comply with court orders. While this poses some potentially difficult challenges for the ACCC, we continue to be recognised for the high standard of our casework.

In the area of small business, we launched 'Franchising complaints, investigations and outcomes' on the ACCC website. This new web page provides information about the ACCC's processes for investigating franchising complaints and the outcomes of such investigations. We are committed to enhancing our outreach initiatives to educate small business operators and help them understand the application of the Trade Practices Act.

We will continue to refine our approach to identifying and investigating small business, franchising and unconscionable conduct issues, and we will remain focused on tailoring compliance responses and interventions using all the resources available to us under the Trade Practices Act.

The ACCC will remain accessible, independent, transparent and fair.

## Productivity Commission reviews

In 2007–08 the Productivity Commission (PC) completed three important reviews affecting the application of the Trade Practices Act—a review of the product safety provisions; a more general review of the consumer protection framework, including of the Act's consumer protection provisions; and a review of the market for retail tenancy leases in Australia.

The PC's report concluded that Australia should implement a single national regime for dealing with product safety issues. In its consumer protection framework review, the PC found inconsistencies between jurisdictions; it also found that the variable outcomes produced resulted in additional costs for both business and consumers.

In its submission to the PC, the ACCC argued for significant reform, including the need to unify the nine separate sets of fair trading and consumer protection laws that currently exist in Australia. Further, the ACCC argued that to help Australian consumers, more research was needed to allow it to better understand the pressures they face.

The ACCC sought pecuniary penalties for consumer protection offences, as well as stronger investigative powers to detect, prosecute and gain redress. The PC adopted and presented these recommendations in its final report; the Ministerial Council on Consumer Affairs has agreed in principle to support them. The ACCC continues to consolidate its product safety role and is working with the federal government and with state and territory governments to develop a more effective product safety regime.

The ACCC has stepped up cooperation with its international counterparts in product safety. We continue to work closely with other agencies, including the Australian Customs Service, to prevent unsafe products entering the Australian marketplace.

## Mergers and adjudication

The number of merger reviews considered by the ACCC does not appear to be affected by fluctuations in the share market, interest rates or the rate of economic growth. Indeed, merger activity seems to be remaining strong and this may well continue into the foreseeable future. In 2007–08 the ACCC undertook 397 merger reviews.

Over the past year, the ACCC has reviewed several major matters from a variety of sectors of the Australian economy including banking, dairy, plastics, health insurance and the media.

Most mergers are not opposed by the ACCC. In 2007–08 we publicly opposed five mergers and confidentially opposed another six, while six others were cleared after the merger parties provided court enforceable undertakings to resolve competition concerns. In the previous financial year the ACCC publicly opposed six mergers, confidentially opposed 11, while eight were resolved through undertakings.

The draft 'Merger guidelines 2008', setting out the ACCC's revised analytical framework for merger reviews, was released for comment in February 2008. Once finalised, this publication will replace the *Merger guidelines* published in 1999. The new guidelines are intended to bring the ACCC's merger practice into line with international best practice, contemporary views on anti-trust analysis and ACCC experience in conducting merger analysis.

The revised guidelines do not radically depart from the 1999 guidelines because the merger test has itself not changed since then. Rather, they reflect developments in best practice merger analysis, both here and overseas, since 1999. The revised guidelines are intended to explain the ACCC process for evaluating the competitive effects of mergers to the business community and its advisers.

In 2007–08 the ACCC received a significant number of authorisation applications—including from potato, wine and fruit growers—for collective bargaining arrangements; all these authorisation applications were granted.

The ACCC issued 29 final determinations on authorisation matters during 2007–08, covering an extremely wide range of conduct. As well as collective bargaining matters, the ACCC considered decisions on queue management systems to manage

infrastructure bottlenecks in the Hunter Valley and Goonyella coal chains, eBay arrangements relating to online transactions, codes of conduct for shopping centre leasing arrangements, alcohol packaging and IT contracting and recruiting. The ACCC also considered an increase in an industry-agreed levy applied to ozone-depleting and synthetic greenhouse gas refrigerants.

Some 416 exclusive dealing notifications were lodged with the ACCC in 2007–08, most of which were allowed to stand. The ACCC issued notices revoking the immunity afforded by notifications lodged by Eastern Suburbs Newspapers, GeelongPort, Racing and Wagering Western Australia and Seal-A-Fridge. A number of other notifications were withdrawn after the ACCC raised concerns about them.

## Regulatory and monitoring functions

As mentioned, the ACCC and the AER have new roles in water and energy regulation. Our understanding of the economic theory underpinning regulation and its application in a legal framework continues to develop. Following the review of various decisions by tribunals and various courts, we now have better guidance about how the law relating to regulated industries should be applied.

Currently the ACCC is developing regulatory processes and positions for its new roles under the Water Act. We are also considering the impact new communication technologies may have on economic regulation, and are undertaking new monitoring functions. Issues regarding energy production and the environment are at the forefront of current policy debates in Australia.

In late September 2007 the High Court of Australia overturned the Full Federal Court's judgments of 2 June 2006 and 18 August 2006, which arose from the Australian Competition Tribunal's decision of 19 May 2005 about access arrangements for the covered parts of the Moomba-to-Sydney Pipeline. The High Court reinstated the access arrangement determined by the tribunal in its final decision on 19 May 2005.

Significant economic questions about the interaction between intellectual property rights and competition law need to be answered. The ACCC continues to develop expertise in this area as greater demands are placed upon us. In 2007–08 the ACCC became a party to two separate references before the Copyright Tribunal of Australia; both matters are still proceeding.

In July 2007 the AER released its first comprehensive overview of gas and electricity markets, the *State of the energy market report 2007*. The workload of the AER is ramping up as it assumes responsibility for distribution regulation. Eventually over 40 electricity and gas businesses will be subject to AER regulation. Over the next five years, the AER is expected to undertake an average of eight revenue decisions annually.

The telecommunications sector is moving inescapably towards the next major challenge in what has already been a substantial evolution. The ACCC has provided advice on a diverse range of access matters; we continue to examine emerging issues and new policy approaches to the impact of technical convergence on communications markets. In preparing its plans for a national broadband network, the government sought the ACCC's assistance. In 2008–09 the ACCC will provide a detailed independent report on pricing and competition issues. To date the ACCC has interacted positively with the government and the NBN panel. Competition dynamics will continue to play a key role in the delivery of services to consumers and businesses over the next five years, as an NBN is gradually built.

Monitoring was a significant component of the ACCC's work in 2007–08. New directions under Part VIIA of the Trade Practices Act were given to the ACCC for formal price



monitoring. One direction was to monitor the prices, costs and profits of the supply of unleaded petrol products for three years.

Other types of price monitoring activities to provide consumers with more information were also initiated:

In April 2008 the ACCC was directed to monitor the prices, costs and profits of the supply of car-parking services at Adelaide, Brisbane, Melbourne, Perth and Sydney airports. On 13 May 2008 the government announced that the ACCC would conduct a monthly survey of prices for typical grocery baskets across Australia and would publish the survey results on a dedicated consumer website. In April 2008 the government announced its intention to establish a national Fuelwatch scheme to address the information imbalance between consumers and retailers, and to eliminate intraday volatility. The ACCC continues to monitor medical indemnity insurance premiums.

## Corporate

Once again the ACCC has been recognised in the international anti-trust arena as a high-quality and effective enforcement agency.

As part of our ongoing commitment to transparency and accountability, the ACCC undertook a client satisfaction survey in November 2007. Overall the results show that approximately 80 per cent of contacts were satisfied with the Infocentre service and with the ACCC more generally.

The ACCC's organisational structure was changed to accommodate increased work demands expected in 2008–09. The Water Branch was established and has over 20 full-time staff to administer the ACCC's new functions, while stand-alone branches to deal with increased monitoring functions have also been created.

ACCC staff numbers increased to 638 full-time equivalents, from 588 in 2006–07. We have successfully recruited from both the private and the public sectors to enhance our workforce capabilities. On behalf of the Commission, I would like acknowledge the ACCC's senior management group, which has successfully led a team of dedicated staff through a challenging period.

The 2007–08 budget provided the ACCC with \$118.3 million for operating expenses and \$1.073 million for capital funds. The ACCC recorded a budget deficit of \$5.15 million, largely due to the other party costs associated with the Geelong petrol case. Had it not been for this expense, the ACCC would have recorded a modest surplus of \$1.2 million.

The ACCC is served well by a strong group of commissioners who have depth and breadth of experience across a range of sectors, which enhances the work of the ACCC as a whole. One of the ACCC/Trade Practices Commission original commissioners, Mr David Smith, retired in 2008. He had more than 30 years experience in all areas of regulatory activity. The ACCC thanks him for his enormous contribution to national and international competition law. Following David's resignation, the government appointed Ms Sarah Court to the ACCC. She has extensive knowledge of, and experience in, trade practices law and has taken the chair of the Enforcement Committee.

The ACCC also farewelled Ms Jennifer McNeill, who completed her term in July 2007. We thank her for her service to the ACCC, particularly in guiding litigation and enforcement in consumer protection matters. On 31 March 2008 Mr Patrick Walker, previously the Commissioner for Consumer Protection and Prices Commissioner in Western Australia, commenced with the ACCC as the nominated Petrol Commissioner. On 5 September 2008 Mr Walker resigned from this position for personal reasons. Mr Edward Willett was re-appointed to the ACCC and as the full-time federal member of the AER on 6 June 2008. His experience in communications and energy matters is greatly valued.

Ms Louise Sylvan completed her term as deputy chair of the ACCC on 31 July 2008 and took up an appointment with the Productivity Commission. We thank her for her tireless work for the ACCC and especially for consumers as chair of the Australasian Consumer Fraud Taskforce. Under Ms Sylvan, the ACFT was established in March 2005 as part of a whole-of-government approach to combating consumer fraud and scams targeted at consumers. Currently the ACFT comprises 19 federal and state government regulatory agencies and departments (including from New Zealand) responsible for consumer protection relating to frauds and scams.

In July the government announced the appointments of Mr Peter Kell and Dr Michael Schaper as deputy chairs of the ACCC. Mr Kell was the Chief Executive Officer of CHOICE (the Australian Consumers Association) and has been an executive director of the Australian Securities and Investments Commission. Dr Schaper was Dean of the Murdoch University Business School and previously the Australian Capital Territory's Small Business Commissioner. The ACCC welcomes these appointments, both of which further strengthen our leadership team.

Mr Steve Edwell was appointed as chair of the AER for an additional two years from May 2008, and Mr Andrew Reeves replaces Mr Geoff Swier as the part-time state/territory member of the AER. Mr Andrew Reeves has been appointed for five years. He was previously the Energy Regulator for Tasmania as well as the Tasmanian Government's Prices Oversight Commissioner. The ACCC and the AER would like to thank outgoing AER member, Mr Geoff Swier, for his valuable contribution to the AER. His services are greatly appreciated.

## Looking forward

The coming financial year promises to be a fascinating and challenging one for the ACCC. The climate is now right for Australia to embark on a third wave of competition and consumer law reform, which will build on the strong foundations laid in the 1970s and 1990s.

As the principal regulator of the Trade Practices Act, the ACCC believes that the suite of reforms foreshadowed by the federal government will enhance the competitiveness of Australian markets and allow consumers to exercise more informed choice in competitive markets.

The ACCC's role is not to protect individual competitors but to promote competition in the long-term interests of all consumers.

The ACCC and the AER will continue to keep abreast of economic regulatory issues and to be alert to any impact the federal government's reform package may have on the current regulatory framework. Our focus remains firmly fixed on getting those reforms right.

Under the penalty regime that came into effect in 2007, companies found to have engaged in serious breaches of Part IV of the Trade Practices Act now may face penalties of a maximum of \$10 million, three times the value of the gain from the breach or, if the gain cannot be accurately estimated, 10 per cent of the turnover of the body corporate and all related bodies. The ACCC will seek to have this new penalty regime applied in appropriate cases where significant anti-competitive conduct has occurred. The ACCC is also looking forward to the foreshadowed introduction of criminal sanctions for cartel conduct, bringing Australian competition law in line with other international jurisdictions.

Many challenges lie ahead for the ACCC. We will continue to exercise the full rigour of the law in all our decisions. Relentless pursuit of effective, competitive markets has delivered results in the past; as long as the ACCC maintains its focus on getting the fundamentals right, it will continue to deliver results.



# Who we are

## The ACCC and the AER

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

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

The responsible minister is the Hon. Chris Bowen MP, Assistant Treasurer and Minister for Competition Policy and Consumer Affairs. Both agencies are within the Treasury portfolio.

## Australian Competition and Consumer Commission

(correct on 29 August 2008)

<b>Chairman</b>	Graeme Samuel AO
<b>Deputy chairs</b>	Peter Kell Michael Schaper
<b>Members</b>	Sarah Court Stephen King John Martin Patrick Walker Edward Willett
<b>Chief executive officer</b>	Brian Cassidy

### Enforcement and Compliance Division

Executive general manager	Mark Pearson
General managers	Scott Gregson, Coordination Branch Lee Hollis, Development Projects Michael Kiley (acting), Enforcement Branch Ruth Mackay, Product Safety Branch Nigel Ridgway, Compliance Strategies Branch David Snowden (acting), Information, Research and Analysis Branch
Regional directors	Peter Clemes, Tasmania Sam Di Scerni, Western Australia Alan Ducret, Queensland Derek Farrell, Northern Territory George Kamencak, South Australia Kim McBey, North Queensland Bob Weymouth, Victoria Geoff Williams, New South Wales

**Regulatory Affairs Division**

Executive general manager     Joe Dimasi

**Communications Group**

Group general manager     Michael Cosgrave

General managers     Richard Home, Strategic Analysis and Development Branch  
 Robert Wright, Compliance and Regulatory Operations Branch

**Regulatory Development Branch**

General manager     Anne Plympton

**Fuel Price Monitoring Branch**

General manager     Margaret Arblaster

**Water Branch**

General manager     Sebastian Roberts

**Prices Oversight Branch**

General manager     Anthony Wing (acting)

**Fuelwatch Unit**

General manager     Warwick Anderson (acting)

**Transport Branch**

General manager     David Salisbury (acting)

**Office of the AER**

Group general manager     Michelle Groves

General managers     Mike Buckley, Network Regulation North Branch  
 Chris Pattas, Network Regulation South Branch  
 Vacant, Markets Branch

**Adjudication Branch**

General manager	Richard Chadwick
-----------------	------------------

**Mergers and Asset Sales Branch**

General manager	Tim Grimwade
-----------------	--------------

**Corporate Branch**

General manager	Helen Lu
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**Finance and Services Branch**

Chief finance officer	Adrian Brocklehurst
-----------------------	---------------------

**Legal Group**

Executive general manager	Margaret Micallef
General counsel	Robert Alexander, Trade Practices Litigation Unit
General manager	Bruce Cooper, Corporate and Regulatory Law Unit

**Media Relations Unit**

Director	Lin Enright
----------	-------------

## Australian Energy Regulator

Chairman	Steve Edwell
Federal member	Edward Willett
State/territory member	Andrew Reeves



# What we do

## Purpose

The aim of the Australian Competition and Consumer Commission 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 ACCC promotes compliance with federal competition, fair trading and consumer protection laws. The ACCC regulates markets where competition is less effective—for example, the communications market.

## Background

Australia has promoted lawful competition as a means of securing a fair and competitive trading environment for consumers and businesses since the first anti-monopoly laws in 1906. In 1974 the Australian Parliament enacted the *Trade Practices Act 1974*, which brought in new competition and consumer protection laws and created the ACCC's predecessor, the **Trade Practices Commission**. Following reforms agreed to by the **Council of Australian Governments**, the ACCC was established on 6 November 1995 as an independent federal statutory authority. In 1997 telecommunications markets were opened to full competition and the ACCC became responsible for the competition and economic regulation of communications markets. Further reforms by COAG resulted in the establishment under the Act of the **Australian Energy Regulator** on 1 July 2005. The AER is Australia's independent national energy market regulator. To assist in providing a broad competition perspective, the AER is part of the ACCC, although it is a legal entity in its own right.

The ACCC is charged with administering the Trade Practices Act and associated legislation without fear or favour. As competition policy and law continue to evolve, the ACCC is committed to meeting the challenges they present for promoting and encouraging competition in the interests of all Australians.

## Powers and functions

The ACCC is the peak national agency for promoting competition, fair trading and consumer protection. The ACCC's powers and functions are wide ranging allowing it to:

- > investigate possible breaches of the competition and consumer protection provisions of the Trade Practices Act, mainly from the complaints received
- > provide advice on whether proposed mergers or asset sales are likely to breach the Act
- > institute court proceedings against those suspected of breaching the Act
- > seek redress for consumers who have been harmed by breaches of the Act
- > authorise certain anti-competitive conduct when it is considered to be in the public benefit
- > determine the terms and conditions for access to some nationally significant infrastructure services
- > monitor or approve prices in markets where there is limited competition.



The AER regulates transmission networks in the National Electricity Market (NEM), and enforces compliance in the wholesale electricity market with the National Electricity Law and National Electricity Rules. During 2007–08 the functions of the AER will extend to the economic regulation of gas transmission and electricity and gas distribution.<sup>1</sup>

## Culture of compliance

It is the aim of the ACCC that all businesses comply with the Trade Practices Act. The ACCC fosters a culture of compliance with the Act by having an integrated approach to the administration and enforcement of the law. Depending on the circumstances, the ACCC can choose from a range of compliance strategies: court action, court-endorsed and administrative settlements, education and liaison programs and the media, and by working with businesses (both big and small) on specific programs to bring about a change in conduct.

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

The ACCC cooperates with its international counterparts to combat unfair trading practices directed at Australian consumers or businesses from other countries. It shares information and enforcement assistance, and provides technical assistance to developing economies. The AER promotes a culture of corporate compliance among energy market participants through effective engagement, auditing processes and, where appropriate, rigorous investigation and enforcement of breaches of the electricity law and rules. The AER actively monitors the performance and obligations of market participants and publishes reports to inform the market about compliance levels and to highlight areas of potential concern.

## Consultation and liaison

The ACCC convenes several committees with external stakeholders. These formal consultative mechanisms focus on specific sectors of the economy or areas of regulation. As well as being successful and inclusive forums for industry discussion, they also provide accountability and transparency to the ACCC's decision-making.

This year consultative committee members have played a key role in assisting the ACCC with its education and information programs, as well as drawing industry and emerging trade practices issues to its attention.

There are five specialised consultative committees that deal with specific interest groups (consumers, small business, franchising, health and infrastructure). The ACCC keeps consultative committee members up-to-date on its activities through the quarterly publication of *ACCCcount* (previously titled *Recent activities report*).

The ACCC convened the Utility Regulators Forum and holds bilateral meetings with various groups and industry associations about matters of particular interest to them.

Appendix 10 of this report contains details about committee membership and functions.

<sup>1</sup> Responsibility for regulation of electricity and gas transmission businesses was shared between the AER and the ACCC. The ACCC had responsibility for regulatory decisions under the National Third Party Access Code for Natural Gas Pipeline Systems (the Gas Code) until the introduction of the new National Gas Law and National Gas Rules (NGR) on 1 July 2008. At this time the responsibility for regulatory decisions under the NGL was transferred to the AER.

## What we don't do

The ACCC deals with competition and consumer protection matters of national and international significance and therefore does not:

- > pursue issues (such as the pricing of particular goods or services, warranties and refunds) that are more effectively dealt with at local or state level
- > mediate disputes between individuals and the suppliers of goods and services
- > advise whether a company or individual is honest
- > approve individual business conduct
- > disclose the number or nature of complaints received about a company or individual
- > give legal advice
- > settle employment disputes
- > register business names.

The ACCC does not handle complaints about misleading or deceptive conduct in financial transactions. This is the responsibility of the **Australian Securities and Investments Commission**.

Under the *Water Act 2007* the ACCC does not have any role in:

- > urban water supply activities beyond the point at which the water is removed from the Murray-Darling Basin (MDB) water resources
- > water resources other than MDB water resources.

# The law

The Trade Practices Act promotes competition and fair trading and provides for consumer protection to enhance the welfare of Australians.

## Effective competition and informed markets

### Parts of the Trade Practices Act dealing with competition

IV	Anti-competitive conduct: price fixing, market sharing, boycotts, agreements substantially lessening competition, misuse of market power, exclusive dealing, resale price maintenance, mergers substantially lessening competition
VII	Authorisations and notifications
XIA	The Competition Code

### Enforcement

The ACCC is the only government agency that deals with anti-competitive conduct—which is illegal for all businesses in Australia. It conducts merger and acquisition analysis. To enforce the provisions of the Trade Practices Act, the ACCC can seek:

- > declarations of contraventions
- > findings of facts
- > injunctions
- > damages
- > community service orders
- > probation orders
- > disqualification of a person from managing corporations
- > adverse publicity orders
- > corrective advertising, public notices and disclosure for breaches of anti-competitive conduct
- > pecuniary 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 annual turnover (whichever is the greater) for companies and \$500 000 for individuals.

## Fair trading and consumer protection

### Parts of the Trade Practices Act dealing with fair trading and consumer protection

IVA	Unconscionable conduct in commercial and consumer transactions
IVB	Industry codes of conduct: the franchising, horticulture and oil codes of conduct are mandatory codes prescribed under Part IVB
V	Unfair practices, misleading and deceptive conduct, pyramid selling, country of origin representations, product safety and information, conditions and warranties in consumer transactions
VA	Liability of manufacturers and importers for defective goods
VC	Criminal conduct in fair trading and consumer protection

### Enforcement

State legislation largely mirrors parts of the fair trading and consumer protection provisions of the Trade Practices Act. To enforce the provisions of the Act, the ACCC can seek:

- > declarations of contraventions
- > findings of facts
- > injunctions
- > damages
- > community service orders
- > probation orders
- > adverse publicity orders
- > corrective advertising, public notices and disclosure.

For general breaches of fair trading and consumer protection, fines of up to \$1.1 million for companies and \$220 000 for individuals may apply.

## Infrastructure service and markets where competition is limited

### Parts of the Trade Practices Act dealing with regulated industries and prices surveillance

IIIA	Access to the services of essential national infrastructure facilities, such as transmission wires networks, natural gas pipelines, rail tracks and airport facilities
VIIA	Price monitoring and surveillance in relation to industries or businesses declared by the Australian Government
X	Establishes limited exemptions in relation to international liner cargo shipping
XIB	Anti-competitive conduct in telecommunications
XIC	Access to services for telecommunications

### Regulation

The ACCC and the AER are responsible for regulating the electricity, gas, telecommunications and transport sectors to ensure equity of access to infrastructure and to monitor services and prices.

Since 1 July 2005 the AER has had direct responsibility for the regulation of revenues in the electricity transmission networks. Since 1 January 2008 the AER has had responsibility for the regulation of revenues in the electricity distribution networks. On 1 July 2008 the AER also became responsible for regulating revenues in the retail and distribution networks in the gas sector.

Following the enactment of the Water Act in March 2008, the ACCC became responsible for water resources in the MDB. Under the Act, the ACCC must provide advice to the Minister for Climate Change and Water on water market rules and water charge rules. The Act also requires the ACCC to monitor and ensure compliance with these rules and provide advice to the Murray-Darling Basin Authority on water trading rules.

# Part two

# Performance





# Achieving outcome one

To enhance the social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed markets

## Australian Competition and Consumer Commission

### Overall outcome

To bring about greater competitiveness in every sector of the economy

#### Outcome one:

To enhance the social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed markets

### Output group 1.1

#### Output 1.1.1

Compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed

#### Output 1.1.2

Competitive market structures and informed behaviour

To achieve outcome one through appropriate outputs, the ACCC seeks to:

- > promote effective competition and informed markets
- > encourage fair trading and protect consumers
- > regulate infrastructure service markets and other markets where competition is restricted.

### Performance indicators

#### Output 1.1.1

Respond quickly to allegations of breaches of competition, fair trading and consumer legislation

Seek appropriate remedies when there is a breach of the law

Enforce mandatory product safety and information standards

#### Output 1.1.2

Assess the competition effects of mergers, acquisitions or asset sales

Encourage competition in markets that depend on monopoly services

Ensure that access regulation provides incentives for efficient business investment and use of infrastructure



## Performance indicators

### Output 1.1.1

Publicise litigation and education activities

Develop new consumer protection and investigation initiatives for e-commerce

Liaise with and inform business and consumers about the law so that they can, in turn, inform their members and customers

Issue publications and media releases, speak to the public, conduct public meetings and conferences and use the latest technology to reach business and consumers throughout Australia

Work with other competition, fair trading and consumer protection agencies in Australia and overseas

Develop industry specific codes of conduct

Publicise merger and authorisation decisions, arbitrations, undertakings and access arrangements and monitoring activities and inquiry findings

Assist parliamentary inquiries and government agencies to develop policies and processes that are consistent with the competition, fair trading and consumer protection laws

Liaise with other regulators, business and consumer associations, speak to the public, participate in meetings and conferences, nationally and internationally

Help overseas trading partners to develop and implement effective competition regimes to benefit Australian industry

### Output 1.1.2

Ensure that businesses using monopoly services pay prices that reflect efficient costs

Adjudicate authorisation applications (where anti-competitive behaviour is claimed to deliver public benefits)

Monitor prices to assess the impact of market conditions on price levels of goods and services

# How we do it

## Outcome one

To enhance the social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets

## Financial results

The ACCC's financial statements, both administered and departmental, are in part four of this report. The outcome summary in this part of the report contains a resource summary of the cost of the ACCC's two outputs.

### Resource table

	Output 1.1.1			Output 1.1.2			Output group 1.1		
	Compliance with competition, fair trading and consumer protection laws			Competitive market structures and informed behaviour					
	2006-07	2007-08	2008-09	2006-07	2007-08	2008-09	2006-07	2007-08	2008-09
<b>Budget</b>	67 598	<b>71 532</b>	68 678	39 920	<b>46 774</b>	70 549	107 518	<b>118 306</b>	139 227
<b>Sale of goods and services</b>	224	<b>154</b>	250	275	<b>338</b>	325	499	<b>492</b>	575
<b>Other non-taxation revenues</b>	70	<b>63</b>	—	18	<b>42</b>	—	88	<b>105</b>	—
<b>Total revenue</b>	67 892	<b>71 749</b>	68 928	40 213	<b>47 154</b>	70 874	108 105	<b>118 903</b>	139 802
<b>Actual expenditure</b>	64 747	<b>77 634</b>	—	38 323	<b>46 419</b>	—	103 070	<b>124 053</b>	—
<b>Net surplus (deficit)</b>	3 145	<b>(5 885)</b>	—	1 890	<b>735</b>	—	5 035	<b>(5 150)</b>	—

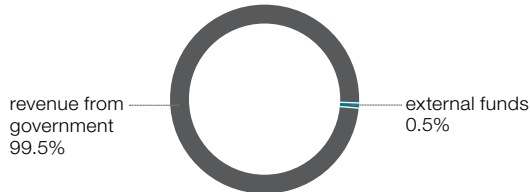
### Average staffing level

	Budgeted	Actual
2006-07	588	576
<b>2007-08</b>	<b>638</b>	<b>617</b>
2008-09	727	—

## Revenue

The main source of revenue for the ACCC is government appropriation with a small proportion of departmental revenue. In 2007–08 the ACCC had total revenue of \$118.9 million, with \$118.3 million being appropriation funding and the remaining \$0.5 million being external funds (refer to figure 1 below). This is in line with the previous year's external revenue of \$0.5 million.

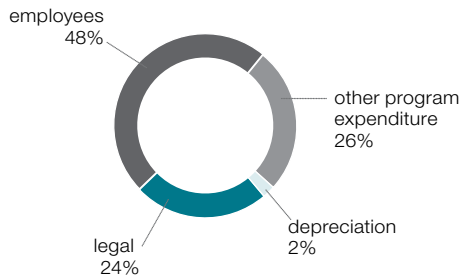
**Figure 1 ACCC revenue, 2007–08**



## Expenditure

The ACCC is a knowledge-based organisation and as such spends approximately 48 per cent of total expenditure on employee costs. This is a 4 per cent reduction from 2006–07 due largely to increased legal expenditure. Legal expenditure is subject to volatility depending on the timing and outcome of litigation proceedings. This has resulted in an increase in the legal expenditure proportion from 20 per cent in 2006–07 to 24 per cent in 2007–08. Other program expenditure is 26 per cent, unchanged from 2006–07. The depreciation proportion has remained unchanged from last year at 2 per cent of total expenditure.

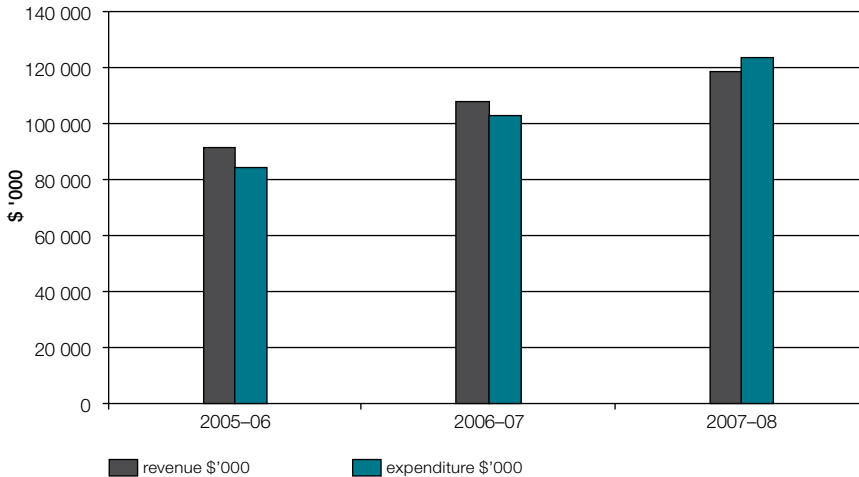
**Figure 2 ACCC revenue, 2007–08**



## Operating statement

The ACCC operating result for 2007–08 was a \$5.2 million deficit. The deficit was generated by unfavourable litigation outcomes—in particular, the Geelong petrol case—that resulted in the ACCC paying court costs.

**Figure 3 ACCC revenues and expenditure, 2007–08**



## Balance sheet

The ACCC's net assets as at 30 June 2008 were \$36.3 million (down from \$44.1 million in 2007). Total assets increased by \$4.5 million to \$70.6 million, mainly driven by the increase in leasehold improvements.

## Administered revenue

Revenues administered on behalf of the government during 2007–08 amounted to \$62.2 million, which is an increase of 165 per cent from last year (2006-07: \$23.4 million). This amount includes court-imposed fines and costs, the most notable being the Visy case at \$38 million.

## Administered expenditure

Expenses administered on behalf of the government increased in 2007–08 by \$5.5 million to \$10.9 million (2006-07: \$5.4 million), as a result of the increased write-off of non-recoverable debts (comprising penalties and cost orders in favour of the Australian Government).

# Enforcement and compliance

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## Promoting effective competition and informed markets Encouraging fair trading and consumer protection

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One of the foundations upon which the ACCC has built its reputation, domestically and internationally, as a capable and highly regarded regulator is its ability to take quick, decisive and effective enforcement action. The Enforcement and Compliance Division has primary responsibility within the ACCC for investigation, compliance and enforcement activities.

The regulatory environment is becoming more complex and ACCC decision-making and legal action is regularly challenged and contested in the courts. To ensure the ACCC has the best resources available to respond to these ongoing challenges, we continue to sharpen our focus, enhance our skills and improve our processes.

Key among the areas of improvement has been the development of ACCC investigators' skills in case planning, investigative interviewing and evidence collection, and in working with lawyers and preparing for court.

In addition the division has now bedded down an enhanced research, intelligence and analytical capacity through a dedicated branch. This new capacity allows the division to make better use of information it already holds or can obtain from external sources, and provides supports for individual enforcement actions. This continues the division's move towards more analytical, informed and proactive enforcement as opposed to the traditional complaint-driven model.

The ACCC continues to build its already robust management and accountability processes through the establishment of stronger internal communication channels and a more principled approach to interventions. These principles include that the ACCC:

- > always acts in the public interest
- > seeks appropriate and proportional responses to alleged or suspected misconduct
- > always makes good use of its resources
- > identifies and manages the risks inherent in enforcement and compliance operations
- > ensures it takes a broad view when fashioning its compliance responses.

The ACCC considers the use of a broad range of possible compliance responses (including, but not limited to, litigation), and this approach provides considerable scope to tailor responses to the particular set of circumstances under assessment.

While the ACCC undertakes a very active education and liaison role, it does not renege from strong action when parties' conduct results in widespread detriment and/or significant harm to consumers or other businesses. This is especially the case when the evidence shows that conduct has been undertaken in the full knowledge of, but complete lack of regard for, the law.

In that light the ACCC has successfully reinforced the seriousness of cartel conduct, price fixing and market sharing through the successful conclusion of litigation affecting liquor retailing, corrugated fibreboard, funeral celebrants, marine fishing, wood preservative chemicals, education and specialist medical and dental services. In the case of Visy Industries Holdings, the court ordered the highest penalties awarded to date in a cartel case, a total of \$38 million.

The ACCC has taken successful action in areas of unfair practices that attracted widespread consumer and small business concern—for example, two-price advertising, mobile phone and network sales, food labelling and internet service providers. Adjuncts to these actions included extensive business and consumer education initiatives to encourage well-informed businesses and consumers to comply with the law.

The ACCC continues to take a firm line whenever it determines that parties have not been truthful in the course of investigations or have failed to comply with court orders. To that end criminal proceedings have been instituted in appropriate matters—something the ACCC will continue to do where evidence determines that individuals have failed to respond to officers truthfully. In one such case an individual was subject to a jail sentence as a result of ACCC action.

The division was involved in two important processes in respect to consumer protection over 2007–08: the major reform efforts arising from the Productivity Commission's reports into Australia's consumer policy framework and the product safety regime.

The ACCC has continued to consolidate its expanded role in product safety and has been working with the federal government and with state and territory governments to develop a more effective product safety regime. Similarly, the ACCC has been active in the government's development of a national consumer protection framework, including proposals for significant reforms to consumer protection laws that address issues such as civil pecuniary penalties and the ability to take representative actions on behalf of consumers not party to court proceedings. These reforms would help to ensure that Australia has a consumer protection regime that is at the forefront of international best practice.

The ACCC will continue to monitor its approach to identifying and investigating market issues and conduct. The division remains focused on tailoring its compliance responses and interventions using all its available resources and knowledge. In undertaking its role, the division will also ensure it remains accessible, independent, transparent and fair.

**Mark Pearson**, Executive general manager, Enforcement and Compliance Division

## Communicating with businesses and consumers

### Performance indicator

#### Publicise litigation and education activities

This year the ACCC:

- > issued 382 media releases—including 36 on mergers and 71 on authorisation and notification decisions
- > undertook 143 speaking engagements and extensive briefings, both private and public, by the chairman, commissioners and senior staff
- > produced 85 consumer and small business articles for external publications.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

### Performance indicator

**Liaise with and inform business and consumers about the law so that they can, in turn, inform their members and customers**

This year the ACCC:

- > Held 264 meetings with business and consumer groups on Trade Practices Act issues, including consumer and small business education and proposed amendments to the Act.
- > Delivered 93 presentations (many in rural and regional areas) on business issues and scams at events such as the South Australian Law Week, 'Introduction to Franchising' seminars and seniors information days.
- > Attended 43 expos, field days and workshops, providing participants with information on the ACCC and the Trade Practices Act.
- > Worked with the Australian Defence Force Financial Services Consumer Council to secure ACCC speaking opportunities at 40 'transition seminars' annually. The ACCC uses these events to highlight some key trade practices issues that prospective small businesspeople and franchisees should consider when making the transition from their Defence careers into the private sector.
- > Continued its disadvantaged and vulnerable consumer program, which is designed to ensure the special needs of these groups are identified and addressed. Activities included:
  - > Holding quarterly meetings of the Commission-wide Disadvantaged and Vulnerable Reference Group.
  - > Translating the core consumer publication *Know how to complain: stand up for your consumer rights* into Somali, Amharic (Ethiopian), Arabic, Vietnamese and Traditional Chinese languages.
  - > Introducing a range of initiatives to assist consumers with disabilities to access ACCC services, including converting the ACCC's consumer guide *Know how to complain: stand up for your consumer rights* into large print, audio and braille versions. The Australasian Consumer Fraud Taskforce 2008 *Fraud Fortnight* fact sheet was also converted into audio format to assist consumers unable to access standard print formats.
  - > Using the National Relay Service to ensure that people with disabilities have equitable and effective access to ACCC services.
  - > Working with consumer and finance groups to develop and publish online advice on mortgage stress issues.
- > Monitored performance of court orders and undertakings—ensuring that trade practices compliance programs required by court orders or agreed to in enforceable undertakings or other settlements were honoured. As part of this work, the ACCC assessed 51 trade practices compliance programs, considered and accepted 76 compliance program review reports and finalised 44 compliance program matters.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

### Performance indicator

Issue publications and media releases, speak to the public, conduct public meetings and conferences and use the latest technology to reach business and consumers throughout Australia

This year the ACCC:

- > Produced 118 new publications; distributed in total 950 000 copies of publications; and produced DVDs, videos and CDs on compliance issues.
- > Issued 382 media releases; 143 speeches were delivered by the chairman, commissioners and senior staff.
- > Responded to the recent rapid growth of 'green marketing' by clarifying the trade practices implications of this type of marketing and informing consumers about what to look for when seeking reassurance about such claims by:
  - > issuing *Green marketing and the Trade Practices Act*—informs business and industry of key trade practices concerns about green marketing claims
  - > issuing *Your consumer rights—environmental claims* (for consumers address general issues relating to green marketing and 'greenwashing')
  - > releasing *The Trade Practices Act and carbon offset claims*—an issues paper seeking comment from industry, green and consumer interest groups, for which more than 100 submissions were received
  - > conducting roundtable meetings with stakeholder groups to determine perceptions of trade practices concerns about carbon offset claims.
- > Produced a suite of products for business and consumers outlining what carbon claims are and the ACCC's role in regulating such claims:
  - > *Carbon claims and the Trade Practices Act: a guide for business and industry*
  - > *Avoiding hot air: a consumer guide to carbon claims*, which forms part of a new 'environmental claims' section of the ACCC website
  - > *Carbon offset claims: trade practices issues and other key concerns*, a background paper exploring concerns identified in responses to the ACCC's issues paper *The Trade Practices Act and carbon offset claims*.
- > Developed the 'franchising information space' on the ACCC website to improve the transparency of the ACCC's investigative processes relating to franchising complaints and to dispel misinformation about those processes.
- > Continued to maintain and enhance the SCAMwatch website, which helps Australians recognise and protect themselves from scams. As part of this process:
  - > Published a new 'See-a-scam' page that provides the public with examples of how scams look and work.
  - > SCAMwatch was the portal for the 2008 Australasian Consumer Fraud Taskforce (ACFT) campaign, receiving more than 8000 visits in one quarter.
  - > Issued 15 SCAMwatch alerts warning consumers to look out for new types of scams or sharp increases in certain scams. Topics of these alerts included warnings about lottery and fake prize scams targeting the Chinese community and medical directory scams targeting doctors surgeries and clinics.
  - > Worked with the media and Mitsubishi management to ensure retrenched workers were warned about potential scams and false business opportunities likely to target them following the closure of the Adelaide Mitsubishi plant.
  - > Launched the *Consumer and Business Directory* on the redeveloped ACCC website, which provides visitors to the site with a single portal through which they can obtain



information to resolve consumer or small business problems. It allows visitors to the ACCC website to find the most appropriate organisation to help them with inquiries or complaints.

- > Released a suite of flyers and a wallet card outlining consumers' statutory rights on warranties, warranties for services and refunds.
- > Contributed to a joint ACCC – ASIC consumer publication, *Dealing with debt: your rights and responsibilities*, published in six languages—Arabic, Traditional Chinese, Greek, Italian, Turkish and Vietnamese.
- > Revised *The little black book of scams*.
- > Issued five fact sheets for consumers:
  - > *Your consumer rights: mobile phone handsets* explains what consumers can do when they are having problems with their mobile phone handset.
  - > *Your consumer rights: Indigenous art and craft* provides consumers or potential consumers of Indigenous art and craft with a checklist to help them verify the authenticity of artwork before they make a purchase.
  - > *Unconscionable conduct in the Indigenous art and craft sector* is aimed at small businesses trading in Indigenous arts and craft. It outlines how unconscionable conduct is defined under the Act and the steps that artists can take to protect themselves from being treated unconscionably.
  - > *Rent bidding* provides consumers with information on their rights under the Trade Practices Act when faced with this issues arising from a shortage of rental property in some parts of Australia, which has led to prospective tenants competing strongly for available rental properties, a practice known as 'rent bidding'.
  - > *Consumer protection and the Trade Practices Act* informs consumers about how businesses should act when selling goods and services. Consumers have a right under the Trade Practices Act to accurate and truthful information about their purchases from businesses. The fact sheet assists consumers to recognise unlawful selling practices.
- > Introduced seven fact sheets for small business, aimed at providing an overview of key trade practices provisions.
- > Developed or updated eight franchising publications following amendments to the Franchising Code:
  - > *Franchising Code of Conduct compliance manual for franchisors and master franchisees* (also on CD) assists franchisors and masters franchisees to comply with the Franchising Code and establish an effective compliance program. It includes checklists and sample disclosure documents
  - > *Franchising Code of Conduct amendments* is a fact sheet designed to help franchisors and franchisees understand their rights and obligations under Franchising Code following its amendment this year
  - > *Disclosure under the Franchising Code of Conduct* is a fact sheet to assist franchisors and franchisees understand their rights and obligations relating to disclosure under the Franchising Code.
  - > *Overview of the Franchising Code of Conduct* is a fact sheet that provides a brief overview of the Franchising Code.
  - > *Being smart about your new franchise and your retail lease* is a fact sheet to assist prospective franchisees to make informed decisions on whether to sign up to a franchise and related lease agreement.
  - > *Resolving franchising disputes* is a fact sheet that explains the procedure for resolving franchising disputes under the Franchising Code.

- > *Franchisees manual* is a guide to matters such as what franchising is; the advantages, disadvantages and responsibilities of being a franchisee; steps to take before choosing a franchise; and what to do if a dispute arises.
- > *Franchisees start-up checklist* is a publication designed to help prospective franchisees assess business opportunities so that they can make informed investment decisions.
- > Created a free subscription service—the Franchising Code information network—to update interested parties about activities in the franchising sector, including amendments to the Franchising Code of Conduct, and relevant ACCC enforcement activity.
- > Attended discussions hosted by the Australasian College of Cosmetic Surgeons to consider issues relevant to practitioners and patients of cosmetic surgery.
- > Participated in ‘regulators panels’ convened by the Australasian Compliance Institute and the Australian Food and Grocery Council, as well as presenting to these groups and the Food and Beverage Importers Association.
- > Addressed concerns that some traders in the backpacker tourism industry were not adhering to legal requirements regarding advertising (through the misuse of fine print and disclaimers) by publishing articles in major travel publications to address the obligations of traders and the rights of consumers.
- > Conducted a mail-out to 6915 service stations, providing information about the Oilcode, ACCC Oilcode publications, a copy of the *Overview of the Oilcode* for fuel re-sellers, and a subscription form for the Oilcode information network to ensure all participants were aware of the code.
- > Produced a range of Horticulture Code publications to provide clarity on issues raised by stakeholders:
  - > *Can growers collectively bargain?*, which explains the procedure for growers who are thinking about getting together with other growers to negotiate the terms and conditions of a horticulture produce agreement with a trader or traders.
  - > *Service agreements and complying with the Horticulture Code*, which provides guidelines on where traders provide services such as storing, ripening, washing, grading and packaging produce.
- > Used local radio advertisements to support an infant nursery safety intervention run by the Monash University Accident Research Centre, the Infant and Nursery Products Association of Australia Inc. (INPAA) and other stakeholders.
- > Produced and distributed product safety bulletins and safety alerts on:
  - > prams and strollers (June 2008)
  - > the safe use of hot water bottles (June 2008)
  - > the banning of diethylene glycol (DEG) in toothpaste (September 2007)
  - > the banning of children’s toys containing lead (October 2007)
  - > the risk to babies and young children caused by blinds and curtain cords (October 2007)
  - > the misuse of novelty contact lenses (November 2007).
- > Product Recalls Australia website:
  - > Continued to deliver and maintain the product recalls website, [www.recalls.gov.au](http://www.recalls.gov.au), which provides consumers and state and territory regulators with access to up-to-date information on all Australian safety-related recalls.

- > Enhanced the PRA website with images of recalled products to supplement product recall information. In 2007–08, 757 recalls were entered on the database and 206 general consumer product recalls were monitored and assessed.
- > Launched an educational DVD, *Keeping baby safe*, for new and prospective parents and carers (May 2008).
- > Undertook supplier education campaigns to aid compliance with the mandatory product safety standards for basketball rings and backboards, caravan jacks and prams and strollers.
- > Produced suppliers' guides on mandatory standards for baby bath aids and babies dummies (both January 2008), and for prams and strollers (April 2008).
- > Produced guides on the requirements of the mandatory standards for caravan jacks (October 2007) and for care labelling for clothing and textile products (January 2008).
- > Responded to 800 email inquiries about product safety and product recalls (in addition to inquiries answered by the ACCC Infocentre).

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

See appendix 3 for a list of all publications.

### Performance indicators

Work with other competition, fair trading and consumer protection agencies in Australia and overseas. Liaise with other regulators, business and consumer associations, speak to the public, participate in meetings and conferences, nationally and internationally

This year the ACCC:

- > Worked closely with the Office of Small Business (now the Department of Innovation, Industry, Science and Resources) to finalise the government response to the Matthews review of the Franchising Code of Conduct. Continued to work with DIISR on the implementation of the amendments.
- > Continued to participate as a key member of the ACFT, which comprises 19 federal and state government regulatory agencies and departments (including from New Zealand) that are responsible for consumer protection relating to frauds and scams. The ACCC continued in its role as the secretariat for, and chair of, the ACFT, representing federal, state and territory government consumer protection and related agencies.
- > Participated in the ACFT's 'Fraud Fortnight', an annual scam awareness campaign focused on raising awareness about deceptive and seductive scams and the steps consumers can take to protect themselves from these types of scams. The taskforce is part of the Mass-Market Global Fraud project of the International Consumer Protection Enforcement Network. Because of the exponential growth of global scams, over 30 ICPEN consumer regulatory agencies around the world participate in campaigns to warn consumers about global scams and fraud.
- > Continued its role as a member of the National Indigenous Consumer Strategy reference group through working to meet the aims of the NICS action plan, 'Taking Action Gaining Trust'. The ACCC contributed to the development of the new NICS website, which was launched in February 2008.
- > Participated in a range of bilateral and multilateral meetings with agencies, including the Australian Securities and Investments Commission (ASIC) and the Department of Climate Change to develop an appropriate response to trade practices concerns associated with carbon offset trading.
- > Attended one meeting of the Ministerial Council on Consumer Affairs and three meetings of the Standing Committee of Officials on Consumer Affairs; contributed to ongoing SCOCA projects on matters such as industry codes, product safety regulation, inbound tourism, pecuniary penalties and Indigenous consumer strategies.
- > Attended two meetings and eight teleconferences of the Consumer Product Advisory Committee and was a member of the CPAC enforcement and compliance working party.
- > Liaised with state and territory fair trading/consumer affairs agencies about the following SCOCA projects—product safety framework, product safety system/overarching review, harmonisation of standards and bans and a baseline epidemiology study.
- > Signed a cooperation agreement with the New Zealand Competition Commission, replacing the 1994 memorandum of understanding.

- > Was an active member of the International Competition Network, which included being co-chair of the cartels subgroup, leading the development of the best practice chapter for 'Investigative strategy' for the ICN cartels work manual on enforcement techniques, and being a member of the merger subgroup.
- > Attended the ICN's merger and cartel workshops.
- > Continued being an active member of ICPEN, which included presenting at its best practices workshop and becoming the coordinator for the ICPEN Green Claims Working Group looking at issues related to environmental marketing claims.
- > Maintained regular liaison with various international competition and consumer authorities to coordinate activities and cooperate on enforcement activities.
- > Continued the international coordination of the annual ICPEN internet sweep. The 2007 sweep involved 24 countries sweeping on the theme *Who Can You Trust?*, targeting testimonials, guarantees and trustmarks.
- > Received requests for information from Canada, Chile, Egypt, Fiji, Hong Kong, Ireland, Israel, Mexico, New Zealand, Singapore, South Africa, South Korea, Sri Lanka, Pakistan, Peru, Taiwan, Tanzania, Thailand, the United Kingdom, the United States of America and Vietnam.
- > Requested information, to assist ACCC activities, from various countries including Canada, China, European Union, Germany, Ireland, Japan, the Netherlands, New Zealand, Spain, the UK and the USA.
- > Conducted staff exchanges with Canada and New Zealand.
- > Participated in Standards Australia committee meetings.
- > Liaised with the Department of Health and Ageing, Therapeutic Goods Administration and the National Industrial Chemicals Notification and Assessment Scheme during reviews of mandatory product safety and information standards.
- > Liaised with the Australian Customs Service to develop cooperation and collaboration on detecting non-compliance with mandatory product safety and information standards and bans.
- > Liaised about current and proposed product safety matters with stakeholder non-government agencies, including the Australian Consumers Association, the Australian Toy Association, NPAA, the Sunglass Association of Australia and the National Association of Testing Authorities.
- > Liaised with the National Association of Testing Authorities on product testing and accreditation regimes.
- > Presented at seminars organised by the Australian Toy Association and the Sunglass Association of Australia.
- > Attended and presented at the Injury Prevention Symposium held by INPAA.
- > Attended and presented at the launch of the joint Standards Australia/INPAA initiative, Product Safety Framework.
- > Liaised with overseas government product safety authorities, including Health Canada; the United States Consumer Product Safety Commission; the Administration of Quality Supervision, Inspection and Quarantine China; and the European Commission on product safety issues.
- > Continued to foster a joint Standards Australia/INPAA initiative for a hazard-based (horizontal) approach to the development of standards for nursery products.
- > Participated in various international events, including International Bar Association conferences, the Consumers International Annual Conference, Fordham Competition

Law Conference and various competition, consumer protection and regulatory forums, including those organised by the Organisation for Economic Co-operation and Development (OECD), ICPEN and ICN.

