

Part 1  
Year in review





## 2012–13 Review ACCC Chairman

The ACCC plays a fundamental role in our market economy. A successful and well functioning economy needs the incentives for innovation and dynamism that only the profit motive can bring. But it also needs clear boundaries for commercial behaviour, which are well enforced.

Through increased engagement with our partners and stakeholders, particularly our fellow regulators, we are striving to enhance compliance with the law and show the Australian community that a market economy and strong competition works for them.

We prioritised our work to make the best use of our limited resources, and so maximise the benefit we provide for competition and consumers.

We had five high level objectives for 2012–13. These were:

- make full use of the profound changes in the Australian Consumer Law (ACL), including by working more closely with state fair trading agencies
- act against widespread consumer detriment with a particular focus on vulnerable consumers
- maintain and enhance competition in concentrated markets
- invigorate the debate on the effective regulation of monopolies
- increase the ACCC's engagement internationally, particularly in our region.

By taking action in cases where we believe there is significant detriment, we make it clear where the boundaries are and what the consequences are for crossing the line. In addition, we hope that over time companies will take our warnings on problematic behaviour more seriously if we say what we will do, and then do what we say.

## Make full use of the Australian Consumer Law

In the past two years, the courts have ordered pecuniary penalties in 33 ACL cases, with penalties totalling almost \$22 million. Penalties in the order of a million dollars or more have been obtained in 10 matters and six in the last year. This year's matters include:

- Cotton On Kids Pty Ltd for selling unsafe children's nightware (\$1 million)
- Energy Watch for misleading consumers in relation to its energy price comparison service (\$2.015 million), and
- Hewlett Packard for making false or misleading representations to customers and retailers regarding consumer guarantee rights (\$3 million).

I think it is evident that these penalty levels are improving compliance with the ACL. Our actions under the ACL also led to:

- payment of 27 infringement notices across 10 matters, with over \$300 000 in penalties paid. This figure includes an infringement notice issued to iiNet Limited—the first infringement notice paid by a publicly listed company
- the banning by the Federal Court of Mr Leslie Forsyth Stott, a former director of Crimeguard International Security Systems Pty Ltd
- audit notices being served on 31 traders in the franchising and horticulture sectors. The ACCC accepted a court enforceable undertaking from V & A Liangos after an audit revealed that it was failing to comply with the Horticulture Code of Conduct.

The ACCC also gave priority to carbon pricing issues. Action in the past year included the acceptance of two court enforceable undertakings from Retail Food Group Limited, owner of Brumby's Bakeries Pty Ltd, and Equipserve Solutions Pty Ltd, as well as the payment of an infringement notice, for false or misleading representations made about the impact of the carbon price.

In 2012–13 the ACCC took four cases to court where the alleged misconduct harmed small businesses and finalised a further two cases, with over \$500 000 in penalties awarded. The ACCC also conducted audits of a number of small businesses and found the vast majority of traders are complying with industry codes.

## Act against widespread consumer detriment with a particular focus on vulnerable consumers

The ACCC continued to target matters that resulted in widespread consumer detriment. Our actions in relation to the door-to-door sales practices has played an important part in protecting vulnerable consumers. High profile cases coupled with the *Knock! Knock! Who's there?* consumer awareness campaign has addressed what was, in our view, reprehensible treatment of consumers by many involved in door-to-door sales. The Federal Court handed down decisions against:

- AGL Sales Pty Ltd and AGL South Australia Pty Ltd for \$1.55 million in penalties
- Neighbourhood Energy Pty Ltd for \$1 million in penalties.

Issues affecting Indigenous communities remain a priority. The Federal Court ordered EDirect Pty Ltd to pay \$2.5 million for selling mobile phone contracts in regional and remote communities that did not have phone coverage. The *Your Rights Mob Tiwi Islands* Facebook page for Tiwi Islanders launched in February 2013, increased the knowledge of Indigenous consumers about their ACL rights.

