



Australian  
Competition &  
Consumer  
Commission

# 2008—09

**Annual report**

ACCC incorporating the AER

FOSTERING COMPETITIVE, EFFICIENT, FAIR AND INFORMED MARKETS





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

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7 September 2009

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

Dear Minister

In accordance with subsections 44AAJ and 171(1) of the *Trade Practices Act 1974*, the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) are pleased to present you with the annual report, covering the operations for the year ended 30 June 2009.

Graeme Samuel  
Chairman, ACCC

Steve Edwell  
Chairman, AER

# About this report

This is the annual report of the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) for the financial year 2008–09. The content of this report has been prepared according to parliamentary reporting requirements. To locate specific information in this report required by legislation use the compliance index on page viii.

The annual report presents our performance against the goals outlined in the Treasury portfolio budget statements. Our performance in achieving government outcomes for 2008–09 is assessed against performance indicators and targets identified in the PBS—demonstrating the actual results achieved in the last year.

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

## Parts of this report

Part one—review of the year's activities; overview of the roles and responsibilities of the ACCC/AER; finance and staffing summaries.

Part two—report on performance in relation to the outcome and related outputs, against the performance indicators and targets for each output by business activity: enforcement and compliance; mergers and acquisitions; adjudication; regulatory activity.

Part three—management and accountability: governance; financial, people and information management; communication; legal services; external scrutiny.

Part four—audited financial statements for 2008–09.

Appendixes: additional information and reports required under specific legislation; statistical report on complaints and inquiries; itemisation of matters—litigation, major mergers, authorisations and notifications, arbitrations, access undertakings.

## How to access this report

The ACCC annual report 2008–09 is available on the 'About us' page at [www.accc.gov.au](http://www.accc.gov.au).

Printed copies of the report are available by contacting the ACCC Infocentre on 1300 302 502.



# Contents

Letter of transmittal	iii
About this report	iv
Compliance index	viii
<b>1 Overview of the ACCC</b>	<b>1</b>
Review of 2008–09	3
Introduction	3
Criminalisation of cartel conduct	3
Litigation highlights	3
Informing the market and connecting with stakeholders	5
Assessing the effects of competition on the economy	6
Regulated industries	6
Engagement with government	7
Governance	8
Future challenges	9
About the ACCC and the AER	11
Role and values	11
Organisational structure	12
Background	13
Powers and functions	13
Key areas of focus for 2008–09	13
Finance and staffing snapshot	15
Financial performance summary	15
Staffing summary	17
<b>2 Performance report</b>	<b>19</b>
Outcome and outputs	21
Performance reporting structure	22
Financial performance	22
Enforcement and compliance	23
Enforcement action	24
Cartel conduct and immunity policy	27
Industry codes of conduct	28
Product safety	30
Product safety enforcement	34
Communicating with businesses, consumers and stakeholders	35
Mergers and acquisitions	44
Adjudication	48
Regulatory activity of the ACCC and the AER	52
Energy	54
Communications	64

Water	72
Transport	77
Post	81
Fuel prices	81
Other price monitoring	85
Intellectual property	87
Regulators forum	87
<b>3 Management and accountability</b>	<b>89</b>
Australian Competition and Consumer Commission	91
Australian Energy Regulator	91
Decision-making structure	91
ACCC and AER members	93
Integrity in decision-making	93
Financial management	94
People management	95
Information management and information technology	98
Communication	100
Legal services	101
Ecologically sustainable development	101
Other activities	102
External scrutiny	103
<b>4 Financial statements</b>	<b>105</b>
Appendixes	<b>163</b>
1. Performance targets set out in PBS	164
2. The law	168
3. Freedom of information	175
4. Further information required under s. 171(3) of the <i>Trade Practices Act 1974</i>	179
5. ACCC service charter	182
6. Business and consumer complaints and inquiries—detail	185
7. Litigation matters, review proceedings and tribunal proceedings 2008–09	188
8. Section 87B undertakings accepted 2008–09	215
9. Mergers matters during 2008–09—some major assessments	250
10. Authorisations and notifications during 2008–09—some significant decisions	258
11. Consultative (stakeholders) committees	266
12. ACCC staffing 2008–09	272
13. Parliamentary inquiries	275
14. ACCC member profiles	277
15. AER member profiles	282
16. Addresses and contacts	284
Glossary and abbreviations	<b>286</b>
Index	<b>289</b>

## Figures

1. Organisational structure of the ACCC/AER	12
2. ACCC revenue, 2008–09	15
3. ACCC expenditure, 2008–09	16
4. ACCC revenue and expenditure trends	16

## Tables

1. Average staffing level	17
2. Resources by output	22
3. Merger and joint venture reviews, 2004–05 to 2008–09	45
4. Collective bargaining notifications, 2008–09	49
5. Authorisation applications, 2008–09	51
6. Subject matter committees of the commission	92
7. Function committees	92
8. Terms of appointment—current members	93
9. Payments over \$10 000 for advertising, 2008–09	95
10. Courses, seminars and learning events for 2007–08 and 2008–09	96
11. Contributions to outcome 1	164
12. Parts of the Trade Practices Act dealing with competition	168
13. Parts of the Trade Practices Act dealing with fair trading and consumer protection	169
14. Parts of the Trade Practices Act dealing with regulated industries and prices surveillance	170
15. FOI requests, 2008–09	175
16. Complaints and inquiries, 2009–09	185
17. Top 10 industries for complaints and inquiries	186
18. Top 10 possible contraventions of the Trade Practices Act	186
19. Publications sent to callers	186
20. Location of inquirers and complainants	187
21. Exclusive dealing notifications, 2008–09	264
22. Certification trademarks applications, 2008–09	265
23. SBCC meetings 2008–09 and member attendance	266
24. FCC meetings 2008–09 and member attendance	268
25. CCC meetings 2008–09 and member attendance	269
26. HSCC meeting 2008–09 and member attendance	270
27. ICC meetings 2008–09 and member attendance	271
28. Number of employees at 30 June 2009	272
29. Senior executive employees at 30 June 2009	273
30. Part-time employees at 30 June 2009	274
31. Temporary employees at 30 June 2009	274
32. Equal opportunity target groups at 30 June 2009	274

## Charts

1. Unleaded petrol price movements, 2008–09	82
2. Diesel price movements, 2008–09	83
3. Automotive LPG price movements, 2008–09	83



# Compliance index

	iii Letter of transmittal
	v Table of contents
	286 Glossary and abbreviations
	289 Index
	284 Contact officers
	iv Internet homepage address and internet address for report
Review	<p>3 Review by departmental secretary</p> <p>3–9 Summary of significant issues and developments</p> <p>3–9 Overview of department's performance and financial results</p> <p>9 Outlook for following year</p> <p>n/a Significant issues and developments—portfolio</p>
Overview	<p>11 Overview description of department</p> <p>11, 13 Role and functions</p> <p>12 Organisational structure</p> <p>21, 164 Outcome and output structure</p> <p>n/a Where outcome and output structures differ from PBS format, details of variation and reasons for change</p> <p>n/a Portfolio structure</p>
Report on performance	<p>19 Review of performance during the year in relation to outputs and contributions to outcomes</p> <p>21–87 Actual performance in relation to performance targets set out in PBS/PAES</p> <p>n/a Performance of purchaser/provider arrangements</p> <p>164–67 Where performance targets differ from the PBS/PAES, details of both former and new targets, and reasons for the change</p> <p>21–87 Narrative discussion and analysis of performance</p> <p>16, 82, 84, 97 Trend information</p> <p>21–87 Factors, events or trends influencing departmental performance</p>

Management  
accountability

Corporate  
governance

External scrutiny

n/a	Significant changes in nature of principal functions/ services
40–41, 185	Performance against service charter customer service standards, complaints data, and the department's response to complaints
21–87	Social justice and equity impacts
15, 22	Discussion and analysis of the department's financial performance
n/a	Discussion of any significant changes from the prior year or from budget
22	Agency resource statement and summary resource tables by outcomes
n/a	Developments since the end of the financial year that have affected or may significantly affect the department's operations or financial results in future

91–95	Statement of the main corporate governance practices in place
12	Names of the senior executive and their responsibilities
92	Senior management committees and their roles
91–95, 102	Corporate and operational planning and associated performance reporting and review
94, 98, 102	Approach adopted to identify areas of significant financial or operational risk and arrangements in place to manage risks
94	Agency heads are required to certify that their agency comply with the Commonwealth Fraud Control Guidelines
11	Policy and practices for the establishment and maintenance of appropriate ethical standards
97	How nature and amount of remuneration for SES officers is determined
103	Significant developments in external scrutiny
188	Judicial decisions and decisions of administrative tribunals
103	Reports by the Auditor-General, a parliamentary committee or the Commonwealth Ombudsman

Management of human resources	95	Workforce planning, staff turnover and retention
	97	Impact and features of certified agreements and AWAs
	95	Training and development undertaken and its impact
	97	Occupational health and safety performance
	40	Productivity gains
	17, 272	Statistics on staffing
	97	Certified agreements and AWAs
Assets management	97	Performance pay
	16	Assessment of effectiveness of assets management
	94	Purchasing
	94	Assessment of purchasing against core policies and principles
	95	Consultants
	94	Competitive tendering and contracting contracts let and outcomes
	n/a	Absence of provisions in CTC contracts allowing access by Auditor-General
Exempt contracts	n/a	Contracts exempt from AusTender
Commonwealth Disability Strategy	274	Report on performance in implementing the Commonwealth Disability Strategy
Financial statements	105	Financial statements
Other information	97	Occupational health and safety (s. 74 of the <i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i> )
	175	Freedom of information (s. 8(1) of the <i>Freedom of Information Act 1982</i> )
	95	Advertising and market research (s. 311A of the <i>Commonwealth Electoral Act 1999</i> )
	101	Ecologically sustainable development and environmental performance (s. 516A of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> )
	n/a	Grants programs
	n/a	Correction of material errors in previous annual report

# Part one

## Overview of the ACCC



The introduction of criminal sanctions for cartel conduct positions Australia well to join the global fight against this serious economic crime. Those doing business in Australia who deliberately flout the law now face financial and personal sanctions in line with those in the US, Canada and other OECD countries.

Graeme Samuel, Chairman



# Review of 2008–09

## Introduction

The Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) made substantial advances in 2008–09. Highlights included legislative enhancements and strong endorsement by the courts and tribunals of ACCC/AER enforcement and regulatory actions.

Over the past year the *Trade Practices Act 1974* has been under more review by parliament than at any other time in its history. As proposed new laws are passed in the next 12 months, the ACCC will be even better equipped to fulfil its role of enhancing the welfare of all Australians through the promotion of competition and fair trading.

Australia's strong competition regime has served the Australian economy, consumers and business well during the global economic crisis for which 2008–09 will long be remembered. For the ACCC/AER and other regulators here and abroad, one of the challenges of the crisis has been its use by vested interests as a justification for applying pressure to unwind competition law and relax regulation and enforcement. However, governments have continued to assess such short-term considerations in the context of long-term economic health and the integrity of business and financial structures. The ACCC will continue to vigorously apply competition and consumer protection laws to their full extent.

Each year a substantial effort is made to confront new issues that have the potential to affect the agency's performance and the law under which it operates. The commission would like to thank its staff across Australia for their professionalism, knowledge and dedication in maintaining the high standard expected of the ACCC by business, government and the community.

## Criminalisation of cartel conduct

In 2008–09, serious cartel conduct became a criminal offence in Australia. This change—for which the ACCC has advocated over many years—allows for a range of more effective responses.

The criminalisation of cartel conduct means that Australia is no longer a soft target for international cartel operations. The message to the business community and its advisers is simple: do not participate in any form of cartel—do not fix prices, do not rig bids and do not allocate customers. The ACCC is now fully empowered to bring those who take part in cartels to account.

## Litigation highlights

A number of developments in 2008–09 have clarified the law and delivered timely outcomes for consumers.

## Cartel conduct

The ACCC instituted separate proceedings against various airlines, alleging a cartel for the imposition of fuel surcharges on cargo across global networks. Penalties of more than \$41 million have been applied, and more matters are still before the courts.

## Misuse of market power

Despite difficulties in mounting cases under this section of the law, the ACCC continues to prosecute possible contraventions. Misuse of market power cases were instituted against Cement Australia Pty Ltd and Cabcharge Australia Ltd. The Baxter Healthcare case—which established that the Trade Practices Act applies to government entities engaged in trade or commerce—has been substantially decided in the ACCC's favour, with penalties yet to be determined.

## Publishers defence

The application of the so-called publishers defence was clarified when the ACCC successfully appealed to the High Court a Full Federal Court finding that Channel Seven had not contravened s. 52 of the Trade Practices Act during broadcasts of *Today Tonight* about a property investment scheme known as the Wildly Wealthy Women mentoring program. The High Court decided that the exemption does not apply where a media outlet that has an arrangement with a supplier of goods or services makes misleading or deceptive representations in relation to goods or services of that kind.

## Unconscionable conduct

The ACCC's action on unconscionable conduct continues to demonstrate its resolve to address poor market practices in relation to both consumers and small business, and to develop this important area of the law.

The ACCC successfully addressed unconscionable practices against consumers by Craftmatic in the door-to-door selling of beds, primarily to vulnerable elderly people. The ACCC was also successful in its case on behalf of small business against Dukemaster and its general manager, where it was alleged that the landlord took advantage of its stronger bargaining position, exerted undue pressure and used unfair tactics against four tenants over their leases.

## Contempt of court

The ACCC takes non-compliance with undertakings and court orders very seriously. For example, the Federal Court sentenced Mr Bon Levi (the subject of a significant case that prevented the sale of bogus franchise businesses) to 10 months' imprisonment, with six months suspended, after the ACCC successfully prosecuted him for five counts of contempt of court for non-compliance. The ACCC will continue to be vigilant in ensuring that the courts' authority is upheld and that those acting in contempt of court orders are brought to justice.

## Telecommunications advertising

Despite a string of ACCC enforcement actions in recent years dealing with lack of clarity in advertising in the telecommunications sector, it has been increasingly apparent that concerted efforts are required to address industry practices and consumer detriment. The ACCC is taking an integrated approach combining educative and liaison activities with enforcement actions in this and a number of other key areas.

## Informing the market and connecting with stakeholders

The ACCC's commitment to liaison and outreach is demonstrated in a wide range of activities. This includes regularly reviewing complaint data and using information obtained through liaison activities to better focus resources on non-compliant industries and sectors.

### Engagement with industry stakeholders

Engagement with industry associations is a key part of disseminating information and revealing industry issues. The ACCC's formal stakeholder committees operated effectively in 2008–09 in providing valuable feedback on our performance.

In the small business area, the ACCC liaised with a number of key retail stakeholders to further encourage compliance with the Act. These stakeholders assisted in identifying emerging trade practices issues affecting their sector, and in disseminating education and guidance material.

The ACCC also worked with the Franchise Council of Australia, the Franchisees Association of Australia and the Australian Retailers Association on joint education activities to address some of the concerns identified in state parliamentary inquiries into the Franchising Code of Conduct.

### Engagement with consumers

In 2008–09 the ACCC Infocentre received 112 561 contacts, an increase of 27 per cent on the previous year. The ACCC's website received more than 560 000 visits to online publications, compared with 200 000 last year.

Some 11 882 emails were received via the SCAMwatch 'report a scam' online complaint form, reflecting the increasing number and variety of attempted web-based scams worldwide. Scammers continue to come up with new ploys to take money from Australian businesses and consumers. During the year, quick responses in the form of SCAMwatch alerts were issued on tax bonus scams, sport investment schemes, phishing scams and fake department store gift cards scams. The increased awareness and use of the site means that alerts and postings form a significant part of the ACCC's disruption activities. Consumers who are forewarned are less likely to become victims; and the more consumers actively refuse to deal with scammers, the sooner the conduct will subside.



# Assessing the effects of competition on the economy

## Mergers

Despite volatile economic conditions over the past year, merger activity was strong and may well remain so into the foreseeable future. The ACCC conducted 412 reviews of merger proposals in 2008–09.

Substantial competition concerns were identified in 16 merger matters and resulted in ACCC decisions to oppose the merger or resolve it through an enforceable undertaking. Separate to this, there were several mergers where no decision was made by the ACCC because the parties withdrew from ACCC consideration. While some of these merger proposals were withdrawn for commercial reasons, the ACCC considers that four or five mergers were withdrawn as a result of competition concerns expressed by the ACCC during its review process but before a final decision could be made.

The ACCC's approach to merger assessment has evolved significantly since its last published analytical merger guidelines in 1999. Revised guidelines were issued in late 2008 outlining the general principles underpinning the ACCC's merger analysis, with increased emphasis on the competitive theories of harm and the effect of constraints.

## Other collective arrangements

The ACCC's adjudication function, which assesses the public interest and competition effects of various collective business arrangements, focused in 2008–09 on key infrastructure arrangements and market structures.

Through the authorisation process, the ACCC is playing a key role in several major infrastructure projects. This includes enabling the Hunter Valley coal industry to develop a long-term solution to ongoing capacity constraints in the coal logistics chain. In addition, the Gorgon Joint Venture lodged its application for joint marketing of domestic gas into Western Australia and AAT lodged its application to operate automotive and general cargo terminals at a range of ports in Australia.

Aviation was an important area for the ACCC in 2008–09. The ACCC denied authorisation of the Air Canada – Air New Zealand cooperation agreement, and is currently assessing an application for a cooperation agreement between Virgin Blue and Delta on flights to the US.

## Regulated industries

The regulatory roles of the ACCC and the AER were particularly demanding in 2008–09.

## ACCC

In addition to maintaining and administering its ongoing function in communications, transport and energy, the ACCC developed and further refined its regulatory approach in recently acquired areas of focus. In 2008–09 it developed expertise in regulating access to rail and access to grain port terminals for wheat exporters, with several access undertakings being assessed under Part IIIA of the Act.

## AER

In an important ruling for regulated industries, the AER issued its final decision on the review of the weighted average cost of capital (WACC) for the energy sector. The AER's determination accounted for the existing unfavourable conditions in financial markets but also took a longer term perspective. Given that for the majority of regulated businesses the outcomes of the WACC review will not apply until 2011, and for some businesses will be relevant until 2019, it was necessary to look beyond the current climate.

The transition to national regulation of gas and electricity continued in 2008–09 with the introduction of the National Gas Law, which passed regulatory responsibility to the AER for covered gas pipelines in all jurisdictions except Western Australia and the Northern Territory.

The AER has been the regulator for electricity transmission networks since its establishment in 2005. The national arrangements provide for the AER to assume responsibility for electricity distribution networks (except in Western Australia and the Northern Territory) on a staged basis. A major milestone in this transition occurred with the first AER revenue resets for electricity distribution networks in New South Wales and the Australian Capital Territory, with final determinations made in April 2009. Victoria passed responsibility for economic regulation—including administration of the price determination previously made by the Essential Services Commission—and for some non-economic regulation of electricity distribution networks to the AER on 1 January 2009. The transition continues in 2009–10 with revenue resets for electricity distribution businesses in Queensland and South Australia.

The AER continued to actively monitor compliance in the energy market. The main elements were regular investigations of all high-price events, weekly market reports and ongoing compliance oversight at the individual business level. The transition to national regulation also saw the AER assume monitoring and compliance oversight for gas markets in the eastern states from July 2008.

## Engagement with government

In 2008–09 the government called on the ACCC to provide strategic advice on issues including the carbon pollution reduction scheme, water rules relating to the Murray–Darling Basin, groceries, the National Broadband Network and the development of a national consumer law.

### National consumer law

The ACCC is playing a leading role in the development of Australia's new single national consumer law. A modern, flexible and genuinely national regulatory system will help ensure consumer benefit while minimising unnecessary risks and costs. The Bill for the first tranche of reforms was introduced into parliament in June 2009. The fast-tracked amendments deal with civil pecuniary penalties, banning orders, unfair contract terms, provisions for consumer transactions, substantiation notices, public warnings, infringement notices and non-party consumer redress.

Significant reforms of Australia's product safety regulatory arrangements were agreed by the Ministerial Council on Consumer Affairs and are to be implemented by the end of 2010. The reforms will remove legal uncertainty for businesses operating across state borders, enable joint enforcement by the ACCC and the state and territory agencies, and reduce regulatory overlap by giving the Commonwealth sole responsibility for making permanent

product bans and safety standards. The states and territories will retain the power to issue interim product bans effective for 60 days, with a 30-day extension if necessary.

## Water trading

The ACCC has been engaged in developing and enforcing rules to aid in the removal of barriers to water trading across the Murray–Darling Basin. In 2008–09 it released guidance materials relating to the application of the water market and termination rules—one of a number of steps required to provide a comprehensive response to the challenges facing the basin.

## Grocery pricing

In response to a formal direction, the ACCC conducted a public inquiry into the competitiveness of retail prices for standard groceries. Following the ACCC's report, the government implemented recommendations on unit pricing. Unit pricing will be implemented nationally by 1 December 2009 for large and online supermarkets, which will be required to display prices based on a commonly accepted unit.

## National Broadband Network

The ACCC provided competition-related advice to the government's NBN panel of experts in relation to tenders for the network. The NBN has the potential to start a new wave of infrastructure investment, technological change and product innovation in the telecommunications sector. Its announcement ushers in arguably the most important policy initiative in the telecommunications sector in both metropolitan and regional Australia since competition began in the industry more than a decade ago.

## Other sectors

The ACCC also responded to government requests to conduct an inquiry into the fertiliser sector and continue monitoring specific industries such as airports, container stevedoring and medical indemnity. The first of three annual reports on the formal monitoring of prices, costs and profits of unleaded petrol products was submitted to government in December 2008.

## Governance

The past year has seen a number of changes to the decision-making structure of the ACCC, including to the membership of the commission. The management structure was revised to provide for increased capabilities.

## Members

The ACCC is well served by a strong group of commissioners with valuable experience across a range of sectors.

Peter Kell was appointed as the second deputy chair of the commission in July 2008. He brings extensive experience in advancing consumer and market reform in Australia and internationally.

Joe Dimasi, former executive general manager of the Regulatory Affairs Division, was appointed as the commissioner with special responsibility for petrol-related matters following the resignation of Pat Walker in September 2008. He has extensive knowledge of regulatory matters.

Andrew Reeves was appointed as the part-time state/territory member of the AER for a five-year term on 17 July 2008. As a former commissioner of the Tasmanian Government Prices Oversight Commission and regulator of the Tasmanian electricity supply industry, Andrew brings strong technical and practical experience to the decision-making process of the AER.

On 31 July 2008 Louise Sylvan concluded her term as deputy chair of the commission to take up a position with the Productivity Commission. Dr Stephen King concluded his five-year term with the commission in 2008, and is now the Dean of the Faculty of Business and Economics at Monash University. Both made substantial contributions to the work of the commission. In June, John Martin completed 10 years of outstanding service, during which he made a significant contribution across a broad range of areas, especially small business, the professions, franchising and health.

## Finance

The 2008–09 budget provided appropriation funding of \$132.6 million for operating expenses, capital funding of \$0.9 million, and a \$5.0 million equity injection to top up the ACCC's litigation contingency fund. A strong focus on financial management in a year of resource pressures allowed the ACCC to record a break-even result (\$0.013 million surplus). Total expenses increased by approximately 10 per cent from the previous financial year, in line with increased business outputs agreed by the government.

## Organisational changes

In October 2008 the ACCC established its External Communications Unit to enhance its capacity to communicate with consumers, business and other stakeholders. In February, it established the Information Management and Technology Services Branch.

## Future challenges

The ACCC and AER continue to secure constructive outcomes for consumers and business by vigorously enforcing and promoting the benefits of compliance with the Trade Practices Act and associated legislation.

The development of the Australian Consumer Law will provide the ACCC with a significantly enhanced enforcement framework and reinforce its leadership role in consumer market regulation.

Importantly, the success of the new consumer protection regime will require effective cooperation between the ACCC and other consumer protection agencies at Commonwealth and state and territory levels. Enhanced enforcement cooperation and information-sharing mechanisms between regulatory agencies will benefit consumers and business, and provide for more effective enforcement at both national and state levels. A number of tools are being employed to formalise this framework, including the development of a multi-agency memorandum of understanding.

For business, the national law will allow for lower compliance costs and a reduced regulatory burden. For consumers it will allow greater certainty and empowerment, providing for the same level of legislative protection no matter where a person lives in Australia. It will also reduce the overlap in government resources.

The ACCC takes on the presidency of the International Consumer Protection and Enforcement Network (ICPEN) in August 2009. ICPEN is a network of national fair trading

law enforcement agencies from around 40 countries, most of which are members of the Organisation for Economic Cooperation and Development. Through its presidency, the ACCC will focus on strengthening cross-border enforcement action between member agencies to enhance consumer protection. Current issues for ICPEN include mass-marketed fraud such as lotteries and scams, misleading and deceptive advertising, environmental marketing claims and airline promotions.

The Australian Government has called for submissions on the adequacy of the current interpretation of the term 'understanding' in the Act to capture anti-competitive conduct under s. 45. As the law currently stands, a business can lawfully receive pricing and other strategic information from a competitor, and can take advantage of that information if it operates in a certain way following receipt of the information. The ACCC believes that such activity reduces competition to the detriment of consumers and the economy generally. The government is considering views on this from interested parties, including the ACCC, and the ACCC looks forward to further law reform in this area.

Next year will see a significant increase in the regulatory work programme of the ACCC and the AER. This includes:

- > the continued transfer of economic regulation of the energy sector from the state level. In all, the AER will undertake eight electricity distribution and three gas distribution revenue resets during 2009–10. Carbon pollution reduction policy and the expanded renewable energy target will present challenges for the sector and the regulatory framework, with implications for all consumers
- > further advice from the ACCC to the Murray–Darling Basin Authority regarding water trading rules
- > an ongoing role in developing and advising the government on the effective form of structural or functional separation of Telstra.

Changes to the current telecommunications access regime being considered by government would allow the ACCC to make up-front determinations on prices paid for telecommunications services. This may see a fundamental change in the ACCC's approach to the pricing of these services.

The ACCC expects to play a significant role in the regulation of the future National Broadband Network Company. The government has made it clear that the company will be a wholesale-only operator, and has indicated that the ACCC will hold new responsibilities in respect of regulating access to the NBN, as well as having oversight of the company's operations. The ACCC's role in regulating the NBN could also extend to oversight of governance, ownership and control restrictions, to ensure that the current incentives for vertically integrated operators to favour their own operations do not arise in the new NBN environment. The ACCC will work closely with policy makers to help ensure that regulatory arrangements during the transition to the NBN enhance competition in the Australian telecommunications industry in the short to medium term.

# About the ACCC and the AER

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

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

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

## Role and values

The ACCC enhances the welfare of Australians by:

- > promoting vigorous, lawful competition and informed markets
- > encouraging fair trading and protecting consumers
- > regulating national infrastructure services and other markets where there is limited competition.

The ACCC's aim is to bring greater competitiveness and fair trading to the Australian economy, working on the fundamental principle that this benefits consumers, business and the wider community. The ACCC promotes compliance with federal competition, fair trading and consumer protection laws. The ACCC regulates markets where competition is less effective—for example, the communications market.

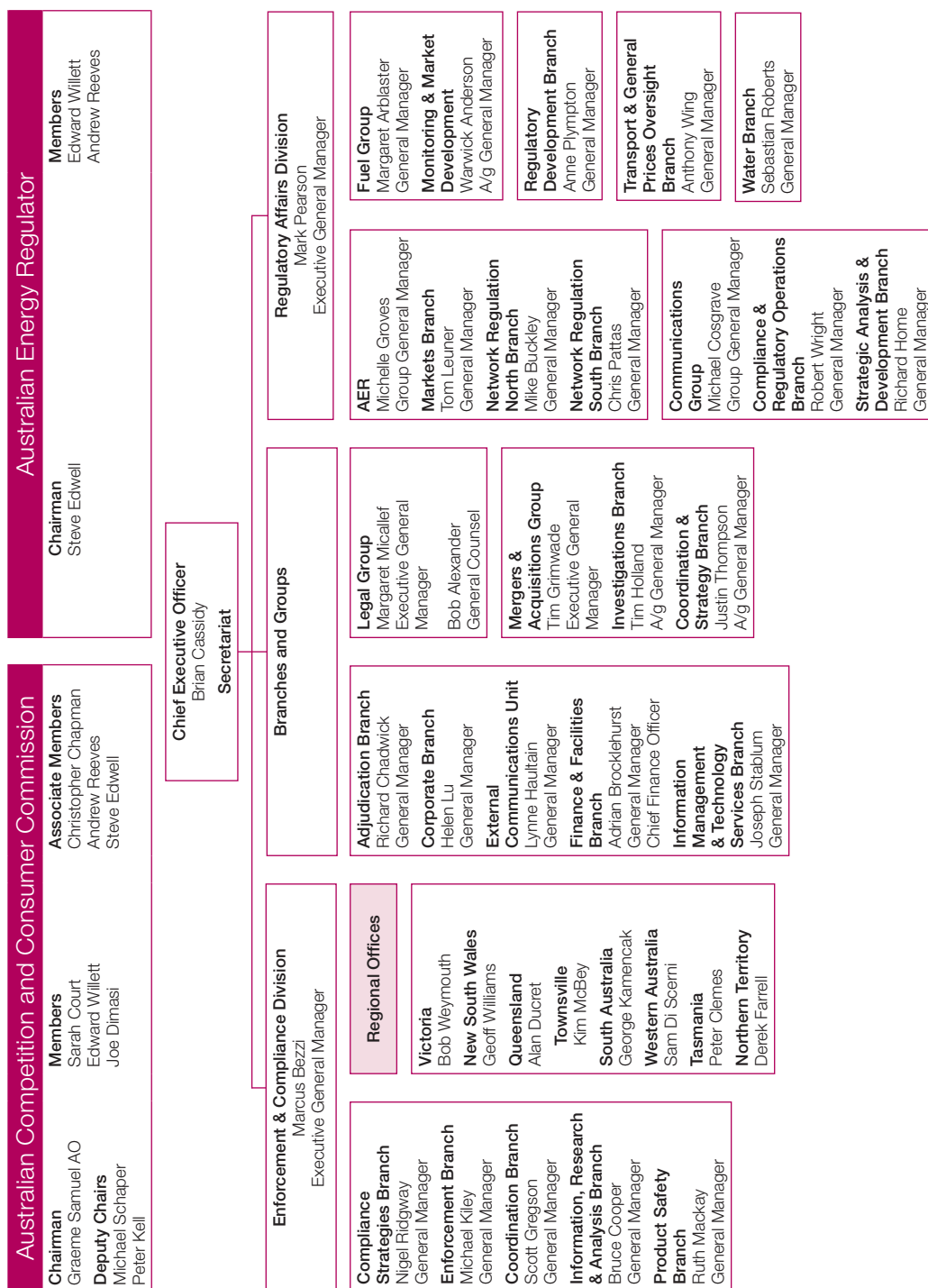
The ACCC takes pride in its people and the way they perform their role. It adheres to the Public Service Values and Code of Conduct. It produces results in the public interest by:

- > being accessible, transparent, independent and fair in its dealings with the community—including consumers, business and governments
- > performing its role in a timely, effective, efficient and consistent manner, respecting the confidentiality of information provided.

# Organisational structure

(correct on 29 August 2009)

Figure 1: Organisational structure of the ACCC/AER



## Background

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

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

## Powers and functions

The ACCC's powers and functions are wide ranging, allowing it to:

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

## Key areas of focus for 2008–09

The overall challenge for the ACCC is to direct its resources to those activities that most benefit business and consumers. The ACCC's key areas of focus for 2008–09 were:

### 1. Promote vigorous, lawful competition and informed markets

- > Detect and stop cartel conduct.
- > Support and protect competition in markets that rely on networks with natural monopoly characteristics.
- > Embark on appropriate compliance and enforcement activities for new and amended laws passed by parliament.



- > Promptly determine authorisation and notification matters, particularly in the field of small business collective bargaining arrangements.
- > Assess mergers promptly and efficiently, taking effective action to prevent competition concerns arising from mergers across all industries.
- > Upgrade business support systems and processes to meet new and changing functions.

## 2. Encourage fair trading and protect consumers

- > Identify and focus effectively on national and cross-border (including international) consumer protection and product safety issues.
- > Pursue and achieve appropriate remedies (including criminal penalties) for false and deceptive conduct, particularly if the conduct is detrimental, blatant or widespread.
- > Facilitate and encourage fair trading conditions between big and small firms.

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

- > The ACCC and the AER work cooperatively to provide a single consistent and independent regulator of the energy sector that encourages competition within and between the gas and electricity markets to benefit industry, consumers and ultimately the nation.
- > Regulate industries where market structures are changing, including where the market structure challenges effective regulation.
- > Use sound methodologies when undertaking price inquiries and monitoring.
- > Achieve consistency in regulatory outcomes, as far as possible, across industries, between firms and over time.

Source: *Australian Competition and Consumer Commission 2008–09 corporate plan and priorities*

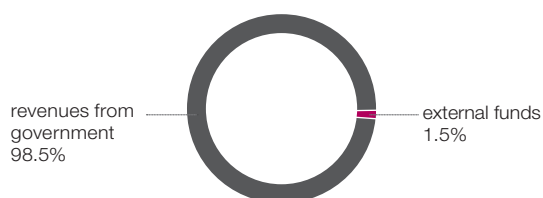
# Finance and staffing snapshot

## Financial performance summary

### Revenue

The main source of revenue for the ACCC is government appropriation; there is also a small proportion of departmental revenue. In 2008–09 the ACCC had total revenue of \$134.6 million, of which \$132.6 million was appropriation funding and the remaining \$2.0 million was external funds (refer to figure 2 below). This is higher than the previous year's external revenue, which was \$0.5 million. The increase is due to a number of factors, including revenue from supplier rebates and gain on sale of assets.

**Figure 2: ACCC revenue, 2008–09**



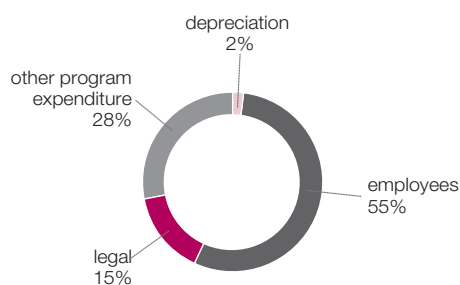
### Expenditure

The ACCC is a knowledge-based organisation and as such spends approximately 55 per cent of its total expenditure on employee costs. This is an increase of six per cent from 2007–08, due largely to decreased legal expenditure.

Legal expenditure is subject to volatility depending on the timing and outcome of litigation proceedings. The ACCC's legal expenditure decreased as a proportion of total expenditure from 24 per cent in 2007–08 to 15 per cent in 2008–09.

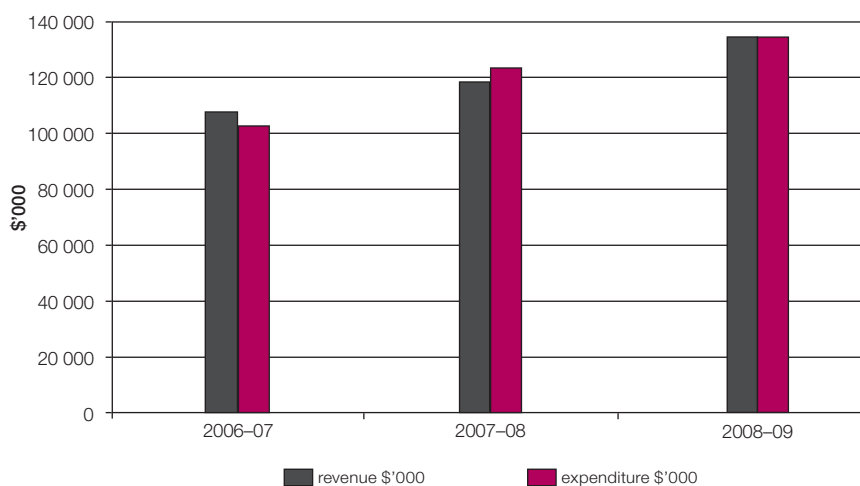
Other program expenditure was 28 per cent of total expenditure—a slight increase from 26 per cent in 2007–08.

The depreciation proportion remained unchanged from 2007–08, at two per cent of total expenditure.

**Figure 3: ACCC expenditure, 2008–09**

## Operating statement

The ACCC recorded a break-even operating result for 2008–09: a \$0.013 million surplus.

**Figure 4 ACCC revenue and expenditure trends**

## Balance sheet

The ACCC's net assets as at 30 June 2009 were \$43.6 million (up from \$36.3 million at 30 June 2008).

### Assets

Total assets increased by \$6.3 million to \$76.9 million. The increase was largely driven by the \$5.6 million increase in appropriation receivable due to a \$5.9 million equity injection, \$5 million of which was to replenish the litigation contingency fund.

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

## Liabilities

Total liabilities reduced from \$34.3 million in 2007–08 to \$33.4 million in 2008–09. The reduction was largely due to reductions in the provisions for make good and litigation settlement, partly offset by increases in employee provisions.

## Administered revenue

Revenues administered on behalf of the government during 2008–09 amounted to \$45.2 million, a decrease of 27 per cent from 2007–08 (\$62.2 million). This amount includes court-imposed fines and costs.

## Administered expenditure

Expenses administered on behalf of the government were \$0.2 million (2007–08: \$10.9 million). The reduction in expenditure is largely due to a reduction in the write-off of debts.

## Staffing summary

**Table 1: Average staffing level**

	Budgeted	Actual
2007–08	638	617
<b>2008–09</b>	<b>695</b>	<b>702</b>
2009–10	723	—



# Part two

## Performance report





# Outcome and outputs

The ACCC has one outcome:

**Outcome 1: to enhance the social and economic welfare of the Australian community by fostering competitive, efficient and informed Australian markets.**

To achieve its outcome the ACCC has two outputs seeking:

- > compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed
- > competitive market structures and informed behaviour.

Key strategies aimed at achieving the outcome and outputs are:

- > promotion of vigorous, lawful competition and informed markets
- > encouragement of fair trading and protection of consumers
- > regulation of national infrastructure services (such as communications, bulk water, energy, rail, airports and post) and other markets where there is limited competition.

Key actions with medium and longer term effects are to:

- > detect and stop cartel conduct
- > support and protect competition in markets that rely on networks with natural monopoly characteristics
- > pursue firms that misuse their market power
- > deliver prompt authorisation and notification decisions, particularly in the field of small business collective bargaining arrangements
- > assess mergers promptly and efficiently, taking effective action to prevent competition concerns arising from mergers across all industries
- > identify and focus effectively on national and cross-border (including international) consumer protection issues
- > pursue and achieve appropriate remedies for false and deceptive conduct, particularly if widespread detriment results
- > facilitate and encourage fair trading conditions between big and small firms
- > work cooperatively through the AER to provide a single consistent and independent regulator of the energy sector that encourages competition within and between the gas and electricity markets to benefit industry and consumers
- > regulate and advise on industries where market structures are changing, including where the market structure impedes effective competition (e.g. water and communications)
- > monitor prices to assess and advise on the effect of market conditions (including deregulation) on the price levels of specified goods and services, including groceries, petrol, stevedoring and a range of airport services, including car parking.

Source: *Portfolio Budget Statements 2008–09 Budget related paper No. 1.17 Treasury portfolio*



## Performance reporting structure

The performance reports are based on the outcomes and outputs structure framework and performance information in the 2008–09 Treasury portfolio budget statements.

The ACCC's performance is aligned with two outputs:

**Output 1.1.1 Compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed**

**Output 1.1.2 Competitive market structures and informed behaviour.**

## Financial performance

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

**Table 2: Resources by output**

	<b>Output 1.1.1</b> Compliance with competition, fair trading and consumer protection laws		<b>Output 1.1.2</b> Competitive market structures and informed behaviour		<b>Output group 1.1</b>	
<b>\$'000</b>	<b>2007–08</b>	<b>2008–09</b>	<b>2007–08</b>	<b>2008–09</b>	<b>2007–08</b>	<b>2008–09</b>
<b>Budget</b>	71 532	<b>76 506</b>	46 774	<b>56 049</b>	118 306	<b>132 555</b>
<b>Sale of goods and services</b>	154	<b>141</b>	338	<b>367</b>	492	<b>508</b>
<b>Other non-taxation revenues</b>	63	<b>921</b>	42	<b>642</b>	105	<b>1 563</b>
<b>Total revenue</b>	71 749	<b>77 568</b>	47 154	<b>57 058</b>	118 903	<b>134 626</b>
<b>Actual expenditure</b>	77 634	<b>77 635</b>	46 419	<b>56 978</b>	124 053	<b>134 613</b>
<b>Net surplus (deficit)</b>	(5 885)	<b>(67)</b>	735	<b>80</b>	(5 150)	<b>13</b>

# Enforcement and compliance

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## **Promoting vigorous, lawful competition and informed markets Encouraging fair trading and consumer protection**

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The *Trade Practices Act 1974* provides the ACCC with a range of enforcement remedies, including court-based outcomes and court enforceable undertakings.

The ACCC also resolves many matters administratively.

While the ACCC has long published information as to how it undertakes its fair trading and competition compliance and enforcement roles, in April 2009 it drew together the various principles in a high-level compliance and enforcement policy.

The policy notes that the ACCC exercises its enforcement powers independently in the public interest with integrity and professionalism and without fear, favour or bias. The ACCC's enforcement response is proportionate to the conduct and resulting harm. The implementation of the ACCC's enforcement policy is governed by the following principles.

- > Transparency—this has two aspects:
  - > the ACCC's decision-making takes place within rigorous corporate governance processes and can be reviewed by a range of agencies, including the Commonwealth Ombudsman and the courts
  - > the ACCC does not do private deals—every enforcement matter that is dealt with through litigation or formal resolution is made public.
- > Confidentiality—in general, investigations are conducted confidentially and the ACCC does not comment on matters it may or may not be investigating.
- > Timeliness—the investigative process and the resolution of enforcement matters are conducted as efficiently as possible to avoid costly delays and business uncertainty.
- > Consistency—the ACCC does not make ad hoc decisions; it sets its focus clearly to give business certainty about its actions.
- > Fairness—the ACCC seeks to strike the right balance between voluntary compliance and enforcement while responding to many competing interests.

To achieve its compliance objectives the ACCC employs three flexible and integrated strategies:

- > enforcement of the law, including resolution of possible contraventions both administratively and by litigation
- > encouraging compliance with the law by educating and informing consumers and businesses about their rights and responsibilities under the Trade Practices Act
- > working with other agencies to implement these strategies.

## Enforcement action

### Performance indicators

Actions (investigations, litigation, communications) taken to prevent or stop anti-competitive conduct

Use all powers at our disposal to prevent and stop misleading, deceptive and unconscionable conduct especially when it causes widespread consumer detriment or raises national issues

Conduct campaigns that target industries and sectors where the risk of failure to comply with the Act is high

### 2008–09 targets

- > Pursue unlawful conduct
- > Effective and appropriate remedies
- > Targeted campaigns where the need is indicated

### 2008–09 achievements

#### Action to cease anti-competitive conduct

The ACCC commenced litigation in 17 competition matters and accepted five s. 87B court enforceable undertakings concerning competition matters covering a wide range of conduct the ACCC considers raises concerns under the competition provisions of the Act.

ACCC action against cartels continues, with five proceedings relating to the ACCC's action against the air cargo cartel commenced in the period and concluded by consent. A number of related proceedings remain before the court. The ACCC has obtained penalties of over \$41 million to date, and more matters are still before the court.

The ACCC commenced two proceedings alleging misuse of market power, an important area of competition law, bringing to three the number of ongoing proceedings at the end of the period.