- > Held joint meetings at commissioner level with the Canadian Competition Bureau, New Zealand Commerce Commission and Taiwan Fair Trade Commission.
- > Attended the 2008 National Consumer Congress.
- > Attended meetings and workshops held by the International Consumer Product Safety Caucus, the International Consumer Product Health and Safety Organisation and the International Organisation for Standardisation, Consumer Policy Committee.
- > Held three meetings of the Consumer Consultative Committee discussed such issues as debt collection practices, product safety and mobile phone warranties and contract issues.
- > Conducted a meeting of the Franchising Consultative Panel (May 2008) provided the ACCC with the opportunity to liaise with industry associations and other key franchising stakeholders to discuss emerging issues and work towards a collaborative approach to addressing them.
- > Informed by the Small Business Advisory Group (met November 2007 and May 2008) of key small business trade practices concerns, including those relating to unconscionable conduct, misuse of market power and other competition issues.
- > Health Sector Consultative Committee (November 2007 and April 2008) considered issues including the advertising of health and medical services, credentialling, product safety and small business matters such as retail tenancy.
- > Conducted quarterly strategic liaison meetings with a number of key retail stakeholders in an endeavour to further enhance compliance with the Trade Practices Act. During these strategic liaison meetings, current and forecast trends regarding Trade Practices Act issues were discussed and guidance provided where required.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

## Performance indicator

### Develop and administer industry-specific codes of conduct

#### Mandatory industry codes of conduct

Currently there are three prescribed mandatory industry codes of conduct—the Franchising Code of Conduct, the Oilcode and the Horticulture Code of Conduct. The ACCC is responsible for promoting compliance with these mandatory codes. To achieve industry compliance with these codes, the ACCC's compliance strategy includes educating industry participants about the rights and obligations imposed by these codes, liaising with industry stakeholders, encouraging voluntary compliance and taking enforcement action where necessary.

##### *The Franchising Code of Conduct*

The Franchise Code of Conduct was introduced in 1998 to regulate the conduct of franchisors and franchisees. In 2007–08 the ACCC:

- > continued to liaise and provide technical assistance to industry stakeholders and DIISR regarding franchisors' and franchisees' rights and responsibilities under the Franchising Code
- > developed and implemented a strategy for educating industry participants about amendments to the disclosure provisions of the Franchising Code, which came into effect on 1 March 2008
- > developed or updated eight franchising publications to assist franchisors and franchisees in understanding their rights and responsibilities under the franchising code, including the March 2008 amendments
- > published and distributed 73 837 copies of publications about franchising
- > redesigned the Franchising Code ([www.accc.gov.au/franchising](http://www.accc.gov.au/franchising)) web page to make it more user friendly and informative.

##### *The Oilcode*

The Oilcode commenced on 1 March 2007; it regulates the conduct of suppliers, distributors and retailers in the downstream petroleum industry. In 2007–08 the ACCC:

- > continued to liaise and provide technical assistance to industry stakeholders and the Department of Resources, Energy and Tourism regarding the rights and responsibilities of participants in the downstream petroleum industry under the Oilcode
- > published and distributed 13 926 copies of Oilcode publications to stakeholders in the downstream industry
- > ensured that the Oilcode webpage ([www.accc.gov.au/oilcode](http://www.accc.gov.au/oilcode)) provided participants with easy access to information about and assistance with Oilcode issues
- > maintained the Oilcode information network, which includes all peak industry associations that distribute details of ACCC Oilcode compliance-related information to their state and national memberships.

##### *The Horticulture Code of Conduct*

The Horticulture Code of Conduct began on 14 May 2007; it aims to regulate the conduct of growers and traders who trade in horticulture produce. In 2007–08 the ACCC:

- > gave an additional 33 presentations and workshops nationally to industry stakeholders about their rights and obligations under the code; with participants' feedback demonstrating a significant increase in the level of understanding of the code
- > published and distributed 2402 copies of code publications to stakeholders in the horticulture industry, outlining growers, and traders' compliance obligations

under the code; feedback indicates that the publications are useful and increase understanding of the code

- > assisted the central markets to develop compliant horticulture produce agreement templates enabling member traders to meet code requirements
- > expanded the Horticulture Code information network, which includes over 50 peak industry associations that distribute regular ACCC Horticulture Code compliance-related information to their local and national memberships.

### **Non-mandatory codes**

Effective voluntary industry codes serve the purpose of fostering more effective compliance with the Trade Practices Act.

This year the ACCC:

- > participated in the development and/or review of a number of voluntary industry codes of conduct, providing technical assistance to 18 industries engaged in developing and reviewing voluntary industry codes of conduct.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*



### Performance indicator\*

#### Develop and review mandatory product safety standards

This year the ACCC:

- > Prepared four regulation impact statements resulting in new safety standards for prams and strollers, children's portable folding cots and hot water bottles, and updated standards for cosmetic ingredient labelling and bicycle helmets.
- > Completed a review of the mandatory product information standard for cosmetics.
- > Prepared regulation impact statements on reviews of the mandatory product safety standards for bicycle helmets, flotation toys and swimming aids, trolley and vehicle jacks and vehicle support stands and portable ramps.
- > Continued with the regulation impact statement process for a proposed standard for lead and heavy metals in children's toys.
- > Began the regulation impact statement process for a new standard for reduced fire risk cigarettes.
- > Contributed significantly to reviews of Australian and New Zealand standards for babies dummies.

\* *Not currently a performance indicator*

### Performance indicator

#### Assist parliamentary inquiries and government agencies to develop policies and processes that are consistent with the competition, fair trading and consumer protection laws

This year the ACCC:

- > Provided input to ASIC and Telecommunications Industry Ombudsman (TIO) on concerns about debt collection practices in the telecommunications industry.
- > Participated in the 'Fair go for tourists' initiative hosted by the Department of Industry Tourism and Resources to deal with consumer protection issues faced by inbound tourists.
- > Provided comments to the DIISR about possible amendments to the Franchising Code.
- > Provided information to the South Australian and Western Australian inquiries into franchising about complaints and dispute resolution under the Franchising Code.
- > Contributed to the review of the Oilcode conducted by the Department of Resources, Energy and Tourism.
- > Participated in the Ministerial Council on Consumer Affairs (MCCA) National Education and Information Advisory Taskforce, which comprises federal, state and territory government consumer protection and related agencies. NEIAT aims to develop national strategies to assist consumers to make informed and timely marketplace decisions.
- > Provided a submission to the Victorian Medical Practitioners Board's review of the Advertising Guidelines for Registered Medical Practitioners to highlight potential trade practices issues arising from proposed amendments to the guidelines.
- > Provided a submission to the Productivity Commission's review into the market for retail tenancy leases in Australia and participated in the interdepartmental committee responsible for formulating the government response to the review's findings.
- > Participated in three meetings of the Horticulture Code Committee (convened by the

Department of Agriculture, Forestry and Fisheries) providing guidance on compliance issues to the committee.

- > Provided the Australian Senate with the ACCC's ninth report on anti-competitive and other practices by health funds and providers in relation to private health insurance.
- > Attended six meetings with Standards Australia and associated organisations concerned with development of the new standard for organic and biodynamic products.
- > Participated in Standards Australia's Consumer Standing Committee, which deals with consumer issues in standards development.
- > Provided input to the Communications Alliance on the Telecommunications Consumer Protection Code.
- > Attended four meetings of the Therapeutic Goods Advertising Code Council.
- > Conducted workshops in community legal centres across South Australia to highlight the issues faced by disadvantaged and vulnerable consumers, in conjunction with ASIC, the Office of Consumer and Business Affairs and the Insolvency and Trustee Service Australia.
- > Met with the Australian Communications and Media Authority and the TIO to address consumer issues in telecommunication.
- > Worked with the Department of Communications, Information Technology and the Arts (now the Department of Broadband Communications and the Digital Economy) to develop and maximise synergies between the Stay Smart Online and SCAMwatch websites.
- > Signed a memorandum of understanding with Consumer Affairs Victoria to establish a framework for cooperation between the two agencies to best serve the interests of consumers and to promote fair trading and active competition across jurisdictions/
- > Convened a forum in the margins of the 2007 Consumers International Congress in Sydney, *Working with consumer groups: Interacting and learning*. This congress drew on case studies to explore the innovative and productive ways in which government agencies and consumer groups work together to determine what is happening in consumer markets and to empower consumers to interact in these markets.
- > Sponsored and attended the National Nigerian Fraud Symposium hosted by the Queensland Police Force in October 2007.
- > Attended the 2008 National Consumer Congress and participated in the Indigenous art and craft panel discussion.
- > Provided regular contributions to the Consumer Telecommunications Network bulletins and Consumer Federation of Australia quarterly newsletters.
- > Worked with the Australian Taxation Office (ATO) to establish an interagency forum to secure and share data on non-English speaking background small businesses and consumers. The purpose of the forum is to develop an effective strategy for educating the various groups within the NESB cohort about their protections and obligations under the Trade Practices Act and other laws.
- > Provided a submission to the Productivity Commission in response to its draft report, *Review of Australia's consumer policy framework*.
- > Provided a submission to Treasury in response to the exposure draft of the Trade Practices Amendment (Component Pricing and Other Measures) Bill 2008, which proposes to amend s. 53C of the Trade Practices Act.

- > Provided submissions to the SCOCA working party in relation to its consideration of a proposal to introduce civil pecuniary penalties for contraventions of Australia's consumer protection laws.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

**Performance indicator:**

**Help overseas trading partners to develop and implement effective competition regimes to benefit Australian industry.**

This year the ACCC:

- > Provided capacity building assistance to officials from Chile, China, Fiji, Hong Kong, Indonesia, Malaysia, Papua New Guinea, the Philippines, Singapore, Thailand and Vietnam.
- > Hosted study visits by officials from Chile, China, Egypt, Indonesia, Japan, Kenya, Korea, Singapore, South Africa, Tanzania, the UK and Vietnam.
- > Continued with an AusAID-funded program for the Independent Consumer and Competition Commission in Papua New Guinea, to introduce a computer-based records management system within the ICCC.
- > Continued being a regular contributor to the capacity-building seminars of the Joint Regional Centre on Competition, a joint program organised by the Korea Fair Trade Commission and the OECD. ACCC staff delivered presentations on competitive effects and experience relating to cartels and immunity programs.
- > Attended free trade agreement negotiation rounds between Australia and Chile, New Zealand, the Association of Southeast Asian Nations countries and Japan relating to the development of provisions for the promotion of competition and mechanisms to enhance cooperation between competition authorities.
- > Assisted in the preparation of material for a free trade agreement feasibility study with India.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

## Responding to business and consumers

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

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

The information received from businesses and consumers is recorded in the ACCC complaints and inquiries database, with Infocentre project officers creating about 95 per cent of those entries. The quality of information available in the database depends on the recorder asking the right questions to establish what, if any, breach of the Trade Practices Act may have occurred and what evidence is available to support the allegations. Additionally, correct and consistent classification of information is an enormous aid to accurate reporting and analysis.

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

Since the Infocentre's inception in 2001, its processes have been developed, tested and honed, which has led to greater national consistency in the provision of advice and information. It has also led to more comprehensive reporting on issues and intelligence-gathering to assist in determining appropriate compliance initiatives and/or strategies.

The overwhelming majority of people who contact the Infocentre do so as consumers seeking information or wishing to make a complaint. All matters alleging a breach of the anti-competitive conduct provisions of the Act are passed directly through to an investigator. When a caller has a complaint about circumstances for which the ACCC or the Trade Practices Act has no remedy, Infocentre staff act to find another agency or organisation that is able to help that caller.

<b>ACCC Infocentre</b>	<b>1300 302 502</b>
<b>Small business helpline</b>	<b>1300 302 021</b>
<b>SCAMwatch complaint line</b>	<b>1300 795 995</b>
<b>SCAMwatch website</b>	<b><a href="http://www.scamwatch.gov.au">www.scamwatch.gov.au</a></b>
<b>ACCC website</b>	<b><a href="http://www.accc.gov.au">www.accc.gov.au</a></b>

**Performance indicator:**

**Respond quickly to allegations of breaches of competition, fair trading and consumer legislation**

This year the ACCC Infocentre:

- > Received 78 308 telephone calls; of these:
  - > 65 336 queries were served by Infocentre staff
  - > 10 553 were referred to the ACCC website
  - > 2416 were unanswered due to congested incoming lines or telephone system breakdown.
- > Of the 65 336 calls served 1875 were received on the SCAMwatch complaint line introduced as part of the 'scams awareness campaign' in 2006.
- > Responded to 64 per cent of calls in less than 20 seconds.
- > Entered 60 904 matters into the complaints and inquiries data base, of which 42 560 were received by telephone (65 per cent of calls served).
- > Received 20 177 emails, of which 6933 emails were received through the SCAMwatch 'Report a scam' online complaint form.
- > Sent 381 229 publications to callers.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

A detailed breakdown of this data is provided at appendix 5.

## Enforcing for business and consumers

### Performance indicator

Seek appropriate remedies when there is a breach of the law

This year the ACCC:

- > Instituted 30 enforcement cases:
  - > six involved alleged contraventions of Part IV of the Trade Practices Act
  - > 18 involved alleged contraventions of Part V of the Act
  - > one involved alleged contravention of Part IVA of the Act
  - > one involved alleged contravention of Part IVB of the Act
  - > one involved an alleged contravention of s. 155(5) of the Act
  - > one involved an alleged breach of an s. 87B undertaking
  - > two involved compliance with previous court orders.
- > Concluded 42 cases. Fifteen alleged contraventions of Part IV and 23 had alleged breaches of parts V, IVA and/or IVB. Four related to use of powers under s. 155 of the Act, and four of them related to non-compliance with prescribed standards—vehicle jacks, beanbags, bunk beds and tobacco product labelling.
- > Stopped retail price agreements and/or other collusive conduct in the supply of specialist medical and dental services, funeral services, retail liquor, corrugated fibreboard containers, abalone fishing, wood preservative chemicals and education by means of court action.
- > Stopped resale price maintenance in respect of bicycles, consumer electronic goods, electronic navigation products and water craft by means of court action.
- > Stopped misleading or deceptive conduct in respect of organic eggs, ISP services, electronic products, motor vehicles, telemarketing of mobile phones, access to essential services, snack foods, telecommunications services, rugs and Manchester, fruit juice labelling and marketing, petrol reselling and lottery scams by means of court action.
- > Accepted 58 s. 87B undertakings during the year as resolution to alleged contraventions of the Trade Practices Act. Of these undertakings, seven related to alleged contraventions of part IV and 51 related to alleged contraventions of Part V of the Act.
- > Used five s. 87B undertakings to resolve concerns that traders were dealing with growers in a manner inconsistent with the Horticulture Code of Conduct.
- > Considered a number of applications for immunity or marker placements under the ACCC immunity policy for cartel conduct
- > Concluded four cases that had been instituted following the granting of immunity.
- > Continued as the secretariat for the Trade Practices Act Consumer Trust, which was established by the ACCC to disburse money arising from enforcement outcomes for research on consumer issues of relevance to the Trade Practices Act.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

## Performance indicator

### Enforce mandatory product safety and information standards

This year the ACCC:

- > Conducted surveys at retail outlets across Australia and on internet sites for products subject to mandatory product safety and information standards and banned goods.
- > Commissioned proactive laboratory testing on strategically sampled products covered by mandatory standards.
- > Investigated complaints concerning alleged breaches of mandatory product safety and information standards and bans.
- > Undertook enforcement action that resulted in the withdrawal from sale and/or recall of:
  - > baby bath aids
  - > basketball rings and backboards
  - > beanbags
  - > bunk beds
  - > children's nightwear and toys
  - > cosmetics and toiletries
  - > cots for household use
  - > sunglasses and fashion spectacles
  - > swimming aids and flotation toys
  - > tobacco products
  - > toothpaste containing DEG
  - > toys with lead
  - > trolley jacks
  - > vehicle jacks
  - > Woofaz retractable dog leashes.
- > Accepted 16 court enforceable undertakings on the supply of beanbags, bunk beds, children's nightwear, children's toys, cots for household use, sunglasses and fashion spectacles, toys with lead and vehicle jacks.
- > Concluded five matters in court for breaches of mandatory product safety and information standards and related offences covering beanbags, bunk beds, trolley jacks and tobacco products.
- > Undertook administrative action over breaches relating to basketball rings and backboards, cots for household use, children's nightwear, children's toys, cosmetics and toiletries, sunglasses and fashion spectacles, swimming aids and flotation toys, toothpaste containing DEG and Woofaz retractable dog leashes.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

### Performance indicator

#### Develop new consumer protection and investigation initiatives for e-commerce

This year the ACCC:

- > Continued ongoing monitoring and education of online traders and mobile commerce providers to ensure compliance with the Act, including misleading or deceptive claims, pricing and breaches of mandatory product safety and information standards.
- > Worked with industry to ensure that internet sites and online trading complied with trade practices provisions.
- > Undertook enforcement action in relation to tobacco products sold over the internet and breaches of mandatory product safety and information standards.
- > Undertook administrative and enforcement action over breaches in relation to false or misleading representations by online traders.
- > Continued warnings issued regarding online scams through SCAMwatch.
- > Continued membership of the Law Council of Australia E-commerce Committee.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*



# Mergers and asset sales

## Promoting effective competition and informed markets

A primary aim of the ACCC is to encourage competitive market structures and informed behaviour. The Mergers and Asset Sales Branch supports this objective through its work in the assessment of mergers, acquisitions, asset sales and certain collaborative arrangements under ss. 45 and 50 of the Trade Practices Act.

This work includes:

- > developing and maintaining competitive market structures by assessing promptly mergers, acquisitions, asset sales and collaborative joint ventures
- > instigating appropriate enforcement action for mergers considered to contravene s. 50, and providing appropriate assistance to the Australian Competition Tribunal during its consideration of clearance reviews and merger authorisations
- > monitoring of, and ensuring compliance with, the s. 87B undertakings accepted by the ACCC in merger reviews
- > educating the public, business and its advisers on the role of the ACCC and its merger review processes, and publicising the ACCC's merger decisions.

The ACCC seeks to minimise uncertainty and risk for business and consumers through fair, predictable and consistent processes, and to be flexible in its strategies for improving market outcomes. This is highlighted in the ACCC's *Merger review process guidelines*, issued in 2006, and in the *Formal merger review process guidelines*, published in 2007, which provide procedural guidance on both informal and formal merger clearance processes.

The draft 'Merger guidelines 2008' was released for comment in February 2008—this publication sets out the ACCC's revised analytical framework for merger reviews and once finalised will replace the *Merger guidelines* published in 1999. This new publication is intended to bring the ACCC's merger practice into line with international best practice, contemporary views on anti-trust analysis and ACCC experience conducting merger analysis.

The ACCC aims to improve market processes more generally by:

- > providing information to the market to limit imbalances in information
- > liaising with other regulators (e.g. through the International Competition Network's merger workgroup and the Cooperation Protocol for Merger Review between the ACCC and the New Zealand Commerce Commission) and business and consumer associations
- > speaking to the public and participating in meetings and conferences
- > helping our overseas trading partners to develop and implement effective merger regimes.

**Tim Grimwade**, General manager, Mergers and Asset Sales Branch

## Assessing mergers, asset sales and joint ventures

The Trade Practices Act prohibits mergers, acquisitions and joint ventures that would substantially lessen competition, and prevents businesses accumulating market power that could lead to anti-competitive conduct. The test applied by the ACCC rests on recognition of the link between market structure and resulting market power and the need to be able to respond to potential threats from the exercise of unilateral or coordinated market power.

### Output 1.1.1

#### Compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed

##### Performance indicator

Publicise merger and authorisation decisions, arbitrations, undertakings and access arrangements and monitoring activities and inquiry findings

This year the ACCC:

- > issued 36 media releases on mergers
- > published all 2007–08 public merger decisions on its website.

### Output 1.1.2

#### Competitive market structures and informed behaviour

##### Performance indicator

Assess the competition effects of mergers, acquisitions or asset sales

This year the ACCC:

- > Conducted 397 merger reviews for compliance with s. 50 of the Trade Practices Act. Of these:
  - > 23 were either withdrawn by the merger parties or the transaction was discontinued before a final decision was made
  - > five were publicly opposed outright following the ACCC's review
  - > six were resolved during their review with court enforceable undertakings
  - > four variations to undertakings were considered.
- > Of the 212 matters considered on a confidential basis, six were opposed or had concerns expressed confidentially.
- > No formal clearance or merger authorisation applications were made.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

**Those publicly opposed were:**

- > Woolworths Ltd's proposed acquisition of Karabar Supabarn
- > PMP Ltd's proposed joint venture with McPherson's Ltd book printing businesses
- > Woolworths Ltd's proposed acquisition of Officeworks and Kmart
- > Pact Group Pty Ltd's proposed acquisition of Brickwood Holdings Pty Ltd (October 2007, but subsequently not opposed under new review in April 2008)
- > Sumitomo Forestry Company Ltd's proposed acquisition of certain assets of Carter Holt Harvey Ltd's Woodproducts Australia business

**Those not opposed included:**

- > A&R Whitcoulls Group Holdings Pty Ltd's proposed acquisition of Borders Australia Pty Ltd
- > P&O Automotive and General Stevedoring Pty Ltd's proposed joint venture with Tasports
- > BUPA Australia Pty Ltd's proposed merger with MBF Australia Limited
- > Google Inc.'s proposed acquisition of DoubleClick Inc.
- > Rio Tinto Ltd's proposed acquisition of Alcan Inc.
- > Wesfarmers Ltd's proposed acquisition of Coles Group Limited

**Those resolved during their review by court enforceable undertakings were:**

- > Tattersall's Ltd's proposed acquisition of Golden Casket Lottery Corporation Ltd
- > Singapore Power, Babcock and Brown Ltd's proposed acquisition of Alinta Ltd
- > Healthscope Ltd, Ironbridge Capital and Archer Capital—proposed acquisition of Symbion Health Ltd
- > Video Ezy Australasia Pty Ltd—proposed acquisition of Blockbuster Australia Pty Ltd
- > Macquarie Media Group—proposed acquisition of Southern Cross Broadcasting (Australia) Ltd
- > Macquarie Media Group—proposed acquisition of certain regional radio assets owned by Fairfax Media Ltd

**Merger and joint venture reviews**

	2007–08	2006–07	2005–06	2004–05
Total <sup>1</sup>	397	390	272	189
Not opposed <sup>1,2</sup>	380	365	261	178
Opposed outright <sup>1,3</sup>	11	17	5	2
Resolved during review through undertakings	6	8	6	9

<sup>1</sup> Includes confidential reviews.

<sup>2</sup> Includes reviews that were not opposed plus reviews that were withdrawn before a decision was made, and reviews of variations to undertakings.

<sup>3</sup> Includes reviews that were publicly opposed and where the ACCC expressed concerns on a confidential basis.

**Mergers, acquisitions and asset sales** were assessed for their compliance with s. 50 of the Act. In total 397 reviews were conducted with five matters being publicly opposed (six where confidential opposition or concerns were expressed) and six being allowed to proceed after the acceptance of undertakings to address competition concerns. During the past financial year some of the more substantial mergers considered by the ACCC fell within the retail, energy and media sectors.

Three merger matters were the subject of litigation during 2007–08, each of which related to compliance with s. 87B undertakings. In August 2007 the ACCC settled legal proceedings to its satisfaction arising from compliance concerns with a s. 87B undertaking given by Alinta. In June 2008 the ACCC commenced proceedings against ABC Learning Centres Ltd for alleged breaches of its 2004 undertaking, including its failure to divest two childcare centres in Western Australia. Also in June 2008 Toll Holdings Ltd commenced proceedings against the ACCC in relation to matters arising from an undertaking it had given the ACCC.

The ACCC worked with overseas competition authorities, particularly through its active participation in the International Competition Network, a global forum through which individual national competition agencies are able to liaise on common issues. The ACCC is a member of the steering committee of the ICN and its working groups, including those dealing with merger notification and procedures and merger analysis and investigative techniques.

## Statement of issues

If the ACCC comes to a preliminary view that a proposed merger raises competition concerns requiring further investigation, it may release a statement of issues outlining the basis and facts on which the ACCC has reached this view. This process is aimed at increasing the transparency of the informal review process. It allows for obtaining further information that may alleviate or (potentially) reinforce the concerns of the ACCC, and/or provide an opportunity to consider any undertakings submitted by the merger parties to resolve competition concerns. In 2007–08 the ACCC released 13 statements of issues.

## Public competition assessments

To improve the handling of matters and provide an enhanced level of transparency in its decision-making, the ACCC provides a public competition assessment outlining how it reached its final conclusion on a transaction proposal when:

- > a merger is opposed
- > a merger is subject to enforceable undertakings
- > the merger parties seek such disclosure
- > a merger is not opposed but raises important issues that the ACCC considers should be made public.

Public competition assessments aim to provide the market with a better understanding of the ACCC's analysis of various markets and associated merger and competition issues. Assessments will also alert the market if the ACCC is changing, or is likely to change, its assessment of the competitive conditions in particular markets because of, for example, technological developments or previous mergers in those markets. In 2007–08 the ACCC released 16 public competition assessments.

## Major mergers assessed included

### Pact Group Pty Ltd's proposed acquisition of Brickwood Holdings Pty Ltd

**Result** | acquisition initially opposed. Acquisition subsequently not opposed following new agreement.

**Summary** | the ACCC conducted two informal merger clearance reviews of this proposed acquisition during 2007–08.

Pact Group and Brickwood are both suppliers of all polyethylene terephthalate bottles and high-density polyethylene (HDPE) bottles to the food and beverage industry. The most significant supplier of PET bottles in Australia is Visy.

A key factor in the ACCC analysis of the proposed acquisition was the existing commercial and family relationships between Pact Group and Visy. In particular, the ACCC was concerned that both the corporate relationship between Pact Group and Visy and the incentives flowing from personal and family relationships would make it unlikely that the merged entity and Visy would compete effectively against each other post-acquisition.

In the 2007 review, the ACCC found that Visy and Brickwood were the only suppliers of PET bottles to large beverage manufacturers. Market inquiries conducted for that review indicated that smaller PET bottle suppliers were unlikely to have the manufacturing capability and credibility to meet the requirements of large beverage suppliers. As a result, the ACCC was concerned that the proposed acquisition would result in the removal of the most significant and direct competitive constraint on Visy in the supply of PET bottles to large beverage suppliers.

On 31 October 2007 the ACCC announced it would oppose the proposed acquisition on the basis that it was likely to result in a substantial lessening of competition in the market for the supply of PET bottles to large beverage suppliers.

On 6 February 2008 Pact Group announced that it had entered into a new agreement to acquire Brickwood, and it sought a second informal merger clearance review from the ACCC, citing new information concerning the market for the supply of PET bottles. On 8 February 2008 the ACCC began a fresh review of the proposed transaction and conducted extensive market inquiries relating to all possible relevant markets.

The 2008 review confirmed most of the ACCC findings and conclusions from the 2007 review of the proposed acquisition, including the conclusion that on the basis of the corporate and family relationships between Pact Group and Visy, it would be unlikely that the merged entity would compete effectively against Visy after the acquisition.

However, through additional information obtained during the ACCC's extensive investigation—including voluntary submissions and responses to s. 155 notices—the ACCC found that large beverage suppliers possess a greater degree of bargaining power and potential countervailing power than had been indicated in information provided to the ACCC during the 2007 review.

This included information provided by the major beverage suppliers that (in 2007) the ACCC considered were the most likely to suffer harm from the proposed acquisition (Cadbury Schweppes, Coca-Cola Amatil, National Foods and P&N Beverages).

On the basis of the information before it, the ACCC was not satisfied that it had the necessary evidence to establish that a lessening of competition in the market for the manufacture and supply of PET bottles to large beverage suppliers arising from the proposed acquisition would be substantial, which is the threshold for establishing a contravention under s. 50 of the Act.

Therefore, on 23 April 2008 the ACCC announced that it would not oppose the proposed acquisition.

## Other markets

The 2008 review confirmed the conclusions reached about the proposed acquisition's likely effect on competition in other markets, including that:

- > the smaller beverage manufacturers are able to obtain PET bottles on a cost-effective basis either through self-manufacture or from small PET bottle suppliers
- > it would be unlikely to result in a substantial lessening of competition with respect to the manufacture and supply of HDPE bottles and plastic closures (lids and caps).

On 21 May 2008 the ACCC released a public competition assessment setting out the reasons for its decision.

## A&R Whitcoulls Group Holdings Pty Ltd's proposed acquisition of Borders Australia Pty Ltd

**Result** | acquisition not opposed.

**Summary** | on 13 February 2008 the ACCC decided not to oppose the proposed acquisition.

- > After a comprehensive review, the ACCC formed the view that the proposed acquisition was unlikely to substantially lessen competition in the relevant markets, namely the:
  - > local markets for the retail supply of books (from retailers to consumers)
  - > national market for the acquisition of books (by retailers from publishers and wholesalers).

Factors informing this conclusion included:

- > While the proposed acquisition would result in the removal of an effective competitor, the merged entity will face constraints from a combination of the discount department stores, Dymocks and, to a lesser extent, QBD, Collins and independents.
- > A&R Whitcoulls currently prices above the recommended retail price on the majority of its backlist titles. If this practice were to be introduced into Borders stores following acquisition, the ability of consumers to switch to retailers that do not price above the RRP would have acted as a competitive constraint.
- > Publishers possess sufficient countervailing power to prevent any increase in negotiating power by the merged firm from amounting to a substantial lessening of competition in the national acquisition of books market.

In reaching this decision, the ACCC considered information provided by the merger parties and extensive market inquiries.

On 27 February 2008 the ACCC issued a public competition assessment on its decision.

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## Macquarie Media Group—proposed acquisition of Southern Cross Broadcasting (Australia) Ltd

**Result |** acquisition not opposed subject to s. 87B undertaking.

**Summary |** on 17 October 2007 the ACCC decided not to oppose Macquarie Media Group's proposed acquisition of Southern Cross Broadcasting (Australia) Ltd (Southern Cross) after MMG provided court enforceable undertakings to the ACCC.

MMG owns and operates 87 commercial radio licences in 45 licence areas across regional Queensland, New South Wales, Victoria, Tasmania, South Australia and Western Australia. Southern Cross controls commercial television broadcasting licences in a number of regional licence areas.

The ACCC considered that, following the offer of the s. 87B undertaking by MMG, the proposed acquisition would be unlikely to substantially lessen competition in any of the relevant markets.

The ACCC had expressed concerns about the impact of the proposed acquisition in Tasmania. The ACCC considered that the Burnie, Devonport and Launceston regions constituted a combined market for advertising on radio and television. In these regions, market inquiries revealed a significant proportion of advertisers considered radio and television substitutable. MMG already owned both commercial radio stations in Burnie and Devonport and one commercial radio station in Launceston. The ACCC considered the acquisition of Southern Cross television by MMG would be likely to substantially lessen competition in the market for the supply of television and radio advertising in each of these licence areas.

The undertaking accepted by the ACCC required MMG to divest radio stations in Launceston, Burnie, Devonport, Queenstown and Scottsdale. Although the ACCC did not consider there were competition concerns specifically in Queenstown and Scottsdale, MMG's radio stations in these towns were included as part of the divestiture package to ensure there was a suite of assets providing the divestiture business with a sufficient scale and scope to enable a prospective purchaser to establish a viable and independent competitor to the merged entity.

On 27 November 2007 the ACCC issued a public competition assessment on this matter.

On 14 March 2008 MMG announced that it had completed sales of the radio stations to be divested under the undertakings accepted by the ACCC. The group of Tasmanian radio stations was bought by Tasmanian Broadcasters Pty Ltd, a subsidiary of Grant Broadcasters, a company that owns other radio stations in Tasmania and Victoria.

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## Macquarie Media Group—proposed acquisition of certain regional radio assets owned by Fairfax Media

**Result** | acquisition not opposed subject to s. 87B undertaking.

**Summary** | on 17 October 2007 the ACCC decided not to oppose MMG's proposed acquisition of nine regional radio stations owned by Fairfax Media Limited after it provided court enforceable undertakings to the ACCC.

MMG owns and operates 87 commercial radio licences in 45 licence areas across regional Queensland, New South Wales, Victoria, Tasmania, South Australia and Western Australia. Fairfax has substantial media assets, including commercial radio licences in regional Queensland and South Australia.

The ACCC considered that following the offer of the s. 87B undertaking by MMG, the proposed acquisition would be unlikely to substantially lessen competition in any of the relevant markets. The ACCC expressed concerns about the impact of the proposed acquisition in Bundaberg, Port Lincoln and Spencer Gulf.

In Bundaberg the proposed acquisition would have meant that MMG would be the sole owner of all three commercial broadcasting radio stations. Market inquiries indicated that other forms of advertising did not act as a strong constraint on radio advertising in this region. The ACCC considered that the acquisition by MMG of the Fairfax radio station in Bundaberg would be likely to substantially lessen competition in the market for the supply of radio advertising in this licence area. The ACCC was also concerned that the acquisition could potentially enable MMG to reduce the quality of local news and information broadcast on the radio stations in Bundaberg because of the removal of its closest competitors.

MMG would own both television and radio stations in Port Lincoln and Spencer Gulf (following its acquisition of Southern Cross television stations in these areas). In these regions, the ACCC considered that there was a combined market for advertising on radio and television. Market inquiries revealed that a significant proportion of advertisers considered radio and television substitutable. The ACCC considered that the acquisition by MMG of Fairfax radio stations in Port Lincoln and Spencer Gulf would be likely to substantially lessen competition in the market for the supply of television and radio advertising in these licence areas. The ACCC was also concerned that the acquisitions could potentially enable MMG to reduce the quality of local news and information broadcast in these regions.

The undertaking accepted by the ACCC required MMG to divest radio stations in Bundaberg, Port Lincoln and Spencer Gulf.

On 10 December 2007 MMG announced that the acquisition of the nine regional radio stations owned by Fairfax would not proceed. Accordingly, the undertakings accepted for this proposed acquisition did not come into effect.

The ACCC issued a public competition assessment relating to this matter on 27 November 2007.

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## Woolworths Ltd's proposed acquisition of Officeworks and Kmart or Officeworks and Target

**Result** | Kmart and Officeworks acquisition opposed, Target and Officeworks acquisition withdrawn.

**Summary** | on 17 October 2007 the ACCC decided to oppose the proposed acquisition of Kmart and Officeworks by Woolworths. Woolworths requested that the ACCC assess two possible transactions: the acquisition of Officeworks and either Kmart or Target. The review began on 15 June 2007.

On 5 September 2007 the ACCC released a statement of issues relating to both proposed acquisitions.

After conducting extensive market inquiries about this matter with participants, the ACCC formed the view that the proposed Kmart acquisition would be likely to have the effect of substantially lessening competition in several markets, in contravention of s. 50. The ACCC concluded that Kmart and Woolworths' Big W are each other's closest competitors in most respects. They are both national discount department store chains positioned closely in terms of price, store format, range and service, and therefore they impose the strongest constraint on each other in a range of markets.

Market inquiries indicated that other retailers, including Target and speciality retailers, are positioned differently from Kmart and Big W and were unlikely to prevent the merged entity from increasing prices.

The ACCC identified a number of product markets in which a substantial lessening of competition was likely. These were the markets for the retail sale of:

- > basic footwear
- > men's basic apparel
- > women's basic apparel
- > children's basic apparel
- > toys
- > books
- > DVDs.

The ACCC also concluded that the barriers to entry on a large national scale are significant—for example, it is especially difficult to obtain access to a large network of suitable store sites.

The ACCC concluded that the acquisition of Officeworks alone would not result in a substantial lessening of competition (Woolworths does not presently operate a similar business, so there is limited competitive overlap). However, the ACCC was not asked to consider a separate acquisition of Officeworks alone, but instead to consider an acquisition of Officeworks in conjunction with either Kmart or Target. Given its opposition to the acquisition of Kmart, the ACCC would therefore also oppose the acquisition of Officeworks and Kmart.

On 17 October 2007 the ACCC issued a public competition assessment on its decision.

On the same day the ACCC extended the timeline for its assessment of Woolworths' separate proposal to acquire Target and Officeworks to allow for further consideration. However, before the ACCC could reach a decision about that proposed transaction, Woolworths announced it would not be proceeding with it.

On 7 November 2007 Coles shareholders voted in favour of a scheme of arrangement that resulted in Wesfarmers Limited acquiring the entire Coles Group.

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## Rio Tinto Ltd—proposed acquisition of Alcan Inc.

**Result** | acquisition not opposed.

**Summary** | on 3 October 2007 the ACCC decided not to oppose the proposed acquisition of Alcan Inc. a global producer of bauxite, alumina and aluminium, by Rio Tinto plc.

The ACCC considered the relevant markets were:

- > national markets for the supply aluminium in various forms
- > the national market for the supply of smelter grade alumina
- > regional markets for the supply of bauxite, with a particular focus on the Queensland market.

The ACCC considered the transaction was unlikely to lead to a substantial lessening of competition in any of the identified markets because the existing and potential alternative suppliers of aluminium and alumina would constrain the merged entity after the merger.

The ACCC also considered that the removal of Alcan as a potential merchant supplier of bauxite in the Queensland market was unlikely to substantially lessen competition.

On 8 November 2007 the ACCC issued a public competition assessment on its decision.

# Adjudication

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Promoting effective competition and informed markets

Encouraging fair trading and consumer protection

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## Authorising anti-competitive conduct

A key objective of the Trade Practices Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business, resulting in greater choice for consumers in price, quality and service.

Some anti-competitive arrangements can, however, be allowed under the Act if the parties can demonstrate that the arrangements are in the public interest. Businesses may obtain immunity by applying for an authorisation or submitting notifications of exclusive dealing and collective bargaining to the ACCC.

With the introduction of the new collective bargaining notification process, seven collective bargaining notifications were lodged in 2007–08. A wide variety of collective bargaining conduct was notified, from collective negotiation by citrus growers, newsagents and removalists to collective negotiation by doctors.

The ACCC continued to receive a significant number of authorisation applications for collective bargaining arrangements, including in 2007–08 from potato growers, wine growers and fruit growers. All these authorisation applications were granted.

The ACCC issued 29 final determinations on authorisation matters during 2007–08, covering an extremely wide range of conduct. In addition to a range of collective bargaining matters, other significant matters considered by the ACCC included decisions relating to queue management systems to manage infrastructure bottlenecks in the Hunter Valley and Goonyella coal chains and codes of conduct for shopping centre leasing arrangements, alcohol packaging and IT contracting and recruiting, as well as an increase in an industry-agreed levy applied to ozone-depleting and synthetic greenhouse gas refrigerants.

Some 416 exclusive dealing notifications were lodged with the ACCC in 2007–08, the vast majority of which were allowed to stand. The ACCC issued notices revoking the immunity afforded by notifications lodged by Eastern Suburbs Newspapers, GeelongPort, Racing and Wagering Western Australia and Seal-A-Fridge. A number of other notifications were withdrawn following concerns raised by the ACCC.

The ACCC assessed 25 certification trademark applications.

**Richard Chadwick**, General manager, Adjudication Branch

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#### Output 1.1.1

### Compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed

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#### Performance indicator

Publicise merger and authorisation decisions, arbitrations, undertakings and access arrangements and monitoring activities and inquiry findings

This year the ACCC:

- > issued 71 media releases on authorisation and notification decisions.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

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#### Output 1.1.2

### Competitive market structures and informed behaviour

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#### Performance indicator

Adjudicate authorisation applications (where anti-competitive behaviour is claimed to deliver public benefits)

This year the ACCC:

- > made 29 final determinations on authorisation matters and received 32 new authorisation applications relating to 16 matters
- > received 416 notifications for exclusive dealing, the majority of which concerned third line forcing, and issued two notices to revoke and two draft notices to revoke (relating to exclusive dealing notifications).

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

## Authorisation applications

Under the authorisation process, in response to an application, the ACCC can grant immunity for potential breaches of most of the competition provisions of the Trade Practices Act if it is satisfied the conduct delivers a net public benefit. The process is open and transparent, involving public registers, consultation with interested parties and the publication of draft determinations.

	Opening balance	New applications	Applications withdrawn	Applications decided	Balance
Authorisation applications	7 (16)	19 (29)	2 (4)	16 (32)	8 (9)
Minor variation applications	0 (0)	7 (9)	0 (0)	7 (9)	0 (0)
Revoke and substitute authorisation applications	1 (2)	5 (7)	0 (0)	4 (7)	2 (2)
Revocations	1 (1)	1 (1)	0 (0)	2 (2)	0 (0)
Total	9(19)	32 (46)	2 (4)	29 (50)	10 (11)
<b>Last year</b>	<b>13 (24)</b>	<b>38 (60)</b>	<b>6 (10)</b>	<b>36 (55)</b>	<b>9 (19)</b>

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

## Exclusive dealing notifications

The exclusive dealing notification process provides immunity for potential breaches of the exclusive dealing provisions of the Trade Practices Act. It differs from the authorisation process because immunity does not depend on a decision by the ACCC. Lodging a notification provides automatic immunity from the date it is lodged with the ACCC (or soon after in the case of third line forcing conduct) and remains in force unless revoked by the ACCC. Again, the process is open and transparent, with notifications placed on a public register. When considering the revocation of a notification, the ACCC is required to consult with interested parties and to issue a draft decision document setting out the reasons it is considering revocation.

	This year	Last year
New notifications	416	694
Notifications withdrawn	3	9
Notifications revoked	7	2

Notifications may be reviewed at any time.

## Collective bargaining notifications

The collective bargaining notification process provides immunity for activities that may otherwise breach the Trade Practices Act, if it can be demonstrated to be in the public interest to do so. After lodging a collective bargaining notification, immunity for the applicant is automatic after 28 days (14 days from 1 January 2009), unless the ACCC moves to revoke the notification.

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

	<b>This year</b>	<b>Last year</b>
New notifications	7	n/a
Notifications withdrawn	1	n/a
Notifications revoked	1	n/a
On hand at end period	0	n/a

## Applications for review by the Australian Competition Tribunal

Decisions under the authorisation process and decisions to revoke either exclusive dealing or collective bargaining notifications may be reviewed by the Australian Competition Tribunal.

	<b>This year</b>	<b>Last year</b>
Opening balance	0	0
New applications	0	2
Applications withdrawn	0	1
Applications decided	0	1
Balance	0	0

There were no new applications for review lodged with the tribunal within the last financial year.

## Certification trademarks

ACCC approval is required before certification trademarks can be registered under the *Trade Marks Act 1995*. Consistent with its role in enforcing the Trade Practices Act, the ACCC assesses whether CTM applications and rules raise consumer protection, competition or associated concerns.

	This year	Last year
Opening balance	13	14
New applications	25	31
Applications withdrawn	0	2
Applications returned	2	0
Applications decided	25	30
Balance	11	13

## Selected authorisation final decisions

Consistent with trends in recent years, in 2007–08 the ACCC was asked to make a number of significant decisions relating to authorisation matters.

Collective bargaining arrangements made up a large proportion of decisions. This reflects the continuing interest of business, predominantly small business, in achieving improved outcomes through collective arrangements. Over the past year ACCC authorisation has enabled collective bargaining arrangements between, among others, potato growers, wine grape growers, health food retailers and retailers of stationery and office products.

A number of applications have been granted to help address capacity imbalances in the Hunter Valley and central Queensland coal chains.

## Aviation

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### Qantas Airways Limited A90525

**Result** | 25 July 2007 | revocation granted.

**Background** | revocation of an authorisation granted to Qantas in 1991 for air service agreements between Australia Asia Airlines and China Airlines Limited for services between Australia and Taiwan.

Qantas Airways Limited A91059

**Result** | 19 December 2007 | authorisation granted until 31 December 2017.

**Background** | authorisation granted to Qantas for tariff arrangements with designated airlines, as required under Australia's air service agreements with other countries.

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### Singapore Airlines Limited A91036, A91037, A91038, A91039 and A91040

**Result** | 18 July 2007 | authorisation granted until 18 July 2012.

**Background** | authorisation granted to Singapore Airlines, on behalf of the Star Alliance, for the Corporate Plus and the Conventions Plus programs.

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## Collective bargaining

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### Office Choice Limited A91058

**Result** | 19 September 2007 | granted authorisation until 19 September 2013.

**Background** | authorisation granted to Office Choice, Office National and Office Products Depot and their franchisees to collectively negotiate, and/or appoint a representative to collectively negotiate on their behalf, the terms and conditions on which office supplies are sold to them by suppliers.

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### South East Potato Growers Association A91057

**Result** | 29 August 2007 | granted authorisation until 29 August 2012.

**Background** | authorisation granted to South East Potato Growers Association to engage in collective negotiations on behalf of its members with McCain Foods and Safries, and to participate in any dispute resolution mechanism relating to disputes between McCain Foods and Safries and members of SEPGA about agreements collectively negotiated.

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### Victorian Farmers Federation Sunraysia Branch A91064

**Result** | 12 December 2007 | granted authorisation until 12 December 2012.

**Background** | authorisation granted to Victorian Farmers Federation Sunraysia members to collectively negotiate with dried vine-fruit processors. VFF Sunraysia is also authorised to negotiate on behalf of its members.

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### ACT Health Food Co-operative Ltd A91071

**Result** | 6 February 2008 | granted authorisation until 6 February 2013.

**Background** | authorisation granted to current and future members of the cooperative to collectively negotiate the terms and conditions on which they will obtain health food products from various suppliers and distributors.

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### North East Valleys Wine Group Pty Ltd A91080 and A91081

**Result** | 19 March 2008 | granted authorisation until 30 June 2012.

**Background** | authorisation granted to growers in the north-east valleys region of Victoria to appoint either North East Valleys or Winegrapes Australia to provide:

- > commercial consulting services for grape supply contracts, including pricing advice
  - > sales agency services for grape sales
  - > farm supply procurement services in respect of telecommunications services and insurance products.
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### Rural Doctors Association of Australia Limited A91078

**Result** | 14 May 2008 | granted authorisation until 30 June 2013.

**Background** | authorisation granted to the Rural Doctors Association of Australia and its constituent state associations to collectively negotiate with state and territory health departments the terms of contracts for rural generalist and general practitioner visiting medical officers in rural areas.

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## Codes of conduct

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### Nestle Australia Ltd A90539 and A90540

**Result** | 30 August 2007 | granted until 31 December 2015.

**Background** | minor variation granted to allow future parties to participate in the Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement.

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### Shopping Centre Council of Australia Limited A91049 and A91050

**Result** | 29 August 2007 | granted until 29 August 2012.

**Background** | authorisation granted to the Shopping Centre Council of Australia for the Casual Mall Licensing Code of Practice—in particular for clause 6, which provides that a lessor must not grant a casual mall licence that results in the unreasonable introduction of a competitor of an adjacent lessee.

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### Distilled Spirits Industry Council of Australia Inc. and others A91054 and A91055

**Result** | 31 October 2007 | granted until 30 June 2011.

**Background** | authorisation for the Alcohol Beverages Advertising (and Packaging) Code and its associated rules and procedures, which establish a system for the removal of inappropriately named or packaged alcohol products from the market (the retailer alert scheme).

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### Information Technology Contract and Recruitment Association A91063

**Result** | 27 February 2008 | granted until 30 June 2010.

**Background** | authorisation for the Information Technology Contract and Recruitment Association Code of Conduct, which establishes standards of conduct and behaviour, a dispute resolution process and a complaint-handling process.

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## Infrastructure, mining and resources

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### Dalrymple Bay Coal Terminal Pty Ltd A91060, A91061 and A91062

**Result** | 29 February 2008 | granted until 31 December 2008.

**Background** | authorisation for a queue management system designed to address the imbalance between demand for coal-loading services at Dalrymple Bay and the capacity of the Goonyella coal chain. Authorisation granted for a transition period to enable a long-term solution to the problem of excessive vessel queues to be developed and implemented.

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### Donaldson Coal Pty Limited A91075, A91076 and A91077

**Result** | 23 April 2008 | granted until 31 December 2008.

**Background** | authorisation for a system to be applied during 2008 to address capacity imbalances between the demand for coal-loading services at the Port of Newcastle and the available capacity of the Hunter Valley coal chain.

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### Newcastle Port Corporation A91072, A91073 and A91074

**Result** | 23 April 2008 | granted until 31 December 2008.

**Background** | authorisation for a system to be applied during 2008 to address capacity imbalances between the demand for coal-loading services at the Port of Newcastle and the available capacity of the Hunter Valley coal chain.

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## Joint tendering

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### National Foods Milk Limited and Australian Co-operative Foods Limited A91051, A91052 and A91053

**Result** | 12 September 2007 | and A91051, and A91053 granted until 31 December 2014; A91052 denied.

**Background** | authorisation relating to a joint tender process for milk haulage services in South Australia.

The ACCC denied authorisation to application A91052 for a subsequent agreement between National Foods, Dairy Farmers and the successful tenderer.

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## Licensing/royalty arrangements

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### Phonographic Performance Company of Australia Ltd A91041 and A91042

**Result** | 27 September 2007 | granted conditional authorisation until 31 March 2011.

**Background** | authorisation for collective licensing arrangements for the public performance or broadcast of sound recordings and music videos.

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## Levies

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### Refrigerant Reclaim Australia Ltd A91079

**Result** | 14 May 2008 | granted authorisation until 31 December 2010.

**Background** | authorisation to allow an increase in the levy applied to ozone-depleting and synthetic greenhouse gas refrigerants imported as bulk or contained in equipment and sold in Australia.

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## Professional associations

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### Construction Material Producers Association Inc. A91047

**Result** | 29 August 2007 | granted conditional authorisation until 29 August 2012.

**Background** | authorisation to develop and publish a number of standard form contracts for Construction Material Producers Association members.

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## Gaming industry

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### ThoroughVision Pty Ltd and others A91031 and A91032

**Result** | 4 July 2007 | granted conditional authorisation until 31 December 2012.

**Background** | authorisation of a memorandum of understanding that sets out in broad terms the commercial terms between Sky and ThoroughVision for the sharing of thoroughbred racing content.

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### Tabcorp Manager Pty Ltd A91065, A91066 and A91067

**Result** | 5 March 2008 | granted authorisation until 14 August 2012.

**Background** | authorisation of the 2007 SuperTAB Pooling Agreement between Tabcorp and TOTE Tasmania, governing TOTE Tasmania's participation in the SuperTAB Pool operated by Tabcorp.