Our consumer guarantees work shifted from education into an enforcement phase. The ACCC commenced enforcement action against Hewlett Packard and 10 Harvey Norman franchisees for allegedly misleading consumers on their warranty and guarantee rights. New digital tools were also developed for both business and consumers. The ACCC Shopper App helps consumers to understand and apply their consumer guarantee rights while shopping.

Small business owners are benefiting from our innovative, free and interactive online ACL education program.

New to our priorities this year was an interest in credence claims, particularly those in the food industry, which have the potential to have a significant effect on consumers and importantly, the competitive process. Consumers are increasingly placing weight on premium claims made by producers and cannot fact check every claim. Honest small businesses also needed to be protected from unscrupulous competitors making false claims. Targeted enforcement over the past year has resulted in penalties (court awarded penalties and Infringement notices) of over \$700 000 for this type of conduct. We have tackled alleged misrepresentations in the labelling of extra virgin olive oil and have taken on country (or region) of origin claims from sheepskins to meat.

In the past year, the ACCC and its state counterparts have worked seamlessly to ensure an effectively coordinated national product safety system. The ACCC has received and assessed in excess of 3500 reports related to the safety of unregulated consumer products. The Federal Court ordered Cotton On Kids Pty Ltd and Cotton On Clothing Pty Ltd to pay a \$1 million penalty for selling children's nightwear misrepresented as 'low fire danger' when the products could not legally be supplied in Australia.

If swallowed, button batteries are a severe and little known risk for children. An estimated five children per week in Australia present to an emergency department with a button battery related injury. We have worked with the battery industry to improve education, labelling and packaging on button or coin sized lithium battery products. Similarly, high powered bucky balls magnets pose a serious risk to children if swallowed and the ACCC has been active in ensuring compliance with the new ban on these products.

We are preparing for the introduction of the safety standard for portable swimming pools. The standard mandates warning labels on children's portable swimming pools and comes into effect in March 2014.

Recently we have warned consumers about the dangers of quad bikes, trampolines and laundry pods. Internally we have re-structured our product safety team to allow for an increased focus on chemical safety and consumer products.

Later this year, the ACCC will join with the International Consumer Product Health and Safety Organisation to host a major international product safety conference on the Gold Coast. It will deal with selling, importing, exporting, or regulating consumer goods in our region.

## Maintain and enhance competition in concentrated markets

During the past 18 months we have seen what cumulatively are the largest penalties for cartel conduct in the history of the ACCC.

Since proceedings were commenced against 15 international airlines, 13 airlines have paid a total of \$98.5 million in penalties to date. Most recently Emirates, Singapore Airlines, Cathay Pacific and Thai Airways International have respectively had pecuniary penalties of \$10 million, \$11.75 million, \$11.25 million and \$7.5 million imposed.

We are proud of our work in the Air Cargo matter. The ACCC commenced investigations in 2006 into collusion by international airlines on fuel surcharges for air cargo services between 2000 and 2006. This result shows us that we can take on complex competition matters and achieve great results.

We have been investigating a growing number of potential cases which involve alleged anti-competitive conduct. Our approach to competition cases is to focus on the most important theories of harm.

In my first year at the ACCC we instituted proceedings in one competition case (against Flight Centre); this year we have been involved in five competition cases as follows:

