



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION



AUSTRALIAN  
ENERGY  
REGULATOR

# Annual Report 2020-21

October 2021



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& CONSUMER COMMISSION



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ENERGY  
REGULATOR

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## About this report

This report describes the performance of the agency, including operational and financial management, for the year ending 30 June 2021. It addresses our annual reporting obligations under:

- the *Public Governance, Performance and Accountability Act 2013*
- the *Public Governance, Performance and Accountability Rule 2014*
- the performance measures set out in the outcome and programs framework in our Portfolio Budget Statement 2020–21 and Corporate Plan 2020–21
- other relevant legislation, including the *Competition and Consumer Act 2010*.

## Contact us

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

Director, Content and Digital Services  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
Canberra ACT 2601  
Australia

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

Email: [publishing.unit@accc.gov.au](mailto:publishing.unit@accc.gov.au)

Phone: (02) 6243 1111

+61 2 6243 1111 (international)

Web address of this report: [www.accc.gov.au/annualreports](http://www.accc.gov.au/annualreports)

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

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2 September 2021

The Hon Josh Frydenberg MP  
Treasurer  
Parliament House  
CANBERRA ACT 2600

Dear Treasurer

**ACCC and AER Annual Report 2020–21**

We are pleased to present to you the Annual Report of the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) for the year ended 30 June 2021. This report has been prepared in accordance with s 46 of the *Public Governance, Performance and Accountability Act 2013* and s 171 of the *Competition and Consumer Act 2010*.

We certify that the ACCC and AER have prepared fraud risk assessments and have a fraud control plan for the agency. We have in place appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet our specific needs. We certify that all reasonable measures have been taken to appropriately deal with any fraud relating to the ACCC and AER.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rod Sims'.

Rod Sims  
Chair, ACCC

A handwritten signature in black ink, appearing to read 'Clare Savage'.

Clare Savage  
Chair, AER



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# 01

## Year in review





# Our year at a glance 2020-21

## OUR PURPOSES

The ACCC and AER work in close coordination to achieve our purposes:

- Marking markets work for consumers, now and in the future.
- Energy consumers are better off, now and in the future.

## OUR PEOPLE



**1,261**  
Employees

### Diversity

**57%**

identify as female

**2%**

identify as Indigenous

**4%**

identify as having disability

### Working flexibly

**127**

part time

**3**

SES job share  
(6 people)

### Continued reduction in gender pay gap (mean)



### 2020 Census results<sup>#</sup>

**90%**

participation

**81%**

engagement<sup>\*</sup> score

**80%**

wellbeing<sup>^</sup> score

## OUR FINANCES



**\$304.96 million**

Total budget



**\$61.12 million**

Additional funding  
secured for our  
functions

<sup>#</sup> The Australian Public Service (APS) Employee Census is an annual survey that collects confidential attitude and opinion information from APS employees on workplace issues.

<sup>\*</sup> The engagement index addresses three attributes ('say', 'stay' and 'strive') associated with employee engagement. It measures the emotional connection and commitment employees have to working for their organisation.

<sup>^</sup> The wellbeing index included in the APS Employee Census measures both the practical and cultural elements that allow for a sustainable and healthy working environment.

# ACCC year in review 2020-21

## ENFORCEMENT

**\$133.13m total penalties awarded by the Court and fines ordered<sup>#</sup>**

**\$108.77m** from consumer protection matters

**\$24.35m** from competition matters

**15** court cases commenced

**27** court cases concluded

**15** court cases continuing



## CONSUMER DATA RIGHT

**16 active data holders**

representing an estimated combined market share of 85% of Australian banking customers sharing a customer's data on request from that customer

**12** accredited data recipients (6 were active)

**100%** of authorised deposit-taking institutions required to share banking product data are doing so

## MARKET STUDIES AND INQUIRIES



**4** inquiries completed

## CONSUMER PRODUCT SAFETY

**1,922** mandatory injury reports assessed

**572** voluntary recall notifications published

**5,674,477** Product Safety Australia website page views

**2.8m** vehicles rectified under the Takata airbag recall



## MERGERS AND EXEMPTIONS

**424 mergers assessed**

**402** merger matters finalised by preassessment

**22** subject to public review

**13** investigations of completed acquisitions commenced

**57 non-merger authorisation applications assessed**

## INFRASTRUCTURE



**7** major regulatory decisions

**28** reports across 8 infrastructure sectors

**15** investigations into potential breaches of rules

**471,104** page views on the petrol price cycles webpage

## SCAMS

**3,986,235** Scamwatch website visits

## INFOCENTRE

**396,190** Infocentre contacts served



<sup>#</sup> This does not include the \$125m penalty upheld against Volkswagen in April 2021.

# AER year in review 2020-21

## PROTECTING CONSUMERS AND ENABLING PARTICIPATION

**729,813** Energy Made Easy (EME) website energy plan searches

**480,000** AER website views

**61,300** fewer disconnections from April 2020 to March 2021 under the *Statement of Expectations of energy businesses*

**\$65,000,000** estimated bill savings in 2021-22 under the AER Default Market Offer

## REGULATING COMPETITIVE MARKETS

**\$4.76m** total penalties from 5 litigated matters and 48 infringement notices

**12** retailer hardship policies and proposed amendments assessed (8 new policies and 4 amended policies)

**15** retail authorisations assessed

**5** retailer compliance audits

**9** individual retailer exemptions assessed

## INFRASTRUCTURE REGULATION

**\$13.4b** in total value of revenue determinations made by the AER for the **8** completed revenue decisions for electricity networks and gas pipelines

**5 out of the 8** decisions reduced the amount of revenue that the businesses can collect from their customers

**\$2.6b** in forecast project costs approved across **3** contingent project applications

**\$88m** reduction in forecast project costs after the AER's assessment of Project Energy Connect

**8** cost pass-through applications

**11%** of customers with a retailer exposed to cost reflective tariffs<sup>#</sup>

## INFORMING THE ENERGY DEBATE

**33** submissions in relation to rule changes, national policy and legislative processes

<sup>#</sup> Estimated. Actual network tariff assignment results for 2020-21 will be reported by electricity distribution networks (including Vic) to the AER in November 2021 - these will subsequently be published on the AER Tariff Reform webpage. Note that bulk reassignment of small customers to cost reflective tariffs in Qld and SA was postponed from 1 July 2020 to 1 July 2021 due to COVID-19.

# Covid-19 pandemic response

## ACCC COVID-19 Enforcement Taskforce

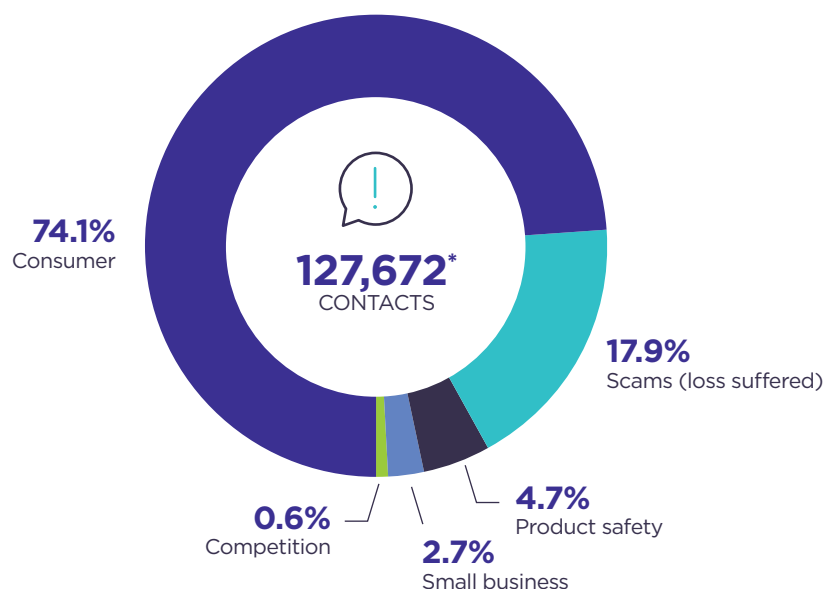
In response to the COVID-19 pandemic and the high volume of contacts to the ACCC about COVID-19-related consumer and fair trading issues, we adjusted the focus of our compliance and enforcement activities to prioritise competition and consumer issues arising from COVID-19 and [publicly announced](#) this change in focus. To facilitate this, the ACCC **established a COVID-19 Enforcement Taskforce** to address, to the extent possible, immediate harm to consumers and small business arising from the pandemic.

As a result of our efforts, hundreds of thousands of consumers and small businesses received assistance from the ACCC. In some cases this was as simple as a consumer or business gaining greater clarity on their rights or obligations in relation to a specific COVID-19 problem. In other instances we were able to get businesses to change their conduct and assisted consumers to receive the remedies they were entitled to under the terms and conditions of their contract.

We also prioritised educating consumers and businesses about their rights and obligations by publishing and continually updating frequently asked questions guidance on our website. With other consumer law regulators, we also developed and released [best practice guidance for the travel industry](#), which reminds businesses of their legal obligations and outlines best practice approaches to dealing with consumers regarding COVID-19 cancellations in a way that balances the concerns of both businesses and consumers.

On [25 November 2020](#) the ACCC released a [report](#) that outlined the impact of COVID-19 on consumers and fair trading and our work in this area. We used the report to amplify our compliance messaging with external stakeholders.

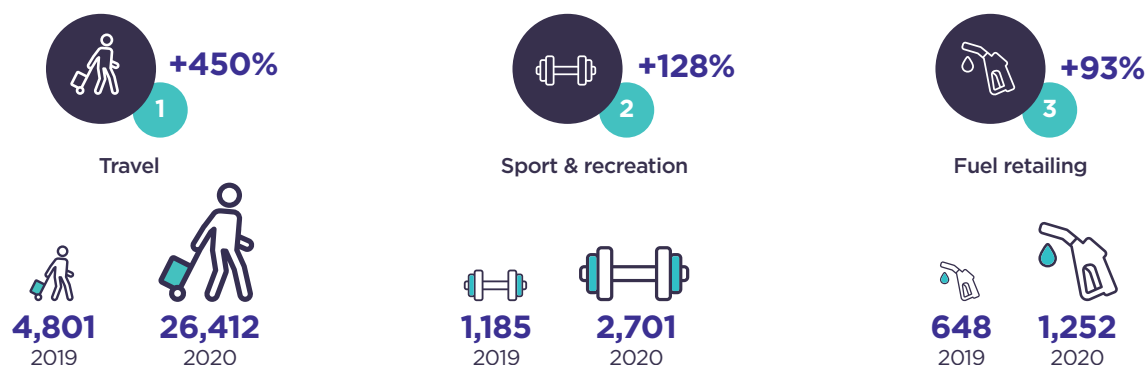
### COVID-19 ACTIVITIES SNAPSHOT 1 JANUARY TO 31 DECEMBER 2020<sup>#</sup>



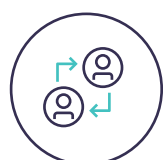
<sup>#</sup> Data for 2020 calendar year used, rather than data for 2020–21 financial year. The largest influx of COVID-19 related contacts and issues occurred during 2020. The infographic uses 2020 calendar year data to provide a more complete picture of COVID-19 issues the ACCC faced.

<sup>\*</sup> These figures exclude over 23,000 complaints that did not raise concerns under the *Competition and Consumer Act 2010* (Cth), and scam reports that did not involve any loss being suffered.

## SECTORS WITH GREATEST GROWTH IN CONTACTS FROM 2019



## ACCC COVID-19 ENFORCEMENT TASKFORCE



Closely engaged with over **100 businesses**, including over **50 travel businesses**, regarding issues or conduct of concern impacting hundreds of thousands of consumers



Responded to **360 media queries** and conducted **175 media interviews**



Released 3 key COVID-19 guidance publications for consumers and industry:

- 1 Consumer guidance viewed more than **345,000 times**
- 2 Business guidance viewed more than **55,000 times**
- 3 Travel industry best practice guidance downloaded more than **3,000 times**

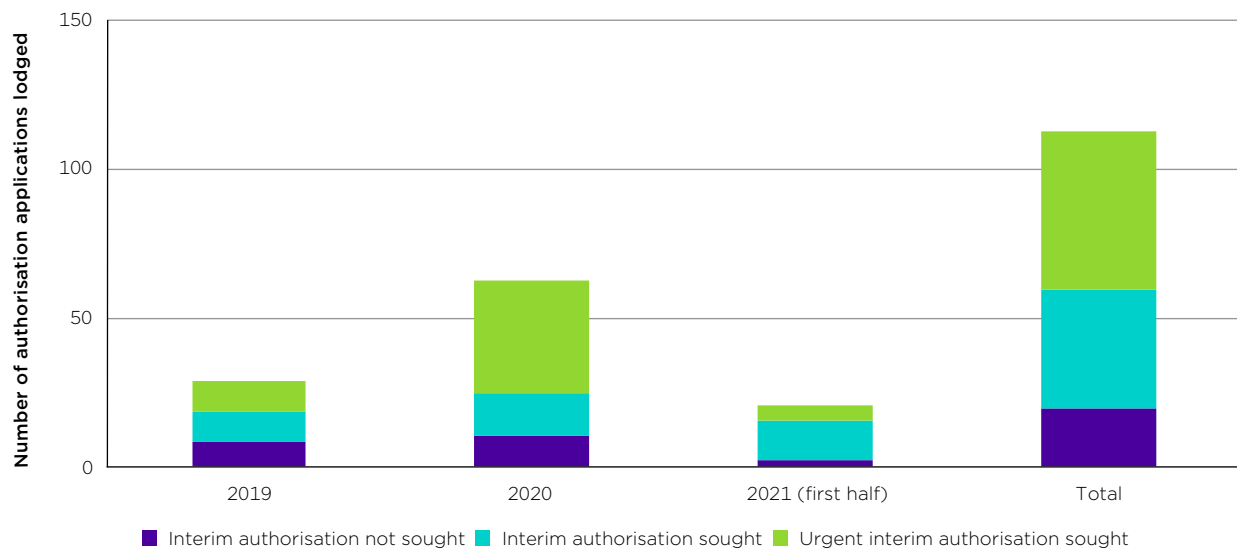
## Competition exemptions work

The ACCC experienced a significant surge in applications for authorisation of competitor collaborations to deal with disruption and risks arising from the COVID-19 pandemic. In general, Australia's competition laws prevent collaborations between competitors. However, the ACCC has broad powers to provide exemptions to businesses, allowing them to collaborate in situations where the likely benefits to the public outweigh the likely detriments.

Many businesses and government agencies acted with a united purpose in responding to the challenges of the COVID-19 pandemic. Some of this involved collaboration between competitors. Our role in authorising what would normally be anti-competitive conduct was important in helping particular industries meet the needs of the Australian public during the pandemic.

The ACCC did not authorise businesses to discuss, negotiate or agree on the prices of goods and services. While we were willing to be flexible, we ensured that authorisations and exemptions were strictly limited in duration. Strong monitoring and reporting obligations allow us to identify any issues with or unintended consequences of the authorisations.

**Figure 1** Authorisation applications lodged 1 January 2019 to 30 June 2021, including matters involving requests for interim and urgent interim authorisation



## COVID-19 Recovery Coordination Taskforce

The ACCC also established a COVID-19 Recovery Coordination Taskforce, which operated from June to December 2020. This taskforce focused on gathering data and intelligence to identify leading indicators of where competition and consumer issues may arise as economic activity increases. We identified the following issues arising from the economic impact during the early stages of the pandemic and closely monitored for any behaviour that required further intervention:

- The importation of goods was severely disrupted in mid to late 2020, which in turn temporarily changed the competitive dynamics in some markets where imports were no longer a competitive constraint.
- Import constraints, coupled with a surge in demand, had a particularly acute impact on specialist medical equipment manufacturing in early 2020.
- There were a range of disruptions and sectoral changes in private health insurance, private hospitals, telehealth, and pathology services which, depending on how the pandemic progressed, could have become significant issues.

These areas have now largely returned to their pre-pandemic state without ACCC intervention. However, this intelligence continues to be an important context for our competition work as the economy continues to recover. We are aware that the funding provided by government stimulus packages enabled many businesses to continue when they otherwise would have failed. However, it is possible that businesses will fail later on, when that government support ceases, and this could lead to increased market concentration.

The taskforce also engaged with governments as they considered significant increases in infrastructure spending in response to the pandemic. We advocated for best practice procurement and risk management measures in order to minimise risks of anti-competitive conduct such as bid rigging.

## Assisting businesses to manage the impact of the pandemic

The ACCC responded quickly across all of our functions to the substantial challenges that the COVID-19 pandemic created for businesses. To minimise the regulatory burden while still fulfilling our statutory obligations, we:

- increased our engagement with businesses and industry associations

- adopted a risk-based, proportionate and pragmatic approach to adjusting our priorities and regulatory processes
- reallocated resources to priority work (such as assessing applications for urgent interim authorisations) and adjusted timelines for other projects to provide businesses more time to engage
- provided targeted guidance to businesses so that ACCC expectations about appropriate conduct were clear
- maintained transparency by communicating clearly and effectively with stakeholders
- collaborated with other regulators and government departments to ensure our actions were coordinated and to improve regulatory frameworks.

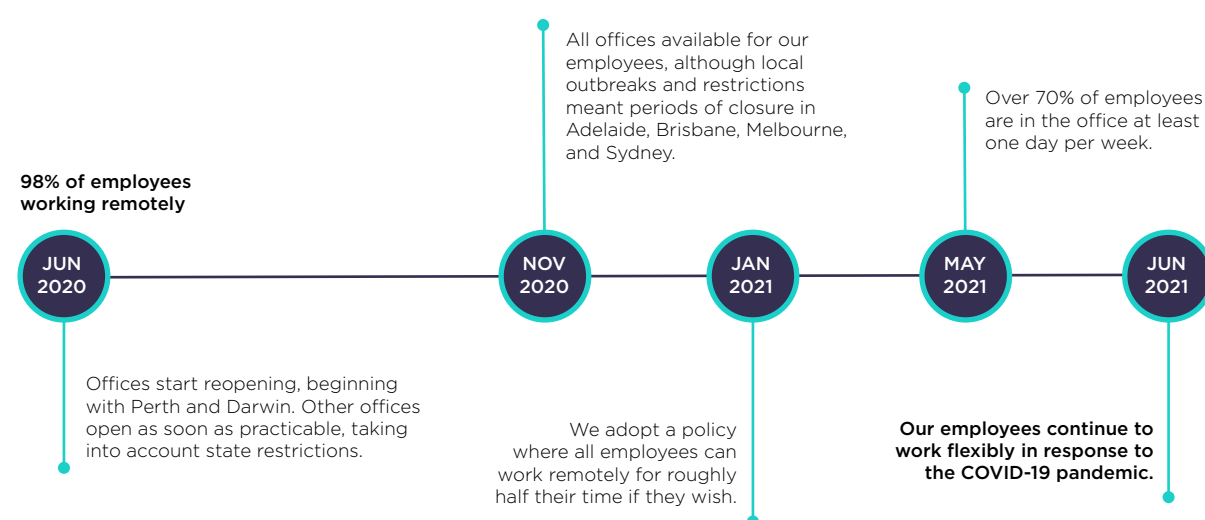
## Supporting our people

Throughout the pandemic and during our return to the office, the wellbeing of our people has been at the forefront of our decision making. To assist employees in this challenging environment, we provided:

- an early and significant step up in technology and arrangements to support remote working
- regular communications regarding the pandemic and assessments to manage the risk of infection
- an agency response to localised outbreaks, government lockdowns and other restrictions
- reassurance from leaders that employee welfare was paramount
- wellbeing articles, tools and webinars run by psychologists and other providers
- a series of sessions for managers and employees on developing strategies to deal with uncertainty, supporting people to maintain their and others' resilience, and mental health first aid training for a number of people across the agency
- access to additional online learning and employee assistance programs
- pulse surveys to check on employee welfare and workloads and on the level of communication and support.

We also engaged in regular consultation with other government agencies such as the Australian Public Service Commission, the Community and Public Sector Union and our Employee Council and Health and Safety Committee.

**Figure 2 Working flexibly in response to COVID-19**





# AER

In March 2020 the AER launched its [\*Statement of Expectations of energy businesses: Protecting consumers and the energy market during COVID-19\*](#). The statement outlined principles that energy providers in the National Electricity Market should adopt, including regarding protection disconnection and debt collection, to provide additional support to residents and small businesses that are experiencing financial stress due to the pandemic.

Between March 2020 and June 2021 the AER developed and communicated 4 iterations of the statement to reflect the changing nature of the COVID-19 pandemic and its impact on consumers and the market. On 30 June 2021 the statement came to an end. Disconnections for residential and small businesses from April 2020 to March 2021 were down by 61,300 when compared to the same period in 2019–20. We have developed a standby statement that may apply in the event of further stay-at-home/lockdown orders. We will continue to monitor the rapidly changing situation and apply the standby statement as required.

In April 2020 the AER called on energy retailers to voluntarily provide more timely data on payment plans, hardship, disconnection and credit collection, in addition to the data they are currently required to provide, to monitor the impact of COVID-19 on consumers. In 2020–21 the AER continued to monitor these impacts to inform supports provided to residential and small business consumers through the Statement of Expectations and monitor any compliance issues.

On 6 August 2020 the AER welcomed the approval by the Australian Energy Market Commission of the AER's proposed rule to introduce a mechanism to allow some retailers to defer the payment of network charges to distribution network service providers for customers impacted by COVID-19 for 6 months. The rule took effect from 1 July 2020 and was in place until 31 December 2020.

The AER also increased its engagement with stakeholders to inform our approach during the pandemic. For example, the AER held a number of stakeholder roundtables when developing the Statement of Expectations. The AER's Customer Consultative Group (CCG) also met more regularly as the CCG COVID-19 Working Group to provide the AER with timely information about the impacts of COVID-19 on energy consumers.

Beyond the AER's initiatives to protect consumers and support the market during the pandemic, the AER continued to meet all of its statutory requirements and deliver upon its broad work program. The AER's adaptation to the pandemic meant that, despite the challenges, we continued to engage with stakeholders, meet our obligations, conduct as many 'business as usual' activities as ever, and embark on new initiatives. While we tailored our approaches, particularly with regard to our methods of communication and activities, we continued to achieve.



## 2020-21 review: ACCC Chair, Rod Sims

The 2020-21 financial year was both challenging and productive for the ACCC. As the COVID-19 pandemic continued to up-end so many aspects of our economy, society and lives, the ACCC made huge adjustments to ensure we could continue our core work of promoting competition in the Australian economy and protecting the rights of consumers. We secured significant outcomes before the courts; delivered and progressed inquiries in digital platforms, gas, electricity, perishable goods and water markets; and remained busy with our important work across many other areas, including mergers, authorisations, product safety and infrastructure.

Upgrading our capabilities for the future while supporting our people during the COVID-19 pandemic were fundamental focus areas for the year. Scott Gregson was appointed to the position of Chief Operating Officer in August 2020, and during the year we then progressed and implemented a restructure of the ACCC. We also advanced our work on closing our gender pay gap and continued the process of increasing our skills and abilities in the use of data.

The ACCC remained busy with COVID-19-related work throughout 2020-21. Our COVID-19 Enforcement Taskforce, established in early 2020, continued to secure significant outcomes for consumers in sectors including travel, live performance and gyms. As a result of the ACCC's engagement, for example, Etihad offered refunds for tickets purchased in Australia for cancelled flights, and Australian Pacific Touring committed to stop deducting substantial marketing and overhead costs from booking refunds and to reimburse customers who had previously been charged those costs. The pandemic's impact on the travel industry led the Treasurer to direct the ACCC to monitor prices, costs and profits in the airline industry. The first report was issued in September 2020 and 3 more followed during the financial year. We are ready to act if we identify any behaviour that diminishes competition in the airline sector.

We secured a number of significant outcomes in the Federal Court during 2020-21. These included our world-first enforcement action against Google. In April 2021 the Court found the company misled consumers about personal location data collected through Android mobile devices. In May 2021 Telstra was given a \$50 million penalty after it admitted to unconscionable conduct in the sale of post-paid mobile products to Indigenous consumers. And in April 2021 the \$125 million penalty imposed on Volkswagen for making false representations about compliance with Australian diesel emissions standards was upheld by the Full Federal Court. This is the

highest penalty ever handed down for breaches of the Australian Consumer Law. Volkswagen has since sought special leave to appeal to the High Court. In May 2021, in the first proceeding brought by the ACCC under the new misuse of market power test, it was declared by consent that Tasmanian Ports Corporation had contravened s 46 of the *Competition and Consumer Act 2010*.

We also retained our strong focus on investigating cartel conduct. Following criminal cartel charges laid by the Commonwealth Director of Public Prosecutions (CDPP), in December 2020 ANZ, Citigroup and Deutsche Bank and senior banking officials were committed for trial by jury in the Federal Court. The first jury trial of criminal cartel charges, following a referral by the ACCC to the CDPP, took place in the first half of 2021 in the Federal Court against the Country Care Group and 2 executives. In early June the jury acquitted the defendants of all charges. In May 2021 the ACCC issued civil proceedings in the Federal Court against Delta Building Automation Pty Ltd and its sole director, Timothy Davis, for an alleged attempt to rig a tender conducted by the National Gallery of Australia in Canberra.

In another first, a former general manager at BlueScope, Jason Ellis, was convicted and sentenced to 8 months imprisonment for obstructing an ACCC cartel investigation. His sentence was suspended on condition that he be of good behaviour for 2 years. This is the first time an individual had been convicted of inciting the obstruction of an ACCC investigation.

We remained busy in our merger assessment role. The overall number of mergers assessed by the ACCC during 2020–21 rose 25% on the previous year. This was partly due to an increase in referrals from the Foreign Investment Review Board (FIRB) after it lowered the screening threshold for foreign acquisitions to \$0 in March 2020 – a measure which remained in place until January 2021. However, there was a decrease in the number of merger applications assessed by the ACCC as requiring public reviews. This was probably because the COVID-19 pandemic dampened some major acquisition activity.

The ACCC continued to assess a range of urgent interim authorisations to allow collaboration between competitors during the COVID-19 pandemic. In the first half of 2020–21 the ACCC granted 28 final determinations for coordinated conduct between competitors on public benefit grounds in sectors, including banking, supermarkets, hospitals and medical equipment. These are all clearly temporary measures.

We achieved some important outcomes in our efforts to protect consumers from unsafe products. We conducted compliance and education activities as part of the first stage of the new mandatory safety standard for quad bikes implemented in October 2020. In December 2020 the government announced new world-first safety standards for button batteries following many years of work by the ACCC with industry and state and territory Australian Consumer Law regulators. The ACCC continues to work with businesses to prepare for compliance with new mandatory safety standards which come into force in 2022.

In November 2020 the ACCC launched the Australian Product Safety Pledge. Four of Australia's largest online marketplaces signed the pledge and committed to strengthening product safety measures on their platforms.

The compulsory Takata airbag recall, which affected 3 million vehicles in Australia, was completed in 2020–21. By June 2021, 99.84% of the affected vehicles had been successfully recalled or accounted for.

On the small business front, the ACCC's class exemption for collective bargaining came into effect on June 2021. This first class exemption made by the ACCC allows collective negotiation by small businesses, franchisees and fuel retailers without first having to seek ACCC approval. The exemption applies to businesses that had turnover of less than \$10 million in the financial year. This covers more than 98% of Australian businesses.

In our agriculture work, the ACCC undertook a range of education, compliance and enforcement activities relating to the Dairy Code – a compliance and enforcement priority for the ACCC in 2021. In October 2020 the Union Dairy Company paid a \$10,500 penalty after the ACCC issued an infringement notice alleging a failure to publish milk supply agreements by the due date.

Investigations into potential noncompliance by other processors continue. The government will lead a review of the Dairy Code in 2021.

Our market studies and inquiries remain a central part of our regulatory toolkit that we use across a range of sectors. We completed the 3-year Northern Australia Insurance Inquiry in November 2020 and, in December 2020, we completed the Perishable Agricultural Goods Inquiry.

In 2019 the government directed the ACCC to undertake a public inquiry into the Murray–Darling Basin water markets. This became one of our most high-profile inquiries, culminating in March 2021 with the ACCC publishing its final report. The report contained 29 recommendations, including the establishment of a new independent Water Markets Agency.

Consumer Data Right (CDR) was launched successfully on 1 July 2020. This remained an important part of our work during the year while the number of active participants continued to grow. Non-major authorised deposit-taking institutions were required to share consumer data from 1 July 2021. In February 2021 the Minister for Superannuation, Financial Services and the Digital Economy took over from the ACCC as the CDR rule-maker and Treasury took over overarching leadership and responsibility for the CDR program. The ACCC's continuing roles include to accredit data recipients; maintain the register of accredited persons; promote compliance and take enforcement action where appropriate; plan, design, build and run the technology solutions that support Consumer Data Right; and support participants with testing and onboarding.

The ACCC's Digital Platforms Branch (DPB) continued its work with 2 inquiries examining competition and consumer issues in digital markets. The first examined markets for the supply of digital advertising technology and digital advertising agency services (Ad Tech Inquiry). The interim report was delivered to the Treasurer in December 2020, and the final report is to follow by 31 August 2021. The second is a 5-year inquiry into markets for the supply of digital platform services. The first report for this inquiry examined online private messaging services and was released in October 2020. The DPB will deliver reports every 6 months until the final report, which is due on 31 March 2025.

In April 2020 the government directed the ACCC to develop a mandatory code to address the bargaining power imbalance between leading digital platforms and Australian news businesses. Throughout 2020 the DPB consulted extensively with news businesses, as well as the Department of the Treasury and the Department of Infrastructure, Transport, Regional Development and Communications, to prepare legislation for the news media bargaining code. Legislation enacting the News Media and Digital Platforms Mandatory Bargaining Code was passed by parliament on 25 February 2021. This legislation has already led to a number of agreements between media companies and Google and Facebook for payment for media content.

As part of our Gas Inquiry we released 2 reports providing key market information for all levels of the gas supply chain on Australia's east coast and made a number of policy recommendations to help avert potential gas shortfalls in the east coast in coming years. In January 2021 the federal government signed a new Heads of Agreement with liquid natural gas (LNG) producers, which included strengthened price terms. In February 2021 we announced a review of LNG netback price series and released an issues paper in March 2021.

The Prohibiting Energy Market Misconduct (PEMM) legislation came into effect in June last year. This legislation allows the ACCC to take action where electricity retailers have not reduced their prices in line with sustained and substantial reductions in costs. We are investigating whether retailers made reasonable adjustments to their prices as required by the PEMM laws given the significant falls in wholesale prices.

We also released 2 electricity inquiry reports and a supplementary report examining consumer bills in Australia in recent years, including the effects of the COVID-19 pandemic on electricity use and bills for households and businesses.

The COVID-19 pandemic highlighted the importance of the ACCC's infrastructure functions, particularly in relation to telecommunications and transport. With increased numbers of people working and learning from home, the performance of the National Broadband Network (NBN)

was critical, and its rollout was timely. Our Measuring Broadband Australia program continued to provide highly valuable information on the performance of services over the NBN. We also concluded access inquiries into NBN pricing and wholesale service standards, which saw important adjustments made.

We increased the frequency of our fuel price monitoring and reporting. We also worked with airports and stevedores to refine the information collected in our monitoring activities so they could better focus on working through the pandemic. This allowed us to provide up-to-date information on their operations to industry, government and the public.

## Acknowledgements

After 13 years as an ACCC Commissioner, in May 2021 Sarah Court departed to take up the position of Deputy Chair at the Australian Securities and Investments Commission. Sarah was first appointed as a Commissioner in May 2008 and was reappointed for an impressive and unprecedented third term in 2018. In her time at the ACCC, Sarah made an incredibly significant contribution to the agency, and we congratulate her and wish her well in her new position.

This year we have welcomed the Treasurer's appointment of 2 new commissioners: Anna Brakey and Peter Crone.

Ms Brakey brings to the ACCC extensive experience in infrastructure regulation. She joins the ACCC from Frontier Economics and after spending over 20 years at the New South Wales Independent Pricing and Regulatory Tribunal, including as Chief Operating Officer and then as a Tribunal member.

Mr Crone has over 30 years of experience in economic policy and commercial strategy in both the private and public sectors. That has included serving as Senior Economic Advisor to Australia's Prime Minister from 1997 to 2006 and as chief economist at the Business Council of Australia, EY and Coles Group.

Their impressive economic and commercial credentials will further broaden the expertise and experience of the ACCC team.

## Conclusion

In the coming financial year the ACCC will continue to advocate for reform to key issues impacting consumers and small businesses. Addressing the deficiencies in the merger policy, improving the consumer guarantees regime and the unfair contract terms provisions, and introducing an unfair trading practices prohibition are of particular interest to the ACCC.

We will build on our increasingly close contacts with our international counterparts and networks to address common issues that affect Australian consumers, such as cartels, mergers, competition enforcement, consumer protection and product safety matters. Our global engagement will include active participation in joint international programs such as the Competition Law Implementation Program (CLIP), which supports ASEAN Member States to effectively implement national competition laws and policies.

While the COVID-19 pandemic continues to massively impact many aspects of our economy and society, the ACCC's role in preserving competition, consumer protection and fair trading remains crucial. In the coming year we will maintain our proactive engagement to champion competition and consumer rights as well as effective infrastructure regulation.

Rod Sims  
Chair, ACCC



## 2020-21 review: AER Chair, Clare Savage

Globally the past 12 months have been shaped by the COVID-19 pandemic, and here in Australia it has continued to change the way we work and live. Despite the pandemic, the Australian Energy Regulator (AER) continued to deliver on our purpose of ensuring energy consumers are better off, now and in the future.

When we released our *Statement of Expectations of energy businesses* in early 2020, never did I imagine that it would continue to be so important. This financial year saw continued refinements and iterations of the statement, which concluded, as anticipated, at the close of the financial year. The protections our statement provided was evidenced by the considerable drop in disconnections – 61,300 fewer from April 2020 to March 2021 than the previous period. Our standby statement, released at the same time the original statement was concluded, will continue to protect those affected by extended lockdowns from disconnection and debt collection, as well as providing extra access to payment plans and hardship programs.

Our commitment to consumers was also evidenced in our significant work towards developing a Consumer Vulnerability Strategy. We undertook extensive consultation, leading conversations with over 70 government, industry and consumer groups to inform the design of the strategy. I am really looking forward to our next round of stakeholder engagement, which will be on the draft strategy.

I was proud to release the AER's 5-year Strategic Plan in late 2020. In the development of our first ever Strategic Plan we reconsidered the AER's purpose, vision, outcomes and objectives. Tellingly, both our purpose and vision remained broadly the same, standing the test of time. The outcomes we aim to achieve in the Strategic Plan are grounded in the former Council of Australian Governments (COAG) Strategic Energy Plan outcomes. To support these outcomes we have articulated 4 key objectives, and it is very exciting to see how much we have already achieved against those objectives this year.

Our first objective is to protect vulnerable consumers while enabling consumers to participate in energy markets. Beyond our work on the Consumer Vulnerability Strategy, the use of our Energy Made Easy website continued to grow. It was accessed by more than 2.7 million users during 2020-21. This was a 64% increase on the previous financial year and shows that more



consumers were shopping around to get a better deal. For those consumers who do not currently shop around, our Default Market Offer 2020-21 provides a price cap for those on standing offer contracts. Consumers on these contracts across South Australia, south-east Queensland and New South Wales will share in more than \$65 million of bill savings in 2021-22 as a result of this determination.

One aspect to enabling participation in the energy market is reducing complexity and confusion for consumers. Simplifying the bills consumers receive is key to this. We are delighted to have begun work on implementing the 'Better Bills' rule change, which requires the AER to develop a mandatory guideline. To help us, we are seeking consumer views in new and exciting ways that are quite different from what we have done in the past. A research partnership with the Behavioural Economics Team at the Department of the Prime Minister and Cabinet has been established. Through this we are testing what simplification is through the eyes of actual consumers. As regulators and policymakers, using such evidence to inform our work is vital.

This year has also seen the AER continue its journey to strengthen our compliance and enforcement approach. We work with energy businesses to help them meet their obligations and, when they do not, we take action as appropriate. Our focus on ensuring compliance with our energy laws and rules throughout the year was demonstrated with the highest civil penalties ordered under the National Energy Laws to date, totalling \$3.8 million. The AER also issued 48 infringement notices totalling \$960,000, making a total of \$4.76 million in penalties paid by energy businesses during 2020-21. The AER's compliance and enforcement priorities for 2020-21 had both a consumer and a market focus.

The second objective in our Strategic Plan is to effectively regulate competitive markets primarily through monitoring and reporting, and enforcement and compliance. Beyond our enforcement efforts, our role in market monitoring continued to shine a light on what is happening in wholesale and retail markets. In late 2020 we published our second biennial *Wholesale electricity market performance report*. This report is a comprehensive picture of the state of wholesale competition in the National Electricity Market (NEM) and analyses how the performance of the market has changed since our inaugural report was released in 2018. In 2020 we found that the NEM continues to be concentrated in ownership of the wholesale market, despite new entry of wind and solar, making ongoing surveillance important in a rapidly changing market.

Our wholesale market monitoring also included detailed analysis and reporting of extreme prices, above \$5,000 per megawatt hour. Over the year we reported 5 times on prices exceeding this threshold. Contributors to the high price events varied in each report – some of the reasons were demand, line outages, lack of baseload and weather. Further, our quarterly wholesale reports to enable us to monitor wholesale prices more frequently, as these prices make up around 30% of energy bills. These reports highlighted good news for consumers throughout the year, with lower wholesale prices in 2020 flowing through to retail bills and reducing the cost for households and small businesses.

Our third objective in our Strategic Plan is to deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services. It was an extraordinarily busy year for the AER in this regard, with a total of 8 network revenue determinations totalling \$13.4 billion across both electricity and gas businesses. In 5 of these 8 decisions we reduced the amount of revenue that the businesses can collect from their customers. These determinations take many months of sophisticated and detailed analysis, so that consumers pay no more than necessary for safe and reliable energy. Completing 8 in 1 year is a mammoth effort, not only for the staff of the AER but also for our many consumer stakeholders who provide us such valuable insights.

In addition to the scheduled revenue determinations, we also approved a number of very significant contingent project applications, which totalled \$2.6 billion in forecast costs. Applications included the Eyre Peninsula Reinforcement project, the Victoria – New South Wales Interconnector and Project EnergyConnect. The AER moved swiftly in its assessment of Project EnergyConnect and effectively reduced the forecast projects costs by \$88 million, which is a substantial saving for the consumers who pay these costs.

We also considered 8 cost pass-through applications this year. Five of these were for natural disaster events, with 3 relating to costs arising from the 2019–20 bushfire season. This demonstrated that there is considerable volatility in the bushfire insurance liability market and that there may be circumstances where insurance coverage is not available to energy networks or commercially viable. In response, we worked collaboratively and consulted with networks and other stakeholders in the development of an insurance guidance note.

Our continued analysis of the performance of both distribution and transmission businesses, through our *Electricity network performance report*, shows that consumers are spending less on network services than they have done in previous years. Total network expenditure is substantially down from its peak in 2012, and network reliability has improved over recent years.

In addition to regularly receiving direct feedback via our Contact Centre, we have 3 key forums – the Consumer Consultative Group, the Consumer Challenge Panel and the Consumer Reference Group – that ensure the consumer voice is represented in our regulatory decisions. We thank them for their crucial input. In particular, this financial year they informed some of our most significant financial decisions, including revenue determinations and our approach to inflation; and contributed to our review process for the 2022 Rate of Return Instrument. This year we also saw the trialling of a new customer engagement approach known as New Reg. Overall, we are seeing a real step-up in network businesses' commitment to engagement, with customer advisory panels becoming a part of business as usual.

The fourth objective in our Strategic Plan is to use our expertise to inform debate about Australia's energy future and support the energy transition. A key way for us to do this is through the submission of rule changes to the AEMC. It was great to see the AER initiate the first ever fast-track rule change, which focused on improving the functioning of semi-scheduled, or 'weather-dependent', generators within the NEM. The AER proposed a change to the energy rules to stop semi-scheduled generators from turning off without instruction from the market operator. The change was approved in March 2021.

In 2020–21 the AER made a total of 33 submissions to the AEMC and other national policy and legislation making processes. This is an amazing step-change for the AER, as we are contributing a regulatory perspective to policy development more than ever.

One of our key policy roles continues with the Energy Security Board (ESB). Beyond my participation in the ESB, numerous staff and Board members of the AER actively participate in working groups that are assisting in the design of NEM 2025. Our engagement focuses on key areas of interest and relevance to the AER – evaluating the impacts of new market designs on competition, networks, monitoring, compliance and enforcement, and very importantly consumer protections.

Last year, I paid tribute to all of the AER employees working from home, and I need to do it again. While we may have got used to 'living at work', I am still amazed by how we continue to deliver and step up, despite these difficult periods. The outcomes and outputs of our increased efforts are evident in our compliance and enforcement achievements and our innovative approach to complex issues in regulatory determinations – whether they be the 'future of gas', replacement capex or opex; in meeting our statutory deadlines and completing many network determinations and monitoring reports; in our enhanced consumer engagement; and in our active participation in policy processes.

Our efforts are also being recognised through our most recent stakeholder survey results. We last surveyed our stakeholders in 2018, and I was thrilled that on most fronts our stakeholders in 2021 are rating us higher than previously. Our stakeholders consider us to have improved with regard to engagement, being a trusted source of information, showing leadership, encouraging and enabling innovation, promoting efficient investment in energy services, supporting and protecting vulnerable consumers, and equipping consumers to participate effectively in the energy market. Overall, 73% of our stakeholders give us a reputation score of 7 or higher out of 10; 48% consider our reputation to have improved; and, importantly, 77% of all our stakeholders trust us to do the right thing by consumers (scoring us 7 or higher out of 10).



The AER's contribution to Australia's energy system has also been recognised through the Commonwealth budget process. I was pleased that the AER received an additional \$29.6 million in funding for the next 2 financial years, which will enable us to deliver many of the important commitments in our Strategic Plan as well as respond to our ever-increasing regulatory responsibilities. Our additional funding will strengthen our compliance and enforcement work; enable upgrades to Energy Made Easy; enable us to implement regulatory sandboxing to assist energy businesses; enable us to enforce new gas market requirements; ensure network investment in distributed energy resources (DER) is efficient; ensure oversight of AEMO's Integrated System Plan (ISP); enable us to share product data with the Consumer Data Right platform; and facilitate our continued involvement in the design and implementation of NEM 2025.

It is an exciting time to be the Chair of the AER. I would like to acknowledge my Board colleagues, Jim, Eric, Catriona and Justin, who have worked tirelessly to ensure we make the best decisions on behalf of Australian energy consumers. The Board and I continue to marvel at the expertise, diligence and insight the employees at the AER share with us. In the last year we continued to see the evolution of the AER, supported by a new organisational design – reflecting the continued growth of, and investment in, the AER. As part of this new design, we welcomed Kathie Standen and Dr Kris Funston to new executive general manager roles in the AER. We experienced further generational change with the retirement of 2 of our long-term senior leaders, Peter Adams and Jacqui Thorpe, who retired during the period. Both Peter and Jacqui have made incredible contributions to the AER, and their legacies will be with us for some time.

It has been a fantastic year at the AER. We delivered terrific outcomes and continue to grow and evolve as an organisation.

It is a real honour to be the Chair of the AER, and it is our dedicated AER employees who remain our greatest strength. I believe we strive every day to be consumer-centric and committed, collaborative and respectful, accountable and honest, and expert and capable. I know that together we will continue to strive to be a high-performing regulator that builds trust in Australia's energy system, making it better for consumers, now and in the future.

Clare Savage  
Chair, AER

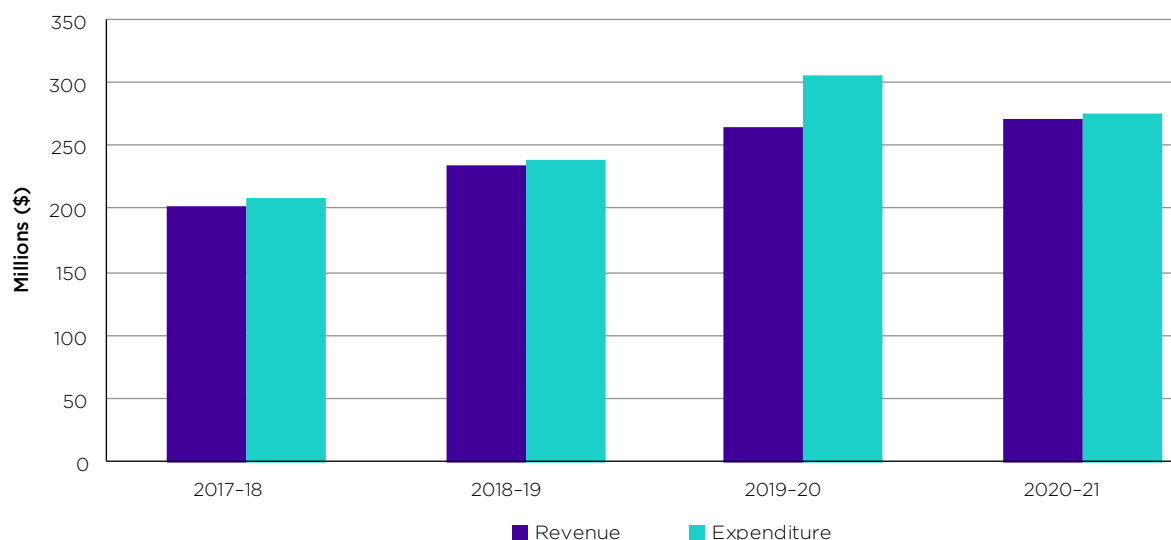
# Finance snapshot

The ACCC received an unqualified audit report on the 2020–21 financial statements from the Australian National Audit Office. These statements can be found in Part 5.

In 2020–21 revenue from government increased by \$7.8 million and expenditure on ACCC activities decreased by \$31.2 million. The additional revenue was appropriated by government to fund new measures and initiatives. The decrease in expenditure was primarily due to lower expenses incurred in relation to adverse litigation cost orders, with costs decreasing from \$33.3 million in 2019–20 to \$5.9 million in 2020–21.

A comparison of revenue and expenditure trends over the last 4 years is illustrated in figure 3.

**Figure 3 ACCC and AER revenue and expenditure 2017–18 to 2020–21**



The ACCC incurred an operating deficit of \$4.5 million in 2020–21. The operating deficit includes unfunded depreciation and amortisation expenses that are excluded when determining the ACCC's actual operating result in accordance with the government's Net Cash Appropriation Arrangements. After adjusting for depreciation the ACCC achieved a minor surplus, primarily due to lower supplier expenses.

During 2020–21 the ACCC incurred lower legal expenditure than originally budgeted. Legal costs can fluctuate between years depending on the number, nature and status of cases being pursued by the ACCC. The current operating environment has also resulted in lower than budgeted costs in some areas, including travel expenses. It is expected that these factors will be temporary in nature and future year costs will be more in line with previous financial years.

The ACCC remains in a sound financial position and is well placed to pay its debts as and when they fall due.

The ACCC's net cost of services for 2020–21 was \$271.6 million (2019–20: \$300.7 million), with revenue from government of \$267.0 million (2019–20: \$259.2 million).

Key financial results for the ACCC for the current and comparative financial years are reported in the financial statements in Part 5.

Appendix 1 of this report details the ACCC's financial results by outcome and program as outlined in its Portfolio Budget Statement 2020–21.

## Expenditure

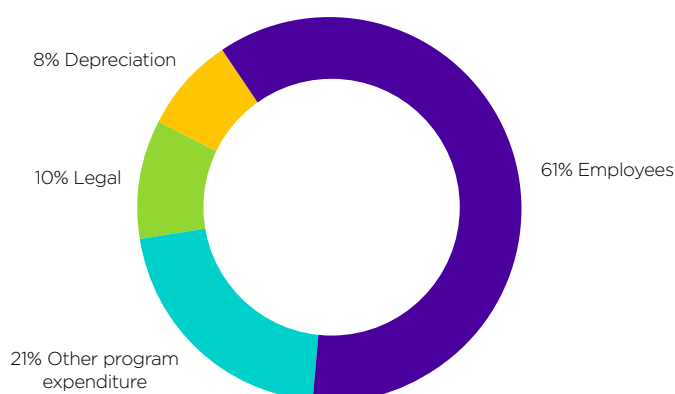
The ACCC is a knowledge-based organisation and, as such, spends approximately 61% of total expenditure on employee costs (2019-20: 53%).

Legal expenditure decreased by \$5.1 million in 2020-21, with costs subject to movement between years depending on the number, nature and status of litigation proceedings.

Other expenses (excluding depreciation and amortisation) decreased by \$38.1 million. The decrease in expenditure was primarily due to lower costs incurred in relation to adverse litigation cost orders. The ACCC also achieved temporary savings in some supplier expense categories as a result of the current operating environment.

Depreciation and amortisation increased by \$5.6 million, largely due to increased amortisation costs associated with Consumer Data Right software assets, noting 2020-21 was the first full year of amortisation for these assets.

**Figure 4 ACCC and AER expenditure 2020-21**



## Balance sheet

The ACCC's net assets as at 30 June 2021 totalled \$63.3 million compared with (\$1.0) million as at 30 June 2020. The increase relates to a number of factors, including a decrease in adverse litigation provisions from \$25.0 million in 2019-20 to nil in 2020-21. Other factors included an increase in intangible assets associated with Consumer Data Right and an increase in accumulated reserves following a \$35.1 million equity injection from the government during 2020-21 to supplement the Litigation Contingency Fund.

## Assets

Total assets as at 30 June 2021 were valued at \$232.9 million, compared with \$169.1 million on 30 June 2020, representing a 38% increase. This variance is largely the result of a \$20.4 million increase in leasehold improvements primarily due to the recognition of right-of-use assets for a new office accommodation lease in Sydney. Other movements included an increase in intangible assets and an increase in the appropriation receivable.

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

## Liabilities

Total liabilities decreased to \$169.6 million in 2020–21 from \$170.1 million in 2019–20. Major movements include a \$25.3 million reduction in other provisions, primarily due to the decrease in adverse litigation provisions. This decrease was partially offset by increases in other lease liabilities following recognition of a new office accommodation lease in Sydney. Other movements included increases in supplier payables and employee provisions.

## Administered revenue

In 2020–21 the ACCC received \$117.5 million in administered revenue, compared with \$203.8 million from 2019–20. This amount includes court-imposed fines, penalties and costs. Administered revenue is subject to variability between financial years depending on the status, volume and severity of cases being pursued.

## Employee summary

**Table 1** Average staffing level 2018–19 to 2020–21

	Budgeted	Actual
2018–19	964	976
2019–20	1,113	1,113
2020–21	1,170	1,172

## Developments affecting our operations or financial results

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

## Significant issues reported to the Minister

There were no significant issues reported to the Minister in 2020–21.





02

## Agency overview





# About the ACCC and AER

## WHO WE ARE

The ACCC is an independent Commonwealth statutory authority whose role is to promote competition and fair trade in markets to benefit consumers, businesses, and the community. We also regulate national infrastructure services. Our primary responsibility is to ensure that individuals and businesses comply with Australian competition, fair trading, and consumer protection laws – in particular the *Competition and Consumer Act 2010* (Cth) (CCA).

The AER is governed by an independent statutory board and is responsible for regulation of the Australian energy market and enforcement of legislation and rules which aim to promote efficient investment in, and operation and use of, energy services for the long-term interests of consumers with respect to price, quality, safety, reliability and security.

The ACCC and the AER are a single listed entity for the purpose of the finance law.<sup>#</sup>

## OUR PURPOSES

The ACCC and the AER work in close coordination to achieve our purposes:

- ACCC: Making markets work for consumers, now and in the future.
- AER: Energy consumers are better off, now and in the future.

## OUR VALUES

The ACCC and AER appreciate and uphold the Australian Public Service Values of Impartial, Committed to Service, Accountable, Respectful and Ethical (ICARE).

The ACCC holds 4 additional complementary values as unique and meaningful to our work:



### Independent:

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



### Expert:

We make timely decisions based on evidence and rigorous analysis.



### Strategic:

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



### Trustworthy:

We communicate honestly and directly and act respectfully.

<sup>#</sup> Pursuant to s 44AAL of the CCA.



## Our role

The roles of the ACCC and AER are founded on the principle that competition provides the best incentive for businesses to become more efficient, innovative and flexible and to operate in the long-term interests of consumers. Competition is a positive force that promotes economic growth and job creation. Where competition is not feasible, effective regulation is required to deliver outcomes in line with those achieved by competitive markets.

For competition to remain healthy, businesses need to operate within the boundaries of acceptable and fair behaviour towards their customers, competitors and suppliers. The role of the ACCC is to enforce compliance with the competition, consumer protection, fair trading, and product safety provisions of the CCA and sections of the other Acts that the ACCC enforces, regulate national infrastructure, and undertake market studies and inquiries.

The AER regulates wholesale and retail energy markets, and energy networks, under national energy legislation and rules. Our functions mostly relate to energy markets in eastern and southern Australia. We place consumers at the heart of our work and are focused on ensuring a secure, reliable and affordable energy future for Australia.

## Organisational structure

The Commission is the primary decision-making body of the ACCC. Members are appointed by the Governor-General for terms of up to 5 years. Appointments are made after the majority of state and territory jurisdictions support the selection. Further information on the Commission is in Part 4.

The AER has its own independent Board comprising 2 Commonwealth members and 3 state/territory members. One member is appointed as the Chair and another member is appointed as the Deputy Chair. The Board is supported by employees who work exclusively on energy matters. It has access to the ACCC's legal and economic specialists.

ACCC Commissioners and AER Board members are statutory officers. The people undertaking work for the ACCC and AER are Australian Public Service employees.

The ACCC Chair and Agency Head, Rod Sims, was the Accountable Authority for the whole agency (both the ACCC and the AER) in 2020–21.

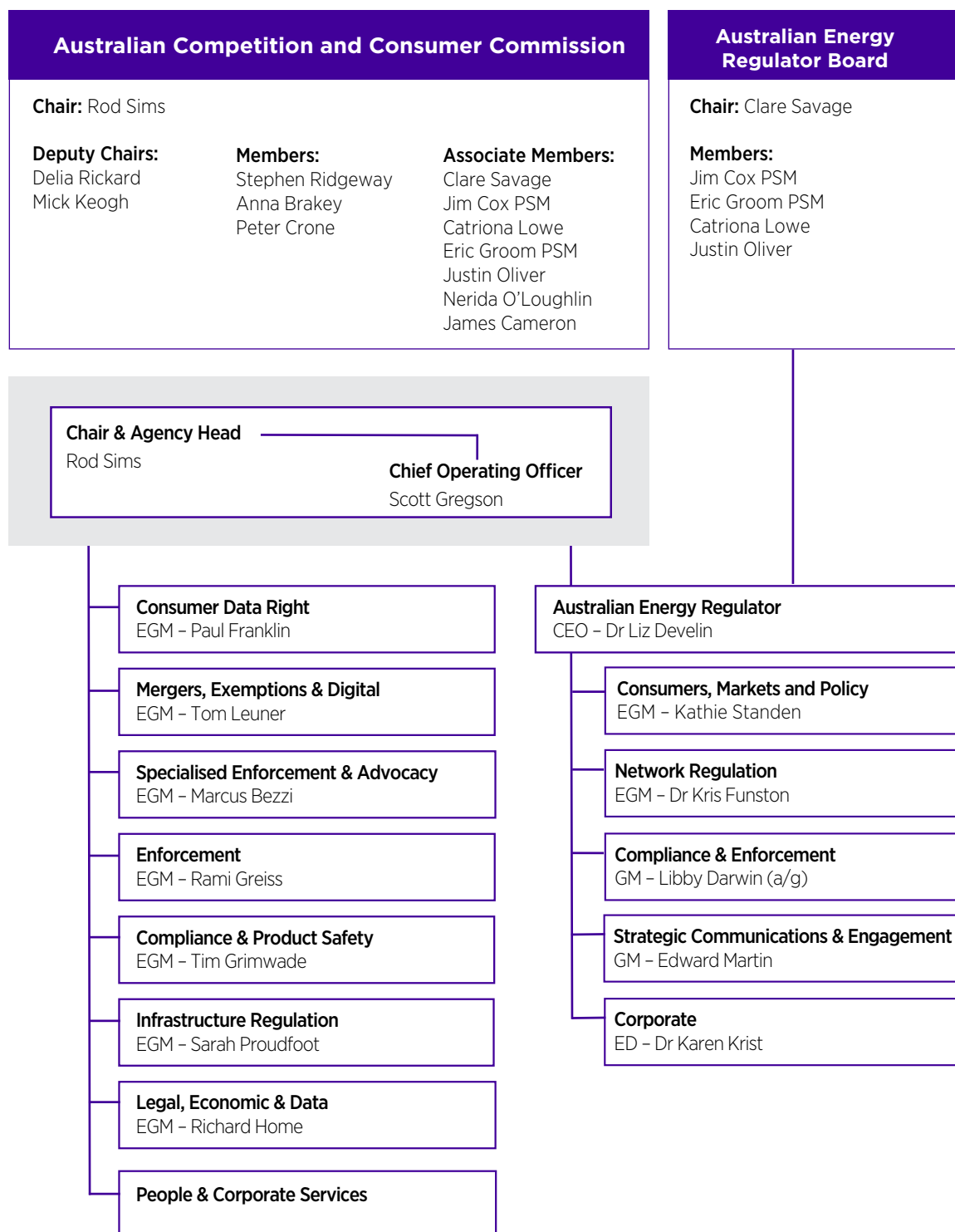
Figure 2.1 provides an overview of the structure of the ACCC and AER as at 30 June 2021.

In 2019–20 the ACCC commenced a review of its strategic objectives and capabilities, and during 2020–21 the ACCC continued internal consultation on how the agency's structure can best deliver on its objectives and ensure it has the capability it needs for the future.

From 1 July 2021 the ACCC will have a new structure. The major change is the establishment of dedicated divisions for consumer and fair trading, competition, and consumer product safety. The new structure equips the ACCC to deliver on the strategic objectives set out in the Corporate Plan 2021–22. The new structure is available on the [ACCC website](#).

During 2020–21 the AER also implemented a [new organisational design](#). This reflects its consistent growth and responds to new functions it is required to deliver.

Figure 2.1 Organisational structure of the ACCC and AER (at 30 June 2021)



EGM – Executive General Manager

GM – General Manager

ED – Executive Director

a/g – acting

## ACCC functions

The ACCC is vested with functions and powers under the CCA and a range of other legislation. Details of this legislation are in Appendix 7.

As Australia's national competition regulator, the ACCC works to enhance the welfare of Australians by maintaining and promoting competition. The ACCC does so by enforcing laws in Part IV of the CCA that prohibit:

- cartel conduct
- anti-competitive agreements and practices, including concerted practices
- misuse of market power
- mergers that would be likely to substantially lessen competition.

The ACCC refers alleged serious cartel conduct to the Commonwealth Director of Public Prosecutions.

The ACCC reviews mergers and acquisitions to prevent structural changes that would substantially lessen competition in a market or be likely to do so.

The CCA allows the ACCC to consider applications for authorisation and notification. Authorisations and notifications provide statutory protection from particular provisions of competition law for arrangements that may otherwise contravene them but are not harmful to competition or are likely to result in overall public benefit. We also identify conduct suitable for a class exemption, and assess certification trade mark applications.

The Consumer Data Right (CDR) provisions of Part IVD of the CCA also aim to create more choice and competition. The ACCC's CDR functions are to:

- plan, design, build, test, run and secure the enabling technology solutions for data holders and accredited data recipients to securely exchange data, including the Register of Accredited Persons
- accredit data recipients
- support participants, including by testing and onboarding participants to the CDR Register
- promote compliance with the Competition and Consumer (Consumer Data Right) Rules 2020 (CDR Rules) and standards and take enforcement action where appropriate.

Until 28 February 2021 we were also accountable for making rules regarding Consumer Data Right.<sup>1</sup>

The ACCC protects the interests and safety of consumers and supports fair trading by promoting compliance with the Australian Consumer Law (ACL) and certain industry codes through a range of compliance and enforcement tools, including:

- bringing court proceedings
- accepting court enforceable undertakings
- issuing infringement notices
- issuing public warning notices
- resolving matters administratively
- education campaigns and other compliance initiatives.

The ACL provides consumer regulators with a single set of provisions to respond to fair trading and consumer protection issues under a 'one law, multi-regulator' regulatory framework. The ACL also allows regulators to collectively work on broader issues and take proactive and timely

<sup>1</sup> Following changes to the CCA, this function transferred to Treasury from 28 February 2021.

compliance and enforcement action. The ACCC works closely with state and territory consumer protection agencies and other national regulators on compliance and enforcement projects.

The ACCC also works with businesses, industry associations and consumer groups to inform businesses and consumers of their rights and obligations under the CCA through engagement, education and the provision of specialised information.

The ACCC helps to ensure small businesses understand and comply with their obligations and encourages them to exercise their rights under the CCA and industry codes in their dealings with larger businesses.

The ACCC uses an intelligence-led approach to assess current and emerging consumer product safety risks, and takes action including:

- negotiating the recall of goods
- educating industry and consumers
- negotiating changes to packaging, labelling or product design, labelling or voluntary safety standards
- enforcing mandatory standards and bans
- making recommendations for regulatory action by the Minister, including in relation to making and updating standards, bans and issuing compulsory recalls.

The ACCC is the national regulator of natural monopoly infrastructure services in communication, postal services and rail industries and has specific regulatory roles in relation to bulk water, retail electricity and bulk wheat port facilities. This includes facilitating access to bottleneck infrastructure and establishing efficient pricing for that access; and enforcing industry-specific competition and market rules in some infrastructure-based markets.