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## Matters before the Australian Competition Tribunal

No adjudication matters came before the Australian Competition Tribunal during the 2007–08 financial year.

### Major notifications of exclusive dealing

The ACCC received 416 exclusive dealing notifications in 2007–08, the majority of which concerned third line forcing. While most notifications are allowed to stand, the ACCC assesses each notification and consults more broadly on notifications that raise apparent concern. Where the ACCC considers the conduct falls short of the relevant public interest test, it ultimately moves to revoke notifications.

The ACCC consulted widely on a number of notifications this year, including on notifications lodged by Bakers Delight Holdings Ltd, Football Federation Victoria, GeelongPort Pty Ltd, Seal-A-Fridge Pty Ltd, Eastern Suburban Newspapers, Harness Racing Victoria, Racing and Wagering Western Australia, Techtronic Industries Australia Pty Ltd and Bunnings Group Limited.

The ACCC also issued revocation notices for four matters involving seven notifications during 2007–08.

### Revocation notices

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#### Seal-A-Fridge N50197, N50198, N50199 and N92676

**Result** | 13 September 2007 | notification revoked.

**Background** | notification requiring Seal-A-Fridge franchisees to acquire door seal supplies from nominated approved suppliers.

#### Racing and Wagering Western Australia N93093

**Result** | 20 December 2007 | notification revoked.

**Background** | notification requiring licensed horse trainers to obtain workers compensation insurance from a nominated insurer.

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#### GeelongPort Pty Ltd N92776

**Result** | 4 February 2008 | notification revoked.

**Background** | notification requiring users of the Lascelles Wharf to use GeelongPort's figee cranes unload fertiliser and other dry-bulk cargoes.

#### Eastern Suburbs Newspapers N90330

**Result** | 29 May 2008 | notification revoked.

**Background** | notification requiring real estate agents to agree to place 75 per cent of the total print display advertising (by centimetre volume) for properties in the eastern suburbs of Sydney with the *Wentworth Courier*.

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## Draft notices to revoke

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### Football Federation Victoria N92852 and N92853

**Result** | 4 July 2007 | draft notice to revoke issued allowed to stand.

**Background** | notification under which the Football Federation Victoria proposes to require clubs that participate in FFV competitions to use only licensed balls and licensed apparel during FFV competitions. The licensing program was amended by the FFV following the release of the draft notice, with the notifications being allowed to stand.

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### Harness Racing Victoria N93059

**Result** | 6 September 2007 | draft notice to revoke issued; notification withdrawn.

**Background** | notification under which Harness Racing Victoria would offer a rebate on the fee otherwise payable (for the supply of race field data) by six nominated bookmakers for a particular month relating to any layoffs or bet-backs placed by these bookmakers with the Victorian TAB (Tabcorp) on harness races within Australia. Notification also required the nominated bookmakers to hold an interstate or international wagering or bookmaking licence. The notification was withdrawn following the release of the draft notice.

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### National Association of Speedway Racing Incorporated and others N93297, N93298, N93301, N93302 and N93303

**Result** | 11 June 2008 | draft notice to revoke issued; matter under consideration as at 30 June 2008.

**Background** | notification under which the National Association of Speedway Racing Incorporated proposes to offer and supply licences on condition that:

- > the offeree only races at tracks and venues sanctioned or approved by NASR
  - > the offeree obtain membership of the relevant national and/or state and/or regional club or association for the offeree's relevant speedway racing category.
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### eBay International AG N93365

**Result** | 12 June 2008 | draft notice to revoke issued; matter under consideration as at 30 June 2008.

**Background** | notification under which eBay proposes to supply the services offered on the www.ebay.com.au site (including search, listing and transaction functions) to registered users of the site, on condition that users only acquire the online payment services provided by PayPal Australia Pty Ltd.

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## Notifications of collective bargaining

The ACCC received seven collective bargaining notifications in 2007–08. The assessment process for collective bargaining notifications is open and transparent, involving submissions from interested parties and the publication of a decision document by the ACCC for all collective bargaining notifications.

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### Nelson Enterprises Pty Ltd and others CB00001 and CB00002

**Result** | 23 August 2007 | allowed to stand.

**Background** | proposal by three Queensland citrus growers to collectively negotiate the price and volume of their supply of citrus fruit to Woolworths Limited and IGA Distribution Limited.

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### Australian Newsagents Federation Limited CB00003

**Result** | 13 September 2007 | allowed to stand.

**Background** | proposal to negotiate contracts on behalf of the Australian Newsagents Federation's Western Australian members with the publisher, Western Australian Newspapers.

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### Australian Medical Association (Vic) Pty Ltd CB00004

**Result** | 19 December 2007 | objection notice issued.

**Background** | proposal to collectively negotiate terms and conditions for the pricing, rostering, provision of out-of-hours service and other conditions of engagement with the target hospital, Latrobe Regional Hospital, on behalf of 39 doctors.

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### Australian Medical Association (Vic) Pty Ltd CB00005

**Result** | 8 November 2007 | draft objection notice issued; notification withdrawn.

**Background** | proposal for the Australian Medical Association Victoria to collectively negotiate, on behalf of 26 doctors, the terms and conditions of their visiting medical officer contracts with Werribee Mercy Hospital. The notification was withdrawn following the release of the draft objection notice.

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### Wangaratta Anaesthetic Group CB00006

**Result** | 17 December 2007 | allowed to stand.

**Background** | proposal to collectively negotiate with BUPA Australia on anaesthesia fees.

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### R J Nuss Removals Pty Ltd CB00007

**Result** | 27 February 2008 | allowed to stand.

**Background** | R J Nuss Removals, on behalf of a group of removalists, proposes to collectively negotiate an annual volume growth rebate for rail line-haul services with Asciano Service Pty Ltd.

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### Ken Hardisty CB00008

**Result** | 18 April 2008 | invalid notification.

**Background** | proposal to negotiate on behalf of a group of telecommunications subcontractors the terms of their contracts with Service Stream Communications Pty Ltd.

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# Regulatory affairs

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## Regulate infrastructure service markets and other markets where competition is restricted

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The ACCC and the AER have roles in promoting competition in network industries—communications, energy, post, transport and, from 2007–08, water. The ACCC is also involved in public pricing inquiries and in monitoring prices of selected goods and services. The products and sectors monitored are diverse and the nature of the monitoring activity varies. Public pricing inquiries and monitoring have been a significant component of the work of the Regulatory Affairs Division in 2007–08.

## Network regulation

Prices oversight and regulatory arrangements to secure third party access to essential services may be necessary in the infrastructure sectors where there might be natural monopoly characteristics.

Administering access regimes for energy, communications and rail has been a major area of regulation activity in 2007–08.

Depending on the infrastructure industry and the nature of the specific regime, access regulation can involve:

- > determining which services should be subject to access regulation
- > determining conditions of access
- > considering access undertakings and/or
- > arbitrating terms and conditions in access disputes.

Access regulation is used as a means to an end—to promote competition and to encourage new entrants into what is the contestable part of the market—for example, freight services over the rail track and telephone services over the copper wires. To be sustainable, the access regime must credibly satisfy the demands of both consumers and investors and be procedurally fair while providing incentives for efficiency.

In addition to the core access work, monitoring and some competition regulatory functions are undertaken as part of network regulation in some of the different infrastructure areas.

In 2007–08 the ACCC also gained responsibility for functions relating to water resources in the Murray-Darling Basin. Under the *Water Act 2007* the ACCC advises on regulatory design and will enforce compliance with the water market and water charge rules currently being developed.

## Pricing inquiries and price monitoring

In 2007–08 there was a significant increase in ACCC activity under Part VIIA of the Act, Prices surveillance.

Under Part VIIA, the ACCC conducted a major inquiry into unleaded petrol in Australia in 2007. This was the first public price inquiry conducted by the ACCC since 1996 (which was also a petrol-related inquiry). The petrol inquiry reported on 14 December 2007. On 22 January 2008 the ACCC received a request from the federal government to inquire into the competitiveness of retail prices for standard grocery products and to report to the government by 31 July 2008.

New directions under Part VIIA were also given to the ACCC for price monitoring. In December 2007 the government directed the ACCC to monitor the prices, costs and profits relating to the supply of unleaded petrol products for three years. In April 2008 the government directed the ACCC to monitor prices, costs and profits relating to the supply of car-parking services at Adelaide, Brisbane, Melbourne, Perth and Sydney airports.

Other types of price monitoring activities to increase information to consumers were initiated. On 13 May 2008 the government announced that the ACCC would be funded to conduct a monthly survey of the prices for typical grocery baskets across Australia and to publish the survey results on a dedicated consumer website. In April 2008 the government announced its attention to establish a national Fuelwatch scheme to address the information imbalance between consumers and retailers and to eliminate intraday volatility.

These tasks are in addition to a range of monitoring functions already being undertaken by the ACCC, including the monitoring of medical indemnity insurance premiums.

In summary, 2007–08 was a particularly busy year for the Regulatory Affairs Division:

- > the AER continued to work closely with jurisdictional regulators to ensure a smooth transfer of the economic regulation of distribution network functions to the national framework
- > the Communications Group advised on a diverse range of access issues and continued to examine emerging issues and new policy approaches relating to the impact of technical convergence on communications markets
- > significant work was undertaken on rail access and in postal matters
- > a new water branch was established and commenced operations
- > public inquiry and monitoring functions were dramatically increased.

A larger division with a new organisational structure is now in place to respond to work demands of 2008–09.

**Joe Dimasi**, Executive general manager, Regulatory Affairs Division

## Energy

Responsibility for regulation of electricity and gas transmission businesses was shared between the AER and the ACCC. The ACCC had responsibility for regulatory decisions under the National Third Party Access Code for Natural Gas Pipeline Systems (the Gas Code) until the introduction of the new National Gas Law and National Gas Rules (NGR) on 1 July 2008. At this time the responsibility for regulatory decisions under the NGL was transferred to the AER. Responsibility for administration of Part VII (authorisations and notifications) provisions in respect of energy businesses is the function of the ACCC. The AER assists the ACCC in this function.

The AER is Australia's national energy market regulator. It commenced operation on 1 July 2005.

The AER functions include:

- > monitoring compliance with the National Electricity Law (NEL), National Electricity Rules (NER) and the regulations by registered participants and other persons
- > investigating breaches or possible breaches of provisions of the NEL and NER, and instituting and conducting enforcement proceedings against registered participants and other persons
- > monitoring the wholesale electricity market
- > economic regulation of electricity transmission and distribution service providers (except in Western Australia and the Northern Territory)
- > economic regulation of gas transmission and distribution service providers (except in Western Australia)

The transfer of relevant functions from jurisdictional regulators to the AER is not yet complete, with regulation of retail markets, to the extent determined by the Ministerial Council on Energy (MCE), to be transferred by 1 January 2010.

An amended Australian Energy Market Agreement was concluded on 2 June 2006. The amended agreement provides for the transfer of economic regulation of gas transmission networks and gas and electricity distribution networks. The MCE announced that the revised date for the transfer is 1 July 2008. In the interim, the AER assisted the ACCC in undertaking gas transmission regulatory functions, including approval of access arrangements, applications for approval of associate contracts, approval of annual tariff changes within an access arrangement period and gas transmission ring-fencing compliance reporting.

The AER will continue to work closely with jurisdictional regulators to ensure a smooth transfer of the economic regulation of distribution network functions to the national framework. The AER also assists the ACCC with energy competition matters, including merger issues and energy authorisations.

The AER was established in accordance with the *Trade Practices Amendment (Australian Energy Market) Act 2004*. The AER comprises three members who are statutory appointees; the members are collectively referred to as **the Board**. The AER was established as a separate legal entity within the ACCC. The Australian Government is responsible for funding the AER.



## Authorising environment

### National Electricity Law

The NEL is established by the *National Electricity (South Australia) Act 1996*, as amended by the *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005*. It is applied through state and territory application legislation.

The National Electricity (South Australia) (New National Electricity Law) Amendment Act was passed by the South Australian Parliament on 14 April 2005. The NEL contains provisions setting out the powers and functions of the Australian Energy Market Commission (AEMC) and the AER as well as provisions for the operation of the National Electricity Market (NEM).

### National Electricity Rules

The initial NER commenced operation on 1 July 2005. The NER governs the operation of the NEM. As the AEMC is charged with amending the rules from time to time, the latest version of the rules can be found on the AEMC website ([www.aemc.gov.au](http://www.aemc.gov.au)).

### National Third Party Access Code for Natural Gas Pipeline Systems

The Gas Code and its enabling legislation, the Gas Pipelines Access (South Australian) Act, applies to transmission and distribution pipelines. The Gas Code sets out the principles to be applied by regulators when determining whether third party access rights are appropriate and the terms and conditions of access on which access is provided (access arrangements). It also provides for binding arbitration of disputes between service providers and access seekers. This code has been replaced by the new gas legislation, which began on 1 July 2008.

### National Gas Law and rules

The MCE response to the Productivity Commission's review of the gas access regime was released in May 2006. The response will be given effect through the new NGL and NGR. The new gas legislative regime commenced on 1 July 2008 and replaced the Gas Code. The main implication for the AER is that it becomes the economic regulator of covered gas transmission and distribution pipelines in all states except Western Australia.

### Performance indicator

#### Encourage competition in markets that depend on monopoly services

This year the ACCC/AER:

- > facilitated competition in energy markets (NEM monitoring/reports)
- > published a weekly market analysis, looking at spot prices, rebidding, network outages and demand/supply forecasting
- > prepared longer term statistics on the performance of the market detailing trends in demand, spot prices, contract prices, the wholesale electricity price index, frequency control ancillary service prices, reserve energy, settlement residue auctions and spot price
- > prepared reports on all incidents where spot prices for a region exceeded \$5000/MWh in a trading interval and analysed market conditions leading up to and during such intervals
- > conducted special investigations into spot market outcomes, addressing compliance issues and publishing results where appropriate
- > examined all rebids through reporting functions during times where prices exceeded three times the volume weighted average in a week and, where necessary, investigated any atypical rebids
- > published four electricity quarterly compliance reports
- > monitored compliance and investigated breaches or possible breaches of the NEL or NER to recommend possible enforcement action.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

### Performance indicator

#### Ensure that access regulation provides incentives for efficient business investment and use of infrastructure

This year the ACCC/AER:

- > released indicators of the market impact of transmission congestion for 2006–07, identifying the causes and market impacts of transmission constraints
- > assessed service standards compliance reports received from electricity transmission businesses and advised the businesses of the financial reward or penalty for their annual revenue allowance
- > reviewed the annual ring-fencing reports from service providers, for the covered gas transmission pipelines to ensure compliance with the ring-fencing requirements of the Gas Code
- > approved two gas transmission service providers' reference tariff variations to ensure their compliance with their access arrangements
- > established efficient access terms for SP AusNet, VENCORP, Electranet, GasNet and the Dawson Valley Pipeline.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

### Performance indicator

Ensure that businesses using monopoly services pay prices that reflect efficient costs

This year the ACCC/AER:

- > established access terms (access arrangements and revenue resets)
  - > approved SP AusNet's revenue proposal for 1 April 2008 to 30 March 2014 period, providing incentives for efficient investment in the NEM
  - > approved ElectraNet's revenue proposal for 1 July 2008 to 30 June 2013 period, providing incentives for efficient investment in the NEM
  - > approved VENCORP's revenue proposal for 1 July 2008 to 30 June 2014 period
  - > approved the initial access arrangement for the Dawson Valley Pipeline for 2007 to 2015 period
  - > approved revisions to GasNet's access arrangement for the 2008–13 period
  - > investigated a reversal of gas flow direction on the South West Queensland Pipeline; and its implications as a trigger event for both the SWQP and the Carpentaria Gas Pipeline, public consultation is ongoing, as the ACCC also awaits the implications of transitional regulations under the NGL for any trigger event on either transmission pipeline.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

## ACCC energy authorisations and review of interim authorisations

### Revocation of North West Shelf joint venturer's authorisation

**Result** | in March 2008 the ACCC revoked the North West Shelf joint marketing authorisation after the North West Shelf joint venture partners requested a revocation of authorisation A18492. The joint venturers reviewed their activities and considered there was no need to maintain the authorisation. The joint venturers will continue their gas joint marketing practices without it.

AER decisions under the National Electricity Rules

### Brisbane Airport Corporation network service provider exemption

**Result** | in July 2007 the AER decided to grant a specific exemption to Brisbane Airport Corporation from the requirement to register as network service provider (NSP). Brisbane Airport Corporation owns and operates a distribution system within Brisbane Airport.

### Cowell Electric network service provider exemption

**Result** | in July 2007 the AER decided to grant a specific exemption to Cowell Electric from the requirement to register as an NSP. Cowell Electric operates a distribution system servicing the Iron Knob, Pimba and Woomera areas in South Australia.

### 16 January 2007 investigation

**Result** | in September 2007 the AER published its report on its investigation into the events of 16 January 2007, when bushfires caused the main transmission links into Victoria to fail. The report identified a number of shortcomings in the National Electricity Market Management Company's systems and procedures.

The AER sought an undertaking from the National Electricity Market Management Company (NEMMCO) obliging it to take all steps necessary to ensure that it does not breach clause 3.9.3 of the NER in the future. The AER also recommended the establishment of formal and effective communication processes between all parties involved in load-shedding to ensure that appropriate action can be taken. The AER additionally recommended that the Victorian Government remove the chapter 9 derogations relating to generator technical standards.

As a result of the investigation, the AER also imposed a penalty of \$60 000 on the State Electricity Commission of Victoria, trading as Vicpower Trading, when it issued three infringement notices on 29 October 2007 over Vicpower Trading's failure to accurately reflect its capability in the NEM on that day. Vicpower Trading offers frequency control services into the NEM on behalf of an aluminium smelter at Point Henry, near Geelong in Victoria.

#### **Moranbah North Management network service provider exemption**

**Result** | in December 2007 the AER granted an exemption to Moranbah North Management (as the operator of the Moranbah Coal network) from the requirement to register as a NSP and the operation of chapter 5 of the NER.

#### **TradeCoast Central network service provider exemption**

**Result** | in December 2007 the AER granted a specific exemption to TradeCoast Central from the requirement to register as an NSP. TradeCoast Central has a 15-year exclusive right to develop the former Brisbane Airport site in Queensland, within which it intends establishing an electricity network.

#### **TransGrid notice of pass-through for Bayswater network support**

**Result** | in January 2008 the AER formed the opinion that the proposed pass-through amount of \$30.5 million to be applied over the 2008–09 financial year satisfies the pass-through rules set out in the 2005 ACCC revenue cap determination for TransGrid.

#### **TransGrid notice of pass-through for network support for deferral of the Western 500kV conversion**

**Result** | in January 2008 the AER formed the opinion that the proposed pass-through amount of \$21.9 million to be applied over the 2008–09 financial year satisfies the pass-through rules set out in the 2005 ACCC revenue cap determination for TransGrid.

#### **SP AusNet electricity transmission determination**

**Result** | in January 2008 the AER issued its final decision and transmission determination for SP AusNet relating to the regulatory control period from 1 April 2008 to 30 March 2014.

#### **Technical audits**

**Result** | the AER is committed to a program of auditing generators' performance standards. To begin this program, the AER decided to audit the compliance programs (required under chapter 4 of the NER) of generators that were explicitly referred to in its investigation report of the events of 16 January 2007. The AER also indicated in that report that it intended to audit SP AusNet's protection and control systems; this audit began in January 2008.

### Moranbah North joint venture partners network service provider exemption

**Result** | in March 2008 the AER granted an exemption to Moranbah North joint venture partners (as the owners of the Moranbah Coal network) from the requirement to register as an NSP and the operation of chapter 5 of the NER.

### Distribution loss factors for 2008–09

**Result** | in March 2008 the AER approved distribution loss factors for 17 distribution network service providers (DNSPs) across all six NEM jurisdictions. Distribution loss factors (DLFs) were approved for CitiPower and Powercor; Alinta AE and United Energy; SP AusNet; Aurora Energy; ETSA Utilities; Integral Energy; Energy Australia; Country Energy; OneSteel; Ergon Energy; Energex; Oaky Creek NSP; Capcoal NSP; and Moranbah North Coal NSP and ActewAGL.

In June 2008 the AER approved the Oxiana Prominent Hill DLF for 2008–09.

### VENCorp electricity transmission determination

**Result** | in April 2008 the AER issued its final decision and determination for VENCORP for the 1 July 2008 to 30 June 2014 regulatory control period.

### ElectraNet electricity transmission determination

**Result** | in April 2008 the AER issued its final decision and transmission determination for ElectraNet for the 1 July 2008 to 30 June 2013 regulatory control period.

### TransGrid proposed cost allocation methodology

**Result** | in April 2008 the AER approved TransGrid's proposed cost allocation methodology, which governs how TransGrid will allocate costs to its prescribed, negotiated and other transmission services.

### Transend proposed cost allocation methodology

**Result** | in May 2008 the AER approved Transend's proposed cost allocation methodology, which governs how Transend will allocate costs to its prescribed, negotiated and other transmission services.

### Oxiana Prominent Hill network service provider exemption

**Result** | in May 2008 the AER decided to grant a full exemption, subject to conditions, for Oxiana Prominent Hill from registering as an NSP. Oxiana owns and operates a network at its mine at Prominent Hill in South Australia.

### Transend electricity transmission revenue proposal

**Result** | in June 2008 Transend submitted its revenue proposal, including its proposed negotiating framework and pricing methodology, for the 1 July 2009 to 30 June 2014 period. The AER began its detailed assessment of the revenue proposal after concluding that it complied with the rules governing submission by a network business of a revenue proposal. A final decision is scheduled for April 2009.

### TransGrid electricity transmission revenue proposal

**Result** | in June 2008 TransGrid submitted its revenue proposal, including its proposed negotiating framework and pricing methodology, for the 1 July 2009 to 30 June 2014 period. The AER began its detailed assessment of the revenue proposal after concluding that it complied with the rules governing submission by a network business of a revenue proposal. A final decision is scheduled for April 2009.

## ACT and NSW electricity distribution regulatory proposals

**Result** | in June 2008 DNSPs from the Australian Capital Territory and New South Wales (i.e. ActewAGL, Energy Australia, Country Energy and Integral) submitted their regulatory proposals for the 1 July 2009 to 30 June 2014 period. The AER began its detailed assessment of the regulatory proposals after concluding that they complied with the rules governing submission by a network business of a regulatory proposal. Final decisions are scheduled for April 2009.

## Framework and approach papers for Energex, Ergon Energy and ETSA Utilities

**Result** | before each distribution determination, the NER requires the AER to publish a framework and approach paper setting out its likely approach to certain matters in its distribution determination. On 30 June 2008 the AER released preliminary position papers on its likely approach to these matters in its upcoming distribution determinations for Energex, Ergon Energy and ETSA Utilities.

## Proposed demand management incentive scheme to apply to Energex, Ergon Energy and ETSA Utilities

**Result** | the NER allows the AER to develop and publish a demand management incentive scheme to provide incentives for DNSPs to implement efficient non-network alternatives or to manage the expected demand for standard control services in some other way. In June 2008 the AER released its proposed DMIS to apply to Energex, Ergon Energy and ETSA Utilities for the 2010–15 regulatory control period.

As part of the framework and approach process, the AER is currently holding consultations about its likely application of the DMIS in its upcoming distribution determinations for these businesses.

## ACCC decisions under the Gas Code

### Dawson Valley Pipeline access arrangement

**Result** | in May 2007 the ACCC issued a draft decision that proposed not to approve the service provider's proposed access arrangement for the Dawson Valley Pipeline. The ACCC made a final decision in August 2008 approving the access arrangement after the service provider Anglo Coal addressed its concerns about the overstatement of the non-capital costs of providing the reference service.

### GasNet revised access arrangement

**Result** | in November 2007 the ACCC released a draft decision that proposed not to approve GasNet's proposed revised access arrangement for the principal transmission system. This draft set out a range of matters that needed to be addressed before the ACCC could approve the revised access arrangement. GasNet's response to this draft decision did not fully address all the issues the ACCC had raised. Therefore on 30 April 2008 the ACCC released a final decision in which it did not accept a number of GasNet's revisions and proposed amendments.

Following further amendments by GasNet that satisfactorily addressed the issues raised, on 25 June 2008 the ACCC released a further final decision approving GasNet's revised access arrangements.

### Moomba-to-Sydney Pipeline extension of time to submit the access arrangement revision

**Result** | the revised access arrangement for the Moomba-to-Sydney Pipeline was due to be submitted on 30 June 2008. However, the ACCC extended the time limit for the APA Group to submit the revision to the pipeline access arrangement to 15 December 2008.

The extension was allowed because the APA Group will be seeking a reclassification of the Moomba-to-Sydney Pipeline as a light regulation pipeline, once the NGL commences. The National Competition Council will make an assessment of the Moomba-to-Sydney Pipeline's eligibility for reclassification as a light regulation pipeline.

### South West Queensland Pipeline—gas flow reversal

**Result** | the reversal of gas flow on the South West Queensland Pipeline has implications for the SWQP access arrangement and potentially for the Carpentaria Gas Pipeline (CGP) access arrangement.

As required by the SWQP access arrangement, the ACCC issued notices on 28 March 2008 indicating that it would notify Epic Energy that a trigger event had occurred and give Epic a reasonable period to prepare its proposed revised access arrangement. The ACCC also sought submissions from interested parties on whether the types of services sought by the market had substantially changed, which, along with the flow reversal, could be considered a trigger event for the CGP access arrangement.

On 15 April 2008 during the consultation process for both pipelines, the National Gas Bill 2008 was introduced into the Queensland parliament. The bill provides for the SWQP, CGP and Queensland Gas Pipeline as pipelines for which transitional regulations can be made. These regulations may have implications for the ACCC's review of trigger events for the pipelines.

ACCC annual tariff resets under the Gas Code

### Dawson Valley, Central Ranges, Central West, Moomba-to-Sydney and Roma-to-Brisbane pipelines

**Result** | the ACCC allowed the annual reference tariff variations for these pipelines for 2008–09.

Submissions

#### Submission to the Retail Policy Working Group

**Result** | in July 2007 the AER made a submission to the MCE's Retail Policy Working Group composite consultation paper being developed by Allens Arthur Robinson. The RPWG was charged with development of the 2007 legislative package to complete the transfer of the non-economic regulation of distribution and retail functions to the AEMC and the AER. The composite consultation paper consolidates AAR's recommendations on the national framework for energy non-economic distribution and retail regulation following consultation on five previous working papers.

#### Submission on national transmission planning arrangements

**Result** | in July 2007 the MCE directed the AEMC to develop a detailed implementation plan to create a national transmission planning function and establish enhanced national transmission planning arrangements. The AER provided three submissions to the AEMC during the review. The submissions addressed four key issues, namely:

- > the scope of the national planning function and the kind of information and level of detail appropriate to a national plan
- > the relationship between the AER and the national planner
- > the development of governance arrangements for the national planner
- > the establishment of a regulatory investment test based on integrated limbs of the regulatory test.

The AEMC report was provided to the MCE on 30 June 2008.

## Submission on the National Gas Law and National Gas Rules exposure drafts

**Result** | the AER, along with other interested parties, has provided submissions and input into processes, including attendance at workshops and making submissions associated with the development of the NGL and NGR.

## Rule change proposals

**Result** | on 16 January 2007 bushfires caused transmission lines in north-eastern Victoria to fail. Around a quarter of that day's demand in Victoria was interrupted and the national power system was separated into three separate electrical islands following the transmission line failure.

In response to this event, on 3 April 2008 the AER put forward two rule change proposals to the AEMC:

- > to make clause 4.2.3(f) of the NER clear that NEMMCO has full responsibility for the reclassification process and decisions with the goal of making the reclassification process more transparent, rigorous and consistent
- > recommending the removal of the obligation on NEMMCO to set the dispatch price to value of lost load (VoLL) following automatic load-shedding caused by a contingency event.

On 21 April 2008 the AER put forward a further rule change proposal to the AEMC concerning the bidding and rebidding of technical parameters. This followed an investigation into the events of 31 October 2005, when there was a transmission line failure in New South Wales, probably due to a lightning strike. This led to the imposition of network constraints to reduce generation. Generators affected by the network constraints were able to rebid their ramp rates to limit the reduction in generator output, compromising NEMMCO's ability to manage power system security.

## Review of the rate of return (weighted average cost of capital) for electricity transmission and distribution networks

**Result** | in April 2008 the AER submitted a proposal to the AEMC to amend the NER to align its review of the weighted average cost of capital parameters for electricity transmission and distribution networks. The AER also submitted a rule change proposal to clarify some aspects of the NER related to the WACC parameters. On 26 June 2008 the AEMC approved the proposed changes, with the amended NER to begin on 1 July 2008.

Guidelines

## National guidelines for electricity transmission businesses

**Result** | in September 2007 the AER published its final decision on the first proposed guidelines for electricity transmission businesses as required under chapter 6A of the NER and the transitional provisions in clause 11.6.17 of the NER. The first proposed guidelines relate to the post-tax revenue model, the roll forward model, an efficiency benefit sharing scheme, a service target performance incentive scheme, submission guidelines and cost allocation guidelines. The final decision incorporates amendments made in response to submissions received on the draft guidelines issued in January 2007.

## Final information guidelines

**Result** | in September 2007 the AER released its final decision on information guidelines for electricity transmission businesses, as required under chapter 6A of the NER. The information guideline facilitates the annual collection of information on the performance of TNSPs within the regulatory control period. The guidelines set out general guidance and protocols that underlie the collection of information and cover information requirements specified under chapter 6A of the NER.



### Final process guidelines for contingent projects

**Result** | in September 2007 the AER released its final process guidelines for contingent projects. Under clause 6A.8.1 of the NER, a contingent project is a project the AER considers is reasonably required but is generally excluded from a TNSP's ex ante capex allowance in a revenue determination because of uncertainty surrounding the project. The project is considered necessary when a specific event— the trigger event outlined in the revenue determination—occurs.

### Pricing methodology guidelines

**Result** | in October 2007 the AER released its final pricing methodology guidelines for TNSPs.

### The regulatory test (version 3) and associated guidelines

**Result** | the AER issued a revised regulatory test for electricity network businesses on 2 November 2007. The regulatory test is used by transmission and distribution businesses in the NEM to assess the efficiency of network investment proposals.

In conjunction with the revised regulatory test, the AER issued its first regulatory test application guidelines. These are designed to provide greater guidance to businesses applying the regulatory test and to enhance transparency and consistency in investment decision-making.

The AER also issued regulatory test dispute resolution guidelines to assist parties in understanding the regulatory test dispute resolution rules and process.

### Transitional guidelines for ACT and NSW DNSPs

**Result** | in February 2008 the AER published a guideline, a statement and two schemes on matters relevant to the 2009 distribution determinations for the Australian Capital Territory and New South Wales. These matters were:

- > control mechanisms for direct control services
- > control mechanisms for alternative control services
- > efficiency benefit sharing scheme
- > demand management incentive schemes.

The AER decided not to apply a service target performance incentive scheme for the Australian Capital Territory and New South Wales 2009–14 regulatory control period. The development of the transitional guidelines for the Australian Capital Territory and New South Wales DNSP regulatory determinations is required by the NER. In November 2007 the AER released preliminary position papers on its likely approach to control mechanisms, efficiency benefit sharing, demand management and service standard incentive schemes. A public forum held in December provided a further opportunity for consultation with stakeholders.

### Service target performance incentive scheme

**Result** | in March 2008 the AER released its final decision on the second version of the transmission service target performance incentive scheme. This version of the scheme incorporates a parameter based on the market impact of transmission congestion and amendments to the parameters currently applying to Transend and TransGrid in readiness for their upcoming transmission determinations.

## National guidelines for electricity distribution businesses

**Result** | in June 2008 the AER released its guidelines, financial models and incentive schemes for national regulation of electricity distribution businesses. This is part of the AER's new role in the national regulation of electricity distribution networks, which began on 1 January 2008, under the NEL and NER.

AER staff undertook preliminary consultation on issues concerning the development of the guidelines, models and schemes through two issues papers released in November 2007, a public forum held in February 2008 and consideration of 14 submissions received in response to the issues papers.

On 1 April 2008 the AER released its proposed guidelines and undertook consultation as required under the NER. The AER held a public forum in April 2008 to discuss the proposed regulatory arrangements and subsequently received 16 submissions that the AER took into account when finalising the guidelines, models and schemes.

Reports issued

### Price and network monitoring

**Result** | the AER published weekly market analyses, looking at spot prices, rebidding, network outages and demand/supply forecasting. Further reports were produced on trading intervals when spot prices were in excess of \$5000/MWh.

Other major reports produced were quarterly compliance reports targeting specific rule provisions and focusing on areas of the rules relating to registration, market operations, security, metering and network connection arrangements.

### State of the energy market report 2007

**Result** | in July 2007 the AER released the *State of the energy market report 2007*. This report, the first produced by the AER, provides a comprehensive factual overview of Australia's electricity and gas industries.

The report focuses on the AER's current and future areas of responsibility, including the entire energy supply chain from electricity generation and gas production through to energy retailing. The AER is developing a second state of the energy market report scheduled for publication in late 2008.

### Compliance and enforcement—Statement of approach

**Result** | in August 2007 the AER issued its *Compliance and enforcement—Statement of approach* publication, which explained the AER's enforcement obligations, its approach to monitoring compliance with the rules and the enforcement options available. The publication was aimed at providing greater transparency about the AER's compliance and enforcement program, with the intention of helping market participants to understand their obligations and encouraging compliance with the rules.

### Indicators of the market impact of transmission congestion 2006–07

**Result** | in November 2007 the AER released *Indicators of the market impact of transmission congestion 2006–07*, its fourth such annual report. The report includes the total cost of constraints and the marginal cost of constraints, together with a qualitative assessment of constraints with high market impacts.

## Service standards compliance reports

**Result** | in February 2008 the AER received service standards compliance reports from Directlink joint venturers ElectraNet, EnergyAustralia, Murraylink Transmission Company, Powerlink, SP AusNet, Transend and TransGrid. In April 2007 the AER advised these electricity transmission businesses of their financial reward or penalty for their respective annual revenue allowance.

High Court of Australia review

### Moomba-to-Sydney Pipeline

**Result** | on 29 September 2007 the High Court of Australia overturned the Full Federal Court's judgments of 2 June 2006 and 18 August 2006 arising from the Australian Competition Tribunal's decision of 19 May 2005 about access arrangement for the covered parts of the Moomba-to-Sydney Pipeline. The High Court reinstated the access arrangement determined by the Australian Competition Tribunal in its final orders on 19 May 2005.

## Communications

The communications sector consists of telecommunications carriage services, broadcast television and radio systems and the provision of internet services. This includes the facilities over which they are provided and the content and applications they deliver.

Telecommunications markets were opened to full competition in 1997. The ACCC is responsible for the **competition and economic regulation** of telecommunications markets, as well as emerging new technologies that compete with and complement traditional communications services, including regulation of the customer access network (CAN) bottleneck. The ACCC administers the telecommunications specific competition notice and access regimes, parts XIB and XIC, within the Trade Practices Act. It also administers other provisions contained in the *Telecommunications Act 1997* and related legislation.

Part XIB of the Trade Practices Act provides an industry-specific mechanism to address breaches of the competition rule. The competition rule prohibits telecommunications carriers and carriage service providers from engaging in anti-competitive conduct. The ACCC has discretion to issue a **Part A competition notice** if it has reason to believe that a carrier or CSP has engaged, or is engaging, in anti-competitive conduct. A Part A competition notice allows for legal proceedings, other than proceedings for injunctive relief, to be taken by the ACCC or a third party to enforce the competition rule. In particular, it allows the ACCC to seek pecuniary penalties from the carrier or CSP. An affected third party may also take legal action seeking damages for the time the notice was in force.

The ACCC also has discretion to issue a **Part B competition notice** if it has reason to believe that a carrier or CSP has committed, or is committing, a specified contravention. A Part B competition notice is prima facie evidence of the matters set out in the notice. However, with both Part A and Part B competition notices, the Federal Court of Australia ultimately decides whether a carrier or CSP has engaged in anti-competitive conduct and has the power to determine the appropriate penalty or remedy.

Part XIB also gives the ACCC the power to make record-keeping rules (RKR) relevant to its responsibilities under the Act. The rules may specify which records are kept, how reports are prepared and when reports are to be provided to the ACCC.

Part XIC of the Act governs the telecommunications access regime. The **access regime** does not provide automatic rights of access. Services must first be declared by the ACCC where it is satisfied that a declaration will promote the long-term interest of end users. Once the service is declared, carriers or CSPs are required to provide the services upon request and in accordance with the **standard access obligations**.

**Terms and conditions** of access are normally negotiated between the access seeker and access provider. However, if access cannot be negotiated, a party may notify the ACCC that an access dispute exists. The ACCC may then arbitrate the dispute.

Access providers may lodge an undertaking with the ACCC in which the access provider undertakes to comply with terms and conditions it specifies in relation to the applicable standard access obligations. If accepted as reasonable by the ACCC, the ACCC cannot make a determination inconsistent with the undertaking. An access provider may also apply to the ACCC for exemption from the standard access obligations that apply to a declared service. Undertakings and exemption applications may be submitted for services that are not currently declared or are not yet being supplied.

The ACCC also has responsibilities for administering access regimes for other communications services, such as particular digital television and digital radio services, as well as access to broadcasting transmission towers under the *Radiocommunications Act 1992*. Content and application services are subject to the restrictive trade practices provisions in Part IV of the Act.

### Performance indicator

Encourage competition in markets that depend on monopoly services

This year the ACCC:

- > Implemented enhanced accounting separation of Telstra's wholesale and retail operations, including the release of six public reports.
- > Delivered:
  - > three annual telecommunications reports to the Minister for Broadband, Communications and the Digital Economy (formerly Communications, Information Technology and the Arts) on competition safeguards and changes in the prices paid for telecommunications services in Australia as required by divisions 11 and 12 of the Trade Practices Act
  - > a report on Telstra's compliance with the price control arrangements under s. 151CM(1)(b) of the Act.
- > Began development of the second joint report with the Australian Communications and Media Authority on communications infrastructure and services availability in Australia:
  - > one requiring identification of key components and locations of infrastructure assets by infrastructure owners
  - > one being a quarterly report of the take-up of the unconditioned local loop service (ULLS) and the line sharing service (LSS).
- > Monitored Telstra's compliance with the operational separation plan.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

### Performance indicator

Ensure that access regulation provides incentives for efficient business investment and use of infrastructure

This year the ACCC:

- > concluded a major review of the regulation of key network and wholesale services provided over the fixed telecommunications network
- > re-declared the LSS until July 2009
- > re-declared the digital data access service (DDAS) and the integrated services digital network (ISDN) for 12 months
- > commenced an inquiry into whether the service declaration for the ULLS should be varied to allow for possible sub-loop access
- > issued two discussion papers and a draft decision concerning Telstra's applications for exemption from the standard access obligations with respect to local carriage services (LCS) and wholesale line rental (WLR) in 387 exchange service areas
- > issued a discussion paper on Telstra's applications for exemption from the standard access obligations with respect to the domestic public switched telephone network originating access (PSTN OA) services in the five mainland central business districts (CBDs) as well as in 387 other exchange service areas

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

### Performance indicator

Ensure that businesses using monopoly services pay prices that reflect efficient costs

This year the ACCC:

- > released a draft decision on the fibre-to-the-node (FTTN) network special access undertaking lodged by FANOC—the company created by the G9 group of telecommunications carriers
- > commenced a public consultation process on the ULLS ordinary access undertaking submitted by Telstra
- > commenced public consultation on a number of applications submitted by Telstra for exemption from standard access obligations relating to the declared domestic transmission capacity service (DTCS)
- > commenced and progressed 30 new arbitrations for declared wholesale services
- > made 50 determinations for arbitrations
- > finalised pricing principles for the ULLS, including indicative prices
- > released pricing principles and indicative prices for the domestic mobile terminating access service (MTAS).

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

	this year	last year
Anti-competitive conduct investigations	5	8
Services newly declared	0	1
Services re-declared	4	4
Services undeclared	0	4
Access undertakings received	2	3
Access disputes notified	30	32

## Reports

The ACCC complied with its reporting requirements under the Act, providing the minister with reports on competitive safeguards, changes in the price paid for telecommunications services and price controls.

The ACCC's **competitive safeguards report** observed that investment in telecommunications during 2006–07 was the highest in the 10 years since the introduction of open competition. Consumers continue to reap the benefits of investments and innovation made by carriers. A range of communications services are now available to consumers through an increasing number of service providers using different technology platforms at competitive price points.

The **changes in the prices for telecommunications services report** observed that the overall average prices for telecommunications services fell in real terms by 2.7 per cent during 2006–07. Average prices for fixed-line services fell by 3.0 per cent and average prices for mobile services fell by 2.3 per cent in real terms.

The ACCC also supplied the minister with a **price control report**, which found that Telstra had adequately complied with all price control arrangements established by the government for 2006–07.

The ACCC published two sets of half-year accounts for Telstra's core services on current cost and historical cost basis. This step is in accordance with a direction issued by the minister in June 2003 requiring the ACCC to develop an RKR and publish reports to implement enhanced accounting separation of Telstra's wholesale and retail operations.

The ACCC also published quarterly reports on imputation testing and non-price terms and conditions under the enhanced accounting separation regime for Telstra. The report presents imputed margins on fixed-line services and key performance indicators that compare Telstra's customer service performance for its wholesale and retail customers.

## Investigations

The ACCC undertook five investigations into potentially **anti-competitive conduct** in the telecommunications industry. The ACCC did not form the requisite reason to believe that the carrier or CSP was engaging in anti-competitive conduct in four of the investigations. The fifth investigation remains ongoing.

The ACCC investigated Telstra's compliance with the **operational separation plan**, bringing one matter to the minister's attention for consideration of whether remedial action was required.

The ACCC conducted a number of industry-wide investigations into compliance with Part V of the Trade Practices Act, including an investigation into Telstra's marketing of its Next G mobile network coverage. In September 2007 the ACCC began proceedings against Telstra in the Federal Court for representations to the effect that Next G was

available everywhere consumers might need it and had greater coverage than the existing CDMA network. In December 2007 the Federal Court found that Telstra had engaged in misleading and deceptive conduct in breach of s. 52 of the Act. Telstra appealed the decision but withdrew its appeal in May 2008.

The ACCC also instituted proceedings against Crazy John's (Mobileworld Operating Pty Ltd) for misleading '\$0' and 'Free' mobile phone representations. These proceedings were settled by way of an s. 87B undertaking offered by Crazy John's that included consumer compensation and a requirement that Crazy John's implement a trade practices compliance program.

## Declarations

During 2007–08 the ACCC continued the second stage of the **fixed services review**. The review began in December 2005 as a broad-ranging inquiry for future regulation of key fixed network and wholesale services. The ACCC sought comment on a position paper outlining a framework for review of existing fixed services regulation and guiding principles on future regulation. The position paper also considered a re-declaration inquiry for the LSS. In August 2007 the ACCC released a draft decision on the LSS declaration and received nine submissions. The final decision to re-declare the LSS until July 2009 was issued in October 2007. The ACCC published LSS pricing principles and indicative prices at the same time as the final decision.

In November 2007 the ACCC began an inquiry into the **declaration of DDAS and ISDN**. In June 2008 the ACCC re-declared the DDAS and ISDN for 12 months. The ACCC also released pricing principles for the services.

In October 2007 the ACCC moved to finalise pricing principles for the **ULLS**. Following the first round of public consultation, the ACCC called for further submissions on the draft principles before issuing the final ULLS pricing principles in November 2007.

In April 2008 the ACCC suspended an inquiry on possible variations to the ULLS declaration, recognising that there was no pressing need to vary the ULLS declaration at that time (the ACCC had received a request from the G9 consortium of companies to vary the ULLS declaration in May 2007).

In July 2007 Telstra provided the ACCC with applications for exemption from the standard access obligations for the LCS and WLR service in 371 exchange service areas across metropolitan Australia. In August 2007 the ACCC issued a discussion paper on Telstra's exemption applications.

In October 2007 Telstra provided the ACCC with two further applications for exemption from the standard access obligations for the LCS and WLR service in 16 exchange service areas across metropolitan Australia. The ACCC issued a short discussion paper on these additional applications and received one submission. Optus and AAPT also requested that the ACCC consider their responses to these additional applications, which had been provided in response to the August discussion paper.

In April 2008 the ACCC released a draft decision on all four of Telstra's **LCS and WLR** exemption applications, in which it proposed to grant Telstra certain exemptions from its standard access obligations subject to a number of conditions.

In October 2007 Telstra provided the ACCC with another exemption application with regard to **PSTN OA services** in 17 exchange service areas in the CBDs of the five mainland state capitals. Telstra also provided a second exemption application with respect to the PSTN OA services in 387 exchange service areas across metropolitan Australia. The ACCC subsequently issued a discussion paper on the exemption applications.



In December 2007 Telstra provided the ACCC with an application for exemption from the standard access obligations for the supply of the ULLS, LSS, LCS, WLR and PSTN OA services to Optus within 75 metres of Optus' HFC cable network in Sydney, Melbourne and Brisbane. The ACCC issued a discussion paper on Telstra's exemption application in January 2008.

## Access pricing—disputes and undertakings

Over the course of 2007–08 the ACCC began or progressed 30 arbitrations for declared wholesale services: five for the MTAS; 12 for the ULLS; nine for the LSS; and one each for the DDAS, DTCS, WLR and LCS.

The ACCC issued 50 determinations: four interim and four final determinations for the MTAS; 10 interim and nine final determinations for the ULLS; nine interim and nine final determinations for the LSS; three interim determinations for the public switched telephone network originating/terminating access (PSTN O/TA) PSTN; and one interim determination each for the LCS and the WLR.

As at 30 June 2008, the ACCC had 53 arbitrations continuing or under legal challenge: four arbitrations for the MTAS; 23 arbitrations for the ULLS; 18 arbitrations for the LSS; two arbitrations for the WLR; four arbitrations for the PSTN OTA; and two arbitrations for the LCS.

On 21 December 2007 Telstra lodged an **ULLS monthly charge undertaking**. On 3 March 2008 Telstra withdrew this undertaking and lodged another ULLS monthly charge undertaking. The 3 March 2008 undertaking proposes a monthly charge of \$30 for each Telstra ULLS connected at an exchange building in a Band 2 exchange service area. The ACCC is currently conducting public consultation on the undertaking.

In November 2007 the ACCC released a final decision that rejected Optus' February 2007 **MTAS undertaking**. The undertaking specified certain terms and conditions upon which Optus would supply its domestic GSM terminating access service.

## Content, applications and convergence

The ACCC continued to examine emerging issues and new policy approaches relating to the impact of technical convergence on communications markets.

The ACCC assessed submissions received in response to the ACCC's discussion paper (released in June 2007) on the **FANOC special access undertaking**. The SAU related to the supply of the broadband access service where the proposed FTTN network is to be deployed. The ACCC issued a draft decision in December 2007 rejecting the FANOC SAU because it was not satisfied that its terms and conditions were reasonable. In March 2008 FANOC formally advised the ACCC that it was withdrawing its SAU and the ACCC did not proceed to a final decision.

As part of its role under the Radiocommunications Act, the ACCC considered submissions on a discussion paper on the **channel B digital television access regime**. In May 2008, however, the Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy, announced that the launch of new digital television services would be delayed until a detailed technical and policy review has been undertaken.

The ACCC also issued a discussion paper seeking stakeholders' views on the proposed access regime for the provision of **digital radio services**, on which it received three submissions. In April 2008 draft legislative instruments—decision-making criteria and procedural rules for assessment of the multiplex facilities' access undertakings—were publicly issued. One submission was received on the draft legislative instruments. In May 2008 the ACCC released the final decision-making criteria and procedural rules.

In December 2007 the Federal Court upheld the ACCC decision of March 2007 to accept Foxtel's SAU for its digital set top unit service after the decision was challenged by the Seven Network.

## Consultation, monitoring and reviews

During 2007–08 the ACCC continued an audit of telecommunications infrastructure assets. In December 2007 the ACCC issued the *Audit of Telecommunications Infrastructure RKR*, requiring 22 carriers to report on the geographic extent of their CAN and core networks in March each year.

In September 2007 the ACCC issued the Telstra Customer Access Network RKR requiring Telstra to provide, on a quarterly basis, information on ULLS, LSS and DSL take-up by exchange service area.

The ACCC continued to provide advice on a range of price and non-price matters relating to Telstra's operational separation. The ACCC also monitored bundling of residential services using RKRs introduced in March 2003.

In May 2008 the ACCC began consultation on a set of procedural rules to apply to the telecommunications specific regulatory provisions under the Trade Practices Act. The rules will apply to various telecommunications specific processes including access undertakings, access dispute resolution, declaration inquiries, pricing principles inquiries and exemption applications.

# Aviation

Output 1.1.2

## Competitive market structures and informed behaviour

### Performance indicator

Monitor prices to assess the impact of market conditions on price levels of goods and services

This year the ACCC:

- > issued a report on price monitoring, financial reporting and quality of aeronautical services for seven major airports
- > re-commenced formal monitoring of prices, costs and profits of car-parking services at designated airports.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

## Monitoring prices and quality of service

The ACCC monitors the prices, costs and profits relating to the supply of aeronautical services and facilities at Australia's five major airports—Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports. The ACCC's role arises from a direction ('direction 29') issued by the federal government under Part VIIA of the Trade Practices Act, which became effective from 1 July 2007. The ACCC also reports on the financial accounts and quality of aeronautical services for those airports under the *Airports Act 1996*.

Monitoring involves collecting information and reporting on prices, quality and financial accounts. The ACCC has no role in approving price increases, except for aeronautical services for regional airline services at Sydney airport. No proposal for price increases for regional services was received from Sydney airport in 2007–08.

The ACCC is also responsible for assessing proposals by Airservices Australia to increase charges for en route and terminal navigation services, and rescue and fire-fighting services. No such proposals were received from Airservices Australia in 2007–08.