- **Renegade Gas Pty Ltd and Speed-E-Gas Pty Ltd:** the ACCC instituted proceedings against Supagas and its competitor Speed-E-Gas, for allegedly giving effect to an anti-competitive cartel arrangement which included not supplying liquid petroleum gas (LPG) cylinders for forklifts to each other's customers.
- **Australia Arrow Pty Ltd:** the ACCC instituted proceedings against Yazaki Corporation, and its wholly owned subsidiary Australia Arrow Pty Ltd, for engaging in alleged cartel conduct, market sharing and price fixing, in relation to the supply of wire harnesses to Toyota Motor Corporation and its related entities in Australia.
- **Visa:** the ACCC instituted proceedings against Visa alleging that they misused their market power in relation to dynamic currency conversion (DCC) services. It is alleged that Visa used its market power to block the expansion of DCC to new outlets in Australia, and prevented businesses in Australia from competing with Visa's own currency conversion service.
- **Koyo:** The ACCC instituted civil proceedings against Koyo for alleged cartel conduct relating to the supply of ball bearings for use in motor vehicles and industrial applications. Ball bearings are used almost anywhere there are moving parts and cartel conduct in this industry can have a wide reaching effect on the prices consumers pay for a whole range of goods.
- **Viscas/Prysmian:** This Japanese cable supplier was ordered to pay \$1.35 million for bid rigging and price fixing. The penalty followed Viscas's admission that, in September 2003, it reached an anti-competitive agreement with other Japanese and European suppliers of land cables in relation to a tender invitation from Snowy Hydro Ltd. Proceedings continue against Prysmian Cavi e Sistemi & Ors.

As a priority, the ACCC examines competition issues in concentrated markets, including the supermarket and fuel sectors. Current ACCC investigations in these sectors include:

- **Supermarket supplier arrangements**—the ACCC is investigating claims that major supermarkets may have engaged in unconscionable conduct and may have misused their market power in their dealings with their suppliers.
- **Shopper docket**—the ACCC has expressed significant concern about the escalating shopper docket petrol discounts. The ACCC has publicly stated that while large shopper docket discounts may provide short term benefits to some consumers, the likely harm to other fuel retailers and therefore to competition and the competitive process for petrol retailing could well be substantial.
- **Fuel retailing**—the ACCC has an investigation underway regarding possible anti-competitive conduct through information sharing in the fuel retailing sector.

The number of mergers assessed by the ACCC varies from year to year generally reflecting the overall level of merger and acquisition activity in the economy. While this year saw a 15 per cent decrease in the total number of mergers (public and confidential reviews) considered by the ACCC, the proportion of mergers that were 'pre-assessed' as not requiring review were steady with the previous year at 73 per cent. Of the 76 public and confidential reviews conducted, six were opposed (an increase from one in 2011-12) and two were resolved with remedies (a decrease of one from the previous year).

Our focus is on real world understanding of market structure and import competition, entry barriers, countervailing power and the overall competitive process. We seek quickly to assess those transactions that do not raise competition concerns and focus our deliberations on transactions where we see the potential for substantial competitive harm.

The airline sector featured heavily in the ACCC's authorisations work for the year, with the ACCC granting conditional authorisation to Qantas and Emirates to coordinate their international air passenger and cargo transport operations pursuant to a Master Cooperation Agreement.

Small businesses often face challenges when negotiating with larger businesses. Through the collective bargaining notification process, businesses can even the playing field by jointly negotiating with suppliers if it is assessed to be in the public interest. This year, the majority of collective bargaining arrangements assessed by the ACCC involved small businesses, including primary producers and professions.

## Invigorate the debate on the effective regulation of monopolies

As the multi-sector economic utility regulator, the ACCC and the AER have worked hard to deal with regulatory issues across the communications, transport, energy, water, ports, airports and rail sectors. Applying the economic principles common to regulation, and using the experience of regulation in one sector and adapting it to another sector is an advantage that was anticipated in the Hilmer report, and which is being realised in our day-to-day regulatory work.

The regulation of the National Broadband Network (NBN) has remained a core part of the ACCC's communications work. The NBN will be a wholesale only network, so regulation is less complicated than the previous experience with the vertically integrated Telstra. But it will still be a monopoly, with the usual incentives of all monopolies to raise price or offer inadequate service quality. The ACCC has been working with NBN Co and the access seekers to further refine and respond to proposed amendments to NBN's Special Access Undertaking (SAU). Ultimately, the ACCC wants the SAU to deliver a framework for the regulation of NBN Co services that allows for vigorous retail competition, while providing sufficient certainty to NBN Co that it will be able to recover the prudent costs of its investment subject, of course, to demand for its services meeting expectations.