The ACCC monitors and reports on the price and quality of goods and services available in some highly concentrated or emerging markets to identify market failure and promote competition. This includes the petrol, aviation, gas, electricity and telecommunications sectors.

The ACCC also takes on additional functions at the direction of the government, such as undertaking market studies and inquiries to support competition, consumer and regulatory outcomes.

## ACCC priorities

Each year the ACCC identifies priorities for all of our key functions to help guide how we use our limited resources, as well as to let market participants know the sectors of the economy and types of conduct that will be of particular focus.

The ACCC cannot pursue all possible breaches of the CCA and other relevant legislation that come to our attention. We target our compliance and enforcement actions to address conduct that will, or has the potential to, harm the competitive process or result in widespread consumer or small business detriment.

Our compliance and enforcement priorities and product safety priorities signal our key areas of concern so as to encourage widespread compliance with the CCA and to promote behavioural change within the relevant markets.

Details of these priorities for 2020–21, as well as the priorities for our other functions, are set out in our [Corporate Plan 2020–21](#) and on our website at [Compliance and Enforcement Priorities 2021 and 2020](#) and at [Product Safety Priorities 2021](#) and [2020](#).

In summary, the ACCC's priorities for 2020-21 were:

- consumer issues arising from the COVID-19 pandemic, including those relating to travel and event cancellations
- competition and consumer issues in the funeral sector
- competition and consumer issues arising from the pricing and selling of essential services
- the safety of consumer products, with a focus on the new quad bike safety standard, Takata airbags, button batteries and the safety of products sold on online platforms
- authorising arrangements between competitors that are in the public interest so as to allow them to temporarily collaborate in response to the pandemic
- assessing mergers to prevent changes to the structure of markets that would substantially lessen competition – with particular attention on any opportunistic purchases of distressed or failing firms caused by the worsening economic conditions
- competition and consumer issues in relation to digital platforms, including through government-directed inquiries into digital advertising services and digital platform services
- ensuring compliance with mandatory industry codes of conduct in the agriculture sector
- ensuring small businesses receive the protection of the competition and fair trading laws, including franchising
- continuing to implement Consumer Data Right in relation to banking to enhance competition; and progressing preparations for implementation of Consumer Data Right for the energy sector
- delivering effective network regulation across a number of infrastructure sectors, such as National Broadband Network access arrangements that support more competitive and efficient retail markets; and establishing regulated access terms for the interstate rail network and bulk wheat facilities
- promoting performance-based competition in concentrated sectors such as communications, fuel, aviation, gas and electricity through monitoring, reporting and transparency measures
- competition issues in the financial services and commercial construction sectors
- competition issues in the context of the COVID-19 pandemic, including monitoring competition in the domestic airline industry
- completing market studies and inquiries covering a range of sectors, including the financial sector (home loans); Murray-Darling Basin water markets; and the supply of home, contents and strata insurance to consumers in northern Australia.

Some forms of conduct are so detrimental to consumer welfare and the competitive process that the ACCC will always regard them as a priority. We refer to these as enduring priorities. Our enduring priorities include:

- cartel and other anti-competitive conduct
- product safety
- conduct impacting consumers experiencing vulnerability or disadvantage
- conduct impacting Indigenous Australians.

Further detail about our priorities is in Part 3 under the relevant strategic objective.

## ACCC stakeholders

To enhance our effectiveness, we work with other government departments and agencies, as well as consumer groups, industry associations and international partners.

### Australian consumers

The interests of consumers are at the heart of all of our work. We engage directly with consumers through numerous media channels, our Infocentre, formal public consultations and education campaigns; and by working with consumer advocacy groups. One of our key mechanisms for partnering with consumer representatives is the Consumer Consultative Committee – see Part 3, page 88 for more information.

### Australian businesses

The ACCC works with businesses and industry bodies and associations to help businesses understand their obligations to comply with the law. The ACCC's aim is to promote a competitive and fair operating environment for small business and, importantly, ensure small businesses understand how the legislation can help them. The ACCC engages with many businesses and industry bodies and associations through most of the consultative committees noted below.

### Australian Government

The ACCC is an independent statutory agency which operates as part of the Australian Government and is accountable to the Australian Parliament, and ultimately to the public, through Treasury portfolio ministers and the parliamentary committee processes. The ACCC's competition and consumer functions fall principally within the responsibility of the Department of the Treasury and the Treasurer.

The ACCC provides timely and accurate information on its activities and matters of significance to the government, including to the Treasurer; Assistant Treasurer; the Minister for Superannuation, Financial Services and the Digital Economy; the Minister for Communications, Urban Infrastructure, Cities and the Arts; the Minister for Agriculture and Northern Australia; the Minister for Resources and Water; and other ministers as required.

The ACCC has accountabilities under Consumer Data Right alongside Treasury, the Data Standards Body and the Office of the Australian Information Commissioner (OAIC). The ACCC collaborates closely with these CDR agencies and has regular engagement with other government stakeholders, including the Department of the Prime Minister and Cabinet, the Digital Transformation Agency, the Attorney-General's Department and sector-specific regulators such as the Australian Prudential Regulation Authority.

We also advise the relevant Minister (who for the relevant period was Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing, the Hon Michael Sukkar MP) on the use of a range of powers for market intervention to protect consumers from unsafe products.

The ACCC continues to work cooperatively with other Australian Government agencies such as the Australian Securities and Investments Commission, the National Disability Insurance Agency, Food Standards Australia New Zealand, the OAIC, the Australian Communications and Media Authority (ACMA), the Therapeutic Goods Administration, the Australian Commission for Law Enforcement Integrity and many more.

### State and territory governments

The ACCC works collegially with state and territory government agencies to coordinate and collaborate in our compliance and enforcement work, influence change, build capacity, share best practice approaches and support broader market and industry behavioural change.

Under Australia's single consumer law multi-regulator model, the ACCC works with other ACL regulators in each state and territory to:

- employ the most effective means of addressing consumer harm through cooperative and complementary enforcement action
- avoid unnecessary duplication of effort in the effective administration of the ACL
- ensure, wherever appropriate, a consistent approach to dispute resolution and enforcement action.

Our key mechanism for coordinating with other ACL regulators has been through the Council of Australian Governments (COAG) Forum on Consumer Affairs (CAF) and CAF's subcommittees. With the cessation of COAG on 1 February 2021, CAF and the supporting Consumer Affairs Australia and New Zealand forum were discontinued. However, the ACCC and its fellow regulators are working closely to ensure that the replacement approach of ad hoc liaison and engagement still facilitates effective coordination between ACL regulators. Further detail about how the ACCC works with the other ACL regulators, including under these new arrangements, can be found in the discussion in Part 3, page 89.

## International counterparts

We engage with international counterparts across all our functions, including with the New Zealand Commerce Commission and sectoral regulators in jurisdictions such as the United Kingdom, the United States and the European Union.

The ACCC also engages with international counterparts through our membership of or participation in international regulatory organisations and multilateral forums such as the:

- Organisation for Economic Cooperation and Development competition, economic and consumer committees and working groups
- United Nations Conference on Trade and Development
- International Competition Network (ICN), including membership of the ICN Steering Group
- International Consumer Protection and Enforcement Network.

Details of international forums and groups we participate in on the subjects of competition, consumer protection, product safety and regulation are available on our [website](#).

## Consultative committees

The ACCC hosts or participates in the following consultative committees and forums:

- Agriculture Consultative Committee
- Consumer Consultative Committee
- Fuel Consultative Committee
- Infrastructure Consultative Committee
- Small Business and Franchising Consultative Committee
- ACCC Performance Consultative Committee
- Utility Regulators Forum
- Wholesale Telecommunications Consultative Forum.

Further information on our consultative committees is available on our [website](#).

## AER functions

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

- regulating electricity networks and covered gas pipelines in all jurisdictions except Western Australia. We set the amount of revenue that network businesses can recover from customers for using these networks
- enforcing the laws for the National Electricity Market and spot gas markets in southern and eastern Australia. We monitor and report on the conduct of energy businesses and the effectiveness of competition
- protecting the interests of household and small business consumers by enforcing the National Energy Retail Law. Our retail energy market functions cover New South Wales, South Australia, Tasmania, the Australian Capital Territory and Queensland.

### Purpose

The AER exists so that energy consumers are better off, now and in the future.

### Vision

The AER is a high-performing regulator that:

- is independent, open and accountable
- builds trust in Australia's energy system
- takes considered risks
- ensures the regime is fit for purpose
- engages actively with stakeholders.

## AER priorities

In December 2020 the AER finalised and launched its [Strategic Plan 2020–2025](#). The outcomes sought are grounded in the former COAG Strategic Energy Plan. To support these outcomes AER has articulated 4 key strategic objectives:

- Protect vulnerable consumers while enabling consumers to participate in energy markets.
- Effectively regulate competitive markets primarily through monitoring and reporting, and enforcement and compliance.
- Deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services.
- Use our expertise to inform debate about Australia's energy future and support the energy transition.

The priorities under each of these objectives are organised against an Execute/Tilt/Advocate Framework. 'Execute' signals to staff and stakeholders the 'must do's' under the regulatory framework. 'Tilt' describes actions to push the AER in a new direction or shift emphasis in response to a rapidly changing external environment but stay within our existing remit. 'Advocate' describes pursuing changes to the regulatory frameworks that are beyond our immediate control and that require collaboration across government and the market bodies.

Further information about our objectives and priorities can be found in our [Strategic Plan](#).



## AER stakeholders

For our many and varied stakeholders we are committed to:

- proactively engaging and listening to understand their diverse perspectives
- working in partnership with other energy market bodies and the government on matters of common interest
- clearly communicating our decisions and making it easy to engage with us
- embracing creative ways of engaging that work for stakeholders, not just us.

To achieve these commitments, the AER has regular dialogue with a range of stakeholders, including other market bodies, consumer groups, industry participants/industry bodies and governments.

As an industry regulator, we rely on and appreciate the numerous interactions we have with the businesses we regulate. We take our consultation obligations very seriously and aim to be transparent, give sound reasons for our decisions and signal well in advance any changes to our approach while maintaining independence.

The AER Chair is also member of the Energy Security Board, and we work particularly closely with the other market bodies, the Australian Energy Market Commission and the Australian Energy Market Operator, Energy Consumers Australia and the Australian and New Zealand Energy and Water Ombudsmen Network.

We also have close relationships with regulators in Australia and overseas.

### AER consumer forums

Consumer engagement is a key part of the AER's stakeholder engagement work. We have 5 key forums:

- **Consumer Consultative Group** – the group has 14 members, each of which is an organisation representing a range of consumer interests. The group's role is to provide advice to the AER relating to our functions under the energy laws affecting energy consumers across participating jurisdictions.
- **Consumer Challenge Panel** – the panel helps the AER to incorporate a consumer perspective into network determinations. Members are individuals with significant local and international expertise, spanning fields including economic regulation, energy networks and consumer representation.
- **Consumer Reference Group** – the group is a project-specific consultation body established by the AER to provide consumer input into our Inflation Review 2020 and Rate of Return Instrument 2022 (2022 Instrument). Members are individuals with significant relevant experience who are appointed by the AER.
- **Retailer Reference Group** – the group provides feedback from a retailer perspective in order to inform the AER's decisions on rate of return and inflation and ultimately the 2022 Instrument.
- **Investor Reference Group** – the group provides feedback from an investor perspective, in order to inform the AER's decisions on rate of return and inflation and ultimately the 2022 Instrument. The insights gained reflect the group members' experience in global capital markets and investments.

## Government expectations

Our agency comes under the portfolio responsibilities of the Department of the Treasury.

The responsible Minister for the ACCC is the Treasurer, the Hon Josh Frydenberg MP.

The [Statement of Expectations](#) issued in 2014 outlines the Australian Government's expectations of the ACCC, including its governance, financial management and relationship with government. The government states that it is imperative that the ACCC act independently and objectively in performing its functions and exercising its powers. The government's vision is for the ACCC to be a high-performing and responsive agency that administers a principles-based regulatory framework.

In October 2020 the Minister for Communications, Cyber Safety and the Arts issued a complementary [Statement of Expectations](#) of the ACCC in relation to our telecommunications functions. It notes the substantial transformation occurring in the telecommunications sector and sets the framework for effective working relationships between the ACCC, the Minister and ACMA.

The ACCC responded to the Statements of Expectations by providing Statements of Intent. These can be found on the [ACCC website](#).

The AER is accountable to the National Cabinet Reform Committee for Energy (which replaced the COAG Energy Council after COAG ceased). The AER reports twice a year to the energy ministers with regard to its priorities, budget, achievements, governance and emerging risks.

The former COAG Energy Council and the Australian Government have issued Statements of Expectations for the AER in 2014. These documents are currently being reviewed and merged. During this time, the government's vision is for the AER to be a high-performing and consultative agency that administers a principles-based regulatory framework in a way that promotes the long-term interests of consumers and minimises compliance costs.

## Oversight bodies

Various public bodies and office holders oversee the operations of the agency, as described in Part 4 under 'External scrutiny' (see page 170).





03

## Annual performance statement



# Statement of preparation

As the accountable authority of the ACCC and AER, I present the 2020–21 financial year annual performance statement of the ACCC and AER, prepared for paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In my opinion, this annual performance statement accurately presents the entity's performance in the reporting period and complies with s 39(2) of the PGPA Act.

A handwritten signature in black ink, appearing to read 'Rod Sims', is positioned above the printed name.

Rod Sims  
Chair, ACCC

# Performance reporting framework

The agency reports under the Commonwealth Performance Framework. This framework is enabled through the PGPA Act and the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule). We also report under our enabling legislation, the *Competition and Consumer Act 2010* (Cth) (CCA). Our performance reporting framework is shown in figure 3.1.

The elements of the Commonwealth Performance Framework are:

- Portfolio Budget Statement (PBS)
- Corporate Plan
- annual performance statement in the Annual Report.

These documents establish a 'line of sight' between our funding and the high-level outcome that the ACCC and AER are to achieve (as set out in the PBS); our purposes, objectives, key activities, priorities and performance measures in the Corporate Plan; and the results for the performance measures to demonstrate in the annual report the extent to which we have achieved our purpose.

This chapter reports on our performance in achieving our outcome and purposes for 2020-21 using the framework and performance indicators set out in both the 2020-21 ACCC PBS (contained in the Treasury portfolio PBS) and the [ACCC and AER Corporate Plan 2020-21](#).

## Portfolio Budget Statement: Outcome and program structure

The agency has one outcome statement (what the Australian Government expects to achieve through our agency) and 2 programs (the activities through which the outcome will be achieved). The outcome and program framework is presented in the PBS.

The ACCC and the AER jointly report against the agency's outcome, with the ACCC reporting against program 1.1 and the AER against program 1.2. Our outcome and our programs are set out below.

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

**Program 1.1:** Australian Competition and Consumer Commission – To achieve compliance with the *Competition and Consumer Act 2010* and other legislation to protect, strengthen and supplement the way competition works in Australian markets and industries to improve the efficiency of the economy and to increase the welfare of Australians.

**Program 1.2:** Australian Energy Regulator – The AER's priorities and work program are guided by the objectives of national energy legislation and rules and the five core outcomes for the energy system established by the COAG Energy Council's Strategic Plan. The common objective through the legislation is to promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of end users of energy with respect to price, quality, safety, reliability and security.

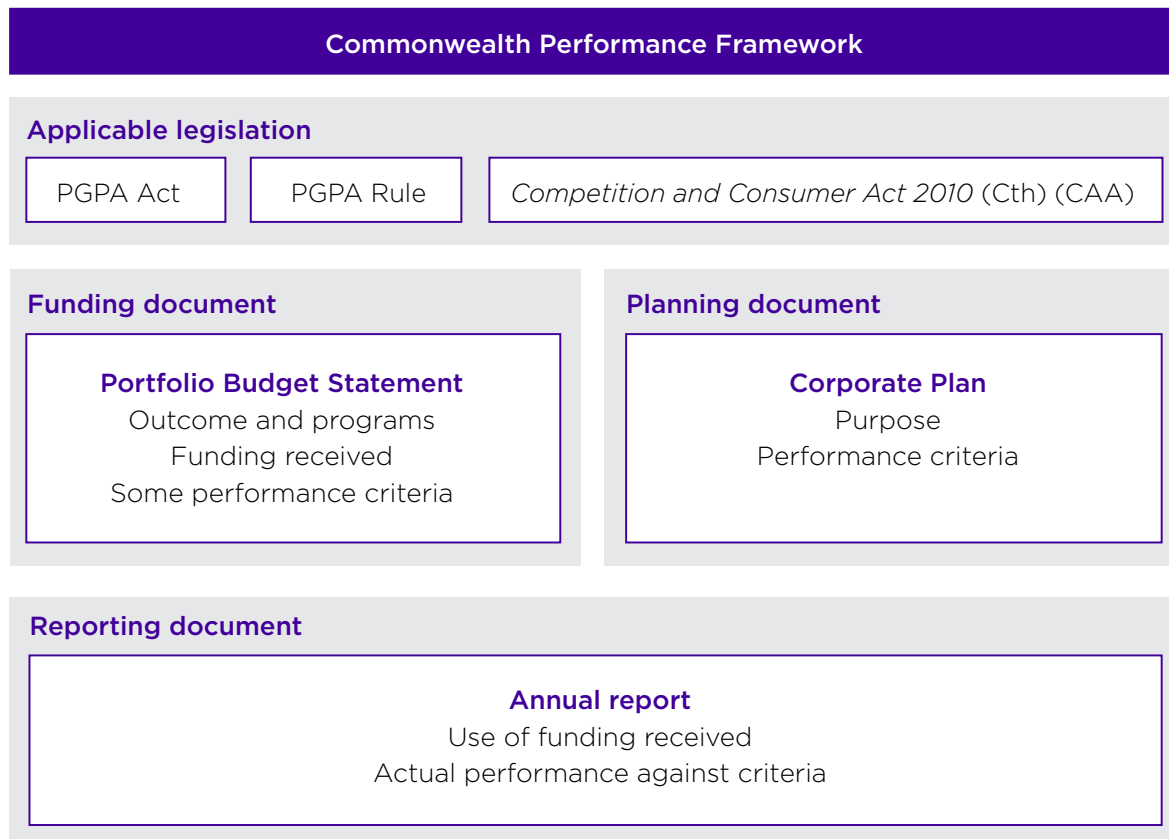
# Corporate Plan: Our purposes and performance measures

The ACCC and the AER work in close coordination to achieve our purposes:

- ACCC: Making markets work for consumers, now and in the future.
- AER: Energy consumers are better off, now and in the future.

Our Corporate Plan sets out the strategic objectives, priorities, deliverables (key activities) and performance measures for the ACCC and AER.

**Figure 3.1** Performance reporting framework





# Strategic objectives to achieve our purpose

We articulate specific strategic objectives to guide the key activities (deliverables) we undertake to achieve our purpose and deliver the outcomes set by the Australian Government.

## Program 1.1: ACCC

The ACCC progresses each strategic objective through a series of deliverables. Our performance indicators are aligned to each deliverable.

**Table 3.1 ACCC strategic objectives and deliverables**

<b>Purpose: Making markets work for consumers, now and in the future</b>
<b>Strategic objective 1:</b> Maintaining and promoting competition
<ul style="list-style-type: none"> <li>▪ Deliverable 1.1 – Deliver outcomes to address harm to consumers and businesses resulting from anti-competitive conduct</li> <li>▪ Deliverable 1.2 – Assess mergers to prevent structural changes that substantially lessen competition</li> <li>▪ Deliverable 1.3 – Make decisions on authorisation, notification and certification trade mark applications in the public interest</li> <li>▪ Deliverable 1.4 – Reliably support the operation of the Consumer Data Right for banking and deliver the change program to expand the Consumer Data Right</li> </ul>
<b>Strategic objective 2:</b> Protecting the interests and safety of consumers, and supporting fair trading in markets affecting consumers and small business
<ul style="list-style-type: none"> <li>▪ Deliverable 2.1 – Deliver outcomes to address harm to consumers and small businesses resulting from non-compliance with the Australian Consumer Law and Industry Codes</li> <li>▪ Deliverable 2.2 – Enhance the effectiveness of the ACCC's compliance and enforcement initiatives through partnerships</li> <li>▪ Deliverable 2.3 – Identify and address the risk of serious injury and death from safety hazards in consumer products</li> <li>▪ Deliverable 2.4 – Support a vibrant small business sector</li> <li>▪ Deliverable 2.5 – Empower consumers by increasing their awareness of their rights under the Australian Consumer Law</li> </ul>
<b>Strategic objective 3:</b> Promoting the economically efficient operation of, use of, and investment in infrastructure; and identifying market failure
<ul style="list-style-type: none"> <li>▪ Deliverable 3.1 – Deliver network regulation that promotes competition in the long-term interests of end users</li> <li>▪ Deliverable 3.2 – Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets</li> <li>▪ Deliverable 3.3 – Improve the efficient operation of markets by enforcing industry-specific competition and market rules</li> </ul>
<b>Strategic objective 4:</b> Undertaking market studies, inquiries and monitoring to support competition, consumer and regulatory outcomes
<ul style="list-style-type: none"> <li>▪ Deliverable 4.1 – Develop a sophisticated understanding of how well competition and markets are working in particular sectors and provide advice on a broad range of competition and consumer issues</li> </ul>



## Program 1.2: AER

The AER's performance indicators are mapped to each strategic objective.

**Table 3.2** AER strategic objectives

<b>Purpose: Energy consumers are better off, now and in the future</b>
<b>Strategic objective 1:</b> Protect vulnerable consumers while enabling consumers to participate in energy markets
<b>Strategic objective 2:</b> Effectively regulate competitive markets primarily through monitoring and reporting, enforcement and compliance
<b>Strategic objective 3:</b> Deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services
<b>Strategic objective 4:</b> Use our expertise to inform debate about Australia's energy future and support the energy transition

# How we measure our performance

The ACCC and AER draw on a number of sources to measure and report on how effective we are in achieving our purpose. These include:

- a suite of performance indicators
- analysis of activities we undertook and how they contributed to achieving our purpose
- stakeholder surveys.

Drawing on a broad range of qualitative and quantitative measures enables us to provide a well-rounded analysis of our performance in achieving our purpose.

## Performance indicators

Our Corporate Plan contains a suite of performance indicators (with targets, where applicable).<sup>2</sup> Our results are reported with comparative results for the previous 3 years (where available) to provide a picture of our performance over time.

We also provide an assessment of how we have performed in achieving our targets for the year. Each performance indicator is assessed as shown in table 3.3.

**Table 3.3 Assessment of performance results**

Rating	Symbol	Assessment
Met or exceeded	✓	Result is 100% or above of target
Partially met	○	Result is between 75% and 99% of target
Not met	✗	Result is less than 75% of target
No target set	●	N/A

While our performance indicator results provide readers with a quantitative indication of the significant outputs from our activities, the results should be read in conjunction with the highlights, case studies and other information about our activities and outcomes achieved.

## Activities undertaken and outcomes achieved

In assessing our effectiveness, we also look at our key activities and outcomes achieved under our strategic objectives and deliverables over the reporting period. These are discussed in the 'Analysis of performance' sections. Key highlights and case studies in the 'Outcomes achieved against deliverable' sections provide more detailed discussion of our activities and achievements.

## Performance surveys

### ACCC Effectiveness Survey

In 2018-19 the ACCC engaged ORIMA Research to undertake a survey and conduct interviews with key stakeholders to qualitatively measure our effectiveness in achieving our purpose. The key findings from this research were incorporated into the annual performance statement for 2018-19, which substantially enhanced our performance measurement and reporting. The ACCC will next undertake this survey in 2021-22.

<sup>2</sup> A subset of these indicators is included in our PBS.

## Perceptions Survey

In 2020 we commissioned Faster Horses to conduct market research on consumers' and small business operators' perceptions and knowledge of the ACCC. The research also explored consumers' understanding of their consumer rights and willingness to exercise them. This follows similar studies conducted in 2018 and 2017. The research involved a survey of approximately 1,600 consumers, 4 online consumer focus groups and approximately 400 small business operators. The findings are used to understand the usefulness of content that the ACCC provides and the effectiveness of current communication channels.

## AER stakeholder surveys

The AER commissions research to measure its reputation, stakeholder needs and expectations and how it is meeting certain key performance indicators. The AER invites a broad range of organisations to participate, including network businesses, retailers, generators, ombudsman schemes, state regulators, industry, consumer representatives, government departments, and energy ministers and staff. The research is conducted by independent market research agencies and includes a quantitative survey and in-depth interviews.

Newgate Research was appointed to deliver the 2021 survey. The survey findings are included in this annual report. The methodology used for the 2021 survey, while a significant enhancement on methodology from previous years, does mean some results from previous years are not directly comparable.

## Other measures of performance

### Self-assessment under the Regulator Performance Framework

The ACCC has undertaken a comprehensive annual self-assessment against the 6 key performance indicators specified in the Australian Government's Regulator Performance Framework (RPF) since 2016. The RPF was replaced by the government's [Regulator Performance Guide](#) on 30 June 2021. Both the RPF and the new guide focus on how Commonwealth regulators administer regulation to encourage them to undertake their regulatory functions with the minimum regulatory burden on regulated businesses.

In accordance with the RPF, the ACCC's self-assessment reports were externally validated by the [ACCC Performance Consultative Committee](#) (APCC), which consists of members from the business, legal and consumer sectors. These members represent the stakeholders that the ACCC engages with when undertaking regulatory functions.

The [ACCC Regulator Performance Framework self-assessment report 2019-20](#) focused on how the ACCC adjusted our operations in light of the COVID-19 pandemic to minimise the regulatory burden while still fulfilling our statutory obligations to achieve compliance with the CCA and a range of additional legislation. Our self-assessment and the feedback received from the APCC is discussed in the analysis of performance on page 46.

# Structure of the annual performance statement

This annual performance statement separately covers program 1.1 (ACCC) and program 1.2 (AER).

The ACCC's performance reporting aligns directly with the deliverables under each strategic objective, except for strategy 3, where our reporting is organised by industry.

The AER's performance reporting aligns with its strategic objectives.

We provide an overall analysis of performance for:

- the ACCC for program 1.1
- the AER for program 1.2.

There are also analyses of performance against the indicators under each strategic objective.

We report on our performance not only by reference to the performance indicator results but also by discussing key outcomes achieved under each deliverable. These outcomes showcase our work in more detail and demonstrate the actions taken to achieve our purpose.

# Program 1.1: ACCC

## Analysis of performance

Although our year was heavily influenced by the **COVID-19 pandemic**, the ACCC continued to achieve a substantial suite of outcomes that enhanced the welfare of Australians by making markets work for consumers, now and in the future.

As the effects of the pandemic continued to ripple through the economy, we adjusted some priorities and refocused our efforts to address emerging competition and consumer issues and to support recovery. However, while the pandemic necessitated a shift in our priorities, it did not stop most of our business-as-usual work.

We performed strongly against our **performance indicators** and other measures of performance as set out in our Corporate Plan. Of the 45 performance indicators with a specified target<sup>3</sup> for 2020–21, we achieved or exceeded the target for 30 indicators and partially met the target for another 4 indicators. We did not meet the target for 11 indicators. In most instances the main reason was that we redirected resources away from this activity towards higher priorities to address competition, consumer and fair trading issues related to the pandemic.

In line with our **Statements of Intent** in response to the 2 Statements of Expectations from relevant ministers, we reported to ministers in a regular and timely manner, including providing notice of announcements to relevant ministers' offices and holding weekly liaison meetings at staff level.

In validating our [2019–20 annual self-assessment](#) against the **Regulator Performance Framework**, the [ACCC Performance Consultative Committee](#) made particular note of our timely, effective and constructive response to the challenges that the COVID-19 pandemic created for regulated businesses.

Throughout the year our focus also remained firmly on fostering **employee wellbeing** during the COVID-19 pandemic. We provided extensive communication and support to assist our employees in navigating the challenging environment.

We also invested resources into a number of **agency change initiatives**, the most significant being a major review of the ACCC's structure. The revised structure aligns with our new strategic objectives in place from 1 July 2021.

Overall, in 2020–21 the ACCC was successful in achieving outcomes that enhanced the welfare of Australians by making markets work for consumers, now and in the future. More detail about some of our main achievements is provided below.

### Competition

As Australia's national competition regulator, we work to enhance the welfare of Australians by maintaining and promoting competition. We instigated 7 new **competition enforcement interventions** (target of 4 to 6) covering alleged cartel and other anti-competitive conduct (for example, boycotts and resale price maintenance). We also continued to invest resources into a number of longstanding competition cases.

Our efforts to improve competition in the Australian dairy industry received international recognition through a **competition advocacy award** from the International Competition Network (ICN) and World Bank Group.

<sup>3</sup> We did not have a target for 7 of our 52 performance indicators because the result is primarily externally driven. However, these indicators still provide a useful measure of work undertaken, such as the number of mergers assessed during the year.

Competition depends on rigorous and effective merger control. We assessed 424 **merger matters**, conducting a public review of 22 matters that raised substantial initial competition issues. In 2 matters the parties decided not to proceed after we raised competition concerns. In April 2021 we issued a landmark joint statement on merger control enforcement with our UK and German counterparts, highlighting the importance of merger enforcement.

Sometimes conduct that may breach Australia's competition laws can have wider public benefits that outweigh the harm to competition. In those cases, businesses can seek an exemption from the ACCC to remove the risk of legal action under the competition provisions. We saw a significant surge of **authorisation applications** from competitors seeking to collaborate to deal with disruption and risks arising from the COVID-19 pandemic. Our role in authorising what would normally be anti-competitive conduct was important in helping particular industries meet the needs of the Australian public during this challenging time. We moved rapidly to grant urgent authorisations (for example, to assist business to supply groceries and other products) on terms and conditions to ensure that competition resumed as soon as practicable.

Enabling real-time data portability and interoperability supports consumers by giving them more control over their data and providing them with new opportunities to make more informed decisions. This will promote competition and drive innovation as businesses design products and services to meet consumers' needs based on the data they choose to share. **Consumer Data Right** launched on 1 July 2020 with a phased rollout of consumer data sharing obligations for data holders, including the 4 major banks and other authorised deposit-taking institutions. As of 30 June 2021 there were 16 active data holders representing an estimated combined market share of 85% of Australian banking customers and 6 active accredited data recipients. The register, which supports data sharing, maintained 100% availability over the year.<sup>4</sup>

## Consumer protection and fair trading

We took decisive action to prevent and redress harm to **consumers and small businesses** from breaches of the Australian Consumer Law (ACL) and industry codes. We commenced **court proceedings** in 9 matters in 2020–21. Further, judgments in 17 first-instance ACCC court proceedings for ACL and/or industry codes breaches were handed down in 2020–21. These cases led to the courts imposing total penalties of over \$105 million.<sup>5</sup>

Not all conduct of concern warranted court action. The ACCC's other consumer protection and fair trading interventions in 2020–21 included administrative resolutions, public warnings, infringement notices and court enforceable undertakings.

The **Telstra case** (see page 81) is a particularly significant example of strong enforcement action taken in relation to conduct impacting Indigenous Australians and consumers experiencing vulnerability and disadvantage. The \$50 million penalty imposed by the courts against Telstra for admitted unconscionable conduct is the second-highest penalty ever imposed under the ACL. Further, our appeal in the **Quantum Housing** matter (see page 82) led to an important clarification of the law regarding unconscionable conduct under the ACL.

Our **enforcement interventions** were directed at conduct impacting consumers experiencing vulnerability and disadvantage, and Indigenous Australians; improving business compliance with consumer guarantees; addressing issues identified in the Digital Platforms Inquiry (including instituting proceedings against Google LLC and against Facebook, Inc and 2 of its subsidiaries); addressing consumer harm from misleading conduct; and ensuring that small businesses receive the protections of the Franchising Code of Conduct.

<sup>4</sup> Refers to live or cached version of the Register and Accreditation Application Platform.

<sup>5</sup> Note that these figures may include cases later under appeal.

We adjusted the focus of our activities to prioritise and address the impact that the **pandemic** was having on Australian consumers and businesses. For instance, we moved quickly to:

- address misleading COVID-19-related representations about products or services, such as Lorna Jane's claims about its 'Anti-virus Activewear'
- influence travel businesses to stop deducting costs that they were not entitled to deduct from customer refunds
- tackle issues associated with unsafe and ineffective hand sanitisers.

We also conducted a wide range of education, compliance and engagement initiatives to assist hundreds of thousands of businesses and consumers to deal with the impacts of the pandemic.

Our Infocentre also helped consumers and businesses with COVID-19-related queries. Approximately 15% of the 140,904 contacts (excluding scam contacts) related to the pandemic.

We also continued to tackle **COVID-19 scams**, issuing Scamwatch radar alerts and participating in media interviews to raise community awareness, while also collaborating behind the scenes with the public and private sectors to try and disrupt these schemes – see Part 3, page 101, for more detail.

We continued to protect Australians from **unsafe consumer products** by:

- overseeing completion of the recall of Takata airbags
- recommending to the Minister, who subsequently introduced, important new safety and information standards for button batteries
- instituting proceedings against an online sports equipment store for allegedly selling sporting goods that did not comply with product safety standards and issuing a safety warning notice about children's nightwear
- moving quickly to deal with unsafe and ineffective hand sanitisers being supplied during the COVID-19 pandemic, with our recommendation to the Minister leading to improved ingredient labelling requirements for hand sanitisers
- strengthening online product safety by launching the Australian Product Safety Pledge.

We maintained close **partnerships** with other government departments and regulators to assist us in taking proactive, timely and effective compliance and enforcement action. Close collaboration with state and territory ACL regulators in particular was especially important to ensure a consistent and coordinated response to consumer issues arising from the pandemic.

## Infrastructure regulation

We regulate natural monopoly infrastructure services to promote effective upstream and downstream competition and facilitate efficient investment in key infrastructure networks and services. We also monitor and report on certain industries to inform industry and consumers about the effects of market conditions in concentrated markets; position us to address current and emerging issues; and support our advice and advocacy efforts.

In response to the impact of the pandemic on many of the businesses we regulate or monitor, we sought to reduce the burden by streamlining and/or delaying some regulatory and monitoring processes. In other sectors, we enhanced our **monitoring and reporting** to provide timely and relevant information to consumers, industry and government. For instance, our enhanced monitoring of fuel prices and increased media engagement helped improve consumer understanding of factors influencing Australian fuel prices during the pandemic.

Public health measures placed unprecedented demand on **communications networks**. We authorised a special working group comprising NBN Co and other key stakeholders that enabled industry to coordinate their response to the significant increase in network demand. Our role in broadband market monitoring also meant we could identify broadband performance issues and assess the impact of policy and industry responses. Specifically, the [Measuring Broadband](#)

[Australia program](#) data provided consumers, industry and policymakers with valuable insights into how broadband speeds held up as Australians switched to working and learning from home.

Among other achievements, we:

- published a final report to conclude 2 public inquiries into **National Broadband Network** (NBN) entry-level pricing and NBN wholesale service standards that outlined proposed improvements to NBN wholesale arrangements to promote the long-term interests of broadband consumers
- made access determinations with significantly lower **wholesale pricing for access** to the mobile terminating access service (MTAS) and the domestic transmission capacity service (DTCS)
- published **electricity market monitoring reports** detailing recent market developments, including the effects of the COVID-19 pandemic on electricity use and affordability
- published multiple **monitoring and inquiry reports on different infrastructure sectors** (including airports, bulk grain ports, telecommunications, gas, electricity and petrol) to inform stakeholders of how businesses performed during the year.

## Market studies and inquiries

Market studies and inquiries are important tools for diagnosing problems associated with markets and competition and providing evidence to support changes to the regulatory framework or other policies. Our findings and recommendations can lead to outcomes that contribute to achieving our purpose of making markets work for consumers. For example, the Digital Platforms Inquiry, which was completed in 2019, has led to a number of new measures, such as the Media Bargaining Code, that will improve market outcomes and benefit consumers.

In 2020–21 we completed the Home Loan Price Inquiry, Perishable Agricultural Goods Inquiry, Murray–Darling Basin Water Markets Inquiry and Northern Australia Insurance Inquiry, all of which identified multiple recommendations to government on actions that would improve market outcomes.

We also provided government with 3 interim reports for our digital platform inquiries. These focused on online private messaging services, app marketplaces, and competition and transparency issues in the digital advertising technology supply chain.



# Strategic objective 1: Maintaining and promoting competition

## About this strategic objective

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

As Australia's national competition regulator, the ACCC works to enhance the welfare of Australians by maintaining and promoting competition and addressing market failures.

We do this by enforcing Part IV of the CCA, which prohibits:

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

We also do this by giving effect to the Consumer Data Right provisions of Part IVD of the CCA. Consumer Data Right aims to create more choice and competition by:

- allowing consumers to request businesses to disclose the consumer's own data to an accredited person who can use that data to provide services of value to the consumer
- requiring businesses to make product information easily accessible to any person.

Consumer Data Right currently applies to banking data and products. It will be extended to energy data and products and other sectors in the future.

## Our competition compliance and enforcement priorities



Competition issues in the context of the **COVID-19 pandemic**, including in the **domestic air travel market**.



Competition and consumer issues in the **funeral services** sector.



Competition and consumer issues relating to **digital platforms**.



Competition and consumer issues arising from the pricing and selling of **essential services**, with a focus on **energy and telecommunications**.



Promoting competition and investigating allegations of anti-competitive conduct in the **financial services** sector.



Conduct affecting **competition in the commercial construction** sector, with a focus on large public and private projects and conduct impacting small business.



Continuing to implement **Consumer Data Right** in banking, preparing for its expansion into additional sectors of the Australian economy (including energy) and continuing to oversee businesses' compliance with CDR rules and standards.

### Enduring priorities

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

#### Cartel conduct



The ACCC will always prioritise cartel conduct causing detriment in Australia. When dealing with international cartels, the ACCC will focus on pursuing cartels that have a connection to, or cause detriment in Australia; that is, cartels that involve Australians, Australian businesses or entities carrying on business in Australia.

#### Anti-competitive conduct



The ACCC will always prioritise anti-competitive agreements and practices, and the misuse of market power.

Further information about our priorities is available in Part 2 on pages 29–30, in our [Corporate Plan 2020–21](#) and on our [website](#).

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

## About this deliverable

The ACCC investigates and takes compliance and enforcement action in relation to suspected breaches of the competition provisions in Part IV of the CCA.

We have the power to take civil court action, refer alleged serious cartel conduct to the Commonwealth Director of Public Prosecutions (CDPP), accept court enforceable undertakings and resolve matters administratively.

We also encourage compliance with the law by educating and informing businesses about their rights and responsibilities under the CCA. We work with other agencies to implement these strategies, including through coordinated approaches.

We may also conduct research on potential new or emerging competition policy issues which may require broader policy considerations, research and analysis; and subsequent engagement and advocacy with relevant external stakeholders, including other government agencies and industry bodies.

With the finite resources available to us, we prioritise our actions to address conduct that does the greatest harm to the competitive process. In 2020–21 our competition related compliance and enforcement priorities included:

- competition issues in the context of the COVID-19 pandemic, including in the domestic air travel market
- competition issues in the funeral services sector
- competition issues relating to digital platforms
- competition issues arising from the pricing and selling of essential services, with a focus on energy and telecommunications
- promoting competition and investigating allegations of anti-competitive conduct in the financial services sector
- conduct affecting competition in the commercial construction sector, with a focus on large public and private projects and conduct impacting small business.

Further information about our yearly priorities, our enduring priorities and how we determine them can be found in Part 3, strategic objective 2, on page 73.

## Performance indicators

**Table 3.4 Performance indicators for deliverable 1.1**

Performance indicator	2017-18	2018-19	2019-20	2020-21		Met?
	Result	Result	Result	Target	Result	
Number of in-depth competition investigations completed	28	23	28	30	18	<span style="color: red;">✗</span>
Percentage of initial competition investigations completed within 3 months	60.6%	44.7%	33.3%	60%	42%	<span style="color: red;">✗</span>
Percentage of in-depth competition investigations completed within 12 months	73%	78.3%	71.4%	60%	44%	<span style="color: red;">✗</span>
Number of competition enforcement interventions (court proceedings commenced, section 87B undertakings accepted, administrative resolutions)**	8	5	6	4-6	7	<span style="color: green;">✓</span>
Percentage of competition enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy	100%	100%	100%	80%	100%	<span style="color: green;">✓</span>
Percentage of competition enforcement interventions in the priority areas, or demonstrate the priority factors, outlined in the Compliance and Enforcement Policy	100%	100%	100%	100%	100%	<span style="color: green;">✓</span>

# Before 2018-19 market studies were included in this performance indicator. From 2018-19 market studies and inquiries are discussed under a standalone performance indicator under strategic objective 4.

\* Administrative resolutions involve some change to a trader's behaviour and can range in the level of formality. For an administrative resolution to be included as an enforcement intervention for reporting purposes, it must be a formal resolution reached with a trader and noted publicly by way of an ACCC media release.

### Analysis of indicator results

We achieved 3 out of our 6 indicators. All interventions were within areas identified as priorities for the period.

We exceeded our indicators in relation to competition enforcement interventions. However, the dedication of resources to these interventions has impacted on our ability to meet timeliness indicators in relation to investigations. We anticipate that this issue will largely be addressed through changes to workflow and resource allocation resulting from recent structural changes in the ACCC.

### Outcomes achieved against deliverable

#### Highlights

- Court ordered fines and penalties totalling \$24,350,000 from 2 ACCC cases completed in the period.
- The ACCC has been able to successfully maintain its status as an internationally respected regulator during this period and has been a significant contributor to the development of improved regulator responses to COVID-19 issues internationally. We have been able to maintain our focus on dealing with anti-competitive behaviour during this challenging time and have achieved significant outcomes in 2020-21.
- The [Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities](#) (MMAC), signed virtually by the US Department of Justice, the US Federal Trade Commission, the UK Competition and Markets Authority, the New Zealand Commerce Commission, the Competition Bureau Canada and the ACCC, came into effect on 2 September 2020. This agreement benefits consumers and businesses in the signatory countries by allowing international cooperation in tackling anti-competitive conduct by multinational companies – in particular, the digital platforms.

## ► CASE STUDY

### Final conviction in international cartel investigation

Norwegian-based global shipping company [Wallenius Wilhelmsen Ocean AS](#) (WWO) has been convicted of criminal cartel conduct and ordered by the Federal Court to pay a fine of \$24 million. On 4 February 2021 WWO was convicted and sentenced for one criminal charge of giving effect to cartel provisions. WWO also admitted guilt in relation to 2 further offences of giving effect to cartel provisions in 2009, which was taken into account on sentence.

This brings to a close an extensive investigation by the ACCC into an international cartel involving several international shipping companies in relation to the shipping of vehicles to Australia from Asia, Europe and the US on behalf of major car manufacturers. Shipping cartel fines resulting from this investigation now total \$83.5 million.

### Actions to achieve our purpose

In 2020–21 our focus on **preventing anti-competitive and cartel conduct** led to proceedings being instituted or other enforcement outcomes being obtained in relation to the following allegations:

#### ■ Cartel conduct:

- Wallenius Wilhelmsen Ocean AS was convicted of criminal cartel conduct, as outlined in the case study above.
- Following a criminal investigation by the ACCC, [Alkaloids of Australia Pty Ltd](#) and its former export manager, Christopher Kenneth Joyce, were each charged with 33 criminal cartel offences around fixing prices, restricting supply, allocating customers and/or geographical markets, and/or rigging bids for the supply of the active pharmaceutical ingredient in antispasmodic medications taken to relieve stomach pain and bowel cramps. The allegations extend over a period of almost 10 years, beginning on 24 July 2009, when criminal cartel laws came into force in Australia.
- The ACCC commenced civil proceedings in the Federal Court against overhead crane company [NQCranes Pty Ltd](#), alleging it engaged in cartel conduct by agreeing with a competitor in the overhead crane market to share the market by not targeting each other's customers for overhead crane parts and servicing in Brisbane and Newcastle.
- [Australia and New Zealand Banking Group Ltd \(ANZ\)](#), [Citigroup Global Markets Australia Pty Limited \(Citigroup\)](#), [Deutsche Bank AG \(Deutsche Bank\)](#) and 6 senior banking executives have all been committed to the Federal Court for trial on criminal cartel charges. They were originally charged in June 2018 following an ACCC investigation. The charges involve alleged cartel arrangements in 2015 relating to trading in ANZ shares held by Deutsche Bank and Citigroup. ANZ and each of the executives charged are alleged to have been knowingly concerned in some or all of the alleged conduct.<sup>6</sup>
- The Federal Court approved a payment plan for airline [PT Garuda Indonesia Ltd](#) (Garuda) to pay a \$19 million penalty that the Court ordered in May 2019. The penalty related to a long-running ACCC action against a global price fixing cartel in the air cargo industry.

- **Boycotts:** The ACCC commenced civil proceedings against construction company [J Hutchinson Pty Ltd \(Hutchinson\)](#) and the [Construction, Forestry, Maritime, Mining and Energy Union \(CFMMEU\)](#) over alleged boycott conduct at a building site in Brisbane. The proceedings relate to an alleged agreement in 2016 between Hutchinson and the CFMMEU, in which Hutchinson allegedly agreed to terminate the contract of an independent waterproofing subcontractor working on the Southpoint A Apartments construction project in South Brisbane to avoid conflict with, or industrial action by, the CFMMEU at the site. Hutchinson was the head contractor on the Southpoint A site. The waterproofing subcontractor was not

<sup>6</sup> Charges against one of the executives have since been withdrawn in August 2021.

covered by an enterprise agreement with the CFMMEU. The CFMMEU allegedly induced or was knowingly concerned in these contraventions.

■ **Anti-competitive conduct:**

- The ACCC instituted Federal Court proceedings against Australasian Food Group Pty Ltd, trading as [Peters Ice Cream](#) (Peters), alleging it engaged in conduct which hindered or prevented competition for the supply of single-wrapped ice creams to petrol and convenience retailers. We allege that Peters engaged in exclusive dealing by entering into and giving effect to an agreement with PFD Food Services Pty Ltd to distribute its single-wrapped ice cream and frozen confectionary products to petrol and convenience retailers nationally. The agreement contained a condition that PFD could not distribute any competing ice cream products in certain locations around Australia. We allege that, for new entrants, PFD was the only distributor capable of distributing single-wrapped ice cream products to national petrol and convenience retailers on a commercially viable basis. We allege that this conduct reduced competition and may have deprived consumers of a variety of choice or the benefit of lower prices at these stores.
- The ACCC accepted a court enforceable undertaking from [Visa \(Visa AP \(Australia\) Pty Ltd and Visa Worldwide Pte Limited\)](#) in relation to concerns that Visa may have limited competition in relation to debit card acceptance through its dealings with large merchants. The ACCC was concerned that Visa's strong market position in the credit card acceptance market could be leveraged to limit competition in the debit card acceptance market by tying the offer of cheaper strategic merchant rates for credit card transactions to a commitment from the merchant to process Visa branded dual network debit card transactions via the Visa network and not through EFTPOS. In its undertaking, Visa acknowledged the ACCC's concerns but made no admission of any breach of the competition laws.
- The Federal Court declared by consent that [Tasmanian Ports Corporation Pty Ltd](#) (TasPorts) engaged in conduct that had the likely effect of substantially lessening competition in the markets for supply of certain marine services at Tasmanian ports. The ACCC also accepted a court enforceable undertaking from TasPorts, requiring it to ensure it provides berth space to a competitor on reasonable commercial terms, charges an affected customer reasonable fees for regulatory functions, and spends \$1 million on the wharf infrastructure in question.

- **Resale price maintenance:** The Federal Court ordered [B & K Holdings \(QLD\) Pty Ltd](#), trading as FE Sports, to pay a \$350,000 penalty after it declared by consent that FE Sports engaged in resale price maintenance in relation to the wholesale supply of cycling and sporting products in Australia. The Court declared that FE Sports provided 328 dealer agreements to existing or prospective dealers containing terms that prohibited the dealer from advertising or promoting the products of certain brands on the dealer's website for less than the recommended retail price set by FE Sports. In total, 246 dealers were affected. Prior to this alleged conduct, the ACCC had warned FE Sports on 3 occasions that resale price maintenance is illegal. The Court ordered FE Sports to refrain from including terms prohibiting discounting in its contracts with dealers; and to write to affected dealers indicating that they are free to set their own prices. FE Sports was also ordered to implement a compliance program.

### ***Immunity tool usage statistics***

**Table 3.5 Cartel immunity applications 2020-21**

2020-21	Number
Approaches	15
Immunity application proffers	11
Proffers not resulting in conditional immunity	2
Civil conditional immunity granted	5
Criminal conditional immunity granted by CDPP upon ACCC recommendation	1

## Litigation

In 2020–21 a number of **longstanding and ongoing competition cases** continued to require considerable ACCC resources. They include:

- proceedings against money transfer business [Vina Money Transfer Pty Ltd](#) and 5 individuals who were charged with criminal cartel conduct in April 2019 for allegedly fixing the Australian dollar/Vietnamese dong exchange rate and fees they charged their customers
- assisting the CDPP in progressing criminal cartel charges against [The Country Care Group Pty Ltd](#) and 2 individuals who were charged in February 2018 for alleged cartel conduct involving assistive technology products used in rehabilitation and aged care. We pursued the matter because such conduct could increase prices that consumers and governments pay for rehabilitative and assistive technology products that are essential for the health, wellbeing and dignity of people with disabilities, people undergoing rehabilitation or those in aged care. On 2 June 2021 a Federal Court jury [acquitted Country Care](#) and the 2 individuals of 8 criminal cartel offences
- assisting the CDPP in progressing criminal cartel charges against the [Construction, Forestry, Maritime, Mining and Energy Union](#) and one individual charged in August 2018 with attempting to induce suppliers of steel-fixing and scaffolding services to agree to contracts, arrangements or understandings containing cartel provisions in relation to services provided to builders in the Australian Capital Territory
- proceedings against [NSW Ports Operations Hold Co Pty Ltd](#) and its subsidiaries for making agreements with the State of New South Wales that the ACCC alleges had an anti-competitive purpose and effect. On 29 June 2021 the Federal Court dismissed the case. We took this action to remove a barrier to competition in an important market, the supply of port services, which has a significant impact on the cost of goods paid by Australian consumers. Such barriers damage Australia's productivity performance. We have appealed this decision to the Full Court<sup>7</sup>
- civil proceedings in the Federal Court against BlueScope Steel Limited (BlueScope) and Mr Jason Ellis for alleged cartel conduct in relation to the supply of flat steel products.

On 1 September 2020 ex-BlueScope General Manager Jason Ellis pleaded guilty to obstructing an ACCC cartel investigation, and in December he was convicted and sentenced to 8 months imprisonment (released on \$1,000 recognisance) and fined \$10,000.

In March 2021 the Federal Court handed down [judgment](#) in PZ Cussons' indemnity costs application against the ACCC. The ACCC's original case against PZ Cussons concerned allegations of cartel conduct in the laundry detergent market. The other alleged cartel participants admitted the conduct and settled the ACCC's case against them. PZ Cussons disputed liability and the ACCC's case against it was ultimately dismissed. PZ Cussons unsuccessfully sought an indemnity costs order against the ACCC for pursuing the case. In his judgment, Justice Wigney provided an important message on **the role of regulators**:<sup>8</sup>

It might also be added, in this context, that the legislation administered by Commonwealth regulators is often complex and the cases they commence and pursue are often difficult to prove. The public responsibilities of regulators mean that they must, on occasion, pursue hard cases; cases based on circumstantial or highly contentious evidence or perhaps unsettled areas of law. It follows that it might reasonably be expected that they will lose some cases, sometimes emphatically. A regulator who chooses only to pursue easy cases and easy targets might perhaps have an excellent strike rate in terms of winning cases, but it would not be doing its job.

7 On 27 July 2021 the ACCC announced it had [filed an appeal](#) against the Federal Court's decision to dismiss the ACCC's proceedings. The appeal is still to be heard.

8 *Australian Competition and Consumer Commission (ACCC) v Colgate-Palmolive Pty Ltd (No 5)* [2021] FCA 246 at [18].



The [2021 Bannerman Competition Lecture](#) (delivered by Dr Andrea Coscelli, Chief Executive of the Competition and Markets Authority) focused on how competition enforcers can stay ahead of the curve in modern and increasingly digital markets. The lecture is jointly run by the ACCC and the Law Council of Australia.



The ACCC received an [international competition advocacy award](#) from the International Competition Network and World Bank Group for our work to improve competition in the Australian dairy industry.



We launched Phase IV of the [Competition Law Implementation Program](#), under which the ACCC delivers targeted capacity building and technical assistance to Association of South-East Asian Nations (ASEAN) Member States. This phase covers September 2020 to October 2021, with funding of \$1.24 million.

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

## About this deliverable

This deliverable is about preventing mergers and acquisitions which would breach s 50 of the CCA. Section 50 prohibits mergers and acquisitions that substantially lessen competition in any market in Australia, or are likely to do so.

Mergers are usually brought to our attention by merger parties that request informal clearance. Alternatively, we may become aware of a merger proposal through the media, from complaints or by referral from other regulatory bodies. There is no process set out in the legislation for the informal clearance regime: this process has developed over time so that merger parties can seek the ACCC's view before they complete a merger.

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

Separate to the informal clearance regime, merger parties may apply for authorisation of a proposed merger for statutory protection from legal action under s 50. The ACCC may grant merger authorisation if it is satisfied that the proposed merger would not be likely to substantially lessen competition or, alternatively, that the likely public benefit from the proposed merger outweighs the likely public detriment.

## Performance indicators

**Table 3.6 Performance indicators for deliverable 1.2**

Performance indicator	2017-18	2018-19	2019-20	2020-21		Met?
	Result	Result	Result	Target	Result	
Number of merger matters considered (externally driven) <sup>#</sup>	281	331	288	N/A	424	●
Percentage of merger matters considered (under the informal merger review process) that were finalised by pre-assessment	90%	92%	89%	80%	95%	✓
Percentage of merger matters subject to Phase 1 only of public review that were finalised within 12 weeks (excluding time periods where information is outstanding)*	45%	41%	67%	80%	67%	✗
Percentage of merger matters subject to Phase 2 of public review that were finalised within 24 weeks (excluding time periods where information is outstanding)^**	71%	88%	40%	80%	50%	✗

<sup>#</sup> From 2020-21, excludes investigation of completed mergers.

<sup>\*</sup> Prior to 2020-21 the target for this indicator was 8 weeks.

<sup>^</sup> Prior to 2020-21 the target for this indicator was 20 weeks.

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

## Analysis of indicator results

We achieved one out of our 3 indicators. All interventions were within areas identified as priorities for the period.

We aim to deal with non-contentious mergers expeditiously. Consistent with this, we determined that 95% of transactions did not require a detailed public review because of the low risk that competition concerns will be raised – this exceeded our target of 80%. The vast majority of these assessments were completed within 4 weeks, excluding time taken for merger parties to respond to information requests.

The remaining 5% of mergers that underwent a public review were the more contentious and potentially more complex matters. A number of these involved mergers in concentrated markets where the competition concerns were likely to be greater; these are also transactions which the public expects the ACCC to scrutinise closely.

While the ACCC endeavours to complete merger reviews as quickly as possible, the focus is on getting the right decision. The ACCC has signalled that it will use its compulsory information gathering powers more in merger investigations where its concerns warrant increased evidence gathering. We exercised these powers in 7 reviews this year. The ACCC did not achieve its target of completing 80% of Phase 1 reviews within 12 weeks. However, all Phase 1 reviews were completed within 15 weeks, with 67% being completed within 12 weeks. The ACCC also did not achieve its target of completing 80% of Phase 2 public merger investigations within 24 weeks.

## Outcomes achieved against deliverable

### Highlights

- 424 matters considered
- 402 mergers finalised by preassessment
- 22 public reviews
- 13 investigations of completed acquisitions commenced
- 5 statements of issues released
- 2 court enforceable undertakings accepted to address competition concerns
- 64% unconditionally cleared mergers that went to public review
- 7 matters where formal information gathering powers were used.

## Actions to achieve our purpose

The informal clearance process allows merger parties to seek the ACCC's views on a merger before they proceed with it. By doing this they can manage the risk of regulatory intervention at a later time. In 2020–21 we assessed 435 mergers that were notified to the ACCC under the informal clearance regime or that were referred to the ACCC by other regulatory agencies or identified through monitoring and intelligence gathering.

**Significant public merger reviews** in 2020–21 included:

- Woolworths acquiring PFD Food Services, which was not opposed, after a statement of issues
- Google acquiring Fitbit, which the ACCC continues to investigate
- National Australia Bank acquiring 86 400 Holdings, which was not opposed
- Saputo acquiring Lion Dairy and Drinks, where the parties withdrew their application during the ACCC's assessment
- AlSCO's and separately South Pacific Laundry's proposed purchases of Spotless laundry operations. In both cases the merger application was withdrawn after the ACCC issued a statement of issues outlining competition concerns
- Mylan NV acquiring Upjohn Inc, which the ACCC cleared subject to a condition to divest specified assets.

All publicly reviewed merger decisions for 2020–21 are published on the ACCC's [mergers public registers](#).

The ACCC also investigates certain mergers and acquisitions that have been completed without informal clearance. In 2020–21 we commenced the **investigation of 13 completed acquisitions**.

In December 2020 the High Court of Australia dismissed the ACCC's application for special leave to appeal the Full Federal Court's decision that Pacific National's acquisition of the Acacia Ridge terminal from Aurizon would not be likely to substantially lessen competition. The dismissal of the ACCC's application for special leave meant that the decision of the Full Federal Court stands. Pacific National has now completed its acquisition of the Acacia Ridge Terminal.

## ► CASE STUDY

### National Australia Bank's proposed acquisition of 86 400 Holdings

On 30 March 2021 the ACCC announced that it would not oppose the proposed acquisition of 86 400 Holdings Ltd (86 400) by National Australia Bank Limited (NAB). 86 400 was launched in 2019 operating as a digital-only bank, delivering its services through a smartphone application.

As digital-only banks and other fintechs are increasingly playing a critical role in challenging the established banks and leading to more innovative and cheaper banking for consumers, the ACCC examined the proposed acquisition closely to determine whether 86 400 was important to the competitive dynamics in the market because of its provision of innovative products and services despite its small size.

The ACCC's consultation included banks, non-bank lenders, fintechs, mortgage brokers and industry and consumer bodies.

The ACCC found that while 86 400 is innovative, particularly in reducing the effort required by applicants to complete a home loan application and increasing the speed with which those applications are assessed, a number of other lenders have similar offerings or the ability to easily replicate what 86 400 offers. In particular, a number of second-tier banks have increased their share of new home loans by innovating. Post-acquisition, they are likely to continue to compete with and attempt to challenge the 'big 4' banks.

The ACCC also found that 86 400's small market share across savings, transactions and home loan products would not strongly enhance NAB's market position.

While the ACCC found that the acquisition of 86 400 by NAB was unlikely to substantially lessen competition, we will continue to closely scrutinise proposed acquisitions of emerging competitors, particularly by the major banks.

In reaching a decision on this merger, the ACCC was able to use the institutional knowledge gained from its specialised enforcement, market inquiry and advocacy work in the financial services sector.

## ► CASE STUDY

### **Proposed acquisitions of all or part of Spotless Laundries by competing bids from South Pacific Laundry and AlSCO**

In the second half of 2020 the ACCC reviewed 2 competing proposals to acquire all or part of Spotless Group Holdings Limited (Spotless). South Pacific Laundry (SPL) sought ACCC clearance to acquire Spotless's laundry services business. Separately AlSCO Pty Ltd (AlSCO) sought clearance to acquire Spotless's garment laundering business.

The reviews were discontinued on 22 October 2020 and 4 November 2020 after both SPL and AlSCO withdrew their requests after deciding to discontinue with their proposed acquisitions. The withdrawals followed the ACCC raising preliminary competition concerns in a statement of issues publishing in August 2020 in relation to each of the proposed acquisitions.

Like Spotless Laundries, SPL is a national supplier of commercial laundry services in Australia. Its services include hiring, cleaning and delivery of linen and garments. AlSCO provides commercial laundry services focusing on garments but also provides linen laundry services, specialising in food and beverage customers.

In the SPL statement of issues, the ACCC identified preliminary competition concerns in relation to the supply of commercial laundry services in the Adelaide, Perth, Sydney and Melbourne areas. The merger would combine 2 of the largest commercial laundry suppliers in each of these regions, removing an important source of competitive constraint and reducing the number of actual and potential suppliers to customers. The ACCC was also concerned that SPL's proposed acquisition could reduce the number of large-scale laundry suppliers operating in all mainland states from 3 to 2.

In the AlSCO statement of issues, the ACCC identified preliminary competition concerns in relation to the supply of commercial laundry services for garments in New South Wales, South Australia, Queensland, Tasmania, Victoria and Western Australia, and across multiple regions. The acquisition would combine the 2 largest commercial laundry suppliers for garments in most states, and the only 2 suppliers with a comprehensive multi-state presence. The ACCC was concerned that the removal of competitive tension between the parties was likely to result in increased prices or reduced service levels.

An alternative acquirer, private equity firm Adamantem Capital, subsequently acquired a 70% interest in Spotless Laundries in March 2021.



**We cleared 402 mergers** via the rapid preassessment process, taking an average of 14 business days.

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

### About this deliverable

This deliverable is about assessing and making timely decisions on applications for authorisation of non-merger conduct, notifications of exclusive dealing, resale price maintenance or collective bargaining, and certification trade marks (CTMs).

These functions help competition law to work more effectively in the interests of the community. They provide a degree of flexibility so that, after appropriate scrutiny and analysis, the ACCC can allow arrangements that might otherwise be prohibited by competition law if they are not likely to substantially lessen competition or if they are likely to result in a net public benefit. We also assess CTM applications to determine whether they may be to the detriment of consumers and competition.