In March 2008 the ACCC published its annual airports monitoring report for the 2006–07 financial year, which for the first time combined reports on the prices and quality of service at the major airports. This report was prepared on the basis of a previous monitoring direction issued by the government ('direction 27'), which included Canberra and Darwin airports. The report for the then seven monitored airports showed that prices for aeronautical services continued to increase in 2006–07, although less significantly than experienced in previous years. An exception was Adelaide airport, which reported an average price increase of 55 per cent after the first full-year application of the passenger facilitation charges following commencement of operations at the new terminal 1 during the previous financial year.

The ACCC's monitoring of airport quality of service is based on an assessment of information from a variety of sources, including airport operators, the Australian Customs Service, Airservices Australia and airlines. The information includes data from customer perception surveys, airline surveys, customs surveys and quantitative indicators from airport operators.

The report found that in terms of overall rating of quality of service, over the past five years Brisbane has been the top-ranking airport, achieving an overall rating of good. The results for 2006–07 show that Brisbane was, for the first time, joined by Adelaide as the top-ranked airport, representing a significant change for Adelaide airport, which was generally rated at the satisfactory level in the past. Melbourne and Sydney airports rated at the mid-point between satisfactory and good. Perth airport has been rated between satisfactory and good. Both Canberra and Darwin have generally rated at the overall satisfactory level, although Canberra fell slightly below the overall satisfactory level in 2006–07.

There was a large increase in passenger numbers in 2006–07. Passenger numbers increased at all airports for the fourth consecutive year, most notably at Darwin and Perth. Airports generally charge on a per passenger basis, resulting in an increase in revenues. Costs have increased to a lesser extent, as they are largely fixed and are less influenced by passenger volumes, resulting in increased margins.

Most airports reported increased average prices for 'aeronautical-related' services (predominantly car parking and check-in counters), with the more significant increases being at Adelaide and Darwin. However, the margins earned on these aeronautical-related services varied across airports, with Canberra and Darwin posting the most significant increases.

## Key changes to regulatory regime commenced from 1 July 2007

On 30 April 2007 the Australian Government responded to the Productivity Commission inquiry report, *Review of price regulation of airport services*, released on 27 April 2007. The government decided to continue the existing approach to regulation of aeronautical prices at the major airports and has accepted the PC's recommendation that Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports continue to be subject to price monitoring for a further six years. Canberra and Darwin airports are not subject to the price monitoring arrangements that took effect from 1 July 2007.

## Airport car parking

On 7 April 2008 the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs directed the ACCC (through direction no. 31 under the Trade Practices Act) to monitor prices, costs and profits relating to the supply of car-parking services at Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports. Monitoring of prices, costs and profits is being undertaken by the ACCC as part of its wider airport monitoring responsibilities under Part VIIA of the Act.

## Fuel prices

Output 1.1.2

Competitive market structures and informed behaviour

### Performance indicator

Monitor prices to assess the impact of market conditions on price levels of goods and services

This year the ACCC:

- > conducted a public inquiry and published a report into the price of unleaded petrol
- > monitored the retail prices of unleaded petrol, diesel and automotive liquefied petroleum gas (LPG) in all capital cities and about 110 country towns
- > monitored E10 petrol prices and the price differential between E10 petrol and regular unleaded petrol
- > monitored international crude oil and refined petrol prices, published terminal gate prices of the major oil companies and the city – country price differential.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

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In 2007 the ACCC conducted a major inquiry into unleaded petrol prices in Australia. The terms of reference for the inquiry included:

- > the current structure of the industry
- > the extent of competition at the refinery, wholesale and retail levels (including the role of imports)
- > the determination of prices at each of these levels, including the methodology for determining wholesale prices
- > current impediments to efficient petrol pricing and possible ways to address them.

The inquiry was held in accordance with Part VIIA of the Act, which empowers the ACCC to conduct monitoring and surveillance activity and, where necessary, to conduct a public inquiry. It was the first inquiry conducted by the ACCC under these provisions and the first price inquiry conducted by the ACCC since the inquiry into the petrol products declaration in 1996.

The inquiry was conducted by the ACCC in public and confidential hearings. These hearings commenced on 21 August 2007 and finished on 15 November 2007. Twenty-five hearings were conducted in all Australian capital cities and in several regional towns (Townsville, Wagga Wagga, Mt Gambier and Ballarat). Forty-eight organisations were represented at the public hearings and the inquiry heard from 94 witnesses. The ACCC received over 50 submissions from interested parties or persons, ranging from the major oil companies to members of the general public. The ACCC also exercised the information-gathering powers of the Act, obtaining information and documents from the major participants in the industry.

The ACCC report was provided to the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon. Chris Bowen MP, on 14 December 2007. The inquiry found:

- > no obvious evidence of price fixing or collusion between the major participants in the industry
- > pricing of petrol is dictated fundamentally by international factors
- > major refiners have established 'a comfortable oligopoly', with the Australian industry being relatively concentrated
- > significant impediments to the large-scale importing of petrol by parties other than refiner-marketers, resulting in little independent importing
- > buy-sell arrangements may have had the effect of lessening competition in wholesale petrol markets
- > well-defined price cycles in the retail unleaded petrol markets in Australia's major metropolitan cities, the cause of which is not clear (particularly their persistence and regularity).

In December 2007 the government directed the ACCC to monitor prices, costs and profits relating to the supply of unleaded petroleum products under the price monitoring provisions of the Act for three years. The 2007–08 report is to be published in mid-December 2008.

In April 2008 the government announced its intention to establish a national Fuelwatch scheme to address the information imbalance between consumers and retailers and eliminate intraday price volatility. Legislation relating to the establishment of Fuelwatch was introduced into parliament on 29 May 2008.

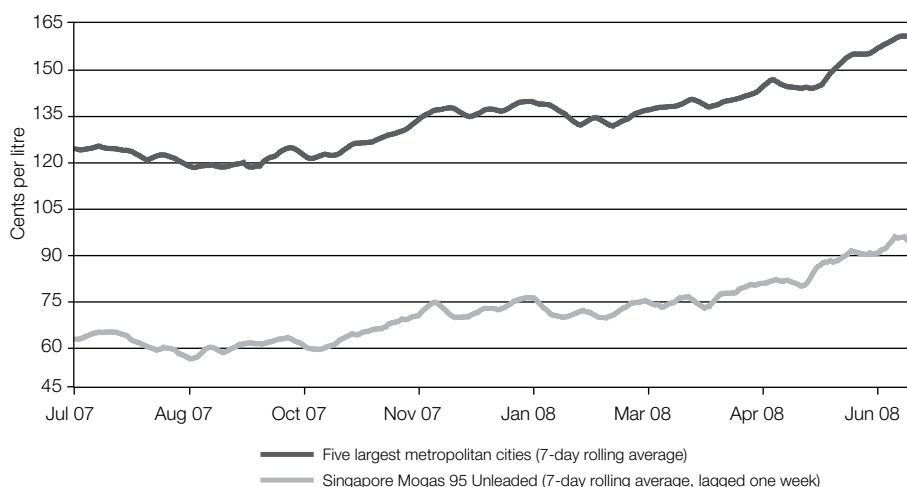
ACCC monitoring of unleaded petrol prices indicated that there was a broad trend upwards in petrol prices in 2007–08, as can be seen in chart 1. The average monthly retail unleaded petrol price for the five largest metropolitan cities (i.e. Sydney, Melbourne, Brisbane, Adelaide and Perth) ranged from a low of 120.4 cents per litre in August 2007 to a high of 158.3 cpl in June 2008. The average price during the year was 134.5 cpl, which was 13 cpl (or 10.7 per cent) above the average price in 2006–07 (121.5 cpl).

On 7 May 2008 the ACCC issued a media release that noted that in Melbourne, Brisbane, Sydney and Adelaide, Coles Express was leading petrol prices higher as the petrol pricing cycle peaked on that day. It advised consumers to shop around and not automatically rely on their petrol discount voucher to necessarily deliver the lowest price.

Movements in domestic petrol prices are largely driven by movements in the international refined petrol price (measured by the spot price for Singapore Mogas 95 Unleaded) and the Australian – United States exchange rate. However, divergences between these prices may occur from time to time, such as in late December 2007 and early January 2008.

When these divergences are significant, the ACCC makes inquiries, usually with the major oil companies, to help ensure that domestic petrol prices are no higher than necessary.

**Chart 1 ACCC unleaded petrol price monitoring, 2007–08**

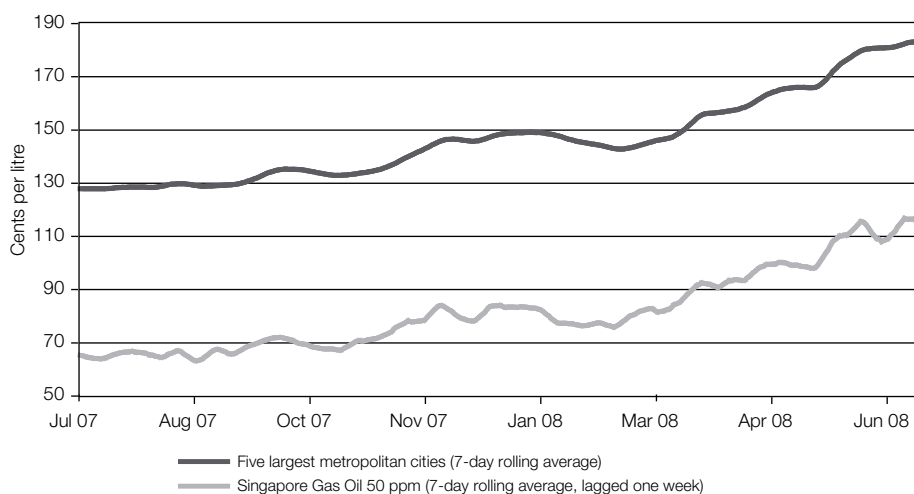


In 2007–08 the average differential between average retail prices in the five largest metropolitan cities and country areas was 5.0 cpl. The monthly differential ranged from a high of 8.2 cpl in July 2007 to a low of 1.8 cpl in June 2008.

On 16 February 2008 the government asked the ACCC to increase its focus on diesel and LPG prices.

Diesel retail prices increased substantially over 2007–08 as domestic prices followed the rise in international diesel prices (measured by the spot price for Singapore Gas Oil 50 parts per million sulphur content). This is illustrated in chart 2.

**Chart 2 ACCC diesel price monitoring, 2007–08**



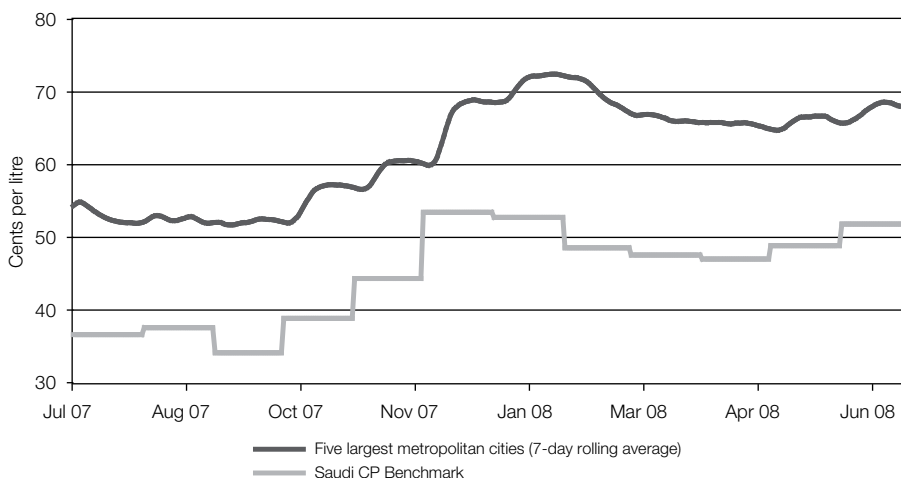
Average monthly diesel prices in the five largest metropolitan cities increased in 2007–08 by 53.5 cpl, from 128.3 cpl in July 2007 to 181.8 cpl in June 2008. Most of the price increase has been since March 2008. The average price for 2007–08 increased by 19.6 cpl (or 15.4 per cent) to 147.2 cpl, from an average of 127.6 cpl in 2006–07.

On 26 May 2008 the ACCC issued a media release noting the recent strong increases in diesel prices in Australia and identifying some of the factors contributing to the price rise—namely, higher prices of crude oil and refined diesel and continuing strong demand for diesel in China and other countries. The devastating earthquake in China in May 2008 damaged power infrastructure and constrained coal transportation, resulting in a greater demand for diesel to generate electricity.

The ACCC also monitored diesel price movements in Western Australia as a result of the Apache Corporation’s gas pipeline explosion in early June, which also increased demand for diesel as an alternative source of energy.

Retail prices of automotive LPG increased during 2007–08 as domestic automotive LPG prices followed the rise in international LPG prices (measured by the average of the monthly Saudi Aramco contract prices for propane and butane). This is illustrated in chart 3.

**Chart 3 ACCC automotive LPG price monitoring, 2007–08**



Average monthly LPG prices in the five largest metropolitan cities increased in 2007–08 by 14.9 cpl, from 52.8 cpl in July 2007 to 67.7 cpl in June 2008. Most of the price increase occurred over December 2007 and January 2008. The average price for 2007–08 increased by 9.6 cpl (or 18.3 per cent) to 62.1 cpl, from an average of 52.5 cpl in 2006–07.

The ACCC dealt with 3636 inquiries and complaints on fuel pricing during 2007–08.



# Grocery inquiry

Output 1.1.2

## Competitive market structures and informed behaviour

### Performance indicator

Monitor prices to assess the impact of market conditions on price levels of goods and services

This year the ACCC:

- > undertook a public inquiry into the competitiveness of grocery prices in Australia.  
*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

On 22 January 2008 the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs requested the ACCC to hold a public inquiry into the competitiveness of grocery prices. The inquiry was held in accordance with Part VIIA of the Act. This is the second inquiry conducted by the ACCC under these provisions. The final report was due on 31 July 2008.

On 11 February 2008 the ACCC published an issues paper titled *ACCC inquiry into the competitiveness of retail prices for standard groceries*, which provides background to the inquiry, information on the consultation process and details on the issues on which the ACCC is seeking comment, and puts forward a series of questions.

On 20 May 2008 the ACCC released a second issues paper on issues relating solely to the Horticulture Code of Conduct as part of its inquiry into grocery prices.

Issues raised in the inquiry relate, but are not limited, to:

- > changing grocery prices over time
- > the structure of the retail industry and retailer competition
- > reasons for increased production costs and the structure of upstream industries
- > differences between regional and national operations
- > consumer behaviour
- > the impact of the Horticulture Code of Conduct on growers and traders.

ACCC Chairman Graeme Samuel and commissioners John Martin and Stephen King conducted the inquiry.

Over 200 public submissions were received, as well as a number of confidential submissions.

Hearings for the inquiry were held in all state and territory capitals and in Cairns (Queensland), Griffith (New South Wales), Shepparton (Victoria), Launceston (Tasmania), Port Lincoln (South Australia) and Bunbury (Western Australia).

## Grocery monitoring

Output 1.1.2

### Competitive market structures and informed behaviour

#### Performance indicator

Monitor prices to assess the impact of market conditions on price levels of goods and services

This year the ACCC:

- > commenced work on a monthly survey of prices for typical grocery baskets and a grocery monitoring website.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

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On 13 May 2008 the federal government announced that the ACCC would be funded to conduct a monthly survey of the prices for typical grocery baskets (e.g. meat, vegetables and dairy products) across Australia, with the survey results to be published on a dedicated consumer website. The monthly survey is designed to improve transparency in the grocery market and help consumers locate the cheapest grocery prices and supermarket chain in their area.

Development work on the survey and the website has begun and as at 30 June 2008 was progressing according to schedule.

## Intellectual property

Output 1.1.2

### Competitive market structures and informed behaviour

#### Performance indicator

Ensure that businesses using monopoly services pay prices that reflect efficient costs

This year the ACCC:

- > continued in its role as a party to the Phonographic Performance Company of Australia's reference of its fitness class tariff to the Copyright Tribunal of Australia
- > became a party to the reference by the Australasian Performing Right Association Limited/Australasian Mechanical Copyright Owners Society to the Copyright Tribunal of Australia of the licence fee payable for the use of its repertoire by means of digital music services, including digital downloads services.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

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*The Copyright Act 1968* was amended in December 2006 to allow the Copyright Tribunal of Australia to consider any relevant guidelines made by the ACCC and to make the ACCC a party to certain proceedings before it.

In May 2007 the ACCC became a party to the Phonographic Performance Company of Australia's reference of its fitness class tariff to the Copyright Tribunal of Australia. This matter was still proceeding as at 30 June 2008.

In September 2007 the ACCC became a party to the reference by the Australasian Performing Right Association Limited/Australasian Mechanical Copyright Owners' Society to the Copyright Tribunal of Australia of the licence fee payable for the use of its repertoire by means of digital music services, including digital downloads services. This matter was still proceeding as at 30 June 2008.

## Insurance and bank charges

Output 1.1.2

### Competitive market structures and informed behaviour

#### Performance indicator

Monitor prices to assess the impact of market conditions on price levels of goods and services

This year the ACCC:

- > monitored medical indemnity insurance premiums.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

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In November 2002 the Australian Government requested the ACCC to monitor medical indemnity premiums on a yearly basis for three years to assess whether they were actuarially and commercially justified. On 16 March 2005 the government asked the ACCC to extend its monitoring to examine the actuarial and commercial justification of premiums within each jurisdiction in more detail. On 29 May 2006 the government asked the ACCC to continue to examine the actuarial and commercial justification of medical indemnity premiums, including within jurisdictions, for a further three years.

On 2 May 2008 the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs released the ACCC's fifth medical indemnity insurance monitoring report. The report found that medical indemnity insurance premiums were actuarially and commercially justified, including within jurisdictions, for all medical indemnity insurers.

The ACCC also maintains a watching brief on bank fees and charges, including credit cards and personal transaction accounts.

# Post

Output 1.1.2

## Competitive market structures and informed behaviour

### Performance indicator

Ensure that businesses using monopoly services pay prices that reflect efficient costs

This year the ACCC:

- > required Australia Post to keep records relevant to the ACCC's functions of testing for cross-subsidy, assessing proposals for price increases and dispute inquiry under the *Australian Postal Corporation Act 1989*
- > issued a report outlining the ACCC's analysis of Australia Post's 2006–07 regulatory accounts
- > assessed Australia Post's February 2008 proposal to increase prices for its monopoly postal services.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

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In March 2005 the ACCC issued an RKR to Australia Post, requiring Australia Post to provide the ACCC with annual regulatory accounts. In May 2008 the ACCC released its third cross-subsidy report, which analysed Australia Post's 2006–07 regulatory accounts.

Proposals by Australia Post to increase charges for monopoly postal services are assessed by the ACCC. In February 2008 Australia Post lodged a draft notification with the ACCC proposing to increase the prices of many of its reserved services. In particular, Australia Post proposed to increase the basic postage rate for the standard letter from 50 cents to 55 cents. Following a detailed assessment and public consultation process, the ACCC released a preliminary view on 20 June 2008 that raised no objections to the price increases.

The ACCC also has a role in resolving disputes over the price charged to users of Australia Post's bulk interconnection services. No disputes were notified to the ACCC this year.

# Rail

Output 1.1.2

## Competitive market structures and informed behaviour

### Performance indicator

Ensure that businesses using monopoly services pay prices that reflect efficient costs

This year the ACCC:

- > issued its draft assessment of an access undertaking from the Australian Rail Track Corporation (ARTC).

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

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## Part III A access regime

The ARTC was established in 1998 to manage access to the standard gauge rail network connecting the mainland capital cities between Brisbane and Perth (i.e. the interstate rail network). In September 2004 ARTC entered a 60-year lease over the interstate New South Wales rail tracks and the New South Wales Hunter Valley network.

On 20 December 2007 ARTC lodged a voluntary access undertaking application with the ACCC for the interstate rail network. The undertaking will replace the previously approved 2002 interstate access undertaking that expired on 30 June 2007. The ACCC has a role in assessing voluntary access undertakings submitted to it under the criteria of s. 44ZZA of Part IIIA of the Act.

The undertaking does not cover access to rail tracks servicing the Hunter Valley coal network.

On 14 January 2008 the ACCC released an issues paper calling for submissions on the ARTC undertaking. The last submission was received on 21 February 2008. The ACCC is required to use its best endeavours to decide whether to accept or reject the ARTC undertaking within six months of the application.

The ACCC released a draft decision on the ARTC undertaking on 29 April 2008, which recommended that ARTC address a number of price and non-price provisions in the undertaking to ensure a balance of interests between the access provider (i.e. ARTC), access seekers and the public. The ACCC called for public submissions on its draft decision in May 2008. ARTC is expected to submit a revised access undertaking and the ACCC is expected to release its final decision in July 2008.

# Water

Output 1.1.2

## Competitive market structures and informed behaviour

### Performance indicator

Ensure that businesses using monopoly services pay prices that reflect efficient costs

This year the ACCC:

- > completed a stocktake of current water market arrangements and water planning and management activities in the Murray-Darling Basin (MDB)
- > released an issues paper on water market rules
- > released an issues paper on water charge rules relating to irrigation infrastructure operators (IIOs).

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

## Water market and water charge rules

The *Water Act 2007* was enacted to provide for the management of the water resources in the MDB and for other water and water information matters of national interest.

Under the Water Act the ACCC is responsible for:

- > advising the Minister for Climate Change and Water on water market rules and water charge rules
- > monitoring and enforcing compliance with the water market rules and water charge rules
- > providing advice to the Murray-Darling Basin Authority (MDBA) on water trading rules.

These new functions are aimed at providing greater consistency and transparency in water charging arrangements and ensuring that water markets are able to operate freely.

In developing an understanding of current water market and water charge arrangements, the ACCC sent out information requests to relevant stakeholders. As part of this work the ACCC met with the state and territory government agencies, IIOs and bulk water suppliers.

Two issues papers, both seeking submissions, were released by the ACCC:

- > Development of water market rules—released 4 April 2008—the water market rules are designed to free up the trade of water access rights within the MDB. They do so by ensuring that the policies or administrative requirements of the IIOs holding group water access entitlements on behalf of their member irrigators do not prevent or unreasonably delay trade.
- > Development of water charge rules for IIOs—released 30 May 2008—water charge rules applied consistently across the MDB will help water markets function efficiently by removing trade distortions and sending signals to water users about efficient investment in water infrastructure assets. Water charges based on full cost recovery for water services will contribute to achieving an economically efficient and sustainable use of water resources and water infrastructure assets.

The ACCC will undertake further consultation on water market rules and water charge rules before providing final advice to the Minister for Climate Change and Water during 2008–09.

# Waterfront and shipping

Output 1.1.2

## Competitive market structures and informed behaviour

### Performance indicator

Monitor prices to assess the impact of market conditions on price levels of goods and services

This year the ACCC:

- > issued a container stevedoring monitoring report showing average company costs and revenues fell while productivity levels improved
- > monitored prices formally and informally for container stevedoring and freight rates for international liner cargo
- > administered international liner cargo shipping arrangements.

*Measured against performance indicators defined in the ACCC portfolio budget statements 2007–08*

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The Treasurer directed the ACCC on 20 January 1999 under the then *Prices Surveillance Act 1983* to monitor prices, costs and profits of container stevedoring operators in the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney to inform the community about the progress of waterfront reform at major container terminals. The ACCC's container stevedoring program is now undertaken under a direction from the federal treasurer under Part VIIA of the Act.

The ACCC released its ninth container stevedoring report in October 2007, examining trends in prices, costs and profits of the three major stevedoring companies—Patrick, DP World, and DP World Adelaide Pty Ltd—for the July 2006 to June 2007 period. Industry average costs and revenues fell during 2006–07 while productivity levels improved, which contrasts with a trend over recent years of rising unit revenues and falling productivity. In real terms, the pattern of decreasing unit revenues and costs has continued since the late 1990s. Profitability as measured by an average rate of return of assets increased slightly in 2006–07 and remains at a high level. This is in contrast to much lower levels of profitability reported by the stevedoring industry during the period before the waterfront reforms.

The ACCC has a role in administering Part X (international liner cargo shipping) of the Act, which provides for agreements between shipping lines to be exempt from some of the provisions proscribing anti-competitive conduct. The ACCC did not conduct any investigations under Part X during 2007–08.

## Regulators forum

The ACCC, with state and territory regulatory agencies, set up a public utility regulators forum to share information and develop understanding of the activities of various regulators and industries as they implement reform. All regulators are involved. The aim of the forum is to exchange information, to encourage consistency in the application of regulatory functions and to review new ideas about regulatory practices. The forum published four *Network* newsletters in 2007–08 with updates on regulatory activities as well as articles on common challenges.





Part three  
Management and  
accountability



The ACCC aims to have a high standard of governance and efficient management, including cost-effective use of resources in all its offices. This chapter reports on the ACCC's and AER's governance, financial, people and information management, and other administrative activities.

### In 2007–08 the ACCC:

- > received total government funding of \$118 306 million, including additional funding for the implementation of the National Plan for Water Security
- > employed 617.2 full-time equivalent employees
- > recruited 32 graduates for its 2008 graduate training program
- > moved the national office in Canberra to new premises
- > substantially increased the size of its Melbourne office to cater for growth and relocated its Adelaide office to larger premises
- > commenced a strategic review of ICT infrastructure and business applications
- > implemented a redesigned and redeveloped ACCC website.

### The ACCC

The Commission comprises the chair, two deputy chairs and five full-time members. They were appointed by the Governor-General for terms of up to five years after a majority of state and territory governments had supported the selections. Mr Steve Edwell (AER), Mr Chris Chapman (ACMA) and Mr Andrew Reeves (AER) are associate members. See appendix 11 for biographies and photographs of members.

### The Australian Energy Regulator

The AER commenced on 1 July 2005. It is an independent statutory authority and part of the ACCC. Its staff are employed by the ACCC. Mr Steve Edwell has been appointed chair of the AER for a further two years from 23 May 2008. Mr Ed Willett was appointed full-time federal member until 9 June 2013 (this appointment will be served concurrently with his ACCC appointment). Mr Andrew Reeves was appointed as the part-time state/territory member. See appendix 12 for biographies and photographs of members.

## Decision-making structure

The Commission's decisions are made at a meeting of its members held once a week and otherwise as necessary.

The ACCC held 54 formal meetings and considered 341 formal papers dealing with matters under investigation, litigation, mergers, access, adjudication, submissions to inquiries and compliance and education strategies, and received recommendations from its committees.

External scrutiny—the ACCC is accountable for its activities through the courts, tribunals, parliament and the Commonwealth Ombudsman.

The AER's decisions are made at meetings of members, held once a fortnight and otherwise as necessary. The AER held 26 formal meetings.

## Committees

The ACCC has five subject matter committees: communications, mergers, enforcement, adjudication and regulated access and price monitoring. It has six function committees: corporate governance, information and liaison, internal audit, information and communications technology, people and resources and occupational health and safety. It also has an employer – employee consultative committee comprising elected staff representatives, management representatives and representatives of employee organisations.

## Subject matter committees

<b>Enforcement</b>	Sarah Court (chair), Graeme Samuel, Peter Kell, John Martin, Michael Schaper—oversees the ACCC's enforcement program; recommendations are referred to the full commission for decision; meets weekly
<b>Mergers</b>	Stephen King (chair), Graeme Samuel, Sarah Court—considers most merger matters and reports to the full commission; meets weekly
<b>Communications</b>	Ed Willett (chair), Graeme Samuel, Stephen King, John Martin—coordinates the ACCC's media and telecommunications regulatory functions, including enforcement of competition notices with the enforcement committee; meets as required
<b>Regulated access and price monitoring</b>	John Martin (chair), Stephen King, Ed Willett, Pat Walker—oversees access and price monitoring issues
<b>Adjudication</b>	Peter Kell (chair), John Martin, Ed Willett, Michael Schaper—considers authorisations and notifications; meets weekly

## Function committees

<b>Corporate governance</b>	Chair, deputy chair, members, chief executive officer and senior staff; meets quarterly
<b>Information and liaison</b>	Chief executive officer and staff involved in the ACCC's communication and outreach activities; meets monthly
<b>Internal audit</b>	Chief executive officer, ANAO representatives, independent member and senior staff; meets quarterly
<b>Information and communication technology</b>	Senior staff; meets quarterly
<b>People and resources</b>	Senior staff; meets quarterly
<b>Occupational health and safety</b>	Corporate manager and staff representing workplace; meets quarterly
<b>Workplace relations consultative committee</b>	Representatives of employer, employees and employee organisations; meets quarterly

## Terms of appointment – current members

(correct on 29 August 2008)

	appointed until
<b>ACCC</b>	
<b>Chair</b>	
Graeme Samuel	31 July 2011
<b>Deputy chairs</b>	
Michael Schaper	29 May 2013
Peter Kell	31 July 2013
<b>Members</b>	
Stephen King	6 June 2009
John Martin	6 June 2009
Patrick Walker	30 March 2013
	(resigned 5 September 2008)
Sarah Court	25 May 2013
Edward Willett	29 May 2013
<b>Associate members</b>	
Steve Edwell	22 May 2010
Chris Chapman	27 February 2011
Andrew Reeves	16 July 2013
<b>AER</b>	
<b>Chairman</b>	
Steve Edwell	22 May 2010
<b>Members</b>	
Edward Willett (full-time federal member)	29 May 2013
Andrew Reeves (part-time state/territory member)	16 July 2013

## Financial management

See also pp. 21–27 in the Part Two, Performance section of this report.

The financial management of the ACCC is undertaken on a sound basis of budget setting, variance analysis and reporting in a context of coordinated corporate planning, business unit planning and financial planning. Financial monitoring and reporting is undertaken on a monthly basis with more detailed reviews each quarter.

The ACCC continues to work closely with the Treasury, Department of Finance and Deregulation and the Australian National Audit Office (ANAO), as key stakeholders, to ensure that financial performance is aligned to expectations.

The ACCC received audit clearance of its financial statements from the ANAO on 28 August 2008. The ANAO issued an unqualified report with no findings being made regarding its audit of the financial statements.

## Purchasing performance

The department's purchasing activities are undertaken in accordance with the *Commonwealth procurement guidelines* and *Best practice guidelines*.

The *Chief Executive's Instructions* and other supporting guidance assists staff by outlining the appropriate procedures to undertake purchasing activities. The purchasing manual and credit card manual support the CEIs with more detailed instructions. Standard requests for tender and contract documentation have been developed to ensure that the clauses and requirements reflect government policy.

The ACCC continually improves the efficiency and effectiveness of the procurement to payment processes including contract management. In 2007–08 this included the appointment of a procurement officer to improve the efficiency and cost-effectiveness of the ACCC's procurement activities. The ACCC aims to balance the benefits of goods and services to be purchased against their costs and risks so that the best value for money is achieved.

The ACCC has assurance and reporting processes in place to ensure that it complies with government requirements. This includes the publication of its annual procurement plan and all procurements greater than \$10 000 on AusTender and listing contracts of \$100 000 or more on the website in accordance with the Senate Order on departmental and agency contracts.

## Fraud control

The ACCC complies with the federal government fraud control guidelines and has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the needs of the agency. A fraud awareness training module has been developed and training is provided to target staff as required. During the year the fraud control plan was reviewed and updated in accordance with federal government requirements.

## Consultants

During 2007–08, 99 new consultancy contracts were entered into, involving total expenditure of \$11.4 million. Twenty-four ongoing consultancy contracts were active during the 2007–08 year, involving total expenditure of \$4 million. Full details of consultancy contracts let with a value of \$10 000 or more are available on the ACCC website.

A total of \$470 413 was paid by the ACCC for advertising during the 2007–08 financial year. A listing of total payments to organisations in excess of \$1 500 appears below.

Organisation	Description	Amount
HMA Blaze Pty Ltd	Public notices, expressions of interest, recruitment	\$429 942.77
Graduate Career	Recruitment	\$14 100.00
Hobsons Austral	Recruitment	\$7500.00
New South Wales Department of Commerce	Fraud awareness campaign	\$6732.24
Unimail	Recruitment	\$6000.00
Attorney-General's Department	<i>Gazette</i>	\$742.70

## People management

The ACCC's budgeted **staff level** for 2007–08 was 638 full-time equivalents (588 in 2006–07), including eight full-time holders of public office (ACCC members and AER member) and one part-time holder of public office (AER). The total average full-time equivalents employed during the year was 617.2 (up from 575.8 in 2006–07).

The total actual number of staff employed (including commission members, part-time employees, employees absent on leave and secondments) at 30 June 2008 was 723 (660 on 30 June 2007). There were 223 commencements and 160 cessations during the year. See p. 118 for the staffing overview.

Staffing statistics and payroll information is managed in an Aurion database. Enhancements to the database mean that managers are able to make statistical queries for workforce planning purposes. The Aurion Timekeeper system was installed to replace the previous employee attendance recording system.

The ACCC has updated internet employment presence and its link to NGA.net, an online recruitment portal and suite of application management tools. The internet employment page contains contemporary images and a video clip about working at the ACCC. The NGA.net system enables applicants to register and submit their applications online. This system provided useful data on how candidates first hear about vacancies and the ACCC used this information when deciding which channel to use for job advertisements.

The ACCC's learning and development strategy for the year continued to focus on providing managers and staff with systems for planning and delivering structured professional development. Initiatives implemented included a significant revision of the professional development journal that updated course information and more clearly identified learning pathways; an introduction to regulatory affairs course for graduates; a program focusing on senior executive level 2 staff; an introductory micro-economics course; an IT forensics course; the development of negotiation skills training; and refinements to the applied investigations and litigation skills workshop.

Training and development costs in 2007–08 totalled \$2 681 083. This comprised salaries of staff on development activities (\$958 139); salaries of the learning and development unit employees (\$489 224); courses and conference fees and study assistance (\$871 823); costs of staff travel for training purposes (\$335 394); and venue hire and various other costs (\$26 503). These represent 4.5 per cent of the annual employee benefits.



## Courses, seminars and learning events for 2006–07 and 2007–08

Type	Number of attendances	
	2006–07	2007–08
Operational skills and knowledge	903	1013
Legal skills and knowledge	156	277
Applying the Act	132	381
Economics and regulatory	230	550
Leadership supervision and management	636	175

Employees are eligible for study assistance in the form of study leave and full or partial reimbursement of tuition fees for approved courses of study. The study leave policy and guideline was revised during the year to place a greater emphasis on post-graduate studies. In conjunction with the University of Melbourne, a scholarship program was introduced for selected staff to participate in a Graduate Diploma of Competition Law. During the year 69 employees participated in the study assistance scheme, mainly for postgraduate studies in economics, law and business. The ACCC reimbursed \$85 663.36 in fees and granted leave with pay to attend lectures and tutorials equivalent to \$102 048 in paid time.

The ACCC recruited 37 graduates at the beginning of 2007; 37 remained with the ACCC after the program was completed and gained promotions. The ACCC recruited 32 graduates for its 2008 program. Each will undertake three rotations during the 10-month graduate training program.

International exchanges—reciprocal staff exchanges were conducted with New Zealand and Canada.

During the year productivity improvements associated with the **ACCC certified agreement 2006–08** were progressively implemented, such as increased capacity through acquisition of additional skills relating to new functions and changes in legislation, especially in the enforcement and regulatory affairs areas, and efficiencies arising from the implementation of the legal services review.

Under the ACCC certified agreement, in accordance with the *Public Service Act 1999*, staff can request a review of employment action or decision that affects them. No request was received this year.

The ACCC's formal employee consultative body is the Workplace Relations Consultative Committee (WRCC) with eight staff representatives (elected by staff), two employee organisation representatives requested by staff and a management representative. Employees covered by the agreement received a 4 per cent salary increase in December 2007.

**Performance pay** is not paid to non-SES. They are eligible instead for the special salary level scheme (criteria for which is in the certified agreement); during 2005–06, three staff received additional salary under this scheme. Performance pay was paid to 25 senior executive staff at band 1 and band 2 levels for a total of \$355 693.

The ACCC has designated work groups in each office, with multiple work groups in Canberra and Melbourne. Health and safety representatives from each work group participate in the Health and Safety Committee. The ACCC is currently completing a health and safety management arrangement in consultation with all employees. Professionally qualified assessors conducted ergonomic assessments for 217 new employees nationally and for those employees requiring review due to injury. Employees in Canberra and Melbourne were also provided with ergonomic workstation assessments following the relocation of these offices.

Influenza vaccinations were made available to all employees in April. A total of 266 employees were vaccinated under this program. Twenty-nine injury incidents were reported in 2007–08.

The ACCC's Comcare premium for 2007–08 was set at 0.72 per cent of total salaries, compared with the all-agencies combined rate of 1.55 per cent. The premium for 2008–09 has been set at 0.51 per cent of total salaries, compared with the all-agencies combined rate of 1.36 per cent. This continues a five-year trend of achieving lower Comcare premiums and having lower premiums compared with the average rate for federal government agencies.

The employee assistance program was used by 30 staff and two family members. It also provided mediation services and assistance to managers.

The ACCC reinvigorated its equity and diversity role with the selection of workplace contact officers in each major work area. The workplace contact offices received formal training in their role. The harassment-free workplace guideline was completely revised. Mandatory workplace harassment and bullying seminars and workshops were held for commissioners, senior managers and all staff.

## Information and communications

A series of major ICT projects were undertaken in 2007–08, primarily linked to the continuing growth in the organisation's activities. These projects included:

- > the relocation of the ACCC Canberra office to new larger premises
- > the expansion of the Melbourne office by the addition of two floors in the ACCC's current premises
- > the relocation of the Adelaide office to a larger premises
- > planning for additional office space in Sydney, Brisbane and Canberra
- > commencement of the Fuelwatch project
- > the development of a grocery price monitoring system
- > redevelopment of the ACCC website.

As a result of the continuing growth in business complexity, the ACCC also decided to undertake a strategic review of its business applications and IT infrastructure. The consultant's recommendations from these reviews are currently being considered.

A major tender was undertaken for the delivery of ICT support services to the ACCC. The successful tenderer was awarded a three-year contract with services commencing on 1 July 2008. Service contracts were also extended for one year with providers of data communications, internet communications and video-bridging support services.

Further work was undertaken as part of the ACCC's business continuity plan arrangements, with a number of changes implemented, including:

- > increased disk capacity to the Melbourne TRIM server for data replication purposes
- > upgrade of the wide area network with high performance switches
- > increased bandwidth to Melbourne and the internet
- > installation of a second internet link from the Melbourne office for load balancing and redundancy
- > the progression of a secondary ICON connection to the internet from the Canberra office.

The ACCC's in-house applications developers completed 100 development projects and resolved 381 feedback issues relating to the **ACCC, AER** and **SCAMwatch websites**. During the year the ACCC internet site received 2 344 684 visits (1 869 645 last year); the AER internet site, 149 183 (88 554 last year) visits; and the SCAMwatch internet site, 408 886 (284 897 last year) visits. The following major web projects were completed during the year:

- > The standard operating environment has been upgraded for all eight web servers, internet, intranet and development servers. Three replacement internet servers were built and installed at the Verizon hosting facility.
- > The ACCC search engine, Funnelback, has been upgraded to version 6, and extensive testing and enhancements have been made to improve search results in both the intranet and internet.
- > The ACCC website has been redeveloped to improve accessibility and navigation for our clients. Significant enhancements have been made to improve the visitor experience and clients can request automatic alerts when content is updated. The ACCC website now contains the information from the now closed Consumersonline website. Other enhancements include the 'consumer business directory', which enables consumers to search for the contact details of over 1600 private, community and government organisations that offer consumer and business complaint-handling services, including industry associations, businesses, government agencies and independent mediation services.
- > The requisition for a travel module on the intranet has been upgraded with an improved user interface and additional functionality.
- > The training courses 'Writing for the web' and 'Publishing content on the ACCC website' have been updated, with 85 staff trained nationally.

In addition, 152 staff were trained in the ACCC's **electronic document and records management system**, TRIM, during the financial year (109 in Canberra and 43 in Melbourne). Increased use of the EDRMS resulted in the creation of 121 725 new records in TRIM, compared to 108 621 last year. All files up to 2003 have been sentenced.

The **library service** focuses on electronic resources and provides research services. Services are available to ACCC staff across Australia from the national office—1728 requests for information were received (477 were followed up with research activity), 3639 items were borrowed from the collection, 507 items were acquired on inter-library loan, 1807 journals were circulated to staff and 934 new items were added to the collection. A new library management system was implemented during the year as a library information portal for electronic resources and an online research tracking system was introduced.

The ACCC produced and released 118 new **publications** for business, industry and consumers in print, electronic and multimedia formats. These initiatives included:

- > An enhanced range of publications for franchisors and franchisees following a review of the Franchising Code's disclosure provisions, following the amendment of the code by the Australian Government; the code became law on 1 March 2008. New information products include an interactive CD-ROM for the *Franchising Code of Conduct compliance manual for franchisors and master franchisees*.
- > A review and update of information guides to the Trade Practices Act provided to business and consumers following amendments to the Act.
- > The introduction of four new guides for product manufacturers, importers, wholesalers, distributors and retailers of babies dummies, baby bath aids, prams and strollers and care labelling for clothing and textile products. The guides provide information for suppliers on the scope and application of the mandatory safety requirements for these products.

- > The release of five new consumer product safety brochures produced to alert consumers to high-risk products and provide them with advice on how to use such products safely.
- > The development of two new consumer information campaigns targeted to non-English speaking consumers with guidance on consumer protection in Amharic, Arabic, Somali, Traditional Chinese and Vietnamese, and guidance on consumer rights when dealing with debt, which was produced in Arabic, Chinese, Greek, Italian, Turkish and Vietnamese.
- > Distribution of over 950 000 published items.

The ACCC website received over 200 000 visits to online publications. For more information, see appendix 3.

Twenty-seven statutory and voluntary **public registers** are maintained, including s. 87B undertakings, authorisations, notifications, mergers and acquisitions, access to services, product safety conferences and communications (e.g. competition notices, access undertakings and agreements and tariff information). See appendix 2 for more information.

## Legal services

The **legal service requirements** of the ACCC and AER are provided by an in-house legal group, a panel of law firms and counsel. The panel firms are the Australian Government Solicitor, Corrs Chambers Westgarth, DLA Phillips Fox and Thomson Playford.

The panel firms provide legal services in both the enforcement and non-enforcement areas of the operations of the ACCC and the AER. The panel arrangements were renewed in December 2007 and will remain in place until the end of 2009.

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

## Other governance activities

The **ACCC service charter** is available from each ACCC office and online. The ACCC received 25 compliments and one formal complaint from the public on its standards of service during the year.

Because public confidence in the integrity of the ACCC and its employees is vital, every employee is asked to undertake an annual **conflict of interest** self-assessment. As a general rule, gifts and hospitality are not accepted because they could compromise, or be perceived to compromise, the integrity of the ACCC, its office holders and employees. When accepted, gifts and hospitality must be declared using an online register.

The ACCC orientation programs, various training events and policy and procedure documents remind employees of their conduct responsibilities as set out in the **APS Code of Conduct**. During the year, one formal misconduct investigation was completed and one breach of the code was found.

The **Audit Committee** met four times during 2007–08 to oversee and control internal audit activities, risk management, fraud control, business continuity planning and the financial statements. During the year audits were undertaken on legal services arrangements, consultancy management, receivables and *Financial Management and*

*Accountability Act 1997* compliance. The agency was also a participant in the ANAO's performance review of credit card management. While no major control weaknesses were identified, a number of improvements were suggested, and these have been implemented. The committee also oversaw the revision of the ACCC's fraud control plan in accordance with federal government requirements.

**Nine offices are maintained**—one in each state and territory, and in Townsville. An additional satellite office is maintained in Melbourne because of the growth in ACCC functions and related staffing numbers. Public contact hours for Canberra, Melbourne and Sydney offices are 8.30 am to 5.30 pm each week day for the other offices, it is 9.00 am to 5.00 pm.

## Ecologically sustainable development

The ACCC aims to identify, implement and promote best practice in environmental management, to operate in an ecologically sustainable manner and to provide an environmentally sound workplace that conforms to occupational health and safety requirements.

The ACCC has developed a register of potential actions that could assist with the minimisation of the effect of the ACCC's activities on the environment. The register is regularly reviewed to identify any initiatives that could be implemented. Before implementation, all potential actions are reviewed against the environmental benefit, the cost or saving involved and any system or process that measures the benefit.

### Measures taken to minimise the ACCC's impact on the environment

To reduce the environmental impact of its activities, the ACCC:

- > buys 10 per cent green electricity for the Canberra office
- > procures office equipment with low-energy use and power-save modes
- > recycles paper and cardboard products, including the pulping of classified waste and use-again office envelopes
- > uses LCD computer screens instead of CRT screens
- > uses recycled toner cartridges where possible
- > disposes of toner cartridges through a recycling outlet
- > implements duplex printing and photocopying
- > disposes of mobile phones and batteries through a recycling outlet
- > services vehicles in accordance with manufacturers' specifications
- > uses E10 fuels for fleet vehicles where possible.

The ACCC buys goods and services in accordance with environmental purchasing guides promoted by the Department of Environment, Water, Heritage and the Arts. This ensures that goods and services are:

- > environmentally sound in manufacture
- > reusable or recyclable
- > designed and made for reliability and long life
- > environmentally best practice in energy efficiency and/or energy consumption.

The ACCC's new national headquarters in Canberra has been designed to achieve a 4.5 star Australian building greenhouse rating.

## Energy management

The ACCC's overall energy consumption is in line with the Australian Government energy consumption targets. Where possible, mechanisms to measure actual electricity use within offices allow the ACCC to monitor, profile and diagnose energy consumption more effectively.

# Staffing

## Number of employees at 30 June 2008

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	Total this year	Total last year
<b>Graduates total</b>	7	5	13	0	1	0	0	1	1	28	30
Female	7	2	9	0	1	0	0	1	0	20	19
Male	0	3	4	0	0	0	0	0	1	8	11
<b>APS 1 total (incl. juniors)</b>	5	0	6	0	1	0	0	0	0	12	11
Female	3	0	5	0	1	0	0	0	0	9	4
Male	2	0	1	0	0	0	0	0	0	3	7
<b>APS 2 total</b>	3	2	2	1	0	0	0	1	0	9	13
Female	3	1	1	1	0	0	0	1	0	7	11
Male	0	1	1	0	0	0	0	0	0	2	2
<b>APS 3 total</b>	15	4	8	2	1	2	0	0	1	33	45
Female	12	4	5	2	1	2	0	0	1	27	38
Male	3	0	3	0	0	0	0	0	0	6	8
<b>APS 4 total (incl. L1)</b>	45	6	28	4	1	5	2	0	0	91	78
Female	31	5	19	4	0	4	1	0	0	64	49
Male	14	1	9	0	1	1	1	0	0	27	29
<b>APS 5 total (incl. L1)</b>	39	10	26	4	2	2	1	0	0	84	82
Female	25	8	13	3	1	0	0	0	0	50	42
Male	14	2	13	1	1	2	1	0	0	34	40
<b>APS 6 total</b>	46	16	62	9	7	4	2	0	3	149	137
Female	28	4	22	6	4	3	0	0	3	70	69
Male	18	12	40	3	3	1	2	0	0	79	68
<b>EL 1 total (incl. L1)</b>	47	18	66	8	4	8	0	1	1	153	113
Female	26	10	29	3	0	4	0	1	1	74	54
Male	21	8	37	5	4	4	0	0	0	79	59
<b>EL 2 total (incl. L2)</b>	45	15	46	3	2	3	1	0	1	116	107
Female	16	7	20	3	0	0	0	0	0	46	41
Male	29	8	26	0	2	3	1	0	1	70	67
<b>SES B1 total</b>	14	1	13	2	1	0	0	0	0	31	25
Female	4	0	2	0	0	0	0	0	0	6	5
Male	10	1	11	2	1	0	0	0	0	25	20
<b>SES B2 total</b>	3	0	3	0	0	0	0	0	0	6	7
Female	1	0	1	0	0	0	0	0	0	2	2
Male	2	0	2	0	0	0	0	0	0	4	5
<b>SES B3 total</b>	1	0	0	0	0	0	0	0	0	1	1
Female	0	0	0	0	0	0	0	0	0	0	0
Male	1	0	0	0	0	0	0	0	0	1	1
<b>Compensation total</b>	0	0	1	0	0	0	0	0	1	2	not reported
Female	0	0	0	0	0	0	0	0	0	0	not reported
Male	0	0	1	0	0	0	0	0	1	2	not reported
<b>ACCC employees total</b>	270	77	274	33	20	24	6	3	8	715	651
Female	155	41	126	22	8	13	1	3	5	374	334
Male	114	36	148	11	12	11	5	0	3	340	317

## Number of employees at 30 June 2008

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	Total this year	Total last year
<b>Public office holders total</b>	3	1	3	0	0	1	0	0	0	8	9
Female	1	0	0	0	0	1	0	0	0	2	2
Male	2	1	3	0	0	0	0	0	0	6	7
<b>Total employees</b>	273	78	277	33	20	25	6	3	8	723	660
Female	156	41	126	22	8	14	1	3	5	376	336
Male	116	37	151	11	12	11	5	0	3	346	324

Total number of full-time equivalent employees at 30 June 2008 was 683.81.

Total number of actual employees on 30 June 2008 was 723, including eight public office holders and 41 inoperative staff (long-term leave, both paid and unpaid, or secondment to another agency).