In other communications work, the ACCC completed its inquiry to set terms and conditions for the wholesale ADSL service and published a Final Access Determination (FAD). This year, the prices will decrease by about 15 per cent compared to the prices previously being charged. The ACCC plays an important role in this area as Telstra supplies ADSL services at both the wholesale and retail levels and holds a dominant position in both markets. By regulating wholesale ADSL services, the ACCC can help ensure consumers and businesses have a choice in the provision of broadband services.

The ACCC's annual *Airport Monitoring Report* for 2011-12 concluded that without investment, airports will continue to experience congestion, delayed flight times and lower standards. The report shows that the quality of service at all airports was lower this year than last year.

Increased consumer and stakeholder consultation has been something that all our regulatory areas are doing. This has been exemplified in the work of the AER following the commencement of the National Energy Retail Law in Tasmania, the ACT, South Australia and New South Wales. The AER's Better Regulation Reform Program also led to the release of a range of papers for public consultation that focus on enhancing the long term interests of consumers.

The Productivity Commission is currently undertaking an inquiry into Part IIIA of the Competition and Consumer Act, the National Access Regime. The Regime is intended to promote the economically efficient operation of significant national infrastructure, including ports and railways, and promoting competition in upstream and downstream markets. The ACCC lodged a submission to the inquiry on 8 February 2013 and will continue to engage with the inquiry process until the Productivity Commission releases its final report in October 2013.

## Increase engagement internationally, particularly in our region

The ACCC's efforts to maximise our engagement with the Asian region are increasingly important given consumers changing buying behaviour and ever greater business globalisation. We participated in many regional workshops to increase the capacity of consumer and competition regulation in the region, including running some of the first ASEAN workshops on consumer protection with our Korean and US counterparts.

Importantly, with the support of our regional counterparts, the ACCC has recently been welcomed into regional forums for planning the development of effective regional competition regulation and cooperation. For the first time, in August 2013, I will take part in the East Asia Top Level Officials Meeting on Competition Policy in Manila, at the invitation of our East Asian counterparts.

As our most immediate Asian neighbors in ASEAN make strong progress towards their goal of each member country introducing a competition law and agency by 2015, ASEAN Ministers are meeting later this month to decide whether to establish a Competition Committee under the ASEAN, Australia and New Zealand Free Trade Area.

Building on work the ACCC, New Zealand Commerce Commission and the ASEAN Experts Group on Competition have done to date, this Committee would provide an institutional mechanism to cooperate on implementing efficient and effective competition regulation throughout the region.

## ACCC's capabilities

The ACCC continued to improve its capabilities during 2012-13 through the following projects.

- We launched a new website. The new design provides consumers and business quick and easy access to information to help them solve common competition and consumer law problems. The ACCC also took advantage of social media to engage with consumers and business, for example around sharing product safety tips for Christmas gifts.
- We finalised our IT Transformation program delivering printer upgrades, improved video conferencing, new wireless networks and we moved our servers to a dedicated data centre.
- We improved the cost management of our legal service providers, through a streamlined procurement process and taking advantage of the legal services whole of government arrangements.

During the course of the year, the ACCC reviewed the pipeline of investigations to assess them against our stated priorities. The assessment found that over 50 per cent of the ACCC's enforcement and compliance work sat well within the main priority areas and that almost all matters pursued were in the priority factors.



We encouraged our staff to develop their skills to enable them to do their job as well as they can and to develop them for future progression or greater capacity within the organisation. During the year the ACCC:

- developed the leadership capacity of our executive level staff
- implemented a new learning management system, and enhanced our e-learning capabilities
- implemented a number of initiatives to support the long term careers of our female staff.

This year the ACCC continued to operate effectively and deliver strong results, albeit with significantly reduced real resources.

The ACCC and AER are well served by a strong group of Commissioners who have a depth and breadth of experience across a range of sectors. This year we welcomed Cristina Cifuentes as a full time ACCC Commissioner. She is now also the AER's full time Commonwealth Member. Jim Cox has also recently been appointed as the acting State Member of the AER.