#### Action against unconscionable conduct

The ACCC commenced four proceedings under the unconscionable conduct provisions of Part IVA, one in relation to consumer transactions and three in relation to business transactions. With matters from past years, the ACCC's action in this area continues to demonstrate its resolve to address poor market practices and develop this important area of the law.

#### Action to protect consumers

This year the ACCC commenced litigation in 27 consumer protection matters and accepted 62 undertakings concerning consumer protection matters, which includes actions to ensure product safety compliance.

The ACCC believes that some industry or conduct specific problems are best addressed by a combination of measures as part of a targeted campaign rather than relying only on compliance tools. In striving to deliver compliance with the competition, fair trading and consumer protection provisions of the Trade Practices Act, the ACCC is increasingly

seeking to identify the important problems and use a range of coordinated compliance initiatives to address the harms identified.

Increasingly the ACCC is using market and trend analysis as a means of facilitating and informing internal identification of the important problems. The ACCC regularly reviews its complaint data and information obtained through liaison activities to assist in focusing resources on industries and sectors where consumers are being harmed through widespread non-compliance with the Act.

Integrated approaches will draw together consumer education and liaison initiatives with industry compliance measures and, where necessary, enforcement activities directed at obtaining redress and driving change through specific and general deterrence.

Many of these integrated approaches will span more than one financial year. Three examples of integrated approaches continuing through 2008–09 relate to debt collection, scams and telecommunications.

## Debt collection

In recent years, both the ACCC and the Australian Securities and Investments Commission (ASIC) have continued to receive reports of poor debt collection practices in Australia. This is despite significant efforts by all stakeholders to ensure compliance with consumer protection laws.

Reports include serious allegations of harassment, coercion and other problems experienced by debtors when businesses seek to recover outstanding debts. This was identified as an important consumer protection issue.

Accordingly, the ACCC conducted an examination of practices in the debt collection industry in conjunction with ASIC, consumer organisations and industry participants. An early step in this process was a phone-in day to capture intelligence about consumer concerns relating to debt collection practices and to identify any systemic patterns of conduct across the industry.

The debt collection phone-in day in July 2008 was followed by a joint ACCC/ASIC forum which enabled discussion between industry and consumer organisations on ways to minimise consumer detriment arising from debt collection practices.

In May 2009 ACCC chairman Graeme Samuel addressed the launch of the Australian Collectors and Debt Buyers Association and released an issues paper jointly produced by the ACCC and ASIC, *Debt collection practices in Australia*.

The ACCC and ASIC take allegations of this nature seriously and in the course of 2008–09 investigated a number of recent consumer complaints. Both agencies will closely scrutinise all complaints and back their education and liaison activities with enforcement action where necessary.

## Scams

The proliferation of scams of all varieties is an ongoing concern to the ACCC and like-minded enforcement agencies. The 2007 Australian Bureau of Statistics (ABS) report putting an annual price tag of \$1 billion on personal fraud in Australia reinforced the already held views as to the importance of the problem.

With the benefit of internal and external research and complaint trends, the ACCC continues to direct its compliance tools to disrupt scam activity and prevent consumers and businesses from being stung.

To help Australians recognise and protect themselves against scam conduct, the ACCC:

- > continued to maintain and enhance its SCAMwatch website by issuing 21 SCAMwatch radar alerts warning consumers to look out for new scams or be aware of increases in particular scam conduct. Topics covered by the radar alerts included scams related to the government stimulus payments, swine flu, sports arbitrage and the Victorian bushfire appeal.
- > chaired the Australasian Consumer Fraud Taskforce, which now comprises 23 government agencies delivering an annual scams education and awareness campaign. This year's taskforce partner program grew by 26 new members, particularly government and community partners. Fraud Week involved 29 government agencies, 39 business partners and 35 community partners
- > hosted a one-day consumer fraud forum as part of the Australasian Consumer Fraud Taskforce's annual scam awareness campaign. The forum examined the prevalence of scams in a globalised environment and ways consumers can protect themselves against scammers.
- > delivered presentations to community organisations, students, business and industry associations
- > developed three single-topic fact sheets to explain the most common scams that target consumers.

These initiatives are backed by targeted enforcement activities in relation to a number of scam activities.

## Telecommunications

The number of consumer complaints received by the ACCC, together with research and analysis undertaken in telecommunications-related fields, highlighted a number of important consumer issues in the marketing of a range of telecommunications products. Despite a string of ACCC enforcement actions in recent years dealing with lack of clarity in advertising, it has been increasingly apparent to the ACCC that concerted efforts are required to address its concerns.

In an ongoing integrated approach, the ACCC has combined educative and liaison activities with refocused enforcement actions in a number of key areas.

- > *Mobile premium services*—concerns that consumers are often misled by mobile premium service marketing activities.

The ACCC finalised by consent separate proceedings against TMG Asia Pacific Pty Ltd and AMV Holdings Pty Ltd, which included declarations that the parties engaged in misleading or deceptive conduct in the advertising of mobile premium services.

The ACCC accepted court enforceable undertakings from TMG Asia Pacific Pty Ltd and Mobile Generation I BV, which advertised mobile premium services by way of internet pop-up advertising, in which they undertook to clearly communicate in any future promotions who is eligible to enter the competition, the nature of the services provided, who the services are being promoted by, and the terms and conditions (including price) to which consumers agree when they acquire the services.

The ACCC has accepted court enforceable undertakings from Pacific Magazines Pty Ltd and ACP Magazines Ltd, which have undertaken to ensure advertisements for mobile premium services published in their magazines targeted at young readers state that the service is a subscription service, the cost of the service, and the eligibility of consumers to receive the benefit of the services.

ACCC-initiated proceedings against Teracomm Ltd for alleged misleading and deceptive advertising of mobile premium services continue, as do the ACCC's

proceedings against Clarion Marketing Australia Pty Ltd relating to alleged misleading and deceptive conduct by way of scratch-and-win cards.

The ACCC also made a submission to the Australian Communications and Media Authority (ACMA) review of mobile premium services and has subsequently worked with ACMA to raise consumer awareness of mobile premium issues through media events and its website leading up to the commencement of the Mobile Premium Services Code on 1 July 2009. A number of the ACCC's recommendations were included in the code.

- > *Phone cards*—where consumers could have been misled that certain phone cards would provide a specified amount of call time when that was not the case, and where fees were charged when it was represented that such fees would not be charged.

The ACCC has concluded its action against two of the biggest phone card providers. In March 2009 the court found that Tel.Pacific Pty Ltd had misled and deceived consumers over the fees and charges associated with its phone card products. In May 2009 proceedings against CardCall Pty Ltd were finalised by consent with the finding that CardCall engaged in misleading and deceptive conduct in relation to its phone card products.

- > *Misleading advertising*—relating to the use of inadequate disclaimers and misleading and deceptive claims about telecommunications products.

The ACCC accepted court enforceable undertakings from Dodo Australia Pty Ltd, JB Hi-Fi Pty Ltd, TPG Internet Pty Ltd and M2 Telecommunications Pty Ltd to resolve concerns that consumers may be misled in relation to their sales of phones and phone services.

## Other matters

The ACCC commenced two proceedings involving an alleged breach of a s. 87B undertaking, and one proceeding involving an alleged contravention of s. 155(5) of the Trade Practices Act.

## Cartel conduct and immunity policy

### Performance indicator

Businesses or individuals who are possibly in breach of the law are encouraged to come forward to assist ACCC investigations through the immunity for cartel conduct and cooperation policies for enforcement matters

### 2008–09 target

Immunity policy to be communicated and utilised

### 2008–09 achievements

The ACCC's immunity policy for cartel conduct continues to play an important role in the detection and deterrence of cartel conduct affecting Australia.

The ACCC received an average of one to two approaches each month in this period.

In response to the government's proposal to amend the Trade Practices Act and criminalise cartel conduct in Australia, the ACCC and the Commonwealth Director of Public Prosecutions issued the final draft memorandum of understanding between the agencies in December 2008.

At the same time the ACCC released revised drafts of the *ACCC immunity policy for cartel conduct* and the *ACCC immunity policy interpretation guidelines*. Changes to the immunity policy and guidelines were made in a way that incorporated amendments necessary in the proposed criminal cartel environment while continuing to maintain certainty for potential immunity applicants.

On 16 June 2009 the Australian parliament passed legislation introducing new civil prohibitions and criminal sanctions for cartel conduct. The legislation received royal assent on 26 June 2009 for the new provisions to commence on 24 July 2009.

## Industry codes of conduct

### Performance indicator

Actions (investigations, litigation, communications) taken to prevent or stop anti-competitive conduct

### 2008–09 target

Mandatory codes of conduct support a competitive market

### 2008–09 achievements

#### Mandatory industry codes of conduct

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

#### Franchising Code of Conduct

The Franchising Code of Conduct was introduced in 1998 to regulate the conduct of franchisors and franchisees. In 2008–09, the ACCC:

- > continued to liaise with and provide technical assistance to industry stakeholders and the Department of Innovation, Industry, Science and Research regarding the rights and responsibilities of franchisors and franchisees under the Franchising Code of Conduct
- > distributed more than 39 500 copies of ACCC publications about franchising
- > produced nine articles for external publications such as *Franchising* magazine ('Thinking of buying a franchise?'), *Business franchise* magazine ('The ACCC helps franchisees make the most of their disclosure document' and 'Advice for prospective franchisees from the chairman of the ACCC'), and *My business* magazine ('Understanding the issues in franchising')
- > placed advertisements in business opportunities classified pages and franchising supplements in major newspapers to alert prospective franchisees about ACCC information relevant to their purchasing decision
- > continued to engage with Griffith University on a joint research project to identify the main causes of conflict in franchise systems and to provide a framework for addressing such conflict before it occurs. Griffith University received an Australian

Research Council grant to support the research and both the university and the ACCC also provided substantial support.

- > updated 'Frequently asked questions' on the ACCC's Franchising Code webpage ([www.accc.gov.au/franchisingcode](http://www.accc.gov.au/franchisingcode)) and continued to expand the Franchising Code information network, which currently has more than 550 subscribers.

## Oilcode

The Oilcode came into effect on 1 March 2007. It regulates the conduct of suppliers, distributors and retailers in the downstream petroleum industry. In 2008–09 the ACCC:

- > continued to liaise with and provide technical assistance to industry stakeholders and the Department of Resources, Energy and Tourism (DRET) regarding participants' rights and responsibilities under the Oilcode
- > distributed Oilcode publications to stakeholders in the downstream petroleum industry and maintained both the Oilcode webpage ([www.accc.gov.au/oilcode](http://www.accc.gov.au/oilcode)) on the ACCC website and the Oilcode information network.

## Horticulture Code

The Horticulture Code began on 14 May 2007. It aims to regulate the conduct of growers and traders who trade in horticulture produce. In 2008–09 the ACCC:

- > continued to liaise with and provide technical assistance to industry stakeholders and the Department of Agriculture, Fisheries and Forestry (DAFF) about Horticulture Code issues
- > assisted traders to develop compliant terms of trade and horticulture produce agreements enabling them to meet the requirements of the code
- > distributed more than 800 publications and maintained the Horticulture Code webpage ([www.accc.gov.au/hortcode](http://www.accc.gov.au/hortcode)), bringing about increased awareness among industry participants of their rights and obligations under the code.

## Voluntary industry codes of conduct

The ACCC encourages and assists genuine voluntary compliance initiatives by individual businesses and industry sectors. These initiatives range from individual trader compliance programs to sector-wide initiatives, including industry charters and voluntary codes of conduct that apply the requirements of the Trade Practices Act to the specific circumstances of a particular industry sector.

Effective voluntary industry codes can foster more effective compliance with the Act.

This year the ACCC helped to develop and/or review a number of voluntary industry codes of conduct, providing technical assistance to seven industries engaged in preparing voluntary industry codes of conduct, including:

- > an air conditioning and mechanical contractors code (South Australia)—the objective of this code is to develop commercial ethics and accountability in contracts
- > a fruit juice industry code—the objective of this code is to establish procedures aimed at preventing adulteration of juices and other misleading practices in the processing, reconstituting, packaging, marketing and labelling of fruit juice products
- > an Indigenous Australian art trader code—the objective of this code is to promote the ethical trade of Indigenous art



- > a jewellery trading code—the objective of this code is to set out specific standards of conduct to protect consumers and participants
- > Medicines Australia's code of conduct—the objective of this code is to ensure specific standards of conduct for the activities of companies when engaged in the marketing of prescription products used under medical supervision
- > a pallet hire industry code—the objective of this code is to promote fairness in the pallet hire industry
- > a scanning code of practice—the objective of this code is to ensure that the interests of customers are protected in the operation of supermarket scanning systems, by requiring signatory supermarkets to ensure price accuracy.

## Product safety

### Performance indicator

Advise government on the need for new or amended product safety standards

### 2008–09 targets

- > Publicity, liaison and education activities undertaken
- > Parliamentary inquiries and government agencies assisted to develop policies and processes

### 2008–09 achievements

This year, seven regulation impact statements were completed resulting in new safety standards for reduced fire risk cigarettes, treadmills, and lead and certain other elements in children's toys. Four mandatory standards were updated for trolley jacks, vehicle support stands, flotation and swimming aids, and aquatic and flotation toys.

Regulation impact statements on reviews of the mandatory product safety standards for bicycle helmets, bunk beds, vehicle jacks and portable ramps for motor vehicles were prepared and progressed towards the introduction of revised mandatory standards.

A regulation impact statement process for a new standard for magnets in children's toys was introduced.

Two new permanent bans on lead in children's toys and toothpaste containing diethylene glycol were introduced.

A warning notice on the dangers of using domestic treadmills was issued.

Safety issues associated with the use of various consumer products were investigated, including formaldehyde in timber, risks associated with the inhalation of baby oil containing hydrocarbons, the link between talcum powder and ovarian cancer, disposable protective clothing, cellulosic fibre home insulation, mobility scooters and portable domestic water storage vessels that do not have secure fitted lids.

### Publicity, liaison and education

Safety warnings were issued about child restraint systems for use in motor vehicles, flotation devices for infants, babies' toys and household cots with faulty drop sides, following national consumer recalls that were implemented in relation to certain brands and models of these products.

Consumer safety guides *Safe toys for kids* and *Keeping baby safe: a guide to nursery furniture* were published in September 2008.

Product safety bulletins and safety alerts were produced and distributed on the hazards associated with:

- > fire safety at home (February 2009)
- > domestic treadmills (November 2008)
- > using a ladder (September 2008)
- > basketball rings and backboards (September 2008)
- > blind and curtain cords (September 2008)
- > bunk beds (July 2008).

The ACCC used the media to draw attention to a number of important child and infant safety issues, including:

- > warning about the safety of some children's toys following the recall of three children's toys supplied by online traders that failed to comply with the prescribed mandatory standard
- > publicising the recall of Deep Blue and Aqua Spirit flotation devices for infants, urging consumers to cooperate fully with this recall and emphasising that any consumer who had purchased one of these products should stop using it immediately and return it to the place of purchase for a full refund
- > urging parents and carers to be alert to the dangers associated with blind and curtain cords, following the tragic death of a child. The ACCC undertook to work closely with the states and territories to develop national initiatives to further improve curtain and blind cord safety and awareness.

Education strategies for consumers and guidance strategies for suppliers have been developed and included in the compliance strategies for baby bath aids, child restraints for use in motor vehicles, elastic luggage straps, exercise cycles, folding cots, pedal bicycles and prams and strollers. These strategies generally include development of a consumer alert, website hot topic and other material, and a supplier mandatory standards guide and/or bulletin and web material, along with enforcement-related media releases.

A bulletin informing suppliers about new mandatory standards for folding cots and lead in children's toys that also gives an interpretation on labelling requirements for foam toys was developed and disseminated at the Australian Toy Association Fair in Melbourne in March 2009.

A draft guide on choosing and using product test companies was sent to stakeholders for comment. The need for such a guide was expressed at the 2008 National Toy Summit. Feedback was very positive and the guide is now progressing to publication later this year.

An Easter DIY media campaign was developed to warn consumers of injuries that can result from the use of ladders, elastic luggage straps, and vehicle jacks, ramps and stands that do not meet mandatory and voluntary standards or that are not in proper working order. Consumers were also warned of the dangers of the inappropriate use of these goods.

The ACCC led a campaign with fair trading agencies in South Australia, Western Australia and Queensland to encourage consumers and suppliers to help identify wooden cots with loose filler bars. Suppliers of the cots which had faulty drop sides implemented a voluntary recall of the products. Consumers and suppliers were urged to check the working order of wooden household cots and immediately report any with drop sides that fail to the ACCC.

## Compliance—Product Recalls Australia website

The PRA website maintained by the ACCC provides consumers and state and territory regulators with access to up-to-date information on all Australian safety-related recalls. In 2008–09, 720 recalls were entered on the database and 166 general consumer product recalls were monitored and assessed.

As part of monitoring the effectiveness of consumer product recalls, the ACCC undertook 10 on-site supplier recall assessment visits of high-profile recall items and was therefore able to take up any consumer concerns expressed about the recalls directly with suppliers.

The PRA website has been redeveloped and was launched in May 2009. It now has a facility for suppliers and other regulators to submit product recall notifications using a standardised and secure online s. 65R notification form.

Other improvements to the website include:

- > recalls organised by topic to make it easier for consumers to find what they are particularly interested in
- > enhanced search capability
- > a facility for subscribing to email alerts and RSS feeds on new recalls
- > an expanded list of frequently asked questions
- > a 'Hot topic' feature, for providing information on topical issues
- > the ability to list recalls by year and within selected categories
- > an updated guide on how to conduct an effective product recall.

## Working with other agencies

The ACCC significantly contributed to the harmonisation work of the Implementation Working Group (comprising Commonwealth, state and territory government agencies) including input into the Intergovernmental Agreement for the Australian Consumer Law relating to product safety and the development of the associated memorandum of understanding.

Input was provided to the drafting instructions for legislative reform of the product safety provisions of the Trade Practices Act, including the reasonably foreseeable use threshold, the supply of consumer goods and mandatory reporting.

The ACCC developed initiatives identified in the Productivity Commission research report recommendations for product safety reforms, including initial scoping and structuring for the emerging hazards Clearinghouse and One Stop Shop website projects. The recalls review and mandatory reporting concept and implementation plan were progressed.

The ACCC continued to liaise with state and territory fair trading and consumer affairs agencies with regard to the following Standing Committee of Officials of Consumer Affairs (SCOCA) projects:

- > product safety harmonisation model
- > harmonisation of standards and bans
- > baseline epidemiology study.

ACCC representatives continued to participate in liaison through the SCOCA and the Consumer Products Advisory Committee.

The redeveloped PRA website was launched as the Product Safety Extranet—an electronic forum for sharing information between Commonwealth and state safety regulators that will encourage a consistent approach to product safety regulation and compliance monitoring.

The ACCC continued to liaise with the Australian Customs and Border Protection Service on a variety of product safety issues in relation to the enforcement of the prohibited imports regulations.

Consultation with other government agencies, including the Department of Health and Ageing, the Therapeutic Goods Administration and the National Industrial Chemicals Notification and Assessment Scheme, continued in relation to reviews of mandatory product safety and information standards.

The ACCC worked closely with Standards Australia in several areas. The ACCC:

- > participated with Standards Australia in the development and review of Australian Standards for nursery furniture, bunk beds, household cots, folding cots, bunk beds, prams and strollers, babies' dummies, children's nightwear, children's toys, flotation aids and aquatic toys, sunglasses, motor cycle helmets, trolley jacks and vehicle jacks
- > contributed to discussions on public access to Australian Standards called up by the Trade Practices Act mandatory standards
- > provided input on priorities alignment for future standards development and the ongoing development of horizontal standards for certain industry sectors.

The ACCC continued to liaise with stakeholder non-government agencies, including CHOICE, the Australian Toy Association, the Infant Nursery Products Association of Australia and the National Association of Testing Agencies, and the cosmetic industry about current and proposed product safety standards and issues.

ACCC representatives attended and presented at the 2008 National Toy Summit hosted by the Queensland Department of Justice and Attorney-General. The summit provided an opportunity for key stakeholders—including industry, testing agencies, regulators and safety/consumer groups—to discuss and develop strategies aimed at improving the safety of toys. ACCC representatives also presented at Australian Toy Association compliance workshops.

Papers were presented at a conference held by ACCORD, the industry association for consumer, cosmetic, hygiene and specialty care products, and at the HAZMAT chemicals conference.

International activities included:

- > participation in Organisation for Economic Cooperation and Development (OECD) product safety round table discussions including the International Consumer Product Safety Caucus in Paris, in addition to various activities to develop working relationships with the European Union and the Netherlands
- > assistance with the development and chairing of an Asia-Pacific Economic Cooperation (APEC) workshop on capacity building in consumer product safety. The workshop was held at Kuala Lumpur in November 2008 and was attended by 13 different APEC economies. The 35 participants identified, prioritised and agreed to the critical issues which need to be addressed, including four key focus areas, and developed recommendations to address them.
- > discussions, in conjunction with the New Zealand Commerce Commission, in China and Hong Kong on future cooperative arrangements for product safety and product testing

- > liaison with members of the International Product Safety Caucus regarding the proposed review of the recalls system and the development of the Clearinghouse and mandatory reporting initiatives
- > liaison with the United States Consumer Product Safety Commission on the US proposal to introduce tracking labels on children's products for recall purposes.

## Product safety enforcement

### Performance indicator

Take enforcement action when products breached the safety standards

### 2008–09 targets

- > Pursue unlawful conduct
- > Effective and appropriate remedies

### 2008–09 achievements

The ACCC undertook the following enforcement action in relation to breaches of product safety standards:

- > concluded two matters in court
- > accepted 27 court enforceable undertakings
- > undertook enforcement action resulting in the withdrawal from sale and/or recall of products breaching 10 mandatory standards and bans.

The ACCC undertook administrative action including the withdrawal from sale and/or recall of products breaching 10 mandatory standards or bans.

In the course of its activities leading to the investigation and enforcement of mandatory safety and information standards and bans, the ACCC:

- > conducted surveys at retail outlets across Australia and on internet sites for products subject to mandatory product safety and information standards and banned goods
- > commissioned proactive laboratory testing on strategically sampled products covered by mandatory standards
- > investigated complaints concerning alleged breaches of mandatory product safety and information standards and bans.

The ACCC surveyed baby walkers, bunk beds, cosmetics, disposable cigarette lighters, elastic luggage straps, flotation aids and aquatic toys, household cots, children's pedal bicycles, portable vehicle ramps, prams and strollers, toys for children under three, trolley jacks and vehicle support stands. Surveys were conducted to determine whether the following banned products were on sale: candles with lead wicks, children's dart gun sets, and children's toys containing lead. The surveillance program checked over 440 stores nationally, inspected nearly 2000 products, tested 54 products and had at least 17 noncompliant products withdrawn from sale.

Enforcement action taken resulted in the withdrawal from sale and/or recall of baby walkers, bunk beds, children's nightwear, children's toys, cosmetics, elastic luggage straps, sunglasses, tobacco products, toys with lead and vehicle jacks.

Twenty-seven court enforceable undertakings were accepted by the ACCC relating to the supply of bunk beds, cosmetics, children's nightwear, children's toys, cosmetics, elastic luggage straps, sunglasses, tobacco products, toys with lead and vehicle jacks.

Declarations and final orders were obtained in the Federal Court, Melbourne, in relation to the supply of bunk beds. Another bunk bed supplier was found guilty of contempt in the Federal Court, Melbourne, for failing to comply with court orders prohibiting the supply of bunk beds that did not meet the mandatory product safety standard.

Administrative action was taken to obtain effective and appropriate remedies over non-compliance with mandatory standards and bans relating to baby walkers, bunk beds, child restraints, children's toys, cosmetics, disposable cigarette lighters, elastic luggage straps, flotation aids and aquatic toys, household cots and prams and strollers. This included outcomes such as withdrawal from sale, recall of products, relabelling and rectification of minor faults.

## Communicating with businesses, consumers and stakeholders

### Performance indicators

Actions (investigations, litigation, communications) taken to prevent or stop anti-competitive conduct

Use all powers at our disposal to prevent and stop misleading, deceptive and unconscionable conduct especially when it causes widespread consumer detriment or raises national issues

Support the ability of small business to trade with larger firms in a fair yet robust environment

### 2008–09 targets

- > Reach of publicity, liaison and education activities undertaken
- > Parliamentary inquiries and government agencies assisted to develop policies and processes

### 2008–09 achievements

#### Publicity and education

This year the ACCC issued 346 media releases. Of these over 120 explained the institution and/or outcome of specific enforcement activities, and over 10 related to product safety issues, including educational material.

The chairman, commissioners and senior staff undertook over 140 speaking engagements and extensive briefings, both private and public.

#### Consultation and liaison

The Consumer Consultative Committee held two meetings, in November 2008 and March 2009, where issues such as the potential impact of the global financial crisis, debt collection practices, warranty and refund issues and strategies to assist disadvantaged and vulnerable consumers were discussed.

The Franchising Consultative Committee (previously known as the Franchising Consultative Panel) also met twice, in December 2008 and May 2009, which provided the ACCC with the opportunity to liaise with industry associations and other key franchising stakeholders to discuss emerging issues and work towards a collaborative approach to addressing them. A review of the membership of the FCC was also commenced. Expressions of interest have been sought from current members and, following calls for expressions of interest from non-members, the review is expected to be finalised by the end of 2009.

The Small Business Consultative Committee (previously known as the Small Business Advisory Group) also met twice—in November 2008 and May 2009—to discuss a range of key small business trade practices concerns, including the effect of the global financial crisis, competition issues such as misuse of market power and creeping acquisitions, and amendments to the Trade Practices Act.

In October 2008 the Health Sector Consultative Committee met to consider issues such as the authorisation process, advertising of health and medical services, small business matters such as retail tenancy, and recent ACCC enforcement outcomes.

This year the ACCC:

- > continued to liaise with a number of key retail stakeholders to further enhance compliance with the Act, which included discussions about current and forecast trends in Trade Practices Act issues, and guidance where required
- > participated in Standards Australia's committee for the development of an Australian Standard for organic and biodynamic products
- > presented transition seminars on starting up a business and the Franchising Code of Conduct to the Australian Defence Force
- > worked with the Franchise Council of Australia, the Franchisees Association of Australia and the Australian Retailers Association on joint education activities to address some of the concerns identified in state parliamentary inquiries into the Franchising Code of Conduct
- > presented at the Australian Taxation Office tax basics seminars, which attract an audience of people new to small business, and liaised more broadly with the ATO about areas in which the agencies could cooperate to better assist small business
- > participated in the Horticulture Code Committee process, providing input to discussions about the compliance implications of the committee's recommendations to government to amend the Horticulture Code
- > engaged in ongoing liaison with Australian Made Campaign Ltd regarding place of origin issues
- > participated in a range of conferences organised by industry associations to provide their members with information about relevant trade practices issues, including the Australia Post Business Forum, the Annual Conference of the Real Estate Institute of Tasmania, the Society of Consumer Affairs Professionals' Annual Symposium and the National Franchise Convention.

## Parliamentary inquiries and government agencies

In 2008–09 the ACCC continued to provide submissions to and appear before various inquiries and work with a number of other government agencies. The ACCC:

- > provided a detailed submission to, and appeared before, the Joint Committee on Corporations and Financial Services' inquiry into the Franchising Code of Conduct

- > provided a submission to, and appeared before, the Senate Economics Committee's inquiry into the need for a definition of unconscionable conduct in the Trade Practices Act
- > made a submission to DRET's review of the Oilcode
- > provided information on the potential trade practices implications arising from the operation of alcohol accords to state and territory governments
- > liaised with DAFF in relation to the ACCC's recommended amendments to the Horticulture Code and the potential impact on the horticulture industry. The ACCC also provided DAFF with information on its experiences in relation to the 'Made in Australia' and 'Product of Australia' safe harbours as they apply to food labelling.
- > responded to the Department of Broadband, Communications and the Digital Economy's (DBCDE) issues paper on the development of telecommunications consumer codes
- > worked with Food Standards Australia New Zealand to identify issues of potential concern to both agencies in relation to food labelling and trade practices matters
- > considered possible trade practices issues arising from the proposed carbon pollution reduction scheme (CPRS) and discussed these with the Department of Climate Change
- > provided the Australian Senate with the ACCC's 10th report on anti-competitive and other practices by health funds and providers in relation to private health insurance
- > participated in interdepartmental committees and inquiries into matters such as a federal audit of police capabilities and a National Alternative Dispute Resolution Advisory Council inquiry into alternative dispute resolution and civil proceedings
- > conducted a debt collection phone-in day and forum in close collaboration with ASIC. This resulted in the launch of a jointly produced issues paper that identified the areas of concern uncovered during the phone-in and forum and from feedback provided by consumers and industry.
- > undertook an education campaign in conjunction with the Office of Consumer and Business Affairs to explain to South Australian retailers fair trading obligations in relation to two-price advertising
- > as part of South Australian Law Week, worked with the Office of Consumer and Business Affairs and ASIC to inform consumers of their warranty and refund rights
- > developed guidance on fair trading for the rental car industry, with assistance from the New South Wales Office of Fair Trading
- > through the ACCC's Darwin office, ASIC and the Northern Territory Office of Consumer and Business Affairs, developed *Who do you call?*, a publication explaining the role of each agency and which is best placed to assist Northern Territory consumers with specific issues
- > worked with the office of the Victorian Small Business Commissioner to identify issues of concern for small business that would potentially affect businesses across Australia
- > continued to participate as a key member of the Australasian Consumer Fraud Taskforce, which comprises federal and state government regulatory agencies and departments (including New Zealand) with a responsibility for consumer protection in relation to frauds and scams
- > continued to be involved in the Ministerial Council on Consumer Affairs and the SCOCA, and contributed to ongoing SCOCA projects



- > prepared a submission and appeared before the Senate Economics Committee inquiry into the Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008
- > liaised with Treasury and participated in numerous working groups regarding development of proposed Australian Consumer Law and creeping acquisition amendments.

## Publications

The ACCC developed and launched various new publications in electronic, paper and DVD formats in 2008–09. These included guidance on a range of issues, including component pricing, mobile telephone premium services, warranty and refund rights, codes of conduct and the outcome of ACCC enforcement actions.

The ACCC published:

- > a suite of publications explaining the clarity in pricing amendments to the Trade Practices Act and how they will apply to specific industry sectors: *Pricing manual for the motor vehicle industry* and *Pricing manual for the travel industry*, both of which highlight broader trade practices issues applicable to those sectors; and *News for business—component price advertising* and *News for business—component pricing: electrical goods, whitegoods and furniture advertising*
- > four audiovisual presentations explaining key trade practices issues to small business—topics addressed are collective bargaining, warranties and refunds, advertising and selling and supply issues
- > a joint ACCC/ASIC issues paper *Debt collection practices in Australia—a summary of stakeholder consultation*
- > *Cartels: deterrence and detection—guide for government procurement officers*, which highlights the effect cartel conduct can have on government procurement processes and includes information on ways to minimise the risk of that occurring
- > *Consumer information in your language*, which provides information in 15 different languages on how the ACCC can assist consumers from non-English-speaking backgrounds
- > *Warranties and refunds—a guide for consumers and business*, which is a revised version of a previous publication that provides information on the warranty and refund rights and obligations that exist under the Act
- > a range of fact sheets for business and consumers:
  - > *Your consumer rights: mobile phone premium services*, which advises consumers to be wary before signing up to premium services (produced in conjunction with ACMA)
  - > *Lotteries, sweepstakes and competition scams*, which is one of three fact sheets based on information provided in *The little black book of scams* and highlighting the prevalence of these scams. It also provides information on ways consumers can protect themselves against scammers. The other two fact sheets in this series address phishing scams and money transfer scams.
  - > *Being smart about your new franchise and your retail lease*, which provides information to franchisees in the early stages of setting up their business and includes tips on key considerations when committing to a retail lease
  - > *Retail flash* 2008 edition, which covers such topics as resale price maintenance, common advertising pitfalls and proposed legislative amendments
  - > two issues of *Outreach—a newsletter for the ACCC supporter network*.

## Regional outreach

The ACCC recognises the importance of ensuring consumers and business in rural and regional areas are aware of their rights and obligations under the Trade Practices Act. To that end, in the past year the ACCC regional outreach team:

- > liaised with business and consumer groups on Trade Practices Act issues, including consumer and small business education and proposed amendments to the Act
- > delivered over 140 presentations (many in rural and regional areas) on business and consumer issues.

The ACCC also:

- > worked with a number of industry associations and peak bodies, particularly those from the motor vehicle and travel and tourism sectors, to educate their members about the clarity in pricing amendments to the Trade Practices Act and the additional requirements imposed by those amendments on their advertising practices
- > met with and presented to local and state government procurement officers in all jurisdictions to raise awareness of the warning signs of and appropriate responses to cartel conduct in the government procurement process
- > conducted a range of seminars and presentations in conjunction with business enterprise centres in various states and territories to educate small business people and those thinking of entering the sector about their rights and obligations in relation to key trade practices issues including warranties and refunds, advertising and selling, the Franchising Code of Conduct and anti-competitive practices
- > maintained and expanded its Franchising Code, Horticulture Code and Oilcode information subscriber networks. Subscribers to the networks receive email updates on issues related to the relevant code.

A series of four audiovisual presentations was developed for hosting on the ACCC website and distribution in DVD format to explain key trade practices issues to small business people. Each of the presentations provides an overview of the key points related to that topic, along with information on where further information on the topic can be obtained.

ACCC outreach officers attended over 30 expos and field days, including the Franchise and Business Opportunities Expo (Melbourne), Backpackers and Adventure Travel Conference (Sydney), Getting Started in Business Expo (Darwin) and AGFEST (northern Tasmania), to talk to Australian consumers and businesses about their trade practices rights and obligations.

## Unconscionable conduct survey

The ACCC, with assistance from the Council of Small Business of Australia, developed an online survey to ascertain small business people's understanding of, and information needs regarding, unconscionable conduct. The results of the survey have been used as the basis of focus group discussions that will in turn inform the development of ACCC guidance to small business on that topic.

### Performance indicator

Provide immediate information to hundreds of callers each week, distributing publications through print and the web, and by providing special programs to reach small, isolated or disadvantaged groups

## Infocentre

### 2008–09 targets

- > Calls and emails handled timely
- > Callers responded to within organisational guidelines
- > Publications distributed
- > Website accessible and a source of relevant and up-to-date information

### Overview

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

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

The information received from business and consumers is recorded in the ACCC complaints and inquiries database, with Infocentre project officers creating about 95 per cent of those entries. The information recorded in the database seeks to establish what, if any, breach of the Trade Practices Act may have occurred and what evidence is available to support the allegations.

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

Since its commencement in 2001, Infocentre processes have been developed to provide more comprehensive reporting on issues and intelligence gathering to assist in determining appropriate compliance initiatives and/or strategies.

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

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

## 2008–09 achievements

This year the ACCC Infocentre:

- > responded to 112 561 contacts, which was an increase of 27 per cent over contact levels last year and was achieved within existing staffing levels
- > received 96 118 telephone calls; of these, 80 281 queries were served by Infocentre staff, 13 409 were referred to the ACCC website; and 2008 were unanswered due to congested incoming lines or telephone system breakdown
- > responded to 74 per cent of calls in less than 20 seconds. The relevant industry standard is 80 per cent of calls answered within 20 seconds.
- > entered 74 750 matters in the complaints and inquiries database, of which 51 057 were received via telephone (64 per cent of calls served)
- > responded to 30 008 emails; of these, 11 882 emails were received via the SCAMwatch 'report a scam' online complaint form
- > trained operators to ensure they were able to address issues arising from new functions such as the National Electricity Rules (NER); the *Trade Practices Legislation Amendment Act 2008*, which contained amendments to s. 46; and the *Trade Practices Amendment (Clarity in Pricing) Act 2008*, which amended s. 53C
- > responded to educational campaigns such as the debt collection phone-in day and Consumer Fraud Awareness Week
- > remained open throughout the Easter 2009 long weekend to respond to consumer inquiries regarding fuel pricing
- > sent a total of 299 245 publications to customers.

The ACCC's website is an important medium for its communications with consumers and business and enables the ACCC to provide those groups with timely information about new or emerging issues. During 2008–09, the ACCC developed new pages on issues such as cash-back offers, component pricing and international roaming, as well as maintaining and updating its core business pages to reflect the most relevant information available on a range of issues.

## Disadvantaged and vulnerable consumers

The ACCC maintained its commitment to assisting disadvantaged and vulnerable consumers through such measures as:

- > the development of *Consumer information in your language*, a publication that provides information on the ACCC's role and how it can assist consumers from non-English-speaking backgrounds. The publication provides the information in 15 languages: Arabic, Chinese, Croatian, Dinka, Greek, Italian, Japanese, Khmer, Korean, Macedonian, Persian, Serbian, Spanish, Turkish and Vietnamese
- > continuing its role as a member of the National Indigenous Consumer Strategy reference group through working to meet the aims of the NICS action plan Taking Action Gaining Trust
- > undertaking—in conjunction with the Northern Territory Office of Consumer and Business Affairs, the Northern Australian Aboriginal Justice Agency and the Central Australian Aboriginal Legal Aid Service—to provide information to Indigenous consumers in rural and remote communities in the Northern Territory.

## International liaison and assistance

The ACCC provided capacity-building assistance directly to competition and consumer authorities from 10 economies. Its international liaison work included participating in various fora, including for APEC and the Joint Regional Centre on Competition, a joint program organised by the Korea Fair Trade Commission and the OECD.

The ACCC also hosted study visits by officials from 13 economies and attended negotiation rounds, or assisted in feasibility studies, for eight proposed free trade agreements.

The ACCC was an active participant in the major international competition and consumer protection networks: the International Competition Network (ICN)—and the International Consumer Protection Enforcement Network (ICPEN).

The ACCC also:

- > facilitated information sharing, including providing case-specific assistance, with over 20 jurisdictions
- > provided capacity-building assistance to officials from Bhutan, China, Hong Kong, Indonesia, Malaysia, Papua New Guinea, the Philippines, Singapore, Thailand and Vietnam
- > hosted study visits by officials from Bhutan, China (including Inner Mongolia), the European Commission, France, Indonesia, Japan, New Zealand, Sweden, Thailand, Kazakhstan, the United Kingdom, the United States and Vietnam
- > completed an AusAID-funded program for the Independent Consumer and Competition Commission in Papua New Guinea, to introduce a computer-based records management system within the ICCC
- > continued to be a regular contributor to the capacity-building seminars of the Joint Regional Centre on Competition, a program organised by the Korea Fair Trade Commission and the OECD
- > attended negotiation rounds in relation to the development of provisions in free trade agreements for the promotion of competition and mechanisms to enhance cooperation between competition authorities. This included two agreements that were finalised: one between Australia and Chile and the other between Australia, New Zealand and ASEAN members.
- > assisted in the preparation of material for the free trade agreement feasibility studies
- > continued as an active member of the ICN, including as co-chair of the cartels subgroup and as a member of the unilateral conduct working group and mergers subgroup, and participated in the ICN merger and cartel workshops and effectiveness seminar
- > continued as an active member of ICPEN, which included presenting at the Best Practices Workshop and being coordinator of the ICPEN green claims working group
- > maintained regular liaison with various international competition, regulatory and consumer authorities
- > continued the international coordination of the annual ICPEN Internet Sweep. The 2008 sweep involved 22 countries sweeping on the theme 'The message: true or false?'
- > received requests for information from various countries, including Bhutan, Canada, Chile, China, Fiji, Finland, Georgia, Hong Kong, Hungary, Ireland, Indonesia, Japan, Korea, Mexico, Mongolia, New Zealand, Romania, Singapore, South Africa, Taiwan, Tanzania, the United Kingdom and the United States, and from the European Union

- > requested information from various countries, including Brazil, Canada, China, the European Union, France, Germany, Ireland, Japan, Mexico, the Netherlands, New Zealand, Singapore, South Africa, the United Kingdom and the United States
- > conducted staff exchanges with Taiwan and the United States, and participated in the Australia–China Legal Professional Development Program by hosting an official from China
- > participated in various international events covering competition, consumer protection, small business and regulatory forums, including those organised by the OECD, APEC, ICPEN, the International Bar Association and the ICN
- > participated in the International Consumer Product Health and Safety Organisation and the International Consumer Product Safety Caucus and continued participation in the East Asia and Pacific Network of Infrastructure Regulators.

# Mergers and acquisitions

**Promoting vigorous, lawful competition and informed markets**  
**Encouraging fair trading and consumer protection**

## Performance indicator

Assess the competition effects of mergers, acquisitions or asset sales

## Overview

A primary aim of the ACCC is to encourage competitive market structures and informed behaviour. The ACCC's Mergers and Acquisitions Group supports this objective through its work in the assessment of mergers, acquisitions, asset sales and certain joint ventures under s. 50 of the Trade Practices Act.

This work includes:

- > developing and maintaining competitive market structures by assessing proposed mergers in a timely manner, having regard to commercial imperatives
- > instigating appropriate enforcement action for mergers considered to contravene s. 50, and providing appropriate assistance to the Australian Competition Tribunal during its consideration of merger authorisations and reviews of ACCC formal clearance determinations
- > monitoring and ensuring compliance with the s. 87B undertakings accepted by the ACCC in merger reviews
- > educating the public, business and its advisers on the role of the ACCC and its merger review processes, and publicising the ACCC's merger decisions.

The ACCC seeks to minimise uncertainty and risk for business and consumers through fair, transparent and consistent processes for assessing mergers, and to be flexible in its strategies for ensuring merger activity does not substantially lessen competition. This is highlighted in the ACCC's *Merger review process guidelines*, issued in 2006, and in the *Formal merger review process guidelines*, published in 2007, which provide procedural guidance on both informal and formal merger clearance processes.

*Merger guidelines 2008* sets out the ACCC's analytical framework for merger reviews. This published guidance ensures the ACCC's merger practice appropriately reflects international best practice, contemporary views on anti-trust analysis and ACCC experience conducting merger analysis.

The ACCC's Mergers and Acquisitions Group also aims to improve market processes more generally by:

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

### 2008–09 targets

- > Mergers assessed within statutory guidelines
- > All public merger decisions published on the ACCC website

### 2008–09 achievements

The Trade Practices Act prohibits acquisitions that would be likely to substantially lessen competition. This competition test applied by the ACCC rests on recognition of the potential link between market structure and resulting market power, and the importance of market-based dynamics such as imports in preventing a merger from creating the ability or incentive to exercise unilateral or coordinated market power.

Mergers, acquisitions and asset sales were assessed for their compliance with s. 50 of the Act. In total 412 reviews were conducted. One matter was publicly opposed; confidential opposition or concerns were expressed in nine; and five were allowed to proceed after the acceptance of undertakings to address competition concerns. Of the 412 reviews, 239 were conducted confidentially, and 173 were reviews of public mergers. During the past financial year some of the more substantial mergers the ACCC considered fell within the banking, retail and energy sectors.

## Merger and joint venture reviews

**Table 3: Merger and joint venture reviews, 2004–05 to 2008–09**

	2008–09	2007–08	2006–07	2005–06	2004–05
Total <sup>1</sup>	<b>412</b>	397	390	272	189
Not opposed <sup>1, 2</sup>	<b>397</b>	380	365	261	178
Opposed outright <sup>1, 3</sup>	<b>10</b>	11	17	5	2
Resolved during review through undertakings	<b>5</b>	6	8	6	9

Those publicly opposed were:

- > Baiada Poultry—proposed acquisition of Bartter Enterprises Pty Ltd

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

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

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



Those not opposed included:

- > Vodafone Group plc and Hutchison 3G Australia Pty Ltd—proposed merger of Australian mobile operations
- > Chinalco—proposed acquisition of interests in Rio Tinto plc and Rio Tinto Ltd
- > P&M Quality Smallgoods Pty Ltd (Primo)—proposed acquisition of Hans Continental Smallgoods Pty Ltd
- > Commonwealth Bank of Australia—proposed acquisition of BankWest and St Andrew's Australia
- > Westpac Banking Corporation—proposed acquisition of St George Bank Limited.