### Performance indicators

**Table 3.7 Performance indicators for deliverable 1.3**

Performance indicator	2017-18	2018-19	2019-20	2020-21		Met?
	Result	Result	Result	Target	Result	
Number of authorisation applications assessed (externally driven)	27	18	24	N/A	57	●
Percentage of authorisation matters where a draft determination is released within four months <sup>#</sup>				80%	72%	○
Percentage of authorisation applications assessed within statutory timeframe(s) (excluding time periods where information is outstanding)*	100%	100%	100%	100%	100%	✓
Number of exclusive dealing notifications assessed (externally driven) <sup>^</sup>	268	5 <sup>^</sup>	4	N/A	5	●
Number of collective bargaining notifications assessed (externally driven)	3	13	8	N/A	5	●
Number of resale price maintenance notifications assessed (externally driven) <sup>##</sup>	0	2	1	N/A	1	●
Percentage of certification trade mark final assessments completed within 12 months <sup>#</sup>				90%	60%	✗
Number of class exemptions completed <sup>^^</sup>				1	1	✓

<sup>#</sup> Not reported prior to 2020-21.

<sup>\*</sup> The ACCC is required to assess the validity of an authorisation application within 5 business days of lodgement and to issue a final determination about a new authorisation application within 6 months (unless extended).

<sup>^</sup> Following revisions to the CCA which came into effect in November 2017, third line forcing conduct – a form of exclusive dealing – will in many circumstances no longer require notification. This has meant that the number of exclusive dealing notifications received by the ACCC has decreased significantly since the revisions came into effect.

<sup>##</sup> Notification for resale price maintenance conduct was introduced in 2017-18.

<sup>^^</sup> From 6 November 2017, the ACCC is able to make class exemptions for specific types of business conduct. The ACCC made its first class exemption in 2020-21.

### Analysis of indicator results

We achieved 2 out of our 4 indicators. During the emerging COVID-19 pandemic, the ACCC implemented additional measures to ensure that it continued to meet its objective of protecting competition. The most significant of these was to prioritise consideration of the large number of authorisation applications from firms seeking immunity from competition laws to coordinate their

responses to COVID-19. These applications included requests for urgent interim authorisation, which needed to be dealt with expeditiously. The ACCC granted interim authorisation within days in most cases. Significant resources were diverted from within the agency to undertake this work.

## Outcomes achieved against deliverable

### Highlights

- 57 authorisation applications assessed
- 10 urgent interim and 16 interim authorisations granted
- 11 notifications assessed
- 25 CTM applications assessed
- 1 class exemption completed.

### Actions to achieve our purpose

Significant **authorisation decisions** included:

- 30 authorisations relating to the COVID-19 pandemic. The applications for authorisation fell into 5 broad categories:
  - Response to medical needs arising from treating patients – conduct to secure supply of COVID-19-related medicines and medical equipment.
  - Hospital capacity management between governments and private providers – arrangements to allocate hospital capacity efficiently in the event of a surge of COVID-19 cases.
  - Adjusting supply chains and market operation, especially to respond to economic and social disruption from adjusting to lockdown – broad sector responses to changes in business and consumer behaviour, particularly with more people working from home.
  - Promoting consistent relief or benefits for economic issues and hardship – competitors agreeing on standard minimum relief to alleviate financial hardship caused by the economic fallout from the pandemic, or standard extensions of health-related coverage.
  - Conduct responding to issues resulting from the medical, economic or social consequences of COVID-19 – collaboration to promote efficient actions in response to the financial issues caused by COVID-19, such as collective bargaining by tenants with landlords.
- re-authorisation of Australasian Performing Right Association's musical works licensing arrangements, with conditions to improve transparency about licence fees and royalties
- 3 authorisations for councils to jointly procure and tender for organics waste or recycling services
- an authorisation for a group of councils to pool their electricity demand and place a single tender calling for proposals for the supply of retail electricity services and renewable energy certificates from an electricity retailer
- authorisation of the Shopping Centre Council of Australia's Casual Mall Licensing Code of Practice
- authorisation of the Clean Energy Council's amended Solar Retailer Code of Conduct.

The ACCC made its first ever '**class exemption**', allowing:

- businesses with an aggregated turnover of less than \$10 million in the financial year prior to them forming or joining a bargaining group to collectively bargain with customers or suppliers
- franchisees and fuel retailers to collectively bargain with their franchisor or fuel wholesaler (respectively) regardless of their size.

The collective bargaining class exemption became available for businesses to use on 3 June 2021. More information about the collective bargaining class exemption is available on the ACCC's [website](#).

All notifications and applications for authorisation are published on the ACCC's authorisations and notifications registers.

## ► CASE STUDY

### COVID-19-related authorisation – Coles Group and participating supermarkets

On 23 March 2020 the ACCC granted interim authorisation to supermarkets to work together to ensure the continued supply of food and groceries during the COVID-19 pandemic. The authorisation applied to Coles, Woolworths, Metcash and Aldi, along with other grocery retailers whose participation was approved by the ACCC.

The supermarkets were authorised to coordinate with each other when working with manufacturers, suppliers, and transport and logistics providers. Importantly, authorisation did not extend to the prices of any retail products. Manufacturers, suppliers, and transport and logistics providers could choose to opt in or out of any arrangements.

Authorisation covered only discussions and agreements made at meetings convened by government agencies, including the Department of Home Affairs Supermarket Taskforce and its working groups; and the National Indigenous Australians Agency COVID-19 working groups. The ACCC attended those meetings when issues relevant to the authorisation were discussed.

The interim authorisation was revised in March and June 2020 and was confirmed in a final determination on 3 September 2020 that expired on 31 March 2021. These authorisations allowed supermarkets and authorities to meet and rapidly coordinate responses to, for example, panic buying in response to lockdown announcements or the grocery supply issues that occurred in 2020, particularly in regional and remote communities.

On 12 March 2021 Coles lodged a new application for authorisation to continue coordination by the supermarkets until 31 March 2022. It noted that the value of the authorised beneficial collaboration between the supermarkets as issues emerged had been demonstrated during COVID-19 outbreaks in various capital cities in late 2020 and early 2021.

On 25 March 2021 the ACCC granted interim authorisation to allow the coordination to continue, pending a final determination.



The number of **authorisation applications assessed** in 2020–21 was approximately double that of the last few years.



The **new collective bargaining class exemption** applies to 97% of small businesses, allowing them to engage in collective bargaining.



# Deliverable 1.4: Reliably support the operation of the Consumer Data Right for banking and deliver the change program to expand the Consumer Data Right

## About this deliverable

Consumer Data Right (CDR) is a competition and consumer reform legislated by the Australian Government in August 2019. Consumer Data Right gives consumers more control over data relating to them that is held by businesses providing services to them. It provides more choice in where they take their business and more convenience in how they manage their services. This will drive innovation and competition across the whole economy.

Consumer Data Right provides consumers with the ability to conveniently consent to their data which is held by businesses (data holders) being securely disclosed to trusted third parties (accredited data recipients). It also requires businesses to provide public access to information on specified products that they offer.

The ACCC's roles under the CDR regime are:

- planning, designing, building, testing, running and securing the enabling technology solutions for Consumer Data Right, including the Register and Accreditation Application Platform (RAAP)
- accrediting data recipients
- supporting participants in the CDR ecosystem, including with testing and onboarding
- promoting compliance
- taking action to enforce the Competition and Consumer (Consumer Data Right) Rules 2020 (CDR Rules) and the Consumer Data Standards in accordance with the priorities in the [ACCC/OAIC Enforcement Policy for the Consumer Data Right](#).

The ACCC was also accountable for developing and making the CDR Rules until 28 February 2021.<sup>9</sup>

Consumer data sharing commenced in the banking sector on 1 July 2020 and is being rolled out to cover a wider range of data holders and products. Consumer Data Right will next be implemented in the energy sector, with other sectors to be designated by the responsible minister over time. While other countries have introduced similar rights in the banking sector, Australia will be the first country to introduce a right for consumers to access their data across the whole economy.

## Performance indicators

Deliverable 1.4 and associated performance indicators were established in the Corporate Plan 2020–21 following launch of the Register and Accreditation Application Portal on 25 May 2020. Results are as at 30 June 2021.

<sup>9</sup> On 28 February 2021, following changes to the CCA, this function, together with responsibility for assessing future sectors, was transferred to Treasury. The ACCC will continue to work closely with Treasury and will have an ongoing role in analysing matters the Minister must consider prior to making new rules or designating new sectors when consulted by Treasury as required under the CCA.

**Table 3.8 Performance indicators for deliverable 1.4**

Performance indicator	2020-21		Met?
	Target	Result	
Number of Accredited Data Recipients active (externally driven)	N/A	6	●
Number of Data Holders active (externally driven)	N/A	16 primary entities	●

### Analysis of indicator results

The ACCC offers significant support and guidance to assist data holders and data recipients to participate in Consumer Data Right. It also registers data holders and conducts detailed assessments of businesses applying to become accredited data recipients. The number of active data holders and accredited data recipients is therefore a measure of the overall effort of the ACCC in implementing Consumer Data Right.

No targets were set, as these numbers are externally driven. Data holders are designated by the Australian Government and must comply with obligations under the CDR regime. Data recipients participate voluntarily in Consumer Data Right and must only comply with obligations once they become accredited.

Consumer Data Right is currently being rolled out to its first sector, banking. Live sharing of consumer data held by the 4 major banks for deposit and transaction accounts and credit and debit cards began on 1 July 2020, with data sharing obligations for all products held by major banks completed by 1 February 2021. Sharing of data by major banks for incorporated entities and business partnerships is due to commence by 1 November 2021. For all non-major authorised deposit-taking institutions (ADIs), obligations to share consumer data start on 1 July 2021 for deposit and transaction accounts and credit and debit cards, with progressive expansion to additional products and customer types.

During the year the number of active:

- data holders increased from 4 to 16, representing an estimated combined market share of 85% of Australian banking customers<sup>10</sup>
- accredited data recipients increased from 2 to 6.<sup>11</sup>

These numbers will continue to grow each year. As Consumer Data Right is implemented in other sectors, more data holders will join the ecosystem, more data recipients will become accredited, and consumers will increasingly benefit from the diverse range of products and services available.

<sup>10</sup> The 4 major banks were the first data holders in accordance with Part 6 of Schedule 3 to the CDR Rules. Subsequent data holders are other ADIs such as non-major banks, building societies and credit unions, which have live consumer data sharing obligations commencing on 1 July 2021.

<sup>11</sup> The ACCC accredits data recipients in its capacity as the Data Recipient Accreditor. This involves assessing whether applicants satisfy the requirements set out in the CDR Rules, including that their systems are safe and secure and that their intended use of consumer data complies with the law.

## Outcomes achieved against deliverable

### Highlights

- The number of active data holders increased from 4 to 16 (representing an estimated combined market share of 85% of Australian banking customers)
- 6 active accredited data recipients
- 100% register availability<sup>12</sup>
- 3 public consultations on changes to the rules
- 5 new guidance documents for consumers
- 25 new/updated guidance documents for participants
- 15 knowledge articles published
- 27 CDR newsletters/updates issued<sup>13</sup>
- 125,070 CDR website page views over 55,172 sessions.

### Actions to achieve our purpose

The ACCC's work to implement Consumer Data Right is helping to deliver significant benefits for consumers and a more vibrant and competitive data economy.

The launch of Consumer Data Right on 1 July 2020 was a critical step in giving consumers greater control over their data by enabling them to securely share that data with accredited third parties to access better deals and innovative new products.

### **CDR Rules and new sectors**

The ACCC made changes to the CDR Rules in October and December 2020.<sup>14</sup> These changes incentivise interest and participation in the CDR ecosystem by expanding the types of consumers who will be able to share data under Consumer Data Right to include business customers; promoting better customer experience; and introducing more flexibility for accredited data recipients.

In June 2020 the Treasurer designated the energy sector as the next sector in which Consumer Data Right will be implemented. In preparation for the rollout to this new sector, the ACCC published a rules framework consultation paper in July 2020, which explored a number of energy-specific issues. Feedback received on our proposed approach will inform the development of additional rules for Consumer Data Right in energy.

Under legislation that came into effect on 28 February 2021<sup>15</sup>, responsibility for developing the CDR Rules and recommending future sectors for designation has transferred to Treasury. The ACCC worked closely with Treasury to facilitate this, and some ACCC employees have been permanently or temporarily transferred to Treasury to ensure minimal disruption to the rollout of Consumer Data Right.

### **Register and Accreditation Application Platform**

The ACCC is responsible for planning, designing, building, testing, running and securing the RAAP, which is the technical infrastructure for data holders and accredited data recipients to

12 Refers to live or cached version of the Register and Accreditation Application Platform.

13 This is the number of CDR newsletters/updates issued by the ACCC. From 30 April 2021, CDR newsletters are being issued by Treasury.

14 *Competition and Consumer (Consumer Data Right) Amendment Rules (No 2) 2020*, which commenced on 1 October 2020; and *Competition and Consumer (Consumer Data Right) Amendment Rules (No 3) 2020*, which commenced on 23 December 2020.

15 *Treasury Laws Amendment (2020 Measures No 6) Act 2020*, which amended the CCA.

securely exchange data. The RAAP also functions as the Register of Accredited Persons required by the CDR legislation.

During 2020–21 we made changes to the RAAP to support implementation of the new rules for accredited intermediaries and types of customers who will be able to share data under Consumer Data Right. We worked closely with Treasury and the Data Standards Body to understand future legislative, policy and standards requirements. This ensured that changes were planned, designed and implemented in an optimal way and successfully delivered to set timeframes.

We have also made a number of enhancements to the RAAP focused on improving the user experience for data holders and accredited data recipients, including introducing a new digitised reporting form.

### **Accreditation**

Any person in Australia or overseas who wishes to receive CDR data to offer products or services to consumers must be accredited to ensure that data sharing is safe and secure. Accredited data recipients are subject to continuing obligations.

During 2020–21 the ACCC worked to reduce the time and cost of entering and operating in the CDR ecosystem while continuing to maintain appropriate security standards and consumer protections required by the CDR legislation and rules. In addition to the rule changes mentioned under ‘CDR rules and new sectors’ above, we:

- considered additional types of accreditation to make it easier for more businesses to participate in Consumer Data Right (work that is now being progressed by Treasury)
- provided further information to demonstrate the benefits of becoming accredited and encourage applications, including through direct engagement, social media engagement and a resource package for prospective applicants
- introduced additional flexibility to allow applicants to present alternative forms of evidence to meet the accreditation obligation for information security.

### **Onboarding**

After successfully completing accreditation or registration, CDR participants must complete an onboarding process in order to become active in the CDR ecosystem. Onboarding involves certain legal, technical and testing requirements that participants need to complete to be onboarded onto the CDR Register. These include accepting Registrar agreements about the digital certificates used to ensure the security, integrity and stability of the CDR Register, successfully completing testing activities, and updating technical details for their production environments.

In 2020–21 the ACCC published a range of information and guidance to support participants through this critical process.

We developed the [Conformance Test Suite](#) (CTS) for participants to verify the security profile and consent components of their solutions. The CTS promotes trust and certainty in Consumer Data Right by enabling testing to take place in a secure environment without consumer data or interacting with live software products and brands. Participants must pass the CTS before they can be made active on the CDR Register.

We also developed and released to the public a [free and open source Mock Register](#). The Mock Register provides additional support to participants who want to accelerate the implementation of their CDR technology solution.

### **Compliance and enforcement**

CDR enforcement is a co-regulatory effort between the ACCC and the Office of the Australian Information Commissioner (OAIC).

The ACCC is responsible for enforcing compliance with Part IVD of the CCA, the CDR Rules and the data standards. This includes responsibility for taking strategic enforcement action to address

conduct causing systemic detriment; and enforcing accredited data recipients' compliance with their continuing obligations.

Since Consumer Data Right launched on 1 July 2020 the ACCC has focused on reviewing data holders' compliance with new consumer and product data sharing obligations. We found a high level of compliance by data holders, with some minor remedial issues that the noncompliant parties have agreed to address. We published a [rectification schedule](#) of material outstanding CDR compliance obligations, along with remediation timeframes as proposed by parties, on the CDR website.

The CCA gives the ACCC a broad discretionary power to exempt a person from provisions of the CDR regime.<sup>16</sup> This power provides the ACCC with the ability to ensure that the CDR system does not operate in unintended or perverse ways in exceptional circumstances and that it works in the best way possible for consumers and the designated industries.

In 2020–21 the ACCC granted 39 individual exemptions – 28 are still in force and 11 have now expired/lapsed with no outstanding compliance issues identified. Reasons for granting exemptions included timing challenges associated with major core banking system upgrades, the need to avoid the unnecessary duplication of work, and mergers between ADIs.

These figures include 21 exemptions granted to non-major ADIs to defer the commencement date of their upcoming consumer data sharing obligations.

Details of all exemptions granted can be found in the [CDR exemptions register](#) on the ACCC website.

### ***Education and engagement***

The ACCC launched the [CDR website](#) on 1 July 2020. The CDR website provides comprehensive educational and guidance material for both consumers and participants. It also includes a public register of participating data holders and accredited data recipients, searchable by consumers, and access to the CDR Participant Portal.

We also engaged with consumers and industry stakeholders through a variety of other channels such as weekly newsletters, regular participant consultative forums and weekly participant implementation calls jointly hosted with the Data Standards Body.

Treasury assumed overall responsibility for education and engagement with consumers late in the 2020–21 financial year. The ACCC continues to host the CDR website and engage with CDR participants, stakeholders and consumers in relation to areas for which it is responsible.

The ACCC also continues to work closely with the other CDR co-regulators<sup>17</sup> and industry to enable the delivery of Consumer Data Right.

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<sup>16</sup> Section 56GD(1) of the CCA.

<sup>17</sup> Treasury, Office of the Australian Information Commissioner, Data Standards Body.

## ► CASE STUDY

### New ACCC tools for CDR participants

The ACCC is developing new tools to make it easier and quicker for participants to develop and test their Consumer Data Right (CDR) solutions and to onboard to the CDR ecosystem.

The Conformance Test Suite (CTS) was introduced in October 2020 to provide a more automated and cost-effective approach to ensuring that participants can operate safely and securely in the CDR ecosystem. The CTS enables participants to verify the security profile and consent components of their solutions. CTS testing takes place in a secure environment without consumer data or interacting with live software products or brands.

In June 2021 the ACCC released a free and open source Mock Register. The Mock Register is a simulation of the production CDR Register. It helps businesses to explore and understand the CDR regime before they join. It also gives them the ability to prove potential solutions in the early development phase.

Interested parties can download and run the Mock Register in an environment of their choice. Test data is pre-loaded, but participants have the ability to load their own metadata to test specific solutions.

Participants can download the source code, make changes and run their own modified versions of the Mock Register. They can choose to contribute any modifications back to the main codebase, subject to ACCC review and approval.

The ACCC is developing a Mock Data Holder and Mock Data Recipient, which, together with the Mock Register, will provide a complete CDR ecosystem of mock components for use by the community. Both the Mock Data Holder and Mock Data Recipient solutions will utilise the same approach as the Mock Register. This approach follows the Australian Government Digital Transformation Agency's Digital Service Standard, which specifies that all new source code should be open by default to help 'reduce costs for your project and others' and to 'add benefits, from improvements by other developers'. The source code and artefacts will be published to an open source repository, with community contributions reviewed and vetted by the ACCC. These solutions will also be available for download and are designed for participants to run in an environment of their choice.



As at 30 June 2021 there were:

- **12** accredited data recipients, of which 6 were active in the CDR ecosystem
- **16** data holders active in the CDR ecosystem representing an estimated combined market share of 85% of Australian banking customers.



As of 1 July 2021 consumer data sharing is available for banking products including:

- transaction accounts, savings accounts and credit card accounts (for major and non-major ADIs)
- home, personal and investment loans, offset accounts (for major ADIs)
- data for scheduled payments, payees, direct debits and joint accounts (for major ADIs).



Between 1 July 2020 and 30 June 2021 we:

- resolved **366** CDR external incidents<sup>18</sup>
- implemented **551** separate changes to the CDR ICT environment.

<sup>18</sup> External incidents are technical incidents which impact the exchange of data between participants. These incidents relate to systems that are managed by participants, to which effective monitoring oversight is required by the CDR to ensure the security, integrity, and operability of the ecosystem.

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

## About this strategic objective

The Australian Consumer Law (ACL) is contained in the CCA. A number of industry codes have been prescribed under the CCA. The ACL and the CCA, and these industry codes, govern a range of conduct that can have a negative impact on both consumers and small business. These laws are designed to enable all businesses to compete on their merits in a fair and open market while ensuring consumers are also treated fairly.

The ACCC supports consumers and small businesses by:

- addressing harm arising from noncompliance with the ACL and the CCA
- empowering consumers to know and assert their rights under the ACL
- ensuring that small businesses know their rights and responsibilities under the ACL and the CCA
- educating and warning consumers and small businesses about scams; and employing measures to help disrupt scams.

We also take action to minimise the risks of unsafe consumer goods harming Australian consumers. This includes negotiating recalls of unsafe consumer goods, recommending regulatory action by the Minister and taking action against noncompliant businesses.

We may also conduct research on potential new or emerging fair trading and consumer policy issues which may require broader policy considerations, research and analysis; and subsequent engagement and advocacy with relevant external stakeholders, including other government agencies and industry bodies.

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

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

## Our priorities

The ACCC's [Compliance and Enforcement Policy](#) sets out our priorities for the calendar year and the factors we take into account when deciding whether to pursue matters. These are complemented by our [Product Safety Priorities](#). Further information about our priorities is in Part 2 on pages 29-30, in our [Corporate Plan 2020-21](#) and on our [website](#).



## Compliance and enforcement priorities

The ACCC's compliance and enforcement priorities have always been determined following extensive internal and external consultation and an assessment of existing or emerging issues and their impact on consumer welfare and the competitive process. Due to ongoing pressures and restrictions arising from the COVID-19 pandemic, we chose not to undertake our usual external data gathering and engagement process in late 2020. Instead the 2021 priorities were identified primarily through internal consultation to assess existing or emerging issues and their impact on consumer welfare and the competitive process.

### Compliance and enforcement priorities 2021



**COVID-19**

Consumer issues related to the promotion and sale of products in the context of the **COVID-19 pandemic**, including **travel and event cancellations**.



Competition issues in the context of the **COVID-19 pandemic**, including in the **domestic air travel market**.



Competition and consumer issues in the **funeral services** sector.



Competition and consumer issues relating to **digital platforms**.



Competition and consumer issues arising from the pricing and selling of **essential services**, with a focus on **energy and telecommunications**.



Promoting competition and investigating allegations of anti-competitive conduct in the **financial services** sector.



Conduct affecting **competition in the commercial construction** sector, with a focus on large public and private projects and conduct impacting small business.



Ensuring that **small businesses** receive the protections of the competition and fair trading laws, including **franchising**.



Ensuring compliance with mandatory industry codes of conduct in the agriculture sector, namely the **Dairy Code of Conduct** and the **Horticulture Code of Conduct**.



Empowering consumers and improving industry compliance with consumer guarantees, with a focus on high value goods including **motor vehicles** and **caravans**.



Implementing the new safety standards for **button batteries**, with a focus on promoting compliance through education.



Conducting education and surveillance activities and enforcing compliance in relation to the new **quad bike safety standard**.

Our [2020 compliance and enforcement priorities](#) included almost all of those listed on page 74, except the 2 COVID-19-related priority areas and the quad bike safety standard priority. Our 2020 compliance and enforcement priorities also:

- included misleading conduct in relation to the sale and promotion of food products, including health and nutritional claims, credence claims and country of origin
- included finalising the compulsory recall of vehicles with Takata airbags
- had a differently focused consumer guarantees priority (in 2020 it was empowering consumers and improving industry compliance with consumer guarantees, with a focus on high-value goods such as motor vehicles, electrical goods and whitegoods)
- had a differently focused small business priority (in 2020 it was ensuring that small business receive the protections of the competition and consumer laws, with a focus on the Franchising Code of Conduct)
- had a differently focused button batteries priority (in 2020 it was pursuing regulatory options to prevent injuries and deaths to children caused by button batteries).

## Enduring priorities

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

### Enduring priorities for consumer welfare and competition



#### Cartel conduct

The ACCC will always prioritise cartel conduct causing detriment in Australia. When dealing with international cartels, the ACCC will focus on pursuing cartels that have a connection to, or cause detriment in Australia; that is, cartels that involve Australians, Australian businesses or entities carrying on business in Australia.



#### Anti-competitive conduct

The ACCC will always prioritise anti-competitive agreements and practices, and the misuse of market power.



#### Product safety

The ACCC will always prioritise product safety issues which have the potential to cause serious harm to consumers.



#### Consumers experiencing vulnerability or disadvantage

The ACCC recognises that consumers experiencing vulnerability and disadvantage can be disproportionately impacted by conduct in breach of the Act. The ACCC therefore prioritises conduct that impacts these consumers.



#### Conduct impacting Indigenous Australians

The ACCC acknowledges that certain conduct in breach of the Act has the potential to specifically impact on the welfare of Indigenous Australians. The ACCC also recognises that Indigenous consumers living in remote areas face particular challenges in relation to asserting their consumer rights. The ACCC will always prioritise its work in these areas while these challenges remain.

## Product safety priorities

Consumers expect the products they purchase to be safe. Each year the ACCC identifies priorities to minimise the risks posed by unsafe consumer goods. Our 2020 and 2021 product safety priorities are shown below.

### Product safety priorities 2021

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Conducting education and surveillance activities and enforcing compliance in relation to the new **quad bike** safety standard.

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Implementing the new safety standards for **button batteries**, with a focus on promoting compliance through education.

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Implementing strategies to prevent injuries and deaths to infants caused by **sleeping products identified as unsafe**.

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Strengthening **product safety online** through education, engagement and monitoring of compliance commitments by online marketplaces.

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Scoping more effective risk controls for potential intervention to prevent injuries and deaths caused by **toppling furniture**.

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## Product safety priorities 2020

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Finalising the compulsory recall of vehicles with **Takata airbags**.

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Pursuing regulatory options to prevent injuries and deaths to children caused by **button batteries**.

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Implementing strategies to prevent injuries and deaths to infants caused by **sleeping products identified as unsafe**.

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Improving **product safety in e-commerce** through enhanced compliance commitments from online platforms.

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Scoping more effective risk controls for potential intervention to prevent injuries and deaths caused by furniture falls, including **toppling furniture**.

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

### About this deliverable

This deliverable is about enforcement and compliance action we undertake to protect consumers and small businesses from harmful conduct. We may also undertake relevant research or advocacy projects to help improve compliance with the ACL and industry codes. As a strategic regulator, we look to intervention that can influence behaviour across industries and the economy.

Information on other initiatives undertaken to support business compliance is under deliverable 2.2, and detail of some enforcement outcomes related to small business and product safety is under deliverables 2.4 and 2.5, respectively.

## Performance indicators

**Table 3.9 Performance indicators for deliverable 2.1**

Performance indicator	2017-18	2018-19	2019-20	2020-21		Met?
	Result	Result	Result	Target	Result	
Number of in-depth ACL investigations completed	80	73	66	70	50	✗
Percentage of in-depth ACL investigations that are in the priority areas outlined in the Compliance and Enforcement Policy	61.25%	63%	63.6%	60%	82%	✓
Percentage of initial ACL investigations completed within 3 months	61.4%	66.7%	59.3%	80%	57%	✗
Percentage of in-depth ACL investigations completed within 12 months	80.3%	86.3%	75.8%	80%	70%	○
Number of ACL enforcement interventions (court proceedings commenced, section 87B undertakings accepted, infringement notices issued, administrative resolutions) <sup>***</sup>	56	49	50	35	37	✓
Percentage of ACL enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy	76.8%	87.5%	66%	60%	84%	✓
Percentage of ACL enforcement interventions in the priority areas, or demonstrate the priority factors, outlined in the Compliance and Enforcement Policy	100%	100%	100%	100%	100%	✓
Number of new or revised business compliance resources (published guidance)	16	25**	22	10	32	✓
Number of times online business education resources have been accessed	1,499,696	1,515,927	1,495,195	1 million	1,626,146	✓
Number of surveys and audits for CCA compliance, including in relation to product safety regulations	57	33	19 (+526 TTF audits^^)	10	1^^	✗
Percentage of business compliance projects that are in priority areas identified in the Compliance and Enforcement Policy	100%	100%	100%	60%	100%	✓

# ACL enforcement interventions also include enforcement interventions to protect small business – for example, action taken to address the unfair contract terms laws and actions. They may also include action taken where there is an alleged breach of both the ACL and an industry code. Matters solely involving an alleged breach of an industry code are not included in this number and are instead included in the number of interventions with substantial benefits to the small business sector under deliverable 2.4.

\* Before 2018-19 market studies were included in this performance indicator. From 2018-19 market studies and inquiries are discussed under a standalone performance indicator under strategy 4.

^ In some cases the ACCC may accept an administrative resolution. Depending on the circumstances, administrative resolutions can range from a commitment by the trader in correspondence to a signed agreement between the ACCC and the trader setting out detailed terms and conditions of the resolution. For an administrative resolution to be included as an enforcement intervention for reporting purposes, it must be a formal resolution reached with a trader and noted publicly by way of an ACCC media release.

\*\* The total number of new or revised business compliance resources has been collated by counting a new or revised publication and its multiple translations as a single resource.

^^ The low number of surveys and audits is due to activity being suspended as a result of the COVID-19 pandemic, which led to a redirection of resources to new priorities and raised work health and safety risks for product safety in-store surveillance activity.

## Analysis of indicator results

We achieved 7 of our 11 performance indicators and partially met the requirements of one indicator under deliverable 2.1.

All interventions were within areas identified as priorities for the period. The impact of the COVID-19 pandemic has impacted on the progress of investigations. We are balancing the need to address potential breaches of the ACL with the burden of compulsory information gathering powers on businesses already negatively impacted by the changed economic environment and restrictions on their operations resulting from the pandemic. We also continued to manage a number of complex in-depth investigations and continuing court matters at litigation and appeal stage, including matters that have now been running for multiple years. These matters continue to require ACCC resourcing, diverting resources from the investigation and progression of new matters.

Despite these challenges, we were able to exceed our performance indicator for the number of ACL enforcement interventions in the period. We instituted 9 court proceedings; accepted 7 court enforceable undertakings; resolved other issues through 7 administrative resolutions and infringement notices in 11 matters; and dealt with 3 further matters through public warnings. The variety of types of interventions demonstrates the ACCC's strategic approach to compliance and enforcement to address harm and manage risk proportionately, while also maximising the impact of our interventions.

Further, the focus of our investigations, interventions and business compliance projects was overwhelmingly within our identified priority areas.

We are implementing organisational structure improvements such as better aligning divisions and resourcing with each main strategic objective. This work has progressed in conjunction with a review of our objectives and indicators to ensure they better reflect each division's focus following the restructure. Further details of this change can be found in Part 2, page 26.

Our business education resources help businesses understand how to comply with the law. In 2020–21 we exceeded our target for new or revised compliance resources threefold, driven by new product safety standards, changes to franchising laws and COVID-19. As with previous years, the number of times small business resources were accessed exceeded our target, indicating this is valued information.

In 2020–21 surveillance activity typically undertaken to identify hazardous products, or noncompliance in the franchising sector, was suspended as the COVID-19 pandemic raised workplace health and safety risks for this type of activity.

## Outcomes achieved against deliverable

### Highlights

- 9 Federal Court proceedings instituted
- \$108,768,000 in penalties across 17 first-instance judgments handed down<sup>19</sup>
- Assistance to hundreds of thousands of consumers and small businesses on consumer and fair trading issues arising from the COVID-19 pandemic.

<sup>19</sup> Note that these figures may include cases later under appeal.

## Actions to achieve our purpose

### **COVID-19 activity**

Rather than focusing on traditional enforcement processes and compliance through court-based outcomes, for many consumer and fair trading issues arising from the COVID-19 pandemic we sought to trade off lengthy and punitive court action to achieve prompt changes in businesses' behaviour and, most importantly, achieve financial redress for consumers at a time when many were under financial strain due to the pandemic. We quickly intervened on issues by engaging with businesses to seek resolution of problems, educating consumers on their rights, and adjusting broader business behaviour through various compliance and educative initiatives.

However, a key part of the strategy involved a willingness to take quicker and stronger enforcement action against recalcitrant businesses. We were prepared to take [Flight Centre](#) to court if it had not agreed to compensate its customers for cancellation fees that it was not entitled to charge. We were also prepared to take court action in relation to [APT](#) if it had not agreed to stop deducting certain costs that it was not entitled to deduct from refunds.

The ACCC also took action to address potentially misleading COVID-19-related claims some businesses made about their products or services. For example, we commenced court proceedings in December 2020 against [Lorna Jane](#) for alleged false or misleading claims about its 'Anti-virus Activewear'. The ACCC alleged that in July 2020 Lorna Jane claimed that its 'Anti-virus Activewear', which was sprayed with a substance called 'LJ Shield', eliminated and stopped the spread of COVID-19 and provided protection against viruses and pathogens, including COVID-19, when this was not the case.

Further details of our response to the pandemic can be found in Part 1, page 6.

### ***Addressing conduct impacting consumers experiencing vulnerability and disadvantage, including unconscionable conduct***

The ACCC prioritises conduct that impacts consumers who are experiencing vulnerability and disadvantage, as they can be disproportionately impacted by conduct in breach of the CCA. Consumers may experience disadvantage or vulnerability due to a variety of personal, social and situational factors. While some consumers may experience vulnerability or disadvantage in most situations, other consumers may move in and out of vulnerability or disadvantage throughout their lives.

The [Telstra matter](#) described in the following case study is an example of the strong enforcement action the ACCC takes in response to conduct that impacts consumers experiencing vulnerability and disadvantage.

## ► CASE STUDY

### Telstra penalised for unfair practices in sales to Indigenous consumers

On 26 November 2020 the ACCC instituted Federal Court proceedings against Telstra for admitted unconscionable conduct in the sale of post-paid mobile products to Indigenous consumers. Telstra has admitted it acted unconscionably when sales staff at 5 licensed Telstra-branded stores used unfair practices to sign up 108 Indigenous consumers to multiple post-paid mobile contracts which they did not understand and could not afford. The improper sales practices caused many of the affected consumers severe personal financial hardship and great distress, including where some unpaid debts were referred to debt collectors. The average debt per consumer was more than \$7,400. Telstra has since taken steps to waive the debts.

Telstra agreed to the filing of consent orders and joint submissions, and at the hearing on liability and penalty held on 31 March 2021 it offered an apology 'for the serious contraventions and the impacts it had on Indigenous consumers and affected communities'. On 13 May 2021 the Court ordered Telstra pay \$50 million in penalties – the second highest penalty ever imposed under the ACL.

In addition to the remedies to be determined by the Court, the ACCC accepted a court enforceable undertaking from Telstra in which Telstra undertook to provide remediation to affected consumers, improve its existing compliance program, review and expand its Indigenous telephone hotline and enhance its digital literacy program for consumers in certain remote areas.

**Other notable enforcement outcomes** in 2020–21 included the following:

- Penalties of \$25,200 were paid by [Live Life Alarms](#) (an online seller of personal 'SOS' alarms which are typically used by the elderly and people with disabilities if they require urgent assistance) after the ACCC issued 2 infringement notices for alleged false or misleading representations.
- [Get Gizmo](#) refunded approximately 4,000 consumers who were charged for unsolicited purchases before the 10-day cooling-off period ended, under a court enforceable undertaking which includes a commitment by the sole director not to be involved, for a period of 5 years, in any business that offers, negotiates or enters into an unsolicited consumer agreement. Get Gizmo promoted and sold electronic goods by unsolicited telemarketing to thousands of consumers in Australia, including many in remote Indigenous communities.
- Four-wheel-drive vehicle hire business [Smart Corporation Pty Ltd](#) (in liquidation), previously trading as 'Australian 4WD Hire', was ordered to pay penalties of \$870,000 following court action by the ACCC. The Federal Court found that the business engaged in unconscionable conduct, made false or misleading representations in relation to insurance cover, and included unfair contract terms (UCTs) in its vehicle rental contracts. The Court also found that the business's former director and its fleet manager and director were knowingly concerned in this conduct. The Court made orders disqualifying them from managing a company for 3 years and ordered them to pay \$179,000 and \$174,000 in penalties respectively. The Court considered that the business acted unconscionably by intimidating consumers and threatening them with legal action and other adverse consequences to deter them from disputing claims of damage to the vehicles or raising any other legitimate issues. The Court considered that the threatened actions were out of all proportion to any prejudice which Australian 4WD Hire had suffered and that its conduct involved bad faith, deception, unfair pressure and sharp practice.



In an important clarification of the ACL's unconscionable conduct provision, the Full Federal Court [upheld an appeal](#) by the ACCC and declared that Quantum Housing Group Pty Ltd engaged in an unconscionable system of conduct in its dealings with investors regarding the National Rental Affordability Scheme, in breach of the ACL. In June 2020 the Federal Court imposed penalties against Quantum and its sole director after finding that Quantum made false or misleading representations. However, the trial judge concluded that Quantum had not engaged in unconscionable conduct. The ACCC appealed this decision to clarify whether special disadvantage was necessary to establish unconscionable conduct under the ACL. In upholding the ACCC's appeal, the Full Federal Court clarified that:

- it is not necessary to demonstrate exploitation of some disadvantage or vulnerability of the consumer or small businesses affected, although this may often be the case
- the correct approach to assessing statutory unconscionability is to focus on the conduct and assess whether it departs from the norms of acceptable commercial behaviour as to be unconscionable.

### ***Addressing consumer guarantees issues***

The ACCC continues to prioritise actions to improve business compliance with the ACL consumer guarantees. There were 2 notable outcomes of this work in 2020-21:

- In its judgment in the ACCC's proceedings against [Jayco Corporation Pty Ltd](#) (Jayco) the Federal Court made important findings relating to acceptable quality. The Court dismissed the majority of the ACCC's case, finding that Jayco did not make false or misleading representations to certain consumers about their consumer guarantee rights and did not act unconscionably towards them. However, the Court found that the Jayco caravans purchased by the 4 consumers were not of acceptable quality and that 3 of the caravans had major defects. The Court also confirmed that a series of, or multiple, minor defects can amount a major failure to comply with the statutory guarantee of acceptable quality by reason of the cumulative effect of the defects.
- The ACCC accepted a court enforceable undertaking from [Toyota Motor Corporation Australia Limited](#) to review and improve its compliance processes in response to our concerns that consumers may have been misled about how their consumer guarantee rights under the ACL interact with manufacturer warranties. Toyota acknowledged that internal processes should be maintained that ensure consumers are informed of, and able to easily access, their legal rights under the consumer guarantees. Toyota also acknowledged the ACCC's concerns that failure to inform consumers regarding mechanical issues with their vehicles (or issues with repairs) may be misleading.

### ***Digital platforms***

The ACCC continues to take action that reinforces some of the findings from the Digital Platforms Inquiry, outlined in more detail in Part 3 on page 119. For example, in 2020-21 we:

- instituted proceedings against [Facebook, Inc](#) and 2 of its subsidiaries for allegedly false, misleading or deceptive conduct when promoting Facebook's Onavo Protect mobile app. Onavo Protect was a free downloadable app providing a virtual private network (VPN) service. The ACCC alleges that Facebook and its subsidiaries Facebook Israel Ltd and Onavo, Inc misled Australian consumers by representing that the app would keep users' personal activity data private, protected and secret and that the data would not be used for any purpose other than providing Onavo Protect's products. The ACCC alleges that in fact Onavo Protect collected, aggregated and used significant amounts of users' personal activity data (such as records of apps accessed and how long they were used for) for Facebook's commercial benefit
- launched Federal Court proceedings against [Google LLC](#), alleging Google misled consumers to obtain their consent to expand the scope of personal information that Google could collect and combine about consumers' internet activity, for use by Google, including for targeted advertising. The ACCC alleges Google misled consumers when it failed to properly inform them, and did not gain their explicit informed consent, about its move in 2016 to start combining personal information in consumers' Google accounts with information about those individuals' activities on non-Google sites that used Google technology (formerly DoubleClick

technology). This meant that data about users' non-Google online activity became linked to their names and other identifying information held by Google, where previously this data was not linked to individual users. Google then used this newly combined information to improve the commercial performance of its advertising businesses.

An important outcome from our digital platforms work was the Federal Court's finding that [Google LLC and Google Australia Pty Ltd](#) (together, Google) misled consumers about personal location data collected through Android mobile devices between January 2017 and December 2018. This was a successful conclusion to world-first enforcement action brought by the ACCC in October 2019. The Court found that some of the statements Google made about the collection of personal data were misleading. This decision was an important reminder to companies that in collecting information about their customers they must explain their settings clearly and transparently.

### ***Addressing consumer harm from misleading conduct***

The ACCC took a number of actions to address consumer harm from misleading conduct, including:

- proceedings in the Federal Court against [Sumo Power Pty Ltd](#) (Sumo) alleging it made false or misleading representations to Victorian consumers in relation to its electricity plans, which were resolved by consent. The Federal Court imposed [penalties](#) of \$1.2 million and ordered Sumo to provide redress to affected consumers
- issuing a public warning notice about the alleged conduct of [Dismissals Direct Pty Ltd](#), trading as Unfair Dismissals Direct, a company that represented employees in unfair dismissal claims before the Fair Work Commission (as a paid agent on a 'no win, no fee' basis, rather than providing legal services). The ACCC had reasonable grounds to suspect that Unfair Dismissals Direct may have engaged in misleading and deceptive conduct by telling consumers that it would deduct its professional fee from settlements received on their behalf and transfer the remaining balance to the client when, in some instances, Unfair Dismissals Direct kept the remaining balance
- instituting Federal Court proceedings against [Decathlon \(Australia\) Pty Ltd](#) for allegedly selling sport and recreation goods that did not comply with the applicable product safety standards; and making false or misleading representations about some products. Further details are in Part 3, deliverable 2.3, on page 99.

Notable outcomes in 2020–21 from earlier ACCC actions include:

- the Federal Court ordering ticket reseller [Viagogo AG](#) to pay a penalty of \$7 million for making false or misleading representations when reselling tickets for live music and sports events. The Court had found in 2019 that Viagogo made false or misleading representations to consumers that it was the 'official' seller of tickets to particular events, that certain tickets were scarce, and that consumers could purchase tickets for a particular price when this was not the case. Viagogo has appealed both the liability and relief judgments
- the Federal Court ordering eyewear retailer [Oscar Wylee](#) to pay \$3.5 million in penalties for making false or misleading representations about its charitable donations and affiliations
- the Federal Court ordering [HealthEngine Pty Ltd](#) to pay \$2.9 million in penalties for misleading consumers by not adequately disclosing that it was sharing patient personal information with private health insurance brokers and by publishing misleading patient reviews and ratings
- the Federal Court ordering [iSelect Limited](#) to pay \$8.5 million in penalties for making false or misleading representations about its electricity comparison service. iSelect admitted that, between November 2016 and December 2018, it misled consumers by representing on its website that it would compare all electricity plans offered by its partners and recommend the most suitable or competitive plan, when this was not the case. During the period, hundreds of thousands of consumers visited the website
- the Federal Court ordering that [Medibank Private Limited](#), trading as 'ahm Health Insurance' (Medibank), pay \$5 million in penalties for making false representations to members about the benefits offered by their ahm health insurance policies. Medibank self-reported this conduct

to the ACCC. Businesses that self-report breaches of the ACL are not exempt from ACCC enforcement action, but the penalties ordered by the court take their cooperation into account

- [Amaysim Australia Ltd and Lycamobile Pty Ltd](#) paying penalties totalling \$126,000 and \$12,600 respectively after the ACCC issued each of these mobile services providers with an infringement notice for alleged false or misleading representations about their mobile phone plans. We alleged that each business separately misrepresented that its mobile phone plans were ‘unlimited’ in advertisements on social media designed to entice new customers, when in fact the plans had a maximum data allowance.

### **Small business**

The ACCC took a number of actions in 2020–21 to help small businesses receive protections under the CCA and the ACL, including:

- commencing proceedings against Retail Food Group Limited and 5 of its related entities ([Retail Food Group](#)), alleging the food and beverage franchise company engaged in unconscionable conduct and made false or misleading representations in its dealings with franchisees. We allege that over a number of years Retail Food Group withheld important financial information from incoming franchisees who had purchased or obtained a licence to operate 42 loss-making corporate stores; and made false or misleading representations to them about the viability or profitability of the stores. We also allege that Retail Food Group used marketing funds, to which franchisees had contributed, to pay for non-marketing expenses, in breach of the Franchising Code
- commencing proceedings against [Fuji Xerox Australia Pty Ltd](#) and a related company (together, Fuji), alleging that 9 types of Fuji’s standard form small business contracts contain several UCTs. Fuji supplies a range of business products on a lease basis, including photocopiers, scanners and multifunction printers. Fuji also services these products and supplies software and print management services. The ACCC alleges there are 31 different terms which are unfair, including terms dealing with automatic renewal, excessive exit fees and unilateral price increases
- commencing proceedings against [AA Machinery Pty Ltd](#), trading as Agrison, alleging it made false or misleading representations about the warranties and after-sales services available to its customers. We allege that from at least August 2017 Agrison has represented on its website and in print and social media that its tractors would be fully supported by a 5-year nationwide warranty, a national after-sales service network and access to spare parts; and that Agrison would provide timely after-sales service to customers. We allege that customers who sought assistance after experiencing problems with their tractors found that Agrison did not have a network available to provide service or repairs throughout Australia, that the warranty was a limited ‘parts only’ warranty and that spare parts were not available in a reasonable timeframe or at all.
- lodging an appeal against the Federal Court’s decision to dismiss its case against [Employsure](#), in which the ACCC alleged that Employsure’s Google Ads misrepresented that Employsure was, or was affiliated with, a government agency. Employsure is a private company that offers employment relations and workplace health and safety advisory services to business owners. It has no affiliation with any government agency.

We achieved a number of notable enforcement outcomes benefiting the small business sector:

- In ACCC proceedings the Federal Court found that [Megasave Couriers Australia Pty Ltd](#) (Megasave) made false or misleading representations of guaranteed minimum weekly payments and annual income to prospective franchisees. Megasave’s sole director, Gary Bourne, admitted that he was knowingly concerned in the conduct. Further details are available in the case study in Part 3, deliverable 2.4, page 97.
- The ACCC accepted a court-enforceable undertaking by [Back In Motion Physiotherapy Pty Ltd](#) to remove certain terms from its franchise agreements which it admitted may be unfair. Under a restraint of trade clause in most of the Back In Motion Physiotherapy franchise agreements, any franchisee who wanted to leave the group was not allowed to be involved in

any competing practice located within 10 km of a Back In Motion Physiotherapy franchise for up to 12 months.

- [Engineering company UGL](#) restored 30-day payment terms for its small business suppliers, in response to the ACCC raising concerns about allegations that UGL had unilaterally extended its payment terms to 65 days on new purchase orders and that it was advising suppliers requiring earlier payment to contact finance company Greensill Capital. UGL also allegedly told some suppliers that, in order to be paid earlier, they would need to accept a discount on the amount of their UGL invoice and the invoice would be paid by Greensill Capital. The practice of requiring a discount in exchange for earlier payment of invoices is known as reverse factoring or supply chain financing. While supply chain financing is not unlawful, the ACCC has been looking into issues for small businesses raised by extended payment terms and reverse factoring.

Enforcement actions for agriculture-related industry codes and other work done by the ACCC to support a vibrant small business sector are described in Part 3, deliverable 2.4, page 97.

## Appeals

The Full Federal Court dismissed an appeal by hotel comparison site [Trivago](#) against an earlier [decision](#) which found Trivago had breached the ACL by making misleading representations about hotel room rates on its website and in television advertising.

The Full Federal Court dismissed the ACCC's appeal against [TPG Internet Pty Ltd](#) (TPG) in relation to the marketing and sale of some prepaid internet, home telephone and mobile plans. The Court held that TPG's use of the word 'prepayment' did not convey anything about the way in which TPG would hold and apply the prepayment, particularly at the end of the plan, and as such TPG had not misled consumers.

## Projects relating to law reform and advocacy, and market analysis

- **Consumer guarantees** – in 2019 the Council of Australian Governments (COAG) Forum on Consumer Affairs (CAF) concluded that there were ongoing difficulties for consumers in getting the remedies they were entitled to for businesses' failures to comply with the ACL consumer guarantees. CAF endorsed a regulatory impact assessment of options to increase compliance with the consumer guarantees, including a proposed civil prohibition for failure by a business to provide a consumer guarantees remedy. The ACCC is involved in the project through Consumer Affairs Australia New Zealand (CAANZ),<sup>20</sup> which is considering the nature and extent of the problem and the possible options for assessment. The Australian Government will be releasing a public consultation paper on this. The ACCC considers that law reform is necessary to meaningfully improve compliance with the ACL consumer guarantees.
- **Unfair contract terms** – on 6 November 2020 CAF agreed to strengthen the existing unfair contract term protections in the ACL, including making UCTs unlawful and subject to a potential pecuniary penalty. On 9 November 2020 Treasury publicly released a decision regulatory impact statement discussing the changes agreed to, which include:
  - prohibiting, and imposing civil pecuniary penalties for, the inclusion of UCTs in small business and consumer contracts
  - removing the automatic voiding of UCTs and instead providing courts with greater flexibility on remedies where contract terms are declared unfair
  - increasing eligibility for protections by amending the definition of 'small business'
  - removing the contract valuation element for what constitutes a small business contract
  - clarifying the current definition of a 'standard form contract'.

The government will be releasing an exposure draft of legislation for public consultation. The ACCC has long advocated for changes to the UCT laws (for both small business and consumers). In particular, we consider that the inclusion of a UCT in a standard form contract should be an ACL contravention and subject to penalties for noncompliance.

<sup>20</sup> And now also its replacement forum (the replacement forums are discussed in Part 3, deliverable 2.2, on page 88).

- **Unfair trading practices project** – also on 6 November 2020 CAF agreed to progress a regulation impact assessment process to explore potential options to address some unfair business practices that are unlikely to be covered by the existing provisions of the ACL, as well as seeking further evidence on the nature of the problem. The ACCC has been contributing to this project and continues to do so, along with the Australian Securities and Investments Commission (ASIC), Treasury and the state and territory consumer law jurisdictions. The ACCC remains concerned that there are some unfair and harmful business practices that are unlikely to be covered by the existing protections in the ACL. We have advocated in a number of different contexts for an economy-wide unfair trading practices provision to address these gaps.
- **General safety provision** – under the current provisions of the ACL, it is not illegal to supply unsafe products in Australia. However, this law is in place in many other countries, including the European Union, United Kingdom, Canada, Malaysia, Singapore, Brazil and Hong Kong. In October 2019, in its Consultation Regulation Impact Statement, Treasury canvassed a general safety provision, along with a range of other reform options, to strengthen product safety interventions. The ACCC has long advocated for a general safety provision to strengthen and facilitate a more responsive product safety regime in Australia.
- **Adopting overseas product safety standards** – in June 2021 the government announced it would look to develop amendments to the ACL to allow for more rapid adoption of trusted overseas product safety standards. This would allow the Minister to more easily permit compliance with trusted overseas standards under law where the standard provides at least an equivalent level of consumer protection to Australian standards. The government is also considering if mandatory safety standards could be updated automatically to keep pace with any applicable overseas or voluntary Australian standards. The ACCC is working with Treasury to develop these proposals as part of the government's agenda to reduce regulation and minimise compliance costs for business. Consultation on the reform proposals is expected to commence in the second half of 2021.
- **Funeral industry project** – as highlighted in our [Compliance and Enforcement Policy](#), longstanding concerns about harmful conduct in the funeral industry merits deeper examination, and the ACCC will take targeted action where appropriate. We note there has been much criticism of funeral businesses' use of their significant market power to bundle services and block new entrants to the market; and to engage in unconscionable conduct. To assist us and inform our work in this area, we released a survey seeking further information about the experiences of consumers and businesses with the funeral services sector.

Already our work in this area has led to enforcement action. In March 2021 WT Howard Funeral Services and Coventry Funeral Homes, trading as Fitzgerald's Funerals, each paid \$12,600 in penalties after the ACCC issued each of the businesses with an [infringement notice](#) for allegedly making a false and misleading representation about their ownership.

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

### About this deliverable

This deliverable relates to the partnerships we make to assist us in taking proactive, timely and effective compliance and enforcement action.

As noted earlier, the ACL is administered under a 'one law, multi-regulator' model. Consequently the ACCC works closely with its fellow ACL regulators to ensure a coordinated and consistent approach to compliance and enforcement.

We work collaboratively with stakeholders across the private and public sectors to deliver business and consumer projects or resources. We work with other government agencies (such as Treasury, ASIC and specialist regulators) and with consumer groups, industry associations and businesses on broader competition, consumer and fair trading issues.

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

### Performance indicators

**Table 3.10 Performance indicators for deliverable 2.2**

Performance indicator	2017-18	2018-19	2019-20	2020-21		Met?
	Result	Result	Result	Target	Result	
Percentage of business compliance resources developed or updated in consultation with business, stakeholder groups and peak bodies	100%	74%	43% <sup>#</sup>	80%	55%	✗
Number of business compliance projects that are delivered jointly with ACL regulators ( <i>Business compliance projects may include one or more of the following to address an identified sector-based compliance risk: monitoring, surveillance, audits, research, stakeholder engagement, business compliance resources, consumer education resources</i> )	10	14	5	5	9	✓
Number of business compliance and consumer education projects that involve partnership or joint delivery with businesses, peak bodies, industry or consumer groups	13	19	15	5	17	✓

<sup>#</sup> Most guidance released during the year was existing guidance updated for minor procedural changes which did not justify consultation. In the first half of the financial year the ACCC prioritised providing information to small businesses and franchises that would assist them to meet the challenges of the COVID-19 pandemic. The ACCC moved quickly to produce and publish guidance as a matter of urgency and did not consult with businesses, stakeholder groups and peak bodies as is usual in the absence of an emergency.

### Analysis of indicator results

We achieved 2 out of our 3 performance indicators under deliverable 2.2.

We exceeded our target for joint delivery of business compliance projects with ACL regulators by almost double, largely driven by a combination of our COVID-19 work, product safety consumer education campaigns and activity to support new safety laws to address specific hazardous products.

Similar to previous years, we also exceeded our target for business compliance or consumer education projects involving partnership or joint delivery with stakeholders by over threefold. This



was largely because of our product safety consumer campaigns and provision of information on issues related to the COVID-19 pandemic.

## Outcomes achieved against deliverable

### Actions to achieve our purpose

The following key partnerships assisted us in taking proactive, timely and effective compliance and enforcement action:

- **Cross-jurisdictional collaboration replacing CAF** – this brought together all the Commonwealth, state and territory and New Zealand ministers responsible for fair trading and consumer protection laws. CAF's role was to consider consumer affairs and fair trading matters of national significance and, where possible, to develop a consistent approach to addressing these issues. Operational issues were progressed by the CAF subcommittee CAANZ and its advisory committees and operational groups.

Following the cessation of COAG in May 2020, CAF was replaced with ad hoc liaison and engagement between jurisdictions. The ACCC has worked closely with its Commonwealth, state and territory and New Zealand counterparts to ensure continuing collaboration on consumer affairs and fair trading matters.

- **ACCC Small Business and Franchising Consultative Committee** – in this forum the ACCC and industry can discuss competition and consumer law concerns related to the small business and franchising sectors. The committee met virtually in September and November 2020 and in May 2021. Members considered the impacts of, and recovery from, the COVID-19 pandemic in the sector, where the effects have been highly differentiated by industry, geographical location (and location of outbreaks) and government restrictions.
- **ACCC Consumer Consultative Committee** – in this forum the ACCC and consumer representatives can address consumer protection issues collaboratively. The committee met virtually in September and November 2020 and in March and May 2021, canvassing a range of consumer issues including issues arising from the COVID-19 pandemic, consumer participation in tribunal processes, the National Disability Insurance Scheme, aged care and scams. The meeting in May 2021 was a joint meeting with ASIC's Consumer Advisory Panel. Members discussed issues emerging from the pandemic, including issues impacting culturally and linguistically diverse (CALD) consumers and hardship processes.
- **Competition Law Implementation Program (CLIP)** – this is an important and timely program of economic cooperation that supports the Association of Southeast Asian Nations' (ASEAN) regional goal of building a globally integrated, highly competitive economic region through effective competition laws, strong enforcement agencies and enhanced regional cooperation. CLIP draws on the ACCC's deep experience as a strong enforcer to support policy and law reform, build institutional capacity and raise the quality of law enforcement in the region.

Phase IV of CLIP commenced in September 2020 with funding of \$1.24 million. In 2020–21 the ACCC continued to develop training, with a focus on online and virtual sessions to ensure access during the pandemic.

- **Consumer Affairs Program** – this was launched in 2020 to complement CLIP. Through this program the ACCC is working with ASEAN member states to support capacity development for national consumer protection agencies.

Internationally the ACCC continued to actively advocate for improved cooperation in relation to compliance and enforcement. For example, we:

- provided input to the **Organisation for Economic Cooperation and Development (OECD)** through a variety of forums to address existing and emerging competition and consumer protection challenges and promote ACCC priorities. This includes chairing the OECD's **Working Party on Consumer Product Safety**, which brings together regulators from around the world to improve product safety regulation

- co-developed the [OECD Recommendation on Consumer Product Safety](#), which was adopted by the OECD Council in July 2020, setting a global benchmark for effective product safety frameworks
- co-led the global awareness campaign '[Buying toys online: keep it safe](#)', which is estimated to have reached more than 1.9 million people through social media
- contributed to a joint OECD and International Competition Network (ICN) project that resulted in the release of the [Report on international co-operation in competition enforcement](#) in 2021.

## ► CASE STUDY

### ACL regulators COVID-19 Urgent Response Group

Close collaboration and partnership with state and territory ACL regulators, ASIC, the New Zealand Commerce Commission (NZCC) and Treasury were vitally important during the COVID-19 pandemic to ensure there was a consistent and coordinated response to the consumer issues arising from the pandemic – especially among the ACL regulators. While the ACCC regularly coordinates with each of these bodies as part of our usual work, our engagement with them intensified and strengthened during the pandemic.

The coordination and information sharing on COVID-19 consumer issues was facilitated by regular meetings of the COVID-19 Urgent Response Group meetings under CAANZ. There was also frequent ad hoc engagement between individual bodies within the group. Aside from sharing intelligence, regulators coordinated to develop consistent messaging and industry guidance materials, such as the [best practice travel industry guidance](#). We also coordinated on engagement with industry and consumer stakeholder groups.

Unlike the ACCC, many ACL regulators provide a conciliation function for consumer disputes. In some jurisdictions, the doctrine of frustration is incorporated into state fair trading legislation. Given this, and as many of the consumer issues in relation to COVID-19 focus on contractual entitlements, the conciliation services of these regulators and their contract law experience was essential in assisting consumers who the ACCC was unable to help.

The ACCC took the lead in identifying and analysing issues, sharing this information and identifying how the other ACL regulators could assist in resolving the issues. We engaged directly with businesses and negotiated outcomes. Other regulators were then able to leverage off these outcomes and take follow-on action to facilitate remedies for individual consumers.

Sharing our work also informed the work of Treasury, ASIC and the NZCC in response to consumer issues arising from the COVID-19 pandemic.



In 2020–21 the ACCC led the Asia Oceania contribution to the **International Consumer Protection and Enforcement Network (ICPEN)** COVID-19 Working Party.



In 2020–21 Australia, represented by the ACCC, was elected **ICPEN President for 2022–23**.



This will be **Australia's third presidency of ICPEN** since its establishment in 1992 as the International Marketing Supervision Network.



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

### About this deliverable

This deliverable relates to the methods we use to identify product safety issues and the types of action we take to address risks posed by unsafe consumer goods.

The ACCC administers and enforces a range of product safety provisions under the CCA and ACL that aim to protect consumers from unsafe consumer products and product-related services. While there are exceptions, consumer products are primarily those likely to be found or used in a residential environment.

We work cooperatively with state and territory ACL regulators to deliver the objectives of our shared legislative scheme. Our ACL consumer product safety responsibilities form part of Australia's overall product safety framework, which is complemented by the role of specialist safety regulators who are responsible for the safety of specific classes of goods.

We also have a policy role to advise the Minister on the use of a range of powers for market intervention to protect consumers from unsafe products. These powers include product bans, mandatory safety standards or information standards, compulsory recall notices and safety warning notices to the public.

Our work is guided by our annual [product safety priorities](#) – see page 76.

### Performance indicators

**Table 3.11 Performance indicators for deliverable 2.3**

Performance indicator	2017-18	2018-19	2019-20	2020-21		Met?
	Result	Result	Result	Target	Result	
Percentage of product safety mandatory reports made by businesses of serious injury or death preliminary assessed by the ACCC within 7 days	98.6%	99.9%	100%	100%	100%	✓
Number of initial and in-depth investigations of emerging product safety hazards	22	13	12	10	15	✓
Number of reviews of mandatory product safety and information standards completed	12	4	3	4	2	✗
Number of new or updated published business compliance resources relating to the safety of consumer products	3	9	7	2	12	✓

### Analysis of indicator results

We achieved 3 out of 4 performance indicators under deliverable 2.3.

Our investigations determine if particular consumer products raise sufficient safety concerns to warrant regulatory intervention. In 2020-21 we exceeded our target by 50%. This can be attributed to an increase in investigations of hand sanitisers – a popular consumer product in the context of the COVID-19 pandemic – and products containing button batteries. In both of these markets, our regulatory activity resulted in new or amended mandatory standards, leading to stronger laws to address these safety hazards – see 'Highlights' below.

As with previous years, we exceeded our target for new or updated compliance resources, reflecting the importance we place on providing businesses with the information they need to ensure product safety laws are met. Several resources were produced to support compliance with the new button batteries safety standard. We achieved half of our target for mandatory product

safety standard reviews, due to resources being redirected to address urgent issues arising from the pandemic, including to address safety concerns with hand sanitisers.