The ACCC this year farewelled Joe Dimasi and Ed Willett. As long standing members of the Australian regulatory community, Joe and Ed have made enormous contributions to the work of the ACCC and the AER, and they leave us with a lasting legacy of sound and professional utility regulation. We wish them all the best in the next phase of their careers.

## Looking Ahead

We look forward to the future with great enthusiasm. We have important and challenging work ahead of us in all areas, and we have the people with the skills to ensure the Australian public benefit from this work.

We have a strong pipeline of compliance work and both competition and consumer enforcement investigations that will see even more success reported next year. And our utility regulation work in all sectors is exciting and of unusual importance.

Rod Sims  
Chairman  
Australian Competition and Consumer Commission

# Finance and staffing snapshot

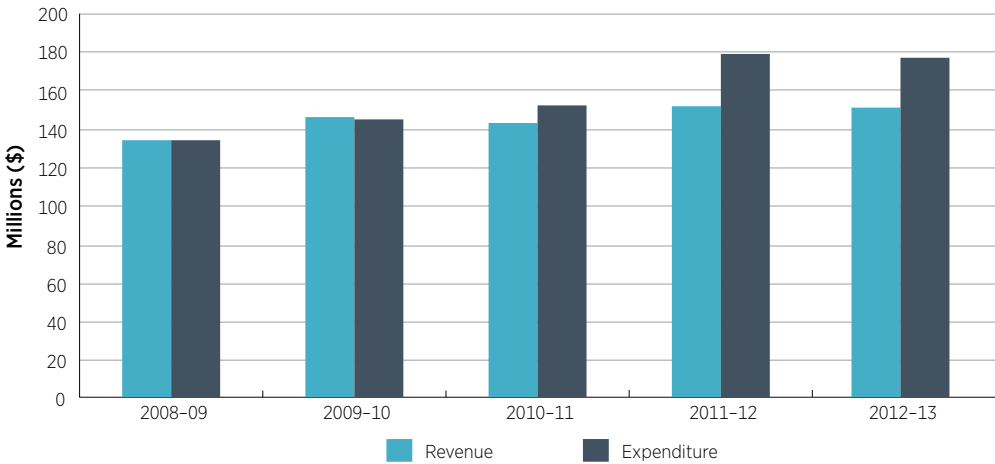
The ACCC received an unqualified audit report on the 2012-13 financial statements from the Australian National Audit Office. These statements can be found in part 5 from pages 235 to 305.

The ACCC's net cost of services for 2012-13 was \$176.3 million, with revenue from Government of \$150.2 million, resulting in an operating loss of \$25.98 million. This result was due to higher staffing and legal costs associated with the investigation and enforcement of significant matters that the Commission is pursuing at this time, settlement costs, and unfunded depreciation and amortisation costs of \$5.1 million. Income from Government also decreased by \$1.0 million during 2012-13.

Revenues from other sources decreased by \$0.7 million in 2012-13.

Expenditure on total ACCC activities decreased by \$1.2 million in 2012-13. This primarily related to a decrease in supplier expenditures. A comparison of revenue and expenditure trends over the past five years is illustrated in figure 1.1 below.