## Senior executive employees at 30 June 2008

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	Total this year	Total last year
<b>SES B1</b>											
Female	4	0	2	0	0	0	0	0	0	6	5
Male	10	1	11	2	1	0	0	0	0	25	20
<b>SES B2</b>											
Female	1	0	1	0	0	0	0	0	0	2	2
Male	2	0	2	0	0	0	0	0	0	4	5
<b>SES B3</b>											
Female	0	0	0	0	0	0	0	0	0	0	0
Male	1	0	0	0	0	0	0	0	0	1	1
<b>Total this year</b>	18	1	16	2	1	0	0	0	0	38	-
<b>Total last year</b>	15	2	12	3	1	0	0	0	0	-	33

## Part-time employees at 30 June 2008

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	Total this year	Total last year
Female	23	7	18	6	2	2	0	0	1	59	58
Male	5	1	3	0	0	0	0	0	0	9	13
<b>Total this year</b>	28	8	21	6	2	2	0	0	1	68	-
<b>Total last year</b>	23	12	13	6	1	4	0	0	1	-	71



## Temporary employees at 30 June 2008

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	Total this year	Total last year
Female	16	2	8	2	0	1	0	0	0	29	26
Male	10	0	18	0	0	0	0	0	0	28	22
Total this year	26	2	26	2	0	1	0	0	0	57	-
Total last year	30	2	14	0	1	0	0	0	1	-	48

## Equal opportunity target groups at 30 June 2008

	APS 1-2	Percentage of total	APS 3-4 (inc Grad)	Percentage of total	APS 5-6	Percent age of total	EL 1-2	Percentage of total	SES and POH	Percentage of total	Total
<b>Non-English speaking background</b>											
This year	2	0.28	34	4.7	40	5.53	34	4.7	2	0.28	112
Last year	11	1.7	26	3.9	24	3.6	32	4.8	1	0.2	94
<b>People with disabilities</b>											
This year	1	0.14	0.00	0.00	5	0.69	3	0.41	0.00	0.00	9
Last year	1	0.2	1	0.2	1	0.2	6	0.9	0.00	0.00	9
<b>Aboriginal and Torres Strait Islander peoples</b>											
This year	1	0.14	0.00	0.00	1	0.14	1	0.14	0.00	0.00	3
Last year	1	0.2	1	0.2	0.00	0.00	0.00	0.00	0.00	0.00	2
<b>TOTAL STAFF</b>											
This year	21	2.90	152	21.02	234	32.37	270	37.34	46	6.36	723
Last year	54	8.18	124	18.79	219	33.18	221	33.48	42	6.36	660

POH: public office holder

# Part four

# Financial statements





## **INDEPENDENT AUDITOR'S REPORT**

**To the Treasurer**

### **Scope**

I have audited the accompanying financial statements of the Australian Competition and Consumer Commission for the year ended 30 June 2008, which comprise: a Statement by the Chairman, Chief Executive Officer and Chief Finance Officer; Income Statement; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Schedule of Administered Items and the Notes to and forming part of the Financial Statements, including the Summary of Significant Accounting Policies.

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

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

### ***Auditor's Responsibility***

My responsibility is to express an opinion on the financial statements based on my audit. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These Auditing Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's

judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Australian Competition and Consumer Commission's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Australian Competition and Consumer Commission's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Australian Competition and Consumer Commission's Chief Executive, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

### *Independence*

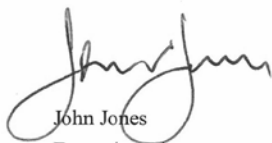
In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

### **Auditor's Opinion**

In my opinion, the financial statements of the Australian Competition and Consumer Commission:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Australian Competition and Consumer Commission's financial position as at 30 June 2008 and its financial performance and cash flows for the year then ended.

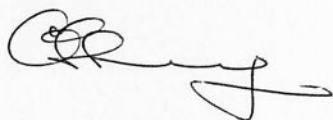
Australian National Audit Office



John Jones  
Executive Director  
Delegate of the Auditor-General  
Canberra  
28 August 2008

## Statement by the Chairman, Chief Executive Officer and Chief Finance Officer

In our opinion, the attached Financial Statements for the year ended 30 June 2008 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Graeme Samuel  
Chairman

28 August 2008



Brian Cassidy  
Chief Executive Officer

28 August 2008



Adrian Brocklehurst  
Chief Finance Officer

28 August 2008

## INCOME STATEMENT

For the period ended 30 June 2008

		2008	2007
		\$'000	\$'000
<b>INCOME</b>	<b>Notes</b>		
<b>Revenue</b>			
Revenue from Government	3A	118,306	107,518
Sale of goods and rendering of services	3B	492	499
<i>Total Revenue</i>		<b>118,798</b>	108,017
<b>Gains</b>			
Sale of assets	3C	–	13
Other gains	3D	105	75
<i>Total Gains</i>		<b>105</b>	88
<b>Total Income</b>		<b>118,903</b>	108,105
<b>EXPENSES</b>			
Employee benefits	4A	60,642	53,336
Suppliers	4B	52,081	43,117
Depreciation and amortisation	4C	2,120	1,663
Finance costs	4D	111	–
Write-down and impairment of assets	4E	47	24
Losses from asset sales	4F	83	86
Other expenses	4G	8,969	4,844
<i>Total Expenses</i>		<b>124,053</b>	103,070
<b>Surplus (Deficit)</b>		<b>(5,150)</b>	5,035
<b>Surplus (Deficit) attributable to the Australian Government</b>		<b>(5,150)</b>	5,035

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

## BALANCE SHEET

As at 30 June 2008

	Notes	2008 \$'000	2007 \$'000
<b>ASSETS</b>			
<b>Financial assets</b>			
Cash and cash equivalents	5A	1,168	1,008
Trade and other receivables	5B	51,607	55,626
<b>Total financial assets</b>		<b>52,775</b>	<b>56,634</b>
<b>Non-financial assets</b>			
Leasehold improvements	6A, C	10,082	4,626
Infrastructure, plant and equipment	6B, C	5,381	3,559
Intangibles	6D	1,342	534
Inventories	6E	42	75
Other non-financial assets	6F	1,007	749
<b>Total non-financial assets</b>		<b>17,854</b>	<b>9,543</b>
<b>Total Assets</b>		<b>70,629</b>	<b>66,177</b>
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	7A	6,322	4,883
Other payables	7B	2,702	1,597
<b>Total payables</b>		<b>9,024</b>	<b>6,480</b>
<b>Provisions</b>			
Employee provisions	8A	16,116	13,778
Other provisions	8B	9,151	1,857
<b>Total provisions</b>		<b>25,267</b>	<b>15,635</b>
<b>Total Liabilities</b>		<b>34,291</b>	<b>22,115</b>
<b>Net Assets</b>		<b>36,338</b>	<b>44,062</b>
<b>EQUITY</b>			
Contributed equity		34,098	33,025
Reserves		1,321	968
Retained surplus (accumulated deficit)		919	10,069
<b>Total Parent Equity Interest</b>		<b>36,338</b>	<b>44,062</b>
<b>Total Equity</b>		<b>36,338</b>	<b>44,062</b>
<b>Current assets</b>		<b>53,824</b>	<b>57,421</b>
<b>Non-current assets</b>		<b>16,805</b>	<b>8,756</b>
<b>Current liabilities</b>		<b>26,716</b>	<b>17,724</b>
<b>Non-current liabilities</b>		<b>7,575</b>	<b>4,391</b>

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

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

STATEMENT OF CHANGES IN EQUITY

For year ended 30 June 2008

	Retained Earnings		Asset Revaluation Reserves		Contributed Equity/Capital		Total Equity	
	2008	2007	2008	2007	2008	2007	2008	2007
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Opening Balance</b>								
Balance carried forward from previous period	10,069	5,034	968	968	33,025	29,067	44,062	35,069
Adjustment for errors	-	-	-	-	-	-	-	-
Adjustment for changes in accounting policy	-	-	-	-	-	-	-	-
<b>Adjusted Opening Balance</b>	<b>10,069</b>	<b>5,034</b>	<b>968</b>	<b>968</b>	<b>33,025</b>	<b>29,067</b>	<b>44,062</b>	<b>35,069</b>
<b>Income and Expenses</b>								
Revaluation adjustment <sup>1</sup>	-	-	353	-	-	-	353	-
<b>Sub-total income and expenses recognised directly in equity</b>			<b>353</b>				<b>353</b>	
Surplus (Deficit) for the period	(5,150)	5,035	-	-	-	-	(5,150)	5,035
<b>Total income and expenses</b>	<b>(5,150)</b>	<b>5,035</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(5,150)</b>	<b>5,035</b>
of which:								
attributable to the Australian Government	(5,150)	5,035	353	-	-	-	(4,797)	5,035
<b>Transactions with Owners</b>								
<i>Distributions to owners</i>	(4,000)	-	-	-	-	-	(4,000)	-
<i>Contributions by owners</i>								
Appropriation (equity injection)	-	-	-	-	1,073	3,958	1,073	3,958
<b>Sub-total Transactions with Owners</b>	<b>(4,000)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,073</b>	<b>3,958</b>	<b>(2,927)</b>	<b>3,958</b>
<b>Closing Balance at 30 June</b>	<b>919</b>	<b>10,069</b>	<b>1,321</b>	<b>968</b>	<b>34,098</b>	<b>33,025</b>	<b>36,338</b>	<b>44,062</b>

<sup>1</sup> Adjustment for the revaluation of provision for makegood liabilities, refer note 8B

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



## CASH FLOW STATEMENT

for the year ended 30 June 2008

	2008	2007
Notes	\$'000	\$'000
<b>OPERATING ACTIVITIES</b>		
<b>Cash received</b>		
Goods and services	437	629
Appropriations	112,160	100,344
Net GST received	5,688	4,036
<b>Total cash received</b>	<b>118,285</b>	<b>105,009</b>
<b>Cash used</b>		
Employees	(58,305)	(51,974)
Suppliers	(55,274)	(50,977)
Other	(2,617)	–
<b>Total cash used</b>	<b>(116,196)</b>	<b>(102,951)</b>
<b>Net cash from or (used by) operating activities</b>	<b>9</b>	<b>2,058</b>
<b>INVESTING ACTIVITIES</b>		
<b>Cash received</b>		
Proceeds from sales of infrastructure, plant and equipment	33	38
<b>Total cash received</b>	<b>33</b>	<b>38</b>
<b>Cash used</b>		
Purchase of infrastructure, plant and equipment	(3,532)	(1,859)
Purchase of leasehold improvements	(4,828)	(1,306)
Purchase of intangibles	(1,195)	(562)
<b>Total cash used</b>	<b>(9,555)</b>	<b>(3,727)</b>
<b>Net cash from or (used by) investing activities</b>	<b>(9,522)</b>	<b>(3,689)</b>
<b>FINANCING ACTIVITIES</b>		
<b>Cash received</b>		
Appropriations–contributed equity	7,593	1,040
<b>Total cash received</b>	<b>7,593</b>	<b>1,040</b>
<b>Cash used</b>		
Lease payments	–	–
Other	–	–
<b>Total cash used</b>	<b>–</b>	<b>–</b>
<b>Net cash from or (used by) financing activities</b>	<b>7,593</b>	<b>1,040</b>
<b>Net increase / (decrease) in cash held</b>	<b>160</b>	<b>(591)</b>
Cash and cash equivalents at the beginning of the reporting period	1,008	1,599
<b>Cash and cash equivalents at the end of the reporting period</b>	<b>5A 1,168</b>	<b>1,008</b>

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

SCHEDULE OF COMMITMENTS

as at 30 June 2008

	2008	2007
	\$'000	\$'000
<b>BY TYPE</b>		
<b>Capital Commitments</b>		
Leasehold improvements	–	1,975
<b>Total Capital Commitments</b>	<b>–</b>	<b>1,975</b>
<b>Other Commitments</b>		
Operating leases <sup>1</sup>	86,762	89,712
Contract for IT services <sup>2</sup>	8,237	1,886
Other commitments <sup>3</sup>	11,055	4,414
<b>Total other commitments</b>	<b>106,054</b>	<b>96,012</b>
Commitments receivable—GST recoverable	(9,641)	(8,908)
<b>Net commitments by type</b>	<b>96,413</b>	<b>89,079</b>
<b>BY MATURITY</b>		
<b>Commitments payable</b>		
<b>Capital commitments</b>		
One year or less	–	1,975
<b>Total capital commitments</b>	<b>–</b>	<b>1,975</b>
<b>Operating lease commitments</b>		
One year or less	7,716	6,298
From one to five years	28,186	32,251
Over five years	50,860	51,163
<b>Total operating lease commitments by maturity</b>	<b>86,762</b>	<b>89,712</b>
<b>Non–operating lease commitments</b>		
One year or less	12,431	5,430
From one to five years	6,861	870
<b>Total non–operating lease commitments by maturity</b>	<b>19,292</b>	<b>6,300</b>
Commitments receivable—GST recoverable	(9,641)	(8,908)
<b>Net commitments by maturity</b>	<b>96,413</b>	<b>89,079</b>

NB: All commitments are GST inclusive where relevant

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

**Leases for office accommodation**

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

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

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

<sup>2</sup> A contract for services

<sup>3</sup> Other commitments included are for contracts entered into for various services to be performed.

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

## SCHEDULE OF CONTINGENCIES

As At 30 June 2008

Contingent Assets	Claims for damages or costs		TOTAL	
	2008	2007	2008	2007
	\$'000	\$'000	\$'000	\$'000
Balance from previous period	-	-	-	-
New	-	-	-	-
Re-measured	-	-	-	-
Assets crystallised	-	-	-	-
Expired	-	-	-	-
<b>Total Contingent Assets</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
Contingent Liabilities	Claims for damages or costs		TOTAL	
	2008	2007	2008	2007
	\$'000	\$'000	\$'000	\$'000
Balance from previous period	996	5,882	996	5,882
New	396	19	396	19
Re-measured	(187)	(3,000)	(187)	(3,000)
Liabilities crystallised	(307)	(650)	(307)	(650)
Obligations expired	(502)	(1,255)	(502)	(1,255)
<b>Total Contingent Liabilities</b>	<b>396</b>	<b>996</b>	<b>396</b>	<b>996</b>
<b>Net contingent assets (liabilities)</b>			<b>(396)</b>	<b>(996)</b>

Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in Note 10: Contingent Liabilities and Assets. The commission has \$0 (2007: \$0) departmental contingent assets. Contingent gains are recognised as administered items and are reported in the Schedule of Administered Contingencies.

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

SCHEDULE OF ADMINISTERED ITEMS			
		2008	2007
	Notes	\$'000	\$'000
<b>Income administered on behalf of Government</b> <i>for the period ended 30 June 2008</i>			
<b>Revenue</b>			
<b>Non-taxation revenue</b>			
Fees and fines	15	62,198	23,433
<b>Total non-taxation revenue</b>		<b>62,198</b>	<b>23,433</b>
<b>Total revenues administered on behalf of Government</b>		<b>62,198</b>	<b>23,433</b>
<b>Expenses administered on behalf of Government</b> <i>for the period ended 30 June 2008</i>			
Write-down and impairment of assets	16	10,872	5,414
<b>Total expenses administered on behalf of Government</b>		<b>10,872</b>	<b>5,414</b>
<b>Assets administered on behalf of Government</b> <i>as at 30 June 2008</i>			
<b>Financial assets</b>			
Cash and cash equivalents	17A	151	5
Receivables	17B	5,988	2,497
<b>Total assets administered on behalf of Government</b>		<b>6,139</b>	<b>2,502</b>
<b>Liabilities administered on behalf of Government</b> <i>as at 30 June 2008</i>			
<b>Payables</b>			
Suppliers	18	2	–
<b>Total liabilities administered on behalf of Government</b>	18	<b>2</b>	<b>–</b>
<b>Administered cash flows</b> <i>for the year ended 30 June 2008</i>			
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Fines and costs		47,544	19,444
Other fees		291	412
<b>Total cash received</b>		<b>47,835</b>	<b>19,856</b>
<b>Net cash from or (used by) operating activities</b>		<b>47,835</b>	<b>19,856</b>
<b>Net increase (decrease) in cash held</b>			
Cash at the beginning of the reporting period		5	1
Cash to Official Public Account for:			
– Appropriations		(47,689)	(19,852)
<b>Cash at the end of the reporting period</b>	17A	<b>151</b>	<b>5</b>
This schedule should be read in conjunction with the accompanying notes.			

SCHEDULE OF ADMINISTERED ITEMS (CONTINUED)

Administered contingencies

as at 30 June 2008

Administered contingent assets	Claims for damages or costs		TOTAL	
	2008	2007	2008	2007
	\$'000	\$'000	\$'000	\$'000
Balance from previous period	3,672	5,078	3,672	5,078
New	6,862	2,790	6,862	2,790
Re-measured	-	-	-	-
Assets crystallised	(632)	(3,606)	(632)	(3,606)
Expired	(1,960)	(590)	(1,960)	(590)
<b>Total administered contingent assets</b>	<b>7,942</b>	<b>3,672</b>	<b>7,942</b>	<b>3,672</b>
Administered contingent liabilities	2008	2007	2008	2007
	\$'000	\$'000	\$'000	\$'000
Balance from previous period	-	-	-	-
New	-	-	-	-
Re-measured	-	-	-	-
Liabilities crystallised	-	-	-	-
Obligations expired	-	-	-	-
<b>Total administered contingent liabilities</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Net contingent assets (liabilities)</b>			<b>7,942</b>	<b>3,672</b>

Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in **Note 20: Administered Contingent Liabilities and Assets**.

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

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

For the year ended 30 June 2008

**Note**

- Note 1: Summary of Significant Accounting Policies
- Note 2: Events after the Balance Sheet Date
- Note 3: Income
- Note 4: Expenses
- Note 5: Financial Assets
- Note 6: Non-Financial Assets
- Note 7: Payables
- Note 8: Provisions
- Note 9: Cash Flow Reconciliation
- Note 10: Contingent Liabilities and Assets
- Note 11: Executive Remuneration
- Note 12: Remuneration of Auditors
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Note 1: Summary of Significant Accounting Policies

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

The Commission is an Australian Public Service organisation. The objectives of the Commission are to:

- promote effective competition and informed markets;
- encourage fair trading and protect consumers; and
- regulate the infrastructure services market and other markets where competition is restricted.

The Commission's outcome is to enhance social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets.

The Commission's activities contributing towards this outcome are classified as either Departmental or Administered. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Commission in its own right. Administered activities involve the management or oversight by the Commission, on behalf of the Government, of items controlled or incurred by the Government.

Departmental activities are identified under two outputs:

Output 1.1 | Compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed.

Output 1.2 | Competitive market structures and informed behaviour.

The Commission does not conduct administered activities however fines and penalties collected are returned to the Commonwealth as administered items.

The continued existence of the Commission in its present form and with its present programs is dependent on Government Policy and on continuing appropriations by Parliament for the Commission's administration and programs.

**1.2 Basis of Preparation of the Financial Report**

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

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

- Finance Minister's Orders (or FMOs) for reporting periods ending on or after 1 July 2007; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial report has been prepared on an accrual basis and is in accordance with the historical cost convention, except for certain assets at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial report is presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

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### NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

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

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

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

### 1.3 Significant Accounting Judgements and Estimates

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

- Management have assessed the fair value of Leasehold Improvements to materially equal the depreciated carrying value of Leasehold Improvements either previously valued by an independent valuer or acquired in 2006–07 and 2007–08.

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

Accounting estimates have been used to quantify the Provision for Litigation Settlement based on estimates provided by the Commission's legal representatives. Based upon available data used to measure the estimate the risk of material adjustments to the estimates in future accounting periods is possible, but is not considered likely.

### 1.4 Statement of Compliance

#### Adoption of new Australian Accounting Standard requirements

No accounting standard has been adopted earlier than the application date as stated in the standard. The following new standards are applicable to the current reporting period:

#### Financial instrument disclosure

AASB 7 Financial Instruments: Disclosures is effective for reporting periods beginning on or after 1 January 2007 (the 2007–08 financial year) and amends the disclosure requirements for financial instruments. In general AASB 7 requires greater disclosure than that previously required. Associated with the introduction of AASB 7 a number of accounting standards were amended to reference the new standard or remove the present disclosure requirements through 2005–10 Amendments to Australian Accounting Standards [AASB 132, AASB 101, AASB 114, AASB 117, AASB 133, AASB 139, AASB 1, AASB 4, AASB 1023 & AASB 1038]. These changes have no financial impact but will effect the disclosure presented in future financial reports.



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The following new standards, amendments to standards or interpretations for the current financial year have no material financial impact on the Commission:

*2007–4 Amendments to Australian Accounting Standards arising from ED 151 and Other Amendments and Erratum: Proportionate Consolidation*

*2007–7 Amendments to Australian Accounting Standards*

*UIG Interpretation 11 AASB 2 – Group and Treasury Share Transactions and 2007–1 Amendments to Australian Accounting Standards arising from AASB Interpretation 11.*

#### **Future Australian Accounting Standard requirements**

The following new standards, amendments to standards or interpretations have been issued by the Australian Accounting Standards Board but are effective for future reporting periods. It is estimated that the impact of adopting these pronouncements when effective will have no material financial impact on future reporting periods.

*AASB Interpretation 12 Service Concession Arrangements and 2007–2 Amendments to Australian Accounting Standards arising from AASB Interpretation 12*

*AASB 8 Operating Segments and 2007–3 Amendments to Australian Accounting Standards arising from AASB 8*

*2007–6 Amendments to Australian Accounting Standards arising from AASB 123*

*AASB Interpretation 13 Customer Loyalty Programmes*

*AASB Interpretation 14 AASB 119 – The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction*

#### **Other**

The following standards and interpretations have been issued but are not applicable to the operations of the Commission.

#### **AASB 1049 Financial Reporting of General Government Sectors by Governments**

AASB 1049 specifies the reporting requirements for the General Government Sector. The FMOs does not apply to this reporting or the consolidated financial statements of the Australian Government.

## **1.5 Revenue**

### **Revenue from Government**

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

\$2,948,000 has been recognised as appropriation revenue in 2007–08 that was advanced in the 2008–09 Portfolio Budget Statements to cover expenses incurred for previous years' outputs

Appropriations receivable are recognised at their nominal amounts.

### **Resources Received Free of Charge**

Resources received free of charge are recognised as revenue when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of restructuring of administrative arrangements.

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**Other types of Revenue**

Revenue from the sale of goods is recognised when:

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

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- The probable economic benefits with the transaction will flow to the Entity.

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 provision for bad or doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collectability of the debt is no longer probable.

## 1.6 Gains

**Other Resources Received Free of Charge**

Resources received free of charge are recognised as gains when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructuring of administrative arrangements. (Refer to Note 1.7).

Resources received free of charge are recorded as either revenue or gains depending on their nature i.e. Whether they have been generated in the course of the ordinary activities of the Commission.

**Sale of assets**

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

## 1.7 Transactions with the Government as Owner

**Equity injections**

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

**Restructuring of Administrative Arrangements**

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

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### 1.8 Employee benefits

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

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

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

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

#### Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Commission is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, including the Commission's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The Liability for Long Service Leave has been calculated using the Australian Government short hand method. The estimate of present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

#### Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The Commission recognises a provision for termination when it has developed a detailed formal plan for the termination and has informed those employees affected that it will carry out the terminations.

#### Superannuation

Staff of the Commission are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap).

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the Financial Statements of the Australian Government and is settled by the Australian Government in due course. This Liability is reported by the Department of Finance and Deregulation as an administered item.

The Commission makes employer contributions to the Employee Superannuation Scheme at rates determined by an actuary to be sufficient to meet the cost to the Government of the superannuation entitlements of the Commission's employees.

The Commission accounts for the contributions as if they were contributions to defined contribution plans.

From 1 July 2005, new employees are eligible to join the PSSap Scheme.

The liability for superannuation recognised as at 30 June 2008 represents outstanding contributions for the final fortnight of the year.

### 1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

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Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability recognised at the same time and for the same amount. The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a basis which is representative of the pattern of benefits derived from the leased assets.

There are currently no finance leases within the Commission.

### 1.10 Borrowing costs

All borrowing costs are expensed as incurred.

### 1.11 Cash

Cash and cash equivalents includes notes and coins held and any deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

No interest is earned on the Commission's bank balances.

### 1.12 Financial assets

The Commission classifies its financial assets in the following categories:

- financial assets as 'at fair value through profit or loss'
- 'held-to-maturity investments',
- 'available-for-sale' financial assets, and
- 'loans and receivables'.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition.

Financial assets are recognised and derecognised upon 'trade date'.

#### **Effective interest method**

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

Income is recognised on an effective interest rate basis except for financial assets 'at fair value through profit or loss'.

#### **Loans and receivables**

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. They are included in current assets, except for maturities greater than 12 months after the balance sheet date. These are classified as non current assets. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Interest is recognised by applying the effective interest rate.

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**Impairment of financial assets**

Financial assets are assessed for impairment at each balance date.

- *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 Income Statement.
- *Available for sale financial assets* – If there is objective evidence that an impairment loss on an available for sale financial asset has been incurred, the amount of the difference between its cost, less principal repayments and amortisation, and its current fair value, less any impairment loss previously recognised in expenses, is transferred from equity to the Income Statement.
- *Available for sale financial assets (held at cost)* – If there is objective evidence that an impairment loss has been incurred the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

**1.13 Financial Liabilities**

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities.

Financial liabilities are recognised and derecognised upon 'trade date'.

**Financial liabilities at fair value through profit or loss**

Financial liabilities at fair value through profit or loss are initially measured at fair value. Subsequent fair value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

**Other financial liabilities**

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs.

Other financial liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective yield basis.

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a shorter period.

**Supplier and other payables**

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).

**1.14 Contingent Liabilities and Contingent Assets**

Contingent Liabilities and Contingent Assets are not recognised in the Balance Sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an existing liability or asset in respect of which settlement is not probable or the amount cannot be reliably measured. Contingent assets are reported when settlement is probable, and contingent liabilities are recognised when settlement is greater than remote. Refer Note 10 and 20.

for the year ended 30 June 2008

### 1.15 Acquisition of Assets

Assets are recorded at cost of acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor Agency's accounts immediately prior to the restructuring.

### 1.16 Property, Plant and Equipment (PP&E)

#### **Asset Recognition Threshold**

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition.

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by the Commission where there exists an obligation to restore the property to its original condition. These costs are included in the value of the Commission's leasehold improvements with a corresponding provision for the 'makegood' recognised.

#### **Revaluations**

Fair value of each class of assets are determined as follows: leasehold improvements by depreciated replacement cost, and plant and equipment by market selling price.

Following initial recognition at cost, property plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through surplus and deficit. Revaluation decrements for a class of assets are recognised directly through the operating result except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

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**Depreciation and Amortisation**

Depreciable property plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Commission using, in all cases, the straight line method of depreciation. Leasehold improvements are amortised on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation/amortisation rates (useful lives) and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation and amortisation rates applying to each class of depreciable asset are based on the useful lives in the table below.

<b>Asset Class</b>	<b>2008</b>	<b>2007</b>
Leasehold Improvements	<b>Lesser of the term of the lease or 15 years</b>	Lesser of the term of the lease or 15 years
Furniture and fittings	<b>10 years</b>	10 years
Office Equipment	<b>5 years</b>	5 years
Computer hardware	<b>3 years</b>	3 years
Computer software	<b>3 to 7 years</b>	3 to 7 years

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 4C.

**Impairment**

All assets were assessed for impairment at 30 June 2008. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the Commission were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

No indicators of impairment were found for assets at fair value.

**1.17 Intangibles**

The Commission's Intangibles comprise software that has been externally acquired for internal use. These assets are carried at cost above the capitalisation threshold of \$10,000, below this amount they are expensed in the year of purchase.

Software is amortised on a straight-line basis over its anticipated useful life. The useful life of the Commission's software is 3 to 7 years. (2006-07: 3 to 7 years).

All software assets were assessed for impairment as at 30 June 2008. There were no indicators of impairment.

**1.18 Inventories**

Inventories (publications) held for sale are valued at the lower of cost or net realisable value. Costs incurred in bringing inventory to its present location and condition relate solely to printing and delivery. These costs are assigned to inventory at purchase cost and recognised on a first-in-first-out basis.

for the year ended 30 June 2008

### 1.19 Taxation/Competitive Neutrality

The Commission is exempt from all forms of taxation except fringe benefits tax (FBT) and the goods and services tax (GST).

Revenues, expenses and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

#### **Competitive Neutrality**

The Commission provides services on a not-for-profit basis which are not subject to Competitive Neutrality arrangements.

### 1.20 Reporting of Administered Activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the Schedule of Administered Items and related Notes. There are no administered commitments in 2008, nor were there any in 2007.

Except where otherwise stated below, administered items are accounted for on the same basis and using the same policies as for Departmental items, including the application of Australian Accounting Standards.

#### **Administered Cash Transfers to and from Official Public Account**

Revenue collected by the Commission for use by the Government rather than the Commission is Administered Revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Deregulation. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Commission on behalf of the Government and reported as such in the Statement of Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 19. The Schedule of Administered Items largely reflects the Government's transactions, through the Commission, with parties outside the Government.

#### **Revenue**

All administered revenues are revenues relating to the core operating activities performed by the Commission on behalf of the Australian Government.

Revenue is generated from fines and costs applied by the courts, or by agreement between the Commission and the Defendant. It is recognised when awarded by the courts, or when agreement has been executed.

The court costs awarded against the Commission are recorded as a departmental expense.

Authorisation and notification fees and other revenue are applied when required under the relevant legislation, and are recognised upon payment.

Administered fee revenue is recognised at its nominal amount due less any allowance for bad or doubtful debts. Collectability of debts is reviewed at balance date. Allowances are made when collection of the debt is judged to be less rather than more likely.



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Note 2: Events after the Balance Sheet Date

No events have occurred after the balance date that would have an impact the financial position of the Commission.

Note 3: Income

	2008	2007
	\$'000	\$'000

**Revenues**

**Note 3A: Revenues from Government**

Appropriations

Departmental outputs	118,306	107,518
<b>Total revenues from government</b>	<b>118,306</b>	<b>107,518</b>

**Note: 3B Sale of goods and rendering of services**

Provision of goods - related entities	-	2
Provision of goods - external parties	5	5
Rendering of services - related entities	176	180
Rendering of services - external parties	311	312
<b>Total sale of goods and rendering of services</b>	<b>492</b>	<b>499</b>

**Note: 3C Sale of Assets**

Infrastructure, plant and equipment:

Proceeds from sale	-	13
Carrying value of assets sold	-	-
<b>Net Gains from sale of assets</b>	<b>-</b>	<b>13</b>

**Note: 3D Other Gains**

Resources received free of charge	75	75
Other Gains	30	-
<b>Total Other Gains</b>	<b>105</b>	<b>75</b>

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for the year ended 30 June 2008

Note 4: Expenses

	2008	2007
	\$'000	\$'000

**Note 4A: Employee Benefits**

Wages and Salary	46,014	40,827
Superannuation		
Defined contribution plans	1,998	1,224
Defined benefit plans	5,888	6,245
Leave and other entitlements	6,431	4,759
Separation and redundancies	17	–
Other employee expenses	294	281
<b>Total employee benefits</b>	<b>60,642</b>	<b>53,336</b>

**Note 4B: Suppliers**

Provision of goods– related entities	16	24
Provision of Goods– external entities	2,292	2,204
Rendering of Services– related entities	10,122	9,431
Rendering of services– external entities	33,010	26,739
	45,440	38,398
Operating lease rentals– minimum lease payments	6,268	4,320
Workers' compensation premiums	373	399
<b>Total supplier expenses</b>	<b>52,081</b>	<b>43,117</b>

**Note 4C: Depreciation and Amortisation**

Depreciation		
Infrastructure, plant and equipment	1,053	919
<b>Total Depreciation</b>	<b>1,053</b>	<b>919</b>
Amortisation		
Leasehold improvements	788	508
Intangibles		
Computer Software	279	236
<b>Total Amortisation</b>	<b>1,067</b>	<b>744</b>
<b>Total depreciation and amortisation</b>	<b>2,120</b>	<b>1,663</b>

**Note 4D: Finance Costs**

Unwinding of discount on makegood provision	111	–
<b>Total finance costs expense</b>	<b>111</b>	<b>–</b>

**Note 4E: Write down and impairment of assets**

Asset Write-Downs from		
Infrastructure, Plant & Equipment	8	10
Leasehold Improvements	6	–
Inventory	33	14
<b>Total write-down and impairment of assets</b>	<b>47</b>	<b>24</b>

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Note 4: Expenses (continued)

	2008	2007
	\$'000	\$'000
<b>Note 4F: Losses from asset sales</b>		
Infrastructure, plant and equipment:		
Proceeds from sale	(3)	(25)
Carrying value of assets sold	7	111
Leasehold Improvements		
Proceeds from sale	(30)	–
Carrying value of assets sold	109	–
Intangibles		
Proceeds from sale	–	–
Carrying value of assets sold	–	–
<b>Total losses from asset sales</b>	<b>83</b>	<b>86</b>
<b>Note 4G: Other Expenses</b>		
Settlement of litigation	8,969	4,844
<b>Total other expense</b>	<b>8,969</b>	<b>4,844</b>

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for the year ended 30 June 2008

Note 5: Financial Assets

	2008	2007
	\$'000	\$'000
<b>Note 5A: Cash and cash equivalents</b>		
Cash on hand or on deposit	1,168	1,008
<b>Total cash and cash equivalents</b>	<b>1,168</b>	<b>1,008</b>
<b>Note 5B: Trade and other receivables</b>		
Goods and services	469	98
Appropriations receivable:		
for existing outputs	50,001	54,374
for additional outputs	-	-
<b>Total appropriations receivable</b>	<b>50,001</b>	<b>54,374</b>
GST receivable from the Australian Taxation Office	1,137	1,154
<b>Total trade and other receivables (gross)</b>	<b>51,607</b>	<b>55,626</b>
Less Allowance for doubtful debts:		
Goods and services	-	-
Other	-	-
<b>Total trade and other receivables (net)</b>	<b>51,607</b>	<b>55,626</b>
Receivables are represented by:		
Current	51,607	55,626
Non-current	-	-
<b>Total trade and other receivables (net)</b>	<b>51,607</b>	<b>55,626</b>
Receivables are aged as follows:		
Not overdue	51,606	55,611
Overdue by:		
Less than 30 days	1	4
31 to 60 days	-	11
61 to 90 days	-	-
More than 90 days	-	-
<b>Total receivables (gross)</b>	<b>51,607</b>	<b>55,626</b>

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Note 5: Financial Assets (continued)

**Reconciliation of the allowance for doubtful debts:**

Movements in relation to 2008

	Goods and services	Other receivables	Total
	2008	2008	2008
	\$'000	\$'000	\$'000
Opening balance	-	-	-
Amounts written off	-	-	-
Amounts recovered and reversed	-	-	-
Increase/Decrease recognised in net surplus	-	-	-
<b>Closing balance</b>	-	-	-

Movements in relation to 2007

	Goods and services	Other receivables	Total
	2007	2007	2007
	\$'000	\$'000	\$'000
Opening balance	-	-	-
Amounts written off	-	-	-
Amounts recovered and reversed	-	-	-
Increase/Decrease recognised in net surplus	-	-	-
<b>Closing balance</b>	-	-	-

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Note 6: Non-Financial Assets

	2008	2007
	\$'000	\$'000

**Note 6A: Leasehold Improvements**

**Leasehold improvements**

- Fair Value	11,482	2,513
- Work in progress	-	3,582
- Less: Accumulated amortisation	(1,400)	(1,469)
<b>Total Leasehold Improvements (non-current)</b>	<b>10,082</b>	<b>4,626</b>

\$0 (2007: \$0) of total leasehold improvements refers to special purpose buildings, which may not be disposed of without prior ministerial approval.

**Note 6B: Infrastructure, Plant and Equipment**

Infrastructure, plant and equipment

- Fair Value	8,106	5,525
- Less: Accumulated depreciation	(2,725)	(1,966)
<b>Total infrastructure, plant and equipment (non-current)</b>	<b>5,381</b>	<b>3,559</b>

All revaluations are independent and in accordance with the revaluation policy stated at Note 1.20.

**Note 6C: Analysis of Infrastructure, Plant, and Equipment**

**Table A – Reconciliation of the opening and closing balances of property, plant and equipment (2007–08)**

Item	Leasehold improvements \$'000	Infrastructure plant and equipment \$'000	Total \$'000
<b>As at 1 July 2007</b>			
Gross book value	6,095	5,525	11,620
Accumulated depreciation/amortisation	(1,469)	(1,966)	(3,435)
<b>Net book value 1 July 2007</b>	<b>4,626</b>	<b>3,559</b>	<b>8,185</b>
Additions			
by purchase	6,345	2,904	9,249
Reclassifications	14	(14)	-
Depreciation/amortisation expense	(788)	(1,053)	(1,841)
Disposals:			
Other disposals			
Other disposals (gross book value)	(972)	(308)	(1,280)
Other disposals (accumulated depreciation)	857	293	1,150
<b>Net book value 30 June 2008</b>	<b>10,082</b>	<b>5,381</b>	<b>15,463</b>
<b>Net book value as at 30 June 2008 represented by:</b>			
Gross book value	11,482	8,106	19,588
Accumulated depreciation/amortisation and impairment	(1,400)	(2,725)	(4,125)
	<b>10,082</b>	<b>5,381</b>	<b>15,463</b>

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**Note 6C: Analysis of Infrastructure, Plant, and Equipment (continued)**

**Table B—Reconciliation of the opening and closing balances of property, plant and equipment (2006–07)**

Item	Leasehold improvements \$'000	Infrastructure plant and equipment \$'000	Total \$'000
<b>As at 1 July 2006</b>			
Gross book value	2,247	3,607	5,854
Accumulated depreciation/amortisation	(961)	(1,423)	(2,384)
<b>Net book value 1 July 2006</b>	<b>1,286</b>	<b>2,184</b>	<b>3,470</b>
Additions			
by purchase	3,848	2,414	6,262
Depreciation/amortisation expense	(508)	(919)	(1,427)
Disposals:			
Other disposals			
Other disposals (gross book value)	–	(497)	(497)
Other disposals (accumulated depreciation)	–	377	377
<b>Net book value 30 June 2007</b>	<b>4,626</b>	<b>3,559</b>	<b>8,185</b>
<b>Net book value as at 30 June 2007 represented by:</b>			
Gross book value	6,095	5,525	11,620
Accumulated depreciation/amortisation and impairment	(1,469)	(1,966)	(3,435)
	4,626	3,559	8,185
	<b>2008</b>		2007
	<b>\$'000</b>		<b>\$'000</b>

**Note 6D: Intangibles**

Computer Software at cost:		
Purchased software	2,727	2,058
Work in progress	408	–
<b>Total Computer Software</b>	<b>3,135</b>	<b>2,058</b>
Accumulated impairment write-down	–	–
Accumulated amortisation	(1,793)	(1,524)
<b>Total intangibles (non-current)</b>	<b>1,342</b>	<b>534</b>

Note: No indicators of impairment were found for intangible assets.

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**Note 6D: Intangibles (cont.)**

**Table A—Reconciliation of the opening and closing balances of intangibles (2007-08)**

Item	Computer Software Purchased	Total
	\$'000	\$'000
<b>As at 1 July 2007</b>		
Gross book value	2,058	2,058
Accumulated depreciation/amortisation	(1,524)	(1,524)
<b>Net book value 1 July 2007</b>	<b>534</b>	<b>534</b>
Additions		
by purchase	1,087	1,087
Depreciation/amortisation expense	(279)	(279)
Disposals:		
Other disposals	(10)	(10)
Other disposals (accumulated depreciation)	10	10
<b>Net book value 30 June 2008</b>	<b>1,342</b>	<b>1,342</b>
<b>Net book value as at 30 June 2008 represented by:</b>		
Gross book value	3,135	3,135
Accumulated depreciation/amortisation and impairment	(1,793)	(1,793)
	<b>1,342</b>	<b>1,342</b>

**Table B—Reconciliation of the opening and closing balances of intangibles (2006-07)**

Item	Computer Software Purchased	Total
	\$'000	\$'000
<b>As at 1 July 2006</b>		
Gross book value	1,496	1,496
Accumulated depreciation/amortisation	(1,288)	(1,288)
<b>Net book value 1 July 2006</b>	<b>208</b>	<b>208</b>
Additions		
by purchase	562	562
Depreciation/amortisation expense	(236)	(236)
Disposals:		
Other disposals	-	-
Other disposals (accumulated depreciation)	-	-
<b>Net book value 30 June 2007</b>	<b>534</b>	<b>534</b>
<b>Net book value as at 30 June 2007 represented by:</b>		
Gross book value	2,058	2,058
Accumulated depreciation/amortisation and impairment	(1,524)	(1,524)
	<b>534</b>	<b>534</b>



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	2008	2007
	\$'000	\$'000

**Note 6E: Inventories**

Publications held for sale	42	75
<b>Total inventories</b>	<b>42</b>	<b>75</b>

**Note 6F: Other Non-Financial Assets**

Leasehold rights	41	83
Prepayments	966	666
<b>Total other non-financial assets</b>	<b>1,007</b>	<b>749</b>

Other non-financial assets are represented by:

Current	1,007	712
Non-current	-	37
<b>Total other non-financial assets</b>	<b>1,007</b>	<b>749</b>

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Note 7: Payables

	2008	2007
	\$'000	\$'000

**Note: 7A Supplier Payables**

Trade creditors and accruals	6,322	4,883
<b>Total supplier payables</b>	<b>6,322</b>	<b>4,883</b>

Supplier payables are represented by:

Current	6,322	4,883
Non-current	-	-
<b>Total supplier payables</b>	<b>6,322</b>	<b>4,883</b>

**Note 7B: Other Payables**

Lease incentives	1,354	1,274
Unearned revenue	320	323
Operating lease payment increases	1,028	-
<b>Total other payables</b>	<b>2,702</b>	<b>1,597</b>

Other payables is represented by:

Current	502	460
Non-current	2,200	1,137
<b>Total other payables</b>	<b>2,702</b>	<b>1,597</b>

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Note 8 Provisions

	<b>2008</b>	2007
	<b>\$'000</b>	<b>\$'000</b>

**Note 8A: Employee Provisions**

Salaries and wages	<b>605</b>	352
Leave	<b>15,412</b>	13,365
Superannuation	<b>99</b>	61
Separation and redundancies	–	–
Other	–	–
<b>Total Employee Provisions</b>	<b>16,116</b>	13,778

Employee provisions are represented by:

Current	<b>13,333</b>	11,481
Non-current	<b>2,783</b>	2,297
<b>Total Employee Provisions</b>	<b>16,116</b>	13,778

The classification of current includes amounts for which there is not an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of reporting date. Employee provisions expected to be settled in twelve months from the reporting date \$6,633,000 (2007: \$4,372,000), in excess of one year \$9,483,000 (2007: \$9,406,000).

**Note 8B: Other Provisions**

Provision for 'Makegood' on leasehold improvements <sup>1</sup>	<b>2,799</b>	1,857
Provision for Litigation Settlement <sup>2</sup>	<b>6,352</b>	–
	<b>9,151</b>	1,857

Other provisions are represented by:

Current	<b>6,559</b>	900
Non-current	<b>2,592</b>	957
<b>Total Other Provisions</b>	<b>9,151</b>	1,857

	Provision for restoration <sup>1</sup>	Provision for litigation settlement <sup>2</sup>	Total
	\$'000	\$'000	\$'000
<b>Carrying amount 1 July 2007</b>	<b>1,856</b>	–	<b>1,856</b>
Additional provisions made	<b>1,776</b>	<b>6,352</b>	<b>8,128</b>
Amounts used	<b>(914)</b>	–	<b>(914)</b>
Amounts reversed	<b>(30)</b>	–	<b>(30)</b>
Unwinding of discount or change in discount rate	<b>111</b>	–	<b>111</b>
<b>Closing balance 30 June 2008</b>	<b>2,799</b>	<b>6,352</b>	<b>9,151</b>

<sup>1</sup> The Commission has 13 agreements for the leasing of premises which have provisions requiring it to restate the premises to their original condition at the conclusion of the lease. The Commission has made a provision to reflect the present value of this obligation.

<sup>2</sup> The commission has provided \$6,352,000 for the settlement of litigation settlement in 2008–09.

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Note 9: Cash Flow Reconciliation

	2008	2007
	\$'000	\$'000
<b>Reconciliation of net surplus (deficit) to net cash from operating activities:</b>		
Net surplus (deficit)	(5,150)	5,035
Depreciation/amortisation	2,120	1,663
Net write down of non-financial assets	14	10
Loss on disposal of assets	83	86
Gain on disposal of assets	–	(13)
(Increase)/decrease in appropriation receivable	(6,146)	(7,174)
(Increase)/decrease in GST receivable	885	(488)
(Increase)/decrease in other receivables	(370)	14
(Increase)/decrease in inventories	33	42
(Increase)/decrease in prepayments	(300)	(132)
(Increase)/decrease in other assets	42	46
Increase/(decrease) in employee provisions	2,339	1,364
Increase/(decrease) in supplier payables	1,234	1,111
Increase/(decrease) in prepayments received	(3)	57
Increase/(decrease) in other provisions	6,201	510
Increase/(decrease) in other liabilities	1,107	(73)
<b>Net cash from/(used by) operating activities</b>	<b>2,089</b>	<b>2,058</b>

Note 10: Contingent Liabilities and Assets

Quantifiable Contingencies

The Schedule of Contingencies reports contingent liabilities in respect of claims for damages/costs of \$396,000 (2007: \$966,000). The Commission is expecting to be unsuccessful in 1 matter (2007: 6 matters) before the Courts alleging breaches of the Trade Practices Act, although the cases are continuing. The amount represents an estimate of the Commission's liability based on legal advice and the precedents in such cases. The Commission is defending the claims.

Unquantifiable Contingencies

As at 30 June 2008, the Commission has 1 matter (2007: 2 matters) before the Courts alleging breaches of the Trade Practices Act. In the event of an unfavourable judgment by the court in the other matter, the Commission stands to lose by way of penalties or costs awarded. It is not possible to determine the amount in relation to these matters.

Remote Contingencies

As at 30 June 2008, the Commission has 0 matters (2007: 0 matters) before the Courts alleging breaches of the Trade Practices Act in respect of which it has received legal advice that there is a remote chance of unfavourable judgments by the court.

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Note 11: Executive Remuneration

The number of executives who received or were due to receive total remuneration<sup>1</sup> of \$130 000 or more:

	2008	2007
	Number	Number
\$130,000 to \$144,999	–	1
\$145,000 to \$159,999	–	2
\$160,000 to \$174,999	3	2
\$175,000 to \$189,999	4	6
\$190,000 to \$204,999	11	7
\$205,000 to \$219,999	3	1
\$220,000 to \$234,999	3	1
\$235,000 to \$249,999	3	6
\$250,000 to \$264,999	1	1
\$265,000 to \$279,999	1	–
\$280,000 to \$294,999	1	–
\$295,000 to \$309,999	2	3
\$310,000 to \$324,999	–	1
\$325,000 to \$339,999	1	1
\$340,000 to \$354,999	1	1
\$355,000 to \$369,999	–	1
\$370,000 to \$384,999	1	1
\$385,000 to \$399,999	1	–
\$535,000 to \$549,999	–	1
\$595,000 to \$609,999	1	–
	<b>37</b>	<b>36</b>

The aggregate amount of total remuneration of executives shown above. **\$8,937,088** \$8,544,154

The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above. – –

<sup>1</sup> Total remuneration includes salary and wages, accrued leave, performance pay, superannuation entitlements, motor vehicles and other fringe benefits and fringe benefits tax.

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Note 12: Remuneration of Auditors

Financial statement audit services are provided free of charge to the Commission by the Australian National Audit Office (ANAO).

	2008	2007
	\$	\$
The fair value of the services provided was:	75,200	75,200

No other services were provided by the Auditor-General during the reporting period.

Note 13: Average Staffing Levels

	2008	2007
	Number	Number
The average staffing levels for the Commission during the year were:	617	576

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Note 14: Financial Instruments

	2008	2007
	\$'000	\$'000

**Note 14A: Categories of financial instruments**

**Financial assets**

Loans and receivables		
Cash and cash equivalents	1,168	1,008
Goods and services receivables	469	98
<b>Carrying amount of financial assets</b>	<b>1,637</b>	<b>1,106</b>

**Financial Liabilities**

Other Liabilities		
Payables-suppliers	6,322	4,883
<b>Carrying amount of financial liabilities</b>	<b>6,322</b>	<b>4,883</b>

**Note 14B: Net income and expense from financial assets and financial liabilities**

The commission received/incurred \$0 (2007: \$0) in income and expenses from financial assets and financial liabilities.

**Note 14C: Fair value of financial instruments**

	Carrying amount 2008	Fair value 2008	Carrying amount 2007	Fair value 2007
	\$'000	\$'000	\$'000	\$'000
<b>Financial Assets</b>				
Cash and cash equivalents	1,168	1,168	1,008	1,008
Goods and services receivables	469	469	98	98
<b>Total Financial Assets</b>	<b>1,637</b>	<b>1,637</b>	<b>1,106</b>	<b>1,106</b>
<b>Financial Liabilities</b>				
Payables-Suppliers	6,322	6,322	4,883	4,883
<b>Total Financial Liabilities</b>	<b>6,322</b>	<b>6,322</b>	<b>4,883</b>	<b>4,883</b>

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Note 14: Financial Instruments (continued)

**Note 14D: Credit risk**

The Commission is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This amount is equal to the total amount of trade receivables (2008: \$469,000 and 2007: \$98,000). The Commission has assessed the risk of the default on payment and has allocated \$nil in 2008 (2007: \$nil) to an allowance for doubtful debts account.

The Commission manages its credit risk by undertaking background and credit checks prior to allowing a debtor relationship. In addition, the Agency has policies and procedures that guide employees debt recovery techniques that are to be applied.

The Commission holds no collateral to mitigate against credit risk.

Credit quality of financial instruments not past due or individually determined as impaired

	Not Past Due Nor Impaired	Not Past Due Nor Impaired	Past due or impaired	Past due or impaired
	2008	2007	2008	2007
	\$'000	\$'000	\$'000	\$'000
<b>Loans and receivables</b>				
Cash and cash equivalents	1,168	1,008	-	-
Goods and services receivables	469	98	1	15
<b>Total</b>	<b>1,637</b>	<b>1,106</b>	<b>1</b>	<b>15</b>

Ageing of financial assets that are past due but not impaired for 2008

	0 to 30 days	31 to 60 days	61 to 90 days	90+ days	Total
	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Loans and receivables</b>					
Goods and services receivables	1	-	-	-	1
<b>Total</b>	<b>1</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1</b>

Ageing of financial assets that are past due but not impaired for 2007

	0 to 30 days	31 to 60 days	61 to 90 days	90+days	Total
	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Loans and receivables</b>					
Goods and services receivables	4	11	-	-	15
<b>Total</b>	<b>4</b>	<b>11</b>	<b>-</b>	<b>-</b>	<b>15</b>



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Note 14: Financial Instruments (continued)

**Note 14E: Liquidity risk**

The Commission's financial liabilities are payables. The exposure to liquidity risk is based on the notion that the Agency will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the Entity (e.g. Advance to the Finance Minister) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

The following tables illustrates the maturities for financial liabilities

	On demand 2008	within 1 year 2008	1 to 5 years 2008	> 5 years 2008	Total 2008
	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Other Liabilities</b>					
Payables - Suppliers	6,322	-	-	-	6,322
<b>Total</b>	<b>6,322</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>6,322</b>

	On demand 2007	within 1 year 2007	1 to 5 years 2007	> 5 years 2007	Total 2007
	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Other Liabilities</b>					
Payables - Suppliers	4,883	-	-	-	4,883
<b>Total</b>	<b>4,883</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>4,883</b>

The Commission is appropriated funding from the Australian Government. The Agency manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the Commission has policies in place to ensure timely payment are made when due and has no past experience of default.