## Outcomes achieved against deliverable

### Highlights

- 5,674,477 Product Safety Australia website page views
- 5,584 reports from the public about potentially unsafe products received
- 2,891 mandatory injury reports received.

### Actions to achieve our purpose

In 2020–21 the ACCC undertook a range of regulatory and enforcement activities to protect the Australian community from unsafe consumer products.

#### ***Enforcement action***

The ACCC instituted proceedings in 2020 against [Decathlon \(Australia\) Pty Ltd](#) (Decathlon) for allegedly selling sports and recreation goods that did not comply with the applicable product safety standards. The ACCC alleges that between October 2016 and December 2019 Decathlon offered 14 models of basketball rings and backboards and 5 models of portable swimming pools for sale that failed to carry the safety labelling, consumer warnings or installation and use instructions required under applicable product safety standards. In that period, Decathlon sold more than 400 basketball rings and backboards and nearly 300 portable pools online or at its physical stores. The pools included small inflatable and non-inflatable pools which were intended for use by small children. In December 2019 Decathlon recalled 51 different products, including all the [basketball rings and backboards](#), [basketball systems](#) and [portable pools](#) that are the subjects of these proceedings.

#### ***Safety warnings***

In July 2020, following a recommendation by the ACCC, the Assistant Treasurer issued a [safety warning notice](#) warning consumers about the risks of serious burns or death associated with a children's nightwear garment. The 'Monster High Ghouls Nightie', supplied by Designworks Clothing, was noncompliant with mandatory standards for children's nightwear. The garment failed to meet fibre content requirements and burned too quickly. The Assistant Treasurer issued the safety warning after the product was found to have again been sold online despite being recalled on 3 separate occasions over the previous 5 years.

#### ***Quad bikes mandatory safety standard***

A new [quad bike safety standard](#) was introduced in October 2019 to improve safety in response to continuing deaths and injuries associated with their use. There were 14 quad bike fatalities in Australia in 2020–21 alone. The standard is being introduced in 2 stages over 2 years. Stage 1, relating to safety warning information, came into effect in October 2020; and stage 2, relating to improved design and operator protection, will come into effect in October 2021. Compliance with the new standard is a 2021 product safety priority. We are focusing on conducting education, surveillance and compliance activities as it is being implemented, in partnership with state and territory ACL regulators.

### ***Hand sanitiser information standard***

The ACCC moved quickly to deal with unsafe and ineffective hand sanitisers being supplied during the COVID-19 pandemic. In November 2020, following an ACCC recommendation, the Australian Government updated the existing mandatory standard for ingredient labelling on cosmetics to include additional requirements for hand sanitisers, particularly focused on providing consumers with information on the level of alcohol content necessary to be effective against COVID-19. In April–May 2021 we ran an education campaign to remind hand sanitiser suppliers of their obligations under the standard. In 2021–22 our efforts will be directed towards market surveillance.

### ***Button/coin battery mandatory standards***

In December 2020 we welcomed the government's decision to accept the ACCC's recommendation and introduce 4 [mandatory safety and information standards for button/coin batteries](#). Button/coin batteries pose a significant risk to young children. In Australia, one child a month is seriously injured after swallowing or inserting a button battery. Under the new laws, products must have secure battery compartments that prevent children from gaining access to the batteries; child proof packaging; and appropriate labels.

A product safety priority in 2021 is overseeing the implementation of these standards. We are also promoting compliance with them towards 22 June 2022, when the transition period ends and they become mandatory.

We have produced [guidance materials for suppliers and manufacturers](#) and launched the '[Tiny batteries, big danger](#)' community awareness campaign, which attracted close to 30,000 views of the video. The campaign was run in English as well as Arabic, Cantonese, Mandarin and Vietnamese.

We also issued a media release in June 2021 on our safety concerns about [Apple AirTags](#) in terms of accessibility and security of the button battery inside the product.

### ***Australian Product Safety Pledge***

Strengthening product safety online through education, engagement and monitoring of compliance commitments by online marketplaces is a 2021 product safety priority.

In November 2020 we launched the [Australian Product Safety Pledge](#) – a voluntary initiative that commits its signatories to certain product safety related responsibilities that go beyond what is legally required of them. The pledge aims to protect Australian consumers from safety risks when shopping online by strengthening product safety measures across online marketplaces. There are currently 5 signatories, and we continue to engage with other online marketplaces seeking to strengthen product safety by participating in the pledge.

## ► CASE STUDY

### Making the Takata airbag compulsory recall more effective

The Takata airbag recall is the world's largest automotive recall, affecting an estimated 100 million vehicles. In Australia, about 4 million airbags in 3 million vehicles have been affected. The airbags have been associated with 33 reported deaths (one in Australia) and over 350 serious injuries (one in Australia).

In 2020–21 we oversaw the completion of the recall, with vehicle manufacturers required to account for 100% of affected vehicles by 31 December 2020 unless granted an extension. By 30 June 2021 nearly all (99.84%) affected vehicles had been successfully recalled or otherwise accounted for.<sup>21</sup>

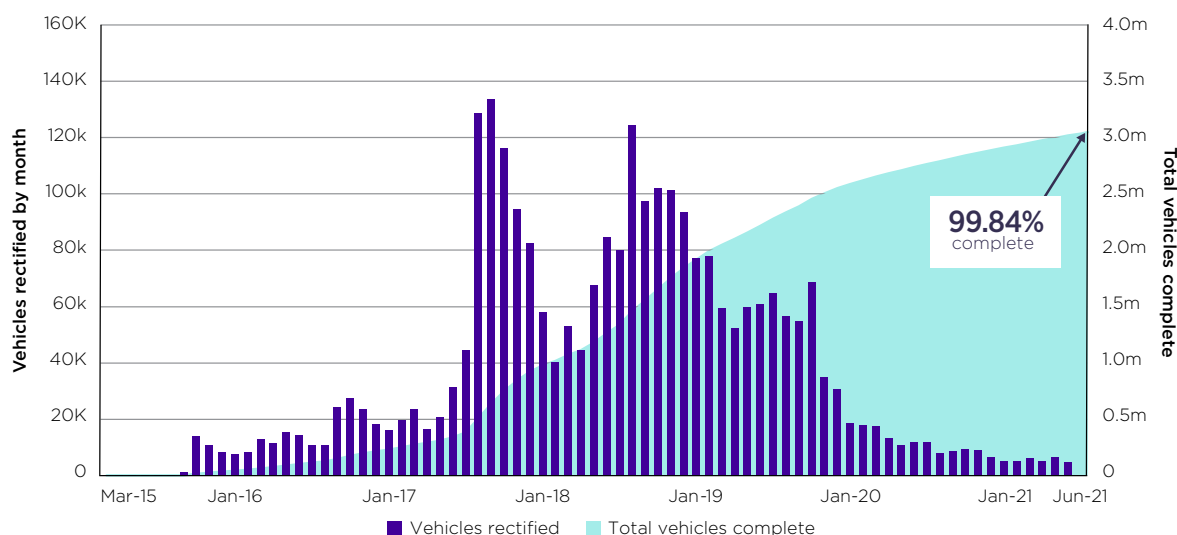
We have implemented a number of strategies to inform, progress and enhance the effectiveness of the recall, including the following:

- **Safety investigation:** In 2017–18, as directed by the Minister for Small Business, we undertook an extensive and complex investigation that led to the recommendation and ultimately introduction of the compulsory recall in February 2018.
- **Industry engagement and guidance:** We engaged extensively with affected businesses across a range of industries throughout the recall to encourage compliance, including through the provision of educational resources.
- **Government collaboration:** We partnered with other government agencies, including 17 agencies responsible for consumer, road safety and vehicle regulation, through the Takata Interagency Group that we formed in 2018.
- **Consumer outreach:** We undertook targeted outreach activity focused on high-risk communities with comparatively low response rates, which were typically communities with high migrant and Indigenous populations. We also adapted our communications to reach consumers from culturally and linguistically diverse backgrounds.
- **Industry outreach and surveillance:** With our state/territory ACL regulators, from November 2019 to June 2020 we rolled out a national industry outreach and surveillance program targeting business types assessed as posing the highest risk of noncompliance. Despite disruption due to COVID-19, more than 1,300 traders and 29,000 vehicles were inspected across the country. We also engaged closely with industry stakeholders to ensure the recall progressed effectively.
- **Enforcement:** We achieved a number of enforcement outcomes, including 5 infringement notices totalling \$63,000 for businesses allegedly advertising or selling vehicles in contravention of the recall notice, and a court-enforceable undertaking from Mercedes-Benz after it acknowledged it had failed to initiate the recall of certain vehicles. As part of the undertaking, Mercedes-Benz agreed to offer consumers loan cars in certain cases where it could not replace the airbag within 2 weeks of a consumer request.
- **Research:** We partnered with the Australian National University on a behavioural insights research project that produced valuable insights into effective recall communication strategies.
- **Policy:** We worked closely with overseas regulatory counterparts throughout the recall to inform our regulatory response. We continue to consider the lessons learnt from this recall and how it can improve regulatory approaches to future recalls.

<sup>21</sup> Some vehicles in the community may still have deadly airbags – in particular, around 312,000 vehicles that have been deemed to be compliant although they have not had their airbags replaced. This category covers vehicles that have been scrapped, stolen or unregistered for more than 2 years, or where consumers did not respond or were not contactable after repeated contacts through different channels.

Since 2019 we have continued to work closely with the Department of Infrastructure, Transport, Regional Development and Communications to support it in its regulatory capacity to address risks associated with another Takata airbag type – ‘NADI’ – not captured under the Takata recall. The department is the lead regulator for monitoring the voluntary NADI recall – see [Recall of Takata NADI 5-AT airbags](#) on the Product Safety Australia website for more information.

**Figure 3.2 Takata airbag recall progress**



**5 consumer awareness campaigns were run** to help keep consumers safe – they focused on buying toys online, staying safe in summer and well in winter, button batteries and hand sanitisers.



**572 recall notifications were published** on the Product Safety Australia website to alert the public about unsafe products.



**5 infringement notices totalling \$63,000 were paid** by businesses allegedly advertising or selling vehicles in contravention of the Takata compulsory recall notice.

## Deliverable 2.4: Support a vibrant small business sector

### About this deliverable

This deliverable relates to our work to support the small business sector to both understand and comply with their obligations and exercise their rights under the CCA as the customers of large suppliers.

Our aim is to promote a competitive and fair operating environment for small business and ensure they understand how the legislation can help them.

### Performance indicators

**Table 3.12 Performance indicators for deliverable 2.4**

Performance indicator	2017-18 Result	2018-19 Result	2019-20 Result	2020-21 Target	2020-21 Result	Met?
Number of small business Infocentre contacts served ( <i>Small business contacts are contacts through separate small business phone line and web forms</i> )	14,315	12,937	12,143	12,000	10,615	○
Number of new or revised business compliance resources (published guidance) to empower small business	8	16	7	5	9	✓
Number of CCA and ACL enforcement interventions with substantial benefits to small business sector	11	12	9	10	12	✓

### Analysis of indicator results

In 2020-21 we achieved 2 out of our 3 performance indicators for deliverable 2.4 and partially met the third.

We continued to see a downward trend in the number of small business contacts served by our Infocentre. This coincides with small business ombudsmen offices across the states and territories, and the Australian Small Business and Family Enterprise Ombudsman, having more established roles, leading to more small businesses seeking assistance from them in the first instance.

In line with previous years, we exceeded our target for new or revised business compliance resources to empower small business by almost twofold. This was largely driven by resources produced to raise awareness of the Franchising Code of Conduct, including legislative amendments.

We exceeded the number of enforcement interventions with substantial benefits to the small business sector reflecting our focus of ensuring that small business receive the protections of the competition and consumer laws, which was a priority area in 2020 and remains so in 2021.

## Outcomes achieved against deliverable

### Actions to achieve our purpose – unfair contract terms and franchising

In 2020–21 the ACCC led or contributed to several initiatives in relation to unfair contract terms and franchising. These included the following:

- **Franchising reforms** – in 2021 the Australian Government introduced several amendments to the Franchising Code of Conduct in response to the Fairness in Franchising report and also to reflect further franchising reforms announced by the Government in March 2021. A new 'key facts' sheet was also introduced to highlight critical information from a franchisor's disclosure document. We published an overview of the code changes in June. We also welcomed the government's announcement of an increase in penalties for wilful, egregious and systemic breaches of the code to better incentivise compliance.
- **Franchising campaign** – in March 2021 we launched the '[Franchising: Is it for you?](#)' campaign to raise awareness of the risks and challenges that prospective franchisees should investigate before signing a contract. The campaign ran from late March 2021 to June 2021 and attracted 3,337 views of our educational resources.
- **Business to Business Unfair Contract Terms** – as noted under deliverable 2.1 on page 85, the Australian Government is progressing reforms to enhance the UCT protections for both consumers and small businesses. Changes under consideration are prohibiting and imposing civil pecuniary penalties for the inclusion of UCTs in small business and consumer contracts, expanding the definition of 'small business', and removing the contract value threshold. Treasury will develop exposure draft legislation that will provide a further opportunity for the ACCC and other stakeholders to comment on the detail of the reforms.

Detail on the ACCC's enforcement actions to support franchisees and small businesses can be found in Part 3, deliverable 2.1, on page 84.

## ► CASE STUDY

### Megasave Couriers pay penalties for misleading prospective franchisees

On 6 July 2020 the ACCC [instituted proceedings](#) against franchisor Megasave Couriers Australia Pty Ltd (Megasave) in the Federal Court, alleging that it misled prospective franchisees with false or misleading promises of guaranteed minimum weekly payments and annual income if they purchased a Megasave courier franchise; and that Megasave's sole director, Mr Gary Bourne, was knowingly involved in the conduct.

In March 2021 the Court [declared by consent](#) that Megasave breached the ACL by making false or misleading representations to prospective franchisees. Mr Bourne admitted that he was knowingly concerned in the conduct. The Court ordered that Mr Bourne be disqualified from managing corporations for a period of 5 years and ordered injunctions restraining Megasave and Mr Bourne from engaging in similar conduct in the future.

Megasave admitted that, from at least September 2019 to July 2020, it made false or misleading representations to prospective franchisees that they would receive guaranteed minimum weekly payments (typically \$2,000 per week) and a guaranteed annual income (usually \$91,000) if they purchased a Megasave courier franchise.

The representations were made in promotional statements and marketing material on Megasave's website and in online advertisements, as well as in documents and communications provided to prospective franchisees.

However, during this time Megasave was not paying existing franchisees the promised minimum weekly payments and did not have sufficient revenue to pay existing or potential franchisees in accordance with the representations it was making. Megasave admitted that there was no reasonable basis for making the representations.

The Court ordered [Megasave](#) to pay \$1.9 million in penalties and Megasave's sole director to pay a penalty of \$120,000. The Court also ordered Megasave and Gary Bourne to pay \$500,000 in partial redress for the losses suffered by affected franchisees.

## Actions to achieve our purpose – other work to support the small business sector

### *Food and Grocery Code amendments*

In October 2020, following an independent review, amendments to the Food and Grocery Code took effect. A new dispute resolution system was introduced, which includes an Independent Reviewer role, and several other changes were made to assist suppliers, including new rules on price rises and delisting procedures. Also in October 2020 Metcash signed up as the first wholesaler signatory. In December 2020 we updated our [Food and Grocery Code of Conduct](#) guidance for suppliers to reflect these changes, including case studies on good faith and the new dispute resolution processes.

### *Country of origin labelling*

[Simplot Australia Pty Ltd](#) (Simplot) amended the country of origin labelling on 31 frozen fish products from 'Made in Australia' to 'Packed in Australia' following concerns raised by the ACCC. The frozen fish products were sold under the brand names Birds Eye, I&J, Neptune and one home brand. Following compliance checks across a range of frozen foods, the ACCC was concerned that these Simplot products displayed a 'Made in Australia' mark when the imported frozen fish may not have been substantially transformed in Australia. Processes that only change the form or appearance of imported ingredients or components do not qualify as substantial transformation. Not only can incorrect labelling wrongly influence consumers into purchasing a certain product, but it can also give an unfair competitive advantage to those who use the 'Made in Australia' label in breach of the ACL.



## Dairy Code

The mandatory Dairy Code of Conduct commenced on 1 January 2020. This mandatory code was a key recommendation in the ACCC's 2018 *Dairy Inquiry final report*. Following a compliance and education phase after the code became mandatory, the ACCC has taken enforcement actions to reinforce compliance with the code.

The Dairy Code requires dairy processors to publish standard form milk supply agreements on their website by 2 pm on 1 June each year. All dairy processors should ensure they have proper processes in place, as well as legal and technical support, to enable them to meet their publishing requirements:

- [Riddoch Trading Pty Ltd](#), trading as the Union Dairy Company (UDC), paid a penalty of \$10,500 after the ACCC issued it with an infringement notice for allegedly failing to comply with these publishing obligations. The ACCC alleged that instead of publishing its exclusive supply agreement on its website, UDC required dairy farmers to fill in an online form with data such as herd size and current processor before they could access the agreement. UDC also allegedly did not publish a non-exclusive agreement until about 2 months after the 1 June deadline.
- Dairy processor [Saputo Dairy Australia](#) (Saputo) will review and improve its internal processes after the ACCC concluded it was likely to have breached the publishing requirements of the Dairy Code. Saputo published the milk supply agreements it intended to offer for the 2020-21 milk season at around 3 pm on 1 June. Saputo has undertaken to examine its internal processes, review the factors that contributed to the breach and make any necessary changes to ensure it meets the publishing requirements of the code in future.

## Other small business education initiatives

The ACCC continued to raise awareness among small businesses about their rights and obligations under the CCA. Our activities included:

- releasing an update to the ACCC-ASIC joint publication [Debt collection guideline for collectors and creditors](#) in December 2020 to reflect legislative updates, new case studies and factors to consider when family violence is present. The guide was published in December 2020 to coincide with the end of the government's COVID-19 debt relief measures, which had temporarily changed the laws for debt collection
- issuing a series of network bulletins on topics such as consumer guarantees, enforcement outcomes relevant to small business and franchising, as well as findings from the ACCC's electricity report
- launching a campaign to increase small businesses' awareness of their rights and obligations when selling online, as more businesses seek to grow their online presence as a result of the pandemic. In late May we published a new '[business online](#)' webpage and promoted it via targeted advertisements, which resulted in 11,863 page views
- continuing to alert small businesses to scams targeting the sector. As highlighted in our [Targeting scams 2020 report](#), in 2020 scam losses reported by businesses increased by 260% to \$18 million, up from \$5 million in 2019. Businesses made the most reports about false billing and phishing scams. In 2020-21 we issued several warnings via our Scamwatch website on common or emerging scams impacting small businesses, such as payment redirection scams. More information on our efforts to combat scams is provided in Part 3, deliverable 2.5, on page 101.

## Motor vehicle service and repair scheme

In March 2021 the government introduced a law for the [Motor Vehicle Service and Repair Information Sharing Scheme](#). The mandatory scheme will require motor vehicle manufacturers to share service and repair information with independent repairers – the information they need to do their job. We previously made a [submission](#) on an exposure draft of the Bill noting areas where we considered the scheme could be made more effective. We welcome this legislative development, as such a scheme was a key recommendation from our 2017 [new car retailing industry market](#)

[study](#). We are preparing to implement and enforce the proposed scheme, including through the development of guidance prior to the scheme coming into effect on 1 July 2022.

### **COVID-19 small business advice**

In the second half of 2020 the ACCC's COVID-19 Enforcement Taskforce (see the discussion of our COVID-19 response in Part 1 on page 6) conducted a wide range of education, compliance and engagement initiatives across various sectors to help both businesses and consumers deal with the impacts of COVID-19. These sectors included travel, fitness, online selling platforms, local and community sports, professional sports, supermarkets, retailers and the events and entertainment sector. In particular, in July 2020 the taskforce led the drafting and publication of the [ACCC and ACL regulators best practice guidance for the travel industry for COVID-19 related travel cancellations](#).

In July 2020 we updated our website guidance for small businesses impacted by COVID-19. The new content answered common questions from businesses about their rights and responsibilities under the ACL in light of the impacts of COVID-19 restrictions, including in relation to product returns and exchanges, delivery delays and gift card expiry. On 5 May 2021 we participated in a joint government agency webcast on the topic 'COVID-19 Next Steps for Your Business'. Five agencies provided small businesses with guidance on issues relevant to case studies reflecting common small business issues in the tourism and hospitality industries, and 119 people joined the discussion.

### **Other small business related policy developments**

As noted under deliverable 2.1 on page 85, the ACCC has been contributing to:

- a CAANZ project considering how the ACL consumer guarantees regime may be enhanced to improve compliance. This assessment has included consideration of options to help ensure suppliers are supported by manufacturers in carrying out their consumer guarantee obligations, including a public regulatory impact assessment of proposals to prohibit manufacturers from failing to indemnify suppliers under the ACL, and to prohibit retribution by manufacturers against suppliers who seek compensation under the ACL's indemnification provisions
- progressing a regulation impact assessment process, along with ASIC, Treasury and the state and territory consumer law jurisdictions, to explore potential options to address some unfair business practices that are unlikely to be covered by the existing provisions of the ACL. This assessment will also include consideration of potential unfair business practices likely to affect small businesses that are unlikely to be covered by the existing provisions of the ACL
- a collective bargaining class exemption, which commenced in June 2021. This is an exemption from competition law for groups of small businesses that decide to collectively bargain with customers or suppliers. It means that small business collective bargaining groups will not need to first seek ACCC approval via the notification or authorisation process before engaging in collective bargaining activities. To fall within the exemption, the group must lodge a simple, one-page notice with the ACCC and with each target business it proposes to collectively bargain with (when they first approach that target). See the [Collective bargaining class exemption webpage](#) for more information.

Other relevant outcomes relate to our work on the small business collective bargaining class exemption (see page 64), our digital platforms work (see pages 118-120) and our exemptions work undertaken as a result of the COVID-19 pandemic (see page 64).

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

### About this deliverable

This deliverable relates to our work to support consumers to understand and assert their rights. Education is an important aspect of our consumer protection work, as equipping consumers to make informed purchasing decisions and empowering them to assert their rights when things go wrong encourages confident participation in the economy.

Information on our product safety education activity is provided in Part 3, deliverable 2.3.

### Performance indicators

**Table 3.13** Performance indicators for deliverable 2.5

Performance indicator	2017-18 Result	2018-19 Result	2019-20 Result	2020-21 Target	2020-21 Result	Met?
Number of new or revised consumer education resources (published guidance)	19	21 <sup>#</sup>	21	10	29	✓
Number of times online consumer education resources have been accessed	4,075,888	4,251,129	4,580,452	2 million	4,463,023	✓
Number of Infocentre contacts served (includes Infocentre contacts served and webforms received)	290,143	314,175	312,773	200,000	396,190	✓
Number of visits to the Scamwatch website*	2,427,886	3,321,747	3,843,815	1.5 million	3,986,235	✓

<sup>#</sup> The total number of new or revised consumer education resources (published guidance) has been collated by counting a new or revised publication and its multiple translations as a single resource.

<sup>\*</sup> The annual figures reflect visits rather than unique visits, due to the data analytics tool used for the Scamwatch website.

### Analysis of indicator results

We exceeded all of our performance indicators under deliverable 2.5.

Our education resources and Infocentre call centre provide consumers with the information they need to understand their rights, including how to assert them if a consumer transaction goes wrong. In line with previous years, we exceeded our targets for the number of times online resources were accessed (nearly 4.5 million times) and the number of Infocentre contacts served (nearly 400,000), reflecting the value of this information to the public. We also note that contacts to our Infocentre increased considerably over the period due to COVID-19-related issues and information sought.

Our Scamwatch website, which provides information on common and emerging scams, also continued to be a sought-after resource, with the public accessing it nearly 4 million times – a twofold increase on our target. This is partially attributable to our Scamwatch radar alerts on emerging scams – in 2020-21 we issued 12 radar alerts on COVID-19 scams and other current scams.

## Outcomes achieved against deliverable

### Highlights

- 396,190 contacts served by our Infocentre
- 4,463,023 times our consumer education resources were accessed
- 259,656 scams reported to Scamwatch, with a total of \$234,782,047 in reported losses
- 3,986,235 visits to our Scamwatch website
- 29,686 @Scamwatch\_gov\_au Twitter followers – an increase of nearly 15% from 2019–20.

### Actions to achieve our purpose – scams

The ACCC plays an important role in protecting the Australian community from scams through education, awareness raising and disruption initiatives. Key scams activity included:

- **Targeting scams report** – in June 2021 we published the [Targeting scams 2020 report](#). This report highlighted the continued devastating impact that scams have on consumers and businesses – in 2020, 444,152 scam reports, with associated financial losses of over \$850 million, were received by Scamwatch, ReportCyber, other government agencies, banks and payment platforms.
- **National Scams Awareness Week** – led by the ACCC, the Scams Awareness Network's '[This Is Not Your Life](#)' campaign, focusing on identity theft, ran from 17 to 21 August 2020. It was supported by 113 partners from the government, non-government organisations and business sectors. As part of this initiative, we launched a 5-episode podcast, *This Is Not Your Life*, on how to avoid identity thieves, which was downloaded almost 10,000 times during the week. The overall campaign achieved a potential audience reach of 17.1 million through media coverage.
- **Scamwatch and other education resources** – the ACCC continued to raise community awareness about scams via the Scamwatch website, subscription Scamwatch radar alert service and Twitter account. In 2020–21 Scamwatch received 3,986,235 visits and @Scamwatch\_gov\_au achieved 29,686 Twitter followers – an increase of nearly 15% from the previous year. The [Little black book of scams](#) also continued to be a highly popular educational resource – it was downloaded 12,252 times in 2020–21.
- **Scams collaboration and disruption activity** – we continued to work with government and industry to tackle scams that are emerging, systemic or resulting in a high level of harm. This included sharing intelligence through a number of intergovernmental taskforces set up in response to COVID-19, exploring practical technological and personal information management solutions, strengthening the nation's cybercrime and fraud response framework, reducing scam telephone calls, and helping to take down scam websites. In the last year Scamwatch disseminated data and intelligence on more than 200 matters to law enforcement and government.

## ► CASE STUDY

### ACCC scams collaboration and disruption activity

In 2020–21 the ACCC progressed a number of important initiatives with partners in the private and public sector to prevent or disrupt scams. We continued to focus on preventing and disrupting scams because it can be difficult for law enforcement to recover funds and personal information once a scam is perpetrated, particularly as many scammers are overseas.

As the COVID-19 pandemic continues, ongoing collaboration remains vital as scammers adapt to take advantage of unique situations arising from the crisis.

In 2020–21 we:

- shared tens of thousands of Scamwatch reports (where we had consent to share this information) with other government agencies and law enforcement on 210 occasions. These comprised 93 disseminations of Scamwatch reports to relevant taskforces and 117 disseminations of Scamwatch reports to other government agencies. The reports were shared for use in specific operations or investigations or to provide more strategic understanding of scams
- shared reports with a number of private sector organisations (where we had consent to share this information), including the 4 major banks, via the Australian Financial Crimes Exchange, Facebook, Gumtree, Western Union, MoneyGram, NBN Co, LinkedIn, SEEK and Afterpay so that they were aware of and could take action to prevent further impacts of scams on their customers
- worked closely with the Australian Communications and Media Authority and telecommunications providers on a range of initiatives to address phone scams. In 2020–21 major milestones included the introduction of the Telecommunications (Mobile Number Pre-Porting Additional Identity Verification) Industry Standard 2020 and the registration of the Reducing Scam Calls Industry Code (the Code):
  - under the Code we shared regular reports of telephone numbers that had been reported to Scamwatch with a number of Communications Alliance members including Telstra, Optus and Vodafone
  - on 30 May 2021 the Minister for Communications, Urban Infrastructure, Cities and the Arts announced that telecommunications providers had blocked 55 million calls since the introduction of the Code<sup>22</sup>
- continued to work with the Australian Cyber Security Centre to identify and remove malicious websites, including those impersonating government organisations. Once identified, we shared this information with organisations being impersonated (where applicable) so they could issue prompt warnings to the public
- worked with the Office of the Australian Information Commissioner, the eSafety Commission and the ACSC to produce [Be safe, be alert online](#) – a short guide published in September 2020 about online safety and security and where to report issues.

### Actions to achieve our purpose – other work to increase consumer awareness

- **Indigenous outreach** – in 2021 we began transitioning to the return of physical Indigenous outreach visits where appropriate, leveraging off the virtual program run in 2020.
- **Ruby Hutchison Memorial Lecture and National Consumer Congress** – in March and April 2021 the ACCC hosted these annual events, which had been postponed in 2020 due to the COVID-19 pandemic. The virtual lecture series explored the theme ‘How can we rebuild

<sup>22</sup> The Hon Paul Fletcher MP, Minister for Communications, Urban Infrastructure, Cities and the Arts, [Millions of scam calls stopped](#) [media release], Australian Government, 30 March 2021.

a safer, fairer and more sustainable Australia post pandemic?’. The lecture, co-hosted by CHOICE, was delivered by Julian Morrow, co-founder of satirical media empire The Chaser and executive producer of the ABC’s *The checkout* program. Over 250 people tuned in to hear Julian’s lecture, in which he advocated for consumer-focused educational programming and funding.

- **Debt collection guidance** – in December 2020 the ACCC updated its [Dealing with debt collectors](#) booklet to help consumers dealing with debt problems. In April and May 2021 we conducted a digital campaign to raise awareness of the new publication and the rights and obligations of consumers when it comes to debt collection. We used a mix of creative assets and media channels to best reach our target audience, including the ACCC website, social media posts and video and image-based display ads across the Google Display Network, which appeared on specific websites or pages to reach people in financial difficulty. The campaign helped to drive 67,310 views of our online [consumer debt collection resources](#) in the first half of the year.
- **Unit pricing guidance** – in September 2020 the ACCC published the [Saving money buying groceries](#) fact sheet in multiple languages to give consumers tips on how unit pricing can help save money at the supermarket.
- **Translated information on COVID-19 consumer issues** – we summarised the website guidance we created in 2019–20 at the start of the pandemic into a 2-page fact sheet and translated it into 12 different languages.

### Actions to achieve our purpose – contacts to the ACCC

In 2020–21 there were:

- 396,190 contacts served by telephone and received in writing
- 99,087 web form responses sent (or otherwise completed)
- 462 letter responses made
- 41,633 calls answered.

Our service level statistics for 2020–21 were:

- 28% of calls answered within 2 minutes (the goal set in our Service Charter is to answer 50% of all calls within 2 minutes)
- 99% of written responses sent within 15 working days.

### Contacts to the ACCC

The ACCC Infocentre is the initial contact point for enquiries and reports about competition, consumer, product safety and fair trading issues. These contacts are received by telephone, letter and online forms. We triage contacts in line with the priorities and factors outlined in our Compliance and Enforcement Policy. In addition to identifying new issues, contact data is also a valuable source of intelligence to help us identify trends and patterns, inform our priorities and assist with current enforcement and compliance activities.

Public demand for assistance from the ACCC remains high, with over 30,000 contacts received per month in 2020–21. Overall, there is a trend towards written contacts and away from telephone calls.

The COVID-19 pandemic continued to be a significant driver of contacts requiring a response. Consumers and businesses sought guidance in relation to travel cancellations, business closures and event postponements and cancellations. Contact increases coincided with state lockdowns or cancelled events. In responding to these contacts, the ACCC sought to provide guidance to consumers and small businesses about their rights and obligations.

At times we also sent follow-up emails to consumers advising them of changes businesses had made following engagement with our COVID-19 Enforcement Taskforce to ensure they were able to obtain any changes to remedies being offered by businesses.

**Table 3.14 Contacts recorded 2020-21**

Category	2017-18	2018-19	2019-20	2020-21
Contacts served by telephone and received in writing	290,143	315,491	312,773	396,190
Contacts recorded in the database	252,091	287,313	282,213	377,862
Scams contacts recorded in the database	156,993	189,006	160,538	259,655
Non-scam contacts recorded in the database	95,098	98,307	121,675	118,207

**Top 10 industries, excluding scams, for complaints and enquiries in 2020-21**

The following analysis of contacts is based on higher level grouping of existing Australian and New Zealand Standard Industrial Classification (ANZSIC) categories. The 10 most reported industries made up 60% of all non-scam contacts to the ACCC over the past year.

Detailed information about the ACCC's scam complaints and enquiries can be found in our [Targeting scams 2020 report](#).

**Table 3.15 Top 10 industries for complaints and enquiries 2020-21**

Industry	2020-21
Electronics and consumer whitegoods	13,939
Automotive industry	11,858
Tourism and accommodation	11,624
Clothing and personal goods	5,399
Passenger transport – air and sea	5,186
Homewares, furniture and manchester	4,635
Energy and water	4,550
Online and non-store retailing	4,518
Construction services	4,488
Other store-based retailing	4,278

**Breakdown of contacts to the ACCC by conduct category – excluding scams**

Further analysis of the largest category, 'Misleading and deceptive conduct and false representations' (see table 3.16), reflects the ACCC's continued engagement with the automotive, electronics and consumer whitegoods industries.

**Table 3.16 Misleading and deceptive conduct and false representations 2020-21**

Industry	2020-21	Percentage of total
Electronics and consumer whitegoods	2,990	10%
Automotive industry	2,354	8%
Tourism and accommodation	1,881	6%

A breakdown of contacts regarding guarantees and warranties (see table 3.17) shows the large proportion of contacts that relate to electronics and consumer whitegoods (28%) and the automotive industry (24%). Key outcomes relating to consumer guarantees are in the case studies on page 82.

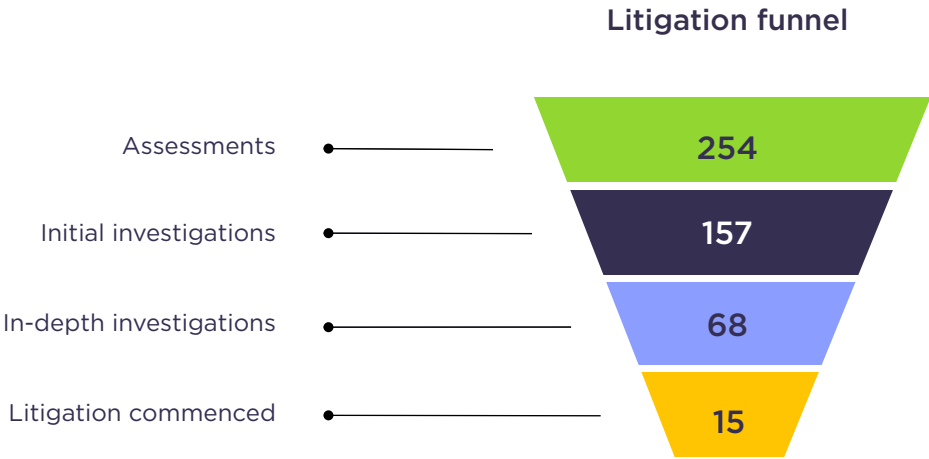
**Table 3.17 Guarantees and warranties 2020-21**

Industry	2020-21	Percentage of total
Electronics and consumer whitegoods	9,798	28%
Automotive industry	8,508	24%
Homewares, furniture and manchester	2,571	7%

Investigations and litigation

The contacts and reports we receive may go through a series of increasingly detailed assessment stages. We analyse the complaints data to establish trends, identify issues for further inquiry and develop compliance responses.

Figure 3.3    Contacts, investigations and litigation 2020-21



**12 Scamwatch alerts** were issued and **260 tweets** posted to raise community awareness on emerging and/or popular scams.



**250 people** attended the Ruby Hutchison Memorial Lecture hosted by the ACCC.



**99% of Infocentre written responses** to queries from the public were **sent within 15 working days**.



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

## About this strategic objective

Infrastructure plays a significant role in Australia's economic and social development and prosperity. The efficient provision and use of infrastructure – its location, availability, quality and pricing – underpins economic growth, productivity and, ultimately, consumer welfare.

Where key infrastructure is provided by only one or a few suppliers, efficient access to that infrastructure may be limited (including through pricing), thereby undermining competition and investment in relevant markets. Appropriate economic regulation of such infrastructure and the efficient provision of access contributes to the efficiency and productivity of the overall economy.

As an economic regulator, the ACCC has a central role in supporting better market outcomes. We undertake a variety of roles across the sectors we regulate, with the extent of our role determined by the nature and scope of the market failure we are seeking to address. Sectors where we have this role include telecommunications, petrol, rail, bulk grain export facilities, airports, container stevedoring and postal services.

We engage in a range of advocacy activities regarding privatisation, market contestability, and strengthening the functioning of markets to improve consumer outcomes.

Our objective is to:

- support the long-term interests of end users by promoting effective upstream and downstream competition and the proper functioning of Australian markets
- facilitate efficient investment in, and use of, key infrastructure networks and services.

In pursuing this objective, our key functions include:

- regulating access to monopoly infrastructure and services that businesses need to compete in upstream or downstream markets
- regulating access prices where competitive pressures on a supplier are not sufficient to produce efficient prices
- monitoring and reporting on the prices and quality of particular goods and services to inform industry and consumers about the effects of market conditions in concentrated markets
- enforcing compliance with industry-specific laws for telecommunications and electricity services and certain industry codes of conduct
- advocating for appropriate regulation of monopoly infrastructure and for reforms to boost competition and efficiency in key sectors of the economy.

We also undertake inquiries and provide advice on a broader range of sectors when directed by the government.

Our monitoring and reporting functions, and the detailed research and analysis underpinning them, position us to address current and emerging issues in markets that play a vital role in the economy. This work also supports our competition advice and advocacy efforts directed at ensuring Australian markets operate within a policy framework that facilitates competition and efficient investment in key infrastructure networks and services.

## Our priorities

In 2020–21 our infrastructure regulation priorities were:

- promoting competition at the wholesale and retail levels by providing market information to increase transparency and remedy market failure across the supply chain
- delivering network regulation, with a continued focus on National Broadband Network (NBN) pricing and performance issues and its long-term regulatory framework
- progressing regulatory decisions in relation to rail, communications and wheat markets
- monitoring and reporting on highly concentrated, newly deregulated or emerging markets, with a focus on affordability issues and increasing information to help consumer choice and switching
- advocating for appropriate regulation of monopoly infrastructure, including in areas where there are efficiency concerns independent of competition concerns.

As we emerge from the pandemic we have carefully monitored the withdrawal of COVID-19 relief measures in key infrastructure industries. We continued to review the timing of our priorities to fast-track those with the most benefit and to streamline our processes to relieve pressure on stakeholders where outcomes have been less time critical. We will continue to consider ways to carry forward streamlined processes introduced during the initial stage of the COVID-19 pandemic.

## Deliverable 3.1: Deliver network regulation that promotes competition in the long-term interests of end-users

### About this deliverable

The ACCC uses its regulatory powers to facilitate access to infrastructure that has market power and establish efficient pricing for that access. Efficient access creates conditions for competition to emerge in upstream and downstream markets, with flow-on impacts for consumers in the form of lower prices, higher quality products, and innovation.

### Performance indicators

**Table 3.18 Performance indicators for deliverable 3.1**

Performance indicators	2017–18	2018–19	2019–20	2020–21		Met?
	Result	Result	Result	Target	Result	
Number of major regulatory decisions	1 <sup>#</sup>	6	1	5	7	✓
Percentage of regulatory decisions completed within statutory timeframes (including 'stop the clock' and timeframe extension provisions in the CCA)	100%	100%	100%	100%	100%	✓

<sup>#</sup> Target performance indicators refer to anticipated decisions for the reporting period. Various factors during regulatory processes can affect anticipated timeframes for decisions.

## Analysis of indicator results

We made 7 major regulatory decisions – an increase of 2 from our initial target of 5 indicators. These reflected external market developments in the telecommunications, rail and wheat sectors. All interventions were within areas identified as priorities for the period. We met the statutory timeframes for all regulatory decisions subject to these requirements.

Our major regulatory decisions in 2020–21 in the telecommunications, rail and wheat sectors helped parties access key infrastructure and promoted efficient investment and upstream and downstream competition in these sectors. In making these decisions, we provided longer term incentives to address or alleviate market failures. The periodic review of access terms ensures they remain efficient and provide the correct incentives, particularly in dynamic sectors such as telecommunications.

## Deliverable 3.2: Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

### About this deliverable

Our focus in meeting this deliverable is to closely monitor the price and quality of goods and services available in markets at risk of being inefficient because they are highly concentrated or developing or that are otherwise an area of high consumer concern. This transparency can help make markets more competitive. It also puts suppliers in those markets on notice that we are scrutinising their conduct and, as such, can inform any regulatory or policy responses if issues persist.

### Performance indicators

Table 3.19 Performance indicators for deliverable 3.2

Performance indicators	2017–18	2018–19	2019–20	2020–21		Met?
	Result	Result	Result	Target	Result	
Number of annual monitoring reports	6	7	7	6	6	✓
Number of reports on monitoring of unleaded petroleum products	6	6	5 <sup>#</sup>	6	5	○
Number of reports on broadband markets	N/A	8	10	10	12	✓

<sup>#</sup> One of the 6 quarterly reports for 2019–20 was not released until 6 July 2020. Accordingly, we have adjusted the result for 2019–20 from 6 to 5.

### Analysis of indicator results

We adjusted our reporting approach and focus across key sectors in response to COVID-19. This included closer focus on broadband markets, given the critical role the communications sector played during this year. All interventions were within areas identified as priorities for the period. We met our annual monitoring report targets in 2020–21, having released annual reports in the wheat, ports, communications, airports and rail sectors. We also produced 5 gas and electricity monitoring interim reports, pursuant to government directions.

Our broadband market monitoring and reporting capability was also key to identifying any broadband performance issues and assessing the impact of policy and industry responses to support unprecedented demand on our communications networks. We expanded the scope and number of Measuring Broadband Australia reports to help identify these issues and examine how the NBN was supporting Australians' shift to online working and learning. This saw an additional 2 reports released in 2020–21, exceeding our target of 10 reports.

In the fuel sector, we enhanced our fuel price monitoring and increased our media engagement to provide consumers with timely information on the impact of the pandemic on fuel prices. We produced 5 petrol monitoring reports for 2020–21. This was less than our target of 6 because we re-prioritised resources to more closely monitor fuel price movements during the pandemic and assist with requests for authorisations relating to the petrol market.

As we emerge from the pandemic, monitoring and reporting on these markets will remain important to arm consumers with valuable information and enhance our advocacy to policymakers around longer term policy responses.

## Deliverable 3.3: Improve the efficient operation of markets by enforcing industry-specific competition and market rules

### About this deliverable

This deliverable is about the ACCC using its powers to enforce industry-specific rules that promote competitive, efficient markets. We seek to mitigate harm to competition or consumers by stopping harmful conduct or securing appropriate remedies. We exercise these powers, where appropriate, in response to anti-competitive conduct, abuse of market power and competitive or consumer harm.

### Performance indicators

**Table 3.20 Performance indicators for deliverable 3.3**

Performance indicators	2017-18	2018-19	2019-20	2020-21		Met?
	Result	Result	Result	Target	Result	
Number of investigations into potential breaches of rules	17	16	12	11	14	✓

### Analysis of indicator results

We exceeded our target for the number of investigations into potential breaches of industry-specific rules by 3 during the period. All interventions were within areas identified as priorities for the period.

This year compliance with the Electricity Retail Code was a key focus. We increased our number of electricity market investigations to further consider issues uncovered in our comprehensive monitoring program. Our investigations helped to ensure that consumers would benefit from the aims and objectives of the code.

Another key activity was monitoring broadband speed claims. Misleading conduct in the broadband market is an ongoing concern, as it can lead consumers into suboptimal decision making on products in this important area. We seek to address this issue by monitoring broadband performance and taking action where claimed performance does not meet that achieved. Over the period we maintained our [broadband speed claims industry guidance](#) and took appropriate enforcement action where we were concerned the Australian Consumer Law had been contravened.

## Outcomes achieved against deliverables

The deliverables for strategic objective 3 cut across multiple industries, so this section is reported by industry rather than by deliverable.

### Highlights

- 7 major regulatory decisions
- 6 annual infrastructure monitoring reports
- 5 interim inquiry reports on electricity and gas
- 15 investigations into potential breaches of rules
- 5 petrol monitoring reports
- 471,104 page views on the petrol price cycles webpage
- 12 broadband markets reports
- Industry roundtable held for revising long-term regulatory arrangements for wholesale access to the NBN.

### Energy

We published 2 **interim reports on the gas market** as part of our inquiry to help address the lack of transparency across many areas of the east coast gas market. Our reports contribute to improved market transparency across the supply chain in relation to prices, pricing strategies and other supply conditions. This market information is assisting policymakers and gas users to avoid the risks of a gas supply shortfall.

The July 2020 interim report recommended that the Australian Government extend and strengthen the price commitments in the Heads of Agreement with liquefied natural gas (LNG) producers. The new Heads of Agreement seeks to help address future supply shortfalls and support more effective functioning of the east coast gas market through more accurate price signals.

We have also been providing feedback on a **gas suppliers' voluntary Code of Conduct**.

In March 2021 we commenced a **review of our LNG netback price** at the request of the Australian Government. The LNG netback price provides domestic gas buyers with a pricing reference to assist in negotiating new gas supply agreements. Our review will set a fit-for-purpose method that considers the impact of international gas markets on Australian gas market pricing. This review will seek to improve confidence in the LNG netback price and provide a more robust set of information to help improve parties' relative bargaining positions in the market.

Our **electricity market monitoring** examines customer billing and cost of supply data to provide greater transparency of costs to consumers and to identify gains that can be attained in the market. Our reports help inform consumers as to how they can minimise electricity costs and influence policy responses to address the market issues we identify. We published 2 reports in October 2020 and one report in June 2021.

We also have a role in **enforcing the Electricity Retail Code**. The code was introduced in July 2019 to reduce confusion and make it easier for consumers to compare retail electricity offers. The code ensures customers on standing offers are not charged above a set price cap. It also imposes requirements on retailers which facilitate price transparency, comparability of offers and competition to benefit electricity consumers.

By promoting compliance with the code, we help ensure that consumers who do not regularly shop around for new offers still benefit from lower prices and all consumers benefit from more competitive electricity retail offerings. During the year we completed 10 investigations into potential breaches under the code.

In the first enforcement action taken by the ACCC for a breach of the Electricity Retail Code, on 29 July 2020 electricity provider [Locality Planning Energy Pty Ltd](#) paid a penalty of \$10,500 after the ACCC issued it with an infringement notice for an alleged contravention.

## Telecommunications

The COVID-19 pandemic increased pressure on **communications networks** as Australians rapidly moved to home-based learning, working and entertainment. Our **authorisation of a special working group** comprising NBN Co and other key stakeholders, with appropriate safeguards against anti-competitive information sharing, enabled industry to coordinate its response and helped NBN Co and service providers to optimise network performance and still meet consumer demand. NBN Co waiving wholesale charges for additional network capacity utilisation was also important to this outcome. The **Measuring Broadband Australia** program provided a robust and independent basis on which to assess the end-to-end performance of NBN broadband services during the pandemic and helped monitor the success of the industry's response.

We reviewed **regulatory settings for various elements of telecommunications infrastructure and services** to promote the long-term interests of end users. We concluded our **NBN wholesale service standards and NBN access pricing inquiries**, securing a new wholesale broadband agreement between NBN Co and access seekers that contains improved entry level pricing and enhanced service standards.

Building on this, we refocused our regulation from Telstra's declared legacy fixed-line networks and have commenced engagement with the telecommunications industry to develop a new set of regulatory arrangements for the NBN under NBN Co's special access undertaking. We held an industry roundtable in June 2021, where representatives of NBN Co, broadband retailers, industry groups, consumer representatives and government agencies came together to discuss potential changes to the regulatory arrangements. Our objective for this work is to develop **NBN wholesale access terms**. This will provide for a long-term framework that supports efficient prices and promotes affordable and diverse NBN products.

Infrastructure-based competition to the NBN can potentially exert competitive constraint on NBN Co in some circumstances. Our **class exemption and deemed functional separation undertaking determination** provides greater commercial flexibility for smaller superfast broadband network operators, reducing their compliance costs and further encouraging investment.

We have balanced this with competitive safeguards to ensure that retailers are able to acquire access to **wholesale superfast broadband services** on reasonable terms. During the year we made a draft decision to regulate access to wholesale superfast broadband services supplied by non-NBN fixed line networks until July 2026.

We have also set significantly lower **wholesale pricing for access** to the mobile terminating access service (MTAS) and the domestic transmission capacity service (DTCS). These lower prices reflect technological and market changes and will promote competition, support more investment and ultimately lower prices in various communications markets.

We **monitor and report on key aspects and indicators of the telecommunications market**. This year we released periodic reports on NBN broadband performance, NBN wholesale market indicators and internet activity more broadly. We also published our annual *Communications market report* that informs industry and policymakers on key issues facing the sector and the ACCC's views and approaches. We also reported to the Minister for Communications in October 2020 on the estimated financial losses of NBN Co's fixed wireless and satellite services.

We also have a role in **advocating for improved competitive settings and regulatory outcomes** in this sector. For example, we provided advice to government on spectrum allocation. Our advice on the upcoming 850/900 MHz spectrum auction recommended allocation limits that would address significant asymmetry of spectrum held by mobile network operators.

We undertook a range of compliance and enforcement activities during the year to promote positive consumer outcomes for those transitioning to the NBN by **targeting misinformation**. This included enforcement action where we identified misleading speed claims; and action against

NBN Co itself to address representations it made to consumers about the need to move to the NBN. We published revised broadband speed claims industry guidance in October 2020 to further assist retail service providers in providing consumers with reliable and clear information.

In June 2021 the Federal Court handed down its decision in our proceeding against Dodo and iPrimus for misleading broadband speed claims, ordering a penalty of \$2.5 million. In formulating the penalty, the Court had regard to Vocus choosing not to follow an existing industry practice in making the relevant speed claims.

## Fuel

Our quarterly **fuel monitoring reports** provide information to assist consumers to navigate fuel markets. Transparency in fuel markets helps identify particular areas of concern where fuel markets may not be delivering competitive prices to consumers. The reports and our broader consumer-oriented materials also play an educational role in explaining the drivers of fuel prices and assisting consumers to shop around. Our [petrol price cycles](#) website continues to be the most visited ACCC website.

Our increased monitoring and reporting of fuel prices helped improve consumer understanding of factors influencing Australian fuel prices during the COVID-19 pandemic.

## Rail

The Hunter Valley Coal Network Access Undertaking establishes a regulatory regime that provides operational benefits to the coal industry in the Hunter Valley. Throughout 2020 we engaged with and assisted the Australian Rail Track Corporation and Access Holders on varying the existing undertaking. On 2 June 2021 we published our final decision, with the revised undertaking operational from 1 July 2021 to 31 December 2026.

The variation provides a range of benefits to downstream users, including reductions in access charges, regulatory certainty and other administrative improvements such as in reporting and transparency. The industry will benefit from the regulatory certainty provided by the undertaking.

In June we accepted the Australian Rail Track Corporation's application to extend the Interstate Network Access Undertaking until 30 June 2023. We commissioned an independent valuation of the Australian Rail Track Corporation's interstate network to determine the Regulatory Asset Base and published the report for stakeholder consultation.

Building upon the revaluation of the network, we have commenced engaging with the industry to develop a long-term framework that promotes efficient and effective regulation in the long-term interests of users and access seekers. As a first step, we will release an issues paper, then we will work closely with stakeholders to identify potential changes to the regulatory arrangements.

## Ports

Our monitoring of and annual reporting on Australia's **container stevedores** provides transparency over the financial and operational performance of Australia's international container ports. We identify areas of emerging concern where competition issues can lead to outcomes that affect supply chain costs and ultimately impact on goods bought by consumers. This transparency helps inform industry and policy responses to emerging issues.

In the bulk grain export market we have been assessing applications by port terminal service providers for exemptions from certain parts of the Port Terminal Access (Bulk Wheat) Code of Conduct. The code regulates the conduct of port terminal service providers to ensure that exporters of bulk wheat have fair and transparent access to port terminal services. In assessing exemptions, we take into account the development of the market, efficient investment and use of infrastructure and other relevant factors. As appropriately targeted and applied regulation promotes a better functioning market, we consider that where we grant exemptions they should promote a more competitive industry and greater investment certainty.

Since 2016 Glencore has been in dispute with Port of Newcastle Operations (PNO) in relation to asset values (impacting price) and scope of services. The dispute has gone through ACCC



arbitration, the Australian Competition Tribunal and the Full Federal Court. In August 2020 the Court allowed the application by Glencore on both scope and asset value, remitting the matter back to the Tribunal for determination. Specifically the Court found that there was an error of law by the Tribunal in failing to have regard to user contributions and in confining the terms of the determination to instances where Glencore was the party in control of the ship carrying Glencore's coal.

PNO applied for special leave to the High Court to appeal the Federal Court's decision. On 12 March 2021 the High Court granted PNO special leave to appeal the Federal Court's decision. The High Court's hearing is scheduled for 7 September 2021 in Canberra. The ACCC is a party to the matter.

## Airports

While the impact of the pandemic was felt broadly across the economy, some sectors were particularly affected. One of these was aviation. In response, we streamlined monitoring and reporting processes to minimise stakeholder burden in preparing our annual *Airport monitoring report*. As the sector recovers from the pandemic, our monitoring role continues to provide greater transparency and understanding of major airports and their market power, including in areas such as car parking charges levied on consumers. This also provides information to government about the potential need for enhanced future regulation of the sector to protect consumers and promote more efficient market outcomes.

## Advocacy – regulation of monopoly pricing by bottleneck infrastructure

We continued our strong advocacy, both publicly and directly with government, for reform of monopoly infrastructure regulation in Australia. For example, the existing default National Access Regime in Part IIIA of the CCA is leaving many monopolies that are not vertically integrated totally unregulated. We believe there should be a public discussion about how to constrain the pricing of monopolies that were often government built and sold without adequate regulation. Currently all the users of this type of infrastructure pay the price of this gap in competition policy, with flow-on impacts on the overall competitiveness of the economy.

## Advocacy on emerging markets and financial services

We continued to undertake an advocacy role in relation to the development and implementation of a replacement for the **Australian Stock Exchange's clearing and settlement system, CHES**. We are seeking a system whereby users are able to access clearing and settlement services on fair, reasonable and non-discriminatory terms.

We also continued to advocate for the development of a regulatory framework for a national **e-conveyancing market** that allows competition. Reform of the market will provide practitioners and their customers with a choice of service provider and more efficient transactions. We have advocated that a more competitive industry will result in lower costs and more innovative and higher quality services.





We completed a review of the **Measuring Broadband Australia program** in December 2020. Consumer advocates expressed support for the program and noted that it assists consumers and promotes better broadband performance. The government has since announced a 4-year extension of the program.



We analysed over **13 million electricity bills paid** by households and small businesses to identify the actual costs being paid by customers.



On 18 June 2021 we held an industry roundtable to begin an important, collaborative process for revising the long-term regulatory arrangements for **wholesale access to the NBN**.



In January 2021 the Australian government signed a **new Heads of Agreement with LNG producers**, with strengthened price terms, following recommendations in our July 2020 gas report. In March 2021 we commenced a review of our **LNG netback price series**, releasing an issues paper and consulting with stakeholders.



We issued **127 notices** under s 95ZK in relation to gas and electricity.

# Strategic objective 4: Undertaking market studies, inquiries and monitoring to support competition, consumer and regulatory outcomes

## About this strategic objective

The CCA provides that relevant ministers may direct the ACCC to undertake market studies, inquiries and monitoring. These studies enable us to develop a sophisticated understanding of how well competition and markets are working in particular sectors and provide advice on a broader range of competition and consumer issues. The ACCC can also undertake self-initiated market studies and conduct research on matters that affect the interests of consumers.

We undertake market studies and inquiries and report on emerging competition issues to:

- identify market failures and how to address them
- assess the implications of emerging competition issues
- support and inform compliance and enforcement measures
- identify areas for policy consideration.

We also monitor and report on the prices and quality of particular goods and services to inform government, industry and consumers. The outcomes of our monitoring work are largely covered in Part 3, strategic objective 3, on page 110.

We publish our findings in formal reports that help to raise awareness among consumers, encourage public debate and inform policy consideration.

## Our priorities

In 2020–21 the ACCC completed or progressed market studies and inquiries covering:

- Murray–Darling Basin water markets – completed
- home loans – completed
- home, contents and strata insurance in northern Australia – completed
- supply chains for perishable agricultural goods – completed
- digital advertising services – one interim report
- digital platform services – 2 interim reports.

# Deliverable 4.1: Develop a sophisticated understanding of how well competition and markets are working in particular sectors and provide advice on a broad range of competition and consumer issues

## About this deliverable

Market studies and inquiries involve extensive investigation and analysis, including public consultation, with the aim of improving understanding of industry practices and dynamics in those sectors. This assists the ACCC to proactively identify risks to consumers and the competitive process that may require intervention by the ACCC or others. Market studies and inquiries also assist the ACCC to identify any market failures and how to address them, including advocacy for law reform. Publicising this work can help inform government, business and consumers, encourage public debate over competition and consumer matters and inform policy consideration.

## Performance indicators

**Table 3.21 Performance indicator for strategic objective 4**

Performance indicator	2017-18	2018-19	2019-20	2020-21		Met?
	Result	Result	Result	Target	Result	
Number of completed market studies and inquiries	N/A <sup>#</sup>	3	3	3	4	✓

<sup>#</sup> Before 2018-19 the number of market studies and inquiries completed was included in the number of competition enforcement interventions under deliverable 1.1. From 2018-19 this became a standalone performance indicator.

## Analysis of indicator results

On 26 August 2020 the Treasurer, the Hon Josh Frydenberg MP, directed the ACCC to commence a 3-month inquiry into bargaining power imbalances in supply chains for perishable agricultural products in Australia. The completion of this and the 3 inquiries noted above meant that the ACCC exceeded the target for the number of market studies and inquiries completed.

We also undertake other studies and research on matters that affect the interests of consumers. In 2020-21 we published our annual report on private health insurance (which is not a market study or inquiry and therefore not included in our performance result).

## Outcomes achieved against deliverable

The ACCC undertakes market studies and inquiries covering a broad range of sectors as determined by ministerial direction or guided by our Compliance and Enforcement Policy priorities. The various market studies and inquiries we undertook in 2020-21 contributed to achieving the ACCC's purpose of making markets work for consumers by informing stakeholders and encouraging public debate, informing policy consideration and improving the way markets function through the adoption of recommendations.

## Highlights

- 4 inquiries completed, with multiple recommendations
- 3 interim reports from the Digital Platform Services Inquiry and the Digital Advertising Services Inquiry.

## Actions to achieve our purpose

### Completed inquiries

The key findings and recommendations of the 4 inquiries completed during 2020–21 are briefly outlined below. Inquiry reports are available in full on our [website](#).

The **Home Loan Price Inquiry** [final report](#) focused on impediments to borrowers switching to alternative lenders; and identifying cost-effective recommendations to address specific impediments. We recommended that:

- lenders be required to regularly prompt borrowers whose loans are older than 3 years to review their current interest rate and to consider the potential benefits of switching products or lenders
- lenders be required to provide a standardised discharge authority form to borrowers, which should be easy to access, fill out and submit, with a time limit of 10 business days being imposed on lenders to complete the discharge authority process
- the ACCC continue to monitor home loan prices and competition in the home loan market.

The 3-month **Perishable Agricultural Goods Inquiry** focused on bargaining power imbalances in supply chains for perishable agricultural products in Australia; and examined the ability of current laws and regulations to address the harmful effects of bargaining power imbalances. In the [report](#), we recommended the strengthening of the small business unfair contract term protections and the Food and Grocery Code of Conduct; and the introduction of an economy-wide unfair trading practices prohibition to flexibly address harmful fair trading conduct that is not currently captured by the existing provisions of the ACL. The report also recommended that governments and industries explore measures to increase price transparency in perishable agricultural goods industries, in order to increase competition in those industries.

Our recommendations in the **Murray–Darling Basin Water Markets Inquiry** [final report](#) focused on enhancing markets for tradeable water rights, including their operation, transparency, regulation, competitiveness and efficiency. They included that a new independent Water Markets Agency be established to oversee trading and ensure water markets in the Murray–Darling Basin operate fairly and with integrity. The new agency should deal with harmful market conduct and practices, including through bans on market manipulation and stronger insider trading rules; and a mandatory code of conduct should apply to water market intermediaries such as brokers. We also recommended that Australian and Basin State governments work with market service providers to establish and implement new digital technologies to improve the quality and flow of water market data and provide a hub for water trade applications, data storage and access to information.

As set out in the **Northern Australia Insurance Inquiry** [final report](#), we made 38 recommendations which, if implemented, would improve competition in insurance markets and result in consumers being better informed and able to more easily search for and compare insurance products (see the case study below).

## ► CASE STUDY

### The Northern Australia Insurance Inquiry

On 30 November 2020 the ACCC provided the Treasurer with our final report on our inquiry into the supply of residential home, contents and strata insurance in northern Australia.

The government asked us to undertake this inquiry, which commenced in 2017, to help address concerns about insurance availability and affordability in northern Australia.

Our final report sets out our analysis of markets for home, contents and strata insurance in northern Australia and provides policymakers with a detailed account of the nature of competition, pricing approaches, costs and profitability in northern Australia insurance markets.

The final report found that consumers living in Northern Australia pay approximately double for their home, contents and strata insurance compared with those in the rest of Australia.

To help address the problems we identified, the report sets out 38 recommendations for reform across 6 categories:

- making it easier to search for, and compare, insurance products
- choosing the right amount of cover
- dealing with conflicts of interest
- addressing immediate affordability concerns
- improving consumers' rights
- reducing risk and building better.

Many of these recommendations could also benefit consumers and insurance markets nationally if more broadly applied.