Those resolved during their review by court enforceable undertakings included:

- > National Foods and Warrnambool Cheese and Butter Factory Company—proposed acquisition of Australian Co-operative Foods Ltd (Dairy Farmers)
- > Flinders Ports Holdings Pty Ltd—proposed joint venture with DP Worlds (SA) Pty Ltd
- > WPP Group—proposed acquisition of Taylor Nelson Sofres plc.

Two merger matters were the subject of litigation, which related to compliance with s. 87B undertakings. In November 2008 the ACCC discontinued proceedings against ABC Learning Centres for alleged breaches of its 2004 undertaking to divest two childcare centres in Western Australia; the centres had been sold and ABC Learning Centres was insolvent. On 11 May 2009, the Federal Court dismissed Toll Holdings' application against the ACCC in relation to matters arising from an undertaking it had given the ACCC.

## Statements of issues

If the ACCC comes to a preliminary view that a proposed merger raises competition concerns requiring further investigation, it may release a statement of issues outlining the basis and facts on which the ACCC has reached this view. This process is aimed at increasing the transparency of the informal review process. It allows for obtaining further information that may alleviate or (potentially) reinforce the concerns of the ACCC, and/or provide an opportunity to consider any undertakings submitted by the merger parties to resolve competition concerns. In 2008–09 the ACCC released 11 statements of issues.

## Public competition assessments

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

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

Public competition assessments aim to provide the market with a better understanding of the ACCC's analysis of various markets and associated merger and competition issues. Assessments will also alert the market if the ACCC is changing, or is likely to change, its assessment of the competitive conditions in particular markets because of, for example, technological developments or previous mergers in those markets. In 2008–09 the ACCC released 12 public competition assessments.

All mergers publicly reviewed and decided were published on the ACCC's website.

## International liaison

The ACCC worked with overseas competition authorities, particularly through its active participation in the ICN. The ACCC is a member of the steering committee of the ICN and its working groups, including those dealing with merger notification and procedures and merger analysis and investigative techniques.

# Adjudication

## Promoting vigorous, lawful competition and informed markets

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

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

Key highlights of 2008–09 for the ACCC's authorisation and notification functions include the following.

- > The ACCC issued 35 final determinations on authorisation matters covering a wide range of conduct. In addition to a range of collective bargaining matters, significant matters considered by the ACCC included decisions on queue management systems to manage infrastructure bottlenecks in the Hunter Valley and Goonyella coal chains; granting conditional authorisation to a code of conduct for members of the Australasian College of Cosmetic Surgery; decisions to deny authorisation to a cooperation agreement between Air New Zealand and Air Canada; and a decision to deny authorisation to a proposal by the Insurance Council of Australia for its members to adopt a common definition of 'inland flood'.
- > Some 563 exclusive dealing notifications were lodged with the ACCC. The vast majority of these were allowed to stand. The ACCC issued notices revoking the immunity afforded by notifications lodged by the National Association of Speedway Racing Incorporated and others. A number of other notifications were withdrawn following concerns being raised by the ACCC.
- > The ACCC allowed 64 collective bargaining notifications covering seven collective bargaining groups. These arrangements included collective bargaining by retailers of paint and related products with suppliers; by operators of clubs in New South Wales with suppliers of wagering and broadcast services; and by the owners of independent record labels with licensees in respect of the public performance and transmission of music videos.

## Collective bargaining notifications

### Performance indicator—output 1.1.1

Support the ability of small business to trade with larger firms in a fair, yet robust environment

### 2008–09 targets

- > Reach of publicity, liaison, consultation and education activities undertaken
- > Collective bargaining notification processes to be within statutory timeframes and decisions communicated
- > Pursue unlawful conduct

### 2008–09 achievements

The ACCC assessed and released public decision documents within statutory timeframes for seven collective bargaining groups (involving 64 collective bargaining notifications).

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

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

**Table 4: Collective bargaining notifications, 2008–09**

	This year	Last year
New notifications	64	7
Notifications withdrawn	0	1
Notifications revoked	0	1
On hand at end period	0	0

### BFC Stores Pty Ltd and others—CB00009–CB00056

**Result** | 29 October 2008 | allowed to stand.

**Background** | proposal to negotiate on behalf of BFC owned and franchise owned stores with 48 targets in relation to the purchase of paint and related products.

### ClubsNSW—CB00057 and CB00058

**Result** | 4 December 2008 | allowed to stand.

**Background** | proposal to collectively negotiate on behalf of certain members of ClubsNSW with TabCorp Holdings Limited and Sky Channel Pty Ltd in relation to the terms and conditions of the supply of wagering and racing broadcast services.

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**Australian Independent Record Labels Association Ltd—CB00059–CB00066**

**Result** | 8 January 2009 | allowed to stand.

**Background** | proposal to collectively negotiate on behalf of participating members with Telstra, Optus, BigPond, Austar, Foxtel, MTV Networks, XYZ Networks and Fuel TV in relation to the licensing of its members' audio and visual rights in respect of public performance and transmission of music videos.

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**E Dobson Pty Ltd and others—CB00067–CB00069**

**Result** | 23 March 2009 | allowed to stand.

**Background** | proposal to collectively negotiate on behalf of certain Wizard franchisees with Aussie Centre Administration Pty Ltd and AHL Investments Pty Ltd the terms of an amended franchise agreement. In the event that a franchisee is unwilling to enter into an amended franchise agreement, the group proposes to collectively negotiate with GE Money Mortgages Pty Ltd the terms on which existing franchise agreements will be terminated.

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**South Australian Farmers Federation—CB00070**

**Result** | 23 March 2009 | allowed to stand.

**Background** | proposal to collectively negotiate on behalf of certain members the terms and conditions of broiler chicken growing contracts with Inghams Enterprises Pty Ltd.

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**KE Viney Traffic and General Consultancy Pty Ltd—CB00071**

**Result** | 24 April 2009 | allowed to stand.

**Background** | proposal to collectively negotiate on behalf of nine sub-contractors in South-East Queensland the terms and conditions for the supply of security and traffic management services with Guardrite Security and Traffic Management Pty Ltd.

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**Australian Newsagents Federation—CB00072**

**Result** | 27 May 2009 | allowed to stand.

**Background** | proposal to collectively negotiate on behalf of certain newsagents located in Western Australia the terms and conditions of their distribution contracts with West Australian Newspapers Limited.

## Authorisations

### Performance indicator—output 1.1.2

Certain anti-competitive practice in industries and professions to be authorised when it is assessed that the public benefits exceed detriments

### 2008–09 targets

- > Decisions are made within statutory and organisational timeframes
- > Timely communication of decisions

### 2008–09 achievements

The ACCC granted authorisation to 35 arrangements in 2008–09. These arrangements spanned a wide range of industries, including collective bargaining by TAB agents in New South Wales, recycling programs aimed at reducing waste from AgVet chemicals and a capacity balancing system at the Port of Newcastle.

All authorisation decisions were made by the ACCC within statutory and organisational timeframes.

All authorisation decisions were published on the ACCC website and communicated to applicants and interested parties.

### Authorisation applications

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

**Table 5: Authorisation applications, 2008–09**

	Opening balance	New applications	Applications withdrawn	Applications decided	Balance
Authorisation applications	8 (9)	27 (50)	1 (3)	22 (29)	12 (27)
Minor variation applications	0 (0)	7 (7)	0 (0)	7 (7)	0 (0)
Revoke and substitute authorisation applications	2 (2)	6 (8)	0 (0)	6 (6)	2 (4)
Revocations	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
Total	10 (11)	40 (63)	1 (3)	35 (42)	14 (31)
<b>Last year</b>	<b>9 (19)</b>	<b>32 (46)</b>	<b>2 (4)</b>	<b>29 (50)</b>	<b>10 (11)</b>

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

# Regulatory activity of the ACCC and the AER

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

The broad objective of the ACCC and the AER is to promote competition and encourage new entrants into markets that rely on monopoly services through the efficient and effective regulation of national infrastructure (such as communications, water, energy, rail, port terminals, airports and post). Price monitoring is also used in some markets where competition is limited. To achieve this broad purpose much of the activity in the regulatory area revolves around:

- > determining prices and access terms and conditions that balance the interests of infrastructure owners, users and the broader public
- > monitoring and enforcing industry specific pro-competition laws for bulk water, energy and communications
- > monitoring and reporting on prices and service quality of particular goods and services to provide information about the effects of market conditions.

Regulatory and monitoring activities must be conducted in such a way that consistent, transparent, accountable processes are used. Also, to allow diverse stakeholder participation, the ACCC and the AER have an information dissemination role to assist stakeholders to understand the regulatory frameworks and the structure and operation of infrastructure markets. Similarly, because of their history and involvement in these types of regulatory activities, the ACCC and the AER provide advice to governments and policy agencies on how efficient regulatory outcomes and competitive, well-functioning markets can be achieved.

Regulatory work in the 2008–09 reporting period was in the context of a dynamic external environment characterised by significant economic events and evolving structural change.

The encouragement of water trading, to assist in the sustainable management of water in the Murray–Darling Basin, required ACCC involvement to advise the Murray–Darling Basin Authority (MDBA) on water trading rules and to oversight fair trading concerns about the conduct of water market intermediaries. Structural change in the export marketing of Australian wheat has resulted in the ACCC's involvement in work to assess access by wheat exporters to port terminals around Australia. The development of a carbon pollution reduction scheme (CPRS) is being watched closely by the energy sector. The likely impact on communications regulation of a rollout of a national broadband network is also being carefully examined. And, in the midst of the global financial crisis, the AER's final decision on its industry-wide weighted average cost of capital (WACC) review was released in May 2009.

Given this external environment, 2008–09 was a particularly demanding year for the ACCC and the AER. In addition to maintaining and administering the ACCC/AER long-term ongoing regulatory roles in communications, transport and energy, they were required to:

- > *Respond to change and new challenges in established areas of regulation.* Further progress was made in the consolidation of economic regulation under the AER, including completion of first reviews of electricity distribution networks revenues and prices formerly undertaken by state regulators; for communications, access to digital radio received attention; and, on 23 April 2009, the Australian Rail Track Corporation (ARTC) lodged its first undertaking for its Hunter Valley Rail Network.
- > *Develop and further refine recently acquired areas of regulation.* For bulk water this included final advice and recommended rules (to the minister), for water charge rules (including termination fees and rules for infrastructure and the planning and management of information) and for water market rules.
- > *Understand and commence work in new regulatory regimes.* For example, on 29 April 2009 the ACCC released an issues paper and invited submissions on proposed access undertakings in relation to access by wheat exporters to grain port terminals around Australia. Stakeholder meetings in the five states where ports are the subject of the undertakings have now been conducted.
- > *React to changing market circumstances through the ACCC's prices oversight and monitoring roles.* In 2008–09 the ACCC responded to requests from government to conduct price inquiries into industries such as groceries and fertilisers and also responded to requests for ongoing monitoring of specific industries such as airports, container stevedoring, and medical indemnity insurance. The first of three reports on the formal monitoring of prices, costs and profits of unleaded petrol products was submitted to the minister on the required date, 17 December 2008.

Performance targets have been substantially met.



# Energy

## Performance indicator

Facilitated and encouraged competition in markets that depend on access to monopoly services so that the benefits of utility regulation are spread throughout the Australian economy

## 2008–09 target

Parliamentary inquiries and government agencies assisted to develop policies and processes

## 2008–09 achievements

The AER provided the following submissions.

### **Submission to Australian Energy Market Commission—regulatory investment test for transmission draft rules**

On 15 May 2009 the AER lodged a submission in response to the AEMC's regulatory investment test for transmission draft rules. The test is a new project assessment and consultation process for transmission investment that will replace the current regulatory test.

### **Submission to Retail Policy Working Group**

On 30 April 2009 the Ministerial Council on Energy released the first exposure draft of the National Energy Retail Law, National Energy Retail Rules and National Energy Retail Regulations for the National Energy Customer Framework. The AER made a submission commenting on issues relating to its functions and roles in the framework.

### **Submissions to AEMC's Review of Energy Market Frameworks in light of climate change policies**

In December 2008 the AEMC released an interim report about proposed amendments to energy market frameworks, following the introduction of a CPRS and expanded national renewable energy target. The AER commented on issues identified in the report, including generation capacity, system operation and the connection of new generators to transmission networks.

### **Submission to National Electricity Market Management Company**

On 25 November 2008 NEMMCO released a draft determination setting out recommendations and proposed changes to the rules regarding the procurement, employment and provision of network control ancillary services and network support and control services. The AER made a submission that commented on the proposed changes.

### **Submission to reliability panel**

On 31 October 2008 the AER made a submission to the reliability panel's exposure draft of a proposed rule change, seeking to implement policy positions on the review of the value of lost load and cumulative price threshold. The AER also made a submission to the AEMC in relation to the subsequent rule change proposal.

### **Rule change proposal—setting value of lost load following the shedding of interruptible load**

On 20 November 2008 the AEMC published its final determination regarding this proposal, which the AER had submitted in April 2008 following its investigation into the events of 16 January 2007, when bushfires caused transmission lines between Victoria and New South Wales to fail. The AER also proposed that clause 4.2.3 of the NER be changed to set out a clearer process for NEMMCO to reclassify contingency events during abnormal conditions, such as those in the context of the events of 16 January.

### **Submission to Ministerial Council on Energy—establishment of the Australian Energy Market Operator**

In September 2008, the AER made a submission to the Ministerial Council on Energy commenting on the legislative framework for the establishment of the Australian Energy Market Operator.

### **Rule change proposal—bidding and rebidding of ramp rates, market ancillary service offers, and dispatch inflexibility**

In April 2008 the AER submitted a rule change proposal to the AEMC designed to limit a participant's ability to rebid technical parameters to pursue commercial objectives when power system security may be compromised.

After appropriate consultation, the rule came into effect on 31 March 2009.

### **Submission to reliability panel review to develop the template for generator compliance programs**

On 22 January 2008 the reliability panel published its issues paper. The AER's submission clarified how it intends to monitor and enforce compliance with the electricity rules.

### **Submissions to AEMC—use of total factor productivity in economic regulation**

The AER provided several submissions and other input to the AEMC's total factor productivity review. The AER also commented on earlier consideration of related rule change proposals by the Victorian government regarding the use of total factor productivity to determine regulated revenues and prices for network businesses.

### Performance indicator

Establish access terms, conditions and prices that balance the interests of infrastructure owners, users and the broader public

### 2008–09 target

Effectiveness of access regimes evidenced by price levels and service delivery standards

### 2008–09 achievements

The AER made the following decisions about the effectiveness of access regimes.

#### Gas market fees

In June 2009 the AER approved VENCORP's gas market fees for operating the Victorian principal transmission system.

#### APA GasNet Australia's access arrangement variation proposal—transmission refill and cross system withdrawal tariffs

In April 2009 the AER released its draft decision not to accept the variation proposal submitted by APA GasNet Australia Pty Ltd in relation to its access arrangement covering the principal transmission system in Victoria. The variation proposal sought tariffs applying to the Western Underground Gas Storage facility and SEA Gas connection points.

In May 2009 GasNet withdrew the variation proposal.

#### Annual tariff variations

The tariff variation approval process is undertaken annually. Tariffs approved at the beginning of an access arrangement period are adjusted to take account of inflation, volume and unaccounted-for gas over the access arrangement period. The methodology for the process is established in the pipeline's approved access arrangement. The 2009–10 variation approval process is being undertaken under the National Gas Code provisions.

In December 2008 the AER approved annual tariff variations for the Victorian principal transmission system (known as the GasNet system).

In May and June 2009 the AER approved annual tariff variations for 2009–10 for the following pipelines:

##### *Transmission pipelines*

- > Central West pipeline
- > Roma to Brisbane pipeline
- > Central Ranges pipeline
- > Dawson Valley pipeline

##### *Distribution pipelines*

- > Central Ranges Tamworth distribution network
- > Jemena NSW Gas Networks
- > Envestra and Allgas gas networks in Queensland
- > Country Energy's Wagga Wagga network
- > ActewAGL's gas distribution network.

## **Country Energy, EnergyAustralia, Integral Energy and ActewAGL distribution determination**

In April 2009 the AER issued its final decisions and distribution determinations for Country Energy, EnergyAustralia, Integral Energy and ActewAGL for the 1 July 2009 to 30 June 2014 regulatory control period. These determinations approved the efficient revenues for these networks, including \$14 billion of capital investment over the next five years, which represents an increase of around 80 per cent from the current level.

## **TransGrid and Transend transmission determination**

In April 2009 the AER issued its final decisions and transmission determinations for TransGrid and Transend for the regulatory control period 1 July 2009 to 30 June 2014. These determinations approved the efficient revenues for these networks, taking account of operating expenditures and capital works requirements. The TransGrid determination approved \$2.4 billion (2008–09) of capital investment over the next five years, which is an increase of more than 72 per cent from the current level. The Transend determination approved \$606 million (2008–09) of capital investment over the next regulatory period, which is an increase of 47 per cent above the level of Transend's capital expenditure in the current regulatory period.

## **ElectraNet transmission determination 2008–09 to 2012–13**

In February 2009 the AER released updated calculations of the regulatory asset base and maximum allowed revenues for ElectraNet following an order by the Australian Competition Tribunal. ElectraNet's regulatory asset base was increased by \$46.8 million to account for value of easements not included in the value of the asset base as determined at the time of its sale.

## **GasNet fuel gas pass-through**

In December 2008 the AER allowed a pass-through amount of \$12.88 million, reflecting a reduction in operating expenditure due to a change in the procurement of compression gas.

## **Transend network support pass-through proposal**

In November 2008 the AER allowed a pass-through amount of \$506 732 for network support payments for Transend for 2007–08 and an adjustment amount (including interest) to be applied to network support customers in the 2009–10 financial year.

## **Variation to APA GasNet Australia's access arrangement**

In November 2008 the AER approved a variation proposal to reflect the final transportation payment deed to be executed by GasNet and all market participants in the payment deed principles set out in Schedule 6 of GasNet's revised access arrangement.

## **Central Ranges Pipeline Tamworth distribution access arrangement amendment**

In October 2008 the AER amended the Tamworth distribution access arrangement, to correct the labelling of some charges as GST inclusive rather than GST exclusive.

## EnergyAustralia contingent project—replacement of feeder cables 908 and 909

In July 2008 the AER approved EnergyAustralia's contingent project application, amending its 2005 electricity transmission revenue determination. The approved project will facilitate the construction of an alternative 132 kV supply route to the Bunnerong sub-transmission station in southern Sydney.

## Powerlink Queensland South Pine to Sandgate upgrade project

In July 2008 the AER adjusted Powerlink's 2007–12 revenue cap to take account of the additional cost of undergrounding a portion of this transmission line.

### Performance indicator

Provide incentives that stimulate efficient investment in and use of services with natural monopoly characteristics

### 2008–09 target

Regulatory reports, determinations, and issues papers are timely and accessible

### 2008–09 achievements

The AER was timely in providing the following guidelines, all of which were available on its website.

### Weighted average cost of capital final decision

In May 2009 the AER released its final decision on its first industry-wide WACC review.

The outcomes of the review apply to all electricity network revenue reset determinations where the regulatory proposal is submitted after 1 May 2009 and before the completion of the next WACC review. The outcomes of the review are locked in for transmission network service providers; for distribution network service providers the AER may depart from these parameters in the context of an individual reset determination if there is persuasive evidence to do so at the time.

In its final decision, the AER confirmed its proposed position to adopt a gamma of 0.65 and equity beta of 0.8, compared to the previously adopted values of 0.5 and either 0.9 or 1.0 respectively. The AER also adopted a market risk premium of 6.5 per cent compared to the previously adopted value of 6 per cent.

The AER maintained a credit rating of BBB+ and a risk-free rate and debt premium term of 10 years.

Under the NER, industry-wide reviews are held every five years.

### Final amended service target performance incentive scheme

In May 2009 the AER published the final amended service target performance incentive scheme. This was to make amendments to version 1.0 of the scheme to correct for errors and clarify aspects of its operation.

## **Demand management incentive schemes for Victorian distribution businesses**

In April 2009 the AER released its final demand management incentive scheme for the Victorian distribution businesses CitiPower, Powercor, Jemena, SP AusNet and United Energy over the 2011–15 regulatory control period.

In October 2008 the AER published separate schemes to apply to Energex, Ergon Energy and ETSA Utilities for the 2010–15 regulatory control period.

## **Framework and approach for assessment of advanced meter infrastructure costs incurred by Victorian distribution businesses**

As part of its new responsibilities for Victorian electricity distribution businesses, the AER is required to assess the costs associated with the rollout of smart meters to Victorian electricity consumers.

In January 2009 the AER released a framework and approach document outlining its approach to the assessment of the budget and charge applications of the Victorian distribution businesses. This included details of the information that the businesses will be required to provide in their applications.

## **Cost allocation methodologies for Queensland, South Australian and Tasmanian distribution businesses**

In the first half of 2009 the AER approved the proposed cost allocation methods of four distribution businesses and published its final decisions for Energex, Ergon Energy, ETSA Utilities and Aurora.

## **Annual compliance order and guideline**

In November 2008 the AER issued an annual compliance order to obtain information from service providers of covered pipelines about their compliance with certain obligations under the National Gas Law (NGL) and National Gas Rules. These obligations relate to the legal separation of entities operating pipelines and/or gas networks, as well as operational separation of marketing staff.

An annual compliance guideline was also issued at this time explaining what information is to be provided to the AER.

## **Framework and approach papers for distribution businesses**

Before making a distribution determination, the AER is required to publish a framework and approach paper setting out its likely approach to certain key regulatory issues in its distribution determination. These include how services will be classified and the form of regulation to apply to these services.

In November 2008 the AER published its final framework and approach papers to apply to Energex, Ergon Energy and ETSA Utilities in the 2010–15 regulatory control period. The document set out the AER's likely approach to the application of a service target performance incentive scheme, an efficiency benefit sharing scheme and a demand management incentive scheme.

In December 2008 the AER published its framework and approach positions paper for the Victorian distribution businesses' 2011–15 revenue determination.

The framework and approach paper will apply to Citipower, Powercor, Jemena, SP AusNet and United Energy. A final framework and approach paper covering the AER's approach to key regulatory issues and the application of incentive schemes was released in May 2009.

## Access dispute guideline

In November 2008 the AER released its *Access dispute guideline* which outlines how the AER will conduct an access dispute hearing under the NGL. The guideline is intended to assist service providers and users or prospective users to understand the access dispute processes.

## Transmission businesses' cost allocation methodologies

In September 2008 the AER approved all the cost allocation methodologies proposed by the transmission businesses, and published its final decision.

## Annual information reporting requirements for electricity distribution businesses

In August 2008 the AER released an issues paper on the reporting requirements of electricity distribution businesses. The issues paper outlined the proposed annual requirements and included a set of information reporting templates.

### Performance indicator

Regulatory processes that support efficient resource allocation including investment in the regulated businesses are predictable and consistent

## 2008–09 target

Reach of publicity, liaison, consultation and education activities undertaken

## 2008–09 achievements

### Revised compliance and enforcement—statement of approach

In June 2009 the AER published its revised *Compliance and enforcement—statement of approach* explaining the AER's enforcement obligations, its approach to monitoring compliance with the electricity and gas rules and the enforcement options available. The publication was aimed at providing greater transparency about the AER's compliance and enforcement program, with the intention of helping market participants to understand their obligations and encouraging compliance with the rules.

## Access arrangement guideline

In March 2009 the AER released its gas access arrangement guideline. The guideline provides pipeline companies and other interested parties with an outline of how the AER will undertake an access arrangement review process under the NGL.

## Priorities and objectives of transmission business—performance reports

In March 2009 the AER released its final decision dealing with the priorities and objectives of its future electricity transmission performance reports as required under the new National Electricity Law provisions. This will allow the AER to continue to refine its approach to performance reporting, using its information powers under the law.

## State of the energy market report 2008

In November 2008 the AER released the *State of the energy market report 2008*. This report, the second produced by the AER, provides a comprehensive factual overview of Australia's electricity and gas industries.

The report focuses on the AER's current and future areas of responsibility, including the entire energy supply chain from electricity generation and gas production through to energy retailing. The AER is developing a third state of the energy market report scheduled for publication in late 2009.

## Price and network monitoring

Throughout 2008–09 the AER published weekly market analyses, looking at spot prices, rebidding, network outages and demand/supply forecasting. Further reports were produced on trading intervals when spot prices were in excess of \$5000/mWh.

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

## Transmission businesses performance report for 2006–07

In August 2008 the AER released its report on the performances of nine transmission businesses. The report provides information on revenue, profit, capital and operating expenditure and service standards for the 2006–07 financial year.

## Regulatory decisions

### Performance indicator

Provide incentives that stimulate efficient investment in and use of services with natural monopoly characteristics

### 2008–09 target

Robustness and accuracy of methodology evidenced by industry acceptance

### 2008–09 achievements

### AER decisions under the NER

#### *Investigation into AGL's compliance with the good faith provision*

On 12 May 2009 the AER released the results of its investigation into the rebidding behaviour of AGL Energy Limited during February 2008. The investigation focused on AGL's rebidding of its Torrens Island Power Station on 19 February 2008. Bidding capacity at high prices is not a breach of the NER, but generators are required to offer and rebid in good faith for efficient market outcomes. The investigation did not find a breach of the NER.

#### *Approval of 2009–10 distribution loss factors*

In March 2009 the AER approved distribution loss factors for 16 distribution network service providers.



Distribution loss factors represent the average electrical energy losses incurred when electricity is transmitted over a distribution network and directly affect the charges paid by electricity consumers.

Network businesses need to provide accurate distribution loss factors to the market operator to account for the electricity losses between a transmission control point and a consumer's premises.

#### *Service target performance incentive scheme—performance reports for transmission networks*

In March and April 2009 the AER approved s-factors relating to the service standard performances of electricity transmission networks in the previous calendar year. The service target performance incentive scheme allows for a bonus or penalty depending on whether networks have met their performance targets. The approved s-factors resulted in six of the eight networks receiving a bonus for exceeding their performance targets.

#### *Investigation into compliance with dispatch instructions—4 November 2007*

On 28 January 2009, an investigation report was issued into compliance with dispatch instructions by Braemar Power Project and the impacts of network congestion in Queensland on 4 November 2007. The report completed the investigation into these events and followed from the imposition of infringement penalties totalling \$60 000 on Braemar Power Project in November 2008. The penalties related to the alleged failure of Braemar's power station to ensure its offers to supply generation capacity into the national electricity market accurately reflected its capability and its alleged failure to follow dispatch instructions issued by the market operator, thus jeopardising the safe operation of the power system.

#### *Reduction of Heywood Interconnector's import capability*

On 23 December 2008 an investigation report was issued into the reduced capacity of the Heywood interconnector, a transmission line that connects Victoria to South Australia, from 500 MW to 460 MW. The investigation resulted from high electricity spot market prices in South Australia over the March quarter of that year. While the investigation did not reveal any specific breaches of the NER by ElectraNet, it identified a number of information quality issues. The AER received a commitment from ElectraNet that it would improve its processes.

#### *GPT Funds Management Limited and QR Networks—network service provider exemption*

In December 2008 the AER granted a full exemption for GPT Funds Management Limited and QR Networks from the requirement to register as a network service provider and the operation of Chapter 5 of the NER.

### **AER decisions under the Victorian transitional energy legislation**

#### *Victorian service incentive scheme exemptions*

In the first half of 2009 the AER published eight final decisions on exemptions by distribution businesses from the Victorian service incentive scheme. These exemptions mean the incidents in question do not affect the businesses' compliance with the scheme, as they relate to matters outside their control.

### *Tariff reassignment requirements for Victorian distribution businesses installing advanced meters*

In May 2009 the AER issued its final decision, notifying distribution businesses about the information they are required to provide to customers before they can change a network tariff when a smart meter is installed. This decision implements an earlier Essential Services Commission requirement under its 2005 distribution pricing determination.

### *Public lighting charges for energy efficient lights*

In April 2009 the AER released its final decision on the charging methodology to be used by Victorian distribution businesses when installing energy efficient public lighting. The methodology is intended to ensure the cost of installing new lights is efficient.

#### **Performance indicator**

Publicise the outcomes of access arbitrations, arrangements and undertakings, and monitoring activities and inquiry findings

#### **2008–09 target**

Publicity, liaison and education activities undertaken

#### **2008–09 achievements**

##### **Public forums**

The AER conducted a number of public forums to assist stakeholders participate effectively in regulatory processes, including in respect of:

- > Australian Capital Territory and New South Wales electricity distribution network revenue determinations
- > New South Wales and Tasmanian transmission network revenue determinations
- > the WACC review
- > the development of regulatory approaches for electricity distribution businesses.

##### **Industry liaison**

The AER hosted compliance forums with energy industry participants to assist them in developing more effective compliance systems.

The AER participated in the National Electricity Market Forum on a regular basis to inform industry participants of developments in enforcement and compliance strategy.

The AER regularly liaised with the AEMC and NEMMCO to ensure cooperative approaches to the effective operation of the national energy markets.

##### **International liaison**

The AER actively participated in the International Energy Surveillance Group to monitor international developments in best practice monitoring and compliance techniques.

# Communications

## Performance indicator

Actions (investigations, litigation, communications) taken to prevent or stop anti-competitive conduct

## 2008–09 targets

- > Pursue unlawful conduct
- > Effective and appropriate remedies

## 2008–09 achievements

The ACCC undertook four major investigations into potentially anti-competitive conduct in the telecommunications industry. The ACCC did not form the requisite reason to believe that the carrier or carriage service provider (CSP) was engaging in anti-competitive conduct in two of the investigations. One of the investigations is ongoing.

The ACCC investigated whether Telstra has prevented access seekers from installing equipment and interconnecting with the unconditioned local loop services (ULLS) and line sharing services (LSS) at certain exchanges. A record-keeping rule (RKR) was issued to Telstra on 11 July 2008 under which Telstra is required to report monthly on queued exchanges and decisions on capped exchanges. The publication of monthly summaries of the RKR reports on the ACCC website has also proved a practical and effective form of regulatory intervention.

In March 2009 the ACCC instituted proceedings against Telstra in the Federal Court for alleged contraventions of the Trade Practices Act and the *Telecommunications Act 1997* in relation to the provision of the ULLS and LSS.

The ACCC initiated a review of all broadband speeds advertising, focusing on mobile broadband and wireless speed advertising. The ACCC has previously conducted an industry-wide compliance program on speeds advertising, including releasing a public information paper in January 2007.

The ACCC is concerned to ensure that any broadband speed claims are reflective of actual customer experience and include actual typical speed ranges likely to be obtained by customers. Any broadband speed claims should also clearly disclose information about the factors that can affect speeds.

### Performance indicator

Facilitated and encouraged competition in markets that depend on access to monopoly services so that the benefits of utility regulation are spread throughout the Australian economy

### 2008–09 targets

- > Complied with statutory reporting requirements—three annual reports delivered to the minister, one six-monthly report; two quarterly reports
- > Four access undertakings (telecomms regime) assessed
- > Assess access undertakings (digital radio regime)
- > Fifty determinations (telecomms access regime) made
- > Review declarations of eight declared services (telecomms regime)
- > Finalise nine decisions on exemption applications
- > Parliamentary inquiries and government agencies assisted to develop policies and processes

### 2008–09 achievements

#### Annual reporting obligations

The ACCC provided the *Telecommunications reports 2007–08* to the Minister for Broadband, Communications and the Digital Economy on 3 April 2009. The reports were tabled in parliament on 15 June 2009 and published on the ACCC website the following day.

The ACCC report on Telstra's compliance with the price control arrangements for 2007–08 was published in March 2009.

In accordance with the enhanced accounting separation regime for Telstra, the ACCC published two current cost accounting reports (July to December 2007 and January to June 2008) and four quarterly reports on imputation and non-price terms and conditions (June quarter 2008, September quarter 2008, December quarter 2008 and March quarter 2009).

#### Assessment of submitted access undertakings

Telstra's undertaking application for a proposed monthly charge of \$30 for Band 2 ULLS was rejected in April 2009.

Telstra has sought review of this decision in the Australian Competition Tribunal.

The ACCC rejected the eight submitted undertakings in relation to the digital radio multiplex transmitter licences and determined that a modified version of the undertakings would apply.

#### Arbitration of access disputes

At the start of 2008–09, 35 access disputes were under active consideration. During the year the ACCC received a further 15 notifications, relating to one LSS, four ULLS and five mobile terminating access service (MTAS) disputes. As at June 30 2009, 11 of the 15 disputes were still ongoing (four MTAS disputes had been withdrawn).

During 2008–09 the ACCC made seven interim determinations. The operation of 19 interim determinations was extended.

At the end of the reporting period, 34 disputes were under active consideration—including 26 disputes on ULLS or LSS access which were being considered in a joint hearing.

### **Fixed services review declaration inquiry**

The ACCC initiated a review of the declarations of six fixed-line services (ULLS, LSS, wholesale line rental (WLR), local call service (LCS), PSTN originating access (PSTN OA) and PSTN terminating access (PSTN TA). The ACCC issued one combined discussion paper (November 2008) and one combined draft decision (June 2009) proposing to extend the declaration of the six fixed-line services for five years. The ACCC also recommenced a suspended declaration inquiry on the variation of the ULLS. In its draft decision, the ACCC proposed to extend the declarations of the six fixed-line services for five years and to make no variation to the ULLS.

### **Declaration review of domestic transmission capacity service**

The ACCC conducted an inquiry into the declaration of the DTCS and released a final report (March 2009). The ACCC decided to vary the declaration to exclude the capital–regional transmission routes and exchange services areas (ESAs) granted exemption in November 2008 as part of Telstra's exemption applications (see section immediately below). The varied declaration was extended for five years.

### **Declaration review of MTAS**

The ACCC conducted an inquiry into the MTAS declaration. On 1 June 2009 the ACCC released a final report on the declaration inquiry. The ACCC decided to extend the MTAS declaration for a period of five years.

### **Declaration review of digital data access service and integrated services digital network**

The ACCC conducted an inquiry into the declaration for the DDAS and ISDN services. On 18 June 2009 the ACCC released its final report on the declaration inquiry. The ACCC decided to allow the declarations to expire.

### **Standard access obligations exemption applications**

The ACCC conducted public consultation processes on Telstra's standard access obligations (SAO) exemption applications and decided to allow these on the supply of WLR and LCS in 248 metropolitan ESAs, and PSTN OA services in 248 metropolitan ESAs and 17 CBD ESAs. In both cases, these exemptions were granted subject to certain conditions and limitations.

The ACCC also conducted public consultation processes on Telstra's standard access obligation (SAO) exemption applications for DTCS and decided to allow these on capital–regional transmissions on nine capital–regional routes, interexchange transmissions in 16 CBD ESAs, and interexchange transmissions in 72 metropolitan ESAs.

The ACCC, however, decided not to grant Telstra an exemption from SAOs to supply ULLS, LSS, WLR, LCS and PSTN OA in areas serviced by Optus's hybrid fibre coaxial (HFC) cable network, after conducting public consultation processes on this application.

## National Broadband Network

- > Advised and reported (12 January 2009) to the expert panel during the request for proposal NBN process.
- > Appeared before the Senate Select Committee on the National Broadband Network (October 2008 and March 2009).
- > Provided a submission to the DBCDE regulatory reform discussion paper (*National Broadband Network: regulatory reform for 21st century broadband*) (3 June 2009).

## International mobile roaming

- > Provided a submission to the House of Representatives Standing Committee on Communications Inquiry into International Mobile Roaming (14 August 2008).
- > Appeared before the inquiry (26 November 2008).

### Performance indicator

Establish access terms, conditions and prices that balance the interests of infrastructure owners, users and the broader public

## 2008–09 targets

- > Effectiveness of access regimes evidenced by price levels and service delivery standards
- > Businesses using monopoly services pay prices that more closely reflect efficient costs

## 2008–09 achievements

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

- > monitoring Telstra's compliance with the operational separation plan
- > monitoring bundling of residential services using RKRs
- > issuing new model non-price terms and conditions (November 2008)
- > issuing final pricing principles and indicative prices for the LCS and WLR services for the period 1 January 2008 to 31 July 2009 (6 August 2008)
- > issuing final pricing principles and indicative prices for the MTAS for the period 1 January 2009 to 31 December 2011 (19 March 2009).

The ACCC determined prices in seven interim determinations during 2008–09.

### Performance indicator

Provide incentives that stimulate efficient investment in and use of services with natural monopoly characteristics

### 2008–09 targets

- > Regulatory reports, determinations, and issues papers are timely and accessible
- > Robustness and accuracy of methodology evidenced by industry acceptance

### 2008–09 achievements

The ACCC issued and made public on its website discussion papers, draft decisions and final decisions, within statutory timeframes, in the course of making determinations on:

- > an access undertaking submitted by Telstra for a monthly charge of \$30 for Band 2 ULLS
- > applications submitted by Telstra in different processes for exemption from SAOs to supply WLR, LCS, PSTN OA, ULLS and DTCS services
- > eight access undertakings submitted by Commercial Radio Australia (CRA) on behalf of eight multiplex licensees for the supply of digital radio multiplex transmission services
- > declarations and pricing principles for ULLS, LSS, WLR, LCS, PSTN OA and PSTN TA services
- > declaration reviews for DTCS, MTAS and DDAS/ISDN services
- > pricing principles for MTAS services.

The ACCC also continued to assess Telstra's compliance with its enhanced accounting separation regime, publicly issuing on its website, in accordance with statutory schedules:

- > four imputation and non-price terms and conditions quarterly reports
- > two half-year accounts on Telstra's core services' current cost and historical costs.

Industry acceptance of the ACCC's methodology and continuing oversight role in telecommunications regulation were evidenced in:

- > public comment made by telecommunications operators during the NBN request for proposal process and the current NBN fibre-to-the-premises (FTTP) implementation process
- > industry submissions with respect to the cost methodology employed by the ACCC in the MTAS pricing principles determination
- > general industry acceptance of the Analysys fixed services network cost model
- > general industry acceptance of the draft and final ULLS decisions
- > general industry support for the extension of the DTCS declaration.

ACCC methodology was also upheld in the majority of tribunal and judicial reviews.

- > The Federal Court affirmed the ACCC's approach to price-setting as applied in three final arbitrations concerning LSS (September 2008).
- > The Full Federal Court upheld the ACCC's approach to the making of model terms and conditions (June 2009).
- > The Federal Court affirmed the ACCC's decision requiring ULLS access to multi-dwelling units, e.g. apartment buildings (June 2009).

- > The Australian Competition Tribunal set aside the ACCC's orders granting Telstra SAO exemptions from supplying WLR/LCS services in certain ESAs (December 2008). On appeal, however, the Full Federal Court remitted the decision back to the tribunal for a rehearing (May 2009). In May 2009, the tribunal handed down reasons in support of the exemptions subject to certain conditions.
- > The Australian Competition Tribunal affirmed the ACCC's decision to reject Telstra's exemption application to restrict regulated access for Optus in areas where Optus has its HFC cable network (May 2009).

### Performance indicator

Regulatory processes that support efficient resource allocation including investment in the regulated businesses are predictable and consistent

### 2008–09 targets

- > Reach of publicity, liaison, consultation and education activities undertaken
- > Robustness and accuracy of methodology evidenced by industry confidence in regulation

### 2008–09 achievements

In addition to liaising directly with key parties on individual matters and educating industry and consumers on telecommunications regulation and the ACCC's role and functions via speeches and media releases (see page 71), the ACCC also consulted interested parties in the course of its decision-making processes, inviting parties to provide submissions on discussion papers, draft decisions and final decisions it made public.

Responses to consultation included:

- > 17 parties' submissions to the digital radio access undertakings discussion paper, 19 parties' submissions to draft decisions, and three parties' submissions on the final decision to apply a version of the undertakings as modified by the ACCC. In each case, parties either endorsed the submissions made by CRA or the Community Broadcasters Association of Australia (CBAA).
- > 14 parties' submissions to the discussion paper for the Fixed Services Review, largely supportive of the ACCC's views
- > three parties' submissions on the draft decision on Telstra's application for exemption from the SAOs to supply ULLS, LSS, WLR, LCS and PSTN OA services to Optus in Optus's HFC cable network areas. Telstra did not support the draft decision to reject the application, whereas Optus did. Foxtel's submission only sought to confirm certain facts.
- > five parties' submissions to the draft decision on Telstra's application for exemption from the SAOs to supply PSTN services in certain ESAs. Telstra supported the draft decision but was critical of the limiting of the exemption to fewer ESAs than sought under the application and the proposed conditions. Other parties did not support the draft decision.
- > eight submissions on the draft decision on Telstra's application for exemption from the SAOs to supply WLR/LCS services in certain ESAs. Telstra supported the draft decision to allow the exemption, but was critical of the limiting of the exemption to fewer ESAs than sought and the proposed conditions. Other parties did not support the draft decision.



- > six parties' submissions to the DTCS exemption decision, which were generally supportive of the ACCC's draft decision
- > four parties' submissions on the Analysys cost model. Three were supportive of the development of the model and current results. Telstra raised a range of concerns, including a number of errors in the model.
- > six parties' submissions to the ULLS access undertaking discussion paper and draft decision. Most submissions were supportive of the ACCC's draft decision, with the exception of Telstra.
- > four parties' submissions to the DTCS declaration inquiry. Access seekers advocated the extension of the declaration.
- > five parties' submissions to the DDAS/ISDN declaration. Most submissions advocated an extension of the declaration, whereas the access provider did not support continued declaration of the services.
- > seven parties' submissions to the MTAS declaration inquiry. Submissions were generally supportive of extending the MTAS declaration.
- > seven parties' submissions to the MTAS pricing principles determination. Submissions were supportive of the ACCC's cost methodology.

Industry confidence in the methodologies used by the ACCC in its regulatory decision-making was evident in:

- > general industry acceptance of the Analysys fixed services network cost model
- > general industry acceptance of the ACCC's cost methodology as applied in the MTAS pricing principles.

Also see page 68 on industry's acceptance of the ACCC's methodology and regulatory oversight for instances where, despite industry criticism, the robustness and accuracy of ACCC methodology was upheld in the majority of tribunal and judicial reviews that occurred during the reporting period.

### Performance indicator

Monitor and advise the government and public on prices to assess the effect of market conditions on the price levels of specified goods and services

### 2008–09 targets

- > Accurate and timely information about prices of those goods and services monitored
- > Government and public advised in an accurate and timely manner

### 2008–09 achievements

The ACCC continued to collect pricing information for a number of telecommunications services. This information together with usage data provided by major carriers and carriage service providers was used to determine and report on the changes in prices paid for telecommunications services in Australia during 2007–08. This report was tabled in parliament on 15 June 2009.

The reports listed on page 65 were submitted to government according to statutory timeframes. Reports were made available to the public in hard copy and electronic form on the ACCC's website.