**Note 14F: Market risk**

The Commission holds basic financial instruments that do not expose the Agency to certain market risks. The Commission is not exposed 'Currency risk' or 'Other price risk'.

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<b>Note 15: Income Administered on Behalf of Government</b>		
	<b>2008</b>	2007
	<b>\$'000</b>	\$'000
<b>Non-taxation revenue</b>		
<b>Other fees and fines</b>		
Fines and costs	<b>61,896</b>	22,939
Authorisation fees	<b>116</b>	157
Other	<b>186</b>	337
<b>Total Revenues Administered on Behalf of Government</b>	<b>62,198</b>	23,433
<b>Note 16: Expenses Administered on Behalf of Government</b>		
<b>Write-down of assets</b>		
Financial assets - Receivables	<b>10,872</b>	5,414
<b>Total Expenses Administered on Behalf of Government</b>	<b>10,872</b>	5,414
<b>Note 17: Assets Administered on Behalf of Government</b>		
<b>Financial Assets</b>		
<b>Note 17A: Cash</b>		
Cash at bank	<b>151</b>	5
<b>Total Cash</b>	<b>151</b>	5
<b>Note 17B: Receivables</b>		
Fines and costs	<b>22,776</b>	8,687
Less: Provision for doubtful debts	<b>(16,788)</b>	(6,190)
<b>Total receivables (net)</b>	<b>5,988</b>	2,497
Receivables (net) are represented by:		
Current	<b>5,988</b>	2,497
Non-current	-	-
<b>Total receivables (net)</b>	<b>5,988</b>	2,497
Receivables (gross) are aged as follows:		
Current	<b>5,642</b>	186
Overdue by:		
Less than 30 days	<b>109</b>	3,301
31 to 60 days	<b>28</b>	-
61 to 90 days	-	-
More than 90 days	<b>16,997</b>	5,200
	<b>17,134</b>	8,501
<b>Total receivables (gross)</b>	<b>22,776</b>	8,687
The provision for doubtful debts is aged as follows:		
Current	<b>5,053</b>	-
Overdue by:		
Less than 30 days	-	3,281
31 to 60 days	-	-
61 to 90 days	-	-
More than 90 days	<b>11,735</b>	2,909
<b>Total provision for doubtful debts</b>	<b>16,788</b>	6,190
<b>Total Assets Administered on Behalf of Government</b>	<b>6,139</b>	2,502

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<a href="#">Note 18: Liabilities Administered on Behalf of Government</a>		
	2008	2007
	\$'000	\$'000
<b>Payables</b>		
<b>Suppliers</b>		
Trade creditors and accruals	2	–
<b>Total Liabilities Administered on Behalf of Government</b>	<b>2</b>	<b>–</b>
All liabilities are expected to be settled within 12 months of balance date.		
<a href="#">Note 19: Administered Reconciliation Table</a>		
<b>Administered assets less administered liabilities as at 1 July</b>	<b>2,502</b>	4,335
<i>Add:</i> Administered revenues	<b>62,198</b>	23,433
<i>Less:</i> Administered expenses	<b>(10,872)</b>	(5,414)
Administered transfers to Australian Government	<b>(2)</b>	–
Transfers to OPA	<b>(47,689)</b>	(19,852)
<b>Closing administered assets less administered liabilities as at 30 June</b>	<b>6,137</b>	2,502

[Note 20: Administered contingent liabilities and assets](#)

[Quantifiable Administered Contingencies](#)

The Schedule of Administered Items reports contingent assets in respect of claims for damages/costs of \$7,942,000 (2007: \$3,672,000). The Commission is expecting to succeed in 11 alleged breaches (2007: 15 alleged breaches) of the Trade Practices Act, although the cases are continuing. The estimate is based on legal advice and the precedents in such cases.

[Unquantifiable Administered Contingencies](#)

As at 30 June 2008, the Commission has 5 matters (2007: 43 matters) considered unquantifiable. In the event of favourable judgment by the court, the Commission stands to gain by way of penalties or costs awarded. It is not possible to determine the amounts in relation to these matters.

[Remote Administered Contingencies](#)

As at 30 June 2008, the Commission has 0 matters (2007: 0 matters) before the Courts alleging breaches of the Trade Practices Act for which it has received legal advice that there is a remote chance of favourable judgment by the court.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

for the year ended 30 June 2008

**Note 21: Administered financial Instruments**

	<b>2008</b>	2007
	<b>\$'000</b>	\$'000

**Note 21A: Categories of financial instruments**

**Loans and receivables**

Loans and receivables		
Cash and cash equivalents	151	5
Fines and Costs Receivable	5,988	2,497
<b>Carrying amount of financial assets</b>	<b>6,139</b>	<b>2,502</b>

<b>Financial Liabilities</b>	<b>2</b>	<b>–</b>
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<b>Carrying amount of financial liabilities</b>	<b>2</b>	<b>–</b>
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**Note 21B: Net income and expense from financial assets**

**Loans and receivables**

Interest revenue	–	–
Exchange gains/(loss)	–	–
Impairment	(10,872)	(5,414)
Gain/loss on disposal	–	–

<b>Net gain/(loss) loans and receivables</b>	<b>(10,872)</b>	<b>(5,414)</b>
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**Note 21C: Net income and expense from financial liabilities**

<b>Other Liabilities</b>	–	–
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<b>Net gain/(loss) financial liabilities– at amortised cost</b>	–	–
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<b>Net gain/(loss) from financial liabilities</b>	–	–
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**Note 21D: Fair value of financial instruments**

	Carrying amount 2008 \$'000	Fair value 2008 \$'000	Carrying amount 2007 \$'000	Fair value 2007 \$'000
<b>Financial Assets</b>				
Cash & cash equivalents	151	151	5	5
Fines and Costs Receivable	5,988	5,988	2,497	2,497
<b>Total Financial Assets</b>	<b>6,139</b>	<b>6,139</b>	<b>2,502</b>	<b>2,502</b>
<b>Financial Liabilities</b>	<b>2</b>	<b>2</b>	<b>–</b>	<b>–</b>

**Note 21E: Credit risk**

The Commission is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This amount is equal to the total amount of trade receivables (2008: \$22,776,000 and 2007: \$8,687,000). The Commission has assessed the risk of the default on payment and has allocated \$16,788,000 in 2008 (2007: \$6,190,000) to an allowance for doubtful debts account.

The Commission holds no collateral to mitigate against credit risk.

for the year ended 30 June 2008

**Note 21E: Credit risk (continued)**

**Credit quality of financial instruments not past due or individually determined as impaired**

	<b>Not Past Due Nor Impaired</b>	Not Past Due Nor Impaired	<b>Past due or impaired</b>	Past due or impaired
	<b>2008</b>	2007	<b>2008</b>	2007
	<b>\$'000</b>	\$'000	<b>\$'000</b>	\$'000
<b>Loans and receivables</b>				
Cash and cash equivalents	151	5	–	–
Trade and other receivables	589	186	5,399	2,311
<b>Total</b>	<b>740</b>	191	<b>5,399</b>	2,311

**Ageing of financial assets that are past due but not impaired for 2008**

	<b>0 to 30 days</b>	<b>31 to 60 days</b>	<b>61 to 90 days</b>	<b>90+ days</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>					
Trade and other receivables	109	28	–	5,262	5,399
<b>Total</b>	<b>109</b>	<b>28</b>	–	<b>5,262</b>	<b>5,399</b>

**Ageing of financial assets that are past due but not impaired for 2007**

	<b>0 to 30 days</b>	<b>31 to 60 days</b>	<b>61 to 90 days</b>	<b>90+ days</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>					
Trade and other receivables	20	–	–	2,291	2,311
<b>Total</b>	<b>20</b>	–	–	<b>2,291</b>	<b>2,311</b>

**Note 21F: Liquidity risk**

The Commission's financial liabilities are payables. The exposure to liquidity risk is based on the notion that the Agency will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the Entity (e.g. Advance to the Finance Minister) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

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for the year ended 30 June 2008

**Note 21F: Liquidity risk**

The Commission's financial liabilities are payables. The exposure to liquidity risk is based on the notion that the Agency will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the Entity (e.g. Advance to the Finance Minister) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

The following tables illustrates the maturities for financial liabilities

	On demand 2008	within 1 year 2008	1 to 5 years 2008	> 5 years 2008	Total 2008
	\$'000	\$'000	\$'000	\$'000	\$'000
Other Liabilities					
Payables– Suppliers	2	–	–	–	2
Total	2	–	–	–	2

	On demand 2007	within 1 year 2007	1 to 5 years 2007	> 5 years 2007	Total 2007
	\$'000	\$'000	\$'000	\$'000	\$'000
Other Liabilities					
Payables– Suppliers	–	–	–	–	–
Other payables	–	–	–	–	–
Total	–	–	–	–	–

The Commission's administered activities relate to fines and costs awarded by courts or through agreements. The Agency manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the Commission has policies in place to ensure timely payment are made when due and has no past experience of default.

**Note 21G: Market risk**

The Commission holds basic financial instruments that do not expose the Agency to certain market risks. The Commission is not exposed 'Currency risk' or 'Other price risk'.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
 NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
 for the year ended 30 June 2008

Note 22: Appropriations

**Table A: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations and borrowings**

Particulars	Departmental Outputs			Total
	2008	2007	2007	
	\$	\$	\$	\$
Balance carried from previous period		21,401,876		21,401,876
Appropriation Act	28,473,881			28,473,881
Appropriation Act (No.1)		104,984,000		104,984,000
Appropriation Act (No.2)				
Appropriation Act (No.3)	5,553,000	2,534,000		5,553,000
Other annual appropriation acts				
Adjustments to appropriation <sup>1</sup>	2,948,000			2,948,000
Reductions of appropriations (Appropriations Act section 9)	(8,000,000)			(8,000,000)
Advance to the Finance Minister (Appropriations Act section 11)				
Comcover receipts (Appropriations Act section 12)				
FMA Act:				
Refunds credited (FMA s30)	704,387	1,026,551		1,026,551
Appropriations to take account of recoverable GST (FMA s30A)	4,912,310	4,524,700		4,912,310
Annotations to 'net appropriations' (FMA section 31)	469,882	667,698		469,882
Adjustments of appropriations on change of entity function (FMA s32)				
Total appropriations available for payments	148,866,460	135,138,825		148,866,460
Cash payments made during the year (GST inclusive)	(118,103,670)	(106,664,944)		(118,103,670)
Appropriations credited to Special Accounts (excluding GST)				
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations and as represented by:	30,762,790	28,473,881		30,762,790
Cash at bank and on hand	1,167,654	1,007,936		1,007,936
Departmental appropriations receivable	28,457,933	26,311,933		28,457,933
Undrawn, unapplied administered appropriations				
Accrued GST receivable from ATO	1,137,203	1,154,012		1,137,203
Total	30,762,790	28,473,881		30,762,790

<sup>1</sup> Appropriations for previous years' output advanced in the 2008–09 Portfolio Budget Statements. Departmental and non-operating appropriations do not lapse at financial year end. However, the responsible Minister may decide that part or all of a departmental or non-operating appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
for the year ended 30 June 2008

Note 22: Appropriations (continued)

**Table B: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Other than Ordinary Annual Services Appropriations**

Particulars	Non-operating Equity			Total
	2008	2007	2007	
	\$	\$	\$	\$
Balance brought forward from previous period (appropriation acts)	28,062,501	25,145,000	28,062,501	25,145,000
Appropriation Act	-	-	-	-
Appropriation Act (No.2)	-	3,958,000	-	3,958,000
Appropriation Act (No.4)	1,073,000	-	1,073,000	-
Other annual appropriation acts	-	-	-	-
Reductions of appropriations (Appropriations Act section 11)	-	-	-	-
Advance to the Finance Minister (Appropriations Act section 12)	-	-	-	-
FMA Act:				
Refunds credited (FMA s30)	-	-	-	-
Appropriations to take account of recoverable GST (FMA s30A)	759,250	104,050	759,250	104,050
Annotations to 'net appropriations' (FMA section 31)	-	-	-	-
Adjustments of appropriations on change of entity function (FMA s32)	-	-	-	-
<b>Total appropriations available for payments</b>	<b>29,894,751</b>	<b>29,207,050</b>	<b>29,894,751</b>	<b>29,207,050</b>
Cash payments made during the year (GST inclusive)	(8,351,751)	(1,144,549)	(8,351,751)	(1,144,549)
Appropriations credited to Special Accounts (excluding GST)				
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services	21,543,000	28,062,501	21,543,000	28,062,501
Appropriations and as represented by:				
Cash at bank and on hand	-	-	-	-
Departmental appropriations receivable	21,543,000	28,062,501	21,543,000	28,062,501
Undrawn, unapplied administered appropriations	-	-	-	-
Accrued GST receivable from ATO	-	-	-	-
<b>Total</b>	<b>21,543,000</b>	<b>28,062,501</b>	<b>21,543,000</b>	<b>28,062,501</b>



AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
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 for the year ended 30 June 2008

Note 23: Special Accounts

<b>Other Trust Monies Special Account</b>	<b>2008</b>	2007
	\$	\$
<i>Legal authority: Financial Management and Accountability Act 1997; s20</i>		
<i>Purpose: for the receipt of monies temporarily held on trust or otherwise for the benefit of another person other than the Australian Government.</i>		
Balance carried forward from previous period	<b>52,543</b>	55,775
Other receipts	<b>7,660</b>	123,124
<b>Total credits</b>	<b>60,203</b>	178,899
Payments made	<b>8,285</b>	(126,356)
Total debits	<b>8,285</b>	(126,356)
<b>Balance carried to the next period and represented by:</b>		
Cash at bank	<b>51,918</b>	52,543
<b>Total balance to be carried to the next period</b>	<b>51,918</b>	52,543

## AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

### NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

for the year ended 30 June 2008

#### Note 24: Compensation and Debt Relief

##### **Administered**

No Acts of Grace payments were made during the reporting period (2007: No payments made).

No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the Financial Management Accountability Act 1997 (2007: No waivers made).

No ex-gratia payments were made during the reporting period (2007: No payments made).

##### **Departmental**

No Acts of Grace payments were made during the reporting period (2007: No payments made).

No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the Financial Management Accountability Act 1997 (2007: No waivers made).

No payments were made under the 'Compensation for Detriment caused by Defective Administration (CDDA) Scheme' during the reporting period (2007: No payments made).

No payments were made under s73 of the Public Service Act 1999 during the reporting period (2007: No payments made).

#### Note 25: Reporting of Outcomes

The Commission attributes its outcome between its two output groups on the basis of identifiable actual costs. Shared costs incurred with respect to these output groups are apportioned according to these resulting actual costs. This basis of attribution is consistent with that used for the 2006–07 budget.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
 NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

for the year ended 30 June 2008

Note 25A: Net Cost of Outcome Delivery

	Outcome 1		Total	
	2008	2007	2008	2007
	\$'000	\$'000	\$'000	\$'000
<b>Expenses</b>				
Administered	10,872	5,414	10,872	5,414
Departmental	124,053	103,070	124,053	103,070
<b>Total expenses</b>	<b>134,925</b>	<b>108,484</b>	<b>134,925</b>	<b>108,484</b>
<b>Costs recovered from provision of goods and services to the non government sector</b>				
Administered	–	–	–	–
Departmental	316	317	316	317
<b>Total costs recovered</b>	<b>316</b>	<b>317</b>	<b>316</b>	<b>317</b>
<b>Other external revenues</b>				
Administered	62,198	23,433	62,198	23,433
Departmental	176	193	176	193
<b>Total other external revenues</b>	<b>62,374</b>	<b>23,626</b>	<b>62,374</b>	<b>23,626</b>
<b>Net cost/(contribution) of outcome</b>	<b>72,235</b>	<b>84,541</b>	<b>72,235</b>	<b>84,541</b>

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
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for the year ended 30 June 2008

Note 25B: Major Classes of Departmental Revenues and Expenses by Output Groups and Outputs

	Outcome 1		Output 1.1		Output 1.2		Total	
	2008	2007	2008	2007	2008	2007	2008	2007
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Departmental expenses</b>								
Employees	31,849	29,509	28,793	23,827	60,642	53,336		
Suppliers	35,233	29,237	16,848	13,880	52,081	43,117		
Depreciation & amortisation	1,421	1,085	699	578	2,120	1,663		
Finance costs	74	—	37	—	111	—		
Losses from asset sales	32	54	15	32	47	86		
Write-down and impairment of assets	56	18	27	6	83	24		
Other expenses	8,969	4,844	—	—	8,969	4,844		
<b>Total departmental expenses</b>	<b>77,634</b>	<b>64,747</b>	<b>46,419</b>	<b>38,323</b>	<b>124,053</b>	<b>103,070</b>		
<b>Funded by:</b>								
Revenue from government	71,532	67,598	46,774	39,920	118,306	107,518		
Sale of goods and services	154	224	338	275	492	499		
Other non-taxation revenues	—	8	—	(8)	—	—		
Gains	63	62	42	26	105	88		
<b>Total departmental revenues</b>	<b>71,749</b>	<b>67,892</b>	<b>47,154</b>	<b>40,213</b>	<b>118,903</b>	<b>108,105</b>		

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
 NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

for the year ended 30 June 2008

*Note 25C: Major Classes of Administered Revenues and Expenses by Outcomes*

	Outcome 1		Total	
	2008	2007	2008	2007
	\$'000	\$'000	\$'000	\$'000
<b>Administered Income</b>			<b>61,896</b>	<b>22,939</b>
Fines and costs	61,896	22,939	61,896	22,939
Authorisation fees	116	157	116	157
Other	186	337	186	337
<b>Total Administered Income</b>	<b>62,198</b>	<b>23,433</b>	<b>62,198</b>	<b>23,433</b>
<b>Administered Expenses</b>			<b>10,872</b>	<b>5,414</b>
Write-down of assets	10,872	5,414	10,872	5,414
<b>Total Administered Expenses</b>	<b>10,872</b>	<b>5,414</b>	<b>10,872</b>	<b>5,414</b>

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

# Appendixes



# Appendix 1

## The law

### Amendments to the Trade Practices Act

*Trade Practices Amendment (Access Declarations) Act 2008*; commenced 20 March 2008

*Trade Practices Legislation Amendment Act (No. 1) 2007*; commenced 25 September 2007

*Water (Consequential Amendments) Act 2007*; commenced 3 March 2008

### Amendments to the Trade Practices Regulations

Trade Practices Amendment Regulations 2007 (No. 6); commenced 25 October 2007

Trade Practices Amendment Regulations 2007 (No. 5); commenced 5 October 2007

Trade Practices Amendment Regulations 2008 (No. 1); commenced 7 March 2008

Trade Practices Amendment Regulations 2008 (No. 2); commenced 12 June 2008

Trade Practices Amendment Regulations 2008 (No. 3); commenced 27 June 2008

### Regulations introduced under the Act

Trade Practices (Consumer Product Safety Standard) (Hot Water Bottles) Regulations 2008; commenced 8 March 2008

### Other laws

*Airports Act 1996*—focusing on access, prices and the quality of service at Australia's privatised airports

*Australian Postal Corporation Act 1989*—defining access to the postal network

*Broadcasting Services Act 1992*—covering the payment of television licences

*Copyright Act 1968*

Gas Pipeline Access Law

National Electricity Law

*Radiocommunications Act 1992*

*Telecommunications (Consumer Protection and Service Standards) Act 1999*—provides a range of safeguards to consumers of telecommunication services

*Telecommunications Act 1997*—implements a regulatory framework for the telecommunications industry

*Trade Marks Act 1995*—governing the approval of a trademark that certifies that goods or services are of a particular standard of quality, origin, material or mode of manufacture

*Water Act 2007*—providing for the management of water resources within the Murray-Darling Basin

## Exceptions under federal, state and territory legislation

Some federal, state and territory Acts permit conduct that would normally contravene the Trade Practices Act. Section 51(1) of the Trade Practices Act provides that such conduct may be permitted if it is specifically authorised under those other Acts.

Below is a list of the legislation that allows such conduct or provides for regulations to be made authorising particular conduct. The list includes legislation which the ACCC has been notified of or has otherwise become aware of.

### Federal

*Australian Postal Corporation Act 1989*

*Northern Territory National Emergency Response Act 2007*

*Payment Systems (Regulation) Act 1998*

*Trade Practices Act 1974—s. 173*

### New South Wales

*Australian Jockey Club Act 2008*

Casino Control Regulation 2001

*Coal Industry Act 2001*

*Competition Policy Reform (New South Wales) Act 1995*

Competition Policy Reform (New South Wales) Savings and Transitional Regulation 1996

*Farm Produce (Repeal) Act 1996*

*Gaming Machines Act 2001*

*Grain Marketing Act 1991*

*Health Services Act 1997*

*Hunter Water Act 1991*

*Industrial Relations (Ethical Clothing Trades) Act 2001*

*Industrial Relations Act 1996*

*James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*

*Liquor Act 2007*

*Poultry Meat Industry Act 1986*

*Protection of the Environment Operations Act 1997*

*Racing Administration Act 1998*

*Registered Clubs Act 1976*

*Rice Marketing Act 1983*

*Thoroughbred Racing Amendment Act 2008*

*Totalizator Act 1997*

*Wine Grapes Marketing Board (Reconstitution) Act 2003*

*World Youth Day Act 2006*



## Queensland

*Chicken Meat Industry Committee Act 1976*

*Competition Policy Reform (Queensland) Act 1996*

*Forestry Act 1959*

*Gladstone Power Station Agreement Act 1993*

*Sugar Industry Act 1999*

*Transport Operations (Passenger Transport) Act 1994*

## Victoria

*Competition Policy Reform (Victoria) Act 1995*

*Electricity Industry (Residual Provisions) Act 1993*

*Gas Industry (Residual Provisions) Act 1994*

*Gas Industry Act 2001*

*Health Services Act 1998*

*Legal Profession Act 2004*

*Liquor Control Reform Act 1998*

*Outworkers (Improved Protection) Act 2003*

*Owner Drivers and Forestry Contractors Act 2005*

*State Owned Enterprises Act 1992*

*Water Industry Act 1994*

## Tasmania

*Competition Policy Reform (Tasmania) Act 1996*

*Electricity Supply Industry Act 1995*

*Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*

## Western Australia

*Competition Policy Reform (Western Australia) Act 1996*

*Electricity Corporations Act 2005*

*Electricity Industry (Wholesale Electricity Market) Regulations 2004*

*Electricity Industry Act 2004*

*Energy Coordination Act 1994*

*Grain Marketing Act 2002*

*North West Gas Development (Woodside) Agreement Act 1979*

## South Australia

*Authorised Betting Operations Act 2000*

Authorised Betting Operations Regulations 2001

*Chicken Meat Industry Act 2003*

*Cooper Basin (Ratification) Act 1975*

*Roxby Downs (Indenture Ratification) Act 1982*

## Northern Territory

*Competition Policy Reform (Northern Territory) Act 1996*

*Consumer Affairs and Fair Trading Act 1990*

*Electricity Reform Act 2000*

*Water Supply and Sewerage Act 2000*

## Australian Capital Territory

*Cemeteries and Crematoria Act 2003*

*Competition Policy Reform Act 1996*

*Financial Management Act 1996*

*Government Procurement Act 2001*

*Health Act 1993*

*Insurance Authority Act 2005*

*Road Transport (Public Passenger Services) Act 2001*

*Territory Records Act 2002*

# Appendix 2

## Freedom of information

### Statistics 2007–08

The ACCC received 82 freedom of information requests during 2007–08. The requests were for access to documents generally relating to ACCC processes, investigations, regulatory activities and complaints. Six requests were carried over from the previous financial year.

In eight cases access was granted in full, with part-access being granted in 38 cases. Access was refused in 24 cases and eight cases were not proceeded with. Ten requests had not been finalised by the end of the year.

There were 52 requests for internal review and 36 requests for review by the Administrative Appeals Tribunal. Three matters (two of which were carried over from 2006–07) before the Administrative Appeals Tribunal were resolved during 2007–08.

### Section 8 of the Freedom of Information Act

Section 8 of the *Freedom of Information Act 1982* requires the ACCC to report annually on:

- > its organisation, functions and decision-making
- > its arrangements for outside participation
- > categories of documents it holds
- > how the public can access these documents.

### Organisation, functions and decision-making

The structure, functions, legal basis, organisation and detailed descriptions of the exercise of powers of the ACCC are set out in detail earlier in this report.

### Arrangements for outside participation

The ACCC's functions bring it into frequent contact with private individuals, companies, industry and consumer groups, and other state, territory and federal government agencies. This contact allows interested bodies outside the ACCC to express their opinions and to have them taken into account by the ACCC when it establishes its policies and priorities.

## Categories of documents

The ACCC maintains the following categories of documents:

- > particulars of agreements furnished to the Commissioner of Trade Practices under previous Acts
- > court, adjudication and legal material
- > library material, organisation matters and operational guidelines;
- > publications, speeches and media releases
- > personnel records
- > working documents, including staff investigations, reports, analyses, recommendations, correspondence and complaints, public registers and confidential material excluded from public registers
- > ACCC papers relating to parliamentary committees and questions on meetings of the ACCC with government and non-government bodies about new and amending legislation
- > general correspondence with members of the public.

## Public registers

The ACCC maintains 27 public registers, both statutory and voluntary.

### Statutory registers

The Trade Practices Act requires the ACCC to maintain certain public registers.

#### The notifications and authorisations registers (ss. 95 and 89)

These registers contain details of applications for notifications and authorisation, related submissions and the ACCC's decisions and reasons for its decisions.

#### Consumer protection/product safety register (s. 65)

This register contains details about conferences held on bans or mandatory recalls of defective goods.

#### Access to services register (ss. 44Q, 44ZW, 44ZZC and 44ZZL)

This is a register of decisions and declarations under Part IIIA of the Trade Practices Act. These decisions and declarations may include decisions made by the federal minister that a regime established by a state or territory for access to a service is an effective access regime for the service or proposed service declarations that a service is an essential one of national significance.

#### Register of price notifications (s. 95ZC)

This register contains copies of all locality notices given to the ACCC under s. 95Z of the Trade Practices Act and copies of any notices given under Part VIIA of the Trade Practices Act to, or by, the ACCC relating to the locality notice. This register was originally in place under s. 23(1) of the *Prices Surveillance Act 1983*; it effectively became the register under s. 95ZC of the Trade Practices Act, once that section came into operation.

### Part X investigations register (international liner shipping)

This register contains references given to the ACCC by the minister under ss. 10.47(1) and 10.57(1) of the Trade Practices Act; particulars of decisions made by the ACCC to hold investigations under ss. 10.48(2) and 10.58(2); requests to the ACCC by the minister under ss. 10.48(3) and 10.58(3); relevant documents given to the ACCC; particulars of oral submissions; and reports given to the minister by the ACCC about such investigations.

### Telecommunications registers (ss. 151AR–152EA)

The telecommunications registers include declared services, determinations, competition notices, ministerial pricing determinations, access codes and undertakings.

### Formal merger clearance register

This register includes formal merger clearance applications, submissions and determinations, including statements of reasons.

### Voluntary registers

Although not obliged by statute, the ACCC also maintains public registers on mergers and acquisitions and undertakings under s. 87B of the Trade Practices Act.

### Informal mergers clearance register

The mergers register makes brief details of the informal merger clearances considered by the ACCC publicly available. The details include the names of the target, acquirer and possible acquirer; product description; an outline of the matter; and the ACCC's decision, including an outline of the reasons for that decision.

### Undertakings register

The undertakings register relates to s. 87B of the Trade Practices Act, under which enforceable undertakings may be given to the ACCC about a matter in which the ACCC has a power or function other than under Part X. Such undertakings provide for the ACCC to negotiate administrative settlements. The register contains copies of those undertakings.

## Public access to the documents

### On the public registers

Most documents on the registers can be downloaded from the ACCC website, [www.accc.gov.au](http://www.accc.gov.au).

To discuss access to earlier registers or to arrange personal inspection of any register, contact the Public Registers Officer by calling (02) 6243 1330 or emailing [public\\_registers@acc.gov.au](mailto:public_registers@acc.gov.au). Please note that fees are charged for copies of documents on the earlier registers.

More contact details and information about access for hearing or speech impaired people are available in appendix 7 of this annual report.

### Under the Freedom of Information Act

To access ACCC documents or other matters using the Freedom of Information Act, contact the Freedom of Information Officer on (02) 6243 1244 during business hours or by emailing [foi@acc.gov.au](mailto:foi@acc.gov.au).

To access documents under the Freedom of Information Act apply in writing to:

Freedom of Information Officer  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

The FOI application fee is \$30, which should accompany the request. The ACCC levies the applicable fees and charges imposed under the Freedom of Information Regulations (Fees and Charges). Such fees and charges may be remitted, reduced or not imposed for any reason, including on the grounds of financial hardship or general public interest (if established).

Access may be refused to a document deemed to be exempt or to contain exempt material. Alternatively, access may be granted in part, if practicable. A refusal to grant access will be supported by a statement of reasons. An applicant may apply for internal review of the decision. The Chairman of the ACCC is authorised to make these decisions, although that power has been delegated to certain specified officers.

# Appendix 3

## Publications

### Regular publications

ACCC briefing (electronic only) July 07, August 07, September 07, October 07, November 07, February 08, March 08, May 08

ACCC eJournal, nos 38–48

ACCC update magazine, issues 22–23

ACCCCount—a report of the Australian Competition and Consumer Commission's activities, July to September 07

ACCCCount—a report of the Australian Competition and Consumer Commission's activities, 1 October to 31 December 07

ACCCCount—a report of the Australian Competition and Consumer Commission's activities 1 January to 31 March 08

Network (Utility Regulators Forum), issues 24–27

### Fair trading and consumer protection

ACCC fact sheets

- > Advertising in the healthcare industry
- > Misleading claims about health and therapeutic benefits
- > Prams and strollers—safety requirements
- > Your consumer rights—environmental claims
- > Your consumer rights—mobile phone handsets

Babies' dummies, product safety, a mandatory standards guide

Baby bath aids, product safety, a mandatory standards guide

Blind and curtain cords, safety alert

Care labelling, product safety, a mandatory standards guide

Dealing with debt: your rights and responsibilities (Arabic)

Dealing with debt: your rights and responsibilities (Chinese)

Dealing with debt: your rights and responsibilities (Greek)

Dealing with debt: your rights and responsibilities (Italian)

Dealing with debt: your rights and responsibilities (Turkish)

Dealing with debt: your rights and responsibilities (Vietnamese)

Hot water bottles, safety alert (brochure and poster)

Keeping baby safe (DVD)

Know how to complain (for vision impaired) (CD-ROMs, large print and braille)

Know how to complain (Amharic)

Know how to complain (Arabic)

Know how to complain (Somali)  
Know how to complain (Traditional Chinese)  
Know how to complain (Vietnamese)  
Novelty contact lenses, safety alert  
Prams and strollers, product safety, a mandatory standards guide  
Prams and strollers, safety alert  
Product safety bulletin October 2007, Banned lead in children's toys  
Product safety bulletin September 2007, Banned DEG in toothpaste  
Product safety bulletin, mandatory standard for caravan jacks  
The little black book of scams  
Your consumer rights: Indigenous art and craft: thinking of buying Indigenous art?

## Effective competition and informed markets

### ACCC fact sheets

- > A simple guide to the Franchising Code of Conduct
- > Amendments to the Franchising Code of Conduct in force 1 March 2008
- > An overview of the Franchising Code of Conduct
- > Bait advertising, small business
- > Being smart about your new franchise and your retail lease
- > Comparative advertising
- > Disclosure under the Franchising Code of Conduct
- > Franchising Code of Conduct amendments
- > Refusal to deal
- > Resale price maintenance and power tools—the Tooltechnic decision
- > Resale price maintenance and the cosmetics industry
- > Resolving franchising disputes
- > Service agreements and complying with the Horticulture Code
- > Service agreements and the Horticulture Code of Conduct
- > Unconscionable conduct in small business transactions
- > Unconscionable conduct in the Indigenous art and craft sector

Draft merger guidelines 2008

Franchising code of conduct compliance manual (CD-ROM)

Franchising Code of Conduct compliance manual for franchisors and master franchisees

Furnishing industry: country of origin guidelines to the Trade Practices Act

Green marketing and the Trade Practices Act

Outreach: a newsletter for the ACCC supporter network

Retail flash 2007

Section 155 and the Trade Practices Act

The franchisee manual

The Horticulture Code—how does it affect you? (DVD) infrastructure service markets



## Infrastructure service markets

- ACCC telecommunications reports 2006–07
- Arbitration report: Sydney water access dispute
- Assessing cross-subsidy in Australia Post 2006–07: an ACCC report
- Communications Infrastructure and Services Availability in Australia Report 2006–07, joint ACMA and ACCC publication
- Container stevedoring monitoring report no. 9
- Electricity transmission network service providers, Cost allocation guidelines, final decision, September 2007
- Electricity transmission network service providers, Efficiency benefit sharing scheme, final decision, September 2007
- Electricity transmission network service providers, Post-tax revenue model, final decision, September 2007
- Electricity transmission network service providers, Price Methodology guidelines, final decision, October 2007
- Electricity transmission network service providers, Service target performance incentive scheme, final decision, August 2007
- Electricity transmission network service providers, Service target performance incentive scheme, draft, November 2007
- Electricity transmission network service providers, Submission guidelines, final decision, September 2007
- Final process guideline for contingent project applications under the National Electricity Rules August 2007
- Medical indemnity insurance, fifth monitoring report
- Petrol prices and Australian consumers—report of the ACCC inquiry into the price of unleaded petrol
- Price monitoring and financial reporting – price monitored airports, 2006–07
- Report to the senate on anti-competitive private health insurance
- State of the energy market report 2007
- Telstra's compliance with price control arrangements, 2006–07
- Water market rules issues paper—April 2008
- Water charge rules for charges payable to irrigation infrastructure operators—May 2008

# Appendix 4

## Further information required under s. 171(3) of the Trade Practices Act 1974

### Final determinations relating to access disputes (s. 44V)

No final determinations relating to access disputes were made during 2007–08.

### Decisions on access undertaking applications or access undertaking codes (s. 44B)

At 30 June 2008 the ACCC had one draft access undertaking before it. The Australian Rail Track Corporation lodged a draft undertaking relating to access to the interstate rail track on 20 December 2007. An issues paper was released by the ACCC on 14 January 2008, with submissions called for (February 2008). A draft decision to accept the revised undertaking was released on 29 April 2008, subject to the ARTC addressing a number of issues, with submissions received in response to the draft decision (June 2008). The process continued into the 2008–09 financial year, with a decision to accept the undertaking made on 30 July 2008.

No other decisions on access undertaking applications or access undertaking codes were made during the year.

### Government tendering (s. 44PA(1))

No applications for government tendering were made during 2007–08.

### Notices under ss. 155 and 155A

During 2007–08 the ACCC issued:

- > 482 notices under s. 155 (to compulsorily acquire information)
- > 184 notices under s. 155(1)(a) (to provide information in writing)
- > 171 notices under s. 155(1)(b) (to provide documents)
- > 163 notices under s. 155(1)(c) (to appear in person).

### General description of matters for which notices were given

Notices were issued in the course of investigations into conduct potentially in contravention of parts IV (restrictive trade practices), IVA (unconscionable conduct), IVB (industry codes) and V (consumer protection) of the Trade Practices Act.

## Challenges to the validity of notices

One challenge seeking to have a s. 155 notice set aside based on lack of jurisdiction and burden was concluded. The Federal Court dismissed the application with costs. Two court challenges seeking to have s. 155 notices set aside are continuing.

## Search warrants issued or signed

Under ss. 154X and 154Y of the Trade Practices Act, search warrants can be issued or signed by a magistrate. During 2007–08 no search warrants were issued or signed.

## Entries onto premises

No entries onto premises were made under Part XIX of the Trade Practices Act during the year.

## General description of major matters investigated by the ACCC

Notices were issued in the course of investigations into conduct potentially in contravention of parts IV (restrictive trade practices), IVA (unconscionable conduct), IVB (industry codes) and V (consumer protection) of the Trade Practices Act.

A fuller description of matters resolved by court proceedings or the acceptance of s. 87B undertakings appears on Mergers and Assets page 48.

## Interventions in court proceedings

The ACCC intervened in one third party proceeding—*Kiran Rubina Shahid v Australasian College of Dermatologists*

Intervention by the ACCC to the Full Federal Court of Appeal was limited to the finding by Justice Nicholson that the college's conduct was not 'in trade or commerce'. The full court ordered that the appeal be allowed. The majority overturned findings at first instance that representations by the Australasian College of Dermatologists (College), in relation to the process of admission for training for professional qualifications, were not made in trade or commerce. This decision is an important reversal of a judgment that, if followed by the courts, would have been likely to substantially limit the application of the Trade Practices Act to training and candidate selection processes of professional or specialist colleges.

## Additional information in respect of the ACCC use of s. 155

One prosecution alleging the provision of false or misleading evidence during a s. 155 notice examination was concluded, with the court imposing fines and a community service order. Prosecutions against two individuals and one company relating to offences under s. 155(5) of the Trade Practices Act and s. 11 of the *Criminal Code Act 1995* were concluded with the court sentencing one individual to a term of imprisonment, another individual to a suspended sentence of imprisonment and a period of recognisance, and the company was fined \$6000.

The ACCC commenced one action against an individual alleging provision of false or misleading evidence at a s. 155(1)(wwc) examination in contravention of s. 155(5). This matter is continuing.

# Appendix 5

## Complaints and inquiries—detail

### Telephone calls

	<b>This year</b>	<b>Last year</b>
Received	78 308	63 024
Served	65 336	54 035
Abandoned or advised to visit website	10 553	7282
Engaged	2416	1698
Voicemail	3	9

### Email contacts

	<b>This year</b>	<b>Last year</b>
Number of emails received	20 177	14 773
Answered by telephone response	7556	6181
Answered by return email	8506	6647
Sent elsewhere for response	837	448
No response required	3278	1497

### Written correspondence

	<b>This year*</b>	<b>Last year*</b>
Number of letters received	810	n/a
Sent elsewhere for response	127	n/a
No response required	30	n/a

\*As of 1 April 2008 the process for handling written correspondence changed and correspondence is now forwarded to the Infocentre, where it is initially assessed and either responded to or assigned to a regional office for response.

### Business information complaints or inquiries

	<b>This year</b>	<b>Last year</b>
About a small business	1608	2683
From a small business	2673	2893
About a franchise matter	715	853
About an online trader or e-commerce	6736	7833
Escalated for assessment	1014	807

## Top 10 industries for complaints and inquiries

	<b>This year</b>	<b>Last year</b>
Other auxiliary finance and investment services	5483	1377
Automotive fuel retailing	3640	1837
Lottery operation	3294	2102
Non-store retailing	2504	1095
Electrical, electronic and gas appliance retailing	2320	1422
Wired telecommunications network operation	1703	4695
Auction rooms operation	1532	322
Other store-based retailing	1465	669
Car retailing	1299	1072
Internet service providers web search portals	1265	982

## Complaints and inquiries

	<b>This year</b>	<b>Last year</b>
Misleading or deceptive conduct	24 584	15 144
Retail warranties	6525	4414
Price misrepresentation	1303	1241
Accepting payment non-supply	1617	1121
Misrepresentation of performance	1110	984
Misrepresentation of grade, quality	577	502
Harassment and coercion	422	432
Bait advertising	382	359
Misrepresentation of warranty, guarantee	375	626
Exclusive dealing	487	372
Misuse of market power	325	364

## Publications sent to callers

	<b>This year</b>	<b>Last year</b>
Keeping baby safe	74 550	62 018
The little black book of scams	46 284	13 077
Safe toys for kids	20 873	41 483
Blind/curtain cords (safety alert)	20 873	14 133
Baby bath aids—brochure	19 338	12 158
Fire safety at home	16 662	12 045
Safety alert—household furniture hazards for kids	15 071	9168
Cot safety	14 264	8583
Toy safety	13 336	8946
Safety alert—babies dummies	11 094	8583

## Geographic location of inquirers and complainants

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

	Part IV		Part V		Parts IVA and IVB		Other		Total	
	Last year	This year	Last year	This year	Last year	This year	Last year	This year	Last year	This year
New South Wales	933	1017	9487	13 659	295	270	4710	4263	15 438	19 209
Victoria	629	785	8902	11 436	264	231	3104	3398	12 909	15 850
Queensland	542	680	7928	10 973	269	278	3072	3037	11 821	14 968
Western Australia	298	286	2993	3904	82	148	1014	930	4388	5268
South Australia	223	262	2364	3354	89	102	3630	895	3630	4613
Australian Capital Territory	95	108	1196	1553	17	7	492	432	1802	2100
Tasmania	69	88	844	1196	20	16	324	342	1258	1642
Northern Territory	35	38	388	481	17	19	192	136	632	674
Others	22	17	539	1099	4	9	154	197	720	1322
<b>Total</b>	<b>2846</b>	<b>3281</b>	<b>34 641</b>	<b>47 655</b>	<b>1057</b>	<b>1080</b>	<b>16 692</b>	<b>13 630</b>	<b>52 598</b>	<b>65 336</b>

# Appendix 6

## Litigation concluded during 2007–08

### Effective competition and informed markets

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#### Cardiothoracic surgeons

#### **Knight, John Lincoln, and another**

**Commenced** | 5 February 2007 | **Concluded** | 5 July 2007

Market sharing arrangements between cardiothoracic surgeons in Adelaide.

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#### **Justice Mansfield | Federal Court Adelaide**

**Outcome** | declarations, pecuniary penalties totalling \$110 000, respondents to attend trade practices/competition code compliance training and costs, by consent.

**Significance** | this matter involved conduct by two individuals in the medical profession that was in breach of the Competition Code of South Australia.

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#### Construction

#### **Construction Forestry, Mining, and Energy Union and others**

**Commenced** | 23 August 2006 | **Concluded** | 16 May 2008

Engaging in conduct to induce/implement a secondary boycott.

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#### **Justice Gyles | Federal Court Sydney**

#### **Justice Finn | Federal Court Canberra**

**Outcome** | on 27 September 2007 Justice Gyles made orders by consent against Bovis, including a penalty of \$100 000, injunctions and costs. In making his orders, Justice Gyles noted that Bovis Lend Lease Ltd had paid compensation to Bernmar and had provided an undertaking to the ACCC to improve Bovis' existing compliance procedures.

On 16 May 2008 Justice Finn dismissed the ACCC's application against the CFMEU and two of its members, Mr David Noonan and Mr Laslo Lancsar, finding there was no relevant arrangement or understanding between the CFMEU and Bovis Lend Lease Ltd.

**Significance** | this case emphasises that companies must carefully consider s. 45E of the Trade Practices Act before making decisions about how they acquire services from third parties when under pressure from unions.

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**Consumer electronics**

**Teac Australia Pty Ltd and another**

**Commenced** | 27 June 2007 | **Concluded** | 28 November 2007

Resale price maintenance in the sale of consumer electronic goods.

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**Justice Kenny | Federal Court Melbourne**

**Outcome** | declarations and ordered injunctions and implementation of a trade practices compliance program; TEAC to send a letter to all TEAC retail customers advising them that they are free to set the price for the products they purchase from TEAC and resell; penalties (\$200 000) and costs (\$10 000), by consent.

**Significance** | suppliers cannot enforce pricing policies in an attempt to prevent discounting.

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**Corrugated fibreboard container industry**

**Visy Industries Holdings Pty Limited and others**

**Commenced** | 21 December 2005 | **Concluded** | 2 November 2007

Entering into and giving effect to anti-competitive arrangements, including engaging in price-fixing and market sharing with its principal competitor Amcor Ltd in the supply, throughout Australia, of corrugated fibreboard containers..

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**Justice Heerey | Federal Court Melbourne**

**Outcome** | declarations, injunctions, penalties (totalling \$38 million), implementation of a trade practices compliance program and costs, by consent.

**Significance** | largest penalties ordered in Australia against a corporation and individual for anti-competitive conduct.

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**Education consultants**

**Kokos International Pty Ltd and others**

**Commenced** | 1 November 2006 | **Concluded** | 29 May 2008

Price fixing and other anti-competitive conduct where the respondents entered into arrangements or understandings not to offer or accept discounted school tuition fees from Korean students

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**Justice French | Federal Court Perth**

**Outcome** | declarations, injunctions, penalties (\$125 500) and costs, by consent.

**Significance** | the conduct impacted on prices paid by vulnerable consumers of a non-English speaking background.

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<b>Electrical services</b>	<p><b>IPM Operation and Maintenance Loy Yang Pty Ltd (formerly Edison Mission Operation and Maintenance Loy Yang Pty Ltd) and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia</b></p> <p><b>Commenced</b>   7 February 2005   <b>Concluded</b>   17 August 2007</p> <p>Prohibition of contracts, arrangements or understandings affecting the supply or acquisition of goods or services.</p> <hr/> <p><b>Full Federal Court comprising Justices Weinberg, Bennett and Rares</b></p> <hr/> <p><b>Outcome</b>   appeal by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU) against a decision by the Federal Court of Australia earlier this year that it had procured and induced a power station operator to contravene the Trade Practices Act dismissed. The Full Federal Court affirmed the original decision of Justice Young.</p> <p><b>Significance</b>   confirms the application of anti-competitive provisions of the Trade Practices Act to union conduct</p>
<b>Fuel retailing</b>	<p><b>Leahy Petroleum Pty Ltd and others</b></p> <p><b>Commenced</b>   7 November 2003   <b>Concluded</b>   27 November 2007</p> <p>Alleged price fixing of petrol in the Geelong area.</p> <hr/> <p><b>Justice Gray   Federal Court Melbourne</b></p> <hr/> <p><b>Outcome</b>   on 27 May 2007 Justice Gray dismissed the ACCC's application in this matter. On 27 November 2007 Gray J ordered ACCC to pay costs for several respondents.</p> <p><b>Significance</b>   the court considered the evidence did not support the making of a 'contract arrangement or understanding'..</p>
<b>Funeral directors</b>	<p><b>Dally M Publishing &amp; Research Pty Limited and another</b></p> <p><b>Commenced</b>   27 March 2007   <b>Concluded</b>   10 August 2007</p> <p>Agreements lessening competition through attempted price fixing of fees charged by funeral celebrants.</p> <hr/> <p><b>Justice Finkelstein   Federal Court Melbourne</b></p> <hr/> <p><b>Outcome</b>   declarations, injunctions and pecuniary penalties (\$40 000), implementation of a trade practices compliance program and costs, by consent.</p> <p><b>Significance</b>   industry associations and representatives need to appreciate the consequences of attempts to collectively lift prices.</p>

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**Liquor retailing****Liquorland (Aust) Pty Ltd and Woolworths Ltd****Commenced** | 27 June 2003 | **Concluded** | 27 August 2007

Anti-competitive agreements and primary boycotts through restrictive agreements with operators of licensed premises for the purpose of substantially lessening competition in packaged takeaway liquor markets.

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**Justice Allsop | Federal Court Sydney**

**Outcome** | pecuniary penalties of \$11.75 million (Liquorland, \$4.75 million; Woolworths, \$7 million); injunctions and costs imposed previously. Final decision not to impose further injunctive relief in August 2007.

**Significance** | restrictive agreements between competitors harms the competitive process and increases prices to consumers

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**Marine fishing (abalone)****Australian Abalone Pty Ltd and others****Commenced** | 9 November 2005**Concluded** | 26 November 2007

Price fixing and primary boycotts in the abalone industry.

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**Justice Weinberg | Federal Court Melbourne**

**Outcome** | declarations, injunctions, penalties (\$927 500) and costs, by consent.

**Significance** | industry associations and representatives need to appreciate the consequences of attempts to collectively lift prices.

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**Navigation products****Navman Australia Pty Ltd and others****Commenced** | 6 December 2006**Concluded** | 21 December 2007

Resale price maintenance in the supply of 'Navman' marine, in-car and personal electronic navigation products.

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**Justice Jacobson | Federal Court Sydney**

**Outcome** | declarations and ordered injunctions and penalties (\$1.36 million), by consent.

**Significance** | suppliers should not attempt to impose artificially inflated pricing for an emerging technology product.

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**Orthodontists****Ranu Pty Ltd and others****Commenced** | 13 July 2007 | **Concluded** | 5 December 2007

Price fixing and exclusionary provisions by orthodontic businesses in northern Tasmania.

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**Justice Heerey | Federal Court Hobart**

**Outcome** | declarations and ordered injunctions, an education and training program for three years, and costs, by consent

**Significance** | medical practitioners should take care in structuring their medical practice arrangements.

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**Sports equipment** **Netti Atom Pty Ltd and another**

**Commenced** | 10 July 2007 | **Concluded** | 26 October 2007

Resale price maintenance of bicycles imported by Netti Atom.

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**Justice Finklestein | Federal Court Melbourne**

**Outcome** | eclarations, injunctions, penalties (\$121 250), publications orders, implementation of a trade practices compliance program and costs, by consent.

**Significance** | suppliers cannot enforce pricing policies in an attempt to prevent discounting.

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**Watercraft** **Hobie Cat Australasia Pty Ltd**

**Commenced** | 17 September 2007 | **Concluded** | 28 March 2008

Resale price maintenance of kayak and sailboat products.

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**Justice Finn | Federal Court Adelaide**

**Outcome** | declarations, injunctions, penalty (\$168 000), implement and maintain trade practices compliance program, Hobie Cat to notify all Hobie dealers of court orders and costs, by consent.

**Significance** | suppliers cannot enforce pricing policies in an attempt to prevent discounting.

---

**Wood preservative chemicals** **FCHEM (Aust) Limited and others**

**Commenced** | 31 July 2006 | **Concluded** | 20 March 2008

Price fixing in relation to the supply of various wood preservative chemicals including CCA (copper chromium arsenic) and LOSP (light organic solvent preservatives).