### *Inquiries progressed*

The ACCC continued work on 2 key inquiries during 2020–21: the Digital Platform Services Inquiry and the Digital Advertising Services Inquiry.

The **Digital Platform Services Inquiry** is a wide-ranging inquiry into markets for the supply of digital platform services, including search engine services, social media services, online private messaging services, digital content aggregation platform services, media referral services and electronic marketplace services. The inquiry is required to report every 6 months until March 2025.

The [September 2020 report](#) focused on online private messaging services in Australia (see the case study below) and updated some of the findings of the 2019 Digital Platforms Inquiry final report.

The [March 2021 report](#) covered app marketplaces and found that Apple and Google both had market power in the distribution of mobile apps. The report set out potential measures to address the harms stemming from that market power.

The inquiry will continue to consider issues arising in digital platform services and whether further legislative change is required.

The **Digital Advertising Services Inquiry** is examining markets for the supply of digital advertising technology services and digital advertising agency services. The [interim report](#) released in January 2021 found that a lack of competition and transparency in the digital advertising technology supply chain is impacting publishers, advertisers and consumers and needs to be addressed.

The final report, due to the Treasurer in August 2021, will consider whether it is appropriate to recommend measures to address the issues identified throughout the inquiry.

## ► CASE STUDY

### September 2020 interim report on online private messaging services

The September 2020 interim report of the Digital Platform Services Inquiry provides an in-depth examination of online private messaging services in Australia. It also updates the ACCC's previous analysis in relation to search and social media platforms; and identifies competition and consumer issues common across these platforms. This was the first interim report issued under the ACCC's 5-year inquiry into markets for the supply of digital platform services.

The report found that Australians are increasingly turning to online private messaging services to keep in touch with each other and that Facebook and Apple are 2 of the largest suppliers of standalone private messaging services in Australia. The report shows that the use of these services grew significantly during the COVID-19 pandemic as workplaces and schools moved to remote access and people sought alternatives to face-to-face communication.

Research conducted for this report also shows that many digital platforms, including online private messaging providers and suppliers of advertising services, are able to extensively track users' activities online and on mobile apps through the use of cookies, software development kits and other technologies. As large platforms continue to collect vast amounts of consumer information, they are also expanding into new sectors, growing their ecosystems and, with this, their market power and ability to attract and lock in consumers. While these expanded services can deliver benefits to consumers, it is important that the impacts on competition and consumer choice are closely monitored and considered.

We also produced regular reports for the ongoing Electricity Market Monitoring Inquiry and the Gas Inquiry, which are discussed in detail in Part 3, strategic objective 3, on page 110.

### ***Outcomes achieved from previous inquiries***

Our market studies and inquiries findings and recommendations often lead to outcomes supporting our purpose of making markets work for consumers. For example, a number of recommendations in our Digital Platforms Inquiry (completed in 2019) have been progressed to improve digital platform markets and benefit consumers:

- A specialist Digital Platforms Branch has been established within the ACCC to build on and develop expertise in digital markets. As part of its work, this branch is undertaking an extended inquiry into consumer harm in markets where digital platforms operate, as well as an inquiry into digital advertising services.
- The News Media and Digital Platforms Mandatory Bargaining Code, intended to ensure that certain digital platforms deal with news media businesses fairly and transparently, was passed by parliament in February 2021 and became law in March 2021. Facebook and Google have each begun to strike deals with news media businesses to pay for news content.
- The Australian Government has announced and is undertaking a staged process for reform of the media regulatory framework to progress towards a platform-neutral regulatory framework covering both online and offline delivery of media.

- As part of its Public Interest News Gathering program, the government has granted 107 regional publishers and broadcasters a share of \$50 million.
- Digital platforms have worked with the Australian Communications and Media Authority (ACMA) to develop a voluntary industry code on disinformation and misinformation. The government will evaluate initial compliance with the code by signatories, the state of misinformation and disinformation in Australia, and the adequacy of the code in responding to the problems identified in the Digital Platforms Inquiry.
- A review of the *Privacy Act 1988* is being undertaken by the government with a view to making changes to ensure privacy laws in Australia are fit for purpose.

Further details on enforcement actions taken in response to the Digital Platforms Inquiry are in Part 3, strategic objective 2, on page 82.

## ► CASE STUDY

### Implementation of the Digital Platforms Inquiry recommendation – the News Media Bargaining Code

The ACCC's Digital Platforms Inquiry final report (July 2019) identified a significant bargaining power imbalance between Australian news businesses and each of Facebook and Google – which have become unavoidable trading partners in reaching Australian news audiences. To address this imbalance, the report recommended that designated digital platforms develop a code or codes of conduct governing relationships between these platforms and Australian news businesses.

As part of its response to the final report in December 2019, the government directed the ACCC to oversee the development of voluntary codes of conduct between digital platforms and news media businesses. In April 2020 the government directed the ACCC to work with the Treasury and the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC) to develop a mandatory code.

The ACCC, Treasury and DITRDC conducted extensive consultation and stakeholder engagement before providing advice to the government, including a draft code, which was publicly released in July 2020. Following further public consultation on this draft code, the *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021* was passed by parliament on 25 February 2021 and received royal assent on 2 March 2021.

The Act provides that the Treasurer may designate a digital platform that must comply with the code. It also allows news media businesses to bargain individually or collectively with a designated digital platform about issues relating to news content on their services, including remuneration for this content. If the parties cannot reach a negotiated outcome, the code requires mandatory mediation. It then provides a mechanism for binding 'final offer arbitration' in relation to remuneration relating to news content on the designated services. Under this mechanism, an independent arbitration panel will accept one of the 'final offers' submitted by the parties relating to remuneration, based on an assessment of the 2-way exchange of value between digital platforms and news businesses.

As at 30 June 2021, the Treasurer had not designated any digital platforms under the code. However, Google and Facebook both announced a number of voluntary licensing deals with a number of Australian news businesses following passage of the legislation. News businesses that have negotiated agreements with these platforms include both large media businesses that now provide their news online, 'digital native' news businesses and small independent news businesses that cover regional and rural Australia.

### Other studies and research

The ACCC's annual **private health insurance report** examines key competition and consumer developments and trends in this sector. Our 2019-20 report focused on insurer responses to the COVID-19 pandemic, noting that insurers had paid out \$500 million less in hospital and extras benefits in 2019-20 compared with the previous year as a result of government-imposed COVID-19 restrictions that limited non-urgent elective surgery and non-urgent extras treatments. The ACCC expects insurers to act on public commitments to return any profits gained from COVID-19 to policyholders. Our 2020-21 *Private health insurance report* will consider the actions taken by insurers in this regard.



In November 2020 we released our final **Northern Australia Insurance Inquiry report**, with **38 recommendations** to:

- improve the market for residential and strata insurance in northern Australia
- help consumers more easily search for and compare insurance products.



The September 2020 interim report on online private messaging services found that Facebook's and Google's share of online advertising is increasing. Of a typical \$100 spent by advertisers in online advertising in 2019, \$53 went to Google, \$28 went to Facebook and \$19 went to all other websites and **advertising technology**.



We issued **77 notices under s 95ZK** to businesses to provide information or documents for the inquiries reported above.



# Program 1.2: Australian Energy Regulator

## Analysis of performance

The AER exists so that energy consumers are better off, now and in the future. We achieve this through the 4 objectives articulated in our [2020–2025 Strategic Plan](#):

- Protect vulnerable consumers, while enabling consumers to participate in energy markets.
- Effectively regulate competitive markets primarily through monitoring and reporting, and enforcement and compliance.
- Deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services.
- Use our expertise to inform debate about Australia's energy future and support the energy transition.

Our performance against each of these objectives, including an analysis of performance indicator results, our outcome highlights and actions taken to achieve our purpose, is detailed below. Overall the AER performed strongly against most of the performance indicators and other measures of performance identified in our Corporate Plan.

### Stakeholder survey

In May 2021 we surveyed our stakeholder base (including businesses in the energy sector, consumer groups and government agencies with which AER works). The results indicate that AER performance has improved with regard to indicators about effective engagement, being a trusted source of information, showing leadership, encouraging and enabling innovation, promoting efficient investment in energy services, supporting and protecting vulnerable consumers, and equipping consumers to participate effectively in the energy market.<sup>23</sup> The only indicator with a lower performance rating than 2018, albeit a very small difference, was about understanding of the needs of energy consumers. Of note, however, is that, across all core reputation metrics, consumer stakeholders scored the AER higher than our industry and government stakeholders.

Other key findings were also generally favourable:

- Overall reputation – 73% of stakeholders rated the AER 7 or higher out of 10.
- Reputation trend – 48% of all stakeholders felt the AER's reputation has improved (with 36% feeling it had stayed the same).
- Trust (to do the right thing by consumers) – 77% of all stakeholders rated the AER 7 or higher out of 10.

<sup>23</sup> In 2021, the AER enhanced its stakeholder survey methodology. Changes to this methodology included weighting stakeholder groups equally, moving to a performance rating scale with greater sensitivity, different ordering of questions (creating a different framing context), changes to the phrasing of attributes/questions, and increased sample size. Full details regarding the methodology and impacts on comparing with previous results are available in the Newgate research report available on the [AER website](#). The comparison between 2018 and 2021 should be considered indicative only.

## ANAO audit

In March 2019 the Australian National Audit Office (ANAO) commenced a performance audit to determine whether the AER is effectively regulating the National Energy Market. The audit covered the period July 2015 – June 2019. The final audit report, *Regulation of the National Energy Market*, was published on 3 September 2020. The audit found that:

- the AER has been a partly effective regulator of energy markets
- the AER could have been more strategic in prioritising activities, particularly in adopting risk-based approaches to compliance and enforcement
- performance reporting arrangements have not enabled the AER to demonstrate it is meeting its purposes, such as promoting the efficient operation of energy services for the long-term interests of energy consumers with respect to price, quality, reliability and security.

The ANAO made 6 recommendations and the AER has made significant progress in implementing all of the recommendations. Work to date has included improvements to risk management through training and enhanced processes and procedures; and enhanced reporting processes. The AER has also developed a Compliance Decision Making Framework, as well as a revised risk assessment model to assist in triaging compliance and enforcement matters.

In March 2021 the AER appeared before the parliamentary Joint Committee of Public Accounts and Audit in relation to the ANAO's audit findings. The AER updated the committee on its progress on the ANAO's 6 recommendations and received positive feedback on our approach to implementation.

## External factors

During the year energy consumers and the energy industry continued to be impacted by the COVID-19 pandemic, and this remained an external factor that influenced the AER's focus and work program. In response to continuing consumer impacts from COVID-19, we published 4 iterations of our *Statement of Expectations of energy businesses*, originally released in March 2020, to provide additional protections to households and small businesses struggling to pay energy bills during the pandemic.

Like so many Australians, the ongoing COVID-19 pandemic also meant that AER employees continued to adjust their ways of working. All AER offices had to shift to full-time remote working at various times throughout the year.

Despite our shift in focus for the community and employees in response to the pandemic, the AER continued to deliver on our regulatory work program and deadlines to make energy consumers better off, now and in the future.

# Strategic objective 1: Protect vulnerable consumers while enabling consumers to participate in energy markets

## About this strategic objective

Energy is an essential service, and consumers have diverse interests and varying levels of capacity to engage in the energy market. We need a sound understanding of these issues to play our part in delivering a secure, reliable and affordable energy future for Australia. This cuts across a number of our core functions as a regulator: making revenue determinations, taking enforcement action, undertaking compliance activities, sharing insights to shape future policy, working with our stakeholders, and engaging with consumers.

We want barriers that prevent efficient and effective participation in the energy system removed. Consumers experiencing vulnerability and people seeking to overcome market-based problems (such as unclear or confusing retail information, the inability to easily compare offers, or barriers to switching) should be able to access new opportunities and participate.

We also recognise that vulnerability is multifaceted. All consumers can move into and out of vulnerability at different points in life or as a result of various factors. Our annual compliance and enforcement priorities in 2020–21 focused on protecting life support customers and ensuring those in financial difficulties are offered sustainable and affordable payment plans. When we see customers not receiving the required protections, we act decisively using all of our compliance and enforcement tools.

## Our priorities

The AER's 'execute' priorities under strategic objective 1 are:

- Set the Default Market Offer to protect consumers from high prices and encourage participation in the market.
- Facilitate entry of appropriate entities and reduce consumer disruption and loss of competition when a retailer exits.
- Maintain an effective exemptions framework to protect consumers not serviced by authorised retailers.
- Deliver annual consumer-related compliance and enforcement priorities.
- Ensure Energy Made Easy (and electricity/gas bill benchmarks) is the preferred tool for consumers and is promoted effectively.

We also have 8 ‘tilt’ and 3 ‘advocate’ priorities under this strategic objective:

- Develop a vulnerability strategy to inform work across the AER and consideration of consumer issues.
- Implement iterations of the Statement of Expectations (SoE).
- Improve consumer outcomes while reducing cost to serve by boosting consumer and behavioural insights and applying them across AER initiatives.
- Further develop Energy Made Easy to reflect consumer needs and work towards providing a switching service.
- Develop a consumer engagement plan that includes improved consumer engagement tools and capabilities for greater consistency across the AER.
- Implement regulatory sandboxes to encourage:
  - innovation in energy technologies
  - new business models that benefit consumers (outside the current regulatory framework).
- Increase education activities such as retailer compliance workshops.
- Enhance sources and use of market intelligence in compliance and enforcement activities.
- Simplify the retail market regulatory framework to encourage effective competition and reduce cost to serve.
- Support the market in addressing consumer preferences and needs by identifying and helping to address inconsistencies between outcomes and consumer expectations.
- Expand Consumer Data Right applications as required through the energy supply chain to increase consumers’ choice.

## Performance indicators

**Table 3.22 Performance indicators for strategic objective 1**

Performance indicator	2017-18 Result	2018-19 Result	2019-20 Result	2020-21 Measure/target	Result	Met?
Attributed measured:				Proportion of AER Stakeholder Survey 2021 respondents that rated the AER between 7 and 10 <sup>#</sup>		●
<ul style="list-style-type: none"> <li>■ The AER equips consumers to participate effectively, and protects those who are unable to safeguard their own interests</li> </ul>	N/A	N/A 48% (51% unweighted)	N/A	<ul style="list-style-type: none"> <li>■ Equipping consumers to participate effectively in the energy market</li> </ul>	58% (57% unweighted)	
<ul style="list-style-type: none"> <li>■ The AER supports and protects energy consumers, particularly those that are in vulnerable circumstances</li> </ul>		64% (60% unweighted)		<ul style="list-style-type: none"> <li>■ Supporting and protecting vulnerable energy consumers</li> </ul>	73% (76% unweighted)	
<ul style="list-style-type: none"> <li>■ The AER demonstrates a sound knowledge and understanding of energy consumers</li> </ul>		65% (71% unweighted)		<ul style="list-style-type: none"> <li>■ Its understanding of the needs of energy consumers</li> </ul>	63% (60% unweighted)	

Performance indicator	2017-18	2018-19	2019-20	2020-21		Met?
	Result	Result	Result	Measure/target	Result	
Consumer (household and small business) confidence in their ability to make responses to make choices about energy products and services	58%	62%	64%	Proportion of respondents in Energy Consumers Australia Consumer Sentiment Survey rating a 7/10 or higher (Trend)	67%	●
Number of people completing their search on Energy Made Easy (EME)*				Number – EME Tracking Data (Trend)	687,454^	●
Percent of new and amended retailer hardship policies assessed within 12 weeks of AER receiving all relevant information	80%	33.3%	100%	Target: 100%	100%	✓
Percent of retail authorisation and exemptions applications to sell energy assessed within 16 weeks <sup>##</sup> of receiving all relevant information	Authorisations: 71%	Authorisations: 33%	Authorisations: 50%	Target: 100%	Authorisations: 100%**	○
	Exemptions: 89%	Exemptions: 10%	Exemptions: 50%		Exemptions: 78%	
Residential customers on market versus standing offers	73.1% of customers on market contracts	75.3% of customers on market contracts	76.2% of customers on market contracts	Percentage of customers (AER Retailer Data) (Trend)	77% of customers on market contracts (as at end of March 2021)	●
Work delivered against AER consumer Compliance & Enforcement priorities (life support and hardship)*				Proportion of Work Program – AER Data^^	92% of our compliance and enforcement outcomes related to published priorities. Of these, 41% related to life support and hardship	●

# In 2021 the AER enhanced its stakeholder survey methodology. Changes to this methodology included weighting stakeholder groups equally, moving to a performance rating scale with greater sensitivity, different ordering of questions (creating a different framing context), changes to the phrasing of attributes/questions, and increased sample size. Full details regarding the methodology and impacts on comparing with previous results are available in the [Newgate Research report](#) on the AER website. The comparison between 2018 and 2021 should be considered indicative only.

\* New performance indicators as of 2020-21.

^ This number represents the total number of people (website) visitors who completed a plan search during their visit. It is slightly lower than the total number of plan searches, which is reflective of all searches by all people (noting multiple searches can occur in a visit).

## Timeframes for this indicator increased from 12 weeks to 16 weeks in 2020-21.

\*\* The performance indicator references applications where the assessment has been completed. Of the 9 applications currently open for assessment, one is in excess of the 16-week performance indicator.

^^ While the majority of our compliance and enforcement activities relate to published priority areas, we continue to prioritise work outside of priority areas, particularly where it significantly impacts on vulnerable consumers and/or the market. For this reason we do not aim for a particular percentage of compliance and enforcement activities relating to priority areas.

## Analysis of indicator results

The AER's stakeholder survey presents very positive findings on our work protecting vulnerable consumers, while enabling them to participate in the market. Beyond the indicator results presented, the survey also shows that, of all our stakeholders, consumer advocates rate the AER the most positively overall.

Our Energy Made Easy website is a key tool to assist consumers to participate in energy markets. As a price comparator website, Energy Made Easy provides reliable and trusted information to support households and small businesses to make informed choices about their energy (electricity and gas) retailer. It also provides household electricity usage benchmarks, energy efficiency tips and information about consumer rights.

Consumer awareness and use of Energy Made Easy is growing. In 2020–21 the website was visited more than 4.9 million times by more than 2.7 million users – reflecting an increase of 76% and 64% respectively on previous years. The number of people completing an energy plan search was 687,454 – a 3% increase from the previous year. The high and steadily growing proportion of residential customers on market versus standing offers also indicates that increasingly consumers are making active choices about their energy supplier.

Pleasingly, an independent consumer sentiment survey conducted by Energy Consumers Australia shows higher levels of confidence among consumers in their ability to make choices about energy products and services – 67% of consumers rated confidence in their ability to make choices, such as which plan or supplier to choose, to be between 7 and 10. This is a 3% increase compared with June 2020 (64%). We do note, however, that the same consumer sentiment survey also indicates that only about half of energy and gas consumers trust companies to do the right thing.

The AER has a responsibility to protect customers under the Retail Law and requires any entity selling energy to customers to hold a retailer authorisation or have an exemption. Meeting our targets for timely retailer authorisations and exemptions also supports competition in, and new entrants to, energy retail markets as well as minimising disruptions for consumers. There has been a trend towards an increase in retailer applications – in addition to the 15 approved retailer authorisations, there are also 9 currently open for assessment on the public register. These applications highlight a trend towards gas authorisation, solar businesses and embedded network operators seeking retailer authorisation. This year, the AER also considered only the second application for surrender of retailer authorisation and approved Click Energy's applications to surrender both its gas and electricity retailer authorisations. This application was prompted by AGL Energy Limited's acquisition of Click Energy. The AER placed several conditions on Click Energy as the surrendering retailer to ensure impacted customers were protected through the transfer.

We also prioritise our compliance and enforcement work to ensure that our effort and resources are focused on areas of greatest importance and impact. Since 2019–20 we have published annual compliance and enforcement priorities. In 2020–21, 38% of our compliance and enforcement outcomes related to our consumer protection (life support and hardship) priorities, comprising:

- 39% of litigated outcomes (\$1.5 million in penalties)
- 44% of infringement notices (\$420,000)
- 50% of enforceable undertakings
- 20% of compliance audits completed
- 50% of workshops and presentations.

Taken alongside our result for market-related compliance and enforcement priorities (reported under Strategic Objective 2), we succeeded in maintaining our focus, with 92% of all compliance and enforcement work delivered against our stated priorities. We note that enforcement action, particularly litigation, can take a number of years to be finalised. This means that at times an enforcement outcome may relate to an area which relates to previous priorities. We will also take enforcement action and compliance activities in non-priority areas where there are serious issues impacting vulnerable consumers or to help shape new or emerging markets.

## Outcomes achieved against strategic objective

### Highlights

- In response to the COVID-19 pandemic, the AER took proactive action to protect consumers and the energy market. Four **Statements of Expectations of energy businesses** have been published since April 2020, detailing the AER's expectations of energy businesses to support customers (including small businesses) whose capacity to pay their bills has been impacted. The statement proved effective in supporting consumers. Disconnections for residential and small businesses from April 2020 to March 2021 were down by 61,300 when compared with the same period across 2019 to 2020.
- In April 2021 we published our final determination for the **Default Market Offer**, which reduced standing offer electricity prices in South Australia, south-east Queensland and New South Wales. Customers on standing offer contracts in these states will share in over \$65 million of bill savings in 2021–22. Our final determination cut the price that 727,000 electricity customers on a standing offer pay from 1 July 2021 by up to \$116 for households and \$441 for small businesses. The new prices took effect on 1 July 2021.
- A total of **\$1.92 million in penalties** was paid in this reporting period for alleged breaches of retailers' obligations to provide support to customers experiencing payment difficulties and to protect life support customers. This included \$1.5 million paid by EnergyAustralia after the Federal Court declared that it had wrongfully disconnected 8 customers in financial hardship.

## Actions to achieve our purpose

### **Market intelligence**

We worked closely with energy ombudsman schemes and consumer representatives throughout the year to support our investigations and deliver on AER's compliance and enforcement priorities. These key stakeholders are uniquely placed to identify emerging trends and systemic issues affecting energy consumers. To enhance risk-based decision making, we have built new channels of information sharing to improve our access to market intelligence and increase our visibility over issues affecting the energy market.

### **Vulnerability strategy**

The AER is committed to developing a Consumer Vulnerability Strategy to improve outcomes for consumers. In 2020–21 we developed a Consumer Vulnerability: Strategic Framework, which was a working document used to enable key stakeholder groups to collaborate on the design of actions the AER can take or contribute to that will improve outcomes for consumers in vulnerable circumstances over the next 3 years.

During April and May 2021 we facilitated 3 online workshops with over 70 stakeholder organisations representing diverse interests across the sector (energy businesses, consumer groups, government, regulators, market bodies and ombudsman schemes). The workshops helped inform the specific actions under the draft strategy that is in preparation. A final version of the strategy will be published before the end of 2021.

## **Better Bills**

On 18 March 2021 the Australian Energy Market Commission (AEMC) released a final rule change that simplifies energy (gas and electricity) bills so households and small business owners can better understand and manage their bills and find a better energy deal. The AER made 2 formal submissions to the rule change process that emphasised the need for an enforceable AER guideline and the potential for bills to include switching information to assist customers.

The AER has started the research phase of developing a guideline to support implementation and has established a partnership with the Behavioural Economics Team of the Australian Government to assist.

### ***Protecting customers using life support equipment***

Ensuring that customers using life support equipment are protected was a continued area of focus under our compliance and enforcement priorities:

- In July 2020, the Federal Court ordered EnergyAustralia to use best endeavours to comply with the enforceable undertaking it gave to the AER in August 2019. The undertaking includes commitments to registering life support customers as soon as possible and, at the latest, within one business day of advice. It also committed to daily reviews of all calls from the previous day to identify any missed life support customers. Civil proceedings against EnergyAustralia for alleged breaches of obligations to life support customers are ongoing.
- Alinta Energy paid \$200,000 in infringement notices after admitting that it had breached requirements for the protection of life support customers under the National Energy Retail Rules on more than 1,500 occasions. Alinta Energy also gave the AER a court enforceable undertaking which requires Alinta to conduct a review of the steps it took to address the breaches.

In October 2020 we hosted a workshop which was an opportunity for energy retailers and distributors who had recently completed audits of compliance with life support obligations to share their learnings. Around 100 participants were at the workshop.

### ***Protecting customers experiencing payment difficulties***

Ensuring customers in financial difficulty can access affordable payment plans and hardship programs was another annual compliance and enforcement priority.

In addition to the \$1.5 million in penalties paid by EnergyAustralia (see the case study below):

- AGL Sales and AGL South Australia paid a combined \$100,000 in infringement notice penalties in November 2020 after allegedly disconnecting customers experiencing payment difficulties without first offering the customers 2 payment plans. AGL was also required to carry out an independent compliance audit to assess compliance with its hardship, payment plan and disconnections obligations, the results of which were published in May 2021.
- In November 2020 Origin Energy paid infringement notice penalties of \$120,000 for alleged wrongful disconnections after an IT system error resulted in it disconnecting customers who had paid all their outstanding bills.



## ► CASE STUDY

### EnergyAustralia penalised \$1.5 million for failing to protect hardship customers

In November 2020 [EnergyAustralia was ordered to pay \\$1.5 million in penalties](#) after the Federal Court declared the retailer breached energy laws when it wrongfully disconnected 8 customers who were in financial hardship, having failed to extend legal protections to those customers.

Successful enforcement proceedings against EnergyAustralia confirmed the importance of early intervention where customers are experiencing payment difficulties; and of genuine consideration of capacity to pay.

For customers who are experiencing payment difficulties and hardship, this decision highlighted that energy retailers must:

- intervene early and provide the required assistance. There are considerable flow-on effects of failing to intervene at an early stage. If a customer's legitimate concerns are ignored by the retailer (for example, if the customer is not identified as a hardship customer and offered payment plans that consider capacity to pay) the customer is more likely to disengage and at a later stage may not respond to credit messages, letters offering access to a hardship program and so on
- have regard to a customer's capacity to pay. We expect that retailers look beyond debt collection and the customer's usage and debt to consider whether the customer can actually maintain the payment plan. An affordable payment plan is important for ensuring the circumstances of customers in hardship do not deteriorate further. Retailers should foster a collaborative and supportive approach when engaging with customers. This is particularly important where a power imbalance exists, such as the threat of disconnection, as a customer is likely to agree to any figure proposed
- disconnect a customer experiencing financial difficulties only as a last resort. This means ensuring that all reasonable endeavours have been made to discuss the customer's circumstances and to enter the customer into the hardship program and affordable payment plans and, importantly, that all the requirements of the National Energy Retail Rules have been met.

# Strategic objective 2: Effectively regulate competitive markets through monitoring and reporting, enforcement and compliance

## About this strategic objective

The rules underpinning Australia's energy markets rely on market participants having the discretion to decide how to meet their customer's needs, undertake day-to-day operations and make investment decisions based on the risks and opportunities they face. This is premised on the principle that competitive market-based arrangements can be adaptive and provide an opportunity to achieve market efficiency, compared with alternatives, and therefore best service the long-term interests of consumers.

Within this competitive framework, if businesses do not comply with the rules, harms can occur not only to consumers but also to effective competition. The AER continues to strengthen its compliance and enforcement program, supported by well-targeted intelligence systems to address conduct that undermines market operations and erodes consumer confidence in energy markets.

In January 2021 the AER received new powers and penalties to assist our enforcement program under the National Energy Laws. There are 3 tiers of penalty provisions; in the most serious cases the AER will be able to seek penalties of up to \$10 million (or more for large companies). The AER now also has the power to require a person to appear before the AER to give evidence. In February 2021 we published [AER compulsory notice guidelines](#) to support the introduction of these new powers.

Our annual compliance and enforcement priorities for 2020–21 continued to focus on ensuring that customers benefit from competitive metering and ensuring that the AER and the Australian Energy Market Operator (AEMO) receive accurate and timely information. We also prioritised market transparency through strengthened gas market reporting requirements and ensuring access to pipeline capacity.

We play a pivotal role by independently reporting on the outcomes across the supply chain, and our surveillance activities examine transactions and behaviour to identify design anomalies and ensure all market participants meet their obligations. Our market surveillance expertise makes us well placed to assist policymakers with ongoing reforms in both the electricity and gas sectors.

## Our priorities

The AER's 'execute' priorities under strategic objective 2 are:

- Provide effective guidance and oversight of the Retailer Reliability Obligation (including monitoring the Market Liquidity Obligation).
- Produce insightful market reports:
  - weekly wholesale markets; COVID-19 data from retailers
  - quarterly retail and wholesale market performance
  - annual retail compliance; annual state of the energy market
  - biennial wholesale electricity market
  - high price events (as they occur).
- Manage the dispute resolution role efficiently and effectively.

- Deliver compliance and enforcement annual priorities.
- Undertake retail and generator performance compliance audits to improve compliance, systems and processes.
- Manage litigations on foot.
- Better coordinate reporting with other government bodies.

We also have 7 ‘tilt’ and 2 ‘advocate’ priorities under this strategic objective:

- Improve market surveillance capability to interrogate information more effectively by:
  - creating automated processes to flag potential issues with trades, bids and offers
  - developing employee analytical capability relating to financial markets, conduct, and competition analysis.
- Expand understanding of the interplay between physical and financial markets to enable the AER to fulfil our reporting obligations (Retailer Reliability Obligation and biennial performance reports).
- Implement major reforms to improve transparency of the gas markets when required by increasing our east coast gas industry reporting functions.
- Develop an information management framework for compliance intelligence.
- Enhance the retail performance reporting framework to enable more detailed analysis.
- Develop and implement a new risk-based model for prioritising compliance and enforcement work and for assessing noncompliance.
- Develop regular compliance reporting across market participants.
- Review the purpose and focus of reporting to ensure our reporting contributes effectively (for example, high price events reports).
- Increase the scope of AER powers so we can monitor, understand and report on contract markets.

## Performance indicators

**Table 3.22 Performance indicators for strategic objective 2**

Performance indicator	2020-21	Result	Met?
	Measure/target		
Extent to which competition in retail and wholesale energy markets is identified as an issue <sup>#</sup>	Commentary in AER/AEMC reports	Slight decline in structural/ownership concentration (see analysis below)	●
All market reports published within agreed/statutory timeframes <sup>#</sup>	100%	89% <sup>*</sup>	○
Work delivered against AER effective regulation of market Compliance and Enforcement priorities (metering, provision of information and gas) <sup>*</sup>	Proportion of Work Program – AER Data <sup>^</sup>	92% of our compliance and enforcement outcomes related to published priorities. Of these, 59% related to metering, provision of information and gas.	●

<sup>#</sup> New performance indicators as of 2020-21.

<sup>\*</sup> All statutory reporting deadlines were met. The 89% score reflects that the AER did not publish 52 gas weekly and 52 electricity weekly reports during the financial year. The AER published 49 gas weekly and 42 electricity weekly reports during the financial year. We prioritised our statutory high price event reports, as we considered them of more immediate interest to the market. However, the missing weekly reports from the series will be finalised.

<sup>^</sup> While the majority of our compliance and enforcement activities relates to published priority areas, we continue to prioritise work outside of priority areas, particularly where it significantly impacts on vulnerable consumers and/or the market. For this reason we do not aim for a particular percentage of compliance and enforcement activities relating to priority areas.

## Analysis of indicator results

We have a range of obligations to monitor and report regularly on the performance of the national wholesale electricity and gas markets, assessing both short-term and long-term outcomes, as well as the retail markets. During 2020–21 we met the set timeframes for all of our statutory reporting obligations and the agreed timeframes for the vast majority of other reports. These reports include:

- our second biennial *Wholesale electricity market performance report*
- our *Annual retail markets report*
- 4 quarterly wholesale and 4 quarterly retail reports
- our annual *Electricity network performance report*
- weekly market performance reports in electricity and gas
- 5 reports on high wholesale electricity market prices
- our annual network benchmarking reports.

We also undertook additional monitoring of the retail market to understand the impact of COVID-19 on households and small businesses to enable us to respond as needed. Our data showed that household electricity debt, as well as the average debt of customers on hardship programs, increased since the start of the pandemic. However, the number of customers on hardship programs has decreased since the start of the pandemic. We published the results fortnightly on our website to also inform the market and decision makers.

The *Wholesale electricity market performance report*, published in December 2020, reported that structural/ownership concentration has slightly decreased in the last 2 years; however, retail and wholesale markets are still concentrated. As a result, ongoing surveillance will remain important in what is a rapidly changing market.

As discussed in relation to strategic objective 1, we prioritise our compliance and enforcement work to ensure that our effort and resources are focused on areas of greatest importance and impact. In 2020–21, 54% of our compliance and enforcement work was related to our market regulation related priorities, comprising:

- 61% of litigated outcomes (\$2.3 million in civil penalties)
- 56% of infringement notices (\$540,000)
- 50% of enforceable undertakings
- 80% of compliance audits completed
- 100% of formal compliance and rectification plans
- 33% of guidance notes issued.

Details of AER's market-related compliance and enforcement activities and outcomes are provided below.

## Outcomes achieved against strategic objective

### Highlights

- In 2020–21 a total of **\$2.5 million in penalties** was paid for breaches of the national energy laws and rules relating to the provision of accurate and timely information to us and AEMO; to meet timeframes for metering installation and repair; and to meet record keeping and reporting requirements under the National Gas Rules.
- The 12th edition of the AER's annual report on the energy industry, ***State of the energy market*** – which covers Australia's wholesale electricity and gas markets, the transmission and distribution networks, and energy retail markets – was published in July 2020. We also released the ***Wholesale electricity market performance report*** on 14 December 2020. This report highlights how the market is transitioning from a system dominated by large fossil fuel dependent generators to one that incorporates an increasing volume of widely dispersed renewable generators.
- The AER's **Wholesale Energy Market Dispute Resolution Adviser** has managed one dispute under the National Gas Rules and triaged a further 2 disputes under the National Electricity Rules.

### Actions to achieve our purpose

#### ***Retailer Reliability Obligation triggered***

The Retailer Reliability Obligation scheme aims to encourage retailers and large energy customers to enter into contracts that support investment in new sources of energy supply, such as electricity generation, storage and demand side response, to meet a forecast reliability shortfall.

The Retailer Reliability Obligation was triggered twice in 2020–21:

- by AEMO for the period 1 January to 29 February 2024, resulting in Market Liquidity Obligation (MLO) generators in New South Wales – currently AGL, Origin and Snowy Hydro – being required to offer MLO contract products on the Australian Stock Exchange (ASX)
- by the South Australian Minister for the period 8 January 2024 to 15 March 2024. AGL, Origin and Engie are performing the MLO in South Australia.

The AER is receiving regular reports from the ASX on generators' performance of the MLO in both New South Wales and South Australia.

#### ***Provision of timely and accurate information and data to the AER and AEMO***

This year we continued to prioritise the provision of accurate and timely information to AEMO, which is critical to ensuring power system security and/or the efficient outcomes in, or effective operation of, wholesale energy markets; and to the AER, which is critical to the performance of the AER's economic or market monitoring functions:

- In November 2020 the Federal Court ordered [AGL](#) to pay a total of \$1.3 million in penalties for failing to submit retail market performance data to the AER by the relevant due dates. A further 4 retailers (M2 Energy, Red Energy, 1st Energy, and Energy Australia) completed comprehensive compliance [audits](#) testing the adequacy and effectiveness of their performance reporting systems and processes, the results of which were published in March 2021.
- In December 2020 the Federal Court ordered [Snowtown 2](#) to pay \$1 million in penalties for breaching the National Electricity Rules by failing to obtain written approval for critical system settings in its wind farm from AEMO and South Australian transmission network service provider ElectraNet.

The proceedings came after our investigation of the Black System Event which resulted in loss of power to 850,000 customer connections across South Australia on 28 September 2016.

Snowtown 2 also gave the AER a court enforceable undertaking to engage an independent expert to review its settings. The Federal Court's decision on Snowtown 2 was the first in proceedings instituted by the AER against 4 wind farm operators in South Australia for alleged breaches of the National Electricity Rules. On 1 July 2021, the Federal Court published decisions in 2 related proceedings, ordering a further \$1.6 million in penalties from Pacific Hydro. As we publish this report, proceedings are ongoing against subsidiaries of AGL Energy Limited.

- In February 2021, [CS Energy](#) paid \$200,000 in infringement notice penalties for allegedly failing to ensure it could provide frequency control ancillary services it had offered to the market. As part of our resolution of this matter, CS Energy also repaid \$1.13 million it received as payment to provide the services to AEMO.

### ***Supporting the transition to metering contestability***

In 2020–21 our compliance and enforcement priorities reinforced our focus on supporting the transition to metering contestability to ensure consumer and market benefits are delivered.

Three [AGL](#) retailers (AGL Sales, AGL South Australia and Powerdirect) paid infringement notice penalties totalling \$160,000 in January 2021 for failing to promptly appoint dedicated metering coordinators to fix customers' faulty meters. We also released updated guidance on metering installation timeframes in July 2020 and secured 2 compliance and rectification plans from metering coordinators around testing of high-voltage meter installations.

### ***Increased market transparency through strengthened gas market reporting requirements and ensuring access to pipeline capacity***

Another compliance and enforcement priority area for the year was increased market transparency through strengthened gas markets reporting requirements and ensuring access to pipeline capacity under the East Coast Gas Reforms. [Lochard Energy](#) (Iona Operations) Pty Ltd paid an infringement notice penalty of \$20,000 in April 2021 after the AER alleged that it failed to submit auction quantity limits for the Iona Compression Facility to the Australian Energy Market Operator on 3 dates in the previous year.

[EnergyAustralia](#) paid infringement notice penalties totalling \$160,000 in October 2020, after the AER alleged it had failed to comply with the record keeping requirements for Day Ahead Auction participants. This arose from proactive compliance reviews of participants' contemporaneous records undertaken by the AER.

### ***Rule change on weather-dependent generators***

In September 2020 the AER proposed a change in the energy rules following the COAG Energy Council's request that we develop proposals to support system security in the National Electricity Market. In response, the AER proposed a change to the National Electricity Rules that would stop semi-scheduled generators from turning off without signalling their intentions with their bids and awaiting a dispatch instruction from the market operator, AEMO. Semi-scheduled generators include wind and solar plants that are reliant on weather conditions to operate. The proposal sought to enable AEMO to more effectively manage system security.

Due to the AER's extensive consultation before submitting the rule change request, the AEMC fast-tracked its rule change process, with the final rule made in March 2021. In line with our compliance and enforcement priorities, the AER is monitoring the market performance of these generators against the new requirements and has seen a notable improvement. An additional step in the rule change, to improve the information provided by semi-scheduled generators to the market operator, was deferred until the efficacy of the rule change could be assessed. The AER, in conjunction with AEMO, is now considering this next step.

## ► CASE STUDY

### Pipeline capacity trading – 2-year review

On 1 March 2019 new reforms were enacted introducing 2 new markets to facilitate pipeline capacity trading: the Day Ahead Auction and the Capacity Trading Platform. In response, one of the AER's annual compliance and enforcement priorities in 2020–21 was upholding strengthened gas market reporting requirements and ensuring access to pipeline capacity. In March 2021 the AER released a report analysing the performance of these markets over the first 2 years of operation.

This report highlighted the success of the Day Ahead Auction, which has made it easier for wholesale gas customers to access cheap pipeline capacity. It has allowed participants to respond flexibly to changing conditions and has supported increased trade in the east coast spot markets. However, the report found that the benefits of the Day Ahead Auction have not been realised to the same degree across all auction facilities, particularly in relation to the pipelines connecting to the Adelaide short-term trading market.

The other market, the Capacity Trading Platform, has not been active, and there has only been one trade to date. However, the report found that this in part reflects the Day Ahead Auction's success as an alternative for participants. Rather than seeking capacity on the platform, they are winning it through the Day Ahead Auction at low cost.

Separately, the report also detailed the AER's activities in monitoring participant compliance with the new obligations. It explained how the AER has actively refined its surveillance tools and identified some areas of focus for the future.

# Strategic objective 3: Deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services

## About this strategic objective

Australia's energy system is rapidly changing and affecting how energy networks are used. Technological developments and consumer preferences are leading us away from a supply-side oriented system to one that needs to support 2-way flows of electricity; and away from centralised generation to distributed generation. If not managed carefully, these changes may add significantly to network costs and therefore consumer bills.

As the economic regulator of energy networks in all states and territories except Western Australia, we play an important role in the energy transition. We regulate 30 gas and electricity network businesses with a combined asset base of over \$100 billion. Our primary role is in setting the maximum revenue that network businesses can recover from users of their networks. Importantly, we aim to ensure consumers pay no more than necessary for safe and reliable energy.

The AER also develops key aspects of the regulatory framework (including schemes, guidelines and models) and reviews them regularly to keep them relevant. We ensure revenue determinations reflect consumer preferences while at the same time preparing the regulatory framework for new types of expenditures to manage the impact of the energy transition on networks.

## Our priorities

The AER's 'execute' priorities under strategic objective 3 are:

- Undertake regular revenue and price control processes that promote the National Energy Objectives/National Gas Objectives.
- Review the fundamental building blocks such as inflation, rate of return, and value of customer reliability.
- Undertake large Integrated System Plan project assessments.
- Deliver network performance reporting and monitor regulatory asset base growth.
- Deliver network compliance and enforcement.

We also have 4 'tilt' and 2 'advocate' priorities under this strategic objective:

- Incentivise proposals that reflect consumer preferences and are capable of acceptance, including through:
  - establishing a Statement of Expectations for networks that aligns with the National Energy Objectives/National Gas Objectives
  - enhanced consumer engagement (for example, New Reg).
- Be more efficient in our regulation by focusing on high-impact actions that matter most to consumers, including through:
  - building better assessment tools and supporting data
  - reviewing and refining incentive schemes and guidelines to ensure they remain relevant and fit for purpose
  - improving our approach to reviewing large transmission investments (\$10 billion investment over 5-10 years).



- Make sure the regulatory regime and our network performance reporting evolves to support the energy transition:
  - distributed energy resources (DER)
  - standalone power systems (SAPS)
  - depreciation profiles, focusing on intergeneration equity and stranding risks
  - ring fencing and waivers
  - bushfires, COVID-19 and other natural disasters.
- Undertake the transparency review for the Integrated System Plan.
- Advocate for network charging reform to deliver greater cost reflectivity in consumption and export tariffs for more efficient network investment and optimal distributed energy resources deployment.
- Advocate for greater flexibility in network regulation frameworks to enhance consumer engagement and scope for innovation by network businesses; and longer reset periods where appropriate.

## Performance indicators

**Table 3.23 Performance indicators for strategic objective 3**

Performance indicator	2017-18 Result	2018-19 Result	2019-20 Result	2020-21 Measure/target	Result	Met?
Attributed measured:				Proportion of AER Stakeholder Survey 2021 respondents that rated the AER between 7 and 10 <sup>#</sup>		●
<ul style="list-style-type: none"> <li>■ The AER encourages and enables innovation by network businesses</li> </ul>	–	40% (34% unweighted)	N/A			
<ul style="list-style-type: none"> <li>■ The AER promotes efficient investment in, operation and use of energy services for the long-term interests of energy consumers</li> </ul>	–	64% (61% unweighted)	N/A	<ul style="list-style-type: none"> <li>■ Encouraging and enabling innovation by network businesses that is balanced against delivering value to consumers</li> <li>■ Acting in the long-term interests of energy consumers</li> </ul>	53% (50% unweighted)  70% (65% unweighted)	
Revenue reset determinations for electricity networks and gas pipelines completed within statutory timeframes*				100%	100%	✓
Number of completed revenue decisions for electricity networks and gas pipelines	8	7	5	Number per annum	8	●
Customers with a retailer exposed to cost reflective network tariff*				Proportion of customers – AER Retailer data (Trend)	11.1% of residential customers in the NEM (excluding Vic) (2020-21)*	●

<sup>#</sup> In 2021 the AER enhanced its stakeholder survey methodology. Changes to this methodology included weighting stakeholder groups equally, moving to a performance rating scale with greater sensitivity, different ordering of questions (creating a different framing context), changes to the phrasing of attributes/questions, and increased sample size. Full details regarding the methodology and impacts on comparing with previous results are available in the [Newgate Research report](#) on the AER website. The comparison between 2018 and 2021 should be considered indicative only.

\* New performance indicators as of 2020-21.

^ Estimated. Actual network tariff assignment results for 2020-21 will be reported by electricity distribution networks (including Victoria) to the AER in November 2021 – these will subsequently be published on the AER Tariff Reform webpage. Note that bulk reassignment of small customers to cost reflective tariffs in Queensland and South Australia was postponed from 1 July 2020 to 1 July 2021 due to COVID-19.

## Analysis of indicator results

This was a significant year for the AER in delivering effective network regulation. We made final revenue determinations for 5 Victorian electricity distribution businesses and 3 gas businesses in South Australia, the Australian Capital Territory and the Northern Territory. The decisions support the businesses in continuing to deliver safe and reliable electricity while they adapt to a rapidly changing power grid. The gas access arrangement decisions also responded to forecast changes in gas demand and the introduction of alternatives to natural gas.

We also made a draft electricity transmission determination for AusNet, with the final decision due next year. All revenue reset determinations were made within statutory timeframes.

The AER stakeholder survey also indicates a positive trend with regard to our stakeholders' perceptions of our network regulation. Indicators associated with our encouragement of innovation and the promotion of efficient investment were both higher than in 2018.

We have continued to make progress on increasing the number of customers with a retailer exposed to cost reflective network tariffs. Our primary tool for progressing this objective is the tariff structure statements we approve for electricity distributors. We require each network to develop a statement that outlines how it will reform its tariffs to bring them more in line with the cost of providing services and to provide incentive for customers to use power in off-peak times.

In 2020–21 the AER approved tariff structure statements for Victorian networks CitiPower, Powercor, United Energy, Jemena and AusNet. A new statewide time of use network tariff for residential customers was established, incentivising electricity use during the day when rooftop solar is plentiful. By shifting consumption into the daytime period customers can benefit from lower bills. We engaged heavily with the electric vehicle sector on how the electrification of road transport can support electricity networks and vice versa. And we saw broader application of critical peak pricing amongst large business customers, allowing networks to better manage the small number of peak demand events which drive much network investment.

The AER has been actively engaged in advocating for network tariff reform. Highlights include various Distributed Energy Integration Program working groups (with the Australian Renewable Energy Agency, AEMC, AEMO, Energy Consumers Australia (ECA), Energy Networks Australia (ENA) and other partner organisations); AEMC rule change processes; and Energy Security Board (ESB) workshops.

## Outcomes achieved against strategic objective

### Highlights

- The AER published **revenue determinations for 5 Victorian electricity distribution businesses**: AusNet Services, CitiPower, Jemena, Powercor, and United Energy. The decisions support the businesses in continuing to deliver safe and reliable electricity while they adapt to a rapidly changing power grid. The determinations enabled funding of the replacement of wooden power poles; support for rooftop solar into the grid; and installation of new technology to reduce risk from bushfires. The AER reduced the amount of money 4 out of the 5 businesses can collect from their customers compared with the previous regulatory period. In these determinations the AER applied its new Customer Service Incentive Scheme, which creates an incentive for electricity distributors to meaningfully engage with their customers, understand their needs and propose incentives to respond to those needs.

**Table 3.24 AER energy network decisions completed in 2020–21**

Network	Region	Period covered	Revenue proposed by business (\$ nominal, million)	Revenue allowed by AER (\$ nominal, million)	Difference between allowed and proposed revenues (%)	Allowed revenue in previous determination (\$ nominal, million)	Difference between allowed revenue in current and previous determination (\$ nominal, million)
AusNet Services	Vic	1 July 2021 – 30 June 2026	3,430.8	3,470.5	1.2	3,130.4	340.1
Jemena	Vic	1 July 2021 – 30 June 2026	1,379.6	1,335.7	-3.2	1,302.1	33.6
CitiPower	Vic	1 July 2021 – 30 June 2026	1,604.1	1,485.8	-7.4	1,500.3	-14.5
Powercor	Vic	1 July 2021 – 30 June 2026	3,649.9	3,450.9	-5.5	3,176.4	274.5
United Energy	Vic	1 July 2021 – 30 June 2026	2,233.3	2,083.4	-6.7	2,106.1	-22.7
Australian Gas Networks (SA)	SA	1 July 2021 – 30 June 2026	1,136.4	1,122.2	-1.3	973.9	148.3
Evoenergy	ACT	1 July 2021 – 30 June 2026	314.9	317.4	0.8	321.6	-4.2
Amadeus	NT	1 July 2021 – 30 June 2026	93.6	97.9	4.6	112.8	-14.9

- The AER made **decisions on gas distribution and transmission access arrangement proposals for 3 businesses**: Evoenergy, AGN (SA), and the Amadeus Gas Pipeline owned by APT Pipelines (NT). For Evoenergy the decision supported the ACT's transition to renewable energy under the ACT Government's climate change strategy and included a reduction in revenue for the regulatory period compared with the previous one. The AER's decision for AGN (SA) supported innovation by allowing biogas to be blended with natural gas as a step towards reducing carbon emissions, as well as a new vulnerable customer program. For the Amadeus Pipeline there was also a reduction in revenue for this regulatory period after strong historical capital expenditure.
- We saw considerable enhancements to the way electricity and gas businesses are engaging with their customers in the development of their revenue proposals. Notably, AusNet Services showed commitment to customer engagement with its trial of our customer engagement approach (New Reg), which drove increased involvement with customers and better outcomes for consumers. Customer advisory panels are also being incorporated into business as usual for network businesses in the preparation of their regulatory proposals.
- After a significantly expedited process, in May 2021 the AER determined the costs for **Project EnergyConnect**, the AER's final regulatory approval for the South Australia to New South Wales interconnector to be built by ElectraNet and TransGrid. Our rigorous assessment reduced forecast project costs by \$88 million from what was originally proposed, which will reduce the bill impact for consumers. Our final decision was that the prudent and efficient capital cost for the project is \$2.28 billion, compared with the \$2.36 billion initially proposed by TransGrid and ElectraNet. Following our decision, both TransGrid and ElectraNet committed to proceed with the project. In May 2021 we also approved funding for the New South Wales component to upgrade the interconnector between New South Wales and Victoria under the new streamlined arrangements for the approval of projects that are actionable projects identified in AEMO's Integrated System Plan (ISP); and in September 2020 we approved funding for the reinforcement of the Eyre Peninsula transmission network in South Australia, on an application from ElectraNet.

## Actions to achieve our purpose

### *Inflation review*

In December 2020 the AER released its final position paper on the treatment of inflation in the regulatory framework. The final position paper outlines how inflation will be treated in our decisions for regulated electricity and gas networks. It is important to account for the best estimates of expected inflation to assist in determining how much revenue regulated networks are allowed to recover from consumers.

The changes to our current approach are:

- reducing the length of our estimate term from 10 years to 5 years
- including an adjustment mechanism (known as a 'glide-path') to recognise that it is likely to take longer for inflation to settle back into the Reserve Bank's target band of 2% to 3%
- immediately applying our final position to regulatory determinations.

This approach can operate across a broad range of market conditions and forecasts and is more responsive to changes in market conditions than our previous approach.

### *Rate of Return Instrument 2022*

The rate of return is the return expected by investors to reward them for investing their capital in a business. The AER's Rate of Return Instrument specifies how we determine the allowed rate of return on capital in regulatory determinations for energy networks.

We publish a new Rate of Return Instrument every 4 years. The next one is to be published in 2022 and will bind all regulatory determinations in the subsequent 4 years.

To determine the 2022 instrument we are undertaking an extensive review, including multiple rounds of stakeholder consultation. During 2020–21 we held 5 stakeholder workshops and released 3 final working papers on calculating the return on debt, international approaches to the rate of return and models for estimating the return on equity.

### *Transmission Investment Regulation Review*

In November 2020 we published an open letter detailing our program of work to support the efficient and timely delivery of large transmission projects identified as 'actionable' in AEMO's ISP.

The recent reforms to make the ISP actionable have changed the way transmission planning is undertaken. AEMO's 2020 ISP identifies a number of actionable projects which it forecasts to cost between \$6.8 billion and \$12.7 billion over the period 2022–2032. Given these circumstances, we want to ensure our regulatory tools remain fit for purpose to effectively assess forecast expenditure for these projects and ensure consumers pay no more than they need to.

As a first step we developed guidance, in consultation with stakeholders, to provide more transparency and predictability about how we will assess expenditure proposals for actionable ISP projects. Our final guidance was published in March 2021 (see the case study on page 144).

### *Process for transparency review of AEMO's ISP*

The AER is required to publish 2 transparency review reports following AEMO's publication of its Inputs, Assumptions and Scenarios Report (IASR) and draft ISP results. The purpose of our transparency reviews is to report on whether AEMO has adequately explained and addressed stakeholder feedback on key inputs and assumptions and the draft ISP results in its IASR and draft ISP report respectively. This is to ensure that AEMO decisions are transparent, informed by stakeholder consultation and subject to consistent and robust economic analysis.

We have been reviewing the quality, transparency and accessibility of AEMO's stakeholder engagement on the 2022 ISP since November 2020. Our first transparency review report, of AEMO's IASR, is due early in the second half of 2021 and our review of AEMO's draft ISP consultation is due in early 2022.

Relevantly, we have also established and are regularly maintaining a [compliance issues register](#) on the AER website for stakeholders to report on compliance issues related to AEMO's ISP consultation process. Any compliance issues raised by stakeholders will also be reported in our transparency review reports.

### ***Finalisation of the New Reg trial***

The New Reg project was initiated by the AER, ECA and ENA. The project involved a customer forum to better reflect customers' priorities and preferences in regulatory proposals through negotiation with regulated networks. Ausnet Services (AusNet) delivered the New Reg trial through its 2021-2025 regulatory proposal, which evidenced the innovative consumer engagement. As a result, the AusNet Services proposal overall represented good value for consumers and this was reflected in the AER's determination. The evaluation of the project by Cambridge Economic Policy Associates Ltd (CEPA) will soon be released, and the AER will be using the findings in our development of our *Statement of Expectations for Networks* in late 2021.

### ***Electricity network performance report***

In September 2020 the AER published the *Electricity network performance report 2020*. The report provides an analysis of the performance of transmission and distribution electricity networks across a core set of measures, including profitability. The report focuses on the jurisdictions in the National Electricity Market: New South Wales, Victoria, Queensland, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory.

Key findings included that consumers are spending less on network services than they have done in previous years, total network expenditure is substantially down from its peak in 2012, and network reliability has improved over recent years.

### ***Electricity distribution and transmission network annual benchmarking reports***

In November 2020 the AER published its *Annual benchmarking report for distribution 2020* and *Annual benchmarking report for transmission 2020*. In the annual benchmarking reports, we examine the relative efficiency of the distribution and transmission electricity network service providers. In doing this we consider the characteristics of each network business and how their productivity compares at the aggregate level and for the outputs they deliver to consumers. We draw on this analysis when setting the maximum revenues networks can recover from customers.

Where distribution networks become more efficient, customers should benefit through downward pressure on network charges and customer bills. Electricity distribution productivity as measured by total factor productivity (TFP) decreased by 1% over the 12 months to 2019 after improving over the 3 years from 2015. Electricity transmission productivity as measured by TFP declined by 1.8% over the 12 months to 2019 after improvement in the last 2 consecutive years, but it remains above its lowest level (2016).

### ***Value of distributed energy resources***

Households and businesses are continuing to purchase distributed energy resources (DER) such as rooftop solar photovoltaic units, battery storage technologies and electric vehicles. DER can bring a range of benefits to customers, but it can also present challenges to the way that electricity distribution networks operate. In response, the electricity distribution networks have proposed investments to increase network hosting capacity so that more customers can connect DER to the grid.

Following a stakeholder consultation process in 2019-20, the AER and the Australian Renewable Energy Agency (ARENA) commissioned a study on potential methods for valuing DER. In November 2020 the final *Value of distributed energy resources report* was published, with accompanying frequently asked questions and stakeholder submissions. The findings and recommendations of the final report were reviewed and considered as part of the AER's draft DER integration expenditure guidance note, which was published in July 2021 and will be finalised in 2021-22 following further stakeholder consultation.

### **Tariff reform**

Residential and small business customers in Victoria will now face a consistent set of network tariffs across the state with tighter, better targeted peak charging windows.

Our final decisions on the 5 Victorian electricity distribution businesses released in April 2021 provide that:

- standard tariff assignment rules apply – a battery connected to the grid will face the same tariffs as any other customer with similar load and connection characteristics
- assets providing a mix of regulated and unregulated services may only be tarified for the unregulated services. This will lower the cost barrier to incorporation of batteries on Victoria's distribution networks.

### **Ring-fencing guideline**

In May 2021 the AER published the draft *Electricity distribution ring-fencing guideline*. The key issues addressed in the draft guideline are ring-fencing arrangements for standalone power systems and energy storage devices (for example, community batteries). The review also considers a range of minor amendments to provide clarity to specific guideline obligations. In developing the guideline, we engaged extensively with interested parties, including a number of forums. Submissions on the draft guideline closed on 8 July 2021. The final guideline is expected in October 2021.

### **Cost pass-throughs**

Energy networks can apply to the AER to pass through to its customers, in the form of higher or lower network charges, certain material changes in costs caused by pre-defined events outside their control. These are known as cost pass-throughs.

In the past year we have approved 8 cost pass-through applications. Five of these applications were for natural disaster events, with 3 relating to costs arising from the 2019-20 bushfire season. In assessing these applications, we have used the principle that consumers should pay no more than necessary for safe and reliable energy.

Our recent revenue determinations have also recognised there is now considerable volatility in the bushfire insurance liability market. There may be circumstances where insurance coverage is not available to energy networks or commercially viable. In response, we have worked collaboratively and consulted with networks and other stakeholders to develop our *Insurance coverage guidance note*, published on 30 July 2021, to provide greater clarity on the information we would require to assess this type of cost pass-through application.

## ► CASE STUDY

### **Delivering efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services**

In March 2021 the AER published guidance to support the efficient and timely delivery of large transmission projects identified as ‘actionable’ in the Australian Energy Market Operator’s Integrated System Plans (ISPs). The guidance seeks to improve the predictability and transparency of the regulatory framework to assist stakeholders in understanding how we intend to regulate these large transmission projects. It sets out our expectations of transmission network service providers (TNSPs) and we expect it to increase confidence in TNSPs’ cost forecasts and their efficient delivery of these projects.

The *Insurance coverage guidance note* covers:

- the key considerations for the AER in assessing contingent project applications (CPAs) for actionable ISP projects and our expectations of TNSPs for planning and preparing their CPAs
- how the regulatory process can be staged for actionable ISP projects, in some circumstances, by lodging more than one CPA with the AER
- how we may apply ex-post measures when capital expenditure forecasts contain actionable ISP project costs.

The guidance note collates and builds upon our learnings from recent contingent project applications for transmission projects, the stakeholder input and feedback we received and the experiences of delivering large infrastructure projects in other sectors.

The guidance note complements and supports our existing guidelines. It will help to ensure our regulatory tools remain fit for purpose to effectively assess forecast expenditure for these projects against the criteria set out in the National Electricity Rules. This will ensure consumers pay no more than necessary for these large projects, consistent with the National Electricity Objective.



# Strategic objective 4: Use our expertise to inform debate about Australia's energy future and support the energy transition

## About this strategic objective

The National Energy Market is transitioning towards a future with significant and rapid uptake of both grid-based and distributed renewable energy resources, the closure of ageing fossil fuel dependent generation plant, and technological change that will affect how consumers engage with their energy providers. During this transition the need to protect the long-term interests of consumers has never been greater. The AER, as the independent market monitor and enforcement agency, provides strong evidence-based analysis to inform policy proposals and help ensure those proposals are effective, holistic and fit for purpose while protecting the long-term interests of consumers.

The AER brings extensive expertise on energy markets and regulation, which can inform and influence debate about Australia's energy future. We advocate for policy changes to improve the regulatory framework and enhance the interests of consumers. We do this through our relationships with all levels of government and the AER Chair's membership of the ESB. We also make submissions to AEMC policy reviews and rule change processes.

A key focus for the AER is to evaluate the impact of different design solutions on consumers, competition and our role (specifically network regulation along with monitoring and enforcing compliance with the law and rules).

## Our priorities

The AER's 'execute' priorities under strategic objective 4 are:

- Contribute to policy processes and reviews that impact on competition, customers, and the role of the AER, including AEMC rule changes.
- Provide timely and insightful contributions to the Energy Security Board and the Energy Ministers.
- Engage actively in external forums including the Utility Regulators Forum and the regulatory conference.

We also have 3 'tilt' and 3 'advocate' priorities under this strategic objective including:

- Contribute to NEM 2025 via the Energy Security Board by evaluating the impacts of new market designs on competition, consumer protections, monitoring, compliance and enforcement.
- Use consumer insights to inform input to external processes (for example, rule changes).
- Enhance our outward-looking focus by increasing engagement with external professional forums.
- Analyse the competitive positions and margins of different classes of generators through the energy transition and advocate, including through NEM 2025, for reforms or market designs that minimise the potential for the misuse of market power and ensure participant margins are consistent with a competitive market.
- Review transmission network regulation frameworks and advocate for changes that:
  - provide the AER with effective tools to assess efficient expenditure on large transmission projects
  - streamline the RIT-T (regulatory investment test for transmission) process



- drive greater competition in transmission investment planning where beneficial.
- Advocate to ensure arrangements governing DER standards are proportionate, align with the interests of consumers and do not lead to inefficient network investment.