### Performance indicator

Publicise the outcomes of access arbitrations, arrangements and undertakings; and monitoring activities and inquiry findings

### 2008–09 target

Publicity, liaison and education activities undertaken

### 2008–09 achievements

The ACCC's publicity, liaison and education activities included:

- > publicly issuing discussion papers, draft decisions and final decisions in the course of making decisions on:
  - > access undertakings
  - > SAO exemption applications
  - > declaration inquiries
  - > pricing principles
- > publishing:
  - > quarterly price imputation and non-price terms and conditions reports (*Imputation testing and non-price terms and conditions report relating to the accounting separation of Telstra*)
  - > half-yearly accounting separation reports on Telstra's core services' current cost and historical costs (*Current cost accounting report*)
  - > annual reports on the state of competition in the telecommunications sector and changes in prices paid for services by consumers (*Telecommunications reports*)
  - > an annual report on Telstra's compliance with the price control arrangements (*Telstra's compliance with the price control arrangements*)
- > undertaking other public activities, including:
  - > participating in a number of working committees established by the Communications Alliance to review industry codes and guidelines
  - > regularly delivering speeches at industry conferences on telecommunications regulatory policy and related issues.

# Water

## Performance indicator

Use all powers at our disposal to prevent and stop misleading, deceptive and unconscionable conduct especially when it causes widespread consumer detriment or raises national issues

## 2008–09 target

Reach of publicity, liaison, consultation and education activities undertaken

## 2008–09 achievements

Water brokers and exchanges play an important role in the water market. The ACCC published three guides to assist irrigators, brokers and water exchanges to understand their trading rights and obligations under the Trade Practices Act and similar fair trading legislation in each state and territory.

Approximately 9000 of these brochures were distributed by the ACCC, to irrigation infrastructure operators and state and territory government agencies.

Electronic versions of the brochure are available on the ACCC water website.

## Performance indicator

Facilitated and encouraged competition in markets that depend on access to monopoly services so that the benefits of utility regulation are spread throughout the Australian economy

## 2008–09 targets

- > Complied with statutory reporting requirements—three annual reports delivered to the minister; one six-monthly report; two quarterly reports
- > Commitments to public consultation

## 2008–09 achievements

The ACCC provided the minister with final advice and recommended rules on the water market rules, water charge (termination fees) rules and water charge (infrastructure) rules.

Final advice and recommended water charge (planning and management information) rules were provided in July 2009.

In preparing final advice on water market rules and water charge rules the ACCC conducted a three-stage consultation process.

The ACCC held seven public forums across the Murray–Darling Basin to discuss with stakeholders the development of the rules.

## Statutory reporting

Under Part 4 of the *Water Act 2007*, the Minister for Climate Change and Water can make water market rules and water charge rules. The Water Act (ss. 93(2) and 98(2)) requires that the minister seek advice from the ACCC in the formation of these rules and that the ACCC provide advice.

In accordance with a request from the minister, the ACCC provided final advice and recommended rules on:

- > water market rules in December 2008
- > water charge (termination fees) rules in December 2008
- > water charge (infrastructure) rules in June 2009.

The ACCC submitted the water charge (planning and management information) rules in July 2009.

Part 2 of the Water Act provides for the development of a Basin Plan, a strategic plan for water resources in the Murray–Darling Basin. Water trading rules are a key component of the Basin Plan, which is being prepared by the MDBA. One of the objectives of the water trading rules is to facilitate the operation of efficient water markets and opportunities for trading.

In March 2009, the ACCC released an issues paper and commenced its consultation process in relation to the development of its advice to the MDBA about the water trading rules.

### **Commitments to public consultation**

For each set of final advice and recommended rules the ACCC prepared:

- > an issues paper
- > a position paper
- > a draft advice paper and draft rules.

All of these are available at [www.accc.gov.au](http://www.accc.gov.au).

During 2008–09, the ACCC received:

- > 66 submissions for the water market rules
- > 38 submissions for the water charge (termination fees) rules
- > 71 submissions for the water charge (infrastructure) rules
- > 34 submissions for the water charge (planning and management information) rules
- > 20 submissions for the water trading rules.

ACCC staff also met with interested parties to discuss their advice and/or their submissions. In 2008–09, the ACCC conducted:

- > 23 consultation meetings for the water market rules
- > 22 consultation meetings for the water charge (termination fees) rules
- > 18 consultation meetings for the water charge (infrastructure) rules
- > 46 consultation meetings for the water charge (planning and management information) rules
- > 13 consultation meetings for the water trading rules.

The ACCC also conducted seven public forums to discuss the draft advice prepared on the water market rules and the water charge rules. These public forums included:

- > six in regional areas (Deniliquin, Shepparton, Mildura, Renmark, Dubbo and Griffith) of the MDB to discuss the water market rules and water charge (termination fees) rules
- > one in Sydney to discuss the water charge (infrastructure charges) rules.

All ACCC papers and reports are publicly available. In total, the ACCC published 15 media releases relating to water, outlining each of the papers finalised during 2008–09.

### Performance indicator

Establish access terms, conditions and prices that balance the interests of infrastructure owners, users and the broader public

### 2008–09 targets

- > Effectiveness of access regimes evidenced by price levels and service delivery standards
- > Businesses using monopoly services pay prices that more closely reflect efficient costs

### 2008–09 achievements

The ACCC developed advice and recommended water charge rules that promote consistent application of pricing methodologies across the MDB.

The Water Act allows the minister, on advice from the ACCC, to make rules in relation to:

- > fees and charges of irrigation infrastructure operators (IIOs)
- > bulk water charges
- > charges for water planning and management
- > actions by IIOs that may prevent or unreasonably delay an irrigator seeking to transform their irrigation right into a statutory water access entitlement.

The water market rules and water charge rules are to give effect to the water charging principles and water charging objectives of the Water Act. These establish access terms and conditions between IIOs and their customers. These rules balance the rights of IIOs, departing irrigators and remaining irrigators.

For example, the water charge (infrastructure) rules final advice provides for a three-tiered approach to the regulation of IIOs. This approach adopts various regulatory mechanisms that support the existing incentives of infrastructure operators in providing services at efficient costs. The water charge (termination fees) rules provide a balance between sending signals to remaining irrigators about the future cost of service provision and maintaining certainty over infrastructure investment.

### Performance indicator

Provide incentives that stimulate efficient investment in and use of services with natural monopoly characteristics

### 2008–09 targets

- > Regulatory reports, determinations, and issues papers are timely and accessible
- > Robustness and accuracy of methodology evidenced by industry acceptance

### 2008–09 achievements

The three-stage consultation process, submissions and public forums ensured a robust and transparent process. A diverse range of stakeholder perspectives was considered in developing the final advice and recommended rules.

All ACCC issues papers, position papers, draft advice and draft rules were made public once completed. The ACCC final advice on the water market rules and the water charge (termination fees) rules were provided to the minister and then publicly released when the minister published notice to make rules under the Water Act.

In 2008–09 the ACCC released:

- > issues papers on:
  - > bulk water charge rules (July 2008)
  - > water charge rules for water planning and management charges (October 2008)
  - > water trading rules (March 2009)
- > position papers on:
  - > water market rules (July 2008)
  - > water charge rules for termination fees (August 2008)
  - > water charge rules for charges payable to irrigation infrastructure operators and bulk water operators (September 2008)
  - > water charge rules for water planning and management charges (January 2009)
- > draft advice and draft rules on:
  - > water market rules (October 2008)
  - > water charge (termination fees) rules (October 2008)
  - > water charge infrastructure rules (April 2009)
  - > water charge rules for planning and management (May 2009)
- > final advice and recommended rules on:
  - > water market rules (December 2008)
  - > water charge (termination fees) rules (December 2008)
  - > water charge (infrastructure) rules (June 2009)
  - > water charge (planning and management information) rules (July 2009).

The ACCC commenced its water education program following the registration of the water market rules and water charge (termination fees) rules on 22 June 2009. This program included a media release and letters to key operators to advise that the rules have commenced. The ACCC also placed advertisements in national and regional newspapers advising water users of the commencement of the water market rules and water charge (termination fees) rules.

Additionally, as part of this program, the ACCC released a set of guides to inform stakeholders. These include:

- > two guides addressing the key options available to irrigators under the rules
- > two technical guides assisting operators in complying with the rules.

These guides were released to coincide with the registration of the rules.

Under ss. 94 and 99 of the Water Act, the ACCC is required to monitor:

- (a) regulated water charges
- (b) compliance with the water charge rules
- (c) transformation arrangements
- (d) compliance with the water market rules

and report to the minister on the results of its monitoring.

The ACCC is preparing a draft water rules monitoring paper for public discussion. The framework is to be finalised in the 2009–10 financial year.

**Performance indicator**

Regulatory processes that support efficient resource allocation including investment in the regulated businesses are predictable and consistent

**2008–09 targets**

- > Reach of publicity, liaison, consultation and education activities undertaken
- > Robustness and accuracy of methodology evidenced by industry confidence in regulation

**2008–09 achievements**

The ACCC's final advice on termination fees represents a balance between sending price signals to remaining irrigators that support efficient resource allocation and providing certainty over future investments made by operators. Similarly, the draft advice on water planning and management supports improving the transparency of water management activities, costs and charges. Increasing the level of information provides water users with more information on what activities are undertaken, what charges are levied, and what level of cost recovery occurs, and provides comparison between jurisdictions.

# Transport

## Performance indicator

Facilitated and encouraged competition in markets that depend on access to monopoly services so that the benefits of utility regulation are spread throughout the Australian economy

## 2008–09 target

Two transport access undertakings assessed

## 2008–09 achievements

### Airports

On 30 March 2009 the ACCC delivered its report on prices and quality of service at airports to the minister. The report provides transparency about prices and quality of services, including for airside services provided to airlines. Some airlines use the monitoring report to assist them in negotiations with the airports.

The results of the ACCC's airports monitoring report were publicised.

The ACCC's airport monitoring report was delivered to the minister on 30 March 2009.

### CASE STUDY: Airport monitoring report

This report presents the results of the ACCC's price and quality of service monitoring, financial reporting and airport car parking monitoring for Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports for the 2007–08 financial year. The report was prepared based on information supplied by the airports under the provisions of Parts 7 and 8 of the *Airports Act 1996* and directions 27, 29 and 31 made under s. 95ZF of the Trade Practices Act. The report was published on 30 March 2009.

The report found that users of the monitored airports, on average, reported a decline in the quality of services and facilities provided by the airports for the third year in a row.

The five monitored airports controlled aeronautical assets worth \$5.02 billion and reported combined aeronautical revenue of \$911 million in 2007–08. Passenger numbers increased at all of the monitored airports.

Aeronautical revenue per passenger (as an indicator of average prices) also increased at the airports, with the exception of Perth airport where it decreased slightly. Sydney airport had the highest average prices and Brisbane airport had the lowest average prices.

There was also a new focus on airport car parking in the 2007–08 report. The report discussed factors that may affect the price of car parking at airports. Although not conclusive, the ACCC considered that some results were consistent with airports having a monopoly position.



## Container stevedoring

The ACCC's container stevedoring monitoring report was delivered to the minister on 28 October 2008.

The results of the ACCC's container stevedoring monitoring report were publicised.

### CASE STUDY: Container stevedoring monitoring report

The ACCC's container stevedoring monitoring program is undertaken under a direction from the Treasurer pursuant to Part VIIA of the Trade Practices Act. The ACCC is required to monitor prices, costs and profits of container terminal operator companies at the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney.

The ACCC releases the monitoring reports annually.

The ACCC issued its monitoring report for the 2007–08 year on 5 November 2008. The report shows that unit costs and revenues remained steady in 2007–08. Profits, however, increased because of increases in volumes and improved productivity. The report also shows that, over the last 10 years, Australian stevedores have benefited from waterfront reform by becoming increasingly efficient and profitable. In turn, users of stevedoring services have benefited as the cost of using stevedoring services has fallen in real terms. Demand for stevedoring services is expected to grow over the next decade and this presents opportunities for more intense competition in Australian stevedoring.

## Rail

In 2008–09 the ACCC assessed an undertaking specifying terms and conditions of access to the ARTC's interstate rail network. By ensuring that the terms and conditions of access specified in these undertakings promote the efficient operation of, use of and investment in infrastructure, the ACCC promoted competition in downstream markets. The ACCC assessed a request by the ARTC to vary its interstate undertaking. The access and final prices established by the ACCC were efficient and aligned with efficient costs, and non-price terms and conditions of access were assessed as effective.

The ACCC applied established economic principles to assessing the ARTC's undertaking for its interstate rail network. The assessment approach taken by the ACCC was public and consistent with assessment approaches applied in other areas of the ACCC.

On 30 July 2008 the ACCC accepted an access undertaking from the ARTC in relation to its interstate rail network.

On 9 October 2008 the ARTC lodged an application to vary its 2008 interstate undertaking with the ACCC. On 18 December 2008 the ACCC issued a draft decision to reject a request by the ARTC to vary the interstate undertaking. The request to vary was subsequently withdrawn by the ARTC.

On 29 May 2009 the ACCC released an issues paper and invited submissions on a proposed access undertaking from the ARTC in relation to the Hunter Valley rail track. Assessment of that undertaking was ongoing as at 30 June 2009.

Assessments of the ARTC interstate rail network access undertaking and the request to vary the interstate undertaking both involved the release of an issues paper. This was done in a timely manner and in a way that made them accessible to the public. Submissions were received from all key stakeholders. The final decision or report on the interstate undertaking was completed within the statutory timeframe as set out in s. 44ZZBC of Part IIIA of the Trade Practices Act. The final decision on the interstate undertaking was accepted by industry as being robust and accurate in its analysis.

The ARTC interstate rail network access undertaking included provisions relating to price levels and service delivery standards. These service delivery standards were assessed as being effective, and prices reflected efficient price levels through the setting of pricing principles, indicative prices and key performance indicators to be met by the ARTC when providing rail network access to operators.

The request to vary the undertaking was withdrawn by the ARTC on the basis that the ACCC had issued a draft decision proposing to reject the variation on the basis that it did not provide a proper and effective service delivery standard in the proposed form.

Reach of publicity was achieved through media releases and email alerts to key stakeholders in respect of the issues papers. The ACCC liaised and consulted with key stakeholders for assessment of the interstate rail network access undertaking and the ARTC's undertaking variation request.

Robust and accurate regulatory processes that support efficient resource allocation—that is, pricing principles and financial model, and investment in the ARTC interstate rail network—are reflected throughout the undertaking assessment.

### **CASE STUDY: ARTC interstate access undertaking**

The ACCC accepted the interstate rail access undertaking submitted by the ARTC on 15 July 2008. This involved initial consideration of the proposed access undertaking, followed by a public consultation phase in which interested parties were invited to make submissions on the proposed undertaking. Following the receipt of submissions, the ACCC assessed the undertaking in light of the submissions as against the statutory criteria to determine whether the undertaking was appropriate to accept as the terms and conditions for third-party access to the interstate rail network. The ACCC then issued a draft decision as to its preliminary view of the undertaking. The draft decision was released for public consideration, following which the ACCC made a final decision to accept the undertaking.

On 9 October 2008 the ARTC lodged an application to vary its 2008 interstate undertaking with the ACCC. The proposed variation related to the indemnity and loss regime in clause 15 of the indicative access agreement (IAA) of the undertaking so that the liability to third parties for loss or damage was limited to certain prescribed circumstances.

Under s. 44ZZA(7) of Part IIIA of the Trade Practices Act, a service provider is able to vary an undertaking at any time, but only with the consent of the ACCC. The ACCC may consent to the variation if it thinks it appropriate to do so having regard to the specified statutory criteria. The ACCC assessed the variation application to determine whether the variation was appropriate and consent should be given.

In October 2008 the ACCC invited submissions from interested parties on the proposed variation through the release of an issues paper to assist interested parties in preparing their submissions. The issues paper provided information on the details of the proposed variation, the issues likely to be relevant to the ACCC's decision and the assessment process to be followed.

Upon consideration of the variation request and submissions received, in December 2008 the ACCC released its draft decision to reject the ARTC's proposed variation to the interstate rail access undertaking as its preliminary view was that it was not appropriate having regard to the statutory criteria under Part IIIA of the Trade Practices Act. The ARTC subsequently withdrew its application for variation of the interstate access undertaking.

Outcomes of the ARTC interstate rail network access undertaking decision and the draft decision rejecting the ARTC variation request were publicised effectively, engaging all key stakeholders.

### **Wheat ports**

On 29 April 2009 the ACCC released an issues paper and invited submissions on proposed access undertakings from Co-operative Bulk Handling, ABB and Graincorp in relation to access by wheat exporters to 17 grain port terminals around Australia. Assessment of those undertakings was ongoing as at 30 June 2009.

An issues paper on proposed access undertakings submitted under Part IIIA for the export of bulk wheat was released within nine business days of receiving the last of the proposed undertakings.

The ACCC carried out extensive public consultation in 2008–09 on proposed undertakings, including calling for written submissions and engaging in a round of stakeholder meetings in the five states where ports the subject of the undertakings are located.

The ACCC kept Wheat Export Australia, DAFF and the public informed of key developments in its consultation on proposed access undertakings submitted under Part IIIA for the export of bulk wheat.

## Post

### Performance indicator

Facilitated and encouraged competition in markets that depend on access to monopoly services so that the benefits of utility regulation are spread throughout the Australian economy

### 2008–09 target

Finalise the 2008 notification assessment

### 2008–09 achievements

In February 2008 Australia Post lodged a draft notification with the ACCC proposing to increase the prices of many of its reserved services. In particular, Australia Post proposed to increase the basic postage rate for the standard letter from 50 cents to 55 cents. Following a detailed assessment and public consultation process, the ACCC released a final decision not to object in July 2008.

The ACCC's decision not to object to Australia Post's proposed price increases was informed by an assessment of the extent to which Australia Post's proposed price increases were aligned with costs.

The ACCC's assessment was informed by industry views. Industry views were sought on an issues paper and on a preliminary view on the proposed price increases. Australia Post's initial proposal, the ACCC's issues paper, the preliminary view and submissions were made available to the public on the ACCC's website.

In assessing Australia Post's 2008 notification, the ACCC issued news releases to make the public aware of key stages in its process of assessment, including the release of its issues paper, preliminary view, and final decision. The ACCC incorporated the submissions received in response to these papers into its final decision not to object to Australia Post's proposal.

## Fuel prices

### Performance indicator

Monitor and advise the government and public on prices to assess the effect of market conditions on the price levels of fuel

### 2008–09 targets

- > Accurate and timely information about fuel prices
- > Government and public advised in an accurate and timely manner

### 2008–09 achievements

The ACCC responded to government requests to monitor prices and assess market conditions on the price levels of fuel. The ACCC responded to these government requests with accurate monitoring reports within the specified timeframes.

The ACCC also publicised the findings and recommendations of inquiries and monitoring reports.

## Price monitoring

In 2008–09 the ACCC monitored the retail prices of unleaded petrol, diesel and automotive liquefied petroleum gas (LPG) in all capital cities and 110 country towns; monitored international crude oil and refined fuel prices; published terminal gate prices of the major oil companies and the city–country price differential; and monitored E10 petrol prices and the price differential between E10 petrol and regular unleaded petrol. The ACCC also closely follows developments in the petroleum industry.

These monitoring activities enable ACCC staff to provide briefings and advice to the government and ACCC commissioners, including Commissioner Joe Dimasi.

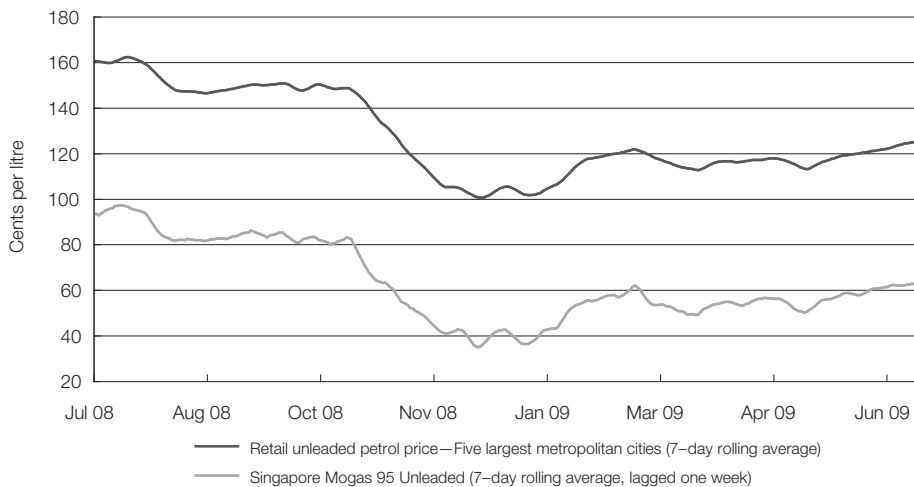
ACCC monitoring of unleaded petrol prices in 2008–09 indicated that there was a broad trend downwards in petrol prices following the peak price in July 2008. This can be seen in chart 1.

The average retail unleaded petrol price for the five largest metropolitan cities (Sydney, Melbourne, Brisbane, Adelaide and Perth) in 2008–09 was 127.1 cents per litre (cpl), which was 7.4 cpl (around 6 per cent) lower than in 2007–08 (134.5 cpl).

Monthly average retail prices reached a high of 158.6 cpl in July 2008, reflecting record prices for refined petrol in international markets. Following the unprecedented decrease in international refined petrol prices in subsequent months, monthly average retail petrol prices decreased by more than 55 cpl (35 per cent) to 103.4 cpl in December 2008. Monthly average retail prices later increased to 122.7 cpl in June 2009.

Movements in domestic retail petrol prices were largely driven by movements in the international refined petrol price (measured by the spot price for Singapore Mogas 95 Unleaded) and the Australian/US dollar exchange rate.

**Chart 1 Unleaded petrol price movements, 2008–09**

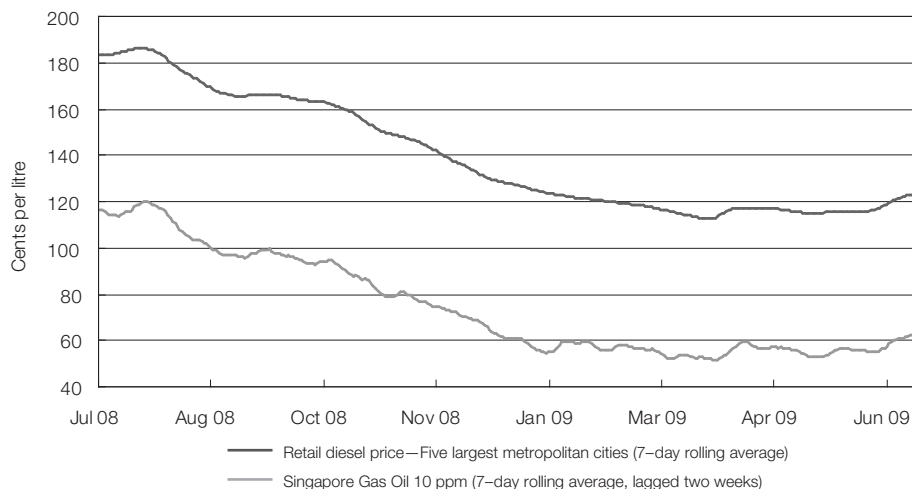


In 2008–09 the average differential between average retail petrol prices in the five largest metropolitan cities and country areas was 5.8 cpl, compared with 5.9 cpl in 2007–08. The monthly differential ranged from a high of 12.2 cpl in November 2008 to a low of 2.2 cpl in June 2009.

Diesel retail prices decreased steadily over 2008–09 as domestic prices followed decreases in international diesel prices (measured by the spot price for Singapore Gas Oil). This can be seen in chart 2. From 1 January 2009, as a result of changes to the Australian

standards for diesel, the maximum amount of sulphur allowed in diesel decreased to 10 parts per million (ppm) from 50 ppm.

**Chart 2 Diesel price movements, 2008–09**

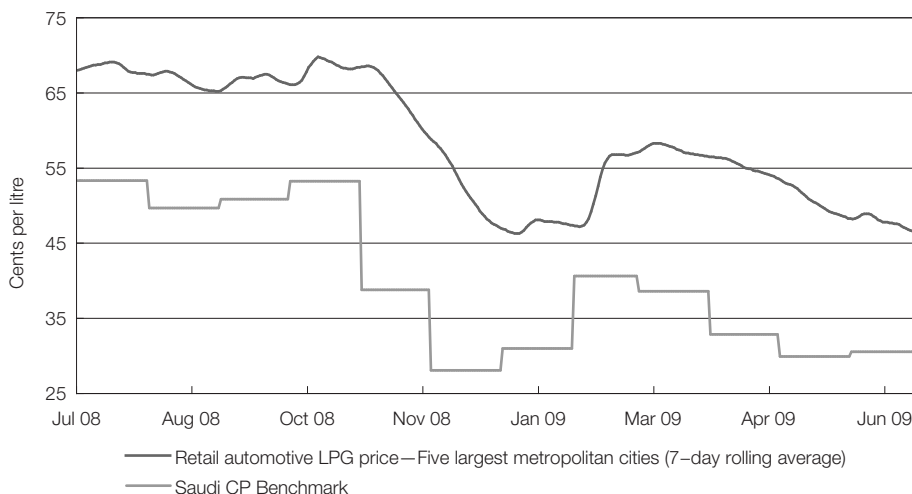


The average retail price for diesel in the five largest metropolitan cities for 2008–09 was 139.0 cpl, which was 8.2 cpl (around six per cent) lower than in 2007–08 (147.2 cpl).

Monthly average retail diesel prices decreased by around 70 cpl (or 38 per cent) from a high of 184.4 cpl in July 2008 to a low of 114.5 cpl in March 2009. By June 2009 average retail prices had increased by around 5.5 cpl from March 2009. For much of the first half of 2009, average retail diesel prices in the five largest metropolitan cities were lower than average retail petrol prices.

Retail prices of automotive LPG decreased during 2008–09 following the decrease in international LPG prices (measured by the average of the monthly Saudi Aramco contract prices for propane and butane (the Saudi CP)). This is illustrated in chart 3.

**Chart 3 Automotive LPG price movements, 2008–09**



The average retail price for automotive LPG in the five largest metropolitan cities for 2008–09 was 58.1 cpl, which was 4.0 cpl (around six per cent) lower than in 2007–08 (62.1cpl).

Monthly average retail automotive LPG prices were broadly stable in the major cities between July and October 2008, before falling by more than 30 per cent in January 2009 to 47.4 cpl, following large decreases in the international benchmark price. By March 2009, retail prices increased by around 10 cpl (or 17 per cent), reflecting higher international prices for LPG, but subsequently decreased steadily to 47.6 cpl in June 2009.

### Formal monitoring of petrol

On 17 December 2007 the then Assistant Treasurer and Minister for Competition and Consumer Affairs, the Hon. Chris Bowen MP, directed the ACCC to formally monitor the prices, costs and profits of unleaded petrol products for a period of three years. The first of three reports was submitted to the minister on 17 December 2008. The report is available on the ACCC website.

In preparing the 2008 report, the ACCC gathered information from the major industry stakeholders covering refiner/marketers (Shell, Caltex, BP and Mobil), supermarket chains (Coles Express and Woolworths), large independent chains (Gull, United, 7Eleven and Neumann) and independent wholesalers (Liberty, United, Gull and Neumann).

The ACCC's report showed that movements in petrol prices in Australia are overwhelmingly influenced by international petrol prices. The analysis concluded that Australian petrol prices have closely followed pricing trends in the international price of petrol, which in turn is strongly correlated with the international price of crude oil. The major contributor to any increases in Australian petrol prices was the higher Singapore Mogas 95 Unleaded benchmark price.

The 2008 report noted that the price of petrol did deviate from the international benchmark price for short periods in December 2007 to January 2008 and October 2008. The ACCC found that the deviations were a result of supply issues in New South Wales, Victoria and Queensland, an increase in international freight costs, and volatility in the price of Singapore Mogas 95 Unleaded and the Australian/US dollar exchange rate.

The analysis in the report showed that the petrol industry remains concentrated at the refining and wholesale levels. However, at the retail level of the petrol industry, price competition is active. Australian petrol prices are also relatively low compared to other OECD countries.

The report noted that the overall profitability of the petrol industry has been somewhat volatile over the past three years. However, profitability did not increase in 2007–08 even though the retail price of petrol increased considerably.

The ACCC provided information on fuel pricing issues on its website. In 2008–09, the ACCC published charts showing movements in average retail petrol prices in the five largest metropolitan cities compared with movements in international benchmark prices. Data about petrol price cycles in the five largest metropolitan cities was updated on a daily basis.

Fuel pricing continued to be an important issue for many Australian consumers. The ACCC responded to 3130 fuel pricing queries during 2008–09.

## Other price monitoring

### Performance indicators

Monitor and advise the government and public on prices to assess the effect of market conditions on the price of specified goods and services

Publicise the outcomes of access arbitrations, arrangements and undertakings; and monitoring activities and inquiry findings

### 2008–09 targets

- > Accurate and timely information about prices of those goods and services monitored
- > Government and public advised in an accurate and timely manner
- > Publicity, liaison and education activities undertaken

### 2008–09 achievements

The ACCC responded to government requests to monitor prices and assess market conditions on the price levels for goods and services for a number of different industries, including fertiliser and groceries. The ACCC responded to these government requests with accurate monitoring reports within the specified timeframes.

The ACCC engaged in extensive consultation on, and received extensive publicity for, the fertiliser inquiry, grocery inquiry, and GROCERYchoice monitoring program.

### Performance indicator

Publicise the outcomes of access arbitrations, arrangements and undertakings; and monitoring activities and inquiry findings

### 2008–09 target

Publicity, liaison and education activities undertaken

### 2008–09 achievements

#### Fertilisers

This year the ACCC issued the fertiliser price examination report in July 2008.

The ACCC conducted an inquiry into fertiliser prices. On 31 July 2008 the ACCC provided its report to the minister in its examination of fertiliser prices. The ACCC subsequently appeared before the Senate Select Committee on Agricultural and Related Industries in their inquiry into the Australian and global fertiliser market on 14 November 2008. It further assisted the committee by collecting and analysing additional domestic and international price data which was provided to the committee on 7 May 2009.



## Grocery price inquiry

On 31 July 2008 the ACCC provided its report to the minister on the competitiveness of retail prices for standard groceries.

The ACCC found that grocery retailing in Australia was workably competitive, but that there were a number of factors that limited the level of price competition. These included high barriers to entry and expansion, limited incentives for Coles and Woolworths to compete aggressively on price and limited price competition from the independent sector.

The recommendations made by the ACCC included:

- > that all appropriate levels of government consider ways in which zoning and planning laws should have specific regard to competition between supermarkets
- > the introduction of a mandatory, nationally consistent unit pricing regime
- > that the Horticulture Code Committee consider a number of recommendations in relation to improving the effectiveness of the Horticulture Code.

The ACCC also indicated that it would review restrictive provisions in supermarket leases in shopping centres.

The government broadly adopted the recommendations of the report.

## Grocery price monitoring

The ACCC, through the GROCERYchoice website, provided monthly prices of typical grocery baskets from supermarket chains across Australia from 6 August 2008 until 5 January 2009 when the website was transferred to the Treasury. Results from the GROCERYchoice price survey were published monthly on a dedicated consumer website.

## Insurance

The ACCC's sixth medical indemnity insurance monitoring report included a range of measures for the levels of medical indemnity insurance premiums and costs for the 2007–08 financial year. This information was provided to government in an accurate and timely manner.

The findings of the ACCC's sixth medical indemnity insurance monitoring report were publicised through media releases issued by both the ACCC and the Minister for Competition and Consumer Affairs.

## Milk prices

The ACCC completed an investigation into the reduction of milk prices following the removal of the 11 cents per litre Dairy Adjustment Levy on 23 February 2009. The ACCC received advice from major supermarket retailers and milk suppliers that the price of milk was reduced by the full amount of the levy either on or before 23 February 2009. The ACCC also investigated a number of consumer complaints relating to milk prices either not being reduced or being increased in the weeks leading up to the removal of the levy. In most cases investigated by the ACCC, retail milk prices were reduced by the full 11 cents per litre on or before 23 February 2009.

## Intellectual property

### Copyright Tribunal

The ACCC was involved as an intervener in the Copyright Tribunal reference involving the Phonographic Performance Company of Australia Ltd and Fitness Australia. The tribunal is presiding over the scheme referred by PPCA in relation to the licence for the rate payable by fitness class providers for using sound recordings in fitness classes.

The ACCC provided expert economic evidence to assist the tribunal in determining whether the proposed scheme is reasonable in the circumstances. This is the first matter which the ACCC has joined pursuant to the new role given to it under the *Copyright Act 1968*. The tribunal noted during the hearing in April 2009 that the ACCC's contribution had been of assistance and that it will comment on the role of the ACCC in its decision.

### Regulators forum

The ACCC, with state and territory regulatory agencies, set up a utility regulators forum to share information and develop understanding of the activities of various regulators and industries as they implement reform. The aim of the forum is to exchange information, encourage consistency in the application of regulatory functions and review new ideas about regulatory practices. In 2008–09 forum meetings took place in Canberra and Sydney. The newsletter of the forum, *Network*, is published quarterly and contains articles on common challenges, summaries of recent journal articles on regulatory matters and updates on regulatory decisions both internationally and in Australia.



# Part three

## Management and accountability





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

In 2008–09 the ACCC:

- > received total government funding of \$132.555 million, including additional funding for grocery price monitoring and fuel price monitoring
- > employed 701.5 full-time equivalent employees
- > recruited 41 graduates for its 2009 graduate training program
- > entered into a replacement employee collective agreement for 2009–10
- > undertook an exercise to examine internal communication and identify ways in which it could be improved
- > established the Information Management and Technology Services Branch to enhance organisational capacity for information management and technology
- > established the External Communications Unit to enhance its capacity for effective communication with stakeholders
- > took additional office space in Canberra, Melbourne, Sydney and Brisbane.

## Australian Competition and Consumer Commission

The ACCC was established on 6 November 1995 by the *Trade Practices Act 1974* (the Act). It is an independent statutory authority. The commission comprises the chair, two deputy chairs and three full-time members. They were appointed by the Governor-General under the Act for terms of up to five years after a majority of state and territory governments had supported the selections. Mr Graeme Samuel was appointed chairman of the ACCC until 30 July 2011 (for a complete list of members, see table 8). Mr Steve Edwell (AER), Mr Chris Chapman (ACMA) and Mr Andrew Reeves (AER) are associate members of the commission. See appendix 14 for biographies and photographs of members.

## Australian Energy Regulator

The AER was established on 1 July 2005 by the Trade Practices Act. It is an independent statutory authority and part of the ACCC. Its members (full time, part time and Commonwealth) are appointed by the Governor-General under the Act for terms of up to five years. Its staff are employed by the ACCC. Mr Steve Edwell was appointed chair of the AER until 22 May 2010. Mr Ed Willett was appointed full-time Commonwealth member until 9 June 2013 (served concurrently with his ACCC appointment). Mr Andrew Reeves was appointed as the part-time state/territory member until 16 June 2013. See appendix 15 for biographies and photographs of members.

## Decision-making structure

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

The ACCC held 65 formal meetings and considered 372 staff papers dealing with matters under investigation, litigation, mergers, access, adjudication, submissions to inquiries

and compliance and education strategies. It also received recommendations from its committees.

The AER's decisions are made at meetings of members held once a fortnight and otherwise as necessary. The AER held 32 formal meetings and considered 168 staff papers.

## Committees

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

**Table 6: Subject matter committees of the commission**

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

**Table 7: Function committees**

Corporate governance	Chairs, deputy chairs, members, chief executive officer and senior staff—meets quarterly
Information and liaison	Senior staff involved in the ACCC's communication and outreach activities—meets monthly
Internal audit	Chief executive officer, ANAO representatives, independent member and senior staff—meets quarterly
Information management and technology services	Senior staff—meets quarterly
Occupational health and safety	Corporate manager and staff representing workplace—meets quarterly
Employer–employee consultative committee	Representatives of employer, employees and employee organisations—meets quarterly

## ACCC and AER members

**Table 8: Terms of appointment—current members (correct on 29 August 2009)**

ACCC		appointed until
Chairman		
Graeme Samuel		31 July 2011
Deputy chairs		
Michael Schaper		29 May 2013
Peter Kell		31 July 2013
Members		
Sarah Court		25 May 2013
Edward Willett		29 May 2013
Joe Dimasi		7 December 2013
Associate members		
Steve Edwell		22 May 2010
Chris Chapman		27 February 2011
Andrew Reeves		16 July 2013
AER		appointed until
Chairman		
Steve Edwell		22 May 2010
Members		
Edward Willett (full-time Commonwealth member) <sup>1</sup>		29 May 2013
Andrew Reeves (part-time state/territory member)		16 July 2013

## Integrity in decision-making

Because public confidence in the integrity of the ACCC/AER, its members and its employees is vital, they have an ever-present obligation to identify and properly manage any personal interests which may give rise to actual or perceived conflicts of interest. Members and employees respectively are reminded of the commission member and APS codes of conduct. ACCC members are required to provide the chair with a statement of their personal interests annually. Every employee is required to undertake annually a self-assessment program for conflict of interest. There is a specific protocol in place governing the participation of one ACCC/AER member in decision-making, in recognition of his spouse's professional position.

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

<sup>1</sup> Serves concurrently with full-time membership of ACCC.



## Financial management

The ACCC operates under the *Financial Management and Accountability Act 1997* and is funded by the Australian Government. During 2008–09 the ACCC/AER received \$132.555 million in funding from the Australian Government. The ACCC receives and manages the AER's funds as part of the arrangement whereby the AER is part of the ACCC. The ACCC/AER does not have cost recovery regimes as part of its financial arrangements. It collects the fees set for applications for mergers, authorisations and notifications, and freedom of information requests. These moneys, together with legal costs recovered through court judgments, and pecuniary penalties imposed by the courts as a result of court action taken by the ACCC, are returned to consolidated revenue.

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

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

The ACCC received audit clearance of its financial statements from the ANAO on 28 August 2009. The ANAO issued an unqualified report with no findings being made regarding its audit of the financial statements.

## Purchasing performance

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

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

The ACCC continually improves the efficiency and effectiveness of the procurement to payment processes, including contract management. In 2008–09 this included the redevelopment of the procurement toolkit used by agency staff in undertaking procurements to ensure the continued efficiency and cost-effectiveness of the ACCC's procurement activities. The ACCC aims to balance the benefits of goods and services to be purchased against their costs and risks so that the best value for money is achieved.

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

## Fraud control

The ACCC complies with the Australian Government fraud control guidelines and has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the needs of the agency. A fraud awareness training module has been developed and training is provided to target staff as required.

During the year the fraud control plan was reviewed and updated in accordance with government requirements.

## Consultants

During 2008–09, 127 new consultancy contracts were entered into involving total expenditure of \$8.5 million. Twenty ongoing consultancy contracts were active during the 2008–09 year, involving total expenditure of \$4.4 million. Full details of consultancy contracts let with a value of \$10 000 or more are available on the ACCC website.

A total of \$229 076 was paid by the ACCC for advertising during the 2008–09 financial year. A listing of total payments to organisations in excess of \$10 000 appears below.

**Table 9: Payments over \$10 000 for advertising, 2008–09**

Organisation	Description	Amount
HMA Blaze Pty Ltd	Public notices, expressions of interest, recruitment	205 378
Attorney-General's Department	Gazette	20 525

## People management

The ACCC employs staff to assist the commission and the AER. It employs ongoing, non-ongoing, full-time and part-time staff under the *Public Service Act 1999*. Its workforce is augmented by contractors and consultants.

### Staff level

The ACCC's budgeted staff level for 2008–09 was 727 full-time equivalents (638 in 2007–08), including eight full-time holders of public office (ACCC members and AER member) and one part-time holder of public office (AER). The total average number of full-time equivalent staff employed during the year was 701.5 (up from 617.2 in 2007–08).

The total actual number of staff employed (including commission and AER members, part-time employees and employees absent on leave and secondments) at 30 June 2009 was 797 (723 on 30 June 2008). There were 219 commencements and 146 cessations during the year. See appendix 12 for an overview of employees by number, gender, classification and location.

## Learning and development

The ACCC's learning and development strategy continued to be shaped by the need to support the enhancement of the core skills and knowledge required to achieve high standards of performance by all. Significant aspects of learning and development activity undertaken this year included:

- > further refinement of the Enforcement and Compliance Division training program, with revisions made to the basic investigation skills course and the applied investigation and litigation skills workshop
- > attendance of 50 staff at the competition law workshops delivered by the University of Melbourne in Melbourne, Sydney and Canberra

- > delivery of sessions on the economics underpinning Parts IV and V of the Trade Practices Act delivered in the Adelaide, Brisbane, Canberra, Hobart, Melbourne and Perth offices
- > development of expertise in the use of data analysis software within the Regulatory Affairs Division, involving 21 staff
- > in-house delivery of energy regulation basics
- > attendance by 14 staff at a behavioural economics workshop
- > conduct of two residential executive leadership programs attended by 31 staff, and provision of a course in conflict resolution
- > attendance by 10 staff at the Australia and New Zealand School of Government course 'Managing regulation, enforcement and compliance', bringing the total number of employees who have now undertaken this week-long residential course to 38.

Training and development costs in 2008–09 totalled \$2 927 701. This comprised salaries of staff on development activities (\$983 778); salaries of the learning and development unit employees (\$511 961); courses and conference fees and study assistance (\$968 999); costs of staff travel for training purposes (\$415 828); and venue hire and various other costs (\$47 133). These represent 4.05 per cent of the annual employee benefits.

The ACCC conducted a three-month staff exchange with the Chinese Taipei Fair Trade Commission. One employee participated in the US Federal Trade Commission's fellowship program (a four-month program conducted in the US).

**Table 10: Courses, seminars and learning events for 2007–08 and 2008–09**

Type	Number of attendances	
	2008–09	2007–08
Operational skills and knowledge	864	1 013
Legal skills and knowledge	318	277
Applying the Act	207	381
Economics and regulatory	438	550
Leadership supervision and management	175	175

Employees are eligible for study assistance in the form of study leave and full or partial reimbursement of tuition fees for approved courses of study. The study leave policy and guideline emphasise postgraduate studies. During the year 69 employees participated in the study assistance scheme. The greater proportion of assistance was provided for postgraduate studies in economics, law and business. The ACCC reimbursed \$152 981 in fees to ongoing employees and granted leave with pay to attend lectures and tutorials equivalent to \$167 252 in paid time.

The ACCC recruited 32 graduates at the beginning of 2008; 29 remained with the ACCC after the program was completed. The ACCC recruited 41 graduates for the 2009 program. Each will undertake three rotations during the 10-month training program.

## Collective agreement

During the year the non-SES employees made an employee collective agreement with their employer. The ACCC Employee Collective Agreement 2009–10 was endorsed by the vote of employees and commenced in November 2008 following assessment by the Workplace Authority. Employees covered by the agreement received a 4.7 per cent salary increase in December 2008.

The ACCC's formal employee consultative body is the Workplace Relations Committee (WRC) with eight elected representatives, two employee organisation representatives requested by employees and a management representative.

Under the ACCC Employee Collective Agreement and in accordance with the *Public Service Act 1999*, employees can request a review of employment actions or decisions that affect them. No requests were received during 2008–09.

## Performance pay

Non-SES staff do not receive performance pay. They are eligible instead for the special salary level scheme (criteria for which are in the collective agreement); during 2008–09, 41 employees received additional salary under this scheme. Performance pay was paid to 29 SES employees at band 1 and band 2 levels for a total of \$400 413.

## Health and safety

Through a subcommittee of the Health and Safety Committee, the ACCC coordinated the development and implementation of a health and safety management arrangement in consultation with all employees. Designated work groups were established in each office. Health and safety representatives from each designated work group participate in the Health and Safety Committee. Professionally qualified assessors conducted ergonomic assessments for 168 new employees nationally and for those employees requiring review because of injury. Employees in Canberra and Melbourne who were relocated were also provided with ergonomic workstation assessments.