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**Justice Cowdroy | Federal Court Sydney**

**Outcome** | declarations, injunctions, penalties (\$1.25 million against FCHEM; \$1.25 million against Osmose; and \$120 000 against Greenacre) and costs, by consent.

**Significance** | anti-competitive arrangements can have a substantial impact when products such as these are widely used.

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## Fair trading and consumer protection

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### Access to essential services

#### Imagine Essential Services Limited, Richard Evans and The Triumphant Group Pty Ltd

**Commenced** | 29 June 2007 | **Concluded** | 2 April 2008

Misleading and deceptive conduct and misrepresentations in the sale of licences offering discounts for essential services (such as telephony and electricity).

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#### Justice Gordon | Federal Court Melbourne

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**Outcome** | declarations, injunctions, establishment of a trade practices law compliance program, website publication of certain information about the proceeding and notification of certain licensees about the proceeding, \$50 000 towards the ACCC's legal costs, by consent.

The court also accepted an undertaking from Imagine to implement and fund an alternative dispute resolution process.

**Significance** | those selling small business opportunities should ensure that the claims made are accurate..

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### Bulk liquid petroleum gas

#### Wesfarmers Kleenheat Pty Ltd

**Commenced** | 5 February 2008

**Concluded** | 21 February 2008

Misleading and deceptive conduct concerning the pricing of bulk LPG supplied under contract.

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#### Justice Spender | Federal Court Brisbane

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**Outcome** | declarations, injunctions and costs, by consent.

**Significance** | representations about pricing must be accurate and transparent.

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### Bunk beds

#### Hercules Iron Pty Ltd

**Commenced** | 19 December 2007

**Concluded** | 5 February 2008

Breach of mandatory product safety standard.

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#### Justice Gordon | Federal Court Melbourne

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**Outcome** | declarations, injunctions, recall notice, implementation of a trade practices compliance program and costs, by consent.

**Significance** | mandatory standards will be enforced.

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**Cars****Audi Australia Pty Ltd****Commenced** | 8 November 2007**Concluded** | 7 December 2007

Misleading or false and deceptive advertisements that did not include information concerning the existence of additional fees and charges.

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**Justice Gordon | Federal Court Melbourne****Outcome** | declarations, publication order and costs, by consent.**Significance** | consumers are entitled to full information on price.

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**Children's beanbags****Kmart Australia Ltd****Commenced** | 5 December 2007**Concluded** | 30 January 2008

Breach of mandatory product safety standard (Elmo beanbags).

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**Justice Finklestein | Federal Court Melbourne****Outcome** | declarations, review and upgrade of Kmart's compliance program, appointment of an independent person to advise and assist Kmart in conducting a trade practices risk assessment, and costs, by consent.**Significance** | highlights the severe but poorly recognised choking hazard of beanbag beads, particularly for young children, and the responsibility of retailers to ensure that the products they supply meet the mandatory product safety standards.

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**Drink machines****Kyloe Pty Ltd and others****Commenced** | 20 July 2006**Concluded** | 18 October 2007

Alleged breach of the Franchising Code of Conduct.

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**Justice Tracey | Federal Court Melbourne****Outcome** | ACCC's application against Kyloe Pty Ltd and others dismissed. Justice Tracey found that the distributor relationships were not covered by the Franchising Code and therefore the 'Polar Krush' sub-distributors were not entitled to the protections offered under the code.**Significance** | clarification of the reach of the Franchising Code.

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**Electronic products**

**Dynacast (INT) Pty Ltd (formerly Phoneflasher.com) and others**

**Commenced** | 31 March 2006

**Concluded** | 17 October 2007

False and misleading representations because the product did not work as claimed and Phoneflasher.com had no reasonable basis for making the claims.

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**Justice Finn | Federal Court Adelaide**

**Outcome** | declarations, injunctions, corrective notices and costs. The court also declared that Mr Alan Jorgensen and Ms Jimeale Jorgensen were knowingly concerned in the conduct.

The company was found in contempt of court in relation to non-compliance with consent orders. The company was fined \$7000 and the ACCC was awarded indemnity costs. The company did not pay either the fines or the costs and was wound up.

**Significance** | the ACCC may institute proceedings against individuals who directly facilitate a company's illegal conduct.

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**Franchise operation**

**Duco Magic Australia Pty Ltd**

**Commenced** | 4 March 2008 | **Concluded** | 26 March 2008

Misleading and deceptive conduct in relation to representations about the income which would be earned by technicians and the expected demand for the services of a Duco Magic technician.

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**Justice Dowsett | Federal Court Brisbane**

**Outcome** | orders made by consent including declaration, injunction and partial costs against Duco Magic (Australia) Pty Ltd and its director Warwick Lindsay for being knowingly concerned.

**Significance** | claims about profitability of business ventures must be reasonably substantiated and are relevant to the time, location and circumstances in which the ventures are offered.

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**Fruit juice labelling  
and marketing**

**Nudie Foods Australia Pty Ltd**

**Commenced** | 13 February 2008

**Concluded** | 19 June 2008

Misleading claims on packaging and in promotional material for two of Nudie's fruit juice products.

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**Justice French | Federal Court Perth**

**Outcome** | declarations, injunctions, corrective advertisements, establish a trade practices compliance program and costs, by consent.

**Significance** | advertisers must consider the ordinary meaning of words to consumers, particularly when the words or terms have a strong positive appeal to consumers.

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**Internet service  
provider**

**Dataline.net.au Pty Ltd and others**

**Commenced** | 21 December 2001

**Concluded** | 7 September 2007

Alleged unconscionable conduct, misleading or deceptive conduct, false representations, resale price maintenance, price fixing and undue harassment.

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**Full Federal Court comprising Justices Dowsett,  
Greenwood and Moore**

**Outcome** | the ACCC appeal to the Full Federal Court dismissed.

**Significance** | principles guiding imposition of a pecuniary penalty on a company in liquidation and the amount of pecuniary penalty.

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**Introduction services**

**Rural Network Pty Ltd and another**

**Commenced** | 28 April 2005 | **Concluded** | 3 March 2008

Misleading or deceptive conduct in relation to the promotion of an introduction agency.

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**Justice Spender | Federal Court Brisbane**

**Outcome** | declarations, injunctions, publication orders and costs, by consent.

**Significance** | action will be taken when misleading and deceptive conduct deliberately targets vulnerable consumers.

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## Lottery scams

### Pacific Network Services Ltd (third party) and others

**Commenced** | 23 February 2007

**Concluded** | 13 July 2007

Alleged misleading and deceptive conduct by persons and companies not party to this litigation.

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**Justice Collier | Federal Court Brisbane**

**Outcome** | consent orders for payment of funds relating to the promotions and previously paid into court to be transferred to a trust fund for return to consumers.

**Significance** | although the promoters of the targeted scams were all located overseas, the ACCC was able to obtain significant redress for many scam victims.

---

## Mobile phones

### Mobileworld Operating Pty Ltd (trading as Crazy John's)

**Commenced** | 16 January 2008

**Concluded** | 28 March 2008

Alleged misleading or deceptive conduct concerning representations that handsets on Crazy phone plans are available 'FREE' or for '\$0', when in fact consumers were required to pay for the handsets through higher call rates than those available on comparable plans that do not include a handset.

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**Justice Gordon | Federal Court Melbourne**

**Outcome** | matter resolved by s. 87B undertaking (signed 28 March 2008). Crazy John's to pay costs..

**Significance** | dvertisers must consider the ordinary meaning of words to consumers, particularly when the words or terms have a strong positive appeal to consumer.

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## Poultry farming (eggs)

### G. O. Drew Pty Ltd and another

**Commenced** | 4 November 2005

**Concluded** | 16 August 2007

Misleading and deceptive conduct and misrepresentations about the supply of certified organic eggs.

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**Justice Gray | Federal Court Melbourne**

**Outcome** | declarations, injunctions and costs, by consent.

**Significance** | payments have been directed to the development and enforcement of an Australian standard.

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## Rugs and manchester

### Terania Pty Ltd and Australian Rug Expos Pty Ltd

**Commenced** | 2 March 2007 | **Concluded** | 22 May 2008

False or misleading representations as to price; 'Was', 'Sale' price labelling; deceptive or misleading conduct relating to representations about the duration and clearance nature of rug sales.

---

#### Justice Mansfield | Federal Court Darwin

**Outcome** | injunctions, implementation of a trade practices compliance program, and costs, by consent. The court also noted an undertaking by Mr Barry Solomon that he will attend a trade practices compliance seminar.

**Significance** | misleading advertising affects consumers and damages businesses that are advertising within the law.

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## Snack foods

### Arnotts Biscuits Ltd

**Commenced** | 15 November 2007

**Concluded** | 29 April 2008

Alleged misleading or deceptive conduct relating to the labelling and packaging of biscuit products.

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#### Justice Gyles | Federal Court Sydney

**Outcome** | declarations, injunctions, corrective advertising, review of trade practices law compliance program and costs, by consent.

**Significance** | advertisers must consider the ordinary meaning of words to consumers, particularly when the words or terms have a strong positive appeal to consumers.

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## Takeaway food retailing

### The Original Mama's Pizza and Ribs and others

**Commenced** | 25 November 2005

**Concluded** | 18 March 2008

Misleading or deceptive conduct and false or misleading representations concerning the sale of a pizza system to convenience stores and service stations.

---

#### Justice Madgwick | Federal Court Sydney

**Outcome** | declarations, injunctions, publication orders and costs. The second and third respondents must also provide the ACCC with a list of all persons who have purchased the oven system or any other piece of equipment used for the preparation of food and a list of all relevant finance companies.

**Significance** | this litigation was instituted under both the Trade Practices Act and the *Australian Securities and Investments Commission Act*. The court considered the characteristics of the product and concluded that it was a 'financial product' within the meaning of the Australian Securities and Investments Commission Act.

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## Telecommunications services

### Telstra Corporation Ltd

**Commenced** | 17 September 2007

**Concluded** | 6 May 2008

Misleading and deceptive conduct in representations concerning Telstra's Next G mobile network.

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**Justice Gordon | Federal Court Melbourne**

**Outcome** | declarations, injunctions and costs. Telstra appealed the decision on 24 December 2007, but withdrew its appeal on 6 May 2008.

**Significance** | advertisers must ensure that descriptions of products or services are accurate, particularly when promoting new technologies with which many consumers may be unfamiliar.

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## Telemarketing mobile phones

### EDirect Pty Ltd and others

**Commenced** | 24 July 2007

**Concluded** | 12 February 2008

Misleading or deceptive conduct and accepting payment without intending or being able to supply as ordered in relation to the telemarketing of mobile phone packages.

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**Justice Reeves | Federal Court Darwin**

**Outcome** | declarations, injunctions, implementation of a trade practices compliance program, specified 'no coverage' customers be allowed to terminate their contract without incurring any additional fee, community service announcement and costs, by consent.

**Significance** | companies should ensure that their marketing practices are not misleading when targeting vulnerable consumers.

---

## Tobacco products—retailing

### Guirguis, Mina

**Commenced** | 13 April 2007 | **Concluded** | 17 July 2007

Supplying retail packages of tobacco in packets and cartons that did not comply with the mandatory product information standard because the retail packages did not display the required messages and graphic images

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**Justice Heerey | Federal Court Melbourne**

**Outcome** | injunctions, declarations and costs, by consent.

**Significance** | mandatory labelling standards apply to goods sold through the internet.

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**Vehicle jacks****Trade Quip Pty Ltd and another****Commenced** | 31 March 2006**Concluded** | 1 August 2007

Misleading or deceptive conduct and the supply of a good that did not comply with a prescribed consumer product safety standard, by consent.

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**Justice Weinberg | Federal Court Melbourne**

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**Outcome** | findings of fact, declarations, injunctions, implementation of a trade practices compliance program, return of non-compliant jacks, costs.**Significance** | mandatory standards will be enforced.

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## Fair trading and consumer protection

### Criminal proceedings

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**Petrol retail****Dojoo Pty Ltd (t/as Ballina Petroleum) and others****Commenced** | 13 July 2007**Concluded** | 19 December 2007

Criminal proceedings relating to alleged false representations about the quality and composition of petrol sold at 12 BP-branded service stations in northern New South Wales.

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**Justice Logan | Federal Court Brisbane**

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**Outcome** | penalties (\$400 000) and costs.**Significance** | product descriptions on petrol pumps must be accurate.

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**Petrol retail****Santo Pennisi****Commenced** | 13 July 2007**Concluded** | 19 December 2007

Criminal proceedings relating to alleged false representations about the quality and composition of petrol sold at 12 BP-branded service stations in northern New South Wales.

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**Justice Logan | Federal Court Brisbane**

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**Outcome** | penalties (\$70 000).**Significance** | product descriptions on petrol pumps must be accurate.

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## Other proceedings

### 'Cancer cures'

#### NuEra Wellness Centre Pty Ltd

**Commenced** | 29 June 2007

**Concluded** | 20 March 2008

Failed to comply with a notice under s. 155(1) of the Trade Practices Act 1974.

#### Justice North | Federal Court Melbourne

**Outcome** | fined \$6000.

**Significance** | the court recognised that the powers of s. 155 are an important part of the regulatory framework.

### 'Cancer cures'

#### Rana, Paul John

**Commenced** | 29 June 2007 | **Concluded** | 20 March 2008

Criminal proceedings for offences under s. 155(5) of the Trade Practices Act and s. 11.2 of the *Criminal Code Act 1995*.

#### Justice North | Federal Court Melbourne

**Outcome** | six months imprisonment—the time spent in custody (93 days) taken into account.

**Significance** | the court recognised that the powers of s. 155 are an important part of the regulatory framework. Significant custodial sentence.

### 'Cancer cures'

#### Rana, Micheal Lee

**Commenced** | 29 June 2007 | **Concluded** | 20 March 2008

Criminal proceedings under s. 11.2 of the Criminal Code Act in relation to the contravention by NuEra Wellness Centre Pty Ltd.

#### Justice North | Federal Court Melbourne

**Outcome** | two months' suspended sentence and a recognisance order for a period of 18 months.

**Significance** | the court recognised that the powers of s. 155 are an important part of the regulatory framework.

### Real estate

#### Neville, John Patrick

**Commenced** | 11 April 2007 | **Concluded** | 16 October 2007

Criminal proceedings for allegedly providing false or misleading evidence during the course of s. 155(1)(c) examinations.

#### Justice Lindgren | Federal Court Sydney

**Outcome** | penalties (\$2160) and defendant to perform 200 hours of community service.

**Significance** | the court recognised the powers of s. 155 are an important part of the regulatory framework.

## ACCC respondent

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### Air cargo

#### Korean Air Lines Co. Ltd

**Commenced** | 3 December 2007 | **Concluded** | 15 May 2008

Korean Air Lines Co. sought to have a s. 155 notice set aside based on lack of jurisdiction and burden.

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#### Justice Jacobson | Federal Court Sydney

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**Outcome** | application by Korean Air Lines challenging a statutory demand for information and documents issued by the ACCC under the Trade Practices Act dismissed and Korean Air Lines ordered to pay costs.

**Significance** | the ACCC's powers under s. 155 are important tools in assisting the ACCC to investigate alleged breaches of the Act.

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### General insurance

#### IMB Group Pty Ltd

**Commenced** | 15 September 2004

**Concluded** | 5 September 2007

ACCC and four individual defendants were sued for alleged malicious prosecution, misfeasance in public office, defamation, negligence and unlawful interference with contractual relations.

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#### High Court of Australia

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**Outcome** | IMB's application for leave to appeal against the Supreme Court of Queensland's decision to dismiss its case against the ACCC was dismissed.

**Significance** | orders of the Supreme Court of Queensland were made in the exercise of a discretion; applicants' written case demonstrated no reason to doubt the correctness of the Court of Appeal's conclusion that the primary judge was shown not to have erred; and the written case does not raise any question of principle of general public importance that would warrant consideration by the High Court.

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## Third party actions

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### Specialised medical services

#### Kiran Rubina Shahid v Australasian College of Dermatologists

**Commenced** | 24 October 2007

**Concluded** | 9 May 2008

Intervention by the ACCC in the Full Federal Court of appeal. Intervention limited to the finding by Justice Nicholson that the college's conduct was not 'in trade or commerce'.

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#### Full Federal Court comprising Justices Branson, Stone and Jessop

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**Outcome** | the court ordered that the appeal be allowed. The majority overturned findings at first instance that representations by the Australasian College of Dermatologists relating to the process of admission for training for professional qualifications were not made in trade or commerce.

**Significance** | this decision is an important reversal of a judgment that, if followed by the courts, would have been likely to substantially limit the application of the Trade Practices Act to training and candidate selection processes of professional or specialist colleges.

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# Appendix 7

## Litigation continuing at end of 2007–08

### Effective competition and informed markets

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#### Banking

#### Australia and New Zealand Banking Group

**Commenced** | 17 August 2007

Alleged price fixing agreements by the ANZ Bank seeking to limit the level of refund a third party mortgage broker could provide to customers.

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**Justice Greenwood | Federal Court Brisbane**

**Status** | court processes continuing.

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#### Commercial air conditioning

#### Admiral Mechanical Services Pty Ltd and others (formerly WA air conditioning firms)

**Commenced** | 17 December 2004

Entering agreements lessening competition through bid-rigging with respect to commercial air conditioning contracts in Western Australia.

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**Justice Nicholson | Federal Court Perth**

**Status** | court processes continuing.

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#### Fine paper

#### April International Marketing Services Australia Pty Ltd and others

**Commenced** | 6 December 2006

Entering into arrangements, contracts or understandings with competitors for the supply of fine paper products.

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**Justice Bennett | Federal Court Sydney**

**Status** | court processes continuing.

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#### Medical fluids

#### Baxter Healthcare Pty Ltd

**Commenced** | 1 November 2002

Misuse of market power and exclusive dealing in relation to the supply of health products to state government purchasing authorities.

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**Full Federal Court, Sydney**

**Status** | on 15 May 2007 the High Court of Australia heard an appeal on the issue of Crown immunity and judgment was handed down on 29 August 2007. This matter is now before the Full Federal Court for consideration of the substantive matters under ss. 46 and 47 of the Trade Practices Act. Awaiting judgment.

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**Sports compression garments****Skins Compression Garments Pty Ltd****Commenced** | 28 August 2007

Alleged resale price maintenance and misleading deceptive conduct in respect of sports compression garments.

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**Justice Besanko | Federal Court Adelaide****Status** | court processes continuing.

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**Stevedoring****Toll (PRK) Ltd and others****Commenced** | 24 August 2007

Alleged entering into contracts, arrangements or understandings that restrict dealings or affect competition, and into agreements to share motor vehicle wharf facilities around Australia and to jointly acquire other facilities.

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**Justice Sackville | Federal Court Sydney****Status** | court processes continuing.

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**Fair trading and consumer protection****Business exhibitions****Gregory Millar and John Webb (trading as Australian Corporate Exhibitions)****Commenced** | 15 August 2007

Misleading and deceptive promotion of various business exhibitions.

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**Justice Gilmore | Federal Court Perth****Status** | court processes continuing.

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**Car sales****GM Holden Ltd****Commenced** | 16 January 2008

Alleged misleading and deceptive conduct and false representations concerning green claims made in the advertising of Saab vehicles by GM Holden.

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**Justice Finn | Federal Court Perth****Status** | court processes continuing.

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**Department store****Harris Scarfe Australia Pty Ltd****Commenced** | 10 October 2007

Alleged misleading and deceptive conduct in relation to a television commercial and sale catalogue for a 20 to 60 per cent off storewide sale held in October 2006.

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**Justice Mansfield | Federal Court Adelaide****Status** | awaiting judgment.



<b>Franchise system</b>	<p><b>Allphones Retail Pty Ltd and others</b></p> <p><b>Commenced</b>   25 March 2008</p> <p>Alleged failure to comply with the Franchising Code of Conduct and misleading and deceptive conduct and unconscionable conduct towards its franchisees. Senior executives alleged to be knowingly concerned.</p> <hr/> <p><b>Justice Emmet   Federal Court Sydney</b></p> <hr/> <p><b>Status</b>   court processes continuing.</p>
<b>Fruit marketing</b>	<p><b>Grove &amp; Edgar Pty Ltd</b></p> <p><b>Commenced</b>   16 June 2008</p> <p>Alleged breaches of the Horticulture Code of Conduct.</p> <hr/> <p><b>Justice Reeves   Federal Court Darwin</b></p> <hr/> <p><b>Status</b>   court processes continuing.</p>
<b>Jewellery</b>	<p><b>Prouds Jewellers Pty Ltd</b></p> <p><b>Commenced</b>   8 December 2006</p> <p>Making 'Was/Now' price comparisons that were false or misleading.</p> <hr/> <p><b>Full Federal Court Sydney</b></p> <hr/> <p><b>Status</b>   court processes continuing.</p>
<b>Online advertising</b>	<p><b>Trading Post Australia Pty Ltd, Google Inc. and others</b></p> <p><b>Commenced</b>   11 July 2007</p> <p>Alleged misleading and deceptive conduct by failing to adequately distinguish 'sponsored links' from 'organic' search results on the Google website.</p> <hr/> <p><b>Justice Tamberlin   Federal Court Sydney</b></p> <hr/> <p><b>Status</b>   court processes continuing.</p>
<b>Price advertising</b>	<p><b>Harbin Pty Ltd</b></p> <p><b>Commenced</b>   12 December 2007</p> <p>Alleged misleading and deceptive price advertising of a barbeque.</p> <hr/> <p><b>Justice Finn   Federal Court Adelaide</b></p> <hr/> <p><b>Status</b>   awaiting judgment.</p>

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## Property investment

### Channel Seven Brisbane Ltd and others

**Commenced** | 27 September 2005

Alleged misleading and deceptive conduct in items aired on the Channel Seven television program *Today Tonight* in late 2003 and early 2004 known as the 'Wildly Wealthy Women Millionaire Mentoring Program'.

On 5 October 2007 Justice Bennett of the Federal Court, Sydney made declarations and ordered injunctions, a publication order and costs.

On 26 October 2007 Channel Seven Brisbane Pty Ltd and others appealed to the Full Federal Court.

On 23 June 2007 the Full Court allowed the appeal, finding that although misleading representations had been made by Channel Seven, the operation of s. 65A of the Trade Practices Act provided exemption to the publisher for liability under the Act.

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**Full Federal Court Sydney**

**Status** | application for special leave to appeal pending.

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## Skin tanning

### Australian Tanning Association Inc. and others

**Commenced** | 11 June 2008

Alleged misleading and deceptive representations concerning the safety of solarium use.

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**Justice Finkelstein | Federal Court Melbourne**

**Status** | court processes continuing.

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## Criminal proceedings

### Fair trading and consumer protection

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#### Corrugated paperboard and paperboard container manufacture

#### Richard Pratt

**Commenced** 19 June 2008

Alleged provision of false or misleading evidence at a s. 155(1)(c) examination in contravention of s. 155(5).

**Status** | court processes continuing.

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#### Diamond industry

#### Carrerabenz Diamond Industries Pty Ltd and another

**Commenced** | 20 December 2005

Alleged misleading price comparisons in advertising diamond clearance sales.

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**Justice Dowsett | Federal Court Brisbane**

**Status** | court processes continuing.

<p><b>Jewellery</b></p>	<p><b>Ascot Four Pty Ltd (formerly listed as Zamel's Pty Ltd)</b></p> <p><b>Commenced</b>   20 December 2006</p> <p>Strike-through price comparisons that were allegedly false or misleading.</p> <hr/> <p><b>Justice Mansfield   Federal Court Adelaide</b></p> <hr/> <p><b>Status</b>   awaiting judgment.</p>
<p><b>Other proceedings</b></p>	
<p><b>Air cargo</b></p>	<p><b>Singapore Airlines Ltd</b></p> <p><b>Commenced</b>   24 April 2008</p> <p>Application to overturn s. 155 notice based on jurisdiction and burden.</p> <hr/> <p><b>Justice Middleton   Federal Court Melbourne</b></p> <hr/> <p><b>Status</b>   court processes continuing.</p>
<p><b>Air cargo</b></p>	<p><b>Emirates Airlines</b></p> <p><b>Commenced</b>   24 April 2008</p> <p>Application to overturn s. 155 notice based on jurisdiction and burden.</p> <hr/> <p><b>Justice Middleton   Federal Court Melbourne</b></p> <hr/> <p><b>Status</b>   court processes continuing</p>
<p><b>Bunk beds</b></p>	<p><b>Hercules Iron Pty Ltd</b></p> <p><b>Commenced</b>   6 May 2008</p> <p>Contempt proceedings for alleged breaches of the judgment of Justice Gordon dated 5 February 2008. The original proceedings relate to breaches of a mandatory product safety standard (bunk beds) under Part V of the Trade Practices Act.</p> <hr/> <p><b>Justice Gordon   Federal Court Melbourne</b></p> <hr/> <p><b>Status</b>   awaiting judgment.</p>
<p><b>Corrugated paperboard and paperboard container manufacture</b></p>	<p><b>Cadbury Schweppes Pty Ltd v Amcor Limited and others</b></p> <p><b>Commenced</b>   26 November 2007</p> <p>Appeal by ACCC of interlocutory decision on claims of legal professional privilege.</p> <hr/> <p><b>Full Federal Court Sydney</b></p> <hr/> <p><b>Status</b>   court processes continuing.</p>

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**Non-payment of penalties and costs**

**Braddon Ralph Webb**

**Commenced** | 16 June 2008

The ACCC obtained an arrest warrant under the Absconding Debtors Act (Northern Territory) in pursuit of a pecuniary penalty of \$150 000 and court costs of \$474 000 owed by the respondent. Orders were subsequently obtained for an examination of the respondent under Order 67 of the Supreme Court Rules (NT). Examination to be heard on 29 July 2008.

**Status** | court processes continuing.

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**Online trading**

**StoresOnline International Inc. and StoresOnline Inc.**

**Commenced** | 5 October 2007

Alleged breach of s. 87B undertakings provided by the respondents in settlement of earlier legal proceedings against them.

**Justice Tamberlin | Federal Court Sydney**

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**Status** | court processes continuing.

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**Small business**

**Mr Bon Levi**

**Commenced** | 13 June 2007

Contempt proceeding for alleged non-compliance with orders made by Justice Kiefel in the Federal Court on 28 February 2005.

**Justice McKerracher | Federal Court Perth**

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**Status** | awaiting judgment.

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# Appendix 8

## Undertakings accepted during 2007–08

### Effective competition and informed markets

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#### Alcohol

##### Jordan Tatum Enterprises Pty Ltd and Nathan Burgess Hunt

Townsville | 1 August 2007

**Conduct** | attempt to make or arrive at an arrangement or understanding about the price of over-the-bar alcoholic beverages.

**Undertaking** | that JTE and Mr Hunt will:

- > not engage in any activity constituting price fixing or attempting to fix prices
- > will undertake trade practices compliance training at least once a year for three years
- > use best endeavours to have published, in an Australian hotel industry newsletter, an article concerning price fixing
- > implement and maintain a trade practices compliance program for any business currently operating or acquired within the next three years by JTE or any other corporation controlled by Mr Hunt.

**Significance** | competitors agreeing or attempting to agree price is a serious contravention of the Trade Practices Act, irrespective of the size of the businesses involved.

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#### Building

##### Bovis Lend Lease Pty Limited

Canberra | 25 September 2007

**Conduct** | Bovis admitted it had an arrangement with a union concerning the use by Bovis of a subcontractor on a building site in the Australian Capital Territory.

**Undertaking** | that Bovis Lend Lease Pty Limited will review its trade practices compliance program.

**Significance** | businesses must not enter into arrangements or understandings with second parties that result in the boycott or exclusion of other businesses.

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**CD/DVD retailing****JB Hi-Fi Ltd**

Melbourne | 29 February 2008

**Conduct** | an agreement required that an existing CD/DVD retailer to close its store and remain out of the market for two years and to arrange with the lessor not to re-let the premises to another CD/DVD retailer for one year.

**Undertaking** | that JB Hi-Fi will:

- > not, for a period of three years, enter into any contract, arrangement or understanding with any person with whom it is (or is likely to be) in competition to the effect that the person will cease trading, unless that contract, arrangement or understanding would not contravene s. 45 of the Act
- > extend its current compliance program.

**Significance** | in seeking to protect their commercial position, businesses must take care that any contracts or agreements do not substantially lessen competition.

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**Franchising****ACN 098 540 633 Pty Ltd  
(formerly Quizno's Australia Pty Ltd)**

Adelaide | 28 July 2007

**Conduct** | various alleged representations made to potential and actual franchisees about the Quizno's franchise.

**Undertaking** | that ACN 098 540 633 Pty Ltd (Quizno) will make an offer of payment to former and potential franchisees who have lodged complaints with the ACCC.

**Significance** | representations designed to induce people to become or remain franchisees must not be misleading or deceptive.

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## Inbound tourism

### Korean Inbound Tour Operators Council Inc.

Brisbane | 4 January 2008

**Conduct** | the association and its members may have agreed that its members would not provide tour services to Korean travel agents and wholesalers who the association considered advertised packaged tours below certain minimum retail rates. The association sought to arrange for certain duty-free stores and Korean restaurants in Australia not to allow the entry of tourists on tours conducted by those operators.

**Undertaking** | that the Korean Inbound Tour Operators Council Inc. (KITOCA) will:

- > not seek or procure its members to enter into anti-competitive arrangements
- > not seek to procure its members to enter into arrangements as to the wholesale price they will charge Korean travel agents for tour services
- > send a letter to each of its members outlining KITOCA's responsibilities under ss. 45, 45A and 45(4D) of the Trade Practices Act
- > advise its members that if they had reached any agreements that were likely to breach the Trade Practices Act, those agreements should be immediately discontinued
- > conduct trade practices compliance training for its officers and employees.

**Significance** | the ability of individual businesses to determine their own selling prices goes to the heart of competition and businesses cannot collude to eliminate competition

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## Skateboards

### Kwala Skateboards Pty Ltd

Brisbane | 18 July 2007

**Conduct** | retailers required to sell goods at the recommended retail price.

**Undertaking** | that Kwala Skateboards will:

- > cease requiring retailers to sell its goods at the recommended retail price
- > undertake a trade practices compliance program
- > send a letter to each of its customers advising of these facts.

**Significance** | retailers should not be prevented from selling products at less than the recommended price.

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**Wood preservative  
chemicals**

**Osmose Australia Pty Ltd**

Sydney | 26 September 2007

**Conduct** | price fixing in relation to the supply of wood preservative chemicals.

**Undertaking** | that Osmose will:

- > ensure that, so far as is reasonably practicable, its officers and employees are not involved in further contraventions of the price fixing provisions of the Trade Practices Act
- > establish and implement a trade practices compliance program.

**Significance** | businesses must not enter into arrangements or understandings with other parties that have the purpose or effect of fixing prices.

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**Fair trading and consumer protection**

**Airline tickets**

**United Air Lines Inc.**

Perth | 9 July 2007

**Conduct** | misleading advertised price of airfares

**Undertaking** | that United Air Lines will:

- > include all taxes, levies and charges applicable to airline tickets in future advertisements
- > review its trade practices compliance program to ensure similar potential breaches of the Act do not occur in the future.

**Significance** | non-avoidable cost components such as taxes and levies should be included in price representations to consumers.

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## Baby sleeping bags

### Louise Dalglish Smith (trading as Cinnamon Bear Distributors)

Perth | 22 October 2007

**Conduct** | supply of a number of baby sleeping bags with attached fire hazard warning labels that did not comply with the relevant mandatory product safety standard for children's nightwear.

**Undertaking** | that Cinnamon Bear will:

- > not in future supply or offer for supply any children's nightwear that does not fully comply with the prescribed consumer safety standard
- > ensure that the correct warning labels as per the standard are printed and attached to any non-compliant baby sleeping bags in the possession of Cinnamon Bear
- > ensure that it will make the appropriate fire hazard labels available to any consumers who wish to have their baby sleeping bags relabelled
- > publish a corrective notice and establish a trade practices compliance program.

**Significance** | mandatory product safety standards are non-discretionary.

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## Batteries

### Alco Battery Sales (Aust) Pty Limited

Sydney | 13 May 2008

**Conduct** | misleading representation concerning the composition of battery products.

**Undertaking** | that Alco Battery Sales (Aust) Pty Limited will:

- > refrain from making misrepresentations concerning the composition of the battery products in the future
- > offer a full refund of the purchase price of the battery products to those consumers who purchased them from Alco Battery Sales, or a distributor or a retailer who supplied them with the product or offer a replacement battery
- > implement and maintain a trade practices compliance program.

**Significance** | when businesses choose to make representations concerning the composition of their products, they must ensure that the descriptions are not misleading or deceptive.

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**Beanbags and beanbag covers****SlumberTrek Australia Pty Ltd**

Darwin | 6 February 2008

**Conduct** | importation and distribution of the Elmo-shaped beanbag covers that were missing the warning label mandated by the prescribed product safety standard.

**Undertaking** | that SlumberTrek Australia will:

- > relabel the Elmo beanbag
- > undertake a national recall of the Elmo beanbag
- > publish a warning notice to appear on SlumberTrek's website
- > implement a trade practices compliance program.

**Significance** | mandatory product safety standards are non-discretionary

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**Bed linen****Laura Ashley (Australia) Pty Ltd**

Melbourne | 2 May 2008

**Conduct** | use of a promotional strategy based on establishing a 'regular price' for a product line by launching the product in a limited number of stores for a limited time and then relying on that price as the 'regular price' as the starting point for any discounts or sales.

**Undertaking** | that Laura Ashley will:

- > refrain from offering for sale merchandise items bearing two price labels, one price being higher than the other, where those items have not been offered for sale in relevant Laura Ashley stores at the higher ticketed price reasonably recently and for a reasonable period
- > refrain from offering for sale merchandise items at a percentage off the higher ticketed price where those items have not been offered for sale at the higher ticketed price immediately prior to percentage off and/or promotional sales
- > display an information notice about the ACCC's concerns in this matter at the point-of-sale counter in each Laura Ashley store
- > publish the information notice in the ARA Retailer magazine
- > implement a trade practices compliance program.

**Significance** | price comparisons must be real and meaningful and not artificially created to suggest inflated savings.

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**Bulk LPG****Wesfarmers Kleenheat Gas Pty Ltd**

Brisbane | 26 February 2008

**Conduct** | misleading or deceptive conduct by varying the pricing for bulk LPG supplied to particular customers in 2002 and 2003, selected as 'managed monthly accounts' or 'Quickhits', contrary to representations it made to those customers on how their prices would move.

**Undertaking** | that Kleenheat Gas will:

- > refund specified managed monthly account and Quickhit customers
- > write to each customer to whom a refund is to be paid
- > display a website for three months, accessible from the Kleenheat Gas website, informing customers how LPG is priced
- > implement procedures to inform bulk LPG customers of the nature and extent of circumstances in which Kleenheat Gas may vary the price for bulk LPG supplied under any term contract and to ensure customers understand what they are signing
- > investigate any additional customer accounts if it becomes aware that they may have been the subject of the managed monthly account and Quickhit practices, and refund them as appropriate
- > review its trade practices compliance program.

**Significance** | accurate information about pricing arrangements for ongoing contracts must be provided to consumers.

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## Bunk beds

### Australian Discount Retail Pty Ltd

Melbourne | 18 March 2008

**Conduct** | supply of two models of bunk beds through 'The Warehouse Where Everyone Gets a Bargain' that may not have complied with a number of the requirements of the prescribed consumer product safety standard for bunk beds (*AS/NZ 4220:1994 Bunk Beds*).

**Undertaking** | that Australian Discount Retail Pty Ltd (ADRT) will:

- > maintain at its business premises up-to-date copies of all consumer product safety standards and prescribed consumer information standards that relate to goods that ADRT supplies or offers to supply
- > ensure that the goods ADRT supplies that are subject to a safety and/or information standard prescribed under the Act comply with the relevant standard
- > maintain product recall procedures that enable products supplied by ADRT that do not comply with prescribed safety and/or information standards under the Act to be efficiently and effectively withdrawn from the market and returned to ADRT
- > prepare and adopt a product compliance program.

**Significance** | mandatory product safety standards are non-discretionary.

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## Car sales

### Thompsons of Shepparton Pty Ltd

Melbourne | 29 May 2008

**Conduct** | advertisement that led consumers to believe that a bulk purchase had facilitated discounts being available when this was not the case.

**Undertaking** | that Thompsons of Shepparton Pty Ltd will implement and maintain a trade practices compliance program for three years and three months from the commencement of the undertaking.

**Significance** | representations that may lead consumers to think that the prices they pay for goods are lower than usual must be accurate so that they do not mislead or deceive.

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## Car tyres

### Goodyear Tyres

Adelaide | 25 June 2008

**Conduct** | representation of the environmental benefits of a motor vehicle tyre that could not be substantiated.

**Undertaking** | that Goodyear Tyres has apologised to its customers and is offering a partial refund of the purchase price to customers who relied upon the environment claims when purchasing an LS2000 Eagle tyre between 1 February 2007 and 31 March 2008. Goodyear has also undertaken to:

- > refrain from making the representations in the future
- > implement a trade practices compliance program
- > place a corrective notice in major metropolitan newspapers, on its Australian website and in each Goodyear Autocare Centre.

**Significance** | extra care is required when making environmental claims.

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## Cots

### ATI Enterprise Pty Ltd, Xiao Ying Liang and Hang Chiu Leung

Perth | 11 March 2008

**Conduct** | supply of a number of cots that did not comply with the mandatory product safety standard for cots for household use.

**Undertaking** | that ATI Enterprise Pty Ltd and its directors will:

- > recall the cots sold and provide a refund to consumers
- > ensure all future products sold by ATI comply with any relevant mandatory product safety standards
- > publish a public disclosure notice on its eBay website
- > implement and maintain a trade practices compliance program for three years.

**Significance** | mandatory product safety standard are non-discretionary.

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## Cots

### Jinlong Shen

Perth | 1 April 2008

**Conduct** | supply of a number of cots that did not comply with the mandatory product safety standard for cots for household use (*AS/NZS 2172:2003*).

**Undertaking** | in addition to the undertakings offered by ATI Enterprise Pty Ltd and its directors on 11 March 2008, Jinlong Shen undertakes to:

- > recall the cots sold and provide a refund to consumers
- > ensure all future products sold by ATI comply with the relevant mandatory product safety standards
- > publish a public disclosure notice on ATI's eBay website
- > implement and maintain a trade practices compliance program for three years.

**Significance** | mandatory product safety standards are non-discretionary.

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## DVD/video rental

### Video Ezy Australasia Pty Ltd

Canberra | 27 May 2008

**Conduct** | television advertisements that gave an overall impression likely to have implied that Video Ezy's price was the lowest price in Australia when this was not the case.

**Undertaking** | that Video Ezy:

- > Not represent that the advertised price for the retail of a DVD title is the 'cheapest price in Australia, guaranteed' without including the qualification, 'or we'll beat any lower advertised price by \$1'. In the case of oral statements, the qualification must be made immediately after the first statement, and in the case of text, the two statements must appear simultaneously.
- > Ensure that all national advertising is approved by its compliance officer.
- > Review and implement necessary changes to its trade practices compliance program.
- > Refund the difference between Video Ezy's advertised price and the lowest advertised price identified in Australia for five titles.
- > Provide corrective notices through direct mail, catalogues, in-store advertisements and magazines, and on its website, and to send a corrective text to the people who received advertising via text.

**Significance** | any qualifications of absolute statements or guarantees must be adequately disclosed.

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**Electrical retail****Lunel Pty Ltd trading as Harvey Norman  
Electrical Noarlunga**

Adelaide | 4 July 2007

**Conduct** | misleading price comparisons in newspaper advertising.

**Undertakings** | publish corrective notice and implement trade practices compliance training.

**Significance** | price comparisons must be real and meaningful so that consumers are not misled concerning the existence or size of any discount or saving.

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**Fashion sunglasses****Pacific Magazines Pty Limited,  
the publisher of Marie Claire**

Canberra | 25 March 2008

**Conduct** | supply of fashion sunglasses that failed to comply with the prescribed mandatory standard (*AS/NZS 1067:2003 Sunglasses and fashion spectacles*).

**Undertaking** | that Pacific Magazines Pty Limited:

- > recall the sunglasses
- > post a recall notice on its website
- > offer consumers the option of returning the sunglasses via free post for a replacement pair of the fashion sunglasses
- > publish an educative piece about the importance of sunglasses safety
- > review its trade practices compliance procedures.

**Significance** | mandatory product safety standards are non-discretionary.

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**Fertility treatment services**

**Fertility Solutions Sunshine Coast Pty Ltd**

Brisbane | 18 March 2008

**Conduct** | inappropriate use of two testimonials in an advertising feature published in the Bundaberg and Region News Mail newspaper, promoting fertility treatment services in the Bundaberg region.

**Undertaking** | that Fertility Solutions Sunshine Coast Pty Ltd will:

- > ensure all future advertising is not misleading or deceptive and in particular will not contain testimonials that are not genuine
- > place corrective advertising in the Bundaberg and Region News Mail within 21 days of the undertaking coming into effect
- > implement and maintain a trade practices corporate compliance program for Fertility Solutions employees and officers.

**Significance** | if businesses choose to use testimonials, they must ensure that both content and the fact of the testimonials are genuine and not misleading or deceptive, particularly in circumstances where consumers are likely to be susceptible to such claims.

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## Food labelling

### Natur-All Pty Ltd (trading as Go Natural)

Canberra | 1 April 2008

**Conduct** | packaging representations that may have implied that the products were unprocessed berry and/or apricot pieces coated in yoghurt, when in fact the product is a ball made from a fruit-based mixture consisting predominantly of fruit concentrate (approximately 35 per cent), sugar (approximately 30 per cent) and semolina (approximately 30 per cent) coated in yoghurt.

**Undertaking** | that Go Natural will:

- > amend the name and the packaging of the Go Natural berry/apricot pieces in yoghurt product
- > amend the representations on its website about these products
- > publish an article for the food industry about this experience, which is to be available to the Australian Food and Grocery Council and to be accessible by the public on the Go Natural website ([www.gonatural.com.au](http://www.gonatural.com.au))
- > review and implement changes to its trade practices compliance program.

**Significance** | when labelling food products, care must be taken to ensure that implied content claims can be substantiated in the product ingredients.

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## Food labelling

### Harvey Fresh (1994) Ltd

Perth | 13 May 2008

**Conduct** | representations that a fruit juice product contains 100 per cent juice, when the product does not contain 100 per cent juice.

**Undertaking** | that Harvey Fresh will:

- > not make a representation that a fruit juice product contains 100 per cent juice, when the product does not contain 100 per cent juice
- > contact all retail customers to which it has supplied the product to inform them of the conduct and recall all units of the product that it has supplied to them
- > publish an information notice on its website for 30 days informing consumers about the conduct
- > implement and maintain a trade practices compliance program.

**Significance** | when labelling food products, care must be taken to ensure that implied content claims can be substantiated in the product ingredients.

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## Furniture

### Kerandis Proprietary Limited (trading as Urban Rhythm Furniture)

Melbourne | 27 May 2008

**Conduct** | misleading two-price advertising of furniture.

**Undertaking** | that Kerandis will:

- > refrain from using comparative two-price representations in the manner described above
- > establish and implement a trade practices compliance program
- > ensure that its directors, agents and employees will make sure that all future advertising and other forms of promotion comply with Part V of the Trade Practices Act.

**Significance** | price comparisons must be real and meaningful so that consumers are not misled about the existence or size of any discount or saving.

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## Health insurance

### iSelect Health Pty Ltd

Melbourne | 7 November 2007

**Conduct** | various representations about a range of health insurance policies which the ACCC believed misrepresented the nature of the service being provided to consumers.

**Undertaking** | that for three years iSelect Health Pty Ltd will:

- > not make the representations of concern in specified circumstances where they may be misleading
- > inform certain customers who arranged to purchase a health insurance policy from the range of insurance policies that iSelect had compared for them
- > maintain a trade practices compliance program.

**Significance** | a business offering a comparison or broker-type service for complex offerings in the market must ensure the consumer understands the scope of comparisons offered, or run the risk of misleading consumers.

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**Horticulture Code****Erceg Holdings Pty Ltd**

Perth | 4 March 2008

**Conduct** | traded with growers without Horticulture Code of Conduct-compliant contracts in place and offered growers contracts that did not meet the minimum mandatory requirements of the code.

**Undertaking** | that Erceg Holdings Pty Ltd will:

- > write to growers outlining the non-compliant aspects of its previous grower contracts and offer replacement contracts
- > not trade in horticulture produce with growers who have not entered into a code-compliant horticulture produce agreement with Erceg
- > cause its directors and any other company officer or employee authorised to sign horticulture produce agreements on behalf of Erceg to attend a trade practices compliance seminar on the code.

**Significance** | the minimum mandatory requirements of the code are non-discretionary.

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**Horticulture Code****A. Giumelli & Sons (1989) Pty Ltd**

Perth | 2 April 2008

**Conduct** | trading as a merchant without preparing, publishing or making publicly available a document setting out the general terms and conditions of trade and trading as a grower without having code-compliant horticulture produce agreements in place.

**Undertaking** | that A. Giumelli & Sons will:

- > not trade in produce subject to the code without entering into code-compliant agreements
- > prepare, publish and make publicly available its terms of trade
- > write to growers explaining its contraventions of the code and this undertaking
- > conduct a trade practices seminar focusing on the code and s. 51AD of the Act for those authorised to sign horticulture produce agreements on its behalf and for growers of horticulture produce that it trades with who wish to attend
- > publish an information notice in the Countryman newspaper, distributed in Western Australia.

**Significance** | the minimum mandatory requirements of the Horticulture Code of Conduct are non-discretionary.

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Perth | 13 May 2008

**Conduct** | trading as a merchant without preparing, publishing or making publicly available a document setting out the general terms and conditions of trade and trading as a grower without having code-compliant horticulture produce agreements in place.

**Undertaking** | that Karragullen will:

- > not trade in produce subject to the code without entering into code-compliant horticulture produce agreements
- > prepare, publish and make publicly available its terms of trade
- > write to growers explaining its contraventions of the code and this undertaking
- > conduct a trade practices seminar focusing on the code and s. 51AD of the Trade Practices Act for those authorised to sign horticulture produce agreements on its behalf and for growers of horticulture produce with whom it trades and who wish to attend
- > publish an information notice in the Farm Weekly newspaper and in the WA Farm Weekly magazine distributed in Western Australia.

**Significance** | the minimum mandatory requirements of the Horticulture Code of Conduct are non-discretionary.

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Perth | 3 June 2008

**Conduct** | trading as a merchant without preparing, publishing or making publicly available a document setting out the general terms and conditions of trade and trading as a grower without having code-compliant horticulture produce agreements in place.

**Undertaking** | that Scamonte Ventures Pty Ltd will:

- > when trading in horticulture produce that is subject to the code, trade only with growers who have entered into code-compliant horticulture produce agreements with it
- > prepare, publish and make publicly available a document that sets out its terms of trade
- > write to growers with whom it traded without a signed and returned horticulture produce agreement, enclosing a copy of its terms of trade and proposed horticulture produce agreement
- > publish a notice in the Countryman newspaper, distributed in Western Australia
- > arrange and conduct a trade practices seminar for its directors and company officers or employees authorised to trade in horticulture produce on behalf of Scamonte, and any such growers with whom it traded without a signed and returned horticulture produce agreement who may wish to attend.

**Significance** | the minimum mandatory requirements of the Horticulture Code of Conduct are non-discretionary.

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Perth | 3 June 2008

**Conduct** | trading as a merchant without preparing, publishing or making publicly available a document setting out the general terms and conditions of trade and trading as a grower without having code-compliant horticulture produce agreements in place.

**Undertaking** | that Brimcove Pty Ltd will:

- > when trading in horticulture produce that is subject to the code, trade only with growers who have entered into code-compliant horticulture produce agreements with it
- > prepare, publish and make publicly available a document that sets out its terms of trade
- > write to growers with whom it traded without a signed and returned horticulture produce agreement, enclosing a copy of its terms of trade and proposed horticulture produce agreement
- > publish a notice in the Countryman newspaper, distributed in Western Australia
- > arrange and conduct a trade practices seminar for its directors and company officers or employees authorised to trade in horticulture produce on behalf of Brimcove, and any such growers with whom it traded without a signed and returned horticulture produce agreement who may wish to attend.

**Significance** | the minimum mandatory requirements of the Horticulture Code of Conduct are non-discretionary.

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**Introduction services****Country Contacts International Pty Ltd and Voula Saris**

Darwin | 19 February 2008

**Conduct** | publishing advertisements depicting a woman as available to meet men in that region when in fact the descriptions were often untrue and it was unknown whether the woman was available to meet men in that region and inducing male customers to pay additional fees that were not required to be paid to receive the services.

**Undertaking** | Country Contacts International and Ms Saris have undertaken to:

- > provide refunds to former members totalling \$11 510
- > only use images and descriptions of women in advertisements if the woman has given written consent
- > not represent that certain fees are due when it knows this is not the case or has no reason to believe it is the case
- > only accept 30 per cent of the total fee payable as a prepayment when providing services in Queensland and Victoria
- > implement a trade practices compliance program
- > develop a complaints handling system.

**Significance** | advertisements must not mislead or deceive, particularly where consumers have no real ability to check the accuracy of representations.

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**Introduction services****Rural Network Pty Ltd**

Darwin | 4 March 2008

**Conduct** | misrepresentations about services to be provided by the introduction agency and about financial arrangements with customers.

**Undertaking** | that Rural Network and Ms McDonald:

- > provide refunds to former members totalling \$118 476
- > provide copies of orders made in the Federal Court to certain existing and new members
- > attend trade practices compliance training
- > develop a complaints-handling system.

**Significance** | representations made to potential and current customers must not be misleading or deceptive, particularly if directed at potentially vulnerable consumers.

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## Job advertisements

### Richard Alexander Roberson (trading as Backpacker Employment Services, or BES)

**Conduct** | representations in respect of future matters about the availability and duration of fruit-picking jobs for which there was no reasonable basis.