## Performance indicators

**Table 3.25 Performance indicators for strategic objective 4**

Performance indicator	2017-18 Result	2018-19 Result	2019-20 Result	2020-21 Measure/target	Results	Met?
Attributed measured:				Proportion of AER Stakeholder survey 2021 respondents that rated the AER between 7 and 10 <sup>#</sup>		●
▪ The AER is an authoritative and trusted source of information about Australian energy markets	-	79% (83% unweighted)	-	▪ Being an authoritative and trusted source of information about Australian energy markets	87% (85% unweighted)	
▪ The AER engages effectively with its stakeholders	-	65% (68% unweighted)	-	▪ Its engagement with stakeholders overall	71% (71% unweighted)	
▪ The AER shows leadership in pursuing or promoting priority issues in the energy sector	-	56% (58% unweighted)	-	▪ Showing leadership in pursuing priority issues in the energy sector	77% (71% unweighted)	
Extent to which AER submissions to policy and rule making processes make an impact*				Annual qualitative self-assessment	The AER made submissions on a wide range of AEMC rule changes and reviews which were influential – in particular, on matters including the financeability of ISP projects, billing requirements, and arrangements during market suspension.	●
Reach of AER social media activities*				Audience growth rates and engagement metrics (Trend)	<b>AER Twitter</b> 72% increase in followers <b>AER LinkedIn</b> 156% increase in followers <b>Energy Made Easy Twitter</b> 64% increase in followers	●
Sentiment of AER media coverage*				Proportion of positive sentiment (Trend)	38% 'positive' or 'trending positive' 61% 'neutral' 1% 'negative' or 'trending negative'	●

<sup>#</sup> In 2021 the AER enhanced its stakeholder survey methodology. Changes to this methodology included weighting stakeholder groups equally, moving to a performance rating scale with greater sensitivity, different ordering of questions (creating a different framing context), changes to the phrasing of attributes/questions, and increased sample size. Full details regarding the methodology and impacts on comparing with previous results are available in the [Newgate Research report](#) on the AER website. The comparison between 2018 and 2021 should be considered indicative only.

\* New performance indicators as of 2020-21.

## Analysis of indicator results

The AER's stakeholder survey shows a positive trend with regard to stakeholders' perceptions of our engagement, being authoritative and trusted, and showing leadership. All of these indicators were rated more highly than 2018. Further results from the survey also suggest that the AER's stakeholders would welcome the AER demonstrating a long-term focus even more and using it to promote innovation even further.

During 2020–21 the AER made a range of submissions on rule changes and reviews to the AEMC. These were across a number of areas, including technical standards for distributed energy resources, the development of system strength services, distribution network access pricing, coordination of transmission and generation review, financeability of integrated system planning projects, bill contents and billing requirements, and arrangements for system security during market suspension. Our submissions, and wider engagement on these issues, have been successful in influencing the final outcome. We also successfully raised a rule change proposal governing the treatment of semi-scheduled generators in the National Electricity Market.

In reflecting upon the extent to which AER submissions to policy and rule-making processes made an impact, there are 3 examples where the impact was clear. The first of these related to the AEMC's consultation on rules changes from TransGrid and ElectraNet seeking to amend the regulatory framework to aid them in securing financing for their respective ISP projects. In the AEMC's final determination, they specifically noted that the AER's submission and analysis indicated that projects were financeable under the current regulatory framework. And, subsequently, the AEMC did not make the rule change.

The second was in the AEMC's consultation on a rule change to set out the applicability of the National Electricity Rules during periods of market suspension. We argued that providing AEMO with flexibility as to which National Electricity Rules provisions it does not need to comply with will not lead to a more optimal outcome during market suspension. The AEMC reflected points made by the AER in reaching its final decision.

The third example was in the AEMC's consultation on the 'Better Bills' rule change. We suggested that the guideline produced by us be evidenced based and informed by consumer research, testing and behavioural insights. The AEMC's final determination provides scope for the AER to include these elements in the guideline.

The AER uses a range of channels to reach our audiences, including traditional media, social media and our website. This year we saw a significant increase in our reach across these platforms:

- Most notably, there was a more than 150% increase in followers to the AER LinkedIn, from 5,334 to 13,674. The platform received 13,494 engagements, which equates to an engagement rate<sup>24</sup> of 3.7%, well above industry standard. We had a 72% increase in followers of the AER Twitter account, which equates to an engagement rate of 1.9% and the Energy Made Easy Twitter account had a 64% increase in followers, which equates to an engagement rate of 1.6%.
- We achieved a significant reach in the media. Known media mentions of the AER reached people nationally approximately 233 million times, with around 99% of coverage having positive or neutral sentiment. This means that the AER and its work was either mentioned or mentioned in a positive light.
- We had approximately 480,000 views of our corporate website. While this is slightly lower than the previous year, we saw our website subscriptions, which allow users to sign up to receive updates on specific subject matters, increase moderately.

<sup>24</sup> Twitter engagement rate above 1% is considered 'great' by industry standards. LinkedIn engagement rate above 2% is considered 'great' by industry standards.

## Outcomes achieved against strategic objective

### Actions to achieve our purpose

#### *Energy Security Board*

The AER has been contributing to the development and design of market reforms through the ESB's NEM 2025 project. The AER had input into a number of major ESB NEM 2025 publications through 2020–21, including the September 2020 NEM 2025 consultation paper, the January 2021 NEM 2025 directions paper and the April 2021 NEM 2025 options paper.

The AER's input occurs through the AER Chair's membership on the Board of the ESB as well as through engagement in the ESB's NEM 2025 working groups and policy development processes. AER engagement has focused on key areas of interest and relevance to the AER's role by evaluating the impacts of new market designs on competition, consumer protections, monitoring, compliance and enforcement. In particular, we have been engaging closely on:

- potential enhancements to the Retailer Reliability Obligation to support the right signals to drive timely investment in new resources that are an efficient mix to minimise cost and maintain reliability, and changes to better manage the exit of fossil fuel dependent generation in an orderly manner
- changes that will help to ensure the provision of essential services required to support an electricity system with greater levels of renewable generation (frequency control, operating reserves, inertia, system strength), including how these should be procured, either through markets or through structured procurement
- delivering greater benefits to customers and the system through the efficient integration of DERs (like rooftop solar, battery storage and smart appliances), including the development of governance arrangements and standards
- ensuring that customer protections evolve and remain appropriate throughout this transition
- changes that will support the reconfiguration of the transmission system so that new renewable generation and large-scale storage can connect and be efficiently dispatched to meet customer demand.

#### *Contributions to policy processes and reviews*

The AEMC is the rule maker for Australian electricity and gas markets. It makes the National Electricity Rules, National Gas Rules and National Energy Retail Rules. The AER enforces these rules and therefore actively engages in their development. In 2020–21 we made 24 submissions to the AEMC. We also made 9 submissions to other national policy and legislation making processes:

- AEMC rule change – Efficient management of system strength on the power system (draft determination) – 17 June 2021
- AEMC rule change – Access, pricing and incentive arrangements for distributed energy resources (draft determination) – 27 May 2021
- [Department of the Prime Minister and Cabinet – Regulator performance guide \(consultation paper\) – 20 May 2021](#)
- Department of Home Affairs Exposure Draft Bill – Protecting Critical Infrastructure and Systems of National Significance (Draft Critical Infrastructure Asset Definition Rules) – 14 May 2021
- [ACT Independent Competition and Regulatory Commission – Retail Electricity \(Transparency and Comparability\) Code \(draft code\) – 8 April 2021](#)
- [Department of Industry, Science, Energy and Resources – Stand-alone power systems \(rule changes\) – 6 April 2021](#)
- [Reliability Panel – Review of the Reliability Standard and Settings Guidelines \(consultation paper\) – 1 April 2021](#)

- [AEMC rule change – Implementing a general power system risk review \(draft determination\) – 18 March 2021](#)
- [AEMC rule change – Financeability of ISP projects \(draft determination\) – 5 March 2021](#)
- [AEMC review – Regulatory frameworks for metering services \(consultation paper\) – 11 February 2021](#)
- [AEMC rule change – Bill contents and billing requirements \(draft determination\) – 5 February 2021](#)
- AEMC rule change – *Prioritising arrangements for system security during market suspension* (consultation paper) – 3 February 2021
- [AEMC rule change – Connection to dedicated connection assets \(draft determination\) – 21 January 2021](#)
- AEMC rule change – Technical standards for distributed energy resources (draft determination) – 14 January 2021
- AEMC rule change – Semi-scheduled generator dispatch obligations (draft determination) – 18 December 2020
- AEMC rule change – *Generator registration thresholds* (consultation paper) – 17 December 2020
- AEMO review – 2020 *Power system frequency risk review* (draft stage 2 report) – 11 December 2020
- AEMC rule change – *Financeability of ISP projects* (consultation paper) – 3 December 2020
- Department of Home Affairs Exposure Draft Bill – Protecting critical infrastructure and systems of national significance – 27 November 2020
- AEMC review of the Retailer of Last Resort scheme (consultation paper) – 16 November 2020
- AEMC rule change – *National Energy Retail Amendment (Bill Contents and Billing Requirements) Rule* (consultation paper) – 22 October 2020
- AEMC market review – *Coordination of generation and transmission investment implementation* (interim report) – 16 October 2020
- AEMC rule change – *Integrating energy storage systems into the National Electricity Market* (consultation paper) – 15 October 2020
- AEMO issues paper – *Initial distributed energy resources minimum technical standards* – 29 September 2020
- Reliability Panel consultation paper – *System restart standard review 2020* – 18 September 2020
- Department of Home Affairs consultation paper – *Protecting critical infrastructure and systems of national significance* – 16 September 2020
- AEMC rule change – *Distributed energy resources integration – Updating regulatory arrangements* (consultation paper) – 10 September 2020
- AEMC rule change – *Maintaining life support customer registration when switching* (consultation paper) – 2 September 2020
- AEMC rule change – *System services rule changes* (consultation paper) – 11 August 2020
- AEMC rule change – *Technical standards for distributed energy resources* (consultation paper) – 27 July 2020
- [SA Department of Energy and Mining's consultation – Regulatory changes for smarter homes \(consultation paper\) – 14 July 2020](#)
- [AEMC approach paper – Electricity network economic regulatory framework review 2020 – 3 July 2020](#) (joint AER-ENA-ECA submission)

- AEMC approach paper – *Electricity network economic regulatory framework review 2020* – 2 July 2020.

### **Professional forums**

AER actively participates in external professional forums including the Utility Regulators Forum (URF). The URF was established to encourage information exchange and cooperation between New Zealand, Commonwealth, state and territory based utility regulators. This year the URF held 2 online forums where the AER presented on compliance and enforcement, including our risk-based framework and our 2021-22 priorities. The AER continues to work closely with the Essential Services Commission Victoria to share knowledge and experiences on matters of common interest. The AER also engages internationally, including through regular meetings of the International Regulatory Futures Forum discussing issues such as market design.

#### **► CASE STUDY**

##### **Victorian network tariffs evolving with customers' use of the network**

In April 2021 the AER approved the 5 Victorian electricity distributors' proposals to progress network tariff reform and better integrate distributed energy resources (DERs).

Among other reforms, updated network tariffs in Victoria will now include lower charges during the 7 am to 3 pm solar peak period to reward customers for shifting their consumption into that period, maximising the societal and network benefits from rooftop photovoltaic (PV).

In assessing the Victorian distributors' tariff proposals we worked with DER stakeholders, particularly those from the energy storage and electric vehicle (EV) sectors, to identify the opportunities and challenges that these new technologies provide.

In November 2020 we held an EV workshop, chaired by an AER Board member. At this workshop stakeholders agreed that EVs can support network operation if used the right way. We think EV owners' behaviour can be influenced through network prices, which must be cost reflective. But there is room for innovation and we were pleased to see the distributors' commitment to tariff trials to explore innovative tariff structures with EV charging stations and customers who own EVs.

Tariff structures for grid-scale batteries also attracted stakeholder interest during our assessment. Our final decision maintained the requirement for all customers using the network to contribute to covering the cost of serving their needs, including battery proponents. We expect further innovation will occur through the distributors' commitment to explore how they can reflect the costs (and reward the benefits) of different ways of using the network over the regulatory period.

We look forward to seeing the outcomes of the distributors' engagement with DER stakeholders to explore, test and refine potential structures in their tariff strategies in the next reset.



# 04

## Management and accountability







# Senior leadership

The ACCC's senior leadership comprises members of the Commission (appointed by the Governor-General) and Senior Executive Service (SES) employees.

The AER's senior leadership comprises the AER Board (appointed by the Governor-General) and SES employees who are engaged exclusively on energy matters.

Details of the leadership structure are in figure 2.1 on page 27.

## Australian Competition and Consumer Commission

During 2020–21 the ACCC had a Chair, 2 Deputy Chairs, 4 Commissioners and 7 Associate Members. Their names and appointment terms are shown in table 4.1.

**Table 4.1 ACCC members during 2020–21**

Position	Name	Appointed until
Chair	Rod Sims	31 July 2022
Deputy Chairs	Delia Rickard	26 July 2022
	Mick Keogh	29 May 2023
Commissioners <sup>#</sup>	Sarah Court	27 May 2021*
	Stephen Ridgeway	26 June 2024
	Anna Brakey	9 December 2025
	Peter Crone	9 December 2025
Associate Members	Clare Savage	13 October 2024
	Jim Cox PSM	25 June 2022
	Catriona Lowe	2 February 2025
	Eric Groom PSM	2 February 2025
	Justin Oliver	2 February 2025
	James Cameron	4 August 2021
	Nerida O'Loughlin	13 October 2022

<sup>#</sup> Commissioner Cristina Cifuentes retired on 3 July 2020.

<sup>\*</sup> Commissioner Sarah Court departed on 27 May 2021 to take up the role of Deputy Chair of the Australian Securities and Investments Commission.



## Biographies – ACCC

### Chair

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**Rod Sims**

Rod Sims was appointed Chair of the ACCC in August 2011 for an initial 5-year term, reappointed for a further 3 years in August 2016, and reappointed again for a further 3 years until July 2022, making him the longest serving Chair of the ACCC.

Rod has extensive business and public sector experience. Immediately prior to his appointment to the ACCC, he was the Chairman of the Independent Pricing and Regulatory Tribunal of New South Wales (IPART), Commissioner on the National Competition Council, Chairman of InfraCo Asia, Director of Ingeus Limited, and a member of the Research and Policy Council of the Committee for Economic Development of Australia. Rod was also a Director of Port Jackson Partners Limited, where he advised the CEOs and boards of some of Australia's top 50 companies on commercial corporate strategy over many years. Rod relinquished all of these roles on becoming Chair of the ACCC.

Rod is also a past Chairman of the NSW Rail Infrastructure Corporation and the State Rail Authority and has been a director of a number of private sector companies. During the late 1980s and early 1990s, Rod worked as the Deputy Secretary in the Department of the Prime Minister and Cabinet, responsible for economic, infrastructure and social policy and the Cabinet Office. He also worked as Deputy Secretary in the Department of Transport and Communications. Between 1988 and 1990 Rod was the Economic Advisor to Australia's Prime Minister.

Rod holds a first-class honours degree in commerce from the University of Melbourne and a Master of Economics from the Australian National University.

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### Deputy Chairs

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**Delia Rickard**

Delia Rickard was appointed to the position of Deputy Chair of the ACCC in June 2012 for a period of 5 years and reappointed for a further 5 years in July 2017. She is also an Associate Member of the Australian Communications and Media Authority.

Delia has extensive public service experience. Her passion is for consumer protection and she has worked in a variety of senior roles primarily at the ACCC and the Australian Securities and Investments Commission.

Delia sits on the ACCC's competition exemptions, communications, consumer data right, enforcement and compliance and product safety committees. She is also a member of the board for a number of ACCC market studies.

Outside work she is a trustee of the Jan Pentland Foundation, an organisation dedicated to providing scholarships for those who want to work as financial counsellors; the Chair of Good Shepherd's Advisory Committee on Financial Inclusion Action Plans; and a member of the Consumer Policy Research Centre's reference group.

Delia was awarded the Public Service Medal in 2011 for her contribution to consumer protection and financial services. She has also been awarded the Society of Consumer Affairs Professionals Lifetime Achievement Award. She holds bachelor's degrees in law and arts from the University of New South Wales.

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**Mick Keogh**

Mick Keogh was appointed to the ACCC in February 2016, and then as Deputy Chair of the ACCC in 2018, with responsibility for small business and agriculture.

Mick has a long and diverse history of involvement with the small business and agriculture sectors, including periods of employment as a business consultant, and in advocacy and advisory roles to policymakers and governments. He has also chaired a number of Australian Government inquiries and ministerial advisory boards. He is currently a member of the Australian Government's Emissions Reduction Assurance Committee and a board member of the Food Agility Cooperative Research Centre.

From 2003 to 2018, he was Executive Director of the Australian Farm Institute, an independent policy research institute that conducted research on strategic policy issues of importance to Australian agriculture and regional Australia. Mick continued in that role until his appointment as Deputy Chair of the ACCC in June 2018.

Mick was awarded the Order of Australia Medal in 2015. He holds bachelor's and master's degrees in science, both obtained at the University of New South Wales, and a Doctor of Applied Science (honoris causa) from Charles Sturt University.

Mick's role at the ACCC includes involvement in a range of committees, as well as oversight of the small business, franchising and agriculture units of the ACCC.

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## Commissioners

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**Sarah Court**

Sarah Court was appointed a Commissioner of the ACCC in May 2008 and reappointed for a third term in 2018. Sarah left the ACCC on 27 May 2021 to commence a role as the Deputy Chair of the Australian Securities and Investments Commission.

Sarah is a former senior executive lawyer with the Australian Government Solicitor, with extensive experience in Commonwealth legal work, including restrictive trade practices, consumer protection and law enforcement litigation.

Until her departure from the ACCC in May 2021, Sarah oversaw the ACCC's enforcement and litigation program and was chair of the Commission's Enforcement Committee, Compliance Committee, Consumer Data Right Committee and Legal Committee. She also sat on the Merger Review Committee and the Competition Exemptions Committee. She was also an Associate Commissioner of the New Zealand Commerce Commission.

Sarah holds a Bachelor of Arts (Jurisprudence) and a Bachelor of Law (Honours) from the University of Adelaide, as well as a Graduate Diploma in Legal Practice from the Australian National University. She is a Fellow of the Australian Institute of Company Directors.



**Peter Crone**

Peter Crone was appointed a Commissioner of the ACCC in December 2020.

Peter has more than 30 years of experience in economic policy and commercial strategy at the highest levels of government and business in Australia. He has served as an adviser to state and federal governments, including as Senior Economic Advisor to Australia's Prime Minister from 1997 to 2006, and filled chief economist roles at the Business Council of Australia, Ernst & Young, and Coles Group.

Peter has also been a commercial adviser to a number of superannuation funds on infrastructure investments and commenced his career at the Department of the Treasury as a policy adviser and research economist.

Peter brings deep experience in assessing and explaining economic and regulatory trends at play across markets and industries. His broad experience reflects the economy-wide remit of the ACCC.

Peter chairs the ACCC's Consumer Data Right Committee and is a member of the Communications Committee, the Compliance and Product Safety Committee, the Mergers Review Committee, Digital Platforms Inquiry Board and the Financial Services Competition Board.

Peter holds a Master of Economics from the Australian National University and a Bachelor of Economics (Honours) from the University of Western Australia. He is also a Graduate of the Australian Institute of Company Directors.



**Stephen Ridgeway**

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Stephen Ridgeway was appointed a Commissioner of the ACCC in June 2019. Stephen brings a wealth of experience from his previous roles as a lawyer in the private and public sectors. He is widely recognised as one of Australia's leading competition and consumer lawyers and an expert in the field.

In 2018 Stephen retired as a senior partner at King & Wood Mallesons.

Early in his career, Stephen acted for the ACCC and its predecessor, the Trade Practices Commission, in enforcement litigation as a senior lawyer with the Australian Government Solicitor. Since joining private practice in 1998, Stephen has had extensive involvement in merger clearance applications in a wide variety of industries, including energy and telecommunications. He also has extensive experience in regulatory enforcement actions, including a number of landmark ACCC enforcement matters in recent years.

During 2011 and 2012 Stephen was National Chairman of the Competition and Consumer Committee of the Law Council of Australia, and led consultations with the ACCC and Treasury about policy and enforcement matters. He was a member of the Executive Committee of the Business Law Section of the Law Council of Australia from 2016 to 2018.

Stephen chairs the ACCC's Merger Review and Competition Exemptions Committees, and is a member of the ACCC's Enforcement Committee, Communications Committee and Agriculture Board.

Stephen holds a Bachelor of Science (Honours) from the University of New South Wales and a Bachelor of Laws from the Australian National University.

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**Anna Brakey**

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Anna Brakey was appointed a Commissioner of the ACCC in December 2020. She is also an Associate Member of the Australian Communications and Media Authority.

Anna has extensive experience in regulatory economics and public policy, with over 25 years of experience working with regulators, with government and in the private sector. She has had broad exposure to a wide range of infrastructure industries, including energy, water and transport. She has also worked on economic reform to social policy.

Prior to starting at the ACCC, Anna worked as an economist at Frontier Economics and held a number of roles at the Independent Pricing and Regulatory Tribunal (IPART), including being a Deputy Tribunal Member, the Executive Director of Strategy and Economic Analysis and the Chief Operating Officer. Anna's expertise includes the parliamentary committee process, the New South Wales Department of Transport, the Australian Productivity Commission, the Bureau of Industry Economics and the Australian Bureau of Statistics. Additionally, Anna has worked for the Australian Energy Market Commission on reforms to economic regulation and with the New South Wales Treasury on the sale of assets.

Anna chairs the ACCC's Infrastructure Committee, Communications Committee, Electricity Markets Inquiry Board and East Coast Gas Market Board, and is a member of the ACCC's Competition Exemptions Committee and Agriculture Board.

Anna holds a Bachelor of Economics from the Australian National University and a Graduate Diploma of Applied Finance and Investment from the Securities Institute of Australia. She is also a Graduate of the Australian Institute of Company Directors.

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# Australian Energy Regulator

The AER Board has 5 members, including the Chair, Clare Savage, and the Deputy Chair, Jim Cox.

**Table 4.2 AER Board members during 2020-21**

Position	Name	Appointed until
Chair	Clare Savage	13 October 2024
Deputy Chair	Jim Cox PSM <sup>#</sup>	25 June 2022
Members	Catriona Lowe	2 February 2025
	Eric Groom PSM	2 February 2025
	Justin Oliver	2 February 2025

<sup>#</sup> Jim Cox has been a Board member since 2013. He was formally appointed Deputy Chair from 26 June 2020.

## Biographies – AER

### Chair



**Clare Savage**

Clare Savage was appointed Chair of the AER in September 2019.

Over the last 19 years, Clare has acquired significant leadership experience in the Australian energy industry and has worked extensively on a range of energy-related matters.

Before joining the AER, Clare was Deputy Chair of the Energy Security Board.

Other previous roles include Executive Director, Policy, Energy and Climate Change, at the Business Council of Australia; senior executive positions within EnergyAustralia spanning corporate strategy, business development, policy, public and government affairs; and several roles at the Energy Supply Association of Australia, including Chief Executive Officer.

Clare began her career in the public service – initially in the UK and then at the Department of the Treasury.

Clare has a Bachelor of Commerce (Economics) and a Bachelor of Arts (Politics and History) from the University of Melbourne.

### Deputy Chair



**Jim Cox PSM**

On 26 June 2020 Jim Cox was appointed as the Deputy Chair of the AER Board for a 2-year term.

Prior to this appointment, Jim had been reappointed as a full-time state/territory member of the AER Board in May 2017 for a further 3-year term. He was initially appointed in an acting capacity in September 2013. He was confirmed in the role for 3 years from 26 June 2014.

Jim has held positions with the Reserve Bank of Australia, the Department of the Prime Minister and Cabinet and the Social Welfare Policy Secretariat of the Department of Social Security. He was a principal economist at the Office of the Economic Planning Advisory Council between 1986 and 1989. Between 1989 and 1992 he was a consultant to the New South Wales Cabinet Office. Jim was Principal Adviser to the Government Pricing Tribunal of New South Wales from 1992 and was a member of IPART from January 1996 to September 2013. He was Acting Chairman of IPART in 2004, 2009–10 and 2011 and a visiting fellow at Monash University in 1985.

Jim assisted the New Zealand Government with social policy changes during the early part of 1991.

Jim has also written extensively on economic and social policy issues. This work has been published by, among others, the New Zealand Business Roundtable and the Centre for Independent Studies.

Jim was awarded the Public Service Medal in the Australia Day honours list in 2011 for outstanding public service to IPART.

## Members

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**Catriona Lowe**

Catriona Lowe was appointed a member of the AER Board in February 2020.

Before joining the AER she was a non-executive director on range of boards, including the Australian Financial Complaints Authority, the Financial Adviser Standards and Ethics Authority and the Telecommunications Industry Ombudsman. She was also principal of a consumer-focused consulting practice.

Catriona has over 20 years of experience in litigation and consumer advocacy. She was Co-CEO of the Consumer Action Law Centre from 2006 to 2013. She has also held senior roles with the Consumers' Federation of Australia and the ACCC.

Catriona has worked extensively on relevant matters, including consumer-focused regulation, behavioural economics and effective enforcement and compliance. She has advocated for consumers across a range of markets, including financial services, telecommunications and energy.

Catriona has a Bachelor of Laws from Northern Territory University (now Charles Darwin University).

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**Eric Groom PSM**

Eric Groom was appointed a member of the AER Board in February 2020.

Before joining the AER Eric was a senior advisor at Cambridge Economic Policy Associates (CEPA) and consultant to the World Bank. He was also a member of the AER's Consumer Challenge Panel. He has over 35 years of experience as an economist with a focus on regulation, energy efficiency and greenhouse gas emission reduction.

Eric formerly held senior roles at IPART and the World Bank and has managed price reviews in electricity, gas and water.

Eric has worked extensively on a range of relevant energy matters and in 2015 was awarded the Public Service Medal for his contribution to the development of regulation and reduction in greenhouse gas emissions through the Greenhouse Gas Reduction Scheme and Energy Savings Scheme.

Eric has a Bachelor of Economics (Honours) from Sydney University and a Master of Economics from Macquarie University.

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**Justin Oliver**

Justin Oliver was appointed a member of the AER Board in February 2020.

Justin was formerly a partner of MinterEllison, specialising in competition law and energy regulation. Before joining MinterEllison he was the head of the ACCC's regulatory law practice, advising on all aspects of energy, communications and transport regulation, and he became the head of legal for the AER upon its creation in 2005. Justin has also worked as a senior lawyer in the Victorian Department of Premier and Cabinet.

For 2 decades, Justin has acted for governments, regulators and industry participants involved in all parts of Australia's energy sector. He has worked extensively on a range of relevant issues, including gas pipeline access arrangements and electricity network determinations; energy policy reform; and a range of compliance and enforcement issues under laws governing the operation of wholesale energy markets, energy networks and energy retail businesses.

Justin holds a Bachelor of Economics and Bachelor of Laws (Honours) from Monash University.

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# Managing the ACCC and AER

## Committees

The decision-making functions of the ACCC and AER are supported by the agency's committee framework, which comprises statutory committees and corporate governance committees. The ACCC and AER governance structure is shown in figure 4.1.

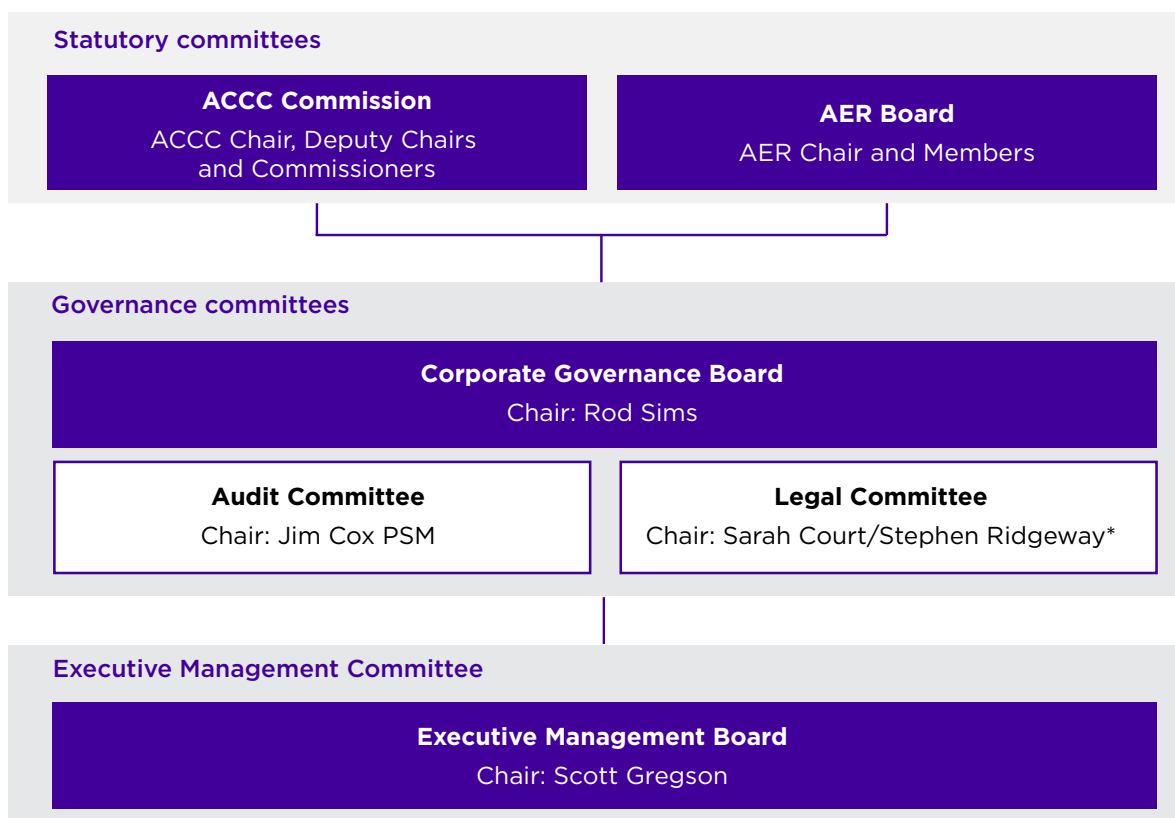
The ACCC makes statutory decisions through the Commission, aided by specialist subject-matter committees, called Commission subcommittees, comprising subgroups of Commissioners (see figure 4.2) and inquiry project boards.

The AER makes its decisions through its Board. In 2020–21 the AER established 4 subject matter committees: Markets Committee, Networks Committee, Policy and Governance Committee and Enforcement and Compliance Committee. The committees do not make statutory decisions. They are designed to be less formal than the Board and provide the opportunity for early and open discussion of issues.

The agency is governed and its administration is overseen by governance committees.

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

**Figure 4.1 ACCC and AER governance structure**



\* Stephen Ridgeway commenced as the new chair of the Legal Committee in June 2021.

## Statutory committees

### Commission

The Commission meeting is the forum in which the ACCC exercises its decision-making role under the CCA. Matters presented to the Commission for decision include mergers, authorisations and notifications; whether to begin court proceedings; whether to accept enforceable undertakings; and decisions about access to infrastructure facilities.

The requirements for Commission meetings are contained in s 18 of the CCA.

The Commission is also discussed on page 26 under 'About the ACCC and the AER'.

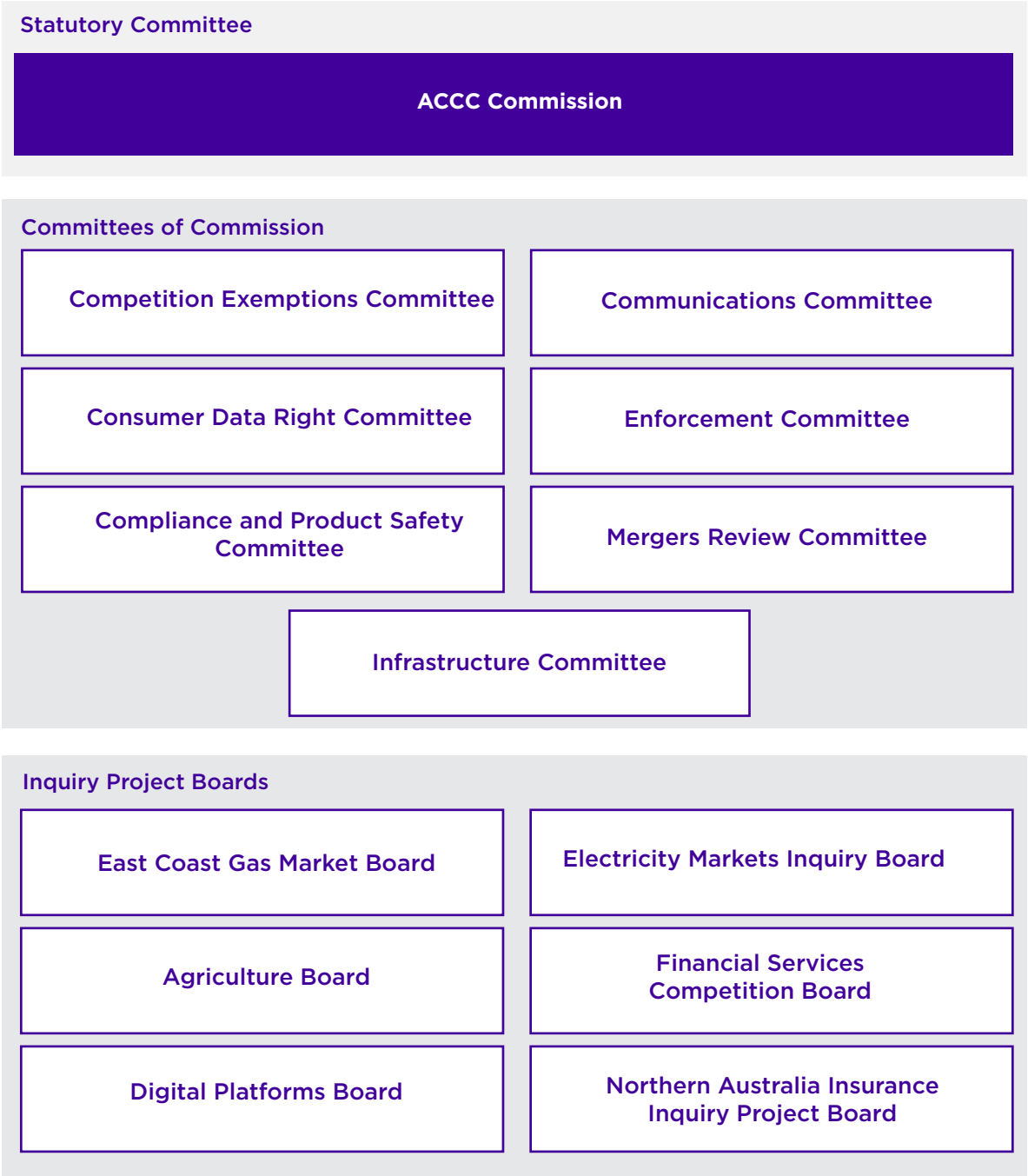
### *Commission subcommittees*

The Commission is supported by several subject-specific subcommittees, which help streamline the Commission's decision making. Each subcommittee comprises full-time members and associate members who have expertise on the particular subjects that the subcommittee considers. Table 4.3 provides a brief explanation of each subcommittee.

### *Inquiry project boards*

Under the CCA, the ACCC can be directed to undertake in-depth inquiries into certain matters and/or long term monitoring activities into particular sectors. Inquiry project boards have been established to provide strategic guidance in relation to these inquiries.

Figure 4.2 ACCC operational committees during 2020–21





**Table 4.3 Commission subcommittees – roles and membership as at 30 June 2021**

<b>Committee</b>	<b>Members</b>	<b>Purpose</b>
Competition Exemptions Committee	Stephen Ridgeway (Chair), Mick Keogh, Delia Rickard, Anna Brakey, Rod Sims.	<p>The committee considers authorisation applications, significant notifications of exclusive dealing and collective bargaining conduct, and significant certification trade mark applications. It subsequently refers all applications for authorisation to the Commission for decision.</p> <p>It sits as a division of the Commission under s 19 of the CCA.</p>
Communications Committee	<p>Anna Brakey (Chair), Delia Rickard, Rod Sims, Peter Crone, Eric Groom.</p> <p>Associate members: Nerida O'Loughlin, James Cameron.</p>	<p>The committee considers regulatory and competition issues arising in the communications sector and refers major statutory matters to the Commission for decision.</p> <p>It sits as a division of the Commission under s 19 of the CCA.</p>
Consumer Data Right Committee	Peter Crone (Chair), Delia Rickard, Stephen Ridgeway, Rod Sims.	<p>The committee oversees the ACCC's role in the implementation and enforcement of the government's Consumer Data Right, including the accreditation of participants and the granting of exemptions.</p> <p>It sits as a division of the Commission under s 19 of the CCA.</p>
Enforcement Committee	Rod Sims (Chair), Stephen Ridgeway, Mick Keogh, Delia Rickard.	The committee oversees the ACCC's enforcement program to ensure compliance with and enforcement of the CCA. Its recommendations are referred to the Commission for decision.
Compliance and Product Safety Committee	Delia Rickard (Chair), Mick Keogh, Peter Crone.	The committee sets the policy and strategic direction for the ACCC's contacts (for example, through the Infocentre) and compliance and product safety functions; makes decisions about policy recommendations, law reform proposals and the exercise of relevant statutory powers and functions; and oversees the strategic compliance and education functions that relate to consumer, small business and product safety programs.
Infrastructure Committee	Anna Brakey (Chair), Jim Cox PSM, Rod Sims.	The committee oversees access, price monitoring, transport and water regulatory issues.
Mergers Review Committee	Stephen Ridgeway (Chair), Mick Keogh, Peter Crone, Rod Sims.	The committee considers whether proposed mergers and acquisitions are likely to substantially lessen competition. Decisions to oppose a merger or to accept an undertaking to remedy competition concerns are referred to the Commission.

## AER Board

The AER has its own Board which is an independent statutory entity. Board members are appointed under Part IIIA of the CCA, following a process outlined in the Australian Energy Market Agreement. The Board now comprises 2 Commonwealth members and 3 state/territory members. One member is appointed as the Chair and another member is appointed as the Deputy Chair.

The Board meeting is the forum in which the AER exercises its decision-making role under its statutory powers. During these meetings, the Board also provides strategic guidance and direction and oversees the AER's performance.

From July 2020 the Board has been supported by 4 subject-specific committees (Policy and Governance, Networks, Compliance and Enforcement, and Markets) to provide the opportunity for timely strategic direction and informal discussion between Board members and staff.

The Board is also supported by staff who are engaged exclusively on energy matters. It also has access to the ACCC's specialist legal and economic staff.

The Board is further discussed on page 26 under 'About the ACCC and the AER'.

### **AER subject-matter committees**

The AER has 4 subject-matter committees. Each is chaired by a member of the Board and meets fortnightly.

The committees are less formal than the AER Board and designed as forums for staff to seek early feedback and direction on work in progress prior to papers being submitted to the Board for formal decision.

After seeking staff feedback in early 2021, the Committees will continue with further clarity on their scope and purpose and enhancements to their processes. The Policy and Governance Committee will become a policy-only committee, with AER governance matters considered in a separate forum.

**Table 4.4 Subject-matter committees of the AER – roles and membership as at 30 June 2021**

Committee	Membership	Purpose
Markets Committee	Justin Oliver (Chair), Eric Groom PSM, Catriona Lowe, Clare Savage.	The committee is focused on market entry, exit and structure; wholesale and retail markets; and market performance, including reporting frameworks, publications and intelligence/surveillance.
Networks Committee	Eric Groom PSM (Chair), Jim Cox PSM, Catriona Lowe.	The committee is focused on the efficient regulation of monopoly infrastructure and incentivising networks to become platforms for energy services.
Policy and Governance Committee	Jim Cox PSM (Chair), Eric Groom PSM, Catriona Lowe, Justin Oliver, Clare Savage.	The committee provides strategic oversight and coordination of AER policy positions and advocacy and monitors aspects of the AER's operational performance. (In 2021–22 it will focus solely on the AER's contribution to external policy issues).
Enforcement and Compliance Committee	Catriona Lowe (Chair), Jim Cox PSM, Justin Oliver.	The committee is focused on compliance with and enforcement of the Energy Laws and Rules.

# Corporate governance

The ACCC and AER corporate governance framework provides oversight of the agency's planning, performance, financial management, resource management and accountability.

The corporate governance framework consists of 2 types of committees:

- governance committees
- executive management committees.

## Governance committees

### Corporate Governance Board

The Corporate Governance Board is at the apex of the corporate governance structure. It meets at least 10 times each year. The Audit Committee and Legal Committee support its work. The Corporate Governance Board, aided by these committees and by executive management committees, is well equipped to oversee our strong corporate and financial performance.

The responsibilities of the Corporate Governance Board include:

- strategy setting and corporate planning
- internal budgets and resource management
- performance monitoring and reporting
- risk oversight and management
- agency accountability.

Members: Rod Sims (Chair), AER Chair or nominated representative, ACCC Deputy Chairs, AER Deputy Chair, all other ACCC Commissioners, and Chair of the Audit Committee (for so long as this role is filled by an ACCC Commissioner or AER Board member).

### Legal Committee

The Legal Committee meets monthly and oversees the ACCC/AER's processes and systems, including:

- overseeing and forecasting the agency's pipeline of investigations and cases and the resulting legal and related expenditure, within its budget, and ensuring accurate information and forecasts relating to legal expenditure are provided monthly to the Corporate Governance Board
- advising the Corporate Governance Board on the effectiveness of our internal enforcement and specialist legal, economic and data resourcing, coupled with our external legal services panel arrangements, to best meet the needs of the ACCC and AER
- providing advice generally to the Corporate Governance Board on the ACCC/AER's policies, processes and systems that relate to its standing and capacity as an agency that uses litigation and refers briefs for criminal prosecution as key regulatory tools
- providing oversight of, and input into, some of the agency's decision making in relation to potential law reform.

Members: Stephen Ridgeway (Chair), Chief Operating Officer, senior managers.

## Audit Committee

The ACCC and AER Audit Committee provides independent advice and assurance to the Accountable Authority (the ACCC Chair) through the Corporate Governance Board. Its functions are to review, report on and provide advice on the ACCC/AER's financial reporting, performance reporting, risk oversight and management, and system of internal control. The committee provides an annual written statement to the Chair setting out its views about these 4 areas. It meets 4 times per year, as well as holding an additional meeting focusing on the ACCC/AER's financial statements. The committee also attends a meeting of the Corporate Governance Board at least once per year.

**Table 4.5 Audit Committee**

Member name	Qualifications, knowledge, skills or experience	Number of meetings attended/ total number of meetings	Total annual remuneration (GST inc.)	Additional information
Jim Cox PSM (Chair, to 30 June 2021)	Qualifications in economics and extensive experience in infrastructure regulation, economics and public policy.  Senior executive roles in state and federal government including with the Reserve Bank of Australia, the Department of the Prime Minister and Cabinet, and the Department of Social Security, as well as being a member of the New South Wales Independent Pricing and Regulatory Tribunal (IPART).  AER Board member since 2013 and appointed AER Deputy Chair in 2020.	5/5	\$0	As an AER Board member, did not receive additional remuneration for chairing the Audit Committee
Kathy Grigg (independent member)	Qualifications in economics and accounting.  Senior executive positions in various entities including as Chief Financial Officer. Fellow of the Australian Institute of Company Directors and the Australian Society of Certified Practising Accountants.  Experienced non-executive director across commercial and government entities. Significant experience as a board chair and chair of audit, risk and compliance committees.	5/5	\$16,610	Appointed to the ACCC and AER Audit Committee commencing 1 August 2018, renewed for a further 2 years commencing 1 August 2020

Don Cross (independent member, Chair from 1 July 2021)	<p>Qualifications in accounting, business administration and fraud control, with strong risk management, audit and financial management expertise.</p> <p>Member of the Australian Institute of Company Directors and the Australian Society of Certified Practising Accountants and fellow of the Institute of Chartered Accountants Australia and New Zealand. Partner with KPMG for 21 years.</p> <p>Extensive experience delivering internal audit and assurance services to the public sector. Currently a member or chair of a number of Federal Government Department and Agency Audit Committees.</p>	5/5	\$16,555	Appointed to the ACCC and AER Audit Committee commencing 1 June 2020, and as Chair commencing 1 July 2021
Paula Goodwin (member from 1 June 2021)	<p>Masters level qualifications in National Security Policy Studies, Human Resources and Business Administration.</p> <p>Senior executive public sector experience includes First Assistant Secretary, People, at the Department of Immigration and Border Protection; Chief Operating Officer at the Department of Energy and Environment; and First Assistant Secretary at the Department of Agriculture, Water and Environment.</p> <p>Current role is Group Executive, Enterprise Services, at the Bureau of Meteorology.</p>	0/0#	\$0	Appointed to the ACCC and AER Audit Committee commencing 1 June 2021

# There was no Audit Committee meeting during June 2021.

The Audit Committee's terms of reference are published on the ACCC website at [www.accc.gov.au/about-us/australian-competition-consumer-commission/accountability#audit-committee](http://www.accc.gov.au/about-us/australian-competition-consumer-commission/accountability#audit-committee).

## Executive management committees

The ACCC has a number of executive management committees that support the governance committees and help to ensure that the organisation is managed effectively.

### Executive Management Board

The Executive Management Board manages the organisation in line with the expectations and limitations set by the Accountable Authority (the ACCC Chair) and the Corporate Governance Board.

Members: Chief Operating Officer (Chair), ACCC Executive General Managers, AER Chief Executive Officer, Chief Information Officer, Chief Financial Officer, General Manager Executive and Governance, General Manager People and Culture, and General Manager Strategic Communications.

The Executive Management Board is supported by subcommittees, led by senior managers that provide advice to it as required.

## Corporate and business plans

The ACCC and AER Corporate Plan 2020-21 meets the requirements of the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act) and Public Governance, Performance and Accountability Rule 2014, as well as our obligations under the Regulator Performance Framework.

To achieve our purpose, each division of the agency develops an annual business plan that aligns our operations and risk management with the strategic objectives and priorities set out in the [Corporate Plan](#) available on the ACCC website.

## Internal audit and risk

### Internal audit

The ACCC/AER's internal audit function provides assurance that we are meeting our obligations and adds value to the management and governance of our operations.

The ACCC and AER Internal Audit Strategy and Plan sets out a 4-year internal audit work program. This plan is reviewed annually with the oversight of the Audit Committee and is approved by the Corporate Governance Board. Audit topics are selected with reference to areas of significant risk and to ensure that all major functions, systems and divisions are audited on a regular basis.

The following internal audits were conducted during 2020-21:

- the agency's monitoring of compliance with enforceable undertakings
- the agency's ICT security governance.

### Risk management

Risk management is a key element of our strategic planning, decision making and business operations. The ACCC and AER aim for best practice in managing risk by identifying priority exposures, addressing them through improvement strategies and contingency planning, and monitoring and reviewing continuing risk.

The ACCC and AER Risk Management Framework has been established to deliver on our obligations under the PGPA Act and developed in accordance with the Commonwealth Risk Management Policy.

This framework formalises our risk management practices, sets out our risk appetite and tolerance statement, and details policies and strategies to strengthen risk culture and review risk management performance. It covers the agency's strategic risks, as well as agency-wide and operational risks that sit across and within the agency's business units.

In 2020-21, with the support of Comcover, the ACCC and AER had Deloitte undertake a survey of the agency's risk culture. The findings from the survey will guide our forward work program to continue to improve and enhance the agency's risk management.

## Business continuity

Business continuity management strengthens business resilience, lessening the likelihood of incidents that adversely affect ACCC and AER operations and minimising the impact if such incidents occur.

The ACCC and AER Business Continuity Plan was created in April 2017 following a substantial review of the business continuity framework. The plan is regularly reviewed, tested and updated to ensure it continues to meet the needs of the agency.

We activated our Business Continuity Plan in March 2020 to response to the COVID-19 pandemic by establishing a Pandemic Response Team to oversee and coordinate the necessary changes to our business operations.

In February 2021 we conducted an evaluation of the agency's pandemic response, which found that the Business Continuity Plan and Pandemic Response Team were very effective and were critical to the agency's overall effective response to the COVID-19 business interruption event.

## Fraud control

The ACCC and AER Fraud Control Plan 2019–23 directs the agency's approach to fraud prevention, detection, investigation, reporting and data collection procedures in a way that meets our specific needs and complies with the PGPA Act and the Commonwealth Fraud Control Guidelines. The plan was last updated in August 2019 and will be reviewed every 2 years to ensure it continues to meet the needs of the agency.

## Ethical standards

### Conflicts of interest

The ACCC and AER take our ethical standards seriously in seeking to maintain the public's confidence in our integrity and that of our employees. Given that we often investigate misrepresentation of information or unconscionable business conduct and determine charges that impact on the cost of living, it is vital that we maintain the trust of the Australian people, government and businesses.

To maintain confidence in our integrity, the ACCC and AER have strict procedures to identify and manage any interests that may cause an actual or perceived conflict of interest. As part of assessing the effectiveness of our internal controls the ACCC is undertaking a project reviewing our conflict of interest framework. The project aims to identify and implement enhancements to our business processes and procedures for overseeing and managing conflicts of interest.

As statutory office holders, ACCC Commissioners and AER Board members are held to high standards of conduct. These standards arise from the high ethical standards we set ourselves and are backed by legislation, codes of conduct and the common law. The [Code of Conduct for Commission Members and Associate Members](#) is available on the ACCC website.

ACCC Commissioners and AER Board members must provide an annual statement of material personal interests and not participate in matters in which they, or a member of their immediate family, may have an actual or perceived conflict of interest. ACCC Commissioners and AER Board members are also required to disclose interests not previously declared.

The ACCC and AER employee conflict of interest policy provides for all perceived and actual conflicts of interest, and agreed actions to manage any conflicts, to be recorded in an online form for each employee. The policy also provides for reporting on completion of the conflict of interest forms to senior management.

The agency has a gifts and hospitality policy for ACCC Commissioners, AER Board members and employees. The ACCC publishes a gifts register, which is updated quarterly for Commissioners and AER Board members.

ACCC Commissioners, AER Board members and employees cannot accept gifts or hospitality, because acceptance could compromise, or be seen to compromise, the organisation's integrity. In some limited circumstances, employees are able to accept hospitality or gifts (for example, small gifts offered as thanks for delivering a speech at a conference). To ensure transparency, gifts valued at over \$50 must be formally declared and approval must be obtained before the gift can be retained.

## Environmental sustainability

The ACCC and the AER remain committed to the development of best practice in environmental sustainability and performance. We established an internal Environment Network to explore ways the organisation and its employees can contribute to sustainability and environmental objectives. Our environmental strategies to improve sustainability and performance are consistent with government sustainability policies. This includes principles set out in the Australian Government ICT Sustainability Plan 2010–2015, which still has relevance as a guide to minimising the impact of our operations on the environment.

### Mandatory environmental reporting

The ACCC and the AER are required to report annually on their environmental performance under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). This is covered in full in Appendix 6.

We adhere to the Energy Efficiency in Government Operations Policy, the Australian Government ICT Sustainability Plan 2010–2015, and the National Packaging Covenant, using recommended key performance indicators to meet requirements.



# External scrutiny

As an Australian Government agency, the ACCC and AER are held to account for their activities by a variety of external bodies, including:

- courts
- tribunals
- parliament
- agencies with administrative oversight, including the Commonwealth Ombudsman.

Collectively these bodies have the power to scrutinise and review our decisions and work, conduct inquiries, and either overturn or uphold decisions of the ACCC and AER or make orders or recommendations for change. Each year the ACCC/AER reports on its interaction with these bodies to ensure transparency on external scrutiny.

## Judicial decisions

There were no judicial review decisions in respect of decisions made by the ACCC or AER in 2020–21.

There were no other types of judicial decisions made during the period that have had, or may have, a significant effect on the agency's operations.

## Administrative Appeals Tribunal

There were no decisions by the Administrative Appeals Tribunal in respect of decisions made by the ACCC or AER in 2020–21.

## Australian Competition Tribunal

Three ACCC authorisation decisions were before the Australian Competition Tribunal during the year:

- **Flexigroup Limited application for review of the ACCC authorisation of the New Energy Tech Consumer Code:** Flexigroup, a 'buy now, pay later' (BNPL) provider, sought Tribunal review of the ACCC's determination to authorise the New Energy Tech Consumer Code, seeking to have the ACCC's conditions relating to BNPL finance replaced with less stringent consumer protection requirements and removal of the prohibition on BNPL finance being offered with unsolicited sales of new energy tech products.

In September 2020 the Tribunal varied the conditions of authorisation in relation to the requirements that BNPL finance providers must meet in order for signatories to offer such finance arrangements under the New Energy Tech Consumer Code, and imposed a condition removing the prohibition on BNPL finance being offered in unsolicited sales of new energy tech.

The varied conditions also remove the code administrators' ability to impose mandatory standards on signatories that would apply to future new energy tech products and services.

More information about this application is available from the [ACCC's website](#).

- **Port of Newcastle's application for review of the ACCC authorisation of collective bargaining by the NSW Minerals Council and mining companies:** As at 30 June 2021 this matter is before the Tribunal and the ACCC determination has not come into effect. More information about this application is available from the [ACCC's public register](#).

- [Australian Dairy Products Federation Inc](#) application for review of the ACCC authorisation of the 'Fair Go Dairy' licensing scheme for processors of milk and dairy products: As at 30 June 2021 this matter is before the Tribunal and the ACCC determination has not come into effect. More information about this application is available from the [ACCC's public register](#).

There were no AER matters before the Australian Competition Tribunal during 2020–21.

## Parliamentary scrutiny

The ACCC and AER are required to regularly attend hearings of the standing committees on economics of both the House of Representatives and the Senate as part of the annual governance, performance and accountability cycle. This provides the opportunity for parliament to examine the operations of the agency and plays a key role in parliamentary scrutiny of the executive.

There were no significant findings regarding the operations of the ACCC and AER in the committees' reports in 2020–21.

Following publication of the Australian National Audit Office (ANAO) performance audit report *Regulation of the National Energy Market* (see 'Australian National Audit Office' below), the AER appeared before the Joint Committee of Public Accounts and Audit inquiry Regulatory Activities: Inquiry into Auditor-General's Reports 33, 47, 48 (2019–20) and 5 and 8 (2020–21) on 4 March 2021.

## Agency capability reviews

There were no ACCC/AER agency capability reviews in 2020–21.

## Australian National Audit Office

In March 2019 the ANAO commenced a performance audit to determine whether the AER is effectively regulating the National Energy Market. The final audit report, *Regulation of the National Energy Market*, was published on 3 September 2020. See the AER analysis of performance on page 123.

## Office of the Merit Protection Commissioner

No application for review of an ACCC or AER decision was made to the Office of the Merit Protection Commissioner in 2020–21.

## Office of the Australian Information Commissioner

The Office of the Australian Information Commissioner includes the Australian Information Commissioner and the Privacy Commissioner.

### Privacy

In 2020–21 the Privacy Commissioner considered 2 privacy complaints in relation to the ACCC/AER.

### Freedom of information

In 2020–21 the Australian Information Commissioner considered 2 decisions made by the ACCC and no decisions made by the AER under the *Freedom of Information Act 1982* (Cth) (FOI Act).

Agencies operating under the FOI Act must publish information for the public as part of the Information Publication Scheme. This requirement has replaced the former requirement to publish a statement in the annual report. Each agency's website must include a plan that shows the information it publishes in accordance with the scheme's requirements. The ACCC and AER's Information Publication Scheme statement pursuant to Part II of the FOI Act can be found on the ACCC's website under [Freedom of information](#).

## Commonwealth Ombudsman

The Commonwealth Ombudsman can investigate complaints made about our activities, including those made under the Service Charter of the [ACCC](#) or [AER](#). The Ombudsman's jurisdiction arises under the *Ombudsman Act 1976* (Cth). It can resolve disputes through consultation or negotiation or by making recommendations.

The Commonwealth Ombudsman did not issue any reports in relation to the operations of the ACCC/AER during the relevant period.

Under the *Telecommunications (Interception and Access) Act 1979* the Ombudsman has an overarching role in assessing agencies' compliance with preserving and accessing stored communications and accessing telecommunications data. In 2020–21 the Ombudsman conducted inspections of the ACCC's record keeping in relation to stored communications warrant records and telecommunications data requests, to assess compliance with that legislation. The Ombudsman did not identify any significant noncompliance issues, and the ACCC has taken steps to rectify all issues raised by the Ombudsman.

## Australian Commission for Law Enforcement Integrity

Since 1 January 2021 the [Australian Commission for Law Enforcement Integrity](#) (ACLEI) has been able to consider, and potentially investigate, alleged corruption issues that relate to the performance of a law enforcement function of the ACCC or AER. ACLEI's jurisdiction arises under the *Law Enforcement Integrity Commission Act 2006* (Cth) (LEIC Act) and the Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020, which have been incorporated into the Law Enforcement Integrity Commission Regulations 2017.

In 2020–21 the ACCC did not notify ACLEI of any allegation, or information, raising a corruption issue in relation to the agency under s 19(1) of the LEIC Act. ACLEI provided corruption prevention training to senior ACCC enforcement staff and the ACCC conducted a high-level review of its integrity framework. The agency is implementing a number of changes to strengthen its ability to prevent and detect conduct that falls short of the standards expected of public servants. The ACCC will continue to identify further opportunities to improve its systems and seek to embed a culture to support and promote integrity and ensure any integrity-related concerns are reported through relevant channels in a timely manner.

# Our people

## Talent

During 2020–21 our talent priorities focused on continuing to expand our learning and development programs, adjusting our graduate program to support a remote workforce, enhancing performance feedback and career conversations, and facilitating the SES talent pool process to identify individuals to act in SES Band 1 roles for up to 12 months.

### Building on learning and development

COVID-19 allowed the Learning and Development team to fast-track and embed a strategic shift from a default of face-to-face to a default of virtual training delivery. The Frontline Managers Program and Future Leaders Program switched to virtual workshop delivery, and the rapid introduction of LinkedIn Learning provided employees with access to a huge range of online courses. The shift to virtual allows much greater equity of access to training, reduces cost and travel time, and increases access to just-in-time learning.

In January 2021 we launched a new learning management system to store training and manage logistics, freeing resources to work with divisions to build localised training offerings.

In March 2021 we launched the last of the key programs in our new leadership development suite. The program now extends from practical management through leadership development for junior APS level to SES employees. We have also commenced work on a comprehensive digital and data program as part of our core skills development program.

### SES talent pool

The SES talent pool was an innovative program that assessed high-performing Executive Level 2 (EL 2) employees' suitability for senior leadership roles and provided them with feedback to prepare a customised development plan.

The program provided a consistent way to assess the leadership capabilities required for SES Band 1 roles. The assessment included applicants working with their SES managers to rate their behaviours against those required at SES level; a sophisticated psychometric assessment that included an individual debrief with an organisational psychologist; and a panel interview. As well as supporting people to identify opportunities to include in their development plans, the assessment established a pool of applicants to draw upon to fill temporary SES Band 1 opportunities.

Aggregated information from the SES talent pool also provided insight as to the collective bench strength for our SES positions. The cohort were conscientious and demonstrated high intelligence, technical proficiency and judgement. Common opportunities for further development included delivering through others, tactfully challenging, embedding a giving and receiving feedback culture, and continuing to build resilience and a growth mindset.

### Graduate program

COVID-19 required us to continue to adapt to how we support and develop entry-level employees when they are working remotely. All training programs were delivered online and graduates were supported to be innovative in how they forged relationships remotely with their graduate peers. Despite the unusual circumstances of 2020, we supported all 54 graduates (the largest ever ACCC graduate program) to successfully complete the program.

## Performance feedback and career conversations

Our human resources business partners provided targeted training of managers to facilitate career conversations. We are also expanding our support in this area by offering a program for all employees to help build a culture of feedback, including frontline management training for supervisors and management.

## Wellbeing

We continued to invest in supporting employees along the spectrum of mental health by actively promoting mental health and wellbeing and providing early intervention and psychological support.

We delivered a range of wellbeing webinars focusing on psychology and presented by psychologists and other expert providers. These sessions included mental health first aid, mental health awareness, managing uncertainty, managing through COVID-19, and resilience. A mental health awareness session was also provided to SES employees. The mental health and wellbeing online tool Headspace was popular, with approximately 500 employees using it.

The ACCC/AER Approach to Mental Health in the Workplace Policy was updated to take a principles-based approach to managing mental health. The principles inform and underpin the agency's approach to mental health, building awareness, understanding and capability in managers and employees in supporting mental health in the workplace. This approach was achieved in consultation with the agency's disability champions and Employee Council.

In addition to managing psychological matters, we worked with employees experiencing discomfort or injury and exploring early medical, counselling or remedial support. Appendix 4 provides details of injuries, incidents and investigations.

Ergonomic awareness and education was a focus in 2020-21. With employees working remotely and returning to the office, we provided additional educational material and webinars to assist employees to set themselves up safely. An external ergonomics provider has been engaged to review employees' remote workstations. Comprehensive workstation assessments have also been conducted with employees who have special needs or have experienced pain and discomfort.

Through COVID-19 the different avenues of support for wellbeing have been heavily promoted to employees. These include the Employee Assistance Program, tailored psychological support for acute cases, and access to the Peer Support Adviser Network. All peer support advisers are trained in mental health first aid.

## Diversity and inclusion

### Diversity and Inclusion Strategy

Development of the ACCC's 2021-2024 Diversity and Inclusion Strategy is underway. The strategy will take into consideration the Australian Public Service Commission strategies and ACCC inclusion plans to address greater representation of people with diverse backgrounds across all classifications.