**Figure 1.1: ACCC Revenue & Expenditure**



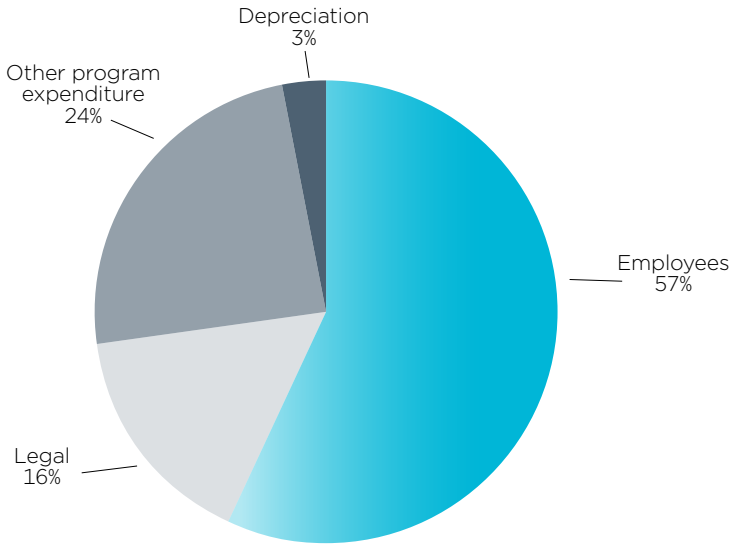
Key financial results for ACCC for the financial years 2010-11, 2011-12 and 2012-13 are shown in the following table.

**Table 1.1: ACCC comparative financial results, 2010–11, 2011–12 and 2012–13**

	<b>2012-13 \$'000</b>	<b>2011-12 \$'000</b>	<b>2010-11 \$'000</b>
Revenue from Government—appropriation receipts	150 228	151 275	141 342
Other revenues	852	1 549	1 176
Changes in asset revaluation surplus	53	142	–
Total income	151 133	152 966	142 518
Operating expenses	177 117	179 063	151 858
Comprising expense major categories:			
Employee costs	101 478	100 607	81 586
Legal fees	28 494	26 277	25 348
Other expenses	47 145	52 206	44 924
Net cost of services (expenses less revenues)	176 265	177 514	150 682
<b>Net operating surplus (loss)</b>	<b>(25 984)</b>	<b>(26 097)</b>	<b>(9 340)</b>
Operating cash balance	592	1 792	1 626
Receivables	11 033	32 626	51 867
Total assets	37 101	60 619	78 777
Total liabilities	46 502	46 114	40 738
Total equity	(9 401)	14 505	38 039
Revenues raised on behalf of the Commonwealth (administered fees and fines)	57 067	28 315	43 412

## Expenditure

The ACCC is a knowledge-based organisation and as such spends approximately 57 per cent of total expenditure on employee costs, as compared to 56 per cent in 2011–12. Legal expenditure is subject to volatility depending on the timing and outcome of litigation proceedings. Legal expenditure increased by \$2.2 million or 8 per cent in 2012–13, compared to 2011–12. Other expenses decreased by \$5.4 million or 11 per cent in 2012–13 (due to reductions in travel, consultants and advertising and publications). There has been a slight increase in depreciation and amortisation expenditure over the same period.

**Figure 1.2: ACCC expenditure, 2012-13**

## Operating statement

The ACCC recorded an operating loss for 2012-13 of \$25.984 million, as compared to an operating loss of \$26.097 million in 2011-12.

## Balance sheet

The ACCC's net assets as at 30 June 2013 totalled \$(9.4) million as compared to \$14.4 million in 2011-12.

### Assets

Total assets as at 30 June 2013 were valued at \$37.1 million compared to \$60.6 million in 2011-12, representing a 39 per cent reduction. This reduction in assets primarily relates to a reduction in the Trade and Other Receivables (Appropriations receivable) as a result of cash drawings being utilised to fund the deficit.

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

### Liabilities

Total liabilities increased from \$46.1 million in 2011-12 to \$46.5 million in 2012-13. The increase was largely due to an increase in employee provisions and accrued wages due as at the end of the financial year (as a result of the timing of the first pay day in July 2013).

## Administered revenue

Revenues administered on behalf of the government during 2012-13 amounted to \$57.1 million, which is an increase of \$28.8 million from last year (2011-12: \$28.3 million). This amount includes court-imposed fines and costs.

## Staffing summary

Table 1.2: Average staffing level

	<b>Budgeted</b>	<b>Actual</b>
2009-10	756	732
2010-11	778	790
2011-12	813	807
2012-13	745	798
2013-14	802	