Influenza vaccinations were made available to all employees during March and April 2009. A total of 258 employees were vaccinated under this program. The ACCC implemented its infectious diseases contingency plan to inform and prepare employees for H1N1 influenza.

Thirty-one injuries/incidents were reported in 2008–09.

The ACCC's Comcare premium for 2008–09 was set at 0.51 per cent of total salaries, compared with the all-agencies combined rate of 1.36 per cent. The premium for 2009–10 has been set at 0.37 per cent of total salaries, compared with the all-agencies combined rate of 1.25 per cent. This continues a six-year trend of achieving lower Comcare premiums and having lower premiums compared with the average rate for Australian Government agencies.

The employee assistance program was used by 51 staff and eight family members. It also provided mediation services and assistance to managers.

The ACCC's equity and diversity roles are facilitated by workplace contact officers in each major work area. Workplace contact officers receive formal training in their role and continue to provide information and assistance to employees as specified in the Harassment- and Discrimination-Free Workplace Policy and Procedures. Twelve queries regarding inappropriate workplace conduct were reported, in keeping with the informal complaints process. No formal complaints were received through the workplace contact officer network.

## Information management and information technology

In response to a major review of internal information and communications technology (ICT) capability, the Information Management and Technology Services (IMTS) Branch was established. The branch was formed by the aggregation of units with a primarily ICT focus, previously distributed across several branches and divisions: records and information management, library services, web services, applications development, legal technical services and market monitoring systems. A chief information officer was recruited to lead the IMTS Branch, which became operational on 2 February 2009.

The IMTS Branch is dedicated to information management and the improvement of business processes through the application of technology. It enhances the ACCC's capability and capacity to meet both the challenges created by recent significant growth and the future needs of the business. Through its internal governance processes and its interface with central agency ICT governance programs, it will support the ACCC in managing risk and achieving efficient and effective business outcomes, in accordance with government policy and public expectations.

### ICT infrastructure

A number of major ICT infrastructure projects were undertaken in 2008–09 primarily linked to the continuing growth in the organisation's activities. These projects included:

- > procurement and commissioning of storage area network (SAN) infrastructure
- > commissioning additional office space in Canberra, Sydney and Brisbane
- > ongoing development and upgrade of the GROCERYchoice website
- > completion of a thin-client-based proof of concept for delivery of remote access
- > implementation of a token-based two-stage authentication for remote access
- > renegotiation of service delivery contracts for video and audio conferencing to provide efficiencies and cost savings
- > planning further initiatives around remote access and virtualisation.

### Business continuity plan

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

- > development of and migration to a virtualised server environment and SAN, improving performance, capacity and availability of servers while reducing hardware
- > upgrade of the Canberra–Melbourne network link to allow data replication, providing improved disaster recovery and BCP capability
- > migration of the AER Adelaide site to SAN, improving capacity and disaster recovery capability
- > progression of a secondary ICON connection to the internet from the Canberra office
- > approach to the market for improved and increased bandwidth based wide area network (WAN) services.

The ACCC's in-house applications development team completed 93 web development projects and resolved 414 feedback issues relating to the ACCC, AER, SCAMwatch and new Recalls websites. During the year the ACCC internet site received 2 612 432 visits (2 344 684 last year); the AER internet site, 209 664 visits (149 183 last year); the Recalls

site, 932 375 visits (statistics not available for last year); and the SCAMwatch internet site, 505 698 visits (408 886 last year). During the year, ACCC developers:

- > substantially redeveloped the web content management system to improve the author interface; removed a number of content management issues; and fixed a number of system bugs
- > redeveloped the Recalls internet site to improve accessibility, navigation and functionality for our clients. New features include capacity to browse through recalls by topic; request automatic email or really simple syndication (RSS) alerts when content is updated; and lodge recall notifications online
- > commenced redevelopment of the AER internet site
- > integrated online complaints and inquiries with internal management systems to reduce processing overheads
- > updated the ACCC website
- > refined and developed TRACKIT, the ACCC's activity management tool, in response to changing business requirements.

In conjunction with standard development activities, the ACCC commissioned a review of TRACKIT. That review recommended a number of quick fixes in anticipation of a product replacement within the next 12 to 18 months.

## Information management

Key information management projects included:

- > further deployment of electronic document and records management system (EDRMS) to various line areas to match their specific business processes
- > commenced version upgrade of the ACCC's EDRMS
- > commenced implementation of a single document repository and user interface for the ACCC to improve information and knowledge management, capture, and collaboration.

Increased use of the existing records management system, TRIM, resulted in the creation of 135 065 new records, compared to 121 725 last year.

## Library

The library service focuses on electronic resources and provides research services. Services are available to ACCC staff across Australia from the national office—1020 requests for information were received (503 were followed up with research activity), 2772 items were borrowed from the collection, 364 items were acquired on inter-library loan, 1628 journals were circulated to staff and 1437 new items were added to the collection.

## Public registers

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

## Communication

### Publications

The ACCC produced and released 98 new publications for business and industry sectors as well as consumers in print, electronic and multimedia formats (118 in 2007–08).

These initiatives included:

- > a review and update of information guides to the Trade Practices Act provided to business and consumers following amendments to the Act
- > new publications provided for consumers and businesses to clarify the use of carbon footprint calculators, low carbon claims and forward crediting. These publications also provide businesses with the terms and behaviour they should avoid to stay within the Act's provisions surrounding misleading and deceptive conduct.
- > new guidance materials developed to assist businesses to comply with the Unit Pricing Code. These included *Unit pricing: a quick guide* with information to assist retailers identify whether the code applies to their business, and *Unit pricing: a guide for grocery retailers* with more comprehensive guidance on complying with the requirements of the code.
- > five new information guides about water trading. The guides include information for water brokers and exchanges as well as water irrigators and fair trading rights when using brokers and exchangers.
- > an instructional DVD and booklet *Keeping baby safe* for parents about issues to consider when buying and using children's nursery and other equipment, including prams and strollers
- > development of a consumer information campaign targeted to non-English-speaking consumers with guidance on what the ACCC can do to help consumers in 16 languages, including English, Arabic, Croatian, Dinka, Greek, Italian, Japanese, Khmer, Korean, Macedonian, Persian, Serbian, Spanish, Traditional Chinese, Turkish and Vietnamese
- > distribution of over 640 000 published items (compared with over 950 000 in 2007–08).

The ACCC website received over 560 000 visits to online publications, compared to 200 000 last year.

### External Communications Unit

The External Communications Unit was established in October 2008 to enhance the ACCC's capacity to effectively communicate with consumers, business and other stakeholders. It is responsible for the development, implementation and delivery of external communication strategies for the ACCC. Its work includes media liaison, speech writing and article preparation.

The ECU circulated 346 news releases on behalf of the ACCC and 18 for the AER. A total of 142 external speeches were prepared and 83 newspaper and magazine articles placed in various publications.

## Legal services

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

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

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

## Ecologically sustainable development

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

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

### Measures taken

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

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

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

- > environmentally sound in manufacture
- > reusable or recyclable



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

## Energy management

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

## Other activities

### Senior management conference

The annual senior management conference, attended by ACCC and AER members and all senior managers (for a total of 48), was held in Melbourne. Its theme was 'The ACCC in a Challenging Environment', and the conference considered issues such as the anticipated legislative changes, the expectations of the community and government, the implications of the global financial crisis, and the report of an examination of internal communication practices.

### Service charter

The ACCC service charter is available from each ACCC office and online. The ACCC received 12 compliments and 2 formal complaints from the public on its standards of service during the year. (For the service charter, see appendix five.)

### Code of Conduct

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

### Audit Committee

The Audit Committee met four times during 2008–09 to oversee and control internal audit activities, risk management, fraud control, business continuity planning and the financial statements. During the year audits were undertaken on public registers compliance, physical security, purchase card management and Financial Management and Accountability Act compliance. While no major control weaknesses were identified, a number of improvements were suggested, and these have been implemented.

### Offices

Nine offices are maintained—one in each state and territory capital, and one in Townsville. Additional office premises are maintained in Canberra, Melbourne and Brisbane because of the growth in ACCC functions and related staffing numbers. Public contact hours for the Canberra, Melbourne and Sydney offices are 8.30 am to 5.30 pm each weekday. For the other offices, it is 9.00 am to 5.00 pm.

## External scrutiny

The ACCC/AER is accountable for its activities through the courts, tribunals, parliament and the Commonwealth Ombudsman. In 2008–09 the ACCC/AER was not the subject of a report by the Auditor-General, a parliamentary committee or the Commonwealth Ombudsman. For information about judicial decisions and decisions by administrative tribunals, please see appendixes three and seven.



# Part four

## Financial statements







## INDEPENDENT AUDITOR'S REPORT

To the Treasurer

### Scope

I have audited the accompanying financial statements of the Australian Competition and Consumer Commission (the Commission) for the year ended 30 June 2009, which comprise: a Statement by the Chairman, Chief Executive Officer and Chief Finance Officer; Income Statement; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Schedule of Administered Items and Notes to and forming part of the Financial Statements, including a Summary of Significant Accounting Policies.

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

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

### *Auditor's Responsibility*

My responsibility is to express an opinion on the financial statements based on my audit. I have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial

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statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Commission's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Commission's Chief Executive, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

### ***Independence***

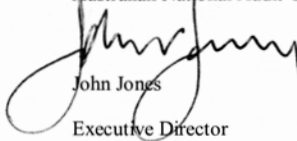
In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

### **Auditor's Opinion**

In my opinion, the financial statements of the Australian Competition and Consumer Commission:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Australian Competition and Consumer Commission's financial position as at 30 June 2009 and its financial performance and cash flows for the year then ended.

Australian National Audit Office



John Jones

Executive Director

Delegate of the Auditor-General

Canberra

28 August 2009

AUSTRALIAN COMPETITION & CONSUMER COMMISSION

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

In our opinion, the attached Financial Statements for the year ended 30 June 2009 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the Financial Management and Accountability Act 1997, as amended.



Graeme Samuel  
Chairman



Brian Cassidy  
Chief Executive Officer

28 August 2009

28 August 2009



Adrian Brocklehurst  
Chief Finance Officer

28 August 2009



**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**INCOME STATEMENT**  
*for the period ended 30 June 2009*

		<b>2009</b>	<b>2008</b>
	<b>Notes</b>	<b>\$'000</b>	<b>\$'000</b>
<b>INCOME</b>			
<b>Revenue</b>			
Revenue from Government	3A	132,555	118,306
Sale of goods and rendering of services	3B	508	423
Other revenue	3C	802	69
<b>Total Revenue</b>		<b>133,865</b>	<b>118,798</b>
<b>Gains</b>			
Sale of assets	3D	6	-
Other gains	3E	755	105
<b>Total Gains</b>		<b>761</b>	<b>105</b>
<b>Total Income</b>		<b>134,626</b>	<b>118,903</b>
<b>EXPENSES</b>			
Employee benefits	4A	72,338	60,534
Suppliers	4B	58,635	52,189
Depreciation and amortisation	4C	2,986	2,120
Finance costs	4D	-	111
Write-down and impairment of assets	4E	82	47
Losses from asset sales	4F	-	83
Other expenses	4G	572	8,969
<b>Total Expenses</b>		<b>134,613</b>	<b>124,053</b>
<b>Surplus (Deficit)</b>		<b>13</b>	<b>(5,150)</b>
<b>Surplus (Deficit) attributable to the Australian Government</b>		<b>13</b>	<b>(5,150)</b>

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

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**BALANCE SHEET**  
*as at 30 June 2009*

	Notes	2009 \$'000	2008 \$'000
<b>ASSETS</b>			
<b>Financial assets</b>			
Cash and cash equivalents	5A	1,783	1,168
Trade and other receivables	5B	57,028	51,607
<b>Total financial assets</b>		<b>58,811</b>	<b>52,775</b>
<b>Non-financial assets</b>			
Leasehold improvements	6A,C	9,561	10,082
Infrastructure, plant and equipment	6B,C	6,075	5,381
Intangibles	6D	1,145	1,342
Inventories	6E	28	42
Other non-financial assets	6F	1,304	1,007
<b>Total non-financial assets</b>		<b>18,113</b>	<b>17,854</b>
<b>Total Assets</b>		<b>76,924</b>	<b>70,629</b>
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	7A	5,472	6,322
Other payables	7B	3,205	2,702
<b>Total payables</b>		<b>8,677</b>	<b>9,024</b>
<b>Provisions</b>			
Employee provisions	8A	19,604	16,116
Other provisions	8B	5,081	9,151
<b>Total provisions</b>		<b>24,685</b>	<b>25,267</b>
<b>Total Liabilities</b>		<b>33,362</b>	<b>34,291</b>
<b>Net Assets</b>		<b>43,562</b>	<b>36,338</b>
<b>EQUITY</b>			
Contributed equity		40,041	34,098
Reserves		3,538	1,321
Retained Surplus (Accumulated deficit)		(17)	919
<b>Total Parent Equity Interest</b>		<b>43,562</b>	<b>36,338</b>
<b>Total Equity</b>		<b>43,562</b>	<b>36,338</b>
<b>Current assets</b>		<b>60,143</b>	<b>53,824</b>
<b>Non-current assets</b>		<b>16,781</b>	<b>16,805</b>
<b>Current liabilities</b>		<b>25,993</b>	<b>26,716</b>
<b>Non-current liabilities</b>		<b>7,369</b>	<b>7,575</b>

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

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**STATEMENT OF CHANGES IN EQUITY**  
*as at 30 June 2009*

	<b>Retained Earnings</b>		<b>Asset Revaluation Reserves</b>		<b>Contributed Equity/Capital</b>		<b>Total Equity</b>	
	<b>2009</b>	<b>2008</b>	<b>2009</b>	<b>2008</b>	<b>2009</b>	<b>2008</b>	<b>2009</b>	<b>2008</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Opening Balance</b>								
Balance carried forward from previous period	919	10,069	1,321	968	34,098	33,025	36,338	44,062
Adjustment for errors	-	-	-	-	-	-	-	-
Adjustment for changes in accounting policies	-	-	-	-	-	-	-	-
<b>Adjusted Opening Balance</b>	<b>919</b>	<b>10,069</b>	<b>1,321</b>	<b>968</b>	<b>34,098</b>	<b>33,025</b>	<b>36,338</b>	<b>44,062</b>
<b>Income and Expenses</b>								
Income and expenses recognised directly in equity	-	-	2,217	353	-	-	2,217	353
<b>Sub-total income and expenses recognised directly in equity</b>	<b>-</b>	<b>-</b>	<b>2,217</b>	<b>353</b>	<b>-</b>	<b>-</b>	<b>2,217</b>	<b>353</b>
Surplus (Deficit) for the period	13	(5,150)	-	-	-	-	13	(5,150)
<b>Total income and expenses</b>	<b>13</b>	<b>(5,150)</b>	<b>2,217</b>	<b>353</b>	<b>-</b>	<b>-</b>	<b>2,230</b>	<b>(4,797)</b>
of which:								
attributable to the Australian Government	13	(5,150)	2,217	353	-	-	2,230	(4,797)
<b>Transactions with Owners</b>								
<i>Distributions to owners</i>	(949)	(4,000)	-	-	-	-	(949)	(4,000)
<b>Contributions by Owners</b>								
Appropriation (equity injection)	-	-	-	-	5,943	1,073	5,943	1,073
<b>Sub-total Transactions with Owners</b>	<b>(949)</b>	<b>(4,000)</b>	<b>-</b>	<b>-</b>	<b>5,943</b>	<b>1,073</b>	<b>4,994</b>	<b>(2,927)</b>
<b>Closing Balance as at 30 June</b>	<b>(17)</b>	<b>919</b>	<b>3,538</b>	<b>1,321</b>	<b>40,041</b>	<b>34,098</b>	<b>43,562</b>	<b>36,338</b>

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

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

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**CASH FLOW STATEMENT**  
*for the period ended 30 June 2009*

	Notes	2009 \$'000	2008 \$'000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Goods and services		476	437
Appropriations		131,252	112,160
Net GST received		5,755	5,688
Other cash received		882	-
<b>Total cash received</b>		<b>138,365</b>	<b>118,285</b>
<b>Cash used</b>			
Employees		(68,850)	(58,305)
Suppliers		(63,181)	(55,274)
Other		(2,455)	(2,617)
<b>Total cash used</b>		<b>(134,486)</b>	<b>(116,196)</b>
<b>Net cash from or (used by) operating activities</b>	9	<b>3,879</b>	<b>2,089</b>
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Proceeds from sales of infrastructure, plant and equipment		7	33
<b>Total cash received</b>		<b>7</b>	<b>33</b>
<b>Cash used</b>			
Purchase of infrastructure, plant and equipment		(1,996)	(3,532)
Purchase of leasehold improvements		(1,609)	(4,828)
Purchase of intangibles		(357)	(1,195)
<b>Total cash used</b>		<b>(3,962)</b>	<b>(9,555)</b>
<b>Net cash from or (used by) investing activities</b>		<b>(3,955)</b>	<b>(9,522)</b>
<b>FINANCING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations - contributed equity		691	7,593
<b>Total cash received</b>		<b>691</b>	<b>7,593</b>
<b>Cash used</b>			
Lease payments		-	-
Other		-	-
<b>Total cash used</b>		<b>-</b>	<b>-</b>
<b>Net cash from or (used by) financing activities</b>		<b>691</b>	<b>7,593</b>
<b>Net increase / (decrease) in cash held</b>		<b>615</b>	<b>160</b>
Cash and cash equivalents at the beginning of the reporting period		1,168	1,008
<b>Cash and cash equivalents at the end of the reporting period</b>	5A	<b>1,783</b>	<b>1,168</b>

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

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**SCHEDULE OF COMMITMENTS**  
*as at 30 June 2009*

	2009 \$'000	2008 \$'000
<b>BY TYPE</b>		
<b>Capital Commitments</b>		
Leasehold improvements	-	-
<b>Total Capital Commitments</b>	-	-
<b>Other Commitments</b>		
Operating leases <sup>1</sup>	80,021	86,762
Contract for IT services <sup>2</sup>	5,040	8,237
Other commitments <sup>3</sup>	5,957	11,055
<b>Total other commitments</b>	91,018	106,054
<b>Commitments receivable</b>		
GST recoverable on commitments	(8,275)	(9,641)
<b>Total commitments receivable</b>	(8,275)	(9,641)
<b>Net commitments by type</b>	82,743	96,413
<b>BY MATURITY</b>		
<b>Commitments payable</b>		
<b>Capital commitments</b>		
One year or less	-	-
<b>Total capital commitments</b>	-	-
<b>Operating lease commitments</b>		
One year or less	8,279	7,716
From one to five years	34,475	28,186
Over five years	37,267	50,860
<b>Total Operating lease commitments</b>	80,021	86,762
<b>Other commitments</b>		
One year or less	7,956	12,431
From one to five years	3,041	6,861
Over five years	-	-
<b>Total other commitments by maturity</b>	10,997	19,292
<b>Commitments receivable</b>		
GST recoverable on commitments (current)	(8,275)	(9,641)
<b>Total commitments receivable</b>	(8,275)	(9,641)
<b>Net commitments by maturity</b>	82,743	96,413

NB: All commitments are GST inclusive where relevant.

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

**Leases for office accommodation**

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

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

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

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

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

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

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**SCHEDULE OF CONTINGENCIES**

*as at 30 June 2009*

Contingent Assets	Claims for damages or costs		TOTAL	
	2009	2008	2009	2008
	\$'000	\$'000	\$'000	\$'000
Balance from previous period	-	-	-	-
New	-	-	-	-
Re-measurement	-	-	-	-
Assets recognised	-	-	-	-
Expired	-	-	-	-
<b>Total Contingent Assets</b>	-	-	-	-
Contingent Liabilities	Claims for damages or costs			
	2009	2008	2009	2008
	\$'000	\$'000	\$'000	\$'000
Balance from previous period	396	996	396	996
New	313	396	313	396
Re-measured	-	(187)	-	(187)
Liabilities recognised	(314)	(307)	(314)	(307)
Obligations expired	(82)	(502)	(82)	(502)
<b>Total Contingent Liabilities</b>	-	-	-	-
<b>Net contingent assets (liabilities)</b>	<b>313</b>	<b>396</b>	<b>313</b>	<b>396</b>
			<b>(313)</b>	<b>(396)</b>

Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in Note 10: Contingent Liabilities and Assets. The Commission has \$0 (2008: \$0) departmental contingent assets.

Contingent gains are recognised as administered items and are reported in the Schedule of Administered Contingencies.

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

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

	Notes	2009 \$'000	2008 \$'000
<b>Income Administered on Behalf of Government</b> <i>for the period ended 30 June 2009</i>			
<b>Revenue</b>			
<b>Non-taxation revenue</b>			
Fees and fines	14	<u>45,183</u>	<u>62,198</u>
<b>Total non-taxation revenue</b>		<u>45,183</u>	<u>62,198</u>
<b>Total Revenues Administered on Behalf of Government</b>		<u>45,183</u>	<u>62,198</u>
 <b>Expenses Administered on Behalf of Government</b> <i>for the period ended 30 June 2009</i>			
Write-down and impairment of assets	15	<u>229</u>	<u>10,872</u>
<b>Total Expenses Administered on Behalf of Government</b>		<u>229</u>	<u>10,872</u>
 <b>Assets Administered on Behalf of Government</b> <i>as at 30 June 2009</i>			
<b>Financial Assets</b>			
Cash and cash equivalents	16A	<u>29</u>	<u>151</u>
Receivables	16B	<u>4,071</u>	<u>5,988</u>
<b>Total Assets Administered on Behalf of Government</b>		<u>4,100</u>	<u>6,139</u>
 <b>Liabilities Administered on Behalf of Government</b> <i>as at 30 June 2009</i>			
<b>Payables</b>			
Suppliers	17	<u>-</u>	<u>2</u>
<b>Total Liabilities Administered on Behalf of Government</b>		<u>-</u>	<u>2</u>

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

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

	Notes	2009 \$'000	2008 \$'000
<b>Administered Cash Flows</b>			
<i>for the year ended 30 June 2009</i>			
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Fines and costs		46,546	47,544
Other fees		323	291
<b>Total cash received</b>		<b>46,869</b>	<b>47,835</b>
<b>Net cash from or (used by) operating activities</b>		<b>46,869</b>	<b>47,835</b>
<b>Net increase (decrease) in cash held</b>			
Cash and cash equivalents at the beginning of the reporting period		151	5
Cash to Official Public Account for:			
- Appropriations		(46,991)	(47,689)
<b>Cash and cash equivalents at the end of the reporting period</b>	16A	<b>29</b>	<b>151</b>

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



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

**Administered Contingencies**  
*as at 30 June 2009*

Administered Contingent assets	Claims for damages or costs				TOTAL	
	2009 \$'000	2008 \$'000	2009 \$'000	2008 \$'000		
Balance from previous period	7,942	3,672	7,942	3,672		
New	9,561	6,862	9,561	6,862		
Re-measurement	-	-	-	-		
Assets recognised	(530)	(632)	(530)	(632)		
Expired	(262)	(1,960)	(262)	(1,960)		
<b>Total administered contingent assets</b>	<b>16,711</b>	<b>7,942</b>	<b>16,711</b>	<b>7,942</b>		
<b>Administered Contingent Liabilities</b>						
	2009 \$'000	2008 \$'000	2009 \$'000	2008 \$'000		
Balance from previous period	-	-	-	-		
New	-	-	-	-		
Re-measurement	-	-	-	-		
Liabilities recognised	-	-	-	-		
Obligations expired	-	-	-	-		
<b>Total administered contingent assets</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>		
<b>Net Contingent Assets (Liabilities)</b>			<b>16,711</b>	<b>7,942</b>		

Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in **Note 19: Administered Contingent Liabilities and Assets**.

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

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**INDEX TO THE NOTES OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note**

- Note 1: Summary of Significant Accounting Policies
- Note 2: Events after the Balance Sheet Date
- Note 3: Income
- Note 4: Expenses
- Note 5: Financial Assets
- Note 6: Non-Financial Assets
- Note 7: Payables
- Note 8: Provisions
- Note 9: Cash Flow Reconciliation
- Note 10: Contingent Liabilities and Assets
- Note 11: Executive Remuneration
- Note 12: Remuneration of Auditors
- Note 13: Financial Instruments
- Note 14: Income Administered on Behalf of Government
- Note 15: Expenses Administered on Behalf of Government
- Note 16: Assets Administered on Behalf of Government
- Note 17: Liabilities Administered on Behalf of Government
- Note 18: Administered Reconciliation Table
- Note 19: Administered Contingent Liabilities and Assets
- Note 20: Administered Financial Instruments
- Note 21: Appropriations
- Note 22: Special Accounts
- Note 23: Compensation and Debt Relief
- Note 24: Reporting of Outcomes

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

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

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

The Commission is an Australian Public Service organisation. The objectives of the Commission are to:

- promote effective competition and informed markets;
- encourage fair trading and protect consumers; and
- regulate the infrastructure services market and other markets where competition is restricted.

The Commission's outcome is to enhance social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets.

The Commission's activities contributing towards this outcome are classified as either Departmental or Administered.

Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Commission in its own right. Administered activities involve the management or oversight by the Commission, on behalf of the Government, of items controlled or incurred by the Government.

Departmental activities are identified under two outputs:

- Output 1.1 Compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed.
- Output 1.2 Competitive market structures and informed behaviour.

The Commission does not conduct administered activities however fines and penalties collected are returned to the Commonwealth as administered items.

The continued existence of the Commission in its present form and with its present programs is dependent on Government Policy and on continuing appropriations by Parliament for the Commission's administration and programs.

**1.2 Basis of Preparation of the Financial Report**

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

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

- Finance Minister's Orders (or FMOs) for reporting periods ending on or after 1 July 2008; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial report has been prepared on an accrual basis and is in accordance with the historical cost convention, except for certain assets at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial report is presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

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

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

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

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

**1.3 Significant Accounting Judgements and Estimates**

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

- The fair value of Leasehold Improvements has been taken to be the market value of similar properties as determined by an independent valuer.

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period. Accounting estimates have been used to quantify the Provision for Litigation Settlement based on estimates provided by the Commission's legal representatives. Based upon available data used to measure the estimate the risk of material adjustments to the estimates in future accounting periods is possible, but is not considered likely.

**1.4 Changes in Australian Accounting Standards**

**Adoption of new Australian Accounting Standard requirements**

No accounting standard has been adopted earlier than the application date as stated in the standard. The following new standards are applicable to the current reporting period:

(These changes have no material impact but will effect the disclosure presented in future financial reports).

AASB 1 First-time Adoption of Australian Equivalents to International Financial Reporting Standards (June 2007)

AASB 3 Business Combinations (December 2007)

AASB 5 Non-current Assets Held for Sale and Discontinued Operations

AASB 7 Financial Instruments: Disclosures

AASB 101 Presentation of Financial Statements (Dec 2007)

AASB 114 Segment Reporting

AASB 116 Property, Plant and Equipment

AASB 127 Consolidated and Separate Financial Statements (Dec 2007)

AASB 137 Provisions, Contingent Liabilities and Contingent Assets

AASB 139 Financial Instruments: Recognition and Measurement

AASB 1004 Contributions

AASB 1048 Interpretation and Application of Standards

AASB 1049 Whole of Government and General Government Sector Financial Reporting

AASB 1050 Administered Items

AASB 1051 Land Under Roads

AASB 1052 Disaggregated Disclosures

AASB 2007-2 Amendments to Australian Accounting Standards arising from AASB Interpretation 12 [AASB 1, AASB 117, AASB 118, AASB 120, AASB 121, AASB 127, AASB 131 & AASB 139]

AASB 2007-9 Amendments to Australian Accounting Standards arising from the Review of AASs 27, 29 and 31 [AASB 3, AASB 5, AASB 8, AASB 101, AASB 114, AASB 116, AASB 127 & AASB 137]

AASB 2008-10 Amendments to Australian Accounting Standards - Reclassification of Financial Assets

AASB 2008-12 Amendments to Australian Accounting Standards - Reclassification of Financial Assets - Effective Date and Transition [AASB 7, AASB 139 & AASB 2008-10]

AASB 2009-3 Amendments to Australian Accounting Standards - Embedded Derivatives [AASB 139 & Interpretation 9]

Interp 4 Determining whether an Arrangement contains a Lease

Interp 12 Service Concession Arrangements (Feb 2007)

Interp 13 Customer Loyalty Programmes

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

Interp 14 AASB 119 - The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction  
 Interp 129 Service Concession Arrangements: Disclosures  
 Interp 1038 Contributions by Owners Made to Wholly-Owned Public Sector Entities

**Future Australian Accounting Standard Requirements**

The following new standards, amendments to standards or interpretations have been issued by the Australian Accounting Standards Board but are effective for future reporting periods. It is estimated that the impact of adopting these pronouncements when effective will have no material financial impact on future reporting periods.

AASB 1 First-time Adoption of Australian Equivalents to International Financial Reporting Standards (May 2009)

AASB 3 Business Combinations (Mar 2008)

AASB 8 Operating Segments

AASB 101 Presentation of Financial Statements (Sep 2007)

AASB 123 Borrowing Costs

AASB 127 Consolidated and Separate Financial Statements (Mar 2008)

AASB 1039 Concise Financial Reports

AASB 2007-3 Amendments to Australian Accounting Standards arising from AASB 8 [AASB 5, AASB 6, AASB 102, AASB 107, AASB 119, AASB 127, AASB 134, AASB 136, AASB 1023 & AASB 1038]

AASB 2007-6 Amendments to Australian Accounting Standards arising from AASB 123 [AASB 1, AASB 101, AASB 107, AASB 111, AASB 116 & AASB 138 and Interpretations 1 & 12]

AASB 2007-8 Amendments to Australian Accounting Standards arising from AASB 101

AASB 2007-10 Further Amendments to Australian Accounting Standards arising from AASB 101

AASB 2008-1 Amendments to Australian Accounting Standard - Share-based Payments: Vesting Conditions and

AASB 2008-2 Amendments to Australian Accounting Standards - Puttable Financial Instruments and Obligations arising on  
 AASB 2008-3 Amendments to Australian Accounting Standards arising from AASB 3 and AASB 127 [AASBs 1, 2, 4, 5, 7, 101, 107, 112, 114, 116, 121, 128, 131, 132, 133, 134, 136, 137, 138 & 139 and Interpretations 9 & 107]

AASB 2008-5 Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASB 5, 7, 101, 102, 107, 108, 110, 116, 118, 119, 120, 123, 127, 128, 129, 131, 132, 134, 136, 138, 139, 140, 141, 1023 & 1038]

AASB 2008-6 Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASB 1 & AASB 5]

AASB 2008-7 Amendments to Australian Accounting Standards - Cost of an Investment in a Subsidiary, Jointly Controlled Entity or Associate [AASB 1, AASB 118, AASB 121, AASB 127 & AASB 136]

AASB 2008-8 Amendments to Australian Accounting Standards - Eligible Hedged Items [AASB 139]

AASB 2008-9 Amendments to AASB 1049 for Consistency with AASB 101

AASB 2008-11 Amendments to Australian Accounting Standard - Business Combinations Among Not-for-Profit Entities [AASB 3]

AASB 2008-13 Amendments to Australian Accounting Standards arising from AASB Interpretation 17 - Distributions of Non-cash Assets to Owners [AASB 5 & AASB 110]

AASB 2009-1 Amendments to Australian Accounting Standards - Borrowing Costs of Not-for-Profit Public Sector Entities [AASB 1, AASB 111 & AASB 123]

AASB 2009-2 Amendments to Australian Accounting Standards - Improving Disclosures about Financial Instruments [AASB

AASB 2009-4 Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASB 2 and AASB 138 and AASB Interpretations 9 & 16]

AASB 2009-5 Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASB 5, 8, 101, 107, 117, 118, 136 & 139]

Interp 1 Changes in Existing Decommissioning, Restoration and Similar Liabilities

Interp 12 Service Concession Arrangements (June 2007)

Interp 15 Agreements for the Construction of Real Estate

Interp 16 Hedges of a Net Investment in a Foreign Operation

Interp 17 Distributions of Non-cash Assets to Owners

Interp 18 Transfers of Assets from Customers

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**1.5 Revenue**

**Revenue from Government**

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

\$2,324,000 has been recognised as appropriation revenue in 2008-09 that was advanced in the 2009-10 Portfolio Budget Statements to cover expenses incurred for previous years' outputs. Appropriations receivable are recognised at their nominal amounts.

**Resources Received Free of Charge**

Resources received free of charge are recognised as revenue when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of restructuring of administrative arrangements (refer to Note 1.6).

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

**Other types of Revenue**

Revenue from the sale of goods is recognised when:

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

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date.

The revenue is recognised when:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- The probable economic benefits with the transaction will flow to the Entity.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at balance date. Allowances are made when collectability of the debt is no longer probable.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**1.6 Gains**

**Other Resources Received Free of Charge**

Resources received free of charge are recognised as gains when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructuring of administrative arrangements. (Refer to Note 1.7).

Resources received free of charge are recorded as either revenue or gains depending on their nature i.e. Whether they have been generated in the course of the ordinary activities of the Commission.

**Sale of assets**

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

**1.7 Transactions with the Government as Owner**

**Equity injections**

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

**Restructuring of Administrative Arrangements**

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

**Other Distributions to Owners**

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2008-09, the Commission made no such distributions.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**1.8 Employee benefits**

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

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

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

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

**Leave**

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Commission is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, including the Commission's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The Liability for Long Service Leave has been calculated using the Australian Government short hand method. The estimate of present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

**Separation and Redundancy**

Provision is made for separation and redundancy benefit payments. The Commission recognises a provision for termination when it has developed a detailed formal plan for the termination and has informed those employees affected that it will carry out the terminations.

**Superannuation**

Staff of the Commission are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap).

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the Financial Statements of the Australian Government and is settled by the Australian Government in due course. This Liability is reported by the Department of Finance and Deregulation as an administered item.

The Commission makes employer contributions to the Employee Superannuation Scheme at rates determined by an actuary to be sufficient to meet the cost to the Government of the superannuation entitlements of the Commission's employees.

The Commission accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June 2009 represents outstanding contributions for the final fortnight of the year.



**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**1.9 Leases**

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability recognised at the same time and for the same amount. The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

There are currently no finance leases within the Commission.

**1.10 Borrowing costs**

All borrowing costs are expensed as incurred.

**1.11 Cash**

Cash and cash equivalents includes notes and coins held and any deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

No interest is earned on the Commission's bank balances.

**1.12 Financial assets**

The Commission classifies its financial assets in the following categories:

- financial assets as 'at fair value through profit or loss'
- 'held-to-maturity investments',
- 'available-for-sale' financial assets, and
- 'loans and receivables'.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition.

Financial assets are recognised and derecognised upon 'trade date'.

***Effective interest method***

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

Income is recognised on an effective interest rate basis except for financial assets 'at fair value through profit or loss'.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

*Loans and receivables*

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. They are included in current assets, except for maturities greater than 12 months after the balance sheet date. These are classified as non current assets. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Interest is recognised by applying the effective interest rate.

*Impairment of financial assets*

Financial assets are assessed for impairment at each balance date.

· *Financial assets held at amortised cost* - If there is objective evidence that an impairment loss has been incurred for loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the Income Statement.

· *Available for sale financial assets* - If there is objective evidence that an impairment loss on an available for sale financial asset has been incurred, the amount of the difference between its cost, less principal repayments and amortisation, and its current fair value, less any impairment loss previously recognised in expenses, is transferred from equity to the Income Statement.

· *Available for sale financial assets (held at cost)* - If there is objective evidence that an impairment loss has been incurred the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

**1.13 Financial Liabilities**

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities. Financial liabilities are recognised and derecognised upon 'trade date'.

*Financial liabilities at fair value through profit or loss*

Financial liabilities at fair value through profit or loss are initially measured at fair value. Subsequent fair value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

*Other financial liabilities*

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs.

Other financial liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective yield basis.

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a shorter period.

*Supplier and other payables*

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**1.14 Contingent Liabilities and Contingent Assets**

Contingent Liabilities and Contingent Assets are not recognised in the Balance Sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an existing liability or asset in respect of which settlement is not probable or the amount cannot be reliably measured. Contingent assets are reported when settlement is probable, and contingent liabilities are recognised when settlement is greater than remote. Refer Note 10 and 19.

**1.15 Acquisition of Assets**

Assets are recorded at cost of acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor Agency's accounts immediately prior to the restructuring.

**1.16 Property, Plant and Equipment (PP&E)**

**Asset Recognition Threshold**

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition.

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by the Commission where there exists an obligation to restore the property to its original condition. These costs are included in the value of the Commission's leasehold improvements with a corresponding provision for the 'makegood' recognised.

**Revaluations**

Fair value of each class of asset are determined as shown below:

Asset Class	Fair value measured at
Leasehold Improvements	Depreciated replacement cost
Plant and Equipment	Market selling price

Following initial recognition at cost, property plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through operating result. Revaluation decrements for a class of assets are recognised directly through the operating result except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Depreciation and Amortisation**

Depreciable property plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Commission using, in all cases, the straight line method of depreciation. Leasehold improvements are amortised on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation/amortisation rates (useful lives) and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation and amortisation rates applying to each class of depreciable asset are based on the useful lives in the table below.

<b>Asset Class</b>	<b>2009</b>	<b>2008</b>
Leasehold Improvements	Lesser of the term of the lease or 15 years	Lesser of the term of the lease or 15 years
Furniture and fittings	10 years	10 years
Office Equipment	5 years	5 years
Computer hardware	3 to 5 years	3 to 5 years
Computer software	3 years	3 to 7 years

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 4C.

**Impairment**

All assets were assessed for impairment at 30 June 2009. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the Commission were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

No indicators of impairment were found for assets at fair value.

**1.17 Intangibles**

The Commission's Intangibles comprise software that has been externally acquired for internal use. These assets are carried at cost above the capitalisation threshold of \$10,000, below this amount they are expensed in the year of purchase.

Software is amortised on a straight-line basis over its anticipated useful life. The useful life of the Commission's software is 3 to 7 years. (2007-08: 3 to 7 years).

All software assets were assessed for impairment as at 30 June 2009. There were no indicators of impairment.

**1.18 Inventories**

Inventories (publications) held for sale are valued at the lower of cost or net realisable value. Costs incurred in bringing inventory to its present location and condition relate solely to printing and delivery. These costs are assigned to inventory at purchase cost and recognised on a first-in-first-out basis.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**1.19 Taxation/ Competitive Neutrality**

The Commission is exempt from all forms of taxation except fringe benefits tax (FBT) and the goods and services tax (GST).

Revenues, expenses and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

**Competitive Neutrality**

The Commission provides services on a not-for-profit basis which are not subject to Competitive Neutrality arrangements.

**1.20 Reporting of Administered Activities**

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the Schedule of Administered Items and related Notes. There are no administered commitments in 2009, nor were there any in 2008.

Except where otherwise stated below, administered items are accounted for on the same basis and using the same policies as for Departmental items, including the application of Australian Accounting Standards.

**Administered Cash Transfers to and from Official Public Account**

Revenue collected by the Commission for use by the Government rather than the Commission is Administered Revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Deregulation. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Commission on behalf of the Government and reported as such in the Statement of Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 18. The Schedule of Administered Items largely reflects the Government's transactions, through the Commission, with parties outside the Government.

**Revenue**

All administered revenues are revenues relating to the core operating activities performed by the Commission on behalf of the Australian Government.

Revenue is generated from fines and costs applied by the courts, or by agreement between the Commission and the Defendant. It is recognised when awarded by the courts, or when agreement has been executed.

The court costs awarded against the Commission are recorded as a departmental expense.

Authorisation and notification fees and other revenue are applied when required under the relevant legislation, and are recognised upon payment.

Administered fee revenue is recognised at its nominal amount due less any allowance for bad or doubtful debts.

Collectability of debts is reviewed at balance date. Allowances are made when collection of the debt is judged to be less rather than more likely.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 2: Events after the Balance Sheet Date**

No events have occurred after the balance date that would have an impact the financial position of the Commission.

**Note 3: Income**

	2009 \$'000	2008 \$'000
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*Revenues*

**Note 3A: Revenues from Government**

Appropriations		
Departmental outputs	132,555	118,306
<b><i>Total revenues from government</i></b>	<b>132,555</b>	<b>118,306</b>

**Note 3B: Sale of goods and rendering of services**

Provision of goods - related entities	-	-
Provision of goods - external parties	8	5
Rendering of services - related entities	184	176
Rendering of services - external parties <sup>1</sup>	316	242
<b><i>Total sale of goods and rendering of services</i></b>	<b>508</b>	<b>423</b>

<sup>1</sup> \$69,552 in revenues 2007-08 not associated with the sale of goods and services reclassified as other revenue (note 3C).

*Freedom of information fees of \$47,665 previously reported as administered revenues in Note 14, have been retained under FMA Regulation 15.*

**Note: 3C Other Revenue**

Rebates and expense refunds	722	-
Other miscellaneous revenues	80	69
<b><i>Total other revenue</i></b>	<b>802</b>	<b>69</b>

**Note: 3D Sale of Assets**

Infrastructure, plant and equipment:		
Proceeds from sale	10	-
Carrying value of assets sold	1	-
Selling expense	3	-
<b><i>Net Gains from sale of assets</i></b>	<b>6</b>	<b>-</b>

**Note: 3E Other Gains**

Resources received free of charge	69	75
Other Gains	686	30
<b><i>Total Other Gains</i></b>	<b>755</b>	<b>105</b>

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2009

**Note 4: Expenses**

	2009	2008
	\$'000	\$'000

**Note 4A: Employee Benefits**

Wages and Salaries <sup>1</sup>	55,010	45,906
Superannuation		
Defined contribution plans	3,103	1,998
Defined benefit plans	6,307	5,888
Leave and other entitlements	7,400	6,431
Separation and redundancies	133	17
Other employee expenses	385	294
<b>Total employee benefits</b>	<b>72,338</b>	<b>60,534</b>

<sup>1</sup> \$108,085 reduced in 2007-08 for item reclassified as supplier expense. The expenses relate to rental assistance payments made to external suppliers.

**Note 4B: Suppliers**

Provision of Goods - related entities	10	16
Provision of Goods - external parties	2,355	2,292
Rendering of Services - related entities	11,767	10,122
Rendering of services - external parties <sup>1</sup>	36,541	33,118
	<b>50,673</b>	<b>45,548</b>
Operating lease rentals - minimum lease payments	7,705	6,268
Workers' compensation premiums	257	373
<b>Total supplier expenses</b>	<b>58,635</b>	<b>52,189</b>

<sup>1</sup> \$108,085 reduced in 2007-08 for item reclassified as supplier expense. The expenses relate to rental assistance payments made to external suppliers.