Under the current ACCC Diversity and Inclusion Strategy we successfully delivered:

- the Cultural Competency Plan, which sets out our opportunities to share stories, offer development opportunities and build awareness
- the Workplace Adjustment Passport, which provides reasonable adjustments for any employee with a temporary or permanent injury, illness or disability
- training on Aboriginal and Torres Strait Islander awareness and on LGBTIQ+ awareness; a presentation on breaking the glass ceiling for people with culturally and linguistically diverse (CALD) backgrounds; and workplace adjustment awareness sessions

- reciprocal CALD mentoring, and mentoring connections for employees who identified as having disability
- 5 + 5 workshops (5 senior executives and 5 people with disability share experiences) for all senior executives
- celebrations of culturally significant days (such as International Day of People with Disability, International Women's Day and Harmony Week) in accordance with our Inclusion Calendar
- re-establishment of a gender network to support the ACCC's Narrowing the Pay Gap Strategy
- refreshment of the Inclusion Committee terms of reference to provide greater accountability and decision making relating to inclusion initiatives
- career coaching and interview skills training for employees with disability
- the launch of our Aboriginal and Torres Strait Islander Strategy.

## Aboriginal and Torres Strait Islander Strategy

The Aboriginal and Torres Strait Islander Strategy is a deliverable under our [Reconciliation Action Plan](#).

The strategy outlines the commitment of the ACCC and AER to increase the representation, retention and career development of our Aboriginal and Torres Strait Islander employees. It prioritises employment pathways, provides targeted development opportunities, facilitates career progression and aims to create an inclusive culture by building the cultural integrity of the agency across all levels. We aim to adopt contemporary cross-agency practices to provide our employees with valuable resources and broad support networks.

## Pay gap – measuring inclusion

We used the Workplace Gender Equality Agency methodology to measure our gender pay gap and extended the methodology to other diversity groups. Pay gap is a measure of inclusion. Identifying pay gaps in the agency enables us to increase awareness of inclusion barriers and work with employees and senior management to develop strategies to narrow the gaps.

The ACCC mean gender pay gap has decreased from 9.3% in 2018 to 5.4% in 2020.

## Disability reporting

The National Disability Strategy is Australia's overarching framework for disability reform. It acts to ensure the principles underpinning the United Nations Convention on the Rights of Persons with Disabilities are incorporated into Australia's policies and programs that affect people with disability, their families and carers.

All levels of government will continue to be held accountable for the implementation of the strategy through progress reporting to the Australian, state, territory and local governments. Progress reports can be found at [dss.gov.au](https://dss.gov.au). Disability reporting is included the Australian Public Service Commission's State of the Service reports and the APS Statistical Bulletin. These reports are available at [www.apsc.gov.au](https://www.apsc.gov.au).

# Innovation

The ACCC and AER National Innovation Project commenced in 2018 and was finalised in December 2020. The project progressed through 5 stages from establishing a framework for innovation to transitioning to steady state. Highlights from 2020 include:

- completing a number of Innovation Roadmap activities – 18 initiatives in total by the end of the project
- the ‘Fizzles to Fabulous’ forum series – reducing fear of failure and driving cultural change on innovation
- developing our Ideas Management Strategy – providing transparency around how we manage getting innovative ideas implemented
- implementing the Ideas Hub – an inclusive space for a dispersed workforce to collaborate on innovative ideas to shape our future ways of working
- significant increases in employee engagement with innovation activities, including the Ideas Hub platform
- commitment from the agency to undertake the adapted States of Change program in 2021 (postponed due to COVID-19 in 2020).

## APS Values and Code of Conduct

The ACCC and AER are committed to driving a respectful culture throughout the organisation and upholding and promoting the behaviours specified in the Australian Public Service (APS) Values and Code of Conduct.

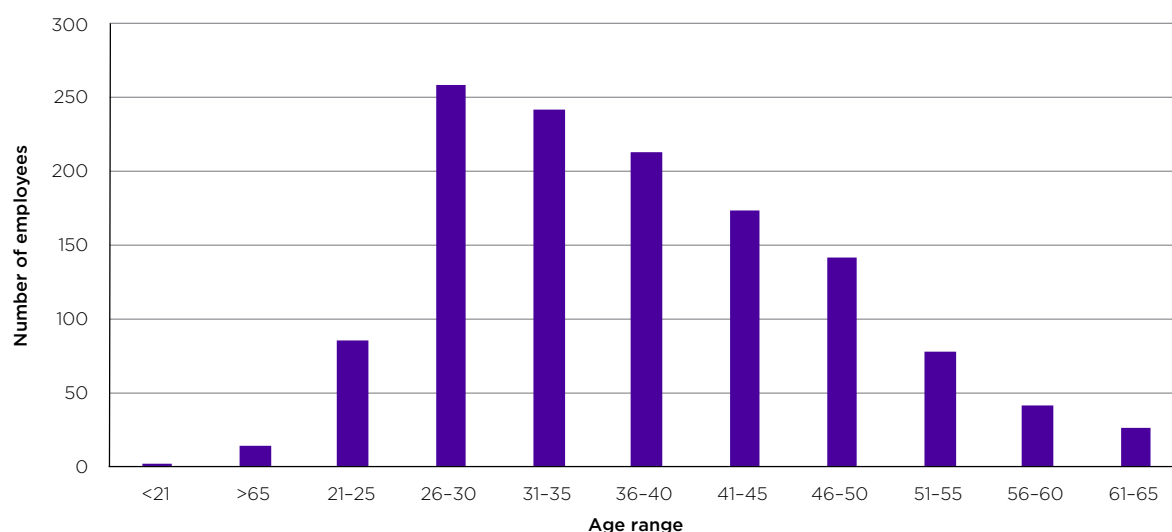
Employees learn about the APS Values and Code of Conduct in corporate induction sessions. Additional awareness training is offered through online courses, cultural awareness workshops and presentations, and at leadership conferences.

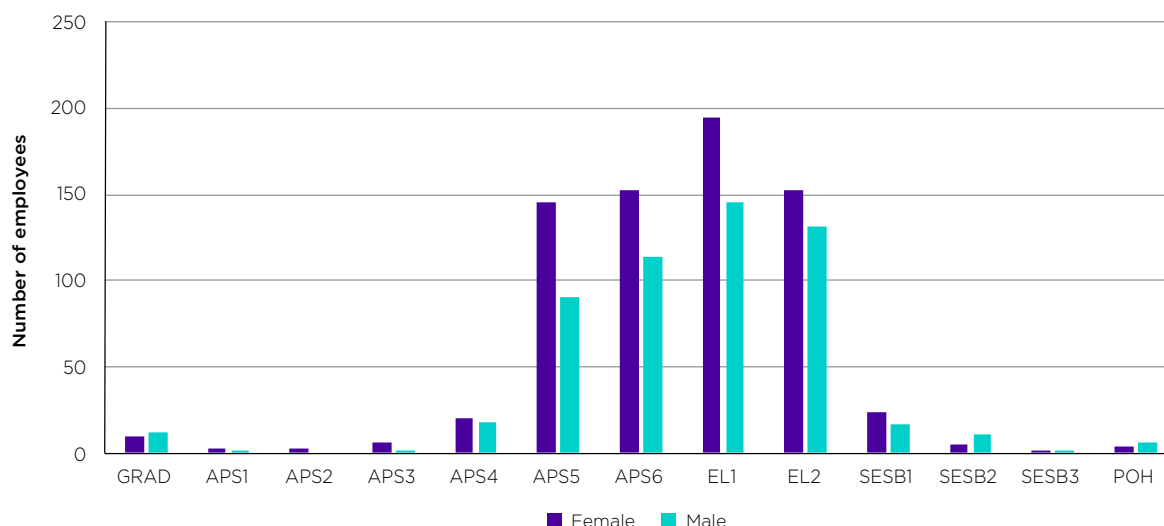
Alleged misconduct by employees may be dealt with under the APS Code of Conduct. In 2020–21 the ACCC and AER commenced investigating one potential breach of the code. This is yet to be finalised.

## Our employee profile

More information on our employees and employee profile is in Part 1, Appendix 2.

**Figure 4.3** Age profile of ACCC employees at 30 June 2021



**Figure 4.4 Gender profile of ACCC employees at 30 June 2021**

Note: POH = public office holder.

**Table 4.6 ACCC turnover according to separation type 2020-21**

Separation	Classification	Number of employees
External transfer or promotion	Non-SES	37
Retirement	Non-SES	12
	SES	1
Contract expired	Non-SES	20
Resignation	Non-SES	48
	SES	2
Redundancy	Non-SES	1
Other	Non-SES	4
<b>Total</b>		<b>125</b>

**Table 4.7 AER turnover according to separation type 2020-21**

Separation	Classification	Number of employees
External transfer or promotion	Non-SES	5
Retirement	Non-SES	4
	SES	4
Contract expired	Non-SES	3
	SES	1
Resignation	Non-SES	16
<b>Total</b>		<b>33</b>

## Employment agreements and remuneration

### Enterprise agreement

The ACCC Enterprise Agreement 2016-2019, which came into effect in December 2016, continues to operate in conjunction with a *Public Service Act 1999* (Cth) s 24.1 determination from August 2019 that supplements the agreement's existing salary and allowance entitlements.



Following an APS direction in April 2020, the ACCC applied a 6-month wage deferral for all employees and senior executives in December 2020. A 2% increase was applied to all eligible employees from 21 June 2021.

We updated our human resources policies to reflect changes in legislation and government policy and to ensure they remain fit for purpose. The following policies were updated in accordance with the ACCC Enterprise Agreement:

- ACCC/AER flexible working policy – if not, why not?
- time off in lieu and flex time
- leave
- Performance Feedback Development Program
- paid and unpaid other employment.

The ACCC adopted a default position of roughly half remote working following the COVID-19 adjustments.

## Senior executive remuneration

Remuneration for ACCC and AER members is determined by the Remuneration Tribunal in accordance with:

- the *Remuneration Tribunal Act 1973* (Cth)
- the [Remuneration Tribunal \(Remuneration and Allowances for Holders of Full-time Public Office\) Determination 2021](#).

Mandatory executive remuneration reporting is detailed in Appendix 3.

## Determinations

SES employees are subject to individual determinations covering remuneration, leave and a range of other employment conditions. Determinations are made in accordance with the *Public Service Act 1999* and ACCC/AER SES remuneration policies, and approved by the Chief Operating Officer or Chair. Other benefits covered in SES determinations can include allowances, performance pay and superannuation.

## Common law contracts and Australian Workplace Agreements

No employees were covered by common law contracts or Australian Workplace Agreements in 2020–21.

## Non-salary benefits

Non-salary benefits provided to employees under the Enterprise Agreement include:

- options for flexible work, including home based
- ability to work part time
- flexible working arrangements
- access to different leave types
- influenza vaccinations
- access to a broad range of professional development than enables mobility across the agency and the broader APS
- access to the Employee Assistance Program.

**Table 4.8** Number of employees covered by each industrial instrument at 30 June 2021

	ACCC Enterprise Agreement 2016-2019	IFAs	Section 24 determinations
APS 1	4	0	0
APS 2	3	0	0
APS 3	7	0	0
APS 4	38	0	0
APS 5	236	0	0
APS 6	267	4	0
EL 1	341	24	0
EL 2	284	60	1
SES 1	0	6	35
SES 2	0	0	13
SES 3	0	0	2
Graduate	22	0	0

Note: IFA = individual flexibility arrangement.

**Table 4.9** Salary ranges for APS employees at 30 June 2021

	ACCC Enterprise Agreement 2016-2019	Section 24 determinations
APS 1	\$49,491-\$54,704	-
APS 2	\$56,008-\$62,107	-
APS 3	\$63,790-\$68,855	-
APS 4	\$71,105-\$77,202	-
APS 5	\$79,307-\$84,092	-
APS 6	\$87,785-\$98,391	-
EL 1	\$109,070-\$120,707	-
EL 2	\$126,448-\$148,186	-
SES 1	-	\$185,982-\$232,877
SES 2	-	\$225,489-\$330,000
SES 3	-	\$344,978-\$354,923
L 1	\$68,855-\$135,679	-
L 2	\$143,384-\$151,978	-
Graduate	\$62,107-\$71,105	-

**Table 4.10** Performance pay

	EL 2	SES B1	SES B2	SES B3	ACCC
Number who received bonus	1	36	12	3	52
Total bonus	\$8,527	\$518,160	\$269,728	\$51,446	\$847,861
Average bonus	\$8,527	\$14,393	\$22,477	\$17,149	\$16,305
Range	\$8,527	\$4,027-\$18,134	\$11,280-\$34,000	\$8,553-\$45,294	\$4,027-\$45,294

# ICT capability

## Our use of technology and data

The agency is transforming its information communication technology (ICT), data technologies and business systems in order to deliver on our purposes. The Working Smarter Program (WSP) is a 4-year business transformation program that embraces digital and emerging trends such as automation to increase business process efficiency and data capture, build on our data skills and technology, and increase our resilience through improving our security posture.

The WSP is aligned to the ICT Strategy 2021-24 and Data Strategy 2021-24, which underpin the goals and strategies of the ACCC and AER. Collectively, they focus on these priority areas:

- delivering data-led insights enabled by expertise and the right tools and governance
- delivering fit-for-purpose business applications utilising automation where appropriate
- unlocking our information assets through enhanced management, re-use, sharing and discoverability
- providing stable, reliable and secure technology.

To deliver these priorities we are focusing on the following capabilities:

- **Innovation:** developing new ways to solve real-world business problems and unlock future value with enabling technology
- **Data and intelligence:** continuing our data culture and capability uplift to improve efficiency and ensure that insight is at the heart of our decision making
- **Strategy and architecture:** ensuring our technology environment is fit-for-purpose, interoperable with other agency systems and supports our strategic goals
- **Automation:** re-engineering business processes and create efficiencies with automation
- **Cloud:** taking a cloud-first approach to enhance flexibility
- **Technology project management office:** delivering outcomes-focused technology projects through effective portfolio prioritisation and project delivery management.

Additional funding provided in the October 2020-21 budget allowed us to focus on the continuing upgrade of our ICT, data technologies and business systems as part of our broader WSP.

# Asset management and procurement

The Finance Branch is responsible for all ACCC financial matters and asset management. Our Corporate Operations and Property Management teams maintain our offices and plan and coordinate moves and office fit-outs.

## Asset management

The ACCC's asset management framework incorporates asset policies and procedures that enable the efficient acquisition and effective management of assets.

Assets managed by the ACCC include:

- buildings, including fit-outs and leasehold improvements
- infrastructure, plant and equipment, including office equipment, furniture and fittings and computer equipment
- intangibles, including computer software.

In 2020–21 we undertook an independent fair value assessment of our buildings, infrastructure, plant and equipment to confirm the validity and value of our asset portfolio.

## Purchasing

The ACCC uses Australian Government resources and spends public money in accordance with the requirements of the PGPA Act and the Commonwealth Procurement Rules.

Responsibility for procurement lies with the financial delegates in each business unit, who have support from a central procurement team. The team advises on risk management, probity, specification development and contract management. Low-risk procurements (valued at less than \$80,000) are managed by business units. Procurements of \$80,000 or more and whole-of-government and panel arrangements are managed by both the business unit and the central procurement team, ensuring that we comply with the Commonwealth Procurement Rules.

Information on all ACCC contracts awarded with a value of \$10,000 (inclusive of GST) or more is available on the AusTender [website](#).

The ACCC had no exempt contracts for the financial year.

There were no contracts of \$100,000 or more (inclusive of GST) during 2020–21 that did not provide for the Auditor-General to have access to the contractor's premises.

The ACCC supports small business participation in the Australian Government procurement market through:

- the Small Business Engagement Principles (outlined in the government's Industry Innovation and Competitiveness Agenda), such as communicating in clear, simple language and presenting information in an accessible format
- the use of the Commonwealth Contracting Suite for low-risk procurements valued under \$200,000
- electronic systems or other processes used to facilitate on-time payment performance, including the use of payment cards.

Small and medium enterprise (SME) and small enterprise participation statistics are available on the Department of Finance [website](#).

Information on procurements expected to be undertaken in the coming year is included in the ACCC's annual procurement plan. This plan is updated as and when circumstances change.

# Consultancy and non-consultancy contract expenditure reporting

## Consultancy contracts

During 2020–21, 83 new reportable consultancy contracts were entered into involving total actual expenditure of \$3.0 million. In addition, 25 ongoing reportable consultancy contracts were active during the period, involving total actual expenditure of \$2.8 million.

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender [website](#).

Decisions to engage consultants during 2020–21 were made in accordance with the PGPA Act and related regulations including the Commonwealth Procurement Rules and relevant internal policies. The Commission selects consultants through the use of panel arrangements or by making an open approach to market.

The ACCC and AER engage consultants where we lack specialist expertise or when independent research, review or assessment is required. Consultants typically investigate or diagnose a defined issue or problem; carry out reviews or evaluations; or provide independent advice, information or creative solutions to assist ACCC or AER decision making.

**Table 4.11 Expenditure on reportable consultancy contracts 2020–21**

	Number	Expenditure \$ (GST inc.)
New contracts entered into during the reporting period	83	3,014,046
Ongoing contracts entered into during a previous reporting period	25	2,826,239
<b>Total</b>	<b>108</b>	<b>5,840,285</b>

**Table 4.12 Organisations receiving a share of reportable consultancy contract expenditure 2020–21**

Name of organisation	Expenditure \$ (GST inc.)
Energy Market Consulting Associates Pty Ltd (ABN 75 102 418 020)	1,077,764
Frontier Economics Pty Ltd (ABN 13 087 553 124)	358,025
Mantel Group Pty Ltd (ABN 38 622 268 240)	332,474
ACIL Allen Pty Ltd (ABN 68 102 652 148)	317,735
Cadency Consulting Pty Ltd (ABN 51 138 143 496)	281,193

## Non-consultancy contracts

During 2020–21, 791 new reportable non-consultancy contracts were entered into involving total actual expenditure of \$75.4 million. In addition, 136 ongoing reportable non-consultancy contract were active during the period, involving total actual expenditure of \$38.2 million.

Annual reports contain information about actual expenditure on reportable non-consultancy contracts. Information on the value of reportable non-consultancy contracts is available on the AusTender [website](#).

**Table 4.13 Expenditure on reportable non-consultancy contracts 2020–21**

	Number	Expenditure \$ (GST inc.)
New contracts entered into during the reporting period	791	75,376,733
Ongoing contracts entered into during a previous reporting period	136	38,237,079
<b>Total</b>	<b>927</b>	<b>113,613,812</b>

**Table 4.14 Organisations receiving a share of reportable non-consultancy contract expenditure 2020-21**

<b>Name of organisation</b>	<b>Expenditure \$ (GST inc.)</b>
Ventia Property Pty Ltd (ABN 16 618 028 676)	18,503,333
NTT Australia Digital Pty Ltd (ABN 31 100 103 268)	18,011,893
Australian Government Solicitor (ABN 69 405 937 639)	10,209,022
Datacom Systems (AU) Pty Ltd (ABN 39 135 427 075)	9,791,261
Ernst & Young (ABN 75 288 172 749)	6,301,596

# Grant programs

Neither the ACCC nor the AER administer any grant programs.



# 05

## Financial statements









## INDEPENDENT AUDITOR'S REPORT

### To the Treasurer

#### Opinion

In my opinion, the financial statements of the Australian Competition and Consumer Commission (the Entity) for the year ended 30 June 2021:

- (a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Entity as at 30 June 2021 and its financial performance and cash flows for the year then ended.

The financial statements of the Entity, which I have audited, comprise the following as at 30 June 2021 and for the year then ended:

- Statement by the Accountable Authority and Chief Financial Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement;
- Administered Schedule of Comprehensive Income;
- Administered Schedule of Assets and Liabilities;
- Administered Reconciliation Schedule;
- Administered Cash Flow Statement; and
- Notes to the financial statements, comprising a Summary of Significant Accounting Policies and other explanatory information.

#### Basis for opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Entity in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) to the extent that they are not in conflict with the *Auditor-General Act 1997*. I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

#### Accountable Authority's responsibility for the financial statements

As the Accountable Authority of the Entity, the Chair is responsible under the *Public Governance, Performance and Accountability Act 2013* (the Act) for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under the Act. The Chair is also responsible for such internal control as the Chair determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Chair is responsible for assessing the ability of the Entity to continue as a going concern, taking into account whether the Entity's operations will cease as a result of an administrative restructure or for any other reason. The Chair is also responsible for disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the assessment indicates that it is not appropriate.

### **Auditor's responsibilities for the audit of the financial statements**

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with the Accountable Authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office



Sally Bond

Executive Director

Delegate of the Auditor-General

Canberra

27 August 2021

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## AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

### STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2021 comply with subsection 42(2) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act) and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Australian Competition and Consumer Commission will be able to pay its debts as and when they fall due.



Rod Sims  
Chair and Accountable Authority

27 August 2021



Peter Maybury  
Chief Financial Officer

27 August 2021

# AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

## Statement of Comprehensive Income

for the year ended 30 June 2021

	Notes	2021 \$'000	2020 \$'000	Original Budget \$'000
<b>NET COST OF SERVICES</b>				
<b>Expenses</b>				
Employee benefits	1.1A	166,749	160,438	157,842
Suppliers	1.1B	77,002	93,400	100,855
Depreciation and amortisation	2.2A	23,347	17,704	23,419
Settlement of litigation		5,884	33,256	-
Finance costs		789	844	944
Impairment of non-financial assets	2.2A	520	18	-
Impairment of financial assets		153	-	-
<b>Total expenses</b>		<b>274,444</b>	<b>305,660</b>	<b>283,060</b>
<b>Own-source income</b>				
Own-source revenue	1.2	2,884	4,932	1,693
<b>Total own-source income</b>		<b>2,884</b>	<b>4,932</b>	<b>1,693</b>
<b>Net (cost of) services</b>		<b>(271,560)</b>	<b>(300,728)</b>	<b>(281,367)</b>
Departmental appropriations		267,036	259,215	270,156
<b>Surplus/(Deficit)</b>		<b>(4,524)</b>	<b>(41,513)</b>	<b>(11,211)</b>
<b>OTHER COMPREHENSIVE INCOME</b>				
<b>Items not subject to subsequent reclassification to net cost of services</b>				
Changes in asset revaluation surplus		364	-	-
<b>Total other comprehensive income</b>		<b>364</b>	<b>-</b>	<b>-</b>
<b>Total comprehensive income/(loss)</b>		<b>(4,160)</b>	<b>(41,513)</b>	<b>(11,211)</b>

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

# AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

## Statement of Financial Position

as at 30 June 2021

	Notes	2021 \$'000	2020 \$'000	Original Budget \$'000
<b>ASSETS</b>				
<b>Financial assets</b>				
Cash and cash equivalents		2,078	1,164	1,164
Trade and other receivables	2.1	89,260	63,842	80,031
<b>Total financial assets</b>		<b>91,338</b>	<b>65,006</b>	<b>81,195</b>
<b>Non-financial assets</b>				
Leasehold improvements	2.2	100,181	79,808	82,878
Plant and equipment	2.2	4,275	3,177	6,196
Computer software	2.2	34,861	19,451	38,856
Prepayments		2,285	1,627	1,627
<b>Total non-financial assets</b>		<b>141,602</b>	<b>104,063</b>	<b>129,557</b>
<b>Total assets</b>		<b>232,940</b>	<b>169,069</b>	<b>210,752</b>
<b>LIABILITIES</b>				
<b>Payables</b>				
Suppliers	2.3	19,919	17,654	17,163
Employee related payables		3,912	3,313	7,714
<b>Total payables</b>		<b>23,831</b>	<b>20,967</b>	<b>24,877</b>
<b>Interest bearing liabilities</b>				
Leases	2.4	93,375	75,076	78,163
<b>Total interest bearing liabilities</b>		<b>93,375</b>	<b>75,076</b>	<b>78,163</b>
<b>Provisions</b>				
Employee provisions	5.1	51,929	48,227	47,089
Other provisions	2.5	504	25,824	4,373
<b>Total provisions</b>		<b>52,433</b>	<b>74,051</b>	<b>51,462</b>
<b>Total liabilities</b>		<b>169,639</b>	<b>170,094</b>	<b>154,502</b>
<b>Net assets</b>		<b>63,301</b>	<b>(1,025)</b>	<b>56,250</b>
<b>EQUITY</b>				
Contributed equity		183,471	114,985	183,471
Reserves		4,561	4,197	4,198
Retained surplus/(Accumulated deficit)		(124,731)	(120,207)	(131,419)
<b>Total equity</b>		<b>63,301</b>	<b>(1,025)</b>	<b>56,250</b>

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

## AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

### Statement of Changes in Equity

for the year ended 30 June 2021

	Retained Surplus			Contributed Equity			Asset Revaluation Reserve			Total Equity		
	2021 \$'000	2020 \$'000	Original Budget \$'000	2021 \$'000	2020 \$'000	Original Budget \$'000	2021 \$'000	2020 \$'000	Original Budget \$'000	2021 \$'000	2020 \$'000	Original Budget \$'000
Opening balance at 1 July 2020	(120,207)	(97,245)	(120,208)	114,985	99,283	114,985	4,197	4,197	4,198	(1,025)	6,235	(1,025)
Changes in accounting policy	-	18,551	-	-	-	-	-	-	-	-	18,551	-
<b>Adjusted opening balance at 1 July</b>	<b>(120,207)</b>	<b>(78,694)</b>	<b>(120,208)</b>	<b>114,985</b>	<b>99,283</b>	<b>114,985</b>	<b>4,197</b>	<b>4,197</b>	<b>4,198</b>	<b>(1,025)</b>	<b>24,786</b>	<b>(1,025)</b>
<b>Comprehensive Income</b>												
Surplus/(Deficit) for the period	(4,524)	(41,513)	(11,211)	-	-	-	-	-	-	(4,524)	(41,513)	(11,211)
Other comprehensive income	-	-	-	-	-	-	364	-	-	364	-	-
<b>Total comprehensive income</b>	<b>(4,524)</b>	<b>(41,513)</b>	<b>(11,211)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>364</b>	<b>-</b>	<b>-</b>	<b>(4,160)</b>	<b>(41,513)</b>	<b>(11,211)</b>
<b>Transactions with owners</b>												
<b>Contributions by owners</b>												
Equity injection	-	-	-	36,200	1,100	36,200	-	-	-	36,200	1,100	36,200
Departmental capital budget	-	-	-	32,286	14,602	32,286	-	-	-	32,286	14,602	32,286
<b>Total transactions with owners</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>68,486</b>	<b>15,702</b>	<b>68,486</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>68,486</b>	<b>15,702</b>	<b>68,486</b>
<b>Closing balance as at 30 June</b>	<b>(124,731)</b>	<b>(120,207)</b>	<b>(131,419)</b>	<b>183,471</b>	<b>114,985</b>	<b>183,471</b>	<b>4,561</b>	<b>4,197</b>	<b>4,198</b>	<b>63,301</b>	<b>(1,025)</b>	<b>56,250</b>

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

#### Accounting Policy

##### Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.



# AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

## Cash Flow Statement

for the year ended 30 June 2021

	2021 \$'000	2020 \$'000	Original Budget \$'000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations	287,066	274,770	279,114
Sale of goods and rendering of services	961	1,223	2,331
Interest	75	84	-
Net GST received	10,023	10,022	9,170
Other	2,199	3,881	185
<b>Total cash received</b>	<b>300,324</b>	<b>289,980</b>	<b>290,800</b>
<b>Cash used</b>			
Employees	162,443	151,004	157,740
Suppliers	89,514	102,160	112,733
Interest payments on lease liabilities	789	844	-
Section 74 receipts transferred to OPA	18,651	25,193	11,879
Settlement of litigation	30,934	14,379	17,108
<b>Total cash used</b>	<b>302,331</b>	<b>293,580</b>	<b>299,460</b>
<b>Net cash from/(used by) operating activities</b>	<b>(2,007)</b>	<b>(3,600)</b>	<b>(8,660)</b>
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Other	3,374	2,194	-
<b>Total cash received</b>	<b>3,374</b>	<b>2,194</b>	<b>-</b>
<b>Cash used</b>			
Purchase of non-financial assets	28,993	19,018	32,886
Other	314	224	-
<b>Total cash used</b>	<b>29,307</b>	<b>19,242</b>	<b>32,886</b>
<b>Net cash from/(used by) investing activities</b>	<b>(25,933)</b>	<b>(17,048)</b>	<b>(32,886)</b>
<b>FINANCING ACTIVITIES</b>			
<b>Cash received</b>			
Principal receipts on sublease receivable	723	743	-
Contributed equity	39,802	32,282	54,486
<b>Total cash received</b>	<b>40,525</b>	<b>33,025</b>	<b>54,486</b>
<b>Cash used</b>			
Principal payments on lease liabilities	11,671	12,869	12,940
<b>Total cash used</b>	<b>11,671</b>	<b>12,869</b>	<b>12,940</b>
<b>Net cash from/(used by) financing activities</b>	<b>28,854</b>	<b>20,156</b>	<b>41,546</b>
<b>Net increase/(decrease) in cash held</b>	<b>914</b>	<b>(492)</b>	<b>-</b>
Cash and cash equivalents at the beginning of the reporting period	1,164	1,656	1,164
<b>Cash and cash equivalents at the end of the reporting period</b>	<b>2,078</b>	<b>1,164</b>	<b>1,164</b>

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

## AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

### Administered Schedule of Comprehensive Income

for the year ended 30 June 2021

	2021 \$'000	2020 \$'000	Original Budget \$'000
<b>NET COST OF SERVICES</b>			
<b>Expenses</b>			
Impairment and repayment of fees and fines	38,163	26,445	-
<b>Total expenses</b>	38,163	26,445	-
<b>Income</b>			
<b>Non-taxation revenue</b>			
Fines, penalties and costs	115,097	202,128	80,000
Other fees and charges	2,423	1,643	-
<b>Total income</b>	117,520	203,771	80,000
<b>Surplus</b>	79,357	177,326	80,000
<b>Total comprehensive income</b>	79,357	177,326	80,000

### Administered Schedule of Assets and Liabilities

as at 30 June 2021

	Notes	2021 \$'000	2020 \$'000	Original Budget \$'000
<b>ASSETS</b>				
<b>Financial assets</b>				
Cash and cash equivalents		-	500	500
Trade and other receivables	3.1	46,014	37,553	37,553
<b>Total financial assets</b>		46,014	38,053	38,053
<b>Total assets administered on behalf of Government</b>		46,014	38,053	38,053
<b>Net assets/(liabilities)</b>		46,014	38,053	38,053

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

## AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

### Administered Reconciliation Schedule

for the year ended 30 June 2021

	2021 \$'000	2020 \$'000
Opening assets less liabilities as at 1 July	38,053	22,970
Net (cost of)/contribution by services		
Income	117,520	203,771
Expenses	(38,163)	(26,445)
Transfers (to)/from the Australian Government		
Appropriation transfers to Official Public Account		
Transfers to Official Public Account	(71,396)	(162,243)
Closing assets less liabilities as at 30 June	46,014	38,053

#### Accounting Policy

##### Administered Cash Transfers to and from the Official Public Account

Revenue collected by the Commission for use by the Government rather than the Commission is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Commission on behalf of the Government and reported as such in the schedule of administered cash flows and in the administered reconciliation schedule.

## Administered Cash Flow Statement

for the year ended 30 June 2021

	2021 \$'000	2020 \$'000
<b>OPERATING ACTIVITIES</b>		
<b>Cash received</b>		
Fines and costs	68,474	161,106
Other fees and charges	2,427	1,645
<b>Total cash received</b>	<b>70,901</b>	<b>162,751</b>
<b>Cash used</b>		
Refund of fees and fines	5	8
<b>Total cash used</b>	<b>5</b>	<b>8</b>
<b>Net cash from operating activities</b>	<b>70,896</b>	<b>162,743</b>
<b>Cash to Official Public Account</b>		
Appropriations	(71,396)	(162,243)
<b>Total cash to Official Public Account</b>	<b>(71,396)</b>	<b>(162,243)</b>
Cash and cash equivalents at the beginning of the reporting period	500	-
<b>Cash and cash equivalents at the end of the reporting period</b>	<b>-</b>	<b>500</b>

This above schedules should be read in conjunction with the accompanying notes.

## OVERVIEW

The Australian Competition and Consumer Commission (ACCC) is an Australian Government controlled not-for-profit entity whose role is to enforce the *Competition and Consumer Act 2010* and a range of additional legislation, promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians.

### The Basis of Preparation

The financial statements are general purpose financial statements and are required by section 42 of the *Public Governance, Performance and Accountability Act 2013*.

The financial statements have been prepared in accordance with:

- *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015* (FRR); and
- Australian Accounting Standards and Interpretations - Reduced Disclosure Requirements issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The financial statements are presented in Australian dollars.

### Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in these statements the Commission has made assumptions or estimates in the following areas that have the most significant impact on the amounts recorded in the financial statements:

- With the exception of right-of-use assets that are carried at cost, the fair value of property, plant and equipment (PP&E) is assessed at market or depreciated replacement cost as determined by an independent valuer and is subject to ongoing assessment by the valuer and management between formal valuations.
- Lease liabilities are discounted using the interest rate implicit in the lease. Where the implicit rate cannot be readily determined the discount rate is based on zero coupon bond yields. The discount rate is established on lease commencement and is not changed during the lease term unless there has been a modification to the lease that impacts the remaining lease payments.
- Leave provisions involve assumptions based on the expected tenure of existing staff, patterns of leave claims and payout, future salary movements and future discount rates. Leave liabilities have been determined by reference to the work of an actuary as at 30 June 2021 and are subject to ongoing assessment by management.
- Litigation provisions have been determined by management based on its best estimate of the expenditure required to settle obligations at reporting date. In determining this amount management uses a combination of available information and past experience to identify a range of possible outcomes. Provisions are established at the highest potential cost outcome where there is a considerable chance that option could eventuate. Provisions are reviewed at the end of each reporting period and adjusted to reflect the current best estimate.

Other than those matters discussed above, no accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next reporting period.

### Taxation

The Commission is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

### Reporting of Administered activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules and related notes.

Administered revenue is generated from fines and costs applied by the courts, or by agreement between the Commission and the defendant. It is recognised when awarded by the courts, or when agreement has been executed. The court costs awarded against the Commission are recorded as a departmental expense.

Authorisation and notification fees are applied when required under the relevant legislation, and are recognised upon receipt. Administered fee revenue is recognised at its nominal amount due less any allowance for bad or doubtful debts. Collectability of debts is reviewed at the end of the reporting period. Allowances are made when collection of the debt is judged to be less rather than more likely.

Except where otherwise stated, administered items are accounted for on the same basis and using the same policies as for departmental items, including the application of Australian Accounting Standards.

### New Accounting Standards

Prior to the signing of the statements by the Accountable Authority and Chief Financial Officer, no new, revised or amending standards or interpretations were issued that would have a material effect on the Commission's financial statements in the current reporting period.

### Departmental Appropriations

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

### Special Accounts

The Commission manages a Services for Other Entities and Trust Moneys Special Account established by *Financial Management and Accountability (Establishment of Special Account for Australian Competition and Consumer Commission) Determination 2011/02*, issued under section 78 of the *Public Governance, Performance and Accountability Act 2013*.

For both the current and comparative periods the Special Account had a balance of \$54,377 and there were no transactions debited or credited to it during either period. Cash and cash equivalents presented in the financial statements do not include amounts held within the Special Account.

The purpose of the Special Account is for:

- (a) amounts to be held on trust or otherwise for the benefit of a person other than the Commonwealth;
- (b) amounts received in the course of the performance of functions that relate to the purpose of the Services for Other Entities and Trust Moneys - Australian Competition and Consumer Commission Special Account;
- (c) amounts received from any person for the purposes of the Services for Other Entities and Trust Moneys - Australian Competition and Consumer Commission Special Account; and
- (d) amounts to be held on trust or otherwise for the benefit of a person other than the Commonwealth.

### Financial Instruments

The Commission's financial assets consist of cash and goods and services receivable. Financial assets are recognised when the Commission becomes party to the contract and has a legal right to receive cash. Financial assets are derecognised when the contractual rights to cash flows expire or are transferred. The Commission classifies its financial assets as 'financial assets at amortised cost' with income recognised using the effective interest rate method.

Financial liabilities, consisting of trade payables, are initially measured at fair value net of transaction costs. Trade payables are recognised to the extent the goods and services have been received. Financial liabilities are derecognised upon payment.

### Related Parties

The Commission is an Australian Government controlled entity. Related parties to this entity are Key Management Personnel including the Portfolio Minister and other Australian Government entities.

Giving consideration to relationships with related entities, and transactions entered into during the reporting period by the Commission, it has been determined that there are no related party transactions to be separately disclosed.

### Regulatory Charging

Annual carrier licence charges are imposed under the *Telecommunications (Carrier Licence Charges) Act 1997* on participating telecommunication carriers under cost recovery arrangements to recover the costs incurred by the Commission, the Australian Communications and Media Authority (ACMA) and the Australian Government in regulating the telecommunications industry. ACMA undertakes the regulatory charging activity, recovering the Commission's costs on behalf of the Commonwealth. The Commission does not receive any monies direct from external parties.

The departmental costs incurred by the Commission are met out of appropriation funding. The Commission's costs being recovered by ACMA in 2020-21, subject to finalisation of the *Telecommunications (Carrier Licence Charges) Act 1997* Determination, totals \$12.6m (2020: \$11.9m). This cost includes components for the Measuring Broadband Australia program of \$1.6m (2020: \$1.7m) and depreciation expense of \$0.3m (2020: \$0.3m), the latter of which is not appropriation funded.

The Cost Recovery Impact Statement for the above activity is available at:  
<https://www.acma.gov.au/cost-recovery-implementation-statement-cris>

### Events After the Reporting Period

#### Departmental

The Commission has no departmental events after the reporting date.

#### Administered

The Commission has favourable judgements by the Courts which have been disclosed in note 6.1.

## 1. Departmental Financial Performance

*This section analyses the financial performance of the Commission for the year ended 30 June 2021*

### 1.1 Expenses

	2021 \$'000	2020 \$'000
<b>1.1A: Employee benefits</b>		
Wages and salaries	128,464	121,287
Superannuation		
Defined contribution plans	15,085	13,856
Defined benefit plans	7,006	7,294
Leave and other entitlements	15,260	17,147
Separation and redundancies	265	169
Other employee benefits	669	685
<b>Total employee benefits</b>	<b>166,749</b>	<b>160,438</b>

#### Accounting Policy

Accounting policies for employee related expenses is included in the People and Relationships section.

	2021 \$'000	2020 \$'000
<b>1.1B: Suppliers</b>		
<b>Goods and services supplied or rendered</b>		
Legal expenses	26,551	31,600
Consultants and contracted services	24,297	32,003
Information technology and communications	12,420	12,243
Property operating expenses	4,534	4,953
Travel expenses	928	4,219
Employee related expenses	2,958	2,226
Information management expenses	2,186	2,695
Other administration expenses	2,101	2,618
<b>Total goods and services supplied or rendered</b>	<b>75,975</b>	<b>92,557</b>
<b>Other suppliers</b>		
Short-term leases	720	468
Workers compensation premiums	307	375
<b>Total other suppliers</b>	<b>1,027</b>	<b>843</b>
<b>Total suppliers</b>	<b>77,002</b>	<b>93,400</b>

#### Accounting Policy

Right-of-use assets and lease liabilities are not recognised where:

- a) the lease has a term of 12 months or less; or
- b) the underlying value of each leased asset is less than \$10,000.

Where these criteria are met lease payments are recognised evenly over the lease term.

## 1.2 Own-Source Revenue

	2021 \$'000	2020 \$'000
<b>Own-Source Revenue</b>		
International development funding	1,090	1,388
Reimbursement of legal costs	59	766
Secretariat Services - National Competition Council	850	851
Seminars	-	424
Sublease rental income	-	193
Finance income	75	84
Resources received free of charge (Remuneration of auditors)	115	115
Other revenue	695	1,111
<b>Total sale of goods and rendering of services</b>	<b>2,884</b>	<b>4,932</b>

### Accounting Policy

Revenue from rendering of services is recognised progressively as the services are provided to the customer where it can be demonstrated that:

- a) the customer simultaneously receives and consumes the services as they are provided;
- b) the services create an asset that the customer controls as the asset is created; or b) the services have no alternative use to the ACCC and an enforceable right to payment exists for work completed to date.

The amount of revenue recognised is determined by reference to progress made in satisfying any obligations that exist.

Where the criteria is not met to recognise revenue over time, revenue is recognised at a point in time once any performance obligations are satisfied and control has transferred to the customer.

#### Resources received free of charge

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

#### Sublease income

Where a sublease is classified as an operating lease, sublease rental income is recognised on a straight-line basis over the term of the lease. Where a sublease is classified as a finance lease, finance income is recognised over the lease term, based on a pattern reflecting a constant rate of return on the Commissions net investment in the lease.



## 2. Departmental Financial Position

*This section analyses the Commission's assets used to conduct its operations and the operating liabilities incurred as a result.*

*Employee related information is disclosed in the People and Relationships section.*

### 2.1 Financial Assets

	2021 \$'000	2020 \$'000
<b>Trade and other receivables</b>		
Goods and services	1,706	3,694
Appropriation receivable	78,005	50,700
GST receivable	2,978	2,001
Net investment in sublease	6,535	7,411
Accrued revenue	36	36
<b>Total trade and other receivables (net)</b>	<b>89,260</b>	<b>63,842</b>

#### Sublease Arrangements

The Commission had one sublease in Sydney that meets the criteria for recognition as an operating lease and expired during the 2020-21 financial year. The Commission has a sublease in Canberra that meets the criteria for recognition as a finance lease. Maturity analysis of the remaining payments is outlined below.

	2021 \$'000	2020 \$'000
<b>Maturity analysis of finance lease receivables</b>		
Within 1 year	846	799
One to two years	1,002	849
Two to three years	1,040	1,028
Three to four years	1,080	1,068
Four to five years	1,122	1,109
More than 5 years	1,668	2,863
<b>Total undiscounted lease payments receivable</b>	<b>6,758</b>	<b>7,716</b>
Unearned finance income	(223)	(305)
<b>Net investment in sublease</b>	<b>6,535</b>	<b>7,411</b>

#### Accounting Policy

Trade receivables are recognised where the right to consideration from the customer is unconditional, with only the passage of time required before payment is due. Accrued revenue is recognised where the Commission has provided services to the customer, but does not have the unconditional right to invoice the customer at reporting date.

Trade and other receivables that are not provided at below market rates and held for:

- the purpose of collecting contractual cash flows; and
- receiving payments that are solely principal and interest

are subsequently measured at amortised cost using the effective interest rate method, adjusted for any impairment allowance.

Trade receivables are assessed for impairment at the end of each reporting period. The Commission applies the simplified approach for trade and other receivables by recognising impairment equal to the lifetime expected credit losses.

Credit terms for goods and services are 30 days (2020: 30 days)

Sublease receivables are recognised where the Commission has transferred substantially all the risks and rewards of the head lease to a sub lessee. Sublease receivables are recognised equal to the lease payments receivable under the sublease, discounted using the same rate applied when calculating the lease liability for the head lease.

## 2.2 Non-Financial Assets

### Reconciliation of the opening and closing balances of property, plant and equipment and intangibles

	Leasehold improvements <sup>1</sup> \$'000	Plant and equipment \$'000	Computer software <sup>2</sup> \$'000	Total \$'000
<b>As at 1 July 2020</b>				
Gross book value	96,641	6,625	25,536	128,803
Accumulated depreciation, amortisation and impairment	(16,833)	(3,448)	(6,085)	(26,366)
<b>Total as at 1 July 2020</b>	<b>79,808</b>	<b>3,177</b>	<b>19,451</b>	<b>102,436</b>
<b>Additions</b>				
Purchase	4,789	2,859	228	7,876
Internally developed	-	-	22,456	22,456
Right-of-use assets	29,964	-	-	29,964
Revaluations recognised in other comprehensive income	445	-	-	445
Reclassifications	(214)	214	-	-
Depreciation (right-of-use assets)	(11,607)	-	-	(11,607)
Depreciation and amortisation (other assets)	(3,011)	(1,455)	(7,274)	(11,740)
Other movements of right-of-use assets	7	-	-	7
Disposals / impairments				
Revaluations recognised in net cost of services		(19)		(19)
Other disposals/write-downs (gross book value)	-	(1,070)	-	(1,070)
Other disposals/write-downs (accumulated depreciation)	-	569	-	569
<b>Total as at 30 June 2021</b>	<b>100,181</b>	<b>4,275</b>	<b>34,861</b>	<b>139,317</b>
<b>Total as at 30 June 2021 represented by</b>				
Gross book value	119,172	4,275	47,795	171,242
Accumulated depreciation, amortisation and impairment	(18,991)	-	(12,934)	(31,925)
<b>Total as at 30 June 2021</b>	<b>100,181</b>	<b>4,275</b>	<b>34,861</b>	<b>139,317</b>

1. Right-of-use assets are disclosed as part of leasehold improvements.

2. The carrying amount of computer software includes \$2.0m purchased software and \$32.8m internally generated software.

Leasehold improvements, plant and equipment may be sold or disposed in 2020-21 coinciding with the termination of some lease arrangements.

## 2.2 Non-Financial Assets (continued)

### Accounting Policy

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Assets are initially measured at their fair value plus appropriate transaction costs.

#### Asset recognition

Purchases of property, plant and equipment are recognised initially at cost in the statement of financial position. Right-of-use assets arising from leasing arrangements are capitalised on the commencement date based on the initial lease liability less any lease incentives received. These assets are accounted for as a separate asset class to corresponding assets owned outright, but are disclosed as part of leasehold improvements.

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make good' provisions in property leases taken up by the Commission where an obligation to restore the property to its original condition exists. These costs are included in the value of the Commission's leasehold improvements with a corresponding provision for restoration.

The Commission's intangibles comprise purchased and internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

#### Revaluations

Right-of-use assets continue to be carried at cost after initial recognition. All other property, plant and equipment is carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

#### Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Commission using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates for each class of depreciable asset are based on the following useful lives:

Asset class	2021 and 2020
Leasehold improvements	Lease term
Right-of-use assets	Lease term
Furniture and fittings	10 years
Office equipment	5 years
Computer hardware	3 to 5 years
Computer software	3 to 7 years

## 2.2 Non-Financial Assets (continued)

### Accounting Policy (continued)

#### Impairment

All assets were assessed for impairment at 30 June 2021. 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.

A write-down and impairment loss of \$0.52m (2020:\$0.02m) for non-financial assets was recognised in the Statement of Comprehensive Income. This included \$0.02m related to the revaluation of plant and equipment class.

The recoverable amount of an asset is the higher of its fair value less costs of disposal and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the entity were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

#### Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use.

#### Fair Value Measurement

The ACCC engaged the valuation services of Jones Lang LaSalle (JLL) to conduct an independent valuation of the tangible non-financial asset classes. An annual assessment is undertaken to determine whether the carrying amount of the assets is materially different from the fair value. Comprehensive valuations are carried out at least once every three years with a valuation of all tangible property, plant and equipment conducted at 30 June 2021.

The methods utilised to determine and substantiate the unobservable inputs are derived and evaluated as follows:

Physical depreciation and obsolescence - assets that do not transact with enough frequency or transparency to develop objective opinions of value from observable market evidence have been measured utilising the Depreciated Replacement Cost approach. Under the Depreciated Replacement Cost approach the estimated cost to replace the asset is calculated and then adjusted to take into account physical depreciation and obsolescence. Physical depreciation and obsolescence has been determined based on professional judgement regarding physical, economic and external obsolescence factors relevant to the asset under consideration. For all leasehold improvement assets, the consumed economic benefit / asset obsolescence deduction is determined based on the term of the associated lease.

The ACCC's policy is to recognise transfers into and transfers out of fair value hierarchy levels as at the end of the reporting period. There have been no transfers during the year (2020: nil).

### Contractual commitments for the acquisition of property, plant and equipment and intangible assets

The Commission has contractual commitments for the acquisition of leasehold improvements of \$0.7m (2020: \$0.7m), commitments for intangible assets of \$2.3m (2020: \$2.1m) and no commitments for property plant and equipment (2020: nil).

## 2.3 Payables

	2021 \$'000	2020 \$'000
<b>Suppliers</b>		
Trade creditors and accruals	18,558	17,309
Unearned revenue	1,361	345
<b>Total suppliers</b>	<b>19,919</b>	<b>17,654</b>

### Accounting Policy

Unearned revenue relates to money that has been received from customers in advance of the services being rendered. Accounting policies for revenue recognition are disclosed in Note 1.2.

## 2.4 Leases

	2021 \$'000	2020 \$'000
<b>Interest Bearing Liabilities</b>		
Leases	93,375	75,076
<b>Total interest bearing liabilities</b>	<b>93,375</b>	<b>75,076</b>

### Maturity analysis of contractual undiscounted lease cash flows

	2021 \$'000	2020 \$'000
Within 1 year	13,845	12,557
Between 1 to 5 years	43,092	34,542
More than 5 years	41,366	31,752
<b>Total undiscounted lease cash flows</b>	<b>98,303</b>	<b>78,851</b>

### Accounting Policy

Liabilities arising from leasing arrangements are initially recognised at the present value of any fixed lease payments that are not paid at that date, discounted using either:

- the interest rate implicit in the lease; or
- zero coupon bond yields released quarterly by the Department of Finance (if the implicit rate cannot be readily determined).

Following initial recognition lease liabilities are increased for accrued interest and decreased for any lease payments made. Lease liabilities are also remeasured where there has been a change in the underlying lease payments or lease term. Any adjustment to the liability is first recognised as an adjustment to the corresponding right-of-use asset. If the adjustment would reduce the carrying value of the right-of-use asset below zero, the remaining adjustment is recognised in the Statement of Comprehensive Income.

## 2.5 Other Provisions

	Provision for litigation \$'000	Provision for makegood \$'000	Total \$'000
<b>As at 1 July 2020</b>	<b>25,050</b>	<b>774</b>	<b>25,824</b>
Additional provisions made	-	82	82
Amounts used	(23,547)	(314)	(23,861)
Amounts reversed	(1,503)	(38)	(1,541)
<b>Total as at 30 June 2021</b>	<b>-</b>	<b>504</b>	<b>504</b>

The Commission currently has 6 agreements (2020: 7) for the leasing of premises which have provisions requiring it to restore the premises to their original condition at the conclusion of the lease.

### 3. Assets and Liabilities Administered on Behalf of the Government

*This section analyses the assets used to conduct operations and the operating liabilities the Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.*

#### 3.1 Administered - Financial Assets

	2021 \$'000	2020 \$'000
<b>Trade and other receivables</b>		
Fines and costs	95,445	49,136
<b>Total trade and other receivables (gross)</b>	<b>95,445</b>	<b>49,136</b>
<b>Less impairment allowance</b>	<b>(49,431)</b>	<b>(11,583)</b>
<b>Total trade and other receivables (net)</b>	<b>46,014</b>	<b>37,553</b>

Credit terms for fines and costs were within 30 days or as stipulated by court judgements (2020: 30 days).

## 4. Funding

*This section identifies the Commission's funding structure.*

### 4.1 Appropriations

#### 4.1A: Annual appropriations ('recoverable GST exclusive')

	2021 \$'000	2020 \$'000
Ordinary annual services	270,474	259,215
Capital Budget <sup>1</sup>	32,286	14,602
Equity Injections	36,200	1,100
Section 74 receipts	8,655	14,621
PGPA Act section 75 transfers <sup>2</sup>	(3,438)	-
<b>Total appropriation</b>	<b>344,177</b>	<b>289,538</b>
Appropriation applied (current and prior years) <sup>3</sup>	315,957	296,972
<b>Variance</b>	<b>28,220</b>	<b>(7,434)</b>

1. Departmental Capital Budgets are appropriated through Appropriation Acts (No.1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts.

2. Relates to funding transferred to the Department of Treasury in relation to the Consumer Data Rights function.

3. Appropriation applied includes use of both current and prior year appropriation funding. The variance in 2020-21 primarily relates to equity injections received during the year to supplement the Litigation Contingency Fund. This funding will be drawn down and used in future financial years, as required.

#### 4.1B: Unspent annual appropriations ('recoverable GST exclusive')

	2021 \$'000	2020 \$'000
<b>Departmental</b>		
Appropriation Act (No. 3) 2018-19	-	990
Supply Act (No. 2) 2019-20	-	459
Appropriation Act (No. 1) 2019-20	-	23,362
Appropriation Act (No. 2) 2019-20	-	641
Appropriation Act (No. 3) 2019-20	-	25,248
Supply Act (No. 2) 2020-21	642	-
Appropriation Act (No. 1) 2020-21	53,117	-
Appropriation Act (No. 2) 2020-21	23,486	-
Appropriation Act (No. 3) 2020-21	760	-
<b>Total departmental</b>	<b>78,005</b>	<b>50,700</b>

In addition to the unspent appropriations disclosed above, at 30 June 2021 the Commission had cash and cash equivalents of \$2.079m (2020: \$1.164m).

#### 4.1C: Special appropriations - Administered ('recoverable GST exclusive')

	Appropriation applied	
	2021 \$'000	2020 \$'000
<b>Authority:</b> PGPA Act, 2013 s.77		
<b>Type:</b> Refund		
<b>Purpose:</b> To provide for an appropriation where an Act or other law permits repayment of an amount received by the Commonwealth and the Finance Minister is satisfied that, apart from this section, there is no specific appropriation for the repayment.	5	8

## 5. People and relationships

*This section describes a range of employment and post employment benefits provided to our people and our relationships with other key people.*

### 5.1 Employee Provisions

	2021 \$'000	2020 \$'000
<b>Employee provisions</b>		
Leave	51,929	48,227
<b>Total employee provisions</b>	<b>51,929</b>	<b>48,227</b>

#### Accounting Policy

Liabilities for short-term employee benefits and termination benefits expected within twelve months of the end of the reporting period are measured at their nominal amounts. Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period.

#### Leave

The liability for employee benefits includes provision for annual leave and long service leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the Commission's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination. The leave liabilities have been determined by reference to the work of an actuary as at 30 June 2021. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

#### Separation and Redundancy

The Commission recognises a provision for separation and redundancies when it has committed to the terminations and having informed those employees affected that the terminations will be carried out.

#### Superannuation

The Commission's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), the PSS accumulation plan (PSSap), or other superannuation funds held outside the Australian Government. The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap and other superannuation funds are defined contribution schemes. The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in the Department of Finance's administered schedules and notes.

The Commission makes employer contributions to the employees' defined benefit superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The Commission accounts for the contributions as if they were contributions to defined contribution plans. The liability for superannuation recognised as at 30 June represents outstanding contributions.

### 5.2 Key Management Personnel Remuneration

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the Commission, directly or indirectly, including any director (whether executive or otherwise) of the Commission. The Commission assessed key management personnel to be the members of the Corporate Governance Board, Chief Operating Officer and Chief Finance Officer.

	2021 \$'000	2020 \$'000
Short-term employee benefits	4,864	4,864
Post-employment benefits	655	656
Other long-term employee benefits	134	115
<b>Total key management personnel remuneration expenses</b>	<b>5,653</b>	<b>5,635</b>

The total number of key management personnel that are included in the above table is 11 (2020: 12).

The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the Commission.



## 6. Managing Uncertainties

*This section analyses how the Commission manages financial risks within its operating environment.*

### 6.1 Contingent Assets and Liabilities

As at 30 June 2021, the Commission has matters before the Courts alleging breaches of the *Competition and Consumer Act 2010*. These cases are at various stages of completion.

#### Departmental

In the event of an unfavourable judgement by the Courts, the Commission stands to be liable for court costs. If it had been possible to estimate the amounts of eventual payments these would have been reported as departmental liabilities. The Commission has no quantifiable contingent liabilities arising from court action to report.

#### Administered

In the event of a favourable judgement by the Courts, the Commission stands to gain by way of penalties or costs awarded. Due to the inherent uncertainty of litigation it was not possible to estimate the value of case outcomes at 30 June 2021.

However, prior to these statements being authorised court judgements have demonstrated that the Commission has quantifiable administered contingent assets totalling \$8.9m (2020: \$8.7 million).

#### Accounting Policy

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

## 7. Other Information

### 7.1 Budgetary Reporting

Explanations of major variances between the actual amounts presented in the financial statements and the corresponding original budget amounts.

#### Departmental Activities

##### Operating Result

The Commission uses a mix of employees and third party experts to deliver on strategic priorities set out in the Commission's Strategic Direction Statement (Portfolio Budget Statements) and Corporate Plan. During the financial year the Commission reduced the use of contractors and consultants and increased the use of permanent employees to deliver against its strategic priorities. This shift is reflected in higher employee expenditure and lower supplier expenditure when compared to budgeted amounts.

- The Commission incurred lower than budgeted legal expenditure during the financial year. Legal costs can fluctuate between years depending on the number, nature and status of cases being pursued by the Commission.
- Ongoing restrictions associated with the COVID-19 pandemic has resulted in lower than budgeted travel expenditure.

**Affected line items:** *Employee benefits, Supplier Expenses, Surplus/Deficit, Appropriation Receivable, Cash Used - Employees, Cash Used - Suppliers*

##### Leasing Arrangements

In June 2021 the Commission commenced a new leasing arrangement in Sydney, Australia. In accordance with AASB 16 *Leases*, the Commission has recognised significant right-of-use assets (within leasehold improvements) and a corresponding lease liability as at 30 June 2021 that were not factored into budgeted amounts.

**Affected line items:** *Leasehold Improvements, Lease Liability*

##### Litigation Contingency Funding

The Litigation Contingency Fund (LCF) is used to strengthen the Commission's capability to deal with major litigation and ensure sufficient reserves are available to fund adverse litigation cost orders. Additional funding added to the LCF is recognised as contributed equity when received. Adverse litigation costs are recognised as an expense in the Statement of Comprehensive Income once the settlement amount can be reliably estimated. Due to the complexity and uncertainty in predicting the future outcome of litigation it is not possible to accurately budget for litigation settlements.

**Affected line items:** *Contributed Equity, Settlement of Litigation, Cash Used - Settlement of Litigation, Cash Received - Contributed Equity*

#### Administered Activities

The Commission uses a historical average to budget for fees and fines revenue due to the complexity and uncertainty in predicting the future outcome of litigation. The resulting variance between budget and actual fees and fines is a favourable \$37.5m in 2020-21. However, the budget did not anticipate impairments for overdue debtor balances of \$38.2m resulting in a final administered outcome that is different to the budget by \$0.7m.

The final receivables balance is difficult to estimate as it is the balance as at the reporting date which is a factor of the penalties and court costs imposed as well as debtors' ability to pay and the timing of their payments. The receivable balance is higher at the end of the financial year in line with increased fees and fines compared to budgeted amounts.

**Affected line items:** *Fees and fines revenue, Impairment of fees and fines, Trade and other receivables.*

## 7.2 Current / Non-Current Classification of Assets and Liabilities

Departmental	2021 \$'000	2020 \$'000
<b>Assets expected to be recovered in:</b>		
<b>No more than 12 months</b>		
Cash and cash equivalents	2,078	1,164
Trade and other receivables	83,506	57,154
Prepayments	2,067	1,422
<b>Total no more than 12 months</b>	<b>87,651</b>	<b>59,740</b>
<b>More than 12 months</b>		
Trade and other receivables	5,754	6,688
Leasehold improvements	100,181	79,808
Plant and equipment	4,275	3,177
Computer software	34,861	19,451
Prepayments	218	205
<b>Total more than 12 months</b>	<b>145,289</b>	<b>109,329</b>
<b>Total assets</b>	<b>232,940</b>	<b>169,069</b>
<b>Liabilities expected to be settled in:</b>		
<b>No more than 12 months</b>		
Suppliers	19,919	17,654
Employee related payables	3,912	3,313
Leases	12,814	11,669
Employee provisions	11,556	13,878
Other provisions	6	25,401
<b>Total no more than 12 months</b>	<b>48,207</b>	<b>71,915</b>
<b>More than 12 months</b>		
Leases	80,561	63,407
Employee provisions	40,373	34,349
Other provisions	498	423
<b>Total more than 12 months</b>	<b>121,432</b>	<b>98,179</b>
<b>Total liabilities</b>	<b>169,639</b>	<b>170,094</b>
<b>Administered</b>	<b>2021 \$'000</b>	<b>2020 \$'000</b>
<b>Assets expected to be recovered in:</b>		
<b>No more than 12 months</b>		
Cash and cash equivalents	-	500
Trade and other receivables	21,440	36,682
<b>Total no more than 12 months</b>	<b>21,440</b>	<b>37,182</b>
<b>More than 12 months</b>		
Trade and other receivables	24,574	871
<b>Total assets</b>	<b>46,014</b>	<b>38,053</b>



06

Appendixes





# Appendix 1: Entity resource statement and expenses by outcome

Table A1.1 Entity resource statement 2020–21

	Actual available appropriation for 2020–21 \$'000 (a)	Payments made 2020–21 \$'000 (b)	Balance remaining 2020–21 \$'000 (a) – (b)
<b>Departmental</b>			
Annual appropriations – ordinary annual services <sup>1,2</sup>	358,741	302,786	55,955
Annual appropriations – other services – non-operating <sup>3</sup>	37,300	13,172	24,128
<b>Total departmental annual appropriations</b>	<b>396,041</b>	<b>315,957</b>	<b>80,084</b>
Special accounts	54	-	54
<b>Total special accounts</b>	<b>54</b>	<b>-</b>	<b>54</b>
<b>Total resourcing and payments for ACCC</b>	<b>396,095</b>	<b>315,957</b>	<b>80,138</b>

- 1 *Supply Act (No. 1) 2020–21, Appropriation Act (No. 1) 2020–21 and Appropriation Act (No. 3) 2020–21, prior year departmental appropriations and retained revenue receipts under section 74 of the Public Governance, Performance and Accountability Act 2013.*
- 2 Includes an amount of \$32.3 million in 2020–21 for departmental capital budget. For accounting purposes this amount has been designated as 'contributions by owners'.
- 3 *Supply Act (No. 2) 2020–21, Appropriation Act (No. 2) 2020–21, Supply Act (No. 2) 2019–20, Appropriation Act (No. 2) 2019–20.*

**Table A1.2 Expenses for Outcome 1, 2020–21**

Outcome 1: Lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation, including enforcement, education, price monitoring and determining the terms of access to infrastructure services.	Budget <sup>1</sup> expenses 2020–21 \$'000 (a)	Actual expenses 2020–21 \$'000 (b)	Variation 2020–21 \$'000 (a)–(b)
<b>Program 1.1:</b>			
<b>Australian Competition and Consumer Commission</b>			
Departmental expenses			
Departmental appropriation <sup>2</sup>	207,686	199,819	7,867
Expenses not requiring appropriation in the budget year	11,305	11,855	(550)
<b>Total for program 1.1</b>	<b>218,991</b>	<b>211,674</b>	<b>7,317</b>
<b>Program 1.2:</b>			
<b>Australian Energy Regulator</b>			
Departmental expenses			
Departmental appropriation <sup>2</sup>	64,387	62,770	1,617
<b>Total for program 1.2</b>	<b>64,387</b>	<b>62,770</b>	<b>1,617</b>
<b>Outcome 1 Total by appropriation type</b>			
Departmental expenses			
Departmental appropriation <sup>2</sup>	272,073	262,589	9,484
Expenses not requiring appropriation in the budget year	11,305	11,855	(550)
<b>Total expenses for Outcome 1</b>	<b>283,378</b>	<b>274,444</b>	<b>8,934</b>
		<b>2019–20</b>	<b>2020–21</b>
<b>Average staffing level (number)</b>		1,113	1,172

- 1 Full-year budget, including any subsequent adjustment made to the 2020–21 budget at Additional Estimates.
- 2 Departmental appropriation combines Ordinary Annual Services (Appropriation Acts Nos 1, 3 and 5) and retained revenue receipts under s. 74 of the *PGPA Act 2013*.