**Undertaking** | that Mr Roberson will:

- > refrain from making the offending representations in circumstances where they are not correct and/or he does not have reasonable grounds for making such representations
- > write to all subscribers of BES for whom he has an address, informing them of the undertaking and offering a refund
- > publish a consumer notice in relevant newspapers, correcting the misrepresentations made
- > provide a refund of the entire subscription fee to any BES subscriber who requests a refund
- > implement a trade practices compliance program.

**Significance** | businesses that provide employment placement services or otherwise advertise employment positions must ensure they do not mislead job seekers about the nature or availability of employment positions being offered.

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## Medical sheepskins

## Tasman Sheepskin Tannery Pty Ltd

Darwin | 30 November 2007

**Conduct** | misrepresentations on the trader's website and the medical sheepskins themselves that the sheepskins comply with the voluntary Australian standard for medical sheepskins. The sheepskins contained grass seed matter, contrary to the standard, and did not display the labelling required by the standard, in particular the special laundering instructions.

**Undertaking** | that Tasman Sheepskin Tannery Pty Ltd will:

- > refrain from representing that its medical sheepskins comply with the standard in circumstances where they do not
- > write to each of its customers to inform them of the undertaking and offering to replace or refund any of its medical sheepskins that do not display the labelling required under the standard and/or contain grass seed matter
- > implement a trade practices compliance program, to be maintained for three years, for its employees and other persons involved in its business.

**Significance** | customers are entitled to accurate information about the products they purchase, particularly when these products are intended to assist in the prevention and treatment of medical conditions such as pressure ulcers. Businesses should not make false claims that their product meets a voluntary standard when the product does not.

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**Australian Linen Supply Pty Ltd  
(trading as Confident Care Products)**

Darwin | 13 February 2008

**Conduct** | misrepresentations on its website and on the medical sheepskins themselves that the sheepskins complied with the voluntary Australian standard for medical sheepskins. The sheepskins contained grass seed matter, contrary to the standard, and did not display the labelling required by the standard—in particular, the special laundering instructions.

**Undertaking** | Australian Linen Supply has provided court enforceable undertakings to the ACCC that it will:

- > refrain from representing that medical sheepskins supplied by it comply with the standard in circumstances where they do not
- > write to each of its customers informing them of the undertaking and offering to replace or refund any medical sheepskins supplied by it that do not display the labelling required under the standard and/or contain grass seed matter
- > implement a trade practices compliance program, to be maintained for three years, for its employees and other persons involved in its business.

**Significance** | customers are entitled to accurate information about the products they purchase, particularly when these products are intended to assist in the prevention and treatment of medical conditions such as pressure ulcers. Businesses should not make false claims that their product meets a voluntary standard when it does not.

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## Men's suits

### Mainstyle Holdings Pty Ltd and Platinum Menswear Pty Ltd

Perth | 3 December 2007

**Conduct** | false representations during a 'Buy one, get one free' advertising campaign, by representing that the suits were 'Australian made' or 'Australian' when a number of the suits offered for sale were made in China.

**Undertaking** | that Mainstyle and Platinum will:

- > not publish advertisements or promotional material making place of origin representations without reasonable grounds for believing the goods were sourced from the represented place of origin
- > publish corrective notices in specified newspapers
- > display a corrective notice in each of the two front windows of its stores for 21 days
- > offer refunds to customers who were misled
- > implement trade practices compliance training for company staff covering ss. 52 and 53 of the Trade Practices Act
- > implement a corporate complaints-handling system.

**Significance** | country-of-origin claims are considered by consumers to be premium claims and must meet strict disclosure requirements under the Trade Practices Act.

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## Mobile phone plans

### EDirect Pty Ltd

Darwin | 4 March 2008

**Conduct** | misrepresentations in telemarketing calls about the performance and cost of mobile phone plans being offered to persons across Australia but particularly affecting Indigenous Australian consumers in remote communities in the Northern Territory, Queensland and Western Australia. Over 150 customers were contracted to 24-month commitments while living in places without network coverage.

**Undertaking** | that EDirect Pty Ltd refund customers identified as living in areas of Australia with no Optus GSM Network coverage.

**Significance** | this undertaking was offered in conjunction with consent orders made by the Federal Court. Particular care should always be taken to ensure that representations directed at disadvantaged consumers are accurate.

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## Mobile phone retail

### Mobileworld Operating Pty Ltd (trading as Crazy John's)

Melbourne | 28 March 2008

**Conduct** | representations that handsets included in certain phone plans were 'FREE\*' or '\$0\*' when customers effectively paid for the handsets through inflated call rates.

**Undertaking** | Crazy John's will:

- > notify consumers on the affected plans of the existence of compensation
- > refrain from advertising '\$0\*' or 'FREE\*' handsets in a misleading manner
- > implement a trade practices compliance program
- > pay a portion of the ACCC's legal costs in the matter.

**Significance** | use of attention getting terms such as 'FREE\*' or '\$0\*' can be misleading if the price of the goods or services are inflated.

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## Online bicycle sales

### Overstockoutlet Pty Ltd

Darwin | 15 October 2007

**Conduct** | an online supplier imported and distributed a bicycle that did not meet the prescribed consumer product safety standard. The bicycle was represented as being suitable for freestyle riding, which may have misleading because it was labelled as being unsuitable for stunt-riding.

**Undertaking** | that Overstockoutlet will:

- > not supply bicycles that do not comply with any prescribed consumer product safety standards in force at the time
- > not promote a bicycle as being suitable for freestyle or trick riding when it is labelled as being unsuitable for stunt-riding
- > withdraw the bicycles from sale.

**Significance** | online businesses are subject to the same consumer protection laws as 'brick and mortar' businesses.

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## Online classified advertisements

### Trading Post Australia Pty Ltd and Sensis Pty Ltd

Sydney | 21 April 2008

**Conduct** | representations on its website in response to online searches that traders had approvals or affiliations that they did not have.

**Undertaking** | that Trading Post will:

- > consent to suitable declarations being made by the Federal Court
- > not permit the publication of search engine advertisements where the title or headline contains a known competitor's name and the user is directed to the Trading Post website, in circumstances where no information regarding, or advertisements by, that known competitor is contained on the Trading Post website.

**Undertaking** | that Sensis will:

- > not permit the publication of search engine advertisements where the title or headline contains a known competitor's name and the user is directed to the Trading Post website, in circumstances where no information about or advertisements by that known competitor are contained on the Trading Post website
- > implement a trade practices corporate compliance program for Sensis employees and other persons involved in its business.

**Significance** | consumers should be provided with accurate information about approvals and affiliations of products and services.

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## Portable air conditioning

### De Longhi Australia Pty Ltd

Sydney | 29 April 2008

**Conduct** | representations by an importer, distributor and supplier of electrical appliances that its portable air-conditioning products are 'environmentally friendly' and contain 'non-harmful gases' when this is not the case.

**Undertaking** | that De Longhi will:

- > refrain from making false or misleading representations about the environmental attributes of its products
- > implement a trade practices compliance program for De Longhi employees and other persons involved in its business.

**Significance** | extra care is required when making environmental claims.

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## Quilts

### Designer Direct (SA) Pty Ltd

Hobart | 5 October 2007

**Conduct** | representations that quilts contained significantly higher percentages of down than shown by independent testing.

**Undertaking** | that Designer Direct will:

- > offer refunds to consumers who purchased a 'Mahogany Summer' or 'Mahogany Winter' brand quilt represented to contain 50 per cent down
- > refrain in future from making any down content claims for its 'Mahogany Summer' or 'Mahogany Winter' or other own-brand down products unless the claims can be substantiated by independent testing
- > implement a trade practices compliance program for Designer Direct employees and other persons involved in its business.

**Significance** | misleading and deceptive conduct is even more serious where it is difficult or impossible for consumers to establish the truth or otherwise of the representations.

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## Snack food

### Tasti Products Limited

Canberra | 4 March 2008

**Conduct** | representations on packaging implied that the products contained a significant amount of some individual fruits, when the ingredients listed the individual fruits at around 1 per cent to 1.5 per cent of the total product.

**Undertaking** | that Tasti Products:

- > amend the packaging of the identified 'Weight Watchers' fruit cereal bars
- > publish a corrective notice in a Saturday edition newspaper in each Australian state and territory
- > publish a corrective notice on its website
- > review and implement changes to its trade practices compliance program.

**Significance** | when labelling food products, care must be taken to ensure that implied content claims can be substantiated in the product ingredients.

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## Sunglasses

### Myer Pty Ltd

Melbourne | 20 December 2007

**Conduct** | supply of the Bloc and Stone ranges of sunglasses that did not comply with the labelling requirements specified in the mandatory consumer product safety standard for sunglasses (*AS/NZS 1067: 2003 Sunglasses and fashion spectacles*).

**Undertaking** | that Myer Pty Ltd will:

- > ensure for a period of three years that goods supplied by Myer that are subject to a prescribed safety and/or information standard under the Trade Practices Act comply with the relevant standard
- > implement a trade practices compliance program.

**Significance** | mandatory product safety standards must be adhered to.

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## Sunglasses

### J. L. Footwear Pty Ltd (trading as Nine West)

Melbourne | 29 April 2008

**Conduct** | a retailer of shoes and accessories such as handbags and sunglasses failed to comply with both the labelling and performance requirements of the mandatory consumer product safety standard (*AS/NZS 1067:3003, Sunglasses and fashion spectacles*).

**Undertaking** | that Nine West will:

- > ensure that sunglasses supplied by Nine West that are subject to a prescribed safety and/or information standard will comply with that standard
- > implement a trade practices corporate compliance program.

**Significance** | mandatory product safety standards are non-discretionary.

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## Sunglasses

### Paris Miki Australia Pty Ltd

Melbourne | 29 April 2008

**Conduct** | supply to consumers of sunglasses that failed to comply with the labelling requirements of the mandatory consumer product safety standard prescribed under the Trade Practices Act—namely, *AS/NZS 1067:2003, Sunglasses and fashion spectacles*.

**Undertaking** | that Paris Miki will:

- > ensure goods supplied by it that are subject to a prescribed safety and/or information standard comply with the relevant standard
- > put in place procedures to ensure display and sales stock of sunglasses are appropriately labelled
- > implement a trade practices compliance program.

**Significance** | mandatory product safety standards are non-discretionary.

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## Sunglasses

### Chelsea Girl Pty Ltd

Melbourne | 13 May 2008

**Conduct** | supply of sunglasses to consumers that failed to comply with the mandatory consumer product safety standard prescribed under the Trade Practices Act—namely, *AS/NZS 1067:2003, Sunglasses and fashion spectacles*.

**Undertaking** | that Chelsea will:

- > ensure sunglasses supplied by it that are subject to a prescribed safety and/or information standard comply with the relevant standard
- > put in place procedures to ensure display and sales stock of sunglasses are appropriately labelled
- > implement a trade practices compliance program.

**Significance** | mandatory product safety standard are non-discretionary.

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**Sunglasses and  
fashion spectacles**

**AFWM Pty Ltd (trading as Cosmetics Plus and  
Mr Larry Norden)**

Brisbane | 14 November 2007

**Conduct** | retail sale of sunglasses and fashion spectacles that did not comply with the labelling requirements of the mandatory product safety standard.

**Undertaking** | that Cosmetics Plus and its director, Mr Larry Norden:

- > will not supply sunglasses and fashion spectacles that do not fully comply with the relevant mandatory consumer product safety and information standards
- > will implement a trade practices corporate compliance program.

**Significance** | mandatory product safety standards must be adhered to.

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**Sunglasses and  
fashion spectacles**

**Fossil Retail Stores (Australia) Pty Ltd**

Melbourne | 29 April 2008

**Conduct** | supply to consumers of sunglasses and fashion spectacles that failed to comply with the mandatory consumer product safety standard prescribed under the Trade Practices Act—namely, *AS/NZS 1067:2003, Sunglasses and fashion spectacles*.

**Undertaking** | that Fossil will:

- > ensure goods supplied by it that are subject to a prescribed safety and/or information standard comply with the relevant standard
- > put in place procedures to ensure display and sales stock of sunglasses are appropriately labelled
- > implement a trade practices compliance program.

**Significance** | mandatory product safety standards are non-discretionary.

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**Gotalk Ltd**

Canberra | 19 June 2008

**Conduct** | misrepresentations by telemarketers selling the services of a phone company about affiliations of the phone company and the price and terms and conditions of the services being offered.

**Undertaking** | that Gotalk will:

- > institute a scheme to compensate current and former customers for financial loss resulting from unlawful conduct by telemarketers
- > write to current customers obtained through telemarketing and place newspaper advertising to inform past customers of the compensation scheme
- > only obtain telemarketing services from a supplier where it has assessed the telemarketers' compliance and quality control capabilities
- > use its best endeavours to have its call centre comply with scripts it has prepared and ensure those scripts make it clear that Gotalk is not affiliated with any other telecommunications provider
- > monitor calls made by its call centre
- > require the call centre to provide complete recordings of calls to potential customers and customers, which it must retain for 12 months
- > institute a trade practices compliance program.

**Significance** | businesses using overseas telemarketing services to promote their business or to sell their products or services must monitor the quality control capabilities and conduct of the telemarketers and act promptly and decisively where misrepresentation is occurring.

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## Toys

### Rite Price Wholesalers Pty Ltd

Perth | 27 February 2008

**Conduct** | importation and supply to retailers of toys that did not comply with a mandatory consumer protection notice banning toy products containing accessible materials with a lead migration of more than 90 milligrams per kilogram.

**Undertaking** | that Rite Price will:

- > not in future supply any children's toys that do not fully comply with the relevant mandatory consumer product safety standards
- > contact retailers to which it has supplied the toys and request them to display an information notice in their stores
- > implement a trade practices compliance program.

**Significance** | mandatory product safety standards are non-discretionary.

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## Toys

### Captain Choppers Pty Ltd

Perth | 12 March 2008

**Conduct** | sale of a toy product to retailers that did not comply with a mandatory consumer protection notice banning toy products containing accessible materials with a lead migration of more than 90 milligrams per kilogram.

**Undertaking** | that Captain Choppers Pty Ltd will:

- > not in future supply any children's toys that do not fully comply with the relevant mandatory consumer product safety standards
- > contact retailers to which it has supplied the toys and request them to display an information notice in their stores
- > implement a trade practices compliance program.

**Significance** | mandatory product safety standards are non-discretionary.

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Perth | 3 June 2008

**Conduct** | promotion of the Nilfisk vacuum cleaner as being available for 'half price' in Western Australia when it was not previously offered for sale in the marketplace at full price before the promotion.

**Undertaking** | that Godfreys Franchise Systems will:

- > refrain from referring to prices for vacuum cleaners in promotions where those vacuum cleaners have not been readily available from Godfreys or in the marketplace in reasonable quantities for a reasonable period immediately before the promotions
- > request that the Godfreys stores involved in the conduct display an information notice about the conduct
- > publish a notice about the conduct in the next Godfreys catalogue distributed in the area of the Godfreys stores involved in the conduct
- > establish a trade practices compliance program.

**Significance** | price comparisons must be real and meaningful so that consumers are not misled concerning the existence or size of any discount or saving.

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## Vacuum cleaner sales

### Hoover Floorcare Asia Pacific Pty Ltd

Perth | 3 June 2008

**Conduct** | misrepresentations about the power output of certain vacuum cleaner products.

**Undertaking** | that Hoover will:

- > only make a representation about the power output of its vacuum cleaners where that representation is correct and can be verified
- > include extra attachments if needed to achieve the represented power output or indicate prominently that they are not included
- > discontinue distributing publishing material that misrepresents the power output of the two products
- > request that retailers display a notice in their stores regarding the conduct

cause to publish an information notice regarding the conduct in the *Weekend Australian* newspaper and on the Hoover website

- > establish a trade practices compliance program.

**Significance** | advertisements must not mislead or deceive, particularly where consumers have no real ability to check the accuracy of representations.

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## Vehicle jacks

### Jayco Corporation Pty Ltd

Melbourne | 8 April 2008

**Conduct** | supply of vehicle jacks with caravans that were not marked with their nominated capacity and which included an inaccurate statement about compliance with the mandatory standard on vehicle jacks.

**Undertaking** | that Jayco will not, in relation to any good subject to a mandatory consumer product safety standard that it supplies:

- > represent that the good complies with the mandatory consumer product safety standard when it does not
- > supply or offer to supply that good if it is a good that is intended to be used or is of a kind likely to be used by a consumer unless the good complies with the mandatory consumer product safety standard.

**Significance** | compliance with mandatory safety standards is not optional.

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# Appendix 9

## When we did it

A list of key activities by calendar month

### July 07

Published interim determinations in two telecommunications access disputes.

Published Telstra's exemption applications in relation to the LCS and WLR service.

Issued Telstra accounting separation report for the March quarter 2007.

Granted authorisation to Singapore Airlines, on behalf of the Star Alliance, for the Corporate Plus and the Conventions Plus programs.

Decided not to oppose Tattersall's Limited proposed acquisition of Golden Casket Lottery Corporation Ltd after accepting court enforceable undertakings.

ACCC proceedings lead to court penalties on two Adelaide cardiothoracic surgeons.

ACCC commencing court proceedings in relation to Trading Post and Google conduct.

ACCC proceedings lead to court \$9 million penalties for Western Australian air conditioner cartel.

### August 07

Made interim determinations in three telecommunications access disputes.

Published final determinations in three telecommunications access disputes.

Notified of three telecommunications access disputes—TPG Internet Pty Limited and Telstra Corporation Limited, and two separate disputes between Macquarie Telecom Pty Limited and Telstra Corporation Limited.

Issued draft decision on regulation of the LSS.

Issued WLR service.

Issued the 2005–06 telecommunications market indicator report.

Commenced public hearings for the inquiry into the price of unleaded petrol.

Granted authorisation to allow the South East Potato Growers Association to collectively negotiate with McCain Foods and Safries.

Allowed a collective bargaining proposal by three Queensland citrus growers to collectively negotiate with Woolworths and IGA.

Opposed PMP Ltd's proposed joint venture with McPherson's Limited book printing businesses.

Decided not to oppose Wesfarmers Ltd's proposed acquisition of Coles Group Limited.

Issued a new suite of publications on consumer rights in relation to refunds and warranties.

Launched joint consumer publication with ASIC on debt collection practices.

\$300 000 scam funds frozen following ACCC court intervention.

Institute proceedings against ANZ Bank over alleged price fixing agreement.

Institute legal proceedings against stevedores for alleged collusion.

High Court upheld ACCC appeal in relation to Crown immunity.

## September 07

Instituted proceedings in the Federal Court against Telstra for alleged contraventions of Part V of the Trade Practices Act relating to the promotion of its Next G network.

Issued discussion paper on the digital radio access regime.

Issued Telstra accounting separation report for the June quarter 2007.

Made the Telstra customer access network (CAN) RKR.

Granted authorisation allowing a joint tender process between National Foods and Australian Co-operative Foods for milk haulage services in South Australia.

Granted authorisation for collective licensing arrangements for the public performance or broadcast of sound recordings and music videos in Australia.

Revoked a notification that required franchisees of Seal-A-Fridge to acquire door seal supplies from nominated approved suppliers.

Allowed a collective bargaining proposal for Western Australian members of Australian Newsagents Federation to collectively negotiate with Western Australian Newspapers.

Decided not to oppose Video Ezy's proposed acquisition of Blockbuster Australia after accepting court enforceable undertakings.

Launched online information outlining ACCC process for investigating franchise complaints.

ICPEN Internet Sweep 2007 targeting testimonials, guarantees and endorsements.

Launched publication on consumer rights in buying Indigenous Australian art.

## October 07

Issued final decision on regulation of the LSS.

Issued discussion papers on Telstra's exemption applications in relation to the PSTN OA service, the DTCS, and the LCS and WLR service.

Issued 2006–07 container stevedoring monitoring report.

Opposed Woolworths Ltd's proposed acquisition of Officeworks and Kmart.

Opposed Pact Group Pty Ltd proposed acquisition of Brickwood Holdings Pty Ltd.  
Decided not to oppose Rio Tinto's proposed acquisition of Alcan Inc.  
Launched new quarterly publication—*ACCCCount*—detailing ACCC activities.

## November 07

Made final determination in one telecommunications access dispute.  
Published interim determinations in three telecommunications access disputes.  
Notified of three telecommunications access disputes—Agile Pty Limited and Telstra Corporation Limited; Soul Pattinson Telecommunications Pty Limited and Telstra Corporation Limited; and Telstra Corporation Limited and Hutchison 3G Australia Pty Limited.  
Issued final decision to reject Optus' MTAS undertakings.  
Published final pricing principles for the ULLS.  
Issued pricing principles determination for the MTAS.  
Issued discussion paper on the declaration of the ISDN and DDAS.  
Public hearings for the inquiry into the price of unleaded petrol ended.  
Decided not to oppose BUPA Australia Pty Ltd's proposed merger with MBF Australia Limited.  
Federal court imposed penalties of \$36 million against Visy Board Pty Ltd in relation to corrugated fibreboard box cartel.  
Obtained penalties against Victorian abalone quota holders over cartel.

## December 07

Received access undertaking application from ARTC.  
Minister for Climate Change and Water requested that the ACCC provide advice on the development of water market and water charge rules under the *Water Act 2007*.  
Made interim determination in one telecommunications access dispute and final determinations in 11 telecommunications access disputes.  
Published final determination in one telecommunications access dispute.  
Released a position paper on the possible variation of the ULLS declaration.  
Published Telstra's exemption applications relating to a range of fixed-line services and the DTCS.  
Issued draft decision to reject the G9 consortium's SAU for the FTTN network.



Notified of five telecommunications access disputes—Telstra Corporation Limited and Optus Mobile Pty Limited; Telstra Corporation Limited and Optus Networks Pty Limited; Chime Communications Pty Limited and Telstra Corporation Limited; EFTel Pty Limited and Telstra Corporation Limited; and Digiplus Pty Limited and Telstra Corporation Limited.

Federal Court found Telstra's advertising about its Next G coverage 'misleading'.

Federal Court made final orders affirming the invalidity of the ACCC's competition notice to Telstra.

Made the Audit of Telecommunications Infrastructure RKR.

Delivered the report of the inquiry into the price of unleaded petrol to the government and made the report publicly available.

Directed by government to monitor the prices, costs and profits for three years relating to the supply of unleaded petroleum products under the price monitoring provisions of the Trade Practices Act.

Granted authorisation to Qantas for tariff arrangements with designated airlines.

Revoked a notification from Racing and Wagering Western Australia that required licensed horse trainers to obtain workers compensation insurance from a nominated insurer.

Allowed a collective bargaining proposal for anaesthetists in Wangaratta to collectively negotiate with BUPA Australia.

Federal Court finds Tasmanian orthodontists engaged in price fixing and market sharing.

Federal Court finds that Telstra misled consumers about Next G coverage.

## January 08

Instituted proceedings in the fast track list in the Federal Court against Crazy John's for alleged misleading or deceptive conduct in contravention of s. 52 of the Trade Practices Act.

Made final determination in one telecommunications access dispute.

Issued discussion papers on Telstra's exemption applications relating to regulated fixed-line services in Optus cable network areas.

Notified of three telecommunications access disputes—Wideband Networks Pty Limited and Telstra Corporation Limited; Primus Telecommunications Pty Limited and Telstra Corporation Limited; and Telstra Corporation Limited and Digiplus Pty Limited.

Issued Telstra accounting separation report for September quarter 2007.

Granted a transitional authorisation for a queue management system designed to address the imbalance between demand for coal-loading services at Dalrymple Bay and the capacity of the Goonyella coal chain.

Revoked a notification that required users of the Lascelles Wharf to use GeelongPort's figee cranes for the purpose of unloading fertiliser and other dry-bulk cargoes.

Allowed a group of removalists to collectively negotiate with Asciano Service Pty Ltd.

Issued a new publication on consumer rights and mobile phone handsets.

## February 08

Made interim determinations in three telecommunications access disputes.

Issued discussion paper on Telstra's exemption applications in relation to the DTCS.

Notified of five telecommunications access disputes—TransACT Capital Communications Pty Limited and Telstra Corporation Limited; TPG Internet Pty Limited and Telstra Corporation Limited; Agile Pty Limited and Telstra Corporation Limited; Saunders Property Pty Limited and Telstra Corporation Limited; and Request Broadband Pty Limited and Telstra Corporation Limited.

Provided submission to Communications Alliance process on the ULLS and LSS.

Issued Telstra current cost accounting separation report for the second half of and the full year 2006–07.

Undertook 'Fraud Fortnight' to raise awareness about increasing dangers of scams.

Issued guidelines for green marketing and the Trade Practices Act.

Issued revised draft 'Merger guidelines' for public consultation.

Opposed Sumitomo Forestry Company Ltd's proposed acquisition of certain assets of Carter Holt Harvey Ltd's Woodproducts Australia business.

Decided not to oppose A&R Whitcoulls Group Holdings' proposed acquisition of Borders Australia Pty Ltd.

## March 08

Issued airport monitoring report combining quality of service, price monitoring and financial reporting 2006–07.

Made interim determinations in six telecommunications access disputes and final determinations in three telecommunications access disputes.

Issued draft report on declarations of the DDAS and ISDN.

Published Telstra's revised ULLS undertaking.

Accepted court enforceable undertakings from Crazy John's that included compensation for customers who felt they were misled by the company's 'Free\*' or '\$0\*' handset advertising campaign.

High Court upheld the constitutional validity of the telecommunications access regime.

Launched new SCAMwatch tool in Fraud Fortnight.

Federal Court declares pizza oven provider misled small business owners.

Commenced proceedings against Allphones Retail in relation to dealings with franchisees.

Obtained gaol time for discredited cancer therapist for failure to comply with ACCC notices.

Federal Court imposed penalties of \$2.5 million for wood preservative price fix against F Chem (Aust) Ltd and Osmose Australia Pty Ltd.

## April 08

Commenced monitoring of prices, costs and profits of the supply of car-parking services at Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports.

Issued draft decision to accept a rail access undertaking submitted by ARTC subject to ARTC addressing a number of issues raised by the ACCC.

The ACCC released an issues paper seeking submissions on the development of water market rules.

Made interim determination in one telecommunications access dispute and final determinations in three telecommunications access disputes.

Published final determination in one telecommunications access dispute.

Issued draft decision to grant Telstra exemptions in relation to the LCS and WLR service in parts of metropolitan Australia.

Released amended pricing principles determination for the ULLS.

Issued draft pricing principles determination for the LCS and WLR service.

Notified of telecommunications access dispute—Netspace Networks Pty Limited and Telstra Corporation Limited.

Issued final version of the telecommunications transmission cost model.

Issued draft legislative instruments on the digital radio access regime.

Issued Telstra accounting separation report for December quarter 2007.

Government announced it would establish a national Fuelwatch scheme.

Granted authorisation for a transitional system to address capacity imbalances between the demand for coal-loading services at the Port of Newcastle and the available capacity of the Hunter Valley coal chain.

Issued Telstra current cost accounting separation report for the first half of 2007–08.

Announced the cessation of Bakers Delight franchise investigation.

## May 08

Released issues paper seeking submissions on development of water charge rules for fees and charges payable to irrigation infrastructure operators.

Period for public submissions on the development of water market rules closed.

Made interim determinations in two telecommunications access disputes.

Published final determinations in two telecommunications access disputes.

Notified of two telecommunications access disputes—Optus Mobile Limited and Telstra Corporation Limited; and Optus Networks Pty Limited and Telstra Corporation Limited.

Published draft RKR proposing to oversee access to Telstra exchange facilities.

Began consultation on procedural rules that will apply to telecommunications specific provisions under the Trade Practices Act.

Issued legislative instruments on the digital radio access regime.

Released request for tender for assistance in developing the IT system for Fuelwatch.

Granted authorisation to the Rural Doctors Association of Australia to collectively negotiate with state and territory health departments the terms of contracts for rural generalist and general practitioner visiting medical officers in rural areas.

Revoked a notification that required real estate agents to agree to place 75 per cent of the total print display advertising (by centimetre volume) for properties in the eastern suburbs of Sydney with the *Wentworth Courier*.

Warned businesses to be careful about their environmental claims.

Launched DVD on infant nursery safety.

Had its compulsory information-gathering powers upheld in the Federal Court.

## June 08

Made interim determinations in nine telecommunications access disputes.

Issued final report on declarations of the DDAS and ISDN.

Issued discussion paper on Telstra's revised ULLS undertaking.

Set final indicative prices for the ULLS.

Notified of eight telecommunications access disputes—Primus Telecommunications Pty Limited and Telstra Corporation Limited; XYZed Pty Limited and Telstra Corporation Limited; Request Broadband Pty Limited and Telstra Corporation Limited; PowerTel Limited and Telstra Corporation Limited; Chime Communications Pty Limited and Telstra Corporation Limited; Macquarie Telecom Pty Limited and Telstra Corporation Limited; and two separate disputes between Optus Networks Pty Limited and Telstra Corporation Limited.

Tabled two annual statutory reports in parliament—the competitive safeguards report and the changes in prices for telecommunications services report.

Issued Telstra accounting separation report for March quarter 2009.

Issued a draft notice proposing to oppose an arrangement under which eBay proposed to supply the services offered on the [www.ebay.com.au](http://www.ebay.com.au) site (including search, listing and transaction functions) to registered users of the site, on condition that users only acquire the online payment services provided by PayPal Australia Pty Ltd.

Opposed Woolworths Ltd's proposed acquisition of Karabar Supabarn supermarket.

Commenced criminal prosecution against Richard Pratt for allegedly providing false or misleading evidence.

Alleged contraventions of the Horticulture Code of Conduct.

Launched suite of ACCC guidance materials on carbon offsets claims.

# Appendix 10

## Consultative (stakeholders) committees

The ACCC continued to work with its key stakeholders to promote competitive, efficient, fair and informed markets. During 2007–08 the ACCC's five consultative committees provided feedback on our enforcement, compliance and regulatory activities and provided input to our education campaigns.

Each quarter consultative committee members receive a report detailing the ACCC's latest work. The report provides an update on recent litigation, international developments, merger reviews, arbitrations, determinations, price monitoring activities and call activity to the ACCC Infocentre, a nationally available service.

Members of the Energy Consultative Committee are also members of the ACCC's Utility Regulators Forum. As a result the ECC did not meet during the 2007–08 financial year. Critical energy matters and emerging issues associated with the regulation of national infrastructure were discussed at the Utility Regulators Forum. This will now become the key forum the ACCC and the AER will use to liaise with energy market stakeholders.

### Small Business Advisory Group

This group provides the ACCC with the opportunity to liaise with small business stakeholders, discuss emerging issues and work towards a collaborative approach to addressing them. The Small Business Advisory Group meetings were held in November 2007 and May 2008. All members attended both meetings.

The group membership comprises:

- > Australian Federation of Business and Professional Women
- > Australian Retailers Association
- > Australian Hotels Association
- > Council of Small Business of Australia
- > Australian Industry Group
- > Real Estate Institute of Australia
- > Franchise Council of Australia
- > Institute of Chartered Accountants in Australia
- > Law Council of Australia
- > Housing Industry Association
- > Master Builders Association
- > National Farmers Federation

- > Motor Trades Association of Australia
- > Australian Chamber of Commerce and Industry
- > The Pharmacy Guild of Australia.

Issues discussed by the group this year include:

- > amendments to the *Trade Practices Act 1974*, particularly those relating to small business concerns
- > collective bargaining and the notification process
- > the ACCC's approach to the enforcement of, and education about, the unconscionable conduct provisions of the Trade Practices Act
- > the ACCC's petrol and grocery inquiries
- > strategies for engaging with small business
- > retail leasing.

## Franchising Consultative Panel

This panel was established by the ACCC to facilitate a more collaborative approach to discussing and resolving issues and concerns in the franchising sector. During the 2007–08 financial year, the Franchising Consultative Panel met in May 2008. All members attended the meeting, while representatives of the DIISR and the Office of the Mediation Adviser attended as observers.

Members of the panel include franchisees, industry associations with a particular interest in franchising, franchise consulting businesses, academics conducting research into franchising issues and law firms which advise on franchising issue.

Current membership comprises:

- > Australian Retailers Association
- > Dibbs Abbott Stillman
- > Federal Chamber of Automotive Industries
- > Franchise Advisory Centre
- > Franchise Council of Australia
- > Franchising Solutions
- > Griffith University
- > Home Wilkinson Lowry
- > Hydrodog
- > Just Cuts
- > Motor Trades Association of Australia.

Issues discussed at the meeting included:

- > the March 2008 amendments to the code
- > ACCC franchising education initiatives
- > the ACCC's joint research project with Griffith University regarding conflict in franchising systems and a report from the Office of the Mediation Adviser.

## Consumer Consultative Committee

The Consumer Consultative Committee comprises consumer, community and welfare organisations from around Australia that meet to advise the ACCC on issues and trends affecting consumers that fall within the scope of the Trade Practices Act.

A new committee was convened in December 2007 following a membership review. Members are appointed for a term of approximately two years, with regular reviews to ensure a dynamic and representative membership.

Members assist the ACCC in its administration of the Act to enhance the delivery of consumer outcomes. Meetings are held three times a year. The Consumer Consultative Committee also:

- > facilitates comment to the ACCC on issues affecting consumers that fall within the scope of the ACCC's administration of the Trade Practices Act and allows group members to inform the ACCC about issues that affect the groups they represent
- > enables the ACCC to ensure its communication and compliance strategies meet the needs of consumers
- > provides tangible outcomes for consumers through work that members undertake in partnership with other members and the ACCC improves consumer and community organisations' understanding of the Trade Practices Act and access to the administrative processes of the ACCC
- > develops and implements further strategies to ensure businesses comply with the Trade Practices Act and improve their processes to take account of, or rectify, consumer issues identified by the ACCC and the Consumer Consultative Committee
- > assists the ACCC in its dissemination strategies and appropriate external networks available to enhance communication with community and consumer groups and consumers and issues as requested by the ACCC.

## Committee membership

Membership of the CCC comprises senior officers of the following consumer, community and welfare organisations:

- > Australian Council on the Ageing
- > Australian Federation of Disability Organisations
- > Australian Financial Counselling and Credit Reform Assoc.
- > CHOICE
- > Consumer Action Law Centre
- > Consumers Federation of Australia
- > Consumers Telecommunications Network
- > Country Women's Association of Australia
- > Federation of Ethnic Communities' Council of Australia
- > Indigenous Consumer Assistance Network
- > Kidsafe Victoria Inc.
- > Public Interest Advocacy Centre
- > Western Australian Council of Social Service
- > Youth Law Victoria.



## Issues dealt with

Outcomes from the committee during the 2007–08 year include:

- > advice on emerging consumer issues including scams, warranties and refunds, and product safety
- > assisting in the development of consumer materials, including the translation of consumer materials and conversion into alternative formats for people with print disabilities, including Know How to Complain and Australasian Consumer Fraud Taskforce/SCAMwatch material
- > assisting in development of strategies to help disadvantaged and vulnerable consumers
- > contributing as community partners in the annual national campaign conducted by the Australasian Consumer Fraud Taskforce, which the ACCC chairs.

## Health Sector Consultative Committee

The Health Sector Consultative Committee was formed to continue the liaison process between the ACCC and the health sector that developed through the operation of the Health Services Advisory Committee. The HSCC meets twice annually and in the 2007–08 financial year, meetings were held in November and April.

The HSCC provides a forum for the ACCC to advise the health sector (through its representatives on the committee) on trade practices issues and for committee members, including consumer representatives, to raise trade practices queries or concerns relevant to their position within the sector.

Membership of the HSCC comprises:

- > Australian Dental Association
- > Australian Health Insurance Association
- > Australian Health Ministers Advisory Council
- > Australian Medical Association
- > Australian Physiotherapy Association
- > Australian Private Hospitals Association
- > CHOICE
- > Committee of Presidents of Medical Colleges
- > Department of Health and Ageing
- > National Rural Health Alliance
- > Optometrists Association Australia
- > The Pharmacy Guild of Australia.

Issues discussed by the HSCC at its meeting this year included:

- > amendments to the Trade Practices Act
- > ACCC enforcement action relating to the health sector
- > issues surrounding food labelling and 'organic' claims
- > complaints and inquiries about the sector received by the ACCC
- > product safety
- > advertising issues for the sector
- > informed financial consent.

Issues discussed by the ICC this year include:

- > methodology for assessing the impact of competition policy reforms on Australia's infrastructure performance
- > price spikes in the electricity wholesale market
- > the nature of the debate regarding the bias in the risk free rate
- > development in the water industry and the ACCC's new water role
- > new regulatory arrangement regarding airports
- > ACCC's inquiry and price monitoring roles and feedback on the petrol report
- > green marketing and the Trade Practice Act
- > AER/ACCC WACC review process
- > establishment and progress of a new ICC research project on the benchmarking of international regulatory processes and practices.

### ICC meetings 2007–08 and member attendance

Members	December 2007	May 2008
Association of Australian Ports and Marine Authorities Inc.	X	
Australasian Railway Association		
Australian Airports Association	X	X
Australian Pipeline Industry Association	X	
Australian Telecommunications Users Group	X	X
Australian Water Association	X	X
Board of Airlines Association of Australia		
Communications Alliance	X	
Competitive Carriers Coalition	X	
Energy Networks Association	X	X
Energy Supply Association of Australia		
Energy Users Association	X	X
Grid Australia	X	X
Infrastructure Partnerships Australia		X
Macquarie Bank		
Sing Tel Optus	X	X
Standard & Poor's		X
Telstra	X	X
Water Services Association of Australia	X	X

### Infrastructure Consultative Committee

The Infrastructure Consultative Committee was set up in 2006 to facilitate discussions on the broad issues of infrastructure and infrastructure regulation. The committee was selected to be representative of the diversity of infrastructure interests and includes representatives from the energy, telecommunications, water, rail, port and airports areas.

The ICC is an important mechanism for the ACCC to gain feedback from stakeholders in the infrastructure sector. Operational issues and the specifics of decisions before the ACCC and/or the AER are not the focus of this committee. Rather, the focus is on issues in the practice of regulation that cross the different infrastructure sectors.

The ICC commissions research work for discussion.

External membership of the ICC includes:

- > Association of Australian Ports and Marine Authorities Inc.
- > Australasian Railway Association
- > Australian Airports Association
- > Australian Pipeline Industry Association
- > Australian Telecommunications Users Group
- > Australian Water Association
- > Board of Airlines Association of Australia
- > Communications Alliance
- > Competitive Carriers' Coalition
- > Energy Networks Association
- > Energy Supply Association of Australia
- > Energy Users Association
- > Grid Australia (formerly Electricity Transmission Network Owners Forum, ETNOF)
- > Infrastructure Partnerships Australia
- > Macquarie Bank
- > Optus
- > Standard & Poor's (Australia) Pty Ltd
- > Telstra
- > Water Services Association of Australia.

# Appendix 11

## ACCC member profiles

### Graeme Samuel AO



**Graeme Samuel** was appointed acting chair of the ACCC on 1 July 2003 and then chair for a five-year term beginning 1 August 2003. He was appointed for a further three-year term on 1 August 2008.

Prior to his first appointment to the ACCC he was president of the National Competition Council, Chair of the Melbourne and Olympic Parks Trust, a commissioner of the Australian Football League, a member of the Board of the Docklands Authority and a director of Thakral Holdings Limited.

He relinquished all these offices to assume his position with the ACCC.

Mr Samuel is also an Associate Member of the Australian Communications and Media Authority.

He is a past president of the Australian Chamber of Commerce and Industry, a past chairman of Playbox Theatre Company and Opera Australia, a former trustee of the Melbourne Cricket Ground Trust and former chairman of the Inner and Eastern Health Care Network.

Until the early 1990s he pursued a professional career in law and investment banking, from which he retired to assume a number of roles in public service and company directorships.

Mr Samuel holds a Bachelor of Laws (Melbourne) and Master of Laws (Monash). In 1998 Mr Samuel was appointed an Officer in the General Division of the Order of Australia.

## Deputy chairs

### Peter Kell



**Peter Kell** was appointed a deputy chair of the ACCC in July 2008 for a five-year term. Mr Kell chairs the Adjudication Committee and is a member of the Enforcement Committee. He serves on the Consumer Policy Committee of the Organisation for Economic Co-operation and Development (OECD) and the International Consumer Protection and Enforcement Network. He is also a member of the Advisory Board of the federal government's Financial Literacy Foundation.

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

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

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

Mr Kell has a BA with Honours in Economics from the University of Sydney.

## Michael Schaper



**Michael Schaper** was appointed to the ACCC on 30 May 2008 for five years.

Dr Schaper brings extensive experience in the area of small business through his previous roles as the Australian Capital Territory Small Business Commissioner, Dean of Murdoch University Business School in Western Australia and as president of the Small Enterprise Association of Australia and New Zealand. He has also been a member of the board of directors of the International Council for Small Business, served as head of the School of Business at Bond University, and held the foundation professorial chair in Entrepreneurship and Small Business at the University of Newcastle. Before this, he was employed as a senior lecturer at Curtin University, responsible for the university's entrepreneurship degree programs.

Between 2001 and 2003 Dr Schaper held several posts as visiting Professor at the Ecole de Management Lyon, France, and the University of St Gallen, Switzerland. In Australia he has served as an Adjunct Professor at both Curtin University and the University of Canberra.

In addition to his extensive academic career, Dr Schaper has worked as a professional small business advisor and as the owner of a number of new business start-ups.

The author or co-author of eight business management books, he has been a regular columnist in a number of national magazines, newspapers and journals on business issues. He has also worked as a policy advisor to government at both the state and federal levels.

Dr Schaper is a member of the ACCC's enforcement and adjudication committees.

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

## Louise Sylvan



**Louise Sylvan** was appointed deputy chair in November 2003. She was formerly the chief executive of the Australian Consumers' Association and president of Consumers International. Ms Sylvan completed her term with the ACCC on 31 July 2008.

Ms Sylvan served on the ACCC's enforcement, mergers, communications and adjudications committees.

## Members

### Sarah Court



**Sarah Court** was appointed to the ACCC in April 2008 for a period of five years. She brings with her more than ten years' experience as a senior government lawyer specialising in federal litigation, including administrative law, employment law, workers compensation, freedom of information and trade practices enforcement litigation.

Ms Court oversees the ACCC's enforcement and litigation program, and is Chairperson of the Commission's Enforcement Committee.

Before joining the ACCC Ms Court was employed as a senior executive lawyer and director at the Australian Government Solicitor. Ms Court's roles at the AGS included director of the Adelaide and Darwin AGS offices, director of the National Tax Practice and National Client Service Manager for the ACCC.

Ms Court has also practised extensively in trade practices law and litigation and has considerable experience conducting consumer protection enforcement litigation for the ACCC. This included advising on investigations, evidence-gathering, conducting formal interviews, working with counsel and developing case management and investigation strategies. Ms Court has particular expertise in unconscionable conduct matters.

Ms Court holds a Bachelor of Arts (Jurisprudence) and Bachelor of Law from the University of Adelaide as well as a Graduate Diploma in Legal Practice from the Australian National University. She was admitted to legal practice in the Australian Capital Territory in 1996 and is currently undertaking MBA study (part-time) through the Australian Graduate School of Management.

### Stephen King



**Stephen King** was appointed in June 2004 for a five-year term. He is the commissioner specialising in mergers.

Dr King is an accomplished academic and one of Australia's most respected expert witnesses and lecturers in the field of economics. Before joining the ACCC he was Professor of Economics at the University of Melbourne from 1998 and a Professor of Management (Economics) at the Melbourne Business School from 2002. He has a PhD from Harvard University and was awarded the University Medal by the Australian National University.

Dr King has been published widely in leading economic journals, and from 1999–2001 edited the *Australian Economic Review*.

## John Martin



**John Martin** was executive director of the Australian Chamber of Commerce and Industry from 1989 until his appointment to the ACCC in June 1999.

In his position at ACCI he was responsible for representation of business interests nationally and development of business policies and programs, particularly as they affect small and medium enterprises. Mr Martin was a member of the Board of Standards Australia for over five years and was an Australian industry representative on the Business and Industry Advisory Committee to the OECD.

Mr Martin has responsibility for the ACCC's small business and rural and regional program and he is chairman of the ACCC's Transport Committee.

Mr Martin holds an economics degree from the Australian National University.

He started his second five-year term on 7 June 2004.

## Edward Willett



**Edward Willett** was appointed in May 2008 for a further five-year term. Before his appointment to the ACCC in 2003, he was the inaugural executive director of the National Competition Council for seven years.

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

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

Mr Willett has degrees in law and economics and a postgraduate diploma in international law.



## Jennifer McNeill



**Jennifer McNeill** was appointed in July 2002 for a five-year term, which she completed on 21 July 2007.

Ms McNeill served on the ACCC's enforcement, merger review and adjudication committees, and took a particular interest in its consumer protection network.

## David Smith



**David Smith** was appointed in June 2004 for a five-year term. Mr Smith served on the ACCC's enforcement and communications committees. He resigned in March 2008.

## Pat Walker



**Pat Walker** was Commissioner for Consumer Protection at the Department of Consumer and Employment Protection in Western Australia and managed the development of significant consumer programs including improved transparency in fuel pricing for Western Australian motorists. He was appointed to the ACCC in March 2008 for a period of five years, with special responsibility for fuel pricing issues. He resigned on 5 September 2008.

# Appendix 12

## AER member profiles

### Steve Edwell



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

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

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

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

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

## Andrew Reeves



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

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

## Geoff Swier



**Geoff Swier** was selected by states and territories as the part-time member of the AER.

He completed his term with the AER on 30 June 2008.

## Edward Willett



**Edward Willett** is a member of the ACCC (See members' profiles in appendix 11.) Part IIIAA of the Trade Practices Act provides that one of the members of the AER must be a member of the ACCC.

## Stephen King



**Dr King** was appointed as acting federal member during Mr Willett's absence. (See commissioners' profiles in appendix 11.)

# Appendix 13

## Addresses and contacts

### ACCC

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

### AER

<b>Address</b>	Level 42, The Tower, 360 Elizabeth Street Melbourne Central, Melbourne VIC 3000 GPO Box 520 Melbourne VIC 3001 telephone: 03 9290 1444 facsimile: 03 9290 1457
<b>AER email</b>	<a href="mailto:AERInquiry@aer.gov.au">AERInquiry@aer.gov.au</a>
<b>AER website</b>	<a href="http://www.aer.gov.au">www.aer.gov.au</a>

### ACCC regional offices

	<b>regional director</b>	<b>address</b>	<b>telephone facsimile</b>
<b>New South Wales</b>	Geoff Williams	Level 7, Angel Place 123 Pitt Street Sydney NSW 2000  GPO Box 3648 Sydney NSW 2001	02 9230 9133 02 9223 1092
<b>Victoria</b>	Bob Weymouth	Level 35, The Tower 360 Elizabeth Street Melbourne Central Melbourne VIC 3000  GPO Box 520 Melbourne VIC 3001	03 9290 1800 03 9663 3699

## ACCC regional offices

	<b>regional director</b>	<b>address</b>	<b>telephone facsimile</b>
<b>South Australia</b>	George Kamencak	Level 2, ANZ House 19 Grenfell Street Adelaide SA 5000  GPO Box 922 Adelaide SA 5001	08 8213 3444  08 8410 4155
<b>Queensland</b>	Alan Ducret	Level 3, 500 Queen Street Brisbane QLD 4000  PO Box 10048 Adelaide Street Post Office Brisbane QLD 4000	07 3835 4666  07 3832 0372
<b>North Queensland</b>	Kim McBey	Level 6, Central Plaza 370 Flinders Mall Townsville QLD 4810  PO Box 2016 Townsville QLD 4810	07 4729 2666  07 4721 1538
<b>Western Australia</b>	Sam Di Scerni	Level 3, East Point Plaza 233 Adelaide Terrace Perth WA 6000  PO Box 6381 East Perth WA 6892	08 9325 0600  08 9325 5976
<b>Tasmania</b>	Peter Clemes	Level 3, AMP Building 86 Collins Street Hobart TAS 7000  GPO Box 1210 Hobart TAS 7001	03 6215 9333  03 6234 7796
<b>Northern Territory</b>	Derek Farrell	Level 8 National Mutual Centre 9–11 Cavenagh Street Darwin NT 0800  GPO Box 3056 Darwin NT 0801	08 8946 9666  08 8946 9600

# Glossary and abbreviations

ACMA	Australian Communications and Media Authority
ARTC	Australian Rail Track Corporation
ASEAN	Association of Southeast Asian Nations
ASIC	Australian Securities and Investments Commission
CAN	Customer access network
CBDs	Central business districts
CFA	Consumer Federation of Australia
COAG	Council of Australian Governments
CPAC	Consumer Product Advisory Council
CSPs	Carriage service providers
CTN	Consumer telecommunications network
DDAS	Digital data access service
DIISR	Department of Innovation, Industry, Science and Resources
DTCS	Declared domestic transmission capacity service
FTTN	Fibre-to-the-node
HFC	Hybrid fibre coaxial
ICCC	Independent Consumer and Competition Commission in Papua New Guinea
ICPEN	International Consumer Protection Enforcement Network
IIO	Irrigation infrastructure operator
INPAA	Infant and Nursery Product Association of Australia Inc.
ISDN	Integrated services digital network
LCS	Local carriage services
LSS	Line sharing service
MCCA	Ministerial Council on Consumer Affairs
MCCA	Ministerial Council on Consumer Affairs
MDB	Murray-Darling Basin
MDBA	Murray-Darling Basin Authority
MTAS	Mobile terminating access service
NEIAT	National Education and Information Advisory Taskforce
NEL	National Electricity Law

NEM	National Electricity Market
NER	National Electricity Rules
NESB	Non-English speaking background
NGL	National Gas Law
NGR	National Gas Rules
NICS	National Indigenous Consumer Strategy
OECD	Organisation for Economic Co-operation and Development
PC	Productivity Commission
PSTN OA	Public switched telephone network originating access services
PSTN O/TA	Public switched telephone lower case network originating/terminating access
RKRs	Record keeping rules
SAU	Special access undertaking
SCOCA	Standing Committee of Officials on Consumer Affairs
s. 87B undertakings	Court enforceable undertaking made under s. 87B of the Trade Practices Act
TGACC	Therapeutic Goods Advertising Code Council
TIO	Telecommunications Industry Ombudsman
ULLS	Unconditioned local loop service
WLR	Wholesale line rental

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