**Note 4C: Depreciation and Amortisation**

Depreciation		
Infrastructure, plant and equipment	1,345	1,053
<b>Total Depreciation</b>	<b>1,345</b>	<b>1,053</b>
Amortisation		
Leasehold improvements	1,074	788
Intangibles		
Computer Software	567	279
<b>Total Amortisation</b>	<b>1,641</b>	<b>1,067</b>
<b>Total depreciation and amortisation</b>	<b>2,986</b>	<b>2,120</b>

**Note 4D: Finance Costs**

Unwinding of discount on makegood provision	-	111
<b>Total finance costs expense</b>	<b>-</b>	<b>111</b>

**Note 4E: Write down and impairment of assets**

Asset Write-Downs from:		
Infrastructure, Plant & Equipment	4	8
Leasehold Improvements	64	6
Inventory	14	33
<b>Total write-down and impairment of assets</b>	<b>82</b>	<b>47</b>

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

	<b>2009</b>	2008
	<b>\$'000</b>	\$'000
<b><u>Note 4F: Losses from asset sales</u></b>		
Infrastructure, plant and equipment:		
Proceeds from sale	-	(3)
Carrying value of assets sold	-	7
Leasehold Improvements	-	-
Proceeds from sale	-	(30)
Carrying value of assets sold	-	109
Intangibles	-	-
Proceeds from sale	-	-
Carrying value of assets sold	-	-
<b><i>Total losses from asset sales</i></b>	<u>-</u>	<u>83</u>
<b><u>Note 4G: Other Expenses</u></b>		
Settlement of litigation	<u>572</u>	<u>8,969</u>
<b><i>Total other expense</i></b>	<u>572</u>	<u>8,969</u>



**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 5: Financial Assets**

	2009	2008
	\$'000	\$'000

**Note 5A: Cash and cash equivalents**

Cash on hand or on deposit	1,783	1,168
<b><i>Total cash and cash equivalents</i></b>	<b>1,783</b>	<b>1,168</b>

**Note 5B: Trade and other receivables**

Goods and services - related entities	-	-
Goods and services - external parties	371	469
<b><i>Total receivables for goods and services</i></b>	<b>371</b>	<b>469</b>
Appropriations receivable:		
for existing outputs	55,607	50,001
for additional outputs	-	-
<b><i>Total appropriations receivable</i></b>	<b>55,607</b>	<b>50,001</b>
GST receivable from the Australian Taxation Office	1,050	1,137
<b><i>Total trade and other receivables (gross)</i></b>	<b>57,028</b>	<b>51,607</b>
Less impairment allowance account:		
Goods and services	-	-
Other	-	-
<b><i>Total trade and other receivables (net)</i></b>	<b>57,028</b>	<b>51,607</b>

Receivables are represented by:

Current	57,028	51,607
Non-current	-	-
<b><i>Total trade and other receivables (net)</i></b>	<b>57,028</b>	<b>51,607</b>

Receivables are aged as follows:

Not overdue	57,021	51,606
Overdue by:		
Less than 30 days	7	1
31 to 60 days	-	-
61 to 90 days	-	-
More than 90 days	-	-
<b><i>Total receivables (gross)</i></b>	<b>57,028</b>	<b>51,607</b>

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

	<b>2009</b>	2008
	<b>\$'000</b>	<b>\$'000</b>
The impairment allowance account is aged as follows:		
Not overdue	-	-
Overdue by:		
Less than 30 days	-	-
31 to 60 days	-	-
61 to 90 days	-	-
More than 90 days	-	-
<b>Total impairment allowance account</b>	<u>-</u>	<u>-</u>

**Reconciliation of the impairment allowance account:**

Movements in relation to 2009

	Goods and services	Other receivables	Total
	<b>2009</b>	<b>2009</b>	<b>2009</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
Opening balance	-	-	-
Amounts written off	-	-	-
Amounts recovered and reversed	-	-	-
Increase/Decrease recognised in net surplus	-	-	-
<b>Closing balance</b>	-	-	-

Movements in relation to 2008

	Goods and services	Other receivables	Total
	<b>2008</b>	<b>2008</b>	<b>2008</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
Opening balance	-	-	-
Amounts written off	-	-	-
Amounts recovered and reversed	-	-	-
Increase/Decrease recognised in net surplus	-	-	-
<b>Closing balance</b>	-	-	-

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 6: Non-Financial Assets**

	2009	2008
	\$'000	\$'000

**Note 6A: Leasehold Improvements**

*Leasehold improvements*

- Fair Value	9,561	11,482
- Work in progress	-	-
- Less: Accumulated amortisation	-	(1,400)
- Less: Accumulated impairment losses	-	-
<b>Total Leasehold Improvements (non-current)</b>	<b>9,561</b>	<b>10,082</b>

\$0 (2008: \$0) of total leasehold improvements refers to special purpose buildings, which may not be disposed of without prior Ministerial approval.

**Note 6B: Infrastructure, Plant and Equipment**

*Infrastructure, plant and equipment*

- Fair Value	6,091	8,106
- Less: Accumulated depreciation	(16)	(2,725)
- Less: Accumulated impairment losses	-	-
<b>Total infrastructure, plant and equipment (non-current)</b>	<b>6,075</b>	<b>5,381</b>

All revaluations are independent and in accordance with the revaluation policy stated at Note 1. On 30 June 2009, the Australian Valuation Office, an independent valuer, conducted revaluations of leasehold improvements and plant and equipment.

Revaluation increments of \$334,267 for Leasehold Improvements (2008 \$0) and \$378,964 for plant and equipment were credited to the asset revaluation reserve by asset class and included in the equity section of the balance sheet. No revaluation decrements were expensed (2008 \$0).

No indicators of impairment were found for infrastructure, plant and equipment.

AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
for the year ended 30 June 2009

**Note 6: Non-Financial Assets**

**Note 6C: Analysis of Property, Plant, and Equipment**

*Table A – Reconciliation of the opening and closing balances of property, plant and equipment (2008-09)*

Item	Leasehold improvements \$'000	Infrastructure plant and equipment \$'000	Total \$'000
<b>As at 1 July 2008</b>			
Gross book value	11,482	8,106	19,588
Accumulated depreciation/amortisation	(1,400)	(2,725)	(4,125)
<b>Net book value 1 July 2008</b>	<b>10,082</b>	<b>5,381</b>	<b>15,463</b>
Additions			
by purchase	282	1,665	1,947
Reclassifications	-	-	-
Revaluations and impairment through equity	334	379	713
Depreciation/amortisation expense	(1,074)	(1,345)	(2,419)
Disposals:			
Other disposals			
Other disposals (gross book value)	(247)	(350)	(597)
Other disposals (accumulated depreciation)	184	345	529
<b>Net book value 30 June 2009</b>	<b>9,561</b>	<b>6,075</b>	<b>15,636</b>
<b>Net book value as at 30 June 2009 represented by:</b>			
Gross book value	9,561	6,091	15,652
Accumulated depreciation/amortisation and impairment	-	(16)	(16)
	<b>9,561</b>	<b>6,075</b>	<b>15,636</b>

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Table B – Reconciliation of the opening and closing balances of property, plant and equipment (2007-08)**

Item	Leasehold improvements \$'000	Infrastructure plant and equipment \$'000	Total \$'000
<b>As at 1 July 2007</b>			
Gross book value	6,095	5,525	11,620
Accumulated depreciation/amortisation	(1,469)	(1,966)	(3,435)
<b>Net book value 1 July 2007</b>	<b>4,626</b>	<b>3,559</b>	<b>8,185</b>
Additions			
by purchase	6,345	2,904	9,249
Reclassifications	14	(14)	-
Depreciation/amortisation expense	(788)	(1,053)	(1,841)
Disposals:			
Other disposals			
Other disposals (gross book value)	(972)	(308)	(1,280)
Other disposals (accumulated depreciation)	857	293	1,150
<b>Net book value 30 June 2008</b>	<b>10,082</b>	<b>5,381</b>	<b>15,463</b>
<b>Net book value as at 30 June 2008 represented by:</b>			
Gross book value	11,482	8,106	19,588
Accumulated depreciation/amortisation and impairment	(1,400)	(2,725)	(4,125)
	<b>10,082</b>	<b>5,381</b>	<b>15,463</b>

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

	<b>2009</b>	2008
	<b>\$'000</b>	\$'000
<b><u>Note 6D: Intangibles</u></b>		
Computer Software at cost:		
Purchased software	<b>3,092</b>	2,727
Internally developed in use	<b>413</b>	-
Internally developed - in progress	-	408
<b><i>Total Computer Software</i></b>	<b><u>3,505</u></b>	<u>3,135</u>
Accumulated impairment write-down	-	-
Accumulated amortisation	<b>(2,360)</b>	(1,793)
<b><i>Total intangibles (non-current)</i></b>	<b><u>1,145</u></b>	<u>1,342</u>
No indicators of impairment were found for intangible assets.		

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 6D: Intangibles (cont.)**

**Table A – Reconciliation of the opening and closing balances of intangibles (2008–09)**

Item	Computer software internally developed \$'000	Computer Software Purchased \$'000	Total \$'000
<b>As at 1 July 2008</b>			
Gross book value	408	2,727	3,135
Accumulated depreciation/amortisation	-	(1,793)	(1,793)
<b>Net book value 1 July 2008</b>	<b>408</b>	<b>934</b>	<b>1,342</b>
<b>Additions</b>			
by purchase	94	276	370
Depreciation/amortisation expense	(89)	(478)	(567)
<b>Disposals:</b>			
Other disposals	-	-	-
Other disposals (accumulated depreciation)	-	-	-
<b>Net book value 30 June 2009</b>	<b>413</b>	<b>732</b>	<b>1,145</b>
<b>Net book value as at 30 June 2009 represented by:</b>			
Gross book value	502	3,003	3,505
Accumulated depreciation/amortisation and impairment	(89)	(2,271)	(2,360)
	413	732	1,145

AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
for the year ended 30 June 2009

**Table B – Reconciliation of the opening and closing balances of intangibles (2007-08)**

Item	Computer software internally developed \$'000	Computer Software Purchased \$'000	Total \$'000
<b>As at 1 July 2007</b>			
Gross book value	-	2,058	2,058
Accumulated depreciation/amortisation	-	(1,524)	(1,524)
<b>Net book value 1 July 2007</b>	-	534	534
<b>Additions</b>			
by purchase	408	679	1,087
Depreciation/amortisation expense	-	(279)	(279)
<b>Disposals:</b>			
Other disposals	-	(10)	(10)
Other disposals (accumulated depreciation)	-	10	10
<b>Net book value 30 June 2008</b>	408	934	1,342
<b>Net book value as at 30 June 2008 represented by:</b>			
Gross book value	408	3,135	3,135
Accumulated depreciation/amortisation and impairment	-	(1,793)	(1,793)
	408	1,342	1,342



**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

	2009 \$'000	2008 \$'000
<b>Note 6E: Inventories</b>		
Publications held for sale	28	42
<b>Total inventories</b>	<u>28</u>	<u>42</u>

During 2008-09, \$14,372 of inventory held for sale was written down to net realisable value (2007-08 \$33,214).  
No items of inventory were recognised at fair value less costs to sell.

**Note 6F: Other Non-Financial Assets**

Leasehold rights	-	41
Prepayments	1,304	966
<b>Total other non-financial assets</b>	<u>1,304</u>	<u>1,007</u>

Other non-financial assets are represented by:

Current	1,304	1,007
Non-current	-	-
<b>Total other non-financial assets</b>	<u>1,304</u>	<u>1,007</u>

**Note 7: Payables**

	2009 \$'000	2008 \$'000
<b>Note: 7A Supplier Payables</b>		
Trade creditors and accruals	5,472	6,322
<b>Total supplier payables</b>	<u>5,472</u>	<u>6,322</u>

Supplier payables - related entities are represented by:

Current	829	1,358
Non-current	-	-

Supplier payables - external parties are represented by:

Current	4,643	4,964
Non-current	-	-

<b>Total supplier payables</b>	<u>5,472</u>	<u>6,322</u>
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Settlement is usually made net 30 days.

**Note 7B: Other Payables**

Lease incentives	1,311	1,354
Unearned revenue	333	320
Operating lease payment increases	1,561	1,028
<b>Total other payables</b>	<u>3,205</u>	<u>2,702</u>

Other payables is represented by:

Current	503	502
Non-current	2,702	2,200

<b>Total other payables</b>	<u>3,205</u>	<u>2,702</u>
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**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 8 Provisions**

	2009 \$'000	2008 \$'000
<b><u>Note 8A: Employee Provisions</u></b>		
Salaries and wages	927	605
Leave	18,526	15,412
Superannuation	151	99
Separation and redundancies	-	-
Other	-	-
<b>Total Employee Provisions</b>	<b>19,604</b>	<b>16,116</b>

Employee provisions are represented by:

Current	16,096	13,333
Non-current	3,508	2,783
<b>Total Employee Provisions</b>	<b>19,604</b>	<b>16,116</b>

The classification of current includes amounts for which there is not an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of reporting date. Employee provisions expected to be settled in twelve months from the reporting date \$7,016,000 (2008: \$6,633,000), in excess of one year \$12,588,000 (2008: \$9,483,000).

**Note 8B: Other Provisions**

Provision for 'Makegood' on leasehold improvements <sup>1</sup>	1,168	2,799
Provision for Litigation Settlement <sup>2</sup>	3,913	6,352
	<b>5,081</b>	<b>9,151</b>

Other provisions are represented by:

Current	3,922	6,559
Non-current	1,159	2,592
<b>Total Other Provisions</b>	<b>5,081</b>	<b>9,151</b>

	Provision for restoration \$'000	Provision for Litigation Settlement \$'000	Total \$'000
<b>Carrying amount 1 July 2008</b>	<b>2,799</b>	<b>6,352</b>	<b>9,151</b>
Additional provisions made	3	-	3
Amounts used	-	(1,883)	(1,883)
Amounts reversed	(1,634)	(556)	(2,190)
Unwinding of discount or change in discount rate	-	-	-
<b>Closing balance 30 June 2009</b>	<b>1,168</b>	<b>3,913</b>	<b>5,081</b>

<sup>1</sup> The Commission has 13 agreements for the leasing of premises which have provisions requiring it to restate the premises to their original condition at the conclusion of the lease. The Commission has made a provision to reflect the present value of this obligation. Of the amounts reversed, \$1,504,015 relates to revaluation of makegood provisions charged to the asset revaluation reserve.

<sup>2</sup> The Commission has provided \$3,913,000 for the future settlement of Litigation settlements.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 9: Cash Flow Reconciliation**

	2009 \$'000	2008 \$'000
<b>Reconciliation of cash and cash equivalents as per Balance Sheet to cash Flow Statement</b>		
<b>Report cash and cash equivalents as per:</b>		
Cash flow statement	1,783	1,168
Balance Sheet	<u>1,783</u>	<u>1,168</u>
<b>Difference</b>	<u>-</u>	<u>-</u>
<b>Reconciliation of operating result to net cash from operating activities:</b>		
Operating result (net surplus)	13	(5,150)
Depreciation / amortisation	2,986	2,120
Net write down of non-financial assets	67	14
Loss on disposal of assets	-	83
Gain on disposal of assets	(6)	-
(Increase) / decrease in appropriation receivable	(1,303)	(6,146)
(Increase) / decrease in GST receivable	447	885
(Increase) / decrease in other receivables	98	(370)
(Increase) / decrease in inventories	14	33
(Increase) / decrease in prepayments	(338)	(300)
(Increase) / decrease in other assets	41	42
Increase / (decrease) in employee provisions	3,488	2,339
Increase / (decrease) in supplier payables	434	1,234
Increase / (decrease) in prepayments received	13	(3)
Increase / (decrease) in other provisions	(2,566)	6,201
Increase / (decrease) in other liabilities	491	1,107
<b>Net cash from / (used by) operating activities</b>	<u>3,879</u>	<u>2,089</u>

**Note 10: Contingent Liabilities and Assets**

**Quantifiable Contingencies**

The Schedule of Contingencies reports contingent liabilities in respect of claims for damages/costs of \$312,719 (2008: \$396,000). The Commission is expecting to be unsuccessful in 3 matters (2008: 1 matter) before the Courts alleging breaches of the Trade Practices Act, although the cases are continuing. The amount represents an estimate of the Commission's liability based on legal advice and the precedents in such cases. The Commission is defending the claims.

**Unquantifiable Contingencies**

As at 30 June 2009, the Commission has 1 matter (2008: 1 matter) before the Courts alleging breaches of the Trade Practices Act. In the event of an unfavourable judgment by the court in the other matter, the Commission stands to lose by way of penalties or costs awarded. It is not possible to determine the amount in relation to these matters.

**Remote Contingencies**

As at 30 June 2009, the Commission has 0 matters (2008: 0 matters) before the Courts alleging breaches of the Trade Practices Act in respect of which it has received legal advice that there is a remote chance of unfavourable judgments by the court.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 11: Executive Remuneration**

The number of executives who received or were due to receive total remuneration<sup>1</sup> of \$130 000 or more:

	2009 Number	2008 Number
\$130,000 to \$144,999	1	-
\$145,000 to \$159,999	1	-
\$160,000 to \$174,999	1	3
\$175,000 to \$189,999	5	4
\$190,000 to \$204,999	8	11
\$205,000 to \$219,999	5	3
\$220,000 to \$234,999	2	3
\$235,000 to \$249,999	2	3
\$250,000 to \$264,999	4	1
\$265,000 to \$279,999	2	1
\$280,000 to \$294,999	-	1
\$295,000 to \$309,999	2	2
\$310,000 to \$324,999	2	-
\$325,000 to \$339,999	1	1
\$340,000 to \$354,999	-	1
\$355,000 to \$369,999	1	-
\$370,000 to \$384,999	2	1
\$385,000 to \$399,999	-	1
\$415,000 to \$429,999	2	-
\$535,000 to \$549,999	1	-
\$595,000 to \$609,999	-	1
	<b>42</b>	<b>37</b>

The aggregate amount of total remuneration of executives shown above. **\$10,610,771** \$8,937,088

The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above. **\$132,659** -

<sup>1</sup> Total remuneration includes salary and wages, accrued leave, performance pay, superannuation entitlements, motor vehicles and other fringe benefits and fringe benefits tax.

**Note 12: Remuneration of Auditors**

Financial statement audit services are provided free of charge to the Commission by the Australian National Audit Office (ANAO).

	2009 \$	2008 \$
The fair value of the services provided was:	<b>68,680</b>	<b>75,200</b>

No other services were provided by the Auditor-General during the reporting period.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 13: Financial Instruments**

<b>2009</b>	<b>2008</b>
<b>\$'000</b>	<b>\$'000</b>

**Note 13A: Categories of financial instruments**

**Financial Assets**

Loans and receivables

Cash and cash equivalents

Goods and Services Receivables

**Carrying amount of financial assets**

<b>1,783</b>	1,168
<b>371</b>	469
<b>2,154</b>	<b>1,637</b>

**Financial Liabilities**

Other Liabilities

Payables - suppliers

**Carrying amount of financial liabilities**

<b>5,472</b>	6,322
<b>5,472</b>	<b>6,322</b>

**Note 13B: Net income and expense from financial assets and financial liabilities**

The Commission received/incurred \$0 (2008: \$0 ) in income and expenses from financial assets and financial liabilities.

**Note 13C: Fair value of financial instruments**

	Carrying amount 2009 \$'000	Fair value 2009 \$'000	Carrying amount 2008 \$'000	Fair value 2008 \$'000
<b>Financial Assets</b>				
Cash and cash equivalents	1,783	1,783	1,168	1,168
Goods and Services Receivables	371	371	469	469
<b>Total Financial Assets</b>	<b>2,154</b>	<b>2,154</b>	<b>1,637</b>	<b>1,637</b>
<b>Financial Liabilities</b>				
Payables - Suppliers	5,472	5,472	6,322	6,322
<b>Total Financial Liabilities</b>	<b>5,472</b>	<b>5,472</b>	<b>6,322</b>	<b>6,322</b>

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 13D: Credit risk**

The Commission is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This amount is equal to the total amount of trade receivables (2009: \$371,000 and 2008: \$469,000). The Commission has assessed the risk of the default on payment and has allocated \$nil in 2009 (2008: \$nil) to an impairment allowance account.

The Commission manages its credit risk by undertaking background and credit checks prior to allowing a debtor relationship. In addition, the Agency has policies and procedures that guide employees debt recovery techniques that are to be applied.

The Commission holds no collateral to mitigate against credit risk.

Credit quality of financial instruments not past due or individually determined as impaired

	<b>Not Past Due Nor Impaired</b>	<b>Not Past Due Nor Impaired</b>	<b>Past due or impaired</b>	<b>Past due or impaired</b>
	<b>2009</b>	<b>2008</b>	<b>2009</b>	<b>2008</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>				
Cash and cash equivalents	1,783	1,168	-	-
Goods and Services Receivables	364	469	7	1
<b>Total</b>	<b>2,147</b>	<b>1,637</b>	<b>7</b>	<b>1</b>

Ageing of financial assets that are past due but not impaired for 2009

	<b>0 to 30 days</b>	<b>31 to 60 days</b>	<b>61 to 90 days</b>	<b>90+ days</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>					
Goods and Services Receivables	7	-	-	-	7
<b>Total</b>	<b>7</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>7</b>

Ageing of financial assets that are past due but not impaired for 2008

	<b>0 to 30 days</b>	<b>31 to 60 days</b>	<b>61 to 90 days</b>	<b>90+ days</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>					
Goods and Services Receivables	1	-	-	-	1
<b>Total</b>	<b>1</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1</b>

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 13E: Liquidity risk**

The Commission's financial liabilities are payables. The exposure to liquidity risk is based on the notion that the Agency will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the Entity (e.g. Advance to the Finance Minister) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

The following tables illustrates the maturities for financial liabilities

	On demand 2009 \$'000	within 1 year 2009 \$'000	1 to 5 years 2009 \$'000	> 5 years 2009 \$'000	Total 2009 \$'000
<b>Other Liabilities</b>					
Payables - Suppliers	5,472	-	-	-	5,472
<b>Total</b>	5,472	-	-	-	5,472
	On demand 2008 \$'000	within 1 year 2008 \$'000	1 to 5 years 2008 \$'000	> 5 years 2008 \$'000	Total 2008 \$'000
<b>Other Liabilities</b>					
Payables - Suppliers	6,322	-	-	-	6,322
<b>Total</b>	6,322	-	-	-	6,322

The Commission is appropriated funding from the Australian Government. The Agency manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the Commission has policies in place to ensure timely payment are made when due and has no past experience of default.

**Note 13F: Market risk**

The Commission holds basic financial instruments that do not expose the Agency to certain market risks. The Commission is not exposed to 'Currency risk' or 'Other price risk'.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 14: Income Administered on Behalf of Government**

	2009 \$'000	2008 \$'000
<b>Non-taxation revenue</b>		
<b>Other fees and fines</b>		
Fines and costs	44,197	61,896
Authorisation fees	224	116
Other <sup>1</sup>	762	186
<b>Total Revenues Administered on Behalf of Government</b>	<b>45,183</b>	<b>62,198</b>

<sup>1</sup> Freedom of information fees reported in 2007-08 have been retained and reported as departmental revenues in 2008-09 under FMA Regulation 15 & 16

**Note 15: Expenses Administered on Behalf of Government**

<b>Write-down and impairment of assets</b>		
Financial assets - Receivables	229	10,872
<b>Total Expenses Administered on Behalf of Government</b>	<b>229</b>	<b>10,872</b>

**Note 16: Assets Administered on Behalf of Government**

**Financial Assets**

**Note 16A: Cash and cash equivalents**

Cash at bank	29	151
<b>Total Cash and cash equivalents</b>	<b>29</b>	<b>151</b>

**Note 16B: Receivables**

Fines and costs	20,411	22,776
Less: impairment allowance account	(16,340)	(16,788)
<b>Total receivables (net)</b>	<b>4,071</b>	<b>5,988</b>

Receivables (net) are represented by:

Current	4,071	5,988
Non-current	-	-
<b>Total receivables (net)</b>	<b>4,071</b>	<b>5,988</b>

Receivables (gross) are aged as follows:

Current	113	5,642
Overdue by:		
Less than 30 days	101	109
31 to 60 days	-	28
61 to 90 days	-	-
More than 90 days	20,197	16,997
	20,298	17,134
<b>Total receivables (gross)</b>	<b>20,411</b>	<b>22,776</b>



**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

	<b>2009</b>	2008
	<b>\$'000</b>	<b>\$'000</b>
The impairment allowance account is aged as follows:		
Current	-	5,053
Overdue by:		
Less than 30 days	-	-
31 to 60 days	-	-
61 to 90 days	-	-
More than 90 days	<b>16,340</b>	11,735
<b>Total impairment allowance account</b>	<b>16,340</b>	16,788
<b>Total Assets Administered on Behalf of Government</b>	<b>4,100</b>	6,139

**Reconciliation of the impairment allowance account:**

Movements in relation to 2009

	Goods and services	Other receivables	Total
	<b>2009</b>	<b>2009</b>	<b>2009</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
Opening balance	-	16,788	16,788
Amounts written off	-	(10)	(10)
Amounts recovered and reversed	-	(663)	(663)
Increase/Decrease recognised in net surplus	-	225	225
<b>Closing balance</b>	-	16,340	16,340

Movements in relation to 2008

	Goods and services	Other receivables	Total
	<b>2008</b>	<b>2008</b>	<b>2008</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
Opening balance	-	6,190	6,190
Amounts written off	-	(264)	(264)
Amounts recovered and reversed	-	(10)	(10)
Increase/Decrease recognised in net surplus	-	10,872	10,872
<b>Closing balance</b>	-	16,788	16,788

**Note 17: Liabilities Administered on Behalf of Government**

	<b>2009</b>	2008
	<b>\$'000</b>	<b>\$'000</b>
<b>Payables</b>		
<b>Suppliers</b>		
Trade creditors and accruals	-	2
<b>Total Liabilities Administered on Behalf of Government</b>	<b>-</b>	<b>2</b>

All liabilities are expected to be settled within 12 months of balance date.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
for the year ended 30 June 2009

**Note 18: Administered Reconciliation Table**

	2009	2008
	\$'000	\$'000
<b>Opening administered assets less administered liabilities as at 1 July</b>	<b>6,137</b>	<b>2,502</b>
Add: Administered revenues	45,183	62,198
Less: Administered expenses	(229)	(10,872)
Administered transfers to Australian Government	-	(2)
Transfers to OPA	(46,991)	(47,689)
<b>Closing administered assets less administered liabilities as at 30 June</b>	<b>4,100</b>	<b>6,137</b>

**Note 19: Administered Contingent Liabilities and Assets**

*Quantifiable Administered Contingencies*

The Schedule of Administered Items reports contingent assets in respect of claims for damages/costs of \$16,711,390 (2008: \$7,942,000). The Commission is expecting to succeed in 11 alleged breaches (2008: 11 alleged breaches) of the Trade Practices Act, although the cases are continuing. The estimate is based on legal advice and the precedents in such cases.

*Unquantifiable Administered Contingencies*

As at 30 June 2009, the Commission has 15 matters (2008: 5 matters) considered unquantifiable. In the event of favourable judgment by the court, the Commission stands to gain by way of penalties or costs awarded. It is not possible to determine the amounts in relation to these matters.

*Remote Administered Contingencies*

As at 30 June 2009, the Commission has 0 matters (2008: 0 matters) before the Courts alleging breaches of the Trade Practices Act for which it has received legal advice that there is a remote chance of favourable judgment by the court.

**Note 20: Administered Financial Instruments**

	2009	2008
	\$'000	\$'000
<b><u>Note 20A: Categories of financial instruments</u></b>		
<b>Loans and receivables</b>		
Loans and receivables		
Cash and cash equivalents	29	151
Fines and Costs Receivable	4,071	5,988
<b>Carrying amount of financial assets</b>	<b>4,100</b>	<b>6,139</b>
<b>Financial Liabilities</b>	-	2
<b>Carrying amount of financial liabilities</b>	-	2

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 20B: Net income and expense from financial assets**

	2009 \$'000	2008 \$'000
<b>Loans and receivables</b>		
Interest revenue	-	-
Exchange gains/(loss)	-	-
Impairment	(229)	(10,872)
Gain/loss on disposal	-	-
<b>Net gain/(loss) loans and receivables</b>	<b>(229)</b>	<b>(10,872)</b>

**Note 20C: Net income and expense from financial liabilities**

<b>Other Liabilities</b>	-	-
<b>Net gain/(loss) financial liabilities - at amortised cost</b>	-	-
<b>Net gain/(loss) from financial liabilities</b>	-	-

**Note 20D: Fair value of financial instruments**

	Carrying amount 2009 \$'000	Fair value 2009 \$'000	Carrying amount 2008 \$'000	Fair value 2008 \$'000
<b>Financial Assets</b>				
Cash & cash equivalents	29	29	151	151
Fines and Costs Receivable	4,071	4,071	5,988	5,988
<b>Total Financial Assets</b>	<b>4,100</b>	<b>4,100</b>	<b>6,139</b>	<b>6,139</b>
<b>Financial Liabilities</b>	-	-	2	2

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 20E: Credit risk**

The Commission is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This amount is equal to the total amount of trade receivables (2009: \$20,411,000 and 2008: \$22,776,000). The Commission has assessed the risk of the default on payment and has allocated \$16,340,000 in 2009 (2008: \$16,788,000) to an allowance for doubtful debts account.

The Commission holds no collateral to mitigate against credit risk.

**Credit quality of financial instruments not past due or individually determined as impaired**

	<b>Not Past Due Nor Impaired</b>	<b>Not Past Due Nor Impaired</b>	<b>Past due or impaired</b>	<b>Past due or impaired</b>
	<b>2009</b>	<b>2008</b>	<b>2009</b>	<b>2008</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>				
Cash and cash equivalents	29	151	-	-
Trade and other receivables	113	589	3,958	2,311
<b>Total</b>	<b>142</b>	<b>740</b>	<b>3,958</b>	<b>2,311</b>

**Ageing of financial assets that are past due but not impaired for 2009**

	<b>0 to 30 days</b>	<b>31 to 60 days</b>	<b>61 to 90 days</b>	<b>90+ days</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>					
Trade and other receivables	101	-	-	3,857	3,958
<b>Total</b>	<b>101</b>	<b>-</b>	<b>-</b>	<b>3,857</b>	<b>3,958</b>

**Ageing of financial assets that are past due but not impaired for 2008**

	<b>0 to 30 days</b>	<b>31 to 60 days</b>	<b>61 to 90 days</b>	<b>90+ days</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>					
Trade and other receivables	109	28	-	5,262	5,399
<b>Total</b>	<b>109</b>	<b>28</b>	<b>-</b>	<b>5,262</b>	<b>5,399</b>

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 20F: Liquidity risk**

The Commission's financial liabilities are payables. The exposure to liquidity risk is based on the notion that the Agency will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the Entity (e.g. Advance to the Finance Minister) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

The following tables illustrates the maturities for financial liabilities

	On demand 2009 \$'000	within 1 year 2009 \$'000	1 to 5 years 2009 \$'000	> 5 years 2009 \$'000	Total 2009 \$'000
<b>Other Liabilities</b>					
Payables - Suppliers	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

	On demand 2008 \$'000	within 1 year 2008 \$'000	1 to 5 years 2008 \$'000	> 5 years 2008 \$'000	Total 2008 \$'000
<b>Other Liabilities</b>					
Payables - Suppliers	2	-	-	-	2
<b>Total</b>	2	-	-	-	2

The Commission's administered activities relate to fines and costs awarded by courts or through agreements. The Agency manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the Commission has policies in place to ensure timely payment are made when due and has no past experience of default.

**Note 20G: Market risk**

The Commission holds basic financial instruments that do not expose the Agency to certain market risks. The Commission is not exposed to 'Currency risk' or 'Other price risk'.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 21: Appropriations**

**Table A: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations and borrowings**

Particulars	Departmental Outputs		Total	
	2009	2008	2009	2008
	\$	\$	\$	\$
Balance carried from previous period (Appropriation Acts) <sup>/</sup>	27,814,790	28,473,881	27,814,790	28,473,881
Appropriation Act:				
<i>Appropriation Act (No.1) 2008-2009</i> as passed				
<i>Appropriation Act (No.3) 2008-2009</i> as passed	139,227,000	113,805,000	139,227,000	113,805,000
<i>Appropriation Act (No.5) 2008-2009</i> as passed	-	-	-	-
Other annual appropriation acts	-	5,553,000	-	5,553,000
Departmental appropriations reduced ( <i>Appropriation Act</i> section 10)	(7,936,000)	(8,000,000)	(7,936,000)	(8,000,000)
Advance to the Finance Minister (Appropriations Act section 14)	-	-	-	-
FMA Act:				
Repayments to the Commonwealth ( <i>FMA Act</i> section 30)	1,213,647	704,387	1,213,647	704,387
Appropriations to take account of recoverable GST ( <i>FMA Act</i> section 30A)	5,478,333	4,912,310	5,478,333	4,912,310
Relevant Agency receipts ( <i>FMA Act</i> section 31)	875,458	469,882	875,458	469,882
Adjustments of appropriations on change of entity function ( <i>FMA Act</i> section 32)	(1,060,210)	-	(1,060,210)	-
<b>Total appropriations available for payments</b>	<b>165,613,018</b>	<b>145,918,460</b>	<b>165,613,018</b>	<b>145,918,460</b>
Cash payments made during the year (GST inclusive)	(136,391,045)	(118,103,670)	(136,391,045)	(118,103,670)
Appropriations credited to Special Accounts (excluding GST)	-	-	-	0
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual	29,221,973	27,814,790	29,221,973	27,814,790
Cash at bank and on hand	1,782,898	1,167,654	1,782,898	1,167,654
Departmental appropriations receivable	26,388,863	25,509,933	26,388,863	25,509,933
Undrawn, unapplied administered appropriations	-	-	-	-
GST receivable from ATO	1,050,212	1,137,203	1,050,212	1,137,203
Adjustments under s101.13 of the Finance Minister's Orders not reflected above	-	-	-	-
<b>Total as at 30 June</b>	<b>29,221,973</b>	<b>27,814,790</b>	<b>29,221,973</b>	<b>27,814,790</b>

<sup>/</sup> 2008-09 opening balance adjusted for \$2,948,000 being amount for prior year outputs transferred to Acquittal Table B

Departmental and non-operating appropriations do not lapse at financial year end. However, the responsible Minister may decide that part or all of a departmental or non-operating appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Table B: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Other than Ordinary Annual Services Appropriations**

Particulars	Non-operating					Total	
	Equity		Previous Years' Outputs				
	2009	2008	2009	2008		2009	2008
	\$	\$	\$	\$		\$	\$
Balance brought forward from previous period ( <i>Appropriation Acts</i> )	21,543,000	28,062,501	-	-	-	21,543,000	28,062,501
Appropriation Act	-	-	-	-	-	-	-
Appropriation Act (No.2) 2008-2009 as passed	1,299,000	1,073,000	2,948,000	-	-	4,247,000	1,073,000
Appropriation Act (No.4) 2008-2009 as passed	5,000,000	-	-	-	-	5,000,000	-
Appropriation Act (No.6) 2008-2009 as passed	-	-	-	-	-	-	-
Other annual appropriation acts	-	-	-	-	-	-	-
Departmental appropriations reduced ( <i>Appropriation Act</i> section 13)	(356,000)	-	-	-	-	(356,000)	-
Advance to the Finance Minister ( <i>Appropriations Act</i> section 15)	-	-	-	-	-	-	-
FMA Act:	-	-	-	-	-	-	-
Repayments to the Commonwealth ( <i>FMA Act</i> section 30)	-	-	-	-	-	-	-
Appropriations to take account of recoverable GST ( <i>FMA Act</i> section 30A)	-	759,250	190,000	-	-	190,000	759,250
Relevant Agency receipts ( <i>FMA Act</i> section 31)	-	-	-	-	-	-	-
Adjustments of appropriations on change of entity function ( <i>FMA Act</i> section 32)	-	-	(949,039)	-	-	(949,039)	-
<b>Total appropriations available for payments</b>	<b>27,486,000</b>	<b>29,894,751</b>	<b>2,188,961</b>	-	-	<b>29,674,961</b>	<b>29,894,751</b>
Cash payments made during the year (GST inclusive)	(690,549)	(8,351,751)	(2,090,000)	-	-	(2,780,549)	(8,351,751)
Appropriations credited to Special Accounts (excluding GST)	-	-	-	-	-	-	-
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations and as represented by:	26,795,451	21,543,000	98,961	-	-	26,894,412	21,543,000
Cash at bank and on hand	-	-	-	-	-	-	-
Departmental appropriation receivable	26,795,451	21,543,000	2,422,961	2,948,000	-	29,218,412	24,491,000
Undrawn, unexpired administered appropriations	-	-	-	-	-	-	-
Adjustments under s101.13 of the Finance Minister's Orders not reflected above	-	-	(2,324,000)	(2,948,000)	-	(2,324,000)	(2,948,000)
<b>Total as at 30 June</b>	<b>26,795,451</b>	<b>21,543,000</b>	<b>98,961</b>	-	-	<b>26,894,412</b>	<b>21,543,000</b>

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 22: Special Accounts**

Other Trust Monies Special Account	2009	2008
	\$	\$
Legal authority: <i>Financial Management and Accountability Act 1997</i> ; s20		
<i>Purpose</i> : for the receipt of monies temporarily held on trust or otherwise for the benefit of another person other than the Australian Government.		
Balance carried forward from previous period	51,918	52,543
Other receipts	-	7,660
<b>Total credits</b>	<b>51,918</b>	<b>60,203</b>
Payments made	-	8,285
Total debits	-	8,285
<b>Balance carried to the next period and represented by:</b>		
Cash at bank	51,918	51,918
<b>Total balance to be carried to the next period</b>	<b>51,918</b>	<b>51,918</b>

**Note 23: Compensation and Debt Relief**

**Administered**

No Acts of Grace payments were made during the reporting period (2008: No payments made).

No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the *Financial Management Accountability Act 1997* (2008: No waivers made).

No ex-gratia payments were made during the reporting period (2008: No payments made).

**Departmental**

No Acts of Grace payments were made during the reporting period (2008: No payments made).

No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the *Financial Management Accountability Act 1997* (2008: No waivers made).

No payments were made under the 'Compensation for Detriment caused by Defective Administration (CDDA) Scheme' during the reporting period (2008: No payments made).

No payments were made under s73 of the *Public Service Act 1999* during the reporting period (2008: No payments made).



**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 24: Reporting of Outcomes**

The Commission attributes its outcome between its two output groups on the basis of identifiable actual costs. Shared costs incurred with respect to these output groups are apportioned according to these resulting actual costs. This basis of attribution is consistent with that used for the 2008-09 budget.

**Note 24A: Net Cost of Outcome Delivery**

	Outcome 1		Total	
	2009	2008	2009	2008
	\$'000	\$'000	\$'000	\$'000
<b>Expenses</b>				
Administered	229	10,872	229	10,872
Departmental	134,613	124,053	134,613	124,053
<b>Total expenses</b>	<b>134,842</b>	<b>134,925</b>	<b>134,842</b>	<b>134,925</b>
<b>Costs recovered from provision of goods and services to the non government sector</b>				
Administered	-	-	-	-
Departmental	324	316	324	316
<b>Total costs recovered</b>	<b>324</b>	<b>316</b>	<b>324</b>	<b>316</b>
<b>Other external income</b>				
Administered	45,183	62,198	45,183	62,198
Departmental	1,747	176	1,747	176
<b>Total other external income</b>	<b>46,930</b>	<b>62,374</b>	<b>46,930</b>	<b>62,374</b>
<b>Net cost/(contribution) of outcome</b>	<b>87,588</b>	<b>72,235</b>	<b>87,588</b>	<b>72,235</b>

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 24B: Major Classes of Departmental Income and Expenses by Output Groups and Outputs**

Outcome 1	Output 1.1		Output 1.2		Total	
	2009 \$'000	2008 \$'000	2009 \$'000	2008 \$'000	2009 \$'000	2008 \$'000
<b>Departmental expenses</b>						
Employees	36,053	31,849	36,285	28,793	72,338	60,642
Suppliers	39,004	35,233	19,631	16,848	58,635	52,081
Depreciation & amortisation	1,936	1,421	1,050	699	2,986	2,120
Finance costs	-	74	-	37	-	111
Losses from asset sales	-	32	-	15	-	47
Write-down and impairment of assets	70	56	12	27	82	83
Other expenses	572	8,969	-	-	572	8,969
<b>Total departmental expenses</b>	<b>77,635</b>	<b>77,634</b>	<b>56,978</b>	<b>46,419</b>	<b>134,613</b>	<b>124,053</b>
<b>Funded by:</b>						
<b>Departmental income</b>						
Revenue from government	76,506	71,532	56,049	46,774	132,555	118,306
Sale of goods and services	141	154	367	338	508	492
Other income	482	-	320	-	802	-
Gains	439	63	322	42	761	105
<b>Total departmental income</b>	<b>77,568</b>	<b>71,749</b>	<b>57,058</b>	<b>47,154</b>	<b>134,626</b>	<b>118,903</b>

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 24C: Major Classes of Departmental Assets and Liabilities by Outcomes**

Outcome 1	Outcome 1		Total	
	2009 \$'000	2008 \$'000	2009 \$'000	2008 \$'000
<b>Departmental assets</b>				
Cash and cash equivalents	1,783	1,168	1,783	1,168
Trade and other receivables	57,028	51,607	57,028	51,607
Leasehold improvements	9,561	10,082	9,561	10,082
Infrastructure, plant and equipment	6,075	5,381	6,075	5,381
Intangibles	1,145	1,342	1,145	1,342
Inventories	28	42	28	42
Other non-financial assets	1,304	1,007	1,304	1,007
<b>Total departmental assets</b>	<b>76,924</b>	<b>70,629</b>	<b>76,924</b>	<b>70,629</b>
<b>Departmental liabilities</b>				
Suppliers	5,472	6,322	5,472	6,322
Other payables	3,205	2,702	3,205	2,702
Employee provisions	19,604	16,116	19,604	16,116
Other provisions	5,081	9,151	5,081	9,151
<b>Total departmental liabilities</b>	<b>33,362</b>	<b>34,291</b>	<b>33,362</b>	<b>34,291</b>

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2009*

**Note 24D: Major Classes of Administered Revenues and Expenses by Outcomes**

	Outcome 1		Total	
	2009 \$'000	2008 \$'000	2009 \$'000	2008 \$'000
<b>Administered Income</b>				
Fines and costs	44,197	61,896	44,197	61,896
Authorisation fees	224	116	224	116
Other	762	186	762	186
<b>Total Administered Income</b>	<b>45,183</b>	<b>62,198</b>	<b>45,183</b>	<b>62,198</b>
<b>Administered Expenses</b>				
Write-down of assets	229	10,872	229	10,872
<b>Total Administered Expenses</b>	<b>229</b>	<b>10,872</b>	<b>229</b>	<b>10,872</b>
<b>Administered Assets</b>				
Cash and cash equivalents	29	151	29	151
Receivables	4,071	5,988	4,071	5,988
<b>Total Administered assets</b>	<b>4,100</b>	<b>6,139</b>	<b>4,100</b>	<b>6,139</b>
<b>Administered Liabilities</b>				
Supplier payables	-	2	-	2
<b>Total Administered assets</b>	<b>-</b>	<b>2</b>	<b>-</b>	<b>2</b>

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.



# Appendixes



# Appendix 1

## Performance targets set out in PBS

The ACCC's output groups are described below, specifying the performance indicators and targets used to assess and monitor the performance of the ACCC in achieving government outcomes.

**Table 11: Contributions to outcome 1**

Output group 1.1—Australian Competition and Consumer Commission		
Components of output group 1.1 are:		
Output 1.1.1—Compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed		
Output 1.1.2—Competitive market structures and informed behaviour.		
Output 1.1.1—Compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed		
Key performance indicators	2008–09 target	Met
Actions (investigations, litigation, communications) taken to prevent or stop anti-competitive conduct.	Unlawful conduct ceased <sup>1</sup> —15 enforcement outcomes.	✓
	Effective and appropriate remedies.	✓
	Reach of publicity, liaison and education activities undertaken—1.1 million publications; 380 media releases.	✓
	Mandatory codes of conduct support a competitive market.	✓
	Parliamentary inquiries and government agencies assisted to develop policies and processes.	✓
Businesses or individuals who are possibly in breach of the law are encouraged to come forward to assist ACCC investigations through the immunity for cartel conduct and cooperation policies for enforcement matters.	Immunity policy to be communicated and utilised.	✓

<sup>1</sup> Varied to 'pursued' for the purposes of performance reporting to more accurately reflect the ACCC's role.