## Appendix 2: Staffing

Tables A2.1 to A2.17 provide details of the ACCC and AER employees in 2020–21.

### Ongoing and non-ongoing employees

**Table A2.1 All ongoing employees, current report period (2020–21)**

	Male		Female			Indeterminate			Total	
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	71	0	71	104	9	113	0	0	0	184
Qld	36	0	36	62	11	73	0	0	0	109
SA	36	1	37	41	7	48	0	0	0	85
Tas	3	1	4	10	1	11	0	0	0	15
Vic	212	12	224	192	26	218	0	0	0	442
WA	12	0	12	15	4	19	0	0	0	31
ACT	124	7	131	154	31	185	0	0	0	316
NT	2	0	2	5	1	6	0	0	0	8
Overseas	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>496</b>	<b>21</b>	<b>517</b>	<b>583</b>	<b>90</b>	<b>673</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,190</b>

**Table A2.2 All non-ongoing employees, current report period (2020–21)**

	Male		Female			Indeterminate			Total	
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	6	0	6	11	4	15	0	0	0	21
Qld	1	0	1	2	2	4	0	0	0	5
SA	1	0	1	3	0	3	0	0	0	4
Tas	0	1	1	1	1	2	0	0	0	3
Vic	6	1	7	6	1	7	0	0	0	14
WA	9	1	10	8	5	13	0	0	0	23
ACT	6	0	6	11	4	15	0	0	0	21
NT	0	0	0	1	0	1	0	0	0	1
Overseas	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>23</b>	<b>3</b>	<b>26</b>	<b>32</b>	<b>13</b>	<b>45</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>71</b>



**Table A2.3 All ongoing employees, previous report period (2019-20)**

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	74	1	75	97	12	109	0	0	0	184
Qld	29	1	30	51	11	62	0	0	0	92
SA	38	1	39	42	8	50	0	0	0	89
Tas	3	1	4	5	0	5	0	0	0	9
Vic	216	12	228	200	31	231	0	0	0	459
WA	11	0	11	15	4	19	0	0	0	30
ACT	132	6	138	158	31	189	0	0	0	327
NT	1	0	1	4	0	4	0	0	0	5
Overseas	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>504</b>	<b>22</b>	<b>526</b>	<b>572</b>	<b>97</b>	<b>669</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,195</b>

**Table A2.4 All non-ongoing employees, previous report period (2019-20)**

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	5	4	9	8	8	16	0	0	0	25
Qld	1	1	2	2	1	3	0	0	0	5
SA	5	0	5	4	0	4	0	0	0	9
Tas	1	0	1	0	1	1	0	0	0	2
Vic	10	3	13	10	3	13	0	0	0	26
WA	0	0	0	0	2	2	0	0	0	2
ACT	6	1	7	9	5	14	0	0	0	21
NT	0	0	0	1	0	1	0	0	0	1
Overseas	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>28</b>	<b>9</b>	<b>37</b>	<b>34</b>	<b>20</b>	<b>54</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>91</b>

# Employees by Australian Public Sector (APS) classification and gender

**Table A2.5 Australian Public Service Act ongoing employees, current report period (2020-21)**

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 3	1	0	1	1	0	1	0	0	0	2
SES 2	11	0	11	5	0	5	0	0	0	16
SES 1	15	2	17	22	2	24	0	0	0	41
EL 2	122	3	125	119	28	147	0	0	0	272
EL 1	127	8	135	158	31	189	0	0	0	324
APS 6	107	5	112	130	16	146	0	0	0	258
APS 5	85	2	87	122	12	134	0	0	0	221
APS 4	15	1	16	13	1	14	0	0	0	30
APS 3	1	0	1	3	0	3	0	0	0	4
APS 2	0	0	0	0	0	0	0	0	0	0
APS 1	0	0	0	0	0	0	0	0	0	0
Graduate	12	0	12	10	0	10	0	0	0	22
<b>Total</b>	<b>496</b>	<b>21</b>	<b>517</b>	<b>583</b>	<b>90</b>	<b>673</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,190</b>

**Table A2.6 Australian Public Service Act non-ongoing employees, current report period (2020-21)**

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 3	0	0	0	0	0	0	0	0	0	0
SES 2	0	0	0	0	0	0	0	0	0	0
SES 1	0	0	0	0	0	0	0	0	0	0
EL 2	5	1	6	4	2	6	0	0	0	12
EL 1	11	0	11	6	0	6	0	0	0	17
APS 6	2	0	2	5	2	7	0	0	0	9
APS 5	3	1	4	9	2	11	0	0	0	15
APS 4	2	0	2	4	2	6	0	0	0	8
APS 3	0	0	0	3	0	3	0	0	0	3
APS 2	0	0	0	1	2	3	0	0	0	3
APS 1	0	1	1	0	3	3	0	0	0	4
Graduate	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>23</b>	<b>3</b>	<b>26</b>	<b>32</b>	<b>13</b>	<b>45</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>71</b>

**Table A2.7 Australian Public Service Act ongoing employees, previous report period (2019-20)**

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 3	0	0	0	2	0	2	0	0	0	2
SES 2	9	0	9	2	0	2	0	0	0	11
SES 1	19	2	21	14	3	17	0	0	0	38
EL 2	96	5	101	89	28	117	0	0	0	218
EL 1	125	8	133	134	34	168	0	0	0	301
APS 6	113	5	118	138	15	153	0	0	0	271
APS 5	87	1	88	134	16	150	0	0	0	238
APS 4	23	0	23	28	1	29	0	0	0	52
APS 3	5	1	6	4	0	4	0	0	0	10
APS 2	0	0	0	0	0	0	0	0	0	0
APS 1	0	0	0	0	0	0	0	0	0	0
Graduate	27	0	27	27	0	27	0	0	0	54
<b>Total</b>	<b>504</b>	<b>22</b>	<b>526</b>	<b>572</b>	<b>97</b>	<b>669</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,195</b>

**Table A2.8 Australian Public Service Act non-ongoing employees, previous report period (2019-20)**

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 3	0	0	0	0	0	0	0	0	0	0
SES 2	0	0	0	0	0	0	0	0	0	0
SES 1	0	0	0	1	0	1	0	0	0	1
EL 2	5	2	7	4	1	5	0	0	0	12
EL 1	8	0	8	7	0	7	0	0	0	15
APS 6	1	0	1	5	2	7	0	0	0	8
APS 5	4	0	4	7	1	8	0	0	0	12
APS 4	4	1	5	3	2	5	0	0	0	10
APS 3	3	1	4	5	1	6	0	0	0	10
APS 2	2	1	3	1	4	5	0	0	0	8
APS 1	1	4	5	1	9	10	0	0	0	15
Graduate	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>28</b>	<b>9</b>	<b>37</b>	<b>34</b>	<b>20</b>	<b>54</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>91</b>

## Employment type by full-time and part-time status

**Table A2.9 Australian Public Service Act employees by full-time and part-time status, current report period (2020-21)**

	Ongoing			Non-ongoing			Total
	Full-time	Part-time	Total ongoing	Full-time	Part-time	Total non-ongoing	Total
SES 3	2	0	2	0	0	0	2
SES 2	16	0	16	0	0	0	16
SES 1	37	4	41	0	0	0	41
EL 2	241	31	272	9	3	12	284
EL 1	285	39	324	17	0	17	341
APS 6	237	21	258	7	2	9	267
APS 5	207	14	221	12	3	15	236
APS 4	28	2	30	6	2	8	38
APS 3	4	0	4	3	0	3	7
APS 2	0	0	0	1	2	3	3
APS 1	0	0	0	0	4	4	4
Graduate	22	0	22	0	0	0	22
<b>Total</b>	<b>1079</b>	<b>111</b>	<b>1190</b>	<b>55</b>	<b>16</b>	<b>71</b>	<b>1,261</b>

**Table A2.10 Australian Public Service Act employees by full-time and part-time status, previous report period (2019-20)**

	Ongoing			Non-ongoing			Total
	Full-time	Part-time	Total ongoing	Full-time	Part-time	Total non-ongoing	Total
SES 3	2	0	2	0	0	0	2
SES 2	11	0	11	0	0	0	11
SES 1	33	5	38	1	0	1	39
EL 2	185	33	218	9	3	12	230
EL 1	259	42	301	15	0	15	316
APS 6	251	20	271	6	2	8	279
APS 5	221	17	238	11	1	12	250
APS 4	51	1	52	7	3	10	62
APS 3	9	1	10	8	2	10	20
APS 2	0	0	0	3	5	8	8
APS 1	0	0	0	2	13	15	15
Graduate	54	0	54	0	0	0	54
<b>Total</b>	<b>1076</b>	<b>119</b>	<b>1195</b>	<b>62</b>	<b>29</b>	<b>91</b>	<b>1,286</b>

## Employment type by location

**Table A2.11 Australian Public Service Act employment type by location, current report period (2020-21)**

	Ongoing	Non-ongoing	Total
NSW	184	21	205
Qld	109	5	114
SA	85	4	89
Tas	15	3	18
Vic	442	14	456
WA	31	0	31
ACT	316	23	339
NT	8	1	9
Overseas	0	0	0
<b>Total</b>	<b>1,190</b>	<b>71</b>	<b>1,261</b>

**Table A2.12 Australian Public Service Act employment type by location, previous report period (2019-20)**

	Ongoing	Non-ongoing	Total
NSW	184	25	209
Qld	92	5	97
SA	89	9	98
Tas	9	2	11
Vic	459	26	485
WA	30	2	32
ACT	327	21	348
NT	5	1	6
Overseas	0	0	0
<b>Total</b>	<b>1,195</b>	<b>91</b>	<b>1,286</b>

## Indigenous employment

**Table A2.13 Australian Public Service Act employment type by location, current report period (2020-21)**

	Total
Ongoing	18
Non-ongoing	2
<b>Total</b>	<b>20</b>

**Table A2.14 Australian Public Service Act employment type by location, previous report period (2019-20)**

	Total
Ongoing	19
Non-ongoing	2
<b>Total</b>	<b>21</b>

# Employment arrangements of SES and non-SES employees

**Table A2.15 Australian Public Service Act employment arrangements, current report period (2020-21)**

	SES	Non-SES	Total
ACCC Enterprise Agreement 2016-2019	0	1,202	1,202
Individual flexibility agreements	0	94	94
Section 24(1) determinations	49	1	50
<b>Total</b>	<b>49</b>	<b>1,297</b>	<b>1,346</b>

## Salary and performance pay

**Table A2.16 Australian Public Service Act employment salary ranges by classification level (minimum/maximum), current report period (2020-21)**

	Minimum salary	Maximum salary
SES 3	\$344,978	\$354,923
SES 2	\$225,489	\$330,000
SES 1	\$185,982	\$232,877
EL 2	\$126,448	\$148,186
EL 1	\$109,070	\$120,707
APS 6	\$87,785	\$98,391
APS 5	\$79,307	\$84,092
APS 4	\$71,105	\$77,202
APS 3	\$63,790	\$68,855
APS 2	\$56,008	\$62,107
APS 1	\$49,491	\$54,704
Other	\$62,107	\$71,105
Minimum/Maximum range	\$49,491	\$354,923

**Table A2.17 Australian Public Service Act employment performance pay by classification level, current report period (2020-21)**

	Number of employees receiving performance pay	Aggregated (sum total) of all payments made	Average of all payments made	Minimum payment made to employees	Maximum payment made to employees
SES 3	3	\$ 51,446	\$17,149	\$8,553	\$45,294
SES 2	12	\$ 269,728	\$22,477	\$11,280	\$34,000
SES 1	36	\$ 518,160	\$14,393	\$4,027	\$18,134
EL 2	1	\$8,527	\$8,527	\$8,527	\$8,527
EL 1	0	0	0	0	0
APS 6	0	0	0	0	0
APS 5	0	0	0	0	0
APS 4	0	0	0	0	0
APS 3	0	0	0	0	0
APS 2	0	0	0	0	0
APS 1	0	0	0	0	0
Other	0	0	0	0	0
<b>Total</b>	<b>52</b>	<b>\$847,861</b>	<b>-</b>	<b>-</b>	<b>-</b>

## Appendix 3: Mandatory executive remuneration reporting

Executive remuneration policies and practices and governance arrangements are disclosed in the annual report on page 178.

In 2021 key management personnel comprised members of the Corporate Governance Board, Chief Operating Officer and Chief Finance Officer as set out in the table below.

**Table A3.1 Key management personnel**

Name	Position	Term
Rod Sims	Chair	Full year
Delia Rickard	Deputy Chair	Full year
Mick Keogh	Deputy Chair	Full year
Sarah Court	Member	31 May 2021
Stephen Ridgeway	Member	Full year
Anna Brakey	Member	Part year – appointed 14 December 2020
Peter Crone	Member	Part year – appointed 14 December 2020
Clare Savage	Associate Member	Full year
James (Jim) Cox PSM	Associate Member	Full year
Scott Gregson	Chief Operating Officer (COO)	Full year
Peter Maybury	Chief Finance Officer (CFO)	Full year

The ACCC disclosed key management personnel remuneration in note 5.2 to the financial statements for the period ending 30 June 2021.

**Table A3.2 Information about remuneration for key management personnel**

Name	Position title	Base salary <sup>1</sup>	Bonuses <sup>2</sup>	Short-term benefits		Post-employment benefits		Other long-term benefits		Termination benefits	Total remuneration
				Other benefits and allowances <sup>3</sup>		Superannuation contributions <sup>4</sup>	Long service leave	Other long-term benefits			
Rod Sims	Chair	722,436	-	-		99,232	16,433	-		-	838,101
Delia Rickard	Deputy Chair	524,221	-	350		74,425	9,479	-		-	608,475
Mick Keogh	Deputy Chair	502,903	-	-		77,709	10,659	-		-	591,271
Sarah Court	Member	447,324	-	-		66,204	12,361	-		-	525,889
Stephen Ridgeway	Member	508,328	-	-		73,217	7,921	-		-	589,465
Anna Brakey	Member	292,802	-	-		40,676	3,199	-		-	336,677
Peter Crone	Member	292,802	-	-		40,676	3,199	-		-	336,677
Clare Savage	Associate Member	482,186	-	-		73,217	7,734	-		-	563,137
James (Jim) Cox PSM	Associate Member	405,594	-	-		21,824	7,883	-		-	435,302
Scott Gregson	Chief Operating Officer (COO)	407,793	29,790	1,752		47,717	53,498	-		-	540,550
Peter Maybury	Chief Finance Officer (CFO)	226,272	18,104	1,752		39,939	1,380	-		-	287,447

**Notes**

- 1 Base salary includes gross salary earned while working plus annual leave accrued.
- 2 Bonuses are based on an accrued estimate at 30 June 2021. The actual cash bonus paid during 2021-22 may differ from this amount following final assessment and approval processes.
- 3 Other benefits and allowances includes car parking benefits that form part of an individual's remuneration package.
- 4 For individuals in a defined contribution scheme, superannuation includes superannuation amounts. For individuals in a defined benefits scheme, superannuation includes the relevant notional employer contribution rate and employer productivity superannuation contribution.



Table A3.3 Information about remuneration for senior executives

Total remuneration bands	Number of senior executives	Short-term benefits			Post-employment benefits		Other long-term benefits			Termination benefits		Total remuneration	
		Average base salary <sup>1</sup>	Average bonuses <sup>2</sup>	Average other benefits and allowances <sup>3</sup>	Average superannuation contributions <sup>4</sup>	Average long service leave	Average other long-term benefits	Average termination benefits	Average total remuneration				
\$0-\$220,000	22	99,845	4,313	80	16,857	2,342	-	4,931	128,368				
\$220,001-\$245,000	2	202,490	-	-	26,690	4,710	-	-	233,890				
\$245,001-\$270,000	5	210,491	9,916	-	29,754	3,556	-	-	253,717				
\$270,001-\$295,000	20	225,430	16,775	564	35,936	2,987	-	-	281,692				
\$295,001-\$320,000	2	238,722	16,241	1,983	36,726	3,096	-	-	296,768				
\$320,001-\$345,000	2	273,132	19,321	-	37,442	10,917	-	-	340,813				
\$345,001-\$370,000	3	282,811	21,064	1,168	46,076	3,218	-	-	354,337				
\$370,001-\$395,000	1	304,140	23,762	2,146	51,525	7,223	-	-	388,795				
\$395,001-\$420,000	2	337,176	28,730	-	37,821	6,949	-	-	410,675				
\$420,001-\$445,000	2	374,613	20,784	1,073	34,723	7,251	-	-	438,444				
\$445,001-\$470,000	1	362,775	26,906	-	47,998	8,891	-	-	446,569				

## Notes

- 1 Base salary includes gross salary earned while working plus annual leave accrued.
- 2 Bonuses are based on an accrued estimate at 30 June 2021. The actual cash bonus paid during 2021-22 may differ from this amount following final assessment and approval processes.
- 3 Other benefits and allowances includes car parking benefits that form part of an individual's remuneration package.
- 4 For individuals in a defined contribution scheme, superannuation includes superannuation amounts. For individuals in a defined benefits scheme, superannuation includes the relevant notional employer contribution rate and employer productivity superannuation contribution.

**Table A3.4 Information about remuneration for other highly paid staff**

Total remuneration bands	Number of other highly paid staff	Short-term benefits			Post-employment benefits		Other long-term benefits	Termination benefits	Total remuneration
		Average base salary <sup>1</sup>	Average bonuses <sup>2</sup>	Average other benefits and allowances <sup>3</sup>	Average superannuation contributions <sup>4</sup>	Average long service leave			
\$230,001–\$245,000	1	206,035	-	-	29,477	4,911	-	-	240,424
\$245,001–\$270,000	3	210,369	-	424	39,697	4,603	-	-	255,092
\$270,001–\$295,000	1	234,206	-	-	35,035	4,005	-	-	273,246
\$295,001–\$320,000	1	244,469	-	1,752	43,028	6,600	-	-	295,849
\$320,001–\$345,000	1	279,847	-	-	41,256	7,751	-	-	328,855
\$345,001–\$370,000	0	-	-	-	-	-	-	-	-
\$370,001–\$395,000	0	-	-	-	-	-	-	-	-
\$395,001–\$420,000	0	-	-	-	-	-	-	-	-
\$420,001–\$445,000	2	393,482	-	-	39,912	5,790	-	-	439,184
\$445,001–\$470,000	1	399,225	-	-	56,171	5,631	-	-	461,027

**Notes**

- 1 Base salary includes gross salary earned while working plus annual leave accrued.
- 2 Bonuses are based on an accrued estimate at 30 June 2021. The actual cash bonus paid during 2021-22 may differ from this amount following final assessment and approval processes.
- 3 Other benefits and allowances includes car parking benefits that form part of an individual's remuneration package.
- 4 For individuals in a defined contribution scheme, superannuation includes superannuation amounts. For individuals in a defined benefits scheme, superannuation includes the relevant notional employer contribution rate and employer productivity superannuation contribution.

# Appendix 4: Work health and safety

## Work health and safety management

The ACCC and AER have continued to enhance policies, guidelines and practices to meet the requirements of the *Work Health and Safety Act 2011* (Cth) (WHS Act) and the Work Health and Safety Regulations 2011 (Cth).

## Health and safety outcomes

### Comcare premiums

The ACCC's Comcare premium for 2020–21 was 0.20% of payroll. This rate is well below the rate for the whole scheme, which was 0.85%.

### Compensation claims

There were 2 new compensation claims lodged with Comcare from the ACCC and AER during 2020–21. The ACCC and AER had 6 open compensation claims at the end of 2020–21.

### Early intervention

The ACCC and AER support employees suffering from work related physical and psychological injuries or illnesses to maintain or resume attendance at work. During 2020–21 this assistance, including psychological support, was provided to 26 employees.

### Incident statistics

There were 38 reports of incidents of an injury or a 'near miss' involving employees in 2020–21. There was one notifiable incident during the year.

### Investigations, directions and notices

The ACCC received no notices under the WHS Act and did not conduct any investigations during 2020–21.

### Rehabilitation Management System Audit

The ACCC's and AER's Rehabilitation Management System achieved 81% compliance in an audit conducted in 2021.

# Appendix 5: Advertising and market research

During 2020–21 the ACCC conducted the following advertising campaigns:

- Button battery safety  
[www.productsafety.gov.au/buttonbatteries](http://www.productsafety.gov.au/buttonbatteries)
- Electrical product recalls  
[www.productsafety.gov.au/news/electrical-product-recalls](http://www.productsafety.gov.au/news/electrical-product-recalls)
- Targeting scams report 2020  
[www.scamwatch.gov.au/scam-statistics/targeting-scams](http://www.scamwatch.gov.au/scam-statistics/targeting-scams)
- Small business online education  
[www.accc.gov.au/business/business-rights-protections/your-rights-responsibilities-as-a-business-online](http://www.accc.gov.au/business/business-rights-protections/your-rights-responsibilities-as-a-business-online)
- Franchising: Is it for you?  
[www.accc.gov.au/update/franchising-is-it-for-you](http://www.accc.gov.au/update/franchising-is-it-for-you)
- Dealing with debt collectors  
[www.accc.gov.au/consumers/dealing-with-debt-collectors](http://www.accc.gov.au/consumers/dealing-with-debt-collectors)
- Dismissals Direct  
[www.accc.gov.au/consumers/consumer-protection/engaging-a-representative-for-an-unfair-dismissal-claim](http://www.accc.gov.au/consumers/consumer-protection/engaging-a-representative-for-an-unfair-dismissal-claim)
- Quad bike safety standard  
[www.productsafety.gov.au/quadbikes](http://www.productsafety.gov.au/quadbikes) and [/quadbikesafety](http://www.productsafety.gov.au/quadbikesafety).

Further information on these campaigns is available at [www.accc.gov.au](http://www.accc.gov.au) and [www.productsafety.gov.au](http://www.productsafety.gov.au). The ACCC did not undertake any advertising campaigns with expenditure in excess of \$250,000.

Under s 311A of the *Commonwealth Electoral Act 1918* (Cth), the ACCC is required to provide details of payments over \$14,300 (GST inclusive) to advertising agencies, market research organisations, polling organisations, direct mail organisations and media advertising agencies.

Table A5.1 sets out expenditure incurred by the ACCC to external organisations for advertising and market research services in 2020–21.

**Table A5.1 Advertising and market research payments of more than \$14,300 in 2020–21**

Advertising and market research organisation	Description of advertising and market research services	Amount \$ inc. GST
Universal McCann	Electrical product recalls	40,000.00
Universal McCann	Button battery safety	48,171.20
Universal McCann	Targeting Scams Report 2020	16,500.00
Universal McCann	Small business online education	29,359.00
Universal McCann	Dealing with debt collectors	18,233.75
Universal McCann	Scams Awareness Week 2020 Campaign	32,999.99
Universal McCann	Consumer Data Right industry awareness campaign	16,500.00
Bastion Insights	Product safety developmental communications market research	224,730.00
Roy Morgan Research	Quantitative research related to the Digital Platform Services Inquiry	64,409.51
Roy Morgan Research	Quantitative study into the impact of scams and consumer reporting	59,888.40

# Appendix 6: Ecologically sustainable development

## How our activities and administration of legislation accord with principles of ecologically sustainable development

We administer legislation that ensures lawful competition, consumer protection and regulated national infrastructure markets and services. At all times we pursue our outcomes and objectives in a manner that provides the maximum benefit to the maximum number of consumers with the least impact on resources and the environment.

## How our outcomes contribute to ecologically sustainable development

We make decisions that, in line with s 3A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), factor in short-term and long-term economic, environmental, social and equitable considerations.

## Activities that affect the environment

To ensure we are able to effectively administer legislation and regulate national infrastructure markets and services, we have established offices at 10 locations around Australia. The work of the ACCC and AER aims to foster competitiveness and fairness, leading to more efficient and sustainable markets. The ACCC/AER operates in line with the Energy Efficiency in Government Operations Policy and the APS Information and Communications Technology (ICT) Strategy and remains committed to environmental sustainability and performance.

## Measures taken to minimise the effect of activities on the environment

We are committed to reducing the environmental impact of our activities in a range of areas.

### Property

- Optimising environmental opportunities through refurbishment and new building projects.
- Exploring energy-efficient building options for new leases, reducing fit-out size, using sustainable materials where possible, and reusing or recycling office furniture.
- Using efficient, low-energy LED lighting when opportunities arise.
- Programming supplementary air conditioning to reduce energy and water consumption.
- Installing programmable and efficient office lighting, including motion sensors, in new fit-outs.
- For existing commercial offices over 2,000 m<sup>2</sup>, maintaining a minimum energy performance standard of 4.5 stars from NABERS (National Australian Built Environment Rating System).
- Focusing on sustainable waste management practices and improving staff awareness through behaviour change programs.
- Continuing monitoring and reporting of the ACCC/AER's whole property portfolio energy consumption.

## Information technology

- Retaining main servers in offsite locations, reducing onsite energy consumption.
- Using power-saving modes for ICT equipment when not in use.
- Increasing use of ISO 14001 accredited printers for external printing services where appropriate.
- Reducing printer numbers and improving printing efficiency in accordance with government requirements.
- Using follow-me printing, duplex printing and photocopying as a default setting on all printers and multi-function devices.

## Travel

- Using ICT options as an alternative to business travel.
- Reducing vehicle fleet and servicing vehicles in accordance with manufacturers' specifications.
- Using E10 fuels for lease vehicles where possible.

## Workplace efficiencies

- Emphasising electronic records and electronic working arrangements.
- Promoting access to ACCC publications electronically rather than in print.

## Purchasing and procurement

- Purchasing 100% post-consumer recycled content copy paper.
- Procuring office equipment with low energy consumption.

## Waste management

- Improving waste segregation practices, including paper, commingled recycling, general waste, e-waste and, in some offices, organic waste.
- Recycling paper and cardboard products, including pulping classified waste and providing use-again office envelopes.
- Disposing toner cartridges through a recycling outlet.
- Recycling all fluorescent tubes.
- Disposing mobile phones and batteries through a recycling outlet.

## Information and education

- Collaborating regularly with building management to identify initiatives and participate in local environmental activities.

## Mechanisms for reviewing and increasing the effectiveness of measures

The ACCC environmental strategy focuses on better environmental and sustainability practices. The ACCC/AER utilises a process of informal continuous review of the various measures it employs to reduce the environmental impact of its activities.

Where further efficiencies are identified in the course of business, the agency endeavours to put in place the measures required to realise these efficiencies. All of the above is done in accordance with both the applicable funding and environmental guidelines available to the ACCC and AER.

# Appendix 7: Legislative framework

This appendix outlines the legislation under which we operate.

## Competition and Consumer Act and key legislation

*Airports Act 1996* (Cth)

*Australian Postal Corporation Act 1989* (Cth)

*Competition and Consumer Act 2010* (Cth) (CCA)

Competition and Consumer (Consumer Data Right) Rules 2020

National Electricity Law and Rules

National Gas Law and Rules

National Energy Retail Law and Rules

*Telecommunications Act 1997* (Cth)

*Water Act 2007* (Cth)

Water Market Rules 2009 (Cth)

Water Charge (Termination Fees) Rules 2009 (Cth)

Water Charge (Infrastructure) Rules 2010 (Cth)

Water Charge (Planning and Management Information) Rules 2010 (Cth)

## Lawful competition and informed markets

**Table A7.1 Parts of the Competition and Consumer Act 2010 dealing with competition**

IV	Cartel conduct: price fixing; output restrictions; bid rigging; allocating customers, suppliers or territories
	Other anti-competitive conduct: boycotts; agreements substantially lessening competition; anti-competitive disclosure of pricing and other information; misuse of market power; exclusive dealing; resale price maintenance; mergers substantially lessening competition
IVD	Consumer Data Right
IVE	Motor vehicle service and repair information sharing scheme
VI	Enforcement and remedies
VII	Authorisations and notifications
XIA	The Competition Code

## Fair trading and consumer protection

**Table A7.2 Parts of the Competition and Consumer Act 2010 (including the Australian Consumer Law) dealing with fair trading and consumer protection**

<b>Competition and Consumer Act 2010</b>	
IVB	Industry codes of conduct: the franchising, horticulture, dairy, wheat, electricity retail, oil and unit pricing codes are mandatory codes prescribed under Part IVB
VI	Enforcement and remedies
<b>Australian Consumer Law – Schedule 2 to the Competition and Consumer Act 2010</b>	
Chapter 2	General protections: misleading or deceptive conduct; unconscionable conduct; unfair contract terms
Chapter 3	Specific protections: false or misleading representations; unsolicited supplies; pyramid selling; pricing display; consumer guarantees; unsolicited consumer agreements; lay-by agreements; gift cards; product safety, bans, recalls, reporting, and safety and information standards
Chapter 4	Criminal conduct relating to fair trading and consumer protection
Chapter 5	Enforcement and remedies for contraventions of the Australian Consumer Law

## Infrastructure services and markets where competition is limited

**Table A7.3 Parts of the Competition and Consumer Act 2010 dealing with regulated industries and prices surveillance**

IIIAA	Regulatory and enforcement responsibilities under Commonwealth laws, the National Energy Laws and Rules
IIIA	Access to the services of essential national infrastructure facilities such as rail tracks and port terminals
IVB	Industry codes of conduct
VIIA	Price inquiries and surveillance in relation to industries or businesses as directed by the Australian Government
X	Limited exemptions for anti-competitive conduct in relation to international liner cargo shipping
XIB	Anti-competitive conduct in telecommunications
XIC	Access to services for telecommunications
XICA	Prohibited conduct in relation to the electricity industry



# Appendix 8: Information required under the Competition and Consumer Act 2010

This appendix contains certain disclosures required by the *Competition and Consumer Act 2010* (Cth) (CCA).

## Section 171(2) reporting requirements

Section 51(1) of the CCA provides that conduct that would normally contravene the law may be permitted if it is specifically authorised under other Commonwealth, state or territory legislation. Section 171(2) of the CCA requires our annual report to include a list of all Commonwealth, state and territory laws that the ACCC is aware of that rely on s 51(1) of the CCA or s 51(1) of the Competition Code (as defined in s 150A).

### Exceptions under Commonwealth, state and territory legislation

Below is a list of the legislation that allows such conduct or provides for regulations to be made authorising particular conduct. The list includes legislation of which the ACCC has been notified or has otherwise become aware.

#### Commonwealth

*Australian Postal Corporation Act 1989*

*Banking Act 1959*

*Competition and Consumer Act 2010*

*Customs Act 1901*

*Financial Sector (Business Transfer and Group Restructure) Act 1999*

*Insurance Act 1973*

*Life Insurance Act 1995*

*Liquid Fuel Emergency Act 1984*

*Payment Systems (Regulation) Act 1998*

*Social Security (Administration) Act 1999*

*Stronger Futures in the Northern Territory Act 2012*

*Telecommunications Act 1997*

#### Australian Capital Territory

*Cemeteries and Crematoria Act 2003*

*Competition Policy Reform Act 1996*

*Financial Management Act 1996*

*Government Procurement Act 2001*

*Health Act 1993*

*Insurance Authority Act 2005*

*Racing Act 1999*

*Road Transport (Public Passenger Services) Act 2001*

*Territory Records Act 2002*

*Waste Management and Resource Recovery Act 2016*

## **New South Wales**

*Australian Jockey and Sydney Turf Clubs Merger Act 2010*

*Betting and Racing Act 1998*

*Casino Control Regulation 2019*

*Coal Industry Act 2001*

*Competition Policy Reform (New South Wales) Act 1995*

*Electricity Generator Assets (Authorised Transactions) Act 2012*

*Gaming Machines Act 2001*

*Health Services Act 1997*

*Hunter Water Act 1991*

*Industrial Relations Act 1996*

*Industrial Relations (Ethical Clothing Trades) Act 2001*

*James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*

*Land and Property Information NSW (Authorised Transaction) Act 2016*

*Liquor Act 2007*

*Major Events Act 2009*

*Passenger Transport Act 2014*

*Point to Point Transport (Taxis and Hire Vehicles) Act 2016*

*Rice Marketing Act 1983*

*Sporting Venues Authorities Act 2008*

*Thoroughbred Racing Act 1996*

*Totalizator Act 1997*

*Waste Avoidance and Resource Recovery Act 2001*

## **Northern Territory**

*Competition Policy Reform (Northern Territory) Act 1996*

*Consumer Affairs and Fair Trading Act 1990*

*Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations 1996*

*Electricity Reform Act 2000*

*Environmental Protection (Beverage Containers and Plastic Bags) Act 2011*

*Liquor Act 2019*

*Water Supply and Sewerage Services Act 2000*

## **Queensland**

*Competition Policy Reform (Queensland) Act 1996*

*Gladstone Power Station Agreement Act 1993*

*Racing Act 2002*

*Sugar Industry Act 1999*

*Sugar Industry Regulation 2010*

*Transport Operations (Passenger Transport) Act 1994*

*Waste Reduction and Recycling Act 2011*

## **South Australia**

*Authorised Betting Operations Act 2000*

*Competition Policy Reform (South Australia) Act 1996*

*Cooper Basin (Ratification) Act 1975*

*Roxby Downs (Indenture Ratification) Act 1982*

## **Tasmania**

*Competition Policy Reform (Tasmania) Act 1996*

*Electricity Reform Act 2012*

*Electricity Supply Industry Act 1995*

*Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*

*Energy Coordination and Planning Act 1995*

*Gaming Control Act 1993*

*Rail Company Act 2009*

*TOTE Tasmania (Sale) Act 2009*

*Water and Sewerage Corporation Act 2012*

## **Victoria**

*Gambling Regulation Act 2003*

*Gas Industry (Residual Provisions) Act 1994*

*Health Services Act 1988*

*Legal Profession Uniform Law Application Act 2014*

*Liquor Control Reform Act 1998*

*Outworkers (Improved Protection) Act 2003*

*Owner Drivers and Forestry Contractors Act 2005*

*State Owned Enterprises Act 1992*

## Western Australia

*Competition Policy Reform (Western Australia) Act 1996*

*Electricity Corporations Act 2005*

Electricity Industry (Wholesale Electricity Market) Regulations 2004

*Electricity Industry Act 2004*

*Energy Coordination Act 1994*

*Fair Trading Act 2010*

Fair Trading (Fitness Industry Interim Code) Regulations 2019

*Liquor Control Act 1988*

*North West Gas Development (Woodside) Agreement Act 1979*

*Owners–Drivers (Contracts and Disputes) Act 2007*

Surveillance Devices Amendment Regulations 2020

*TAB Disposal Act 2019*

*Waste Avoidance and Resource Recovery Act 2007*

## Section 171(3) reporting requirements

### Time taken to make final determinations and decisions

#### Final determinations on access disputes under section 44V

No decisions were made under s 44V during 2020–21.

#### Decisions on access undertaking applications and access code applications

##### ***Rail – Interstate Access Undertaking***

On 23 April 2021 the Australian Rail Track Corporation (ARTC) applied to extend its 2008 Interstate Access Undertaking by 2 years. On 15 June 2021 the ACCC published a notice extending the Interstate Access Undertaking to 30 June 2023.

##### ***Rail – Hunter Valley Coal Network Access Undertaking***

As per s 44ZZA (Part IIIA), on 23 December 2020 the ARTC submitted a proposed variation to the Hunter Valley Coal Network Access Undertaking.

On 13 January 2021 the ACCC published a consultation paper seeking submissions from stakeholders.

On 30 March 2021 the ARTC withdrew the original submission and resubmitted an updated application. On 13 April 2021 the ACCC published a draft decision and on 2 June 2021 the Commission published its final decision, approving the amendments.

As per s 44ZZBC of the CCA, the ACCC has 180 days (subject to ‘stop the clock’ provisions) to make a decision on an access undertaking, beginning on the date it receives an application. The ACCC completed its decision in less than 180 days from the 30 March 2021 submission (as well as within 180 days from the original (December 2020) application).

#### Decisions on applications under section 44PA(1)

No decisions were made on applications under s 44PA(1).

## Notices under the Competition and Consumer Act 2010

### General description of matters for which notices were given

In 2020–21 a total of 941 notices were issued by the ACCC during market studies and investigations of conduct potentially in contravention of the prohibition on anti-competitive mergers, restrictive trade practices provisions, industry codes and consumer and small business protection provisions in the CCA.

#### *Types of notices issued*

- 4 notices under s 51ADD (requiring the provision of information or documents that the addressee is required to keep, generate or publish under an applicable industry code)
- 211 notices under s 95ZK (requiring the provision of information and/or documents relating to the affairs of the addressee which may be relevant to an ACCC inquiry or ACCC monitoring, as set out in the provision)
- No notices under s 133D (requiring the provision of information and documentation relating to the safety of consumer goods)
- 129 notices under s 155(1)(a) and (b) (requiring the addressee to furnish information in writing and produce documents)
- 21 notices under s 155(1)(a) (requiring the addressee to furnish information)
- 50 notices under s 155(1)(b) (requiring the addressee to produce documents)
- 76 notices under s 155(1)(c) (requiring the addressee to appear in person and give evidence)
- 11 authorisation instruments were signed to facilitate the disclosure of protected information under s 155AAA(12) (Chair is satisfied that particular protected information will assist another public agency, body or person)
- No notices under s 155A (requiring the provision of information and documents relating to a matter that may constitute a misuse of market power in a trans-Tasman market).

### Challenges to the validity of notices

No proceedings were instituted to challenge the validity of a notice.

### Search warrants issued or signed

No search warrants were issued by a judge under s 135Z or signed by a judge under s 136.

There were no warrants issued by a magistrate under s 154X (Part XID). No search warrants were signed by a magistrate under s 154Y.

### General description of matters for which search warrants were issued or signed

No search warrants were issued pursuant to s 154X during 2020–21.

### Challenges to the validity of search warrants

There were no challenges to the validity of the search warrants.

### Entry to premises

There were no entries onto premises under s 133B, s 133C or Division 6 of Part XI.

There were no entries to premises with consent under s 154D (Part XID).

Inspectors appointed under s 133(1) of the CCA may enter the premises from which a person in trade or commerce supplies consumer goods and service, if the public has access to the premises at the time of entry. While on the premises, the inspector may take photographs, inspect consumer goods and equipment or purchase consumer goods and services. During 2020–21 surveillance staff appointed as inspectors undertook nil entries to premises under ss 133B or 133C as part of the ACCC routine surveillance program.

## Complaints received by the ACCC

Details of the number of complaints received by the ACCC in 2020–21 and a summary of the kinds of complaints received and how they were dealt with in Part 3 on pages 103–104.

## Matters investigated by the ACCC

Details of the major matters investigated by the ACCC in 2020–21 are in Part 3 on pages 37–150.

## Substantiation notices issued

One substantiation notice was issued pursuant to s 219(2)(a) and (c) of the CCA requiring the addressee to provide information in writing and produce documents substantiating or supporting their claims relating to the performance characteristics of antibacterial and anti-virus activewear.

## Intervention in proceedings

On 12 May 2021 the ACCC was granted leave to intervene as a non-party in order to make written submissions as to issues of public policy which arose in Epic Games Inc's appeal to the Full Federal Court against the stay of Epic's proceedings against Apple Inc and Apple Pty Ltd.<sup>25</sup>

The AER did not intervene in any proceedings during 2020–21.

## Section 56CH(4) reporting requirements

Section 56CH(4) of the CCA requires this report to include information about the performance of the Consumer Data Right (CDR) Data Recipient Accreditor's functions, and the exercise of the Data Recipient Accreditor's powers.

Entities that wish to collect consumer data under Consumer Data Right must be accredited by the Data Recipient Accreditor. The Data Recipient Accreditor is provided with a number of functions and powers related to this accreditation role by Part IVD of the CCA and by the Competition and Consumer (Consumer Data Right) Rules 2020 (CDR Rules). The Data Recipient Accreditor can accredit an accreditation applicant if satisfied that the applicant meets the accreditation criteria specified in the CDR Rules; impose, vary or remove conditions on an accreditation; and revoke or suspend an accreditation. The CDR Rules also allow the Data Recipient Accreditor to accept the surrender of an accreditation, approve the form in which an accreditation application can be made, consult with other regulators and request further information from applicants.

The ACCC is the designated Data Recipient Accreditor under the CCA.

During 2020–21 the Data Recipient Accreditor:

- approved updates to the full and streamlined forms for persons to use when applying to be accredited at the unrestricted level. These updates reflected rule changes to allow for the collection of CDR data by accredited intermediaries
- accredited 10 persons.

<sup>25</sup> *Epic Games, Inc v Apple Inc* [2021] FCAFC 122.

## Section 56CL(4) reporting requirements

Section 56CL(4) of the CCA requires this report to include information about the performance of the CDR Accreditation Registrar's functions and the exercise of the Accreditation Registrar's powers.

The Accreditation Registrar has a number of functions and powers under Part IVD of the CCA and specified in the CDR Rules. The Registrar must establish and maintain the Register of Accredited Persons.<sup>26</sup> Information in the register must be made publicly available by the Registrar as required by the CDR Rules. The CDR Rules also require the Registrar to create and maintain a database of data holders associated with the register. This will contain a list of data holders and associated technical information.

The CDR Rules give the Registrar additional functions to:

- manage the process of onboarding the accredited data recipients and data holders to the register by requiring them to provide information to be stored in the register that is necessary for the processing of requests for CDR data
- maintain the security, integrity and stability of the register, including undertaking and facilitating testing of accredited data recipients and data holders
- issue requests to data holders and accredited data recipients to do specified things where necessary or convenient in order for the Registrar to exercise its powers or, where this is necessary, to ensure the security, integrity and stability of the register
- inform the Data Recipient Accreditor of any failure of an accredited data recipient to comply with a condition of its accreditation or to do things requested by the Registrar.

The ACCC is the designated Registrar under the CCA.

During 2020–21 the Registrar:

- maintained the Register of Accredited Persons and associated database
- published information on the register about 10 data holders and 10 accredited persons<sup>27</sup>
- maintained the security, integrity and stability of the Register of Accredited Persons and associated database by approving new versions of the *Consumer Data Right participant on-boarding guide* and making a written request to accredited persons and data holders to complete the steps in the guide (including the Conformance Test Suite) in order to be onboarded to the CDR Register.

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<sup>26</sup> Section 56CE(1) of the CCA.

<sup>27</sup> Prior to 1 July 2020, there were 4 data holders and 2 accredited data recipients on the Register of Accredited Persons and associated database. During the 2020–21 financial year the Registrar published information about a further 10 data holders and 10 accredited data recipients. On 1 July 2021 the Registrar published information about another 2 data holders which had been approved to be made active prior to the end of the 2020–21 financial year. Another person was accredited on 1 July 2021 and also published in the Register on that date.

## Appendix 9: Correction of material errors in previous annual reports

Nil.



# Glossary and abbreviations

ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ACLEI	Australian Commission for Law Enforcement Integrity
ACMA	Australian Communications and Media Authority
ACT	Australian Capital Territory
ADI	authorised deposit-taking institution
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
ANAO	Australian National Audit Office
Anor	another
ANZ	Australia and New Zealand Banking Group Limited
ANZSIC	Australian and New Zealand Standard Industrial Classification
APCC	ACCC Performance Consultative Committee
APS	Australian Public Service
ARENA	Australian Renewable Energy Agency
ASEAN	Association of Southeast Asian Nations
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
BNPL	buy now, pay later
CAANZ	Consumer Affairs Australia New Zealand
CAF	COAG Legislative and Governance Forum on Consumer Affairs
CALD	culturally and linguistically diverse
CAP	Consumer Affairs Program
CCA	<i>Competition and Consumer Act 2010</i>
CCG	Customer Consultative Group
CDPP	Commonwealth Director of Public Prosecutions
CDR	Consumer Data Right
CDR Rules	Competition and Consumer (Consumer Data Right) Rules 2020
CEO	Chief Executive Officer
CEPA	Cambridge Economic Policy Associates
CFMMEU	Construction, Forestry, Maritime, Mining and Energy Union

CFO	Chief Finance Officer
CLIP	Competition Law Implementation Program
Co	company
COAG	Council of Australian Governments
COO	Chief Operating Officer
CPA	contingent project application
Cth	Commonwealth
CTM	certification trade mark
CTS	Conformance Test Suite
DER	distributed energy resources
DITRDC	Department of Infrastructure, Transport, Regional Development and Communications
DNSPs	distribution network service providers
DPB	Digital Platforms Branch
DSB	Data Standards Body
DTCS	domestic transmission capacity service
ECA	Energy Consumers Australia
EL	Executive Level
EME	Energy Made Easy
ENA	Energy Networks Australia
ESB	Energy Security Board
EV	electric vehicle
FIRB	Foreign Investment Review Board
FOI Act	<i>Freedom of Information Act 1982</i>
GST	Goods and Services Tax
Hon	honourable
IASR	Inputs, Assumptions and Scenarios Report
ICARE	Impartial, Committed to Service, Accountable, Respectful and Ethical
ICC	Infrastructure Consultative Committee
ICN	International Competition Network
ICPEN	International Consumer Protection and Enforcement Network
ICT	information and communication technology
IP	intellectual property
IPART	Independent Pricing and Regulatory Tribunal of NSW
ISP	Integrated System Plan

LEIC Act	<i>Law Enforcement Integrity Commission Act 2006</i>
LGBTIQ+	Lesbian, Gay, Bisexual, Trans, Intersex, Queer and other sexual and gender identities
LNG	liquefied natural gas
Ltd	Limited
MHz	megahertz
MLO	Market Liquidity Obligation
MMAC	Multilateral Mutual Assistance and Cooperation Framework for Competition Authorities
MP	Member of Parliament
MTAS	mobile terminating access service
N/A	not applicable
NABERS	National Australian Built Environment Rating System
NADI	non-azide driver inflator
NBN	National Broadband Network
NEM	National Electricity Market
NSW	New South Wales
NT	Northern Territory
OAIC	Office of the Australian Information Commissioner
OECD	Organisation for Economic Co-operation and Development
Ors	others
PBS	Portfolio Budget Statement
PEMM	Prohibiting Energy Market Misconduct legislation
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	Public Governance, Performance and Accountability Rule 2014
PSS	Public Sector Superannuation Scheme
PSSap	PSS accumulation plan
Pty Ltd	Proprietary Limited
PV	photovoltaic
Qld	Queensland
RAAP	Register and Accreditation Application Platform
RIT-T	regulatory investment test for transmission
RPF	Regulator Performance Framework
SA	South Australia
SAN	Scams Awareness Network

SAPS	stand-alone power systems
SES	Senior Executive Service
SME	small and medium enterprise
SoE	Statement of Expectations
t/a	trading as
Tas	Tasmania
TFP	total factor productivity
TNSP	transmission network service providers
UCT	unfair contract term
UK	United Kingdom
URF	Utility Regulators Forum
US(A)	United States of America
Vic	Victoria
VPN	virtual private network
WA	Western Australia
WHS	work health and safety
WHS Act	<i>Work Health and Safety Act 2011</i>
WSP	Working Smarter Program

# Compliance index

## List of requirements

This schedule provides, for the purposes of paragraph 17AJ(d) of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule), the list of requirements to be included in a non-corporate Commonwealth entity's annual report for a reporting period. The schedule is prepared for subsection 46(3) of the *Public Governance, Performance and Accountability Act 2013* (Cth).

PGPA Rule Reference	Part of Report	Description	Requirement	Page
<b>17AD(g)</b>	<b>Letter of transmittal</b>			
17AI		A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with section 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	iv
<b>17AD(h)</b>	<b>Aids to access</b>			
17AJ(a)		Table of contents.	Mandatory	vi
17AJ(b)		Alphabetical index.	Mandatory	257
17AJ(c)		Glossary of abbreviations and acronyms.	Mandatory	242
17AJ(d)		List of requirements.	Mandatory	246
17AJ(e)		Details of contact officer.	Mandatory	iii
17AJ(f)		Entity's website address.	Mandatory	iii
17AJ(g)		Electronic address of report.	Mandatory	iii
<b>17AD(a)</b>	<b>Review by accountable authority</b>			
17AD(a)		A review by the accountable authority of the entity.	Mandatory	11
<b>17AD(b)</b>	<b>Overview of the entity</b>			
17AE(1)(a)(i)		A description of the role and functions of the entity.	Mandatory	26
17AE(1)(a)(ii)		A description of the organisational structure of the entity.	Mandatory	26
17AE(1)(a)(iii)		A description of the outcomes and programmes administered by the entity.	Mandatory	39
17AE(1)(a)(iv)		A description of the purposes of the entity as included in corporate plan.	Mandatory	25 and 40
17AE(1)(aa)(i)		Name of the accountable authority or each member of the accountable authority	Mandatory	26 and 153
17AE(1)(aa)(ii)		Position title of the accountable authority or each member of the accountable authority	Mandatory	26 and 153

17AE(1)(aa)(iii)	Period as the accountable authority or member of the accountable authority within the reporting period	Mandatory	153
17AE(1)(b)	An outline of the structure of the portfolio of the entity.	Portfolio departments—mandatory	N/A
17AE(2)	Where the outcomes and programs administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, include details of variation and reasons for change.	If applicable, Mandatory	N/A
<b>17AD(c)</b>	<b>Report on the Performance of the entity</b>		
	<b>Annual performance Statements</b>		
17AD(c)(i); 16F	Annual performance statement in accordance with paragraph 39(1)(b) of the Act and section 16F of the Rule.	Mandatory	37-150
<b>17AD(c)(ii)</b>	<b>Report on Financial Performance</b>		
17AF(1)(a)	A discussion and analysis of the entity's financial performance.	Mandatory	19-21
17AF(1)(b)	A table summarising the total resources and total payments of the entity.	Mandatory	215-216
17AF(2)	If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results.	N/A	19-21
<b>17AD(d)</b>	<b>Management and Accountability</b>		
	<b>Corporate Governance</b>		
17AG(2)(a)	Information on compliance with section 10 (fraud systems)	Mandatory	168
17AG(2)(b)(i)	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	iv

17AG(2)(b)(ii)	A certification by accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the entity are in place.	Mandatory	iv
17AG(2)(b)(iii)	A certification by accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity.	Mandatory	iv
17AG(2)(c)	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	153-168 and 177-179
17AG(2)(d) - (e)	A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to non-compliance with Finance law and action taken to remedy non-compliance.	N/A	19-21
<b>Audit Committee</b>			
17AG(2A)(a)	A direct electronic address of the charter determining the functions of the entity's audit committee.	Mandatory	166
17AG(2A)(b)	The name of each member of the entity's audit committee.	Mandatory	165-166
17AG(2A)(c)	The qualifications, knowledge, skills or experience of each member of the entity's audit committee.	Mandatory	165-166
17AG(2A)(d)	Information about the attendance of each member of the entity's audit committee at committee meetings.	Mandatory	165-166
17AG(2A)(e)	The remuneration of each member of the entity's audit committee.	Mandatory	165-166
<b>External Scrutiny</b>			
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	170-172
17AG(3)(a)	Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity.	If applicable, Mandatory	170

17AG(3)(b)	Information on any reports on operations of the entity by the Auditor-General (other than report under section 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, Mandatory	171-172
17AG(3)(c)	Information on any capability reviews on the entity that were released during the period.	If applicable, Mandatory	171
<b>Management of Human Resources</b>			
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	173-179
17AG(4)(aa)	Statistics on the entity's employees on an ongoing and non-ongoing basis, including the following:  (a) statistics on full-time employees;  (b) statistics on part-time employees;  (c) statistics on gender  (d) statistics on staff location	Mandatory	217-223
17AG(4)(b)	Statistics on the entity's APS employees on an ongoing and non-ongoing basis; including the following:  (a) statistics on staffing classification level;  (b) statistics on full-time employees;  (c) statistics on part-time employees;  (d) statistics on gender;  (e) statistics on staff location;  (f) statistics on employees who identify as Indigenous.	Mandatory	217-223
17AG(4)(c)	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subsection 24(1) of the Public Service Act 1999.	Mandatory	173-179
17AG(4)(c)(i)	Information on the number of SES and non-SES employees covered by agreements etc identified in paragraph 17AG(4)(c).	Mandatory	177-179 and 223
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level.	Mandatory	179 and 223



17AG(4)(c)(iii)	A description of non-salary benefits provided to employees.	Mandatory	178
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay.	If applicable, Mandatory	179 and 223
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level.	If applicable, Mandatory	179 and 223
17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, Mandatory	179 and 223
17AG(4)(d)(iv)	Information on aggregate amount of performance payments.	If applicable, Mandatory	179 and 223
<b>Assets Management</b>			
17AG(5)	An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities	If applicable, mandatory	N/A and 181
<b>Purchasing</b>			
17AG(6)	An assessment of entity performance against the <i>Commonwealth Procurement Rules</i> .	Mandatory	181-183
<b>Reportable consultancy contracts</b>			
17AG(7)(a)	A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST).	Mandatory	182-183

17AG(7)(b)	A statement that <i>“During [reporting period], [specified number] new reportable consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing reportable consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]”.	Mandatory	182
17AG(7)(c)	A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged.	Mandatory	182
17AG(7)(d)	A statement that <i>“Annual reports contain information about actual expenditure on reportable consultancy contracts. Information on the value of reportable consultancy contracts is available on the AusTender website.”	Mandatory	182
<b>Reportable non-consultancy contracts</b>			
17AG(7A)(a)	A summary statement detailing the number of new reportable non-consultancy contracts entered into during the period; the total actual expenditure on such contracts (inclusive of GST); the number of ongoing reportable non-consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting period on those ongoing contracts (inclusive of GST).	Mandatory	182–183
17AG(7A)(b)	A statement that “ <i>Annual reports contain information about actual expenditure on reportable non-consultancy contracts. Information on the value of reportable non-consultancy contracts is available on the AusTender website.</i> ”	Mandatory	182
<b>17AD(daa)</b>	<b>Additional information about organisations receiving amounts under reportable consultancy contracts or reportable non-consultancy contracts</b>		
17AGA	Additional information, in accordance with section 17AGA, about organisations receiving amounts under reportable consultancy contracts or reportable non-consultancy contracts.	Mandatory	182–183

<b>Australian National Audit Office Access Clauses</b>			
17AG(8)	If an entity entered into a contract with a value of more than \$100 000 (inclusive of GST) and the contract did not provide the Auditor-General with access to the contractor's premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	If applicable, Mandatory	181
<b>Exempt contracts</b>			
17AG(9)	If an entity entered into a contract or there is a standing offer with a value greater than \$10 000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.	If applicable, Mandatory	181
<b>Small business</b>			
17AG(10)(a)	A statement that “[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance’s website.”	Mandatory	181
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	181
17AG(10)(c)	If the entity is considered by the Department administered by the Finance Minister as material in nature—a statement that “[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury’s website.”	If applicable, Mandatory	N/A

<b>Financial Statements</b>			
17AD(e)	Inclusion of the annual financial statements in accordance with subsection 43(4) of the Act.	Mandatory	185-212
<b>Executive Remuneration</b>			
17AD(da)	Information about executive remuneration in accordance with Subdivision C of Division 3A of Part 2-3 of the Rule.	Mandatory	177-179 and 224-227
<b>17AD(f) Other Mandatory Information</b>			
17AH(1)(a)(i)	If the entity conducted advertising campaigns, a statement that <i>"During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity's website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance's website."</i>	If applicable, Mandatory	229
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, Mandatory	229
17AH(1)(b)	A statement that <i>"Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity's website]."</i>	If applicable, Mandatory	184
17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	175
17AH(1)(d)	Website reference to where the entity's Information Publication Scheme statement pursuant to Part II of FOI Act can be found.	Mandatory	171-172
17AH(1)(e)	Correction of material errors in previous annual report.	If applicable, mandatory	241
17AH(2)	Information required by other legislation.	Mandatory	254-256

## Information required by other legislation

Subsection 17AH(2) of the PGPA Rule provides for the inclusion of other mandatory information in annual reports as required by an act or instrument. The ACCC is required to include information in its annual report by the *Competition and Consumer Act 2010* (Cth) (CCA), the *Work Health and Safety Act 2011* (Cth), the *Commonwealth Electoral Act 1918* (Cth) and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

### Competition and Consumer Act 2010 requirements

Under our enabling legislation, the CCA, the ACCC is required to include the following matters in its annual report.

Section	Requirement	Page
56CH(4)	Information about the performance of the Data Recipient Accreditor's functions, and the exercise of the Data Recipient Accreditor's powers	240
56CL(4)	Information about the performance of the Accreditation Registrar's functions, and the exercise of the Accreditation Registrar's powers	240
171(2)	Cumulative list of all Commonwealth, state and territory laws that the Commission knows about that authorise things for the purposes of s. 51(1) of this Act or s. 51(1) of the Competition Code (as defined in s. 150A).	234–237
171(3)(aa)(i)	The time taken to make final determinations under s. 44V in relation to access disputes.	237
171(3)(aa)(ii)	The time taken to make decisions on access undertaking applications or access code applications (within the meaning of s. 44B).	237
171(3)(aa)(iii)	The time taken to make decisions on applications under s. 44PA(1).	237
171(3)(a)(i)	The number of notices given by the Commission under s. 155.	238
171(3)(a)(iii)	The number of notices given by the Commission under s. 155A.	238
171(3)(b)	A general description of the nature of the matters in respect of which the notices were given.	238
171(3)(c)	The number of proceedings brought to challenge the validity of the notices.	238
171(3)(ca)	The number of search warrants issued by a judge under s. 135Z or signed by a judge under s. 136.	238
171(3)(d)	The number of search warrants issued by a magistrate under s. 154X or signed by a magistrate under s. 154Y.	238
171(3)(da)	A general description of the nature of the matters in respect of which the search warrants referred to in paragraph (ca) or (d) were issued or signed.	238
171(3)(db)	The number of proceedings brought to challenge the validity of the search warrants referred to in paragraph (ca) or (d).	238
171(3)(dc)	The number of entries onto premises under s. 133B or 133C, Division 6 of Part XI or Part XID.	238–239
171(3)(e)	The number of complaints received by the Commission.	103–104 and 239
171(3)(f)	A general summary of the kinds of complaints received by the Commission and how it dealt with them.	103–104 and 239

171(3)(g)	A general description of the major matters investigated by the Commission.	37–150 and 239
171(3)(h)	The number of times the Commission has intervened in proceedings and a general description of the reasons for doing so.	239

## Commonwealth Electoral Act 1918 requirements

Under s 311A of the *Commonwealth Electoral Act 1918*, the ACCC is required to report on the following matters in its annual report.

Requirement	Page
A statement setting out particulars of all amounts more than \$14,300 paid by, or on behalf of, the Commonwealth Department during the financial year to: advertising agencies; market research organisations; polling organisations; direct mail organisations; and media advertising organisations; and the persons or organisations to whom those amounts were paid.	229

## Work Health and Safety Act 2011 requirements

In accordance with Schedule 2, Part 4 of the *Work Health and Safety Act 2011*, the matters the ACCC must include in its annual report are as follows.

Section	Requirement	Page
4(2)(a)	Initiatives taken during the year to ensure the health, safety and welfare of workers who carry out work for the entity.	9 and 174
4(2)(b)	Health and safety outcomes (including the impact on injury rates of workers) achieved as a result of initiatives mentioned under paragraph (a) or previous initiatives.	228
4(2)(c)	Statistics of any notifiable incidents of which the entity becomes aware during the year that arose out of the conduct of businesses or undertakings by the entity.	228
4(2)(d)	Any investigations conducted during the year that relate to businesses or undertakings conducted by the entity, including details of all notices given to the entity during the year under Part 10 of the <i>Work Health and Safety Act 2011</i> .	228
4(2)(e)	Such other matters as are required by guidelines approved on behalf of the parliament by the Joint Committee of Public Accounts and Audit.	N/A

## Environment Protection and Biodiversity Conservation Act 1999 requirements

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires Commonwealth entities and Commonwealth companies to report on the following matters.

Section	Requirement	Page
516A(6)(a)	How the activities of, and the administration (if any) of legislation by, the entity during the period accorded with the principles of ecologically sustainable development (ESD).	169 and 230-231
516A(6)(b)	How the outcomes (if any) specified for the entity in an Appropriations Act relating to the period contribute to ESD.	230-231
516A(6)(c)	The effect of the entity's activities on the environment.	230-231
516A(6)(d)	Any measures the reporter is taking to minimise the impact of activities by the entity on the environment.	230-231
516A(6)(e)	The mechanisms, if any, for reviewing and increasing the effectiveness of those measures.	231

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