Use all powers at our disposal to prevent and stop misleading, deceptive and unconscionable conduct especially when it causes widespread consumer detriment or raises national issues.	Cease <sup>2</sup> unlawful conduct.	✓
	Effective and appropriate remedies.	✓
	Reach of publicity, liaison, consultation and education activities undertaken—1.1 million publications; 380 media releases.	✓
	Parliamentary inquiries and government agencies assisted to develop policies and processes.	✓
Support the ability of small business to trade with larger firms in a fair, yet robust environment.	Reach of publicity, liaison, consultation and education activities undertaken.	✓
	Collective bargaining notification processes to be within statutory timeframes and decisions communicated.	✓
	Cease <sup>2</sup> unlawful conduct.	✓
Provide immediate information to hundreds of callers each week, distributing publications through print and the web, and by providing special programs to reach small, isolated or disadvantaged groups.	Calls and emails handled timely.	✓
	Callers responded to within organisational guidelines.	✓
	Publications distributed.	✓
	Website accessible and a source of relevant and up-to-date information.	✓
Conduct campaigns that target industries and sectors where the risk of failure to comply with the Act is high.	Targeted campaigns where the need is indicated.	✓
Advise government on the need for new or amended product safety standards, product recalls, bans and warning notices.	Parliamentary inquiries and government agencies assisted to develop policies and processes.	✓
	Publicity, liaison and education activities undertaken.	✓
Take enforcement action when products breached the safety standards.	Cease <sup>2</sup> unlawful conduct.	✓
	Effective and appropriate remedies.	✓

<sup>2</sup> Varied to 'pursue' for the purposes of performance reporting.



**Table 11: Contributions to outcome 1** *(continued)*

Output 1.1.2—Competitive market structures and informed behaviour		
Key performance indicators	2008–09 target	Met
Assess the competition effects of mergers, acquisitions or asset sales.	Mergers assessed within statutory guidelines.	✓
	All public merger decisions published on the ACCC website.	✓
Certain anti-competitive practice in industries and professions to be authorised when it is assessed that the public benefits exceed detriments.	Decisions are made within statutory and organisational timeframes.	✓
	Timely communication of decisions.	✓
Facilitated and encouraged competition in markets that depend on access to monopoly services so that the benefits of utility regulation are spread throughout the Australian economy.	Complied with statutory reporting requirements—three annual reports delivered to the minister; one six-monthly report; two quarterly reports.	✓
	Four access undertakings (telecomms regime) assessed.	✓
	Nine access undertakings (digital radio regime) assessed.	✓
	Fifty determinations (telecomms access regime) made.	✓
	Review declarations of eight declared services (telecomms regime).	✓
	Finalise nine decisions on exemption applications.	✓
	Parliamentary inquiries and government agencies assisted to develop policies and processes.	✓
Establish access terms, conditions and prices that balance the interests of infrastructure owners, users and the broader public.	Effectiveness of access regimes evidenced by price levels and service delivery standards.	✓
	Businesses using monopoly services pay prices that more closely reflect efficient costs.	✓
Provide incentives that stimulate efficient investment in and use of services with natural monopoly characteristics.	Regulatory reports, determinations, and issues papers are timely and accessible.	✓
	Robustness and accuracy of methodology evidenced by industry acceptance.	✓
Regulatory processes that support efficient resource allocation including investment in the regulated businesses are predictable and consistent.	Reach of publicity, liaison, consultation and education activities undertaken.	✓
	Robustness and accuracy of methodology evidenced by industry confidence in regulation.	✓

Monitor and advise the government and public on prices to assess the effect of market conditions on the price levels of specified goods and services. <sup>3</sup>	Accurate and timely information about prices of those goods and services monitored.	✓
	Government and public advised in an accurate and timely manner.	✓
Publicise the outcomes of access arbitrations, arrangements and undertakings; and monitoring activities and inquiry findings.	Publicity, liaison and education activities undertaken.	✓

<sup>3</sup> Varied to 'price levels of fuel' for the purposes of fuel price monitoring.

# Appendix 2

## The law

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

### Lawful competition and informed markets

**Table 12: Parts of the Trade Practices Act dealing with competition**

IV	Cartel conduct: price fixing; output restrictions; bid rigging; allocating customers, suppliers or territories
	Other anti-competitive conduct: boycotts; agreements substantially lessening competition; misuse of market power; exclusive dealing; resale price maintenance; mergers substantially lessening competition
VII	Authorisations and notifications
XIA	The Competition Code

### Enforcement

The ACCC investigates cartel and other types of anti-competitive conduct—which are illegal for all businesses in Australia.

The ACCC will refer appropriate matters involving criminal cartel offences to the Commonwealth Director of Public Prosecutions for possible criminal prosecution.

For individuals, the cartel offence is punishable by imprisonment of up to 10 years and/or fines up to \$220 000 per contravention. Corporations found guilty of a cartel offence may be fined up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater).

In relation to civil cartel prohibitions and other forms of anti-competitive conduct, the ACCC may initiate court action for breaches of the Trade Practices Act.

The ACCC conducts merger and acquisition analysis.

To enforce the civil provisions of the Trade Practices Act, the ACCC can seek:

- > declarations of contraventions
- > findings of facts
- > injunctions
- > damages
- > community service orders
- > probation orders
- > disqualification of a person from managing corporations
- > adverse publicity orders

- > corrective advertising, public notices and disclosure for breaches of anti-competitive conduct
- > pecuniary penalties of up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater) for companies; and \$500 000 for individuals.

## Fair trading and consumer protection

**Table 13: Parts of the Trade Practices Act dealing with fair trading and consumer protection**

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

### Enforcement

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

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

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

## Infrastructure services and markets where competition is limited

**Table 14: Parts of the Trade Practices Act dealing with regulated industries and prices surveillance**

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

### Regulation

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

Since 1 July 2005 the AER has had responsibility for enforcement of the National Electricity Law and Rules and for the regulation of revenues in the electricity transmission networks. Since 1 January 2008 the AER has had responsibility for the regulation of revenues in the electricity distribution networks.

On 1 July 2008 the AER became responsible for regulating revenues for gas transmission and distribution networks.

Following the enactment of the *Water Act 2007* in March 2008, the ACCC became responsible for water resources in the Murray–Darling Basin. Under the Act, the ACCC must provide advice to the Minister for Climate Change and Water on water market rules and water charge rules where the minister is proposing to make such rules. The Act also requires the ACCC to monitor and ensure compliance with these rules and provide advice to the Murray–Darling Basin Authority on water trading rules.

## Legislative amendments in 2008–09

### Amendments to the Trade Practices Act

*Australian Energy Market Amendment (AEMO and Other Measures) Act 2009*; commenced 27 March 2009

*Australian Energy Market Amendment (Minor Amendments) Act 2008*; commenced 1 July 2008

*Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008*; commenced 22 November 2008

*Trade Practices Amendment (Clarity in Pricing) Act 2008*; commenced 26 November 2008 (schedule 2) and 25 May 2009 (schedule 1)

*Trade Practices Legislation Amendment Act 2008*; commenced 22 November 2008

*Water Amendment Act 2008*; commenced 15 December 2008

## Amendments to the Trade Practices Regulations

Trade Practices Amendment Regulations 2009 (No. 1); commenced 13 June 2009

## Regulations introduced under the Trade Practices Act

Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008; commenced 15 April 2009

Trade Practices (Consumer Product Safety Standard) (Treadmills) Regulations 2009; commenced 6 June 2009

## Other laws

*Airports Act 1996*—focuses on access, prices and the quality of service at Australia's privatised airports

*Australian Postal Corporation Act 1989*—defines access to the postal network

*Broadcasting Services Act 1992*—covers the payment of television licences

*Copyright Act 1968*

Gas Pipeline Access Law

National Electricity Law

*Radiocommunications Act 1992*

*Telecommunications (Consumer Protection and Service Standards) Act 1999*—provides a range of safeguards to consumers of telecommunication services

*Telecommunications Act 1997*—implements a regulatory framework for the telecommunications industry

*Trade Marks Act 1995*—governs the approval of a trademark that certifies that goods or services are of a particular standard of quality, origin, material or mode of manufacture

*Water Act 2007*—provides for the management of water resources within the Murray–Darling Basin

## Exceptions under Commonwealth, state and territory legislation

Some Commonwealth, state and territory Acts permit conduct that would normally contravene the Trade Practices Act. Section 51(1) of the Trade Practices Act provides that such conduct may be permitted if it is specifically authorised under those other Acts.

Below is a list of the legislation that allows such conduct or provides for regulations to be made authorising particular conduct. The list includes legislation of which the ACCC has been notified or has otherwise become aware.

### Commonwealth

*Australian Postal Corporation Act 1989*

*Banking Act 1959*

*Customs Act 1901*

*Financial Sector (Business Transfer and Group Restructure) Act 1999*

*Insurance Act 1973*

*Liquid Fuel Emergency Act 1984*

*Northern Territory National Emergency Response Act 2007*

*Payment Systems (Regulation) Act 1998*

*Payment Systems (Regulation) Regulations 2006*

*Trade Practices Act 1974—s. 173*

## **New South Wales**

*Australian Jockey Club Act 2008*

*Casino Control Regulation 2001*

*Coal Industry Act 2001*

*Competition Policy Reform (New South Wales) Act 1995*

*Competition Policy Reform (New South Wales) Savings and Transitional Regulation 1996*

*Farm Produce (Repeal) Act 1996*

*Gaming Machines Act 2001*

*Health Services Act 1997*

*Hunter Water Act 1991*

*Industrial Relations (Ethical Clothing Trades) Act 2001*

*Industrial Relations Act 1996*

*James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*

*Liquor Act 2007*

*Poultry Meat Industry Act 1986*

*Protection of the Environment Operations Act 1997*

*Racing Administration Act 1998*

*Registered Clubs Act 1976*

*Rice Marketing Act 1983*

*Thoroughbred Racing Amendment Act 2008*

*Totalizator Act 1997*

*Transport Administration Act 1988*

*Wine Grapes Marketing Board (Reconstitution) Act 2003*

## **Queensland**

*Chicken Meat Industry Committee Act 1976*

*Competition Policy Reform (Queensland) Act 1996*

*Forestry Act 1959*

*Gladstone Power Station Agreement Act 1993*

*Sugar Industry Act 1999*

*Transport Operations (Passenger Transport) Act 1994*

## Victoria

*Competition Policy Reform (Victoria) Act 1995*  
*Electricity Industry (Residual Provisions) Act 1993*  
*Gambling Regulation Act 2003*  
*Gas Industry (Residual Provisions) Act 1994*  
*Health Services Act 1998*  
*Legal Profession Act 2004*  
*Liquor Control Reform Act 1998*  
*Outworkers (Improved Protection) Act 2003*  
*Owner Drivers and Forestry Contractors Act 2005*  
*State Owned Enterprises Act 1992*  
*Water Industry Act 1994*

## Tasmania

*Competition Policy Reform (Tasmania) Act 1996*  
*Electricity Supply Industry Act 1995*  
*Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*

## Western Australia

*Competition Policy Reform (Western Australia) Act 1996*  
*Electricity Corporations Act 2005*  
*Electricity Industry (Wholesale Electricity Market) Regulations 2004*  
*Electricity Industry Act 2004*  
*Energy Coordination Act 1994*  
*Grain Marketing Act 2002*  
*North West Gas Development (Woodside) Agreement Act 1979*  
*Owner-Divers (Contracts and Disputes) Act 2007*  
*Tobacco Products Control Act 2006*

## South Australia

*Authorised Betting Operations Act 2000*  
*Authorised Betting Operations Regulations 2001*  
*Chicken Meat Industry Act 2003*  
*Cooper Basin (Ratification) Act 1975*  
*Industries Development Act 1941*  
*Roxby Downs (Indenture Ratification) Act 1982*



## **Northern Territory**

*Competition Policy Reform (Northern Territory) Act 1996*

Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations 1996

*Consumer Affairs and Fair Trading Act 1990*

*Electricity Reform Act 2000*

*Water Supply and Sewerage Act 2000*

## **Australian Capital Territory**

*Cemeteries and Crematoria Act 2003*

*Competition Policy Reform Act 1996*

*Financial Management Act 1996*

*Government Procurement Act 2001*

*Health Act 1993*

*Insurance Authority Act 2005*

*Road Transport (Public Passenger Services) Act 2001*

*Territory Records Act 2002*

# Appendix 3

## Freedom of information

### Requests and reviews, 2008–09

The ACCC received 140 freedom of information requests during 2008–09, which is a substantial increase from previous years. There were also 10 requests carried over from 2007–08.

**Table 15: FOI requests 2008–09**

	FOI requests received	Internal review requests received	Requests to the AAT for review of ACCC decisions
<b>Financial year</b>			
2008–09	140	21	12
2007–08	82	52	36
2006–07	29	4	2
2005–06	26	2	0
2004–05	14	2	1

Note: These figures do not include requests carried over from previous years.

FOI applicants most commonly seek access to documents in relation to complaints received by the ACCC, ACCC investigations, merger reviews and regulatory activities.

### Initial decisions

In 14 cases access was granted in full. In 33 cases access was granted in part. Access was refused in 44 cases. One case was transferred to another agency. Twelve cases were not proceeded with and 46 requests had not been finalised by the end of the year.

Where access was refused or granted in part, this was most often because the information was considered exempt on the grounds of personal privacy, legal professional privilege, business affairs, prejudicing the future supply of information, or forming part of internal working documents.

### Internal review

There were 21 requests for internal review, 20 of which were completed during 2008–09. In 14 cases the initial decision was upheld. Greater access was given in six cases. One internal review request remained outstanding at the end of 2008–09.

## Review by Administrative Appeals Tribunal

Twelve requests were made for review by the AAT, and 35 requests were carried over from 2007–08. Thirty-eight matters were resolved by the AAT during 2008–09, of which 37 were by consent of both parties, and one affirmed the ACCC's original decision.

## Matters before the AAT in 2008–09

Telstra Corporation Limited lodged 35 applications for review of ACCC FOI decisions in 2007–08 and one application in 2008–09, all of which related to similar subject matter. All 36 applications were withdrawn on 15 May 2009 prior to hearing.

An individual lodged an application with the AAT on 16 October 2008 contending that charges should not be imposed for processing their FOI request. On 8 May 2009 the AAT affirmed the ACCC's decision to impose charges for processing that request.

On 22 June 2009, one matter was resolved by the AAT following consent of the parties to provide partial access to the relevant documents. Nine further applications by the same applicant have not yet been resolved by the AAT.

Separately, a matter finalised by the AAT in 2007–08 continued on a question of costs. On 20 August 2008, the AAT declined to make a recommendation to the Attorney-General for the payment of the individual's costs associated with making an application to the AAT for review of an ACCC FOI decision.

## Section 8 of the Freedom of Information Act

Section 8 of the *Freedom of Information Act 1982* requires the ACCC to report annually on:

- > its organisation, functions and decision-making
- > its arrangements for outside participation
- > categories of documents it holds
- > how the public can access these documents.

## Organisation, functions and decision-making

The structure, functions, legal basis, organisation and detailed descriptions of the exercise of powers of the ACCC are set out in detail earlier in this report.

## Arrangements for outside participation

The ACCC's functions bring it into frequent contact with private individuals, companies, industry and consumer groups and other state, territory and Commonwealth government agencies. This contact allows interested bodies outside the ACCC to express their opinions and to have them taken into account by the ACCC when it establishes its policies and priorities.

## Categories of documents

The ACCC maintains the following categories of documents:

- > particulars of agreements furnished to the Commissioner of Trade Practices under previous Acts
- > court, adjudication and legal material
- > library material, organisation matters and operational guidelines

- > publications, speeches and media releases
- > personnel records
- > working documents including staff investigations, reports, analyses, recommendations, correspondence and complaints, public registers and confidential material excluded from public registers
- > ACCC papers relating to parliamentary committees and questions relating to meetings of the ACCC with government and non-government bodies relating to new and amending legislation
- > general correspondence with members of the public.

## Public registers

The ACCC maintains 27 public registers, both statutory and voluntary.

### Statutory registers

The Trade Practices Act requires the ACCC to maintain certain public registers.

#### *Notifications and authorisations registers*

- > These registers contain details of notifications (s. 95) and authorisation (s. 89) applications, related submissions, the ACCC's decisions and reasons for its decisions.

#### *Consumer protection / product safety register (s. 65)*

- > This is a register of conferences held on bans or mandatory recalls of defective goods.

#### *Access to services register (ss. 44Q, 44ZW, 44ZZC and 44ZZL)*

- > This is a register of decisions and declarations under Part IIIA. They may be decisions of the Commonwealth minister that a regime established by a state or territory for access to a service is an effective access regime for the service; or proposed service declarations that a service is an essential one of national significance.

#### *Register of price notifications (s. 95ZC)*

- > This register contains copies of all locality notices given to the ACCC under s. 95Z of the Act, and copies of any notices given under Part VIIA of the Act to or by the ACCC in relation to the locality notice. When s. 95ZC commenced, the register in place under s. 23(1) of the *Prices Surveillance Act 1983* effectively became the register under s. 95ZC.

#### *Part X investigations register (international liner shipping)*

- > This register contains references given to the ACCC by the minister under ss. 10.47(1) and 10.57(1); particulars of decisions made by the ACCC to hold investigations under ss. 10.48(2) and 10.58(2); requests to the ACCC by the minister under ss. 10.48(3) and 10.58(3); relevant documents given to the ACCC; particulars of oral submissions; and reports given to the minister by the ACCC in relation to such investigations.

#### *Telecommunications registers (ss. 151AR–152EA)*

- > The telecommunications registers include declared services, determinations, competition notices, ministerial pricing determinations, access codes and undertakings.

## Voluntary registers

Although it is not obliged by statute, the ACCC also maintains public registers on mergers and acquisitions and on undertakings under s. 87B of the Trade Practices Act.

The mergers and acquisitions register makes brief details of mergers and acquisitions considered by the ACCC available to the public. The details include the names of the target, acquirer and possible acquirer; a product description; an outline of the matter; and the ACCC's decision, including an outline of the reasons for that decision.

The undertakings register relates to s. 87B of the Trade Practices Act, under which enforceable undertakings may be given to the ACCC about a matter in which the ACCC has a power or function other than under Part X. Such undertakings provide for the ACCC to negotiate administrative settlements. The register contains copies of those undertakings.

## Public access to the documents

### On the public registers

Most documents on the registers can be downloaded from the ACCC website, [www.accc.gov.au](http://www.accc.gov.au).

To discuss access to earlier registers or to arrange personal inspection of any register, contact the Public Registers Officer by calling 02 6243 1330 or emailing [public.registers@acc.gov.au](mailto:public.registers@acc.gov.au). Please note that fees are charged for copies of documents on the earlier registers.

More contact details and information about access for hearing or speech impaired people are available in appendix 16 of this annual report.

### Under the Freedom of Information Act

To access ACCC documents or other matters using the Freedom of Information Act, contact the Freedom of Information Officer on 02 6243 1244 during business hours or by emailing [foi@acc.gov.au](mailto:foi@acc.gov.au).

To access documents under the Freedom of Information Act apply in writing to:

Freedom of Information Officer  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

The FOI application fee is \$30, which should accompany the request. The ACCC levies the applicable fees and charges imposed under the Freedom of Information Regulations (Fees and Charges). Such fees and charges may be remitted, reduced or not imposed for any reason, including on the grounds of financial hardship or general public interest (if established).

Access may be refused to a document deemed to be exempt or to contain exempt material. Alternatively, access may be granted in part, if practicable. A refusal to grant access will be supported by a statement of reasons. An applicant may apply for internal review of the decision. The chairman of the ACCC is authorised to make these decisions, although that power has been delegated to certain specified officers.

# Appendix 4

## Further information required under s. 171(3) of the Trade Practices Act 1974

### Final determinations relating to access disputes (s. 44V)

The ACCC did not issue any final determinations relating to access disputes in 2008–09.

### Decisions on access undertaking applications or access undertaking codes (s. 44B)

The Australian Rail Track Corporation lodged an access undertaking for its interstate rail network in December 2008. It subsequently withdrew that undertaking in July 2008 and submitted a new application immediately in July 2008. The ACCC issued a final decision on 30 July 2008. It took seven months to assess the ARTC's interstate undertaking.

### Section 171(3)(c)

Details of the ACCC's interventions in 2008–09 are as follows.

- > The appeal to the Full Federal Court by Allphones Retail Pty Ltd against the decision of Justice Rares in the matter of *Allphones Retail Pty Ltd v Hoy Mobile Pty Ltd* commenced on 4 July 2008. The ACCC was granted leave to intervene on 2 March 2009. The matter was awaiting judgment as at 30 June 2009.
- > The *Copyright Act 1968* was amended in December 2006 to allow the Copyright Tribunal of Australia to consider any relevant guidelines made by the ACCC and to make the ACCC a party to certain proceedings before it.
- > In May 2007 the ACCC became a party to the Phonographic Performance Company of Australia's reference of its fitness class tariff to the Copyright Tribunal of Australia. This matter was still proceeding as at 30 June 2009.
- > In September 2007 the ACCC became a party to the reference by the Australasian Performing Right Association Limited / Australasian Mechanical Copyright Owners' Society to the Copyright Tribunal of Australia of the licence fee payable for the use of its repertoire by means of digital music services, including digital downloads services. This matter was still proceeding as at 30 June 2009.

## Section 171(3)(h)

In May 2007 the ACCC became a party to the Phonographic Performance Company of Australia's reference of its fitness class tariff to the Copyright Tribunal of Australia. This matter was still proceeding as at 30 June 2009.

In September 2007 the ACCC became a party to the reference by the Australasian Performing Right Association Limited / Australasian Mechanical Copyright Owners' Society to the Copyright Tribunal of Australia of the licence fee payable for the use of its repertoire by means of digital music services, including digital downloads services. This matter was still proceeding as at 30 June 2009.

## Notices under ss. 155 and 155A

During 2008–09 the ACCC issued:

- > 199 notices under s. 155 (to compulsorily acquire information)
- > 9 notices under s. 155(1)(a) (to provide information in writing)
- > 26 notices under s. 155(1)(b) (to provide documents)
- > 35 notices under s. 155(1)(c) (to appear in person)
- > 129 notices under s. 155(1)(a) and (b) (to provide information in writing and to provide documents).

## General description of matters for which notices were given

Notices were issued in the course of investigations into conduct potentially in contravention of restrictive trade practices provisions, unconscionable conduct provisions, industry codes and consumer protection provisions of the Trade Practices Act.

A recent development in relation to the use of the ACCC's information powers has been an increase in the number of notices issued by the Mergers and Acquisitions Group. The Mergers and Acquisitions Group has found the notices an effective way of gaining information about potential breaches of s. 50 of the Act.

The *Trade Practices Legislation Amendment Act 2008* came into effect on 22 November 2008. This amended several sections of the Act but in particular s. 155.

## Challenges to the validity of notices

The Federal Court in Melbourne dismissed the applications by Singapore Airlines Pte Ltd, Singapore Airlines Cargo Pte Ltd and Emirates challenging the validity of compulsory notices issued under s. 155 of the Trade Practices Act in 2007 and 2008. The notices required production of documents and information as part of the ACCC's investigation into alleged international air cargo cartel activity.

## Additional information in respect of the ACCC use of s. 155

On 27 April 2009 the Commonwealth Director of Public Prosecutions decided to discontinue the prosecution of Mr Richard Pratt for alleged breaches of s. 155(5) on the basis of Mr Pratt's health. Furthermore, Justice Ryan announced in the Federal Court on 27 April that he had decided the documents in question were inadmissible in evidence in the main case.

## Search warrants issued or signed

Under ss. 154X and 154Y of the Act, search warrants can be issued or signed by a magistrate. During 2008–09 the ACCC issued two search warrants.

## General description of the matters for which search warrants were issued

Both search warrants were issued in relation to alleged contraventions of the consumer protection provisions of the Act.

## Challenges to the validity of a search warrant

No such proceedings have been brought.

## Notices under Part XID

On two occasions ACCC inspectors sought and were granted search warrants by a magistrate under Part XID.



# Appendix 5

## ACCC service charter

### About the ACCC

The ACCC is a national law enforcement agency and was set up in 1995 by the Australian Parliament to protect the rights of consumers and business.

It does this by encouraging competition in the marketplace and enforcing consumer protection and fair trading laws, in particular the *Trade Practices Act 1974*.

The ACCC regulates where competition is less effective, for example, the energy and telecommunications markets. As well as enforcing the law, the ACCC provides information and education to businesses and consumers about the laws it administers.

Our goals and priorities are set out in the ACCC's *Corporate plan and priorities*.

### About the charter

This charter sets out:

- > the values that guide our service
- > the standards of service you can expect from us
- > the steps you may take if these standards are not met.

The charter is not about the decisions and actions we take when applying the legislation we administer.

The ACCC is held accountable through the courts, tribunals, parliaments and the Commonwealth Ombudsman for enforcement action, merger assessment, adjudication, arbitration, access terms and conditions, and pricing decisions.

### Values of the ACCC

At the ACCC we produce results in the public interest by:

- > being accessible, transparent, independent and fair in our dealings with the community including consumers, business and governments
- > performing our role in a timely, effective, efficient and consistent manner.

### Our service to you

We are committed to:

- > providing you with courteous, professional, quality service
- > responding to the needs of all people regardless of their personal attributes or circumstances
- > being objective and adhering to guidelines on conflict of interest.

We will answer your questions and inquiries promptly and explain our decisions.

## Responsiveness

You can contact us by telephone, fax, email or in person. Our contact details, office locations and business hours are listed separately at the back of this service charter.

We will identify ourselves to you when you contact us.

All correspondence sent to you will include a contact name and telephone number.

We will follow up telephone messages within two business days. Correspondence requiring a response will be acknowledged as soon as possible. Responses will be provided within 28 days.

If this is not possible we will keep you informed of progress. If we are not the appropriate organisation to assist you, we will refer you to one that is.

## Information

You will be able to obtain guidance and information about your rights and responsibilities under the legislation we administer. We are unable to provide you with legal advice.

We will respect your rights to privacy and confidentiality.

We will provide information and guidelines in plain language.

## Complaints and feedback

The ACCC welcomes your feedback, including complaints, compliments and suggestions. You can provide feedback and comment via email or by contacting an office listed at the back of this charter.

We value your right to complain. Our complaints handling process follows the Australian Standard on complaints handling.

If you are dissatisfied with our service:

- > first try to resolve the issue with the staff member you are dealing with
- > speak to that staff member's manager if you are not satisfied
- > if you are still not satisfied, or if the above suggestions are not appropriate in the circumstances, write to the Chief Executive Officer.

The Chief Executive Officer will respond to your complaint within 14 days.

## External review

If you are unhappy with the outcome of your complaint about our service, or you feel that your complaint has not been dealt with satisfactorily, there are four avenues for external review:

- > Commonwealth Ombudsman (1300 362 072)
- > Privacy Commissioner (1300 363 992)
- > Administrative Appeals Tribunal (1300 366 700)
- > Human Rights and Equal Opportunity Commissioner (1300 656 419).

## Review of the charter

We will review this charter through an ongoing consultative process with the public and staff.

Reports on the level of our service performance, complaints and feedback are made to government annually and through the *ACCC annual report*.

# Appendix 6

## Business and consumer complaints and inquiries—detail

**Table 16: Complaints and inquiries, 2008–09**

Telephone calls	This year	Last year
Received	96 118	78 308
Served	80 281	65 336
Abandoned / advised to visit website	13 409	10 553
Engaged	2 008	2 416
Voicemail	420	3
Email contacts	This year	Last year
Number of emails received	30 008	20 177
Answered by telephone response	8 593	7 556
Answered by return email	13 688	8 506
Sent elsewhere for response	844	837
No response required	6 883	3 278
Written correspondence	This year	Last year
Number of letters received	2 272	810
Sent elsewhere for response	207	127
No response required	243	30
Business information complaints or inquiries	This year	Last year
About a small business	423	1 608
From a small business	2 072	2 673
About a franchise matter	949	715
About an online trader or e-commerce	3 545	6 736
Escalated for assessment	1 785	1 014

**Table 17: Top 10 industries for complaints and inquiries**

	This year	Last year
Other auxiliary finance and investment services	15 513	5 483
Non-store retailing	3 130	2 504
Automotive fuel retailing	3 664	3 640
Electrical, electronic and gas appliance retailing	2 699	2 320
Other store-based retailing	2 350	1 465
Lottery operation	1 879	3 294
Computer and computer peripheral retailing	1 720	1 248
Wired telecommunications network operation	1 674	1 703
Car retailing	1 520	1 299
Credit reporting and debt collection services	1 269	602

**Table 18: Top 10 possible contraventions of the Trade Practices Act**

	This year	Last year
<i>Predominantly fair trading and consumer protection Part V</i>		
Misleading or deceptive conduct	32 733	24 584
Retail warranties	8 040	6 525
Accepting payment non-supply	2 159	1 617
Misrepresentation of price	1 621	1 303
Harassment and coercion	929	422
Misrepresentation of performance characteristics, accessories, uses or benefits	888	1 011
Product safety	672	728
Assert right to payment unsolicited services	536	210
Assert right to payment unsolicited goods	503	367
Misrepresentation of warranty, guarantee	501	375
<i>Predominantly effective competition and informed markets Part IV</i>		
Exclusive dealing	451	487
Misuse of market power	246	325

**Table 19: Publications sent to callers**

	This year	Last year
The little black book of scams	39 999	46 284
Blind and curtain cords—safety alert	21 788	20 873
Baby bath aids—safety alert	18 690	19 338
Cots—safety alert	17 924	14 264
Prams and strollers—safety alert	17 179	n/a
Toys—safety alert	17 038	13 336
Warranties and refunds	16 185	6 425
Keeping baby safe	14 716	74 550
Baby walkers—safety alert	13 994	9 765
Household furniture hazards for kids—safety alert	13 970	15 071

**Table 20: Location of inquirers and complainants**

	Part IV		Part V		Part IVA and IVB		Other		Total	
	Last year	This year	Last year	This year	Last year	This year	Last year	This year	Last year	This year
New South Wales	1 017	826	13 659	17 777	270	186	4 263	4 957	19 209	23 746
Victoria	785	622	11 436	14 243	231	184	3 398	3 315	15 850	18 364
Queensland	680	499	10 973	13 493	278	178	3 037	3 140	14 968	17 310
Western Australia	286	222	3 904	4 928	148	74	930	998	5 268	6 222
South Australia	262	189	3 354	4 072	102	72	895	920	4 613	5 253
Australian Capital Territory	108	80	1 553	2 157	7	18	432	539	2 100	2 794
Tasmania	88	57	1 196	1 533	16	14	342	321	1 642	1 925
Northern Territory	38	17	481	529	19	14	136	160	674	720
Others	17	14	1 099	1 298	9	3	197	270	1 322	1 585
<b>Total</b>	<b>3 281</b>	<b>2 526</b>	<b>47 655</b>	<b>60 030</b>	<b>1 080</b>	<b>743</b>	<b>13 630</b>	<b>14 620</b>	<b>65 646</b>	<b>77 919</b>

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

# Appendix 7

## Litigation matters, review proceedings and tribunal proceedings 2008–09

### Litigation concluded during 2008–09

#### Lawful competition and informed markets

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##### Air cargo

##### British Airways PLC

**Commenced** | 28 October 2008 |

**Concluded** | 11 December 2008

Proceedings under Part IV for price fixing in relation to fuel surcharges applied to international carriage of air cargo.

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##### Justice Lindgren | Federal Court Sydney

**Outcome** | orders by consent: pecuniary penalty of \$5 million, injunctions and costs.

**Significance** | restrictive agreements between competitors harm the competitive process and increase prices to consumers.

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##### Air cargo

##### Cargolux Airlines International SA

**Commenced** | 10 February 2009 |

**Concluded** | 16 February 2009

Proceedings under Part IV for price fixing in relation to fuel surcharges applied to international carriage of air cargo.

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##### Justice Lindgren | Federal Court Sydney

**Outcome** | orders by consent: pecuniary penalty of \$5 million, injunctions and costs.

**Significance** | restrictive agreements between competitors harm the competitive process and increase prices to consumers.

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**Air cargo****Martinair Holland NV****Commenced** | 10 February 2009 |**Concluded** | 16 February 2009

Proceedings under Part IV for price fixing in relation to fuel surcharges applied to international carriage of air cargo.

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**Justice Lindgren | Federal Court Sydney**

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**Outcome** | orders by consent: pecuniary penalty of \$5 million, injunctions and costs.

**Significance** | restrictive agreements between competitors harm the competitive process and increase prices to consumers.

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**Air cargo****Qantas Airways Ltd****Commenced** | 28 October 2008 |**Concluded** | 23 December 2008

Proceedings under Part IV for price fixing in relation to fuel surcharges applied to international carriage of air cargo.

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**Justice Lindgren | Federal Court Sydney**

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**Outcome** | orders by consent: pecuniary penalty of \$20 million, injunctions and costs.

**Significance** | restrictive agreements between competitors harm the competitive process and increase prices to consumers.

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**Air cargo****Société Air France and Koninklijke Luchtvaart Maatschappij NV****Commenced** | 10 February 2009 |**Concluded** | 16 February 2009

Proceedings under Part IV for price fixing in relation to fuel surcharges applied to international carriage of air cargo.

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**Justice Lindgren | Federal Court Sydney**

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**Outcome** | orders by consent: pecuniary penalty of \$3 million against each respondent, injunctions and costs.

**Significance** | restrictive agreements between competitors harm the competitive process and increase prices to consumers.

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## Baby clothing

### Oobi Baby Pty Ltd and Alexandra Riggs

**Commenced** | 16 July 2008 | **Concluded** | 7 October 2008

Proceedings under Part IV for resale price maintenance of children's clothing and toys.

**Justice Finkelstein | Federal Court Melbourne  
(Fast Track list)**

**Outcome** | declarations, injunctions, pecuniary penalty (\$40 000), publication of corrective notice on oobi.com.au and letter to all the company's retail customers informing them of its resale price maintenance conduct, compliance program, costs.

**Significance** | suppliers cannot enforce pricing policies in an attempt to prevent discounting.

## Sports compression garments

### Skins Compression Garments Pty Ltd and others

**Commenced** | 28 August 2007 |

**Concluded** | 2 December 2008

Proceedings under Part IV and Part V for resale price maintenance and misleading and deceptive conduct in the retail sports goods industry.

**Justice Besanko | Federal Court Adelaide**

**Outcome** |

Part IV: declarations, penalties (total of \$134 000), an order that Skins Compression Garments Pty Ltd provide a letter to its current retailers, agents and distributors about its conduct, and costs. Undertaking by Skins to the court not to engage in similar conduct in the future. Agreement by Skins, Mr Jaimie Fuller and Mr Warhurst to provide the ACCC with enforceable undertakings to implement a trade practices law compliance program and trade practices compliance training.

Part V: declarations, an order that Skins publish a corrective notice on its website, publish a corrective notice in *B&T Weekly* and broadcast a corrective advertisement on SBS. Undertakings by Skins and Mr Jaimie Fuller not to engage in similar conduct in the future.

**Significance** | suppliers cannot enforce pricing policies in an attempt to prevent discounting; misleading advertising affects consumers and damages businesses advertising within the law.

## Taxis

### White Top Taxis Ltd and others

**Commenced** | 8 August 2008 |

**Concluded** | 13 February 2009

Proceedings under the Competition Code of Victoria against the three directors of White Top Taxis for giving effect to a 'roster off' roster arrangement between themselves and other taxi operators including a driver in contravention of s. 45(2)(a)(i) of the code. This involved a roster arrangement that limited the number of taxi vehicles available to the public (in addition to White Top Taxis being found to have attempted to induce others and to have aided and abetted the contraventions).

#### Justice Finkelstein | Federal Court Melbourne (Fast Track list)

**Outcome** | declaration, injunctions, penalties and costs ordered (total penalties and costs of \$97 000). White Top Taxis to implement a trade practices law compliance program.

**Significance** | restrictive agreements between competitors harm the competitive process.

## Water craft

### Telwater Pty Ltd and Paul Matthew Phelan

**Commenced** | 21 January 2009 |

**Concluded** | 5 March 2009

Proceedings under Part IV for resale price maintenance of marine craft.

#### Justice Spender | Federal Court Brisbane

**Outcome** | declarations, injunctions, penalties (\$210 000 for Telwater, \$28 000 for Mr Phelan), costs (\$40 000).

**Significance** | suppliers cannot enforce pricing policies in an attempt to prevent discounting.

## Fair trading and consumer protection

### Barbecue

#### Harbin Pty Ltd

**Commenced** | 12 December 2007 |

**Concluded** | 28 November 2008

Proceedings under Part V for misleading or deceptive conduct and false or misleading representations in relation to print advertisements of barbecues.

#### Justice Finn | Federal Court Adelaide

**Outcome** | declarations, corrective notice and costs. Harbin to serve the orders and reasons for judgment on the auditor appointed to its annual compliance program pursuant to its s. 87B undertaking accepted by the ACCC in September 2004.

**Significance** | misleading advertising affects consumers and damages businesses advertising within the law.

<b>Bunk beds</b>	<p><b>Aziz Properties and Services Pty Ltd and Rodney Aziz</b></p> <p><b>Commenced</b>   18 December 2008    <b>Concluded</b>   19 February 2009</p> <p>Proceedings under Part V for breach of the mandatory product safety standard for bunk beds.</p> <hr/> <p><b>Justice Finkelstein   Federal Court Melbourne (Fast Track list)</b></p> <hr/> <p><b>Outcome</b>   declarations, a range of probation orders, injunctions, costs.</p> <p><b>Significance</b>   compliance with mandatory product safety standards is essential to ensure the safety of consumers.</p>
<b>Bunk beds</b>	<p><b>Hercules Iron Pty Ltd and Tom Hatz</b></p> <p><b>Commenced</b>   6 May 2008   <b>Concluded</b>   8 August 2008</p> <p>Contempt proceedings for breaches of the judgment of Justice Gordon dated 5 February 2008. The original proceedings relate to breaches of the mandatory product safety standard (bunk beds) under Part V of the Act.</p> <hr/> <p><b>Justice Gordon   Federal Court Melbourne</b></p> <hr/> <p><b>Outcome</b>   declarations, fine (total \$20 000) and costs.</p> <p><b>Significance</b>   the ACCC will enforce court orders and seek punishment for those who do not obey such orders.</p>
<b>Business exhibition</b>	<p><b>Millar, Gregory; and Webb, John</b></p> <p><b>Commenced</b>   15 August 2007    <b>Concluded</b>   24 February 2009</p> <p>Proceedings under Part V for misleading or deceptive conduct in the promotion of various industry exhibitions.</p> <hr/> <p><b>Justice Gilmour   Federal Court Perth</b></p> <hr/> <p><b>Outcome</b>   declarations, injunctions, attend a trade practices compliance seminar and costs. Mr Millar to issue a public disclosure notice.</p> <p><b>Significance</b>   misleading advertising affects consumers and damages businesses advertising within the law.</p>
<b>Car sales</b>	<p><b>GM Holden Ltd</b></p> <p><b>Commenced</b>   16 January 2008    <b>Concluded</b>   18 September 2008</p> <p>Proceedings under Part V for misleading and deceptive conduct and false representations concerning 'green' claims made in the advertising of Saab vehicles by GM Holden.</p> <hr/> <p><b>Justice Siopsis   Federal Court Perth</b></p> <hr/> <p><b>Outcome</b>   declarations and costs, and court enforceable undertakings regarding future advertising and compliance training review.</p> <p><b>Significance</b>   environmental claims are increasingly important to consumers and must be accurate.</p>

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**Dairy****Australian Co-operative Foods Ltd**

**Commenced** | 16 July 2008 | **Concluded** | 29 August 2008

Proceedings under Part V for misrepresentations about the style of certain cheeses.

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**Justice Middleton | Federal Court Melbourne  
(Fast Track list)**

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**Outcome** | declarations, injunctions, corrective notice, trade practices compliance program, costs.

**Significance** | representations about product attributes must be accurate.

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**Department store****Harris Scarfe Pty Ltd**

**Commenced** | 10 October 2007 | **Concluded** | 8 May 2009

Proceedings under Part V for misleading and deceptive conduct in relation to a television commercial and sale catalogue for a '20 per cent to 60 per cent off store-wide' sale.

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**Justice Mansfield | Federal Court Adelaide**

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**Outcome** |

5 February 2009: declarations and injunctions.

8 May 2009: Harris Scarfe to pay 80 per cent of ACCC costs.

**Significance** | misleading advertising affects consumers and damages businesses advertising within the law.

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**Fruit marketing****Grove & Edgar Pty Ltd**

**Commenced** | 16 June 2008 |

**Concluded** | 19 December 2008

Proceedings under Part IVB for contravention of the Horticulture Code.

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**Justice Reeves | Federal Court Darwin**

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**Outcome** | by consent: declaration, order that Grove & Edgar write to all growers it currently trades with under the code and any it commences to trade with in the next two years advising that it will comply with the code and costs.

**Significance** | this was the first case taken under the Horticulture Code. It re-emphasised to agents and growers the need to agree a price in writing before or immediately upon delivery of any produce.

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<b>Hair replacement</b>	<p><b>Narnia Investments Pty Ltd and Simon Charles Clarke</b></p> <p><b>Commenced</b>   20 August 2008   <b>Concluded</b>   23 April 2009</p> <p>Proceedings under Part V for misrepresentations regarding a consumer's termination and refund rights in relation to a hair replacement contract.</p> <hr/> <p><b>Justice Marshall   Federal Court Hobart</b></p> <hr/> <p><b>Outcome</b>   declarations, injunctions against the company and its sole director, Mr Clarke, who was also ordered to attend trade practices law compliance training.</p> <p><b>Significance</b>   care must be taken to ensure vulnerable consumers are dealt with fairly.</p>
<b>Indigenous art</b>	<p><b>Nooravi, Farzad; and Nooravi, Homa</b></p> <p><b>Commenced</b>   23 July 2008   <b>Concluded</b>   29 August 2008</p> <p>Proceedings under Part V for misleading representations that three artists whose work they promoted and sold were of Australian Aboriginal descent when they are not.</p> <hr/> <p><b>Justice Logan   Federal Court Brisbane</b></p> <hr/> <p><b>Outcome</b>   declarations, injunctions, an order that the respondents notify certain purchasers of artwork of the court orders and costs. Mr and Mrs Nooravi also have offered the ACCC a court enforceable undertaking that they will implement a trade practices law compliance program.</p> <p><b>Significance</b>   art is an important economic resource for many Indigenous people and authenticity is an important characteristic for many art buyers.</p>
<b>Jewellery</b>	<p><b>Prouds Jewellers Pty Ltd</b></p> <p><b>Commenced</b>   30 April 2008  </p> <p><b>Concluded</b>   23 December 2008</p> <p>Full Federal Court appeal by the ACCC and cross-appeal by Prouds. The original proceedings relate to false or misleading 'was/now' price comparisons.</p> <hr/> <p><b>Chief Justice Black, Justice Ryan and Justice Gordon   Full Federal Court</b></p> <hr/> <p><b>Outcome</b>   ACCC appeal dismissed and Prouds' cross-appeal dismissed.</p> <p><b>Significance</b>   misleading advertising affects consumers and damages businesses advertising within the law.</p>

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**Lamp wholesaling****LED Technologies Pty Ltd and Anthony Ottobre**

**Commenced** | 19 August 2008 | **Concluded** | 11 May 2009

Proceedings under Part V for alleged misleading or deceptive conduct and alleged false or misleading representations that housing and lenses on certain LED products were made from polycarbonate when in fact they were made from acrylic.

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**Justice Tracey | Federal Court Melbourne (Fast Track list)**

**Outcome** | Justice Tracey noted the undertakings given to the court and ordered that the respondents pay a contribution to the ACCC's costs. Proceedings dismissed.

**Significance** | misleading advertising affects consumers and damages businesses advertising within the law.

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**Media / current affairs****Channel Seven Brisbane Pty Ltd and others**

**Appeal commenced** | 17 July 2008 |

**Concluded** | 30 April 2009

Misleading or deceptive conduct published by *Today Tonight* in relation to the promotion of property investment mentoring program Wildly Wealthy Women.

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**Chief Justice French, Justice Gummow, Justice Hayne, Justice Heydon and Justice Kiefel | High Court of Australia**

**Background** | on 12 October 2007 Justice Bennett of the Federal Court in Sydney made declarations and ordered injunctions and a publication order. On 23 June 2008 Justice Sundberg, Justice Jacobson and Justice Lander of the Full Federal Court, Sydney, reversed the finding by Justice Bennett that Channel Seven had contravened s. 52 of the Act.

**Outcome** | ACCC appeal allowed with costs. The High Court set aside the orders made by the Full Federal Court.

**Significance** | clarification of the extent to which the publishers defence applies in relation to misleading claims.

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**Mobile premium services****AMV Holdings Pty Ltd**

**Commenced** | 23 January 2009 | **Concluded** | 5 June 2009

Proceedings under Part V for misleading or deceptive conduct in relation to advertising of mobile premium services.

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**Justice Moore | Federal Court Sydney**

**Outcome** | declarations by consent.

**Significance** | representations about services must be accurate and there must be adequate disclosure of terms of subscriptions.

## Mobile premium services

### TMG Asia Pacific Pty Ltd

**Commenced** | 19 August 2008 |

**Concluded** | 1 October 2008

Proceedings under Part V for false, misleading and deceptive conduct regarding television advertisements promoting mobile premium subscription quiz services.

**Justice Cowdroy | Federal Court Sydney**

**Outcome** | by consent: declarations, injunctions, corrective advertising, implementation of a trade practices compliance program, and costs.

**Significance** | representations about services must be accurate and there must be adequate disclosure of terms of subscriptions.

## Nappies

### SeNevens International Ltd and Charishma Mohini Wickremesinghe Seneviratne

**Commenced** | 20 August 2008 |

**Concluded** | 27 March 2009

Proceedings under Part V for false, misleading and deceptive '100% biodegradable' claims for Safeties Nature Nappy products.

**Justice Marshall | Federal Court Hobart**

**Outcome** | declarations, injunctions, corrective advertising and notification to distributors, trade practices compliance program and costs.

**Significance** | environmental claims are increasingly important to consumers and must be accurate.

## Phone calling cards

### Cardcall Pty Ltd

**Commenced** | 15 April 2009 | **Concluded** | 22 May 2009

Proceedings under Part V for alleged misleading or deceptive conduct and false or misleading representations in the promotion of prepaid phone calling cards.

**Justice Lindgren | Federal Court Sydney**

**Outcome** | by consent: declarations, injunctions, corrective notice order, community service orders and costs.

**Significance** | representations about services must be accurate—consumers place significant weight on price representations.

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**Phone calling cards****Tel.Pacific Ltd****Commenced** | 3 February 2009 |**Concluded** | 30 March 2009

Proceedings under Part V for misleading or deceptive conduct and false or misleading representations in relation to prepaid international phone cards.

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**Justice Gordon | Federal Court Melbourne**

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**Outcome** | declarations, injunctions, trade practices compliance program, costs.**Significance** | representations about services must be accurate—consumers place significant weight on price representations.

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**Property development****Ingles Group (Qld) Pty Ltd and Graeme Angus Ingles****Commenced** | 8 September 2008 |**Concluded** | 7 October 2008

Proceedings under Part V for misleading or deceptive representations made to residents and potential purchasers as to the status of the council approval and otherwise to the progress of the construction of the golf course at a residential community.

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**Acting Chief Justice Spender | Federal Court Brisbane**

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**Outcome** | declarations, injunctions and costs.**Significance** | those selling land or property must not misdescribe associated amenities or facilities.

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**Retail clothing****Kloosterman, Bindert and others****Commenced** | 4 September 2008 |**Concluded** | 20 April 2009

Proceedings under Part V for false, misleading and deceptive representations made on designerbrandoutlet.com including representations that items of genuine designer label women's clothing were available for purchase when in fact either no items were supplied or the items of clothing supplied were counterfeit copies.

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**Justice Flick | Federal Court Sydney**

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**Outcome** | declarations, injunctions and costs.**Significance** | the integrity of e-commerce is important and, wherever they trade, businesses must not mislead consumers about the attributes of the goods they sell.



## Retail telecommunication services

### Clarus Telecom Pty Ltd

**Commenced** | 28 August 2008 |

**Concluded** | 26 November 2008

Proceedings under Part V for misleading or deceptive conduct by representing via telemarketers that the company and the services they provide are affiliated with or provided on behalf of Telstra Corporation Ltd.

**Justice Middleton | Federal Court Melbourne (Fast Track list)**

**Outcome** | undertakings to the court, orders by consent: declarations, corrective notice, trade practices compliance program and costs.

**Significance** | consumers should be provided with accurate information about approvals and affiliations of products and services.

## Retail tenancy

### Dukemaster Pty Ltd and Patricia Suk-King Wong

**Commenced** | 2 October 2008 | **Concluded** | 24 June 2009

Proceedings under Part IVA and Part V for alleged unconscionable conduct, misleading or deceptive conduct and false representations arising from dealings with tenants by the landlord of retail premises.

**Justice Gordon | Federal Court Melbourne (Fast Track list)**

**Outcome** | declarations, injunctions, orders for payment to the tenants a total of \$275 456 plus interest, trade practices compliance program orders and costs.

**Significance** | landlords must not take unfair advantage of a stronger bargaining position and must ensure information they give to tenants is accurate.

## Skin tanning

### Australian Tanning Association Inc. and others

**Commenced** | 11 June 2008 | **Concluded** | 29 August 2008

Proceedings under Part V for false, misleading or deceptive conduct in relation to advertisements promoting solarium use.

**Justice Finkelstein | Federal Court Melbourne (Fast Track list)**

**Outcome** | declarations, injunctions, trade practices compliance program, publication of the outcome of this proceeding in various forums, and costs.

**Significance** | advertisements must be accurate, especially where there are important issues of health and safety.

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**Trades****All Trades Services Pty Ltd and others**

**Commenced** | 17 July 2008 | **Concluded** | 17 June 2009

Proceedings under Part V for alleged misleading representations in relation to the provision of marketing and job-finding subscription services.

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**Justice Moore | Federal Court Sydney**

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**Outcome** | All Trades Services Pty Ltd: injunctions (19 March 2009).

John Barry: matter discontinued (19 March 2009).

Aaron John Bell: injunctions, declarations and costs (17 June 2009).

**Significance** | representations about the services businesses provide must be accurate.

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**Fair trading and consumer protection—criminal proceedings**

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**Diamonds****Carrerabenz Diamond Industries Pty Ltd and Shahid Iqbal Chaudhary**

**Commenced** | 20 December 2005 |

**Concluded** | 9 July 2008

Criminal proceedings for misleading two-price comparisons advertising diamond clearance sales where the diamonds in question had not previously been offered for sale to the general public at the higher 'usual price'.

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**Justice Logan | Federal Court Brisbane**

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**Outcome** | Corporate defendant Carrerabenz Diamond Industries Pty Ltd convicted on all 27 charges, and imposed a fine of \$220 000. Charges relating to the personal defendant were dismissed.

**Significance** | consumers place significant weight on price and savings representations and price claims should accurately reflect a comparison between recent historical selling prices and advertised discounted price.

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## Jewellery

### Ascot Four Pty Ltd

**Commenced** | 20 December 2006 |

**Concluded** | 26 May 2009

Criminal proceedings for making strikethrough price comparisons that were false or misleading.

**Justice Mansfield | Federal Court Adelaide**  
**Chief Justice Black, Justice Ryan and Justice Jagot |**  
**Full Federal Court Adelaide**

#### Background |

21 August 2008: Justice Mansfield of the Federal Court, Adelaide, handed down judgment finding Ascot Four Pty Ltd guilty on all 11 counts.

23 January 2009: Justice Mansfield ordered that a conviction be recorded against the defendant on each of the 11 counts, imposed a penalty of \$380 000 and costs.

**Outcome** | 26 May 2009: the Full Federal Court, Adelaide, comprising Chief Justice Black, Justice Ryan and Justice Jagot, dismissed Ascot Four Pty Ltd's appeal, and ordered Ascot Four to pay the ACCC's costs.

**Significance** | price saving claims should accurately reflect a comparison between recent historical selling prices and advertised discounted price.

## Other proceedings involving the ACCC

### Business opportunities Levi, Bon

**Commenced** | 13 June 2007 | **Concluded** | 24 October 2008

Contempt of court proceedings arising from the sale of businesses in Melbourne, Sydney and Perth in 2006 and 2007 in contravention of orders made against him by Justice Kiefel in the Federal Court on 28 February 2005.

**Justice McKerracher | Federal Court Perth**

**Outcome** | Mr Levi found guilty of five charges of contempt of court. Sentenced to 10 months imprisonment with six months suspended for five years on the condition that Levi not advertise, sell or accept payment for any business opportunity whatsoever, or knowingly participate in any other person doing so.

**Significance** | respondents must obey orders of the court or the ACCC will seek to ensure those who do not are appropriately punished.

## Corrugated paperboard and paperboard container manufacture

### Pratt, Richard

**Commenced** | 19 June 2008 | **Concluded** | 29 April 2009

Proceedings under Part XII for allegedly providing false or misleading evidence at a s. 155(1)(c) examination in contravention of s. 155(5).

#### Justice Ryan | Federal Court Sydney

**Outcome** | discontinued.

**Significance** | the ACCC's powers under s. 155 are important tools in assisting the ACCC to investigate alleged breaches of the Act.

## Employment services

### Roberson, Richard

**Commenced** | 20 August 2008 |

**Concluded** | 4 November 2008

Proceedings relating to breach of a section 87B undertaking. The s. 87B undertaking signed 2 April 2008 was offered by Mr Roberson to address the ACCC's concerns that representations made by Mr Roberson were likely to mislead consumers as to the availability or nature of employment positions being offered.

#### Justice Graham | Federal Court Sydney

**Outcome** | summary judgment against Mr Roberson.

Declarations, order to contact certain subscribers to Backpacker Employment Services via telephone and read to each of them a statement which includes an offer of a refund of their subscription fee, order to publish consumer notices, and costs.

**Significance** | the ACCC considers non-compliance with undertakings a serious matter and will take action to enforce them.

## Hair replacement

### Narnia Investments Pty Ltd and Simon Charles Clarke

**Commenced** | 17 September 2008 |

**Concluded** | 22 April 2009

Criminal proceedings for knowingly providing false and misleading information to the ACCC in response to a s. 155 notice.

#### Justice Marshall | Federal Court Hobart

**Outcome** | Mr Simon Charles Clarke and Narnia Investments Pty Ltd were convicted and fined a total of \$7000 after pleading guilty to providing false or misleading information in response to an information notice issued by the ACCC under s. 155 of the Act.

**Significance** | the ACCC's powers under s. 155 are important tools in assisting the ACCC to investigate alleged breaches of the Act.

**Introduction agency****Rural Network Pty Ltd and Leanne Nolo****Commenced** | 22 July 2008 |**Concluded** | 5 September 2008

Proceedings in relation to breach of terms of the s. 87B undertaking signed 4 March 2008 including failing to make refunds of \$118 000 and undertake trade practices training. The original proceedings alleged misleading or deceptive conduct in relation to the promotion of an introduction agency.

**Justice Spender | Federal Court Brisbane**

**Outcome** | by consent: declarations, order of a payment of \$118 476 to the ACCC for forwarding to certain former members of Rural Network.

**Significance** | The ACCC will take legal action if it is necessary to secure compliance with court enforceable undertakings.

**Non-payment of penalties and costs****Webb, Braddon****Commenced** | 16 June 2008 | **Concluded** | 28 July 2008

Application by the ACCC for an examination of the respondent pursuant to Order 67 of the Supreme Court Rules (Supreme Court of the Northern Territory) on his means of satisfying the judgment made by the Federal Court for payment of a pecuniary penalty. A warrant for the arrest of Braddon Ralph Webb was issued and executed on 16 June 2008, pursuant to the Absconding Debtors Act.

**Supreme Court Darwin**

**Outcome** | examination conducted.

**Significance** | The ACCC will vigorously pursue payment of unpaid penalties.

**Third-party proceedings****Corrugated paperboard and paperboard container manufacture****Cadbury Schweppes Pty Ltd****Commenced** | 26 November 2007 |**Concluded** | 20 March 2009

Application for leave to appeal and an appeal from an interlocutory decision of a judge of the court made on 28 March 2008 in proceedings between Cadbury Schweppes Pty Ltd and Amcor Ltd and Amcor Packaging (Australia) Pty Ltd.

**Justice Mansfield, Justice Kenny and Justice Middleton | Full Federal Court Melbourne**

**Outcome** | Application for leave to appeal granted. Appeal dismissed.

**Significance** | any legal professional privilege is lost when the ACCC files and serves witness statements in penalty proceedings.

## ACCC as a respondent

### Air cargo

#### Emirates

**Commenced** | 23 April 2008 | **Concluded** | 2 April 2009

Application by Emirates to overturn a s. 155 notice based on jurisdiction and burden.

**Justice Middleton | Federal Court Melbourne**

**Outcome** | application by Emirates dismissed on all counts.

**Significance** | the ACCC's powers under s. 155 are important tools in assisting the ACCC to investigate alleged breaches of the Act.

## Court review proceedings

### Communications

#### Telstra Corporation Limited v Australian Competition Tribunal

**Commenced** | 13 January 2009 |

**Concluded** | 11 March 2009

**ACCC role** | Respondent

Application for judicial review of the tribunal's decision dated 22 December 2008 to set aside the ACCC's decision to grant Telstra conditional exemptions from standard access obligations regarding local call service and wholesale line rental services.

**Justice Jacobson, Justice Lander and Justice Foster | Full Federal Court Sydney**

**Outcome** | set aside the tribunal's decision; remitted to the tribunal for further consideration and determination according to law.

### Communications

#### Telstra Corporation Limited v ACCC and others

**Commenced** | 8 August 2007 |

**Concluded** | 19 September 2008

**ACCC role** | Respondent

Application for judicial review of three arbitral determinations made by the ACCC under Part XIC of the Act (Request, Chime, Primus) regarding the line-sharing service.

**Justice Lindgren | Federal Court Sydney**

**Outcome** | affirmed the ACCC's decision in one application. Affirmed the ACCC's decision in the remaining two applications, except for one minor ground regarding pricing principles. Remitted the latter two matters to the ACCC for further consideration of the LSS disconnection charge. Disputes subsequently withdrawn by the parties before further ACCC consideration occurred.

<b>Communications</b>	<b>Telstra Corporation Limited v ACCC</b> <b>Commenced</b>   28 December 2007   <b>Concluded</b>   24 November 2008 <b>ACCC role</b>   Respondent Application for judicial review of an arbitral determination made by the ACCC pursuant to Part XIC requiring Telstra to grant Optus access to the unconditioned local loop service in multi-dwelling units.
	<b>Justice Rares   Federal Court Sydney</b> <b>Outcome</b>   set aside the ACCC's decision; remitted to the ACCC for further consideration and determination.
<b>Communications</b>	<b>ACCC v Telstra Corporation Limited</b> <b>Commenced</b>   15 December 2008   <b>Concluded</b>   5 June 2009 <b>ACCC role</b>   Appellant Limited appeal of Justice Rares' reasons (but not orders) dated 24 November 2008 regarding the nature of model terms and conditions.
	<b>Justice Ryan, Justice Jacobson and Justice Foster   Full Federal Court Sydney</b> <b>Outcome</b>   appeal upheld; confirmed the ACCC's approach to the making of model terms and conditions.
<b>Australian Competition Tribunal review proceedings</b>	
<b>Communications</b>	<b>Application by Chime Communications Pty Ltd</b> <b>Commenced</b>   12 September 2008   <b>Concluded</b>   22 December 2008 <b>ACCC role</b>   Person assisting Application for merits review of the ACCC's decision to grant Telstra four exemptions from standard access obligations regarding local call service and wholesale line rental services in 248 exchanges subject to conditions.
	<b>Justice Finkelstein, Mr R Davey and Professor D Round   Australian Competition Tribunal Melbourne</b> <b>Outcome</b>   tribunal set aside the ACCC's decision to grant Telstra's exemption applications. Tribunal's decision subsequently set aside by Full Federal Court.

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**Communications****Application by Telstra Corporation Limited****Commenced** | 1 December 2008 |**Concluded** | 22 May 2009**ACCC role** | Person assisting

Application for merits review of the ACCC's decision to refuse to grant Telstra an exemption order from standard access obligations regarding the Singtel Optus hybrid fibre coaxial network.

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**Justice Middleton, Mr R Davey and Professor D Round | Australian Competition Tribunal Melbourne (heard in Sydney)**

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**Outcome** | affirmed the ACCC's decision.

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**Energy****Application by ElectraNet Pty Limited****Commenced** | 21 May 2008 |**Concluded** | 30 September 2008**AER role** | Respondent

Application for merits review under the National Electricity Law of the AER's 2008–13 transmission determination for ElectraNet in relation to easement transaction and acquisition costs.

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**Justice Mansfield | Australian Competition Tribunal Melbourne**

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**Outcome** | tribunal varied the AER's determination by increasing ElectraNet's opening regulatory asset base by \$36.1 million in respect of easement transaction or acquisition costs adjusted for CPI.

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**Litigation continuing at end of 2008–09****Lawful competition and informed markets**

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**Air cargo****Cathay Pacific Airways Ltd****Commenced** | 30 April 2009

Proceedings under Part IV for alleged price fixing in relation to fuel surcharges applied to international carriage of air cargo.

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**Justice Jacobson | Federal Court Sydney**

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**Status** | court processes continuing.



<b>Air cargo</b>	<b>Singapore Airlines Cargo Pte Ltd</b>
	<b>Commenced</b>   22 December 2008 Proceedings under Part IV for alleged price fixing in relation to fuel surcharges applied to international carriage of air cargo.
	<b>Justice Jacobson   Federal Court Sydney</b> <b>Status</b>   court processes continuing.
<b>Banking</b>	<b>ANZ Banking Corporation</b>
	<b>Commenced</b>   17 August 2007 Proceedings under Part IV for alleged price fixing agreements by the ANZ Bank seeking to limit the level of refund a third-party mortgage broker could provide to customers.
	<b>Justice Greenwood   Federal Court Brisbane</b> <b>Status</b>   court processes continuing.
<b>Bill payment services</b>	<b>Bill Express Ltd and others</b>
	<b>Commenced</b>   29 October 2008 Proceedings under Part IV and Part V for alleged third line forcing, false and misleading or deceptive conduct in relation to the 'Bill EXPRESS' electronic product distribution, promotion, sales and bill payment network.
	<b>Justice Finkelstein   Federal Court Melbourne (Fast Track list)</b> <b>Status</b>   court processes continuing.
<b>Commercial air conditioning</b>	<b>Admiral Mechanical Services Pty Ltd and others</b>
	<b>Commenced</b>   17 December 2004 Proceedings under Part IV for allegedly entering into agreements lessening competition through bid-rigging with respect to commercial air conditioning contracts in Western Australia.
	<b>Justice Nicolson   Federal Court Perth</b> <b>Status</b>   court processes continuing.
<b>Defence</b>	<b>DRS C3 Systems, Inc.</b>
	Proceedings under Part V for alleged cartel behaviour in the international military defence training systems industry.
	<b>Justice Edmonds   Federal Court, Sydney</b> <b>Status</b>   court processes continuing.

<b>Fine paper</b>	<b>April International Marketing Services Australia Pty Ltd and others</b>
	<b>Commenced</b>   6 December 2006 Proceedings under Part IV for allegedly entering into arrangements, contracts or understandings with competitors for the supply of fine paper products.
	<b>Justice Bennett   Federal Court Sydney</b>
	<b>Status</b>   court processes continuing.
<b>Flyash and cement production</b>	<b>Cement Australia Pty Ltd</b>
	<b>Commenced</b>   12 September 2008 Proceedings under Part IV for allegedly taking advantage of market power for the purpose of preventing entry and competitive conduct in the relevant concrete-grade flyash market.
	<b>Justice Dowsett   Federal Court Brisbane</b>
	<b>Status</b>   court processes continuing.
<b>Go-karts</b>	<b>Australian Karting Association (NSW) Incorporated and others</b>
	<b>Commenced</b>   9 June 2009 Proceedings under Part IV for alleged price fixing in relation to the go-kart industry.
	<b>Justice Bennett   Federal Court Sydney</b>
	<b>Status</b>   court processes continuing.
<b>Marine hose manufacture</b>	<b>Bridgestone Corporation and others</b>
	<b>Commenced</b>   1 June 2009 Proceedings under Part IV for alleged price fixing and market sharing conduct in the supply of marine hoses to the Australian oil and gas industry.
	<b>Justice Finkelstein   Federal Court Melbourne</b>
	<b>Status</b>   court processes continuing.

<b>Medical fluids</b>	<b>Baxter Healthcare Pty Ltd</b>
	<b>Commenced</b>   1 November 2002
	Proceedings under Part IV for alleged misuse of market power and exclusive dealing in relation to the supply of health products to state government purchasing authorities.
	<b>Justice Mansfield   Federal Court Sydney</b>
	<b>Background</b>
	29 August 2007: High Court allowed ACCC appeal on the issue of Crown immunity. 14 August 2008: Full Federal Court held Baxter had contravened ss. 46 and 47 of the Act in relation to bundling of medical products.
	<b>Status</b>   Currently before Federal Court awaiting hearing on penalty.
<b>Stevedoring</b>	<b>Toll (PRK) Ltd and others</b>
	<b>Commenced</b>   24 August 2007
	Proceedings under Part IV for allegedly entering into contracts, arrangements or understandings that restrict dealings or affect competition, and into arrangements to share motor vehicle wharf facilities around Australia and to jointly acquire other facilities.
	<b>Justice Jacobson   Federal Court Sydney</b>
	<b>Status</b>   court processes continuing.
<b>Taxis</b>	<b>Cabcharge Australia Ltd</b>
	<b>Commenced</b>   24 June 2009
	Proceedings under Part IV for allegedly engaging in conduct with the purpose and/or effect of substantially lessening competition in the taxi industry in relation to the supply of taxi meters and EFTPOS non-cash payment processing services to taxis.
	<b>Justice Finkelstein   Federal Court Melbourne</b>
	<b>Status</b>   court processes continuing.
<b>Telecommunications</b>	<b>Link Solutions Pty Ltd and others</b>
	<b>Commenced</b>   17 September 2008
	Proceedings against 28 parties, including telecommunications companies and their related companies, finance companies and individuals for alleged exclusive dealing and misleading and deceptive conduct.
	<b>Justice Bennett   Federal Court Sydney</b>
	<b>Status</b>   court processes continuing.

## Fair trading and consumer protection

<b>Aboriginal art</b>	<b>Australian Dreamtime Creations Pty Ltd and Tony Antoniou</b>
	<b>Commenced</b>   15 June 2009
	Proceedings under Part V for alleged misleading or deceptive conduct in representing that artists whose work they promoted and sold were of Australian Aboriginal descent when they are not.
	<b>Justice Mansfield   Federal Court Adelaide</b>
<b>Bed retailing</b>	<b>Craftmatic Australia Pty Ltd and others</b>
	<b>Commenced</b>   7 April 2009
	Proceedings under Parts IVA and V for alleged unconscionable conduct and misleading or deceptive conduct in relation to the sale of adjustable beds.
	<b>Justice Logan   Federal Court Brisbane</b>
<b>Business directory listings</b>	<b>Australialink Pty Ltd and others</b>
	<b>Commenced</b>   4 December 2008
	Proceedings under Parts IVA and V for alleged unconscionable conduct and misleading or deceptive conduct in relation to solicitation for online business directory listings.
	<b>Justice Spender   Federal Court Brisbane</b>
<b>Business opportunities</b>	<b>Burnan Pty Ltd and Keith Patrick William Rolston</b>
	<b>Commenced</b>   23 April 2009
	Alleged breach of s. 87B undertakings and proceedings under Part V for alleged misleading or deceptive conduct in relation to the promotion and sale of résumé writing businesses to the public.
	<b>Justice McKerracher   Federal Court Perth</b>
<b>Cheese</b>	<b>Harvey Fresh (1994) Pty Ltd</b>
	<b>Commenced</b>   7 May 2009
	Proceedings under Part V for alleged misrepresentations about the place of origin of certain cheese products.
	<b>Justice Siopsis   Federal Court Perth</b>
	<b>Status</b>   court processes continuing.

<b>Employment services</b>	<p><b>Zanok Technologies Pty Ltd</b></p> <p><b>Commenced</b>   7 May 2009</p> <p>Proceedings under Parts IVA and V for alleged unconscionable and misleading or deceptive conduct in the promotion of employment in the IT industry.</p> <hr/> <p><b>Justice Edmonds   Federal Court Sydney</b></p> <hr/> <p><b>Status</b>   court processes continuing.</p>
<b>Franchise system</b>	<p><b>Allphones Retail Pty Ltd and others</b></p> <p><b>Commenced</b>   25 March 2008</p> <p>Proceedings under Parts IVA, IVB and V for alleged failure to comply with the Franchising Code of Conduct, alleged misleading or deceptive conduct and alleged unconscionable conduct towards its franchisees. Senior executives alleged to be knowingly concerned.</p> <hr/> <p><b>Justice Foster   Federal Court Sydney</b></p> <hr/> <p><b>Status</b>   court processes continuing.</p>
<b>Franchise system</b>	<p><b>Seal-A-Fridge Pty Ltd and Nigel John Rooney</b></p> <p><b>Commenced</b>   4 July 2008</p> <p>Proceedings under Parts IVA and IVB for alleged unconscionable conduct towards its franchisees and failure to comply with the Franchising Code of Conduct in the mobile refrigeration seal replacement industry.</p> <hr/> <p><b>Justice Logan   Federal Court Brisbane</b></p> <hr/> <p><b>Status</b>   court processes continuing.</p>
<b>Health</b>	<p><b>Advanced Allergy Elimination Pty Ltd and Paul Frederick Keir</b></p> <p><b>Commenced</b>   12 May 2009</p> <p>Proceedings under Part V for alleged representations that it can test for and accurately identify a substance to which a person is allergic and that it can eliminate and successfully treat a person's allergy.</p> <hr/> <p><b>Justice Finkelstein   Federal Court Melbourne (Fast Track list)</b></p> <hr/> <p><b>Status</b>   court processes continuing.</p>

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**Internet advertising****Trading Post Australia Pty Ltd, Google Inc and others****Commenced** | 11 July 2007

Alleged misleading or deceptive conduct by failing to adequately distinguish 'sponsored links' from 'organic' search results on the Google website.

**Docket to be confirmed** | **Federal Court Sydney****Status** | court processes continuing.

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**Mobile premium services****Clarion Marketing Australia Pty Ltd****Commenced** | 27 May 2009

Proceedings under Part V for alleged misleading or deceptive conduct in the promotion of mobile premium content services arising out of the the publication of promotional 'scratch and win' cards.

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**Justice Jacobson** | **Federal Court Sydney (Fast Track list)****Status** | court processes continuing.

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**Mobile premium services****Teracomm Ltd****Commenced** | 23 January 2009

Proceedings under Part V for alleged misleading or deceptive conduct in relation to advertising of mobile premium services.

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**Justice Moore** | **Federal Court Sydney****Status** | court processes continuing.

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**Pyramid scheme****Cosic Holdings Pty Ltd****Commenced** | 6 May 2009

Proceedings under Part V for alleged pyramid selling in relation to the 'Emerald Passport' scheme.

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**Justice Barker** | **Federal Court Perth****Status** | court processes continuing.

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**Other proceedings**

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**Air cargo****Singapore Airlines Cargo Pte Ltd and Singapore Airlines Ltd****Commenced** | 15 April 2008

Application by Singapore Airlines to overturn a s. 155 notice based on jurisdiction and burden.

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**Justice Middleton** | **Federal Court Melbourne**  
**Chief Justice Black, Justice Jacobsen and Justice Mansfield** | **Full Federal Court Melbourne****Status** | on 2 April 2009, Justice Middleton dismissed the application by Singapore Airlines on all counts. On 23 April 2009, Singapore Airlines appealed against the decision of Justice Middleton. Court processes continuing.

<b>Franchise system</b>	<b>Allphones Retail Pty Ltd v ACCC</b> <b>Commenced</b>   31 October 2008 Preliminary discovery application.
	<b>Justice Foster   Federal Court, Melbourne</b>
	<b>Status</b>   awaiting judgment.
<b>Online trading</b>	<b>Storesonline International Inc and Storesonline Inc</b> <b>Commenced</b>   5 October 2007 Alleged breach of s. 87B undertakings provided by the respondents in settlement of earlier legal proceedings against them. <b>Justice Edmonds   Federal Court Sydney</b> <b>Status</b>   court processes continuing.
Third-party proceedings	
<b>Franchise system</b>	<b>Allphones Retail Pty Ltd v Hoy Mobile Pty Ltd</b> <b>Commenced</b>   4 July 2008 Appeal to Full Federal Court by Allphones Retail Pty Ltd against decision of Justice Rares in <i>Hoy Mobile Pty Ltd v Allphones Retail Pty Ltd</i> . <b>Justice Goldberg, Justice Jacobson and Justice Perram   Full Federal Court, Sydney</b> <b>Status</b>   ACCC granted leave to intervene on 2 March 2009. Awaiting judgment.
Court review proceedings	
<b>Communications</b>	<b>Telstra Corporation Limited v ACCC and others</b> <b>Commenced</b>   17 January 2008 <b>ACCC role</b>   Respondent Application by Telstra for judicial review of 14 arbitration determinations—Agile Pty Ltd, Adams Internet Pty Ltd, Primus Telecommunications Pty Ltd (x 3), Amcom Pty Ltd, Network Technology (Aust) Pty Ltd, TPG Internet Pty Ltd, Macquarie Telecom Pty Ltd, XYZed Pty Ltd, PowerTel Ltd, Request Broadband Pty Ltd, Optus Networks Pty Ltd, Chime Communications Pty Ltd. <b>Justice Lindgren   Federal Court Sydney</b> <b>Status</b>   awaiting decision.

## Australian Competition Tribunal review proceedings

<b>Communications</b>	<b>AAPT, Chime, Macquarie Telecom, Primus, Agile and PowerTel</b>
	<b>Commenced</b>   19 November 2008
	<b>ACCC role</b>   Person assisting
	Application for merits review of the ACCC's decision to grant Telstra two individual exemption orders from standard access obligations regarding the supply of PSTN OA service in 248 metropolitan and 17 CBD exchange service areas, subject to conditions.
<b>Communications</b>	<b>Justice Finkelstein, Mr R Davey and Professor D Round   Australian Competition Tribunal Melbourne</b>
	<b>Status</b>   awaiting decision.
	<b>Application by Telstra Corporation Limited</b>
	<b>Commenced</b>   13 May 2009
<b>Communications</b>	<b>ACCC role</b>   Person assisting
	Application for merits review of the ACCC's decision to reject an ordinary access undertaking submitted by Telstra for the ULL service for band 2 areas.
	<b>Justice Mansfield, Professor C Walsh and Mr R Steinwall   Australian Competition Tribunal Melbourne</b>
	<b>Status</b>   matter set down for hearing in August 2009.
<b>Communications</b>	<b>Application by Chime Communications Pty Ltd (No 2)</b>
	<b>Commenced</b>   12 March 2009
	<b>ACCC role</b>   Person assisting
	Further hearing following judicial review of application by Chime Communications Pty Ltd.
<b>Communications</b>	<b>Justice Finkelstein, Mr R Davey and Professor D Round   Australian Competition Tribunal Melbourne</b>
	<b>Status</b>   tribunal published reasons for its determination to make conditional exemption orders, dated 27 May 2009. Awaiting final orders.



<b>Energy</b>	<p><b>Applications by EnergyAustralia, Integral Energy Australia, Country Energy, TransGrid Australia and Transend Networks</b></p> <p><b>Commenced</b>   21 May 2009</p> <p><b>AER role</b>   Respondent</p> <p>Applications for merits review under the National Electricity Law of the AER's 2009–14 distribution determinations for EnergyAustralia, Integral Energy and Country Energy and 2009–14 transmission determinations for TransGrid and Transend in relation to the WACC, public lighting, pass throughs and operating expenditure.</p> <p><b>Justice Middleton   Australian Competition Tribunal Melbourne</b></p> <p><b>Status</b>   matter set down for hearing in Sydney on 10–21 August 2009.</p>
<hr/> <b>Other tribunal proceedings</b> <hr/>	
<b>Copyright</b>	<p><b>Phonographic Performance Company of Australia Ltd</b></p> <p><b>Commenced</b>   8 December 2006</p> <p><b>ACCC role</b>   Intervenor</p> <p>ACCC provided expert economic evidence to assist the tribunal in determining whether the proposed licence rate for the use of sound recordings payable by fitness class providers was reasonable.</p> <p><b>Federal Magistrate Rolf Driver   Copyright Tribunal Sydney</b></p> <p><b>Status</b>   awaiting decision.</p>
<b>Copyright</b>	<p><b>Australasian Performing Right Association (APRA) / Australasian Mechanical Copyright Owners Society (AMCOS)</b></p> <p><b>Commenced</b>   14 June 2007</p> <p><b>ACCC role</b>   Intervenor</p> <p>ACCC provided expert economic evidence to assist the tribunal assessing a licence scheme regarding digital music services.</p> <p><b>Justice Emmett   Copyright Tribunal Sydney</b></p> <p><b>Status</b>   tribunal processes continuing.</p>

# Appendix 8

## Section 87B

### undertakings accepted

### 2008–09

#### Lawful competition and informed markets

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##### Ophthalmology

##### Vision Group Holdings Ltd

Brisbane | 8 September 2008

**Conduct** | exclusionary provision for the purpose of restricting or limiting the supply of ophthalmic services to patients in the Hervey Bay and Maryborough area.

**Undertaking** | Vision Group Holdings Ltd has provided court enforceable undertakings to:

- > refrain from engaging in the potentially contravening conduct
- > not in future, enter into any agreement that would restrict the supply of goods or services to particular persons or classes of persons in particular circumstances or on particular conditions in breach of s. 45 of the Act
- > implement a trade practices law compliance program for Vision Group employees and other persons involved in its business.

**Significance** | restrictive agreements between competitors harm the competitive process and increase prices to consumers.

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## Scuba diving related equipment

### Oceanic Diving Australia Pty Ltd

Melbourne | 2 February 2009

**Conduct** | resale price maintenance of scuba diving related equipment.

**Undertaking** | Oceanic Diving Australia Pty Ltd has provided court enforceable undertakings to:

- > refrain from inducing or attempting to induce a reseller from advertising or selling Oceanic Diving products at a price less than a price specified by Oceanic Diving
- > implement a trade practices law compliance program for three years
- > arrange for an article to be published in a scuba diving publication informing readers about its contravention and the prohibition of resale price maintenance.

**Significance** | suppliers cannot enforce pricing policies in an attempt to prevent discounting.

## Sewing machines

### Janome Australia Pty Ltd and Toshiya Takayasu

Perth | 11 June 2009

**Conduct** | Resale price maintenance of sewing and quilting machines, overlockers and associated products. Janome Australia Pty Ltd and Toshiya Takayasu have admitted the conduct.

**Undertaking** | Janome Australia Pty Ltd has provided court enforceable undertakings to:

- > refrain from engaging in similar conduct in the future
- > implement and maintain a trade practices compliance program for three years
- > write to all its resellers advising them of its conduct and its breach of the Act
- > publish a corrective notice on its website for three months
- > publish a full-page corrective notice in *Australian Stitches* and *Embroidery and Cross Stitch* magazines.

**Undertaking** | Toshiya Takayasu has provided court enforceable undertakings to:

- > refrain from engaging in similar conduct in the future.

**Significance** | suppliers cannot enforce pricing policies in an attempt to prevent discounting.

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**Sports compression garments****Skins Compression Garments Pty Ltd**

Adelaide | 25 May 2009

**Conduct** | resale price maintenance and misleading and deceptive conduct in the retail sports goods industry.

**Background** | undertaking ancillary to court proceedings.

**Undertaking** | in addition to the orders made in the related court action, Skins Compression Garments Pty Ltd has provided court enforceable undertakings to implement a trade practices compliance program.

**Significance** | suppliers cannot enforce pricing policies in an attempt to prevent discounting; misleading advertising affects consumers and damages businesses advertising within the law.

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**Sports compression garments****Warhurst, Christopher Thomas**

Adelaide | 25 May 2009

**Conduct** | Resale price maintenance in the retail sports goods industry.

**Background** | undertaking ancillary to court proceedings (Skins Compression Garments Pty Ltd).

**Undertaking** | in addition to the orders made in the related court action, Mr Warhurst has provided court enforceable undertakings to:

- > refrain from being knowingly concerned in or party to any corporation inducing or attempting to induce a party not to sell or advertise products at a price less than a price specified by the corporation
- > attend trade practices compliance training.

**Significance** | suppliers cannot enforce pricing policies in an attempt to prevent discounting.

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**Fair trading and consumer protection****Indigenous art****Nooravi, Farzad; and Nooravi, Homa**

Townsville | 19 September 2008

**Conduct** | representations that three artists whose work they promoted and sold were of Australian Aboriginal descent when they are not, considered likely to mislead or deceive consumers.

**Background** | undertaking ancillary to court proceedings.

**Undertaking** | Mr Farzad Nooravi and Ms Homa Nooravi have provided court enforceable undertakings to implement a trade practices compliance program.

**Significance** | art is an important economic resource for many Indigenous people and authenticity is an important characteristic for many art buyers.

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**Accommodation**
**Stamford Hotels Pty Ltd**

Sydney | 10 February 2009

**Conduct** | representations that the advertising of Stamford Hotels had clearance from the ACCC, likely to mislead or deceive consumers.

**Undertaking** | Stamford Hotels Pty Ltd has provided court enforceable undertakings to:

- > refrain from making any representation, either orally or in writing, to the effect that its advertising has ACCC approval when this is not the case
- > send a letter of correction and apology to the affected guest
- > publish a corrective notice in the reception area of the hotel
- > implement a trade practices law compliance program.

**Significance** | consumers should be provided with accurate information about approvals and affiliations of products and services.

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**Bedding****Furniture and Bedding Concepts Ltd**

Adelaide | 17 June 2009

**Conduct** | 'two-price' representations in the advertising of bedding, furniture and homeware products, considered likely to mislead or deceive consumers.

**Undertaking** | Furniture and Bedding Concepts Ltd has undertaken to:

- > not make misleading price representations for a period of three years
- > offer affected consumers a \$100 gift voucher
- > send a letter of apology to affected consumers and offer them a \$100 gift voucher
- > publish corrective notices on its websites and in its retail stores
- > publish an information article in a relevant industry magazine
- > strengthen its existing trade practices compliance program.

**Significance** | consumers place significant weight on price and savings representations and price claims should accurately reflect a comparison between recent historical selling prices and advertised discounted price.

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**Bed retailing****Craftmatic Australia Pty Ltd**

Brisbane | 29 June 2009

**Conduct** | alleged unconscionable conduct and misleading or deceptive conduct in relation to the sale of adjustable beds.

**Background** | undertaking ancillary to court proceedings.

**Undertaking** | Craftmatic Australia Pty Ltd has undertaken to:

- > appoint a legal practitioner with trade practices experience to review any form, script or instruction (any document) that Craftmatic intends to employ as part of its compliance manual. Craftmatic will then not be able to use any document to sell beds or to train representatives to sell beds on its behalf that does not form part of the compliance manual.
- > conduct trade practices training for all new employees and retrain existing employees in accordance with the compliance manual.

**Significance** | sellers must not use unfair pressure or mislead or deceive consumers when selling goods or services.

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**Bunk beds****Goel, Sanjay, trading as Pacific ImpExp Services**

Sydney | 19 May 2009

**Conduct** | supply of bunk beds which did not comply with the relevant mandatory consumer product safety standard.

**Undertaking** |

- > refrain from supplying bunk beds that do not fully comply with the mandatory standard for bunk beds
- > establish and implement a trade practices compliance program.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Bunk beds****Fantastic Furniture Pty Ltd**

Hobart | 12 November 2008

**Conduct** | supply of bunk beds which did not comply with the relevant mandatory consumer product safety standard.

**Undertaking** | Fantastic Furniture Pty Ltd has provided court enforceable undertakings to:

- > refrain from supplying bunk beds that do not comply with the mandatory standard
- > use its best endeavours to contact and offer a full refund to every customer to whom it supplied the 'Mikki high sleeper'
- > publish recall notices on its website and at the point of sale in all of its stores
- > establish a trade practices compliance program.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Bunk beds****Living Momentum Pty Ltd**

Perth | 29 July 2008

**Conduct** | supply of bunk beds which did not comply with the relevant mandatory consumer product safety standard.

**Undertaking** | Living Momentum Pty Ltd has provided court enforceable undertakings to:

- > ensure that goods supplied by Living Momentum that are subject to a prescribed safety and/or information standard under the Act comply with the relevant standard
- > publish an information notice on its website
- > display an information notice at the point of sale in its store for a period of no less than three months
- > contact its customers who purchased the products to offer them the option to repair and modify the bunk bed, or be refunded the cost of the bunk bed and report on this obligation to the ACCC
- > establish, implement and maintain a trade practices compliance program.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Bunk beds****Sleep City Holdings Ltd**

Hobart | 12 November 2008

**Conduct** | supply of bunk beds which did not comply with the relevant mandatory consumer product safety standard.

**Undertaking** | Sleep City Holdings Ltd has provided court enforceable undertakings to:

- > refrain from supplying bunk beds that do not comply with the mandatory standard
- > display recall notices on its website and in its stores
- > endeavour to contact all customers to whom it supplied any of the bunk beds to repair the product or refund the customer
- > implement a trade practices compliance program.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Car sales****GM Holden Ltd**

Perth | 22 September 2008

**Conduct** | representations that it had taken certain measures so that the carbon emissions from any Saab motor vehicle would be neutral over the life of that vehicle, which would be entirely offset by the planting of trees, was considered to be likely to mislead or deceive consumers.

**Undertaking** | GM Holden Ltd has provided court enforceable undertakings to:

- > refrain from republishing the 'Saab Green Claims' advertisements
- > retrain all its Saab marketing staff in relation to misleading and deceptive conduct in the context of 'green' marketing claims to make them aware of their responsibilities under the Act
- > have the training reviewed by an independent third party and have the reviewer provide a report to the ACCC about the training.

**Significance** | environmental claims are increasingly important to consumers and must be accurate.

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**Car sales****Londy Pty Ltd trading as Purely Commercials**

Perth | 26 June 2009

**Conduct** | alleged misleading representations about a tax benefit that applied to purchasers of vehicles displayed in an advertisement.

**Undertaking** | Londy Pty Ltd has undertaken to:

- > refrain from representing that goods or services have benefits they do not have
- > publish a corrective notice on its website, purelycommercials.com.au, and in the CARSguide section of the *Sunday Times*
- > establish, implement and maintain a trade practices compliance program for a period of three years.

**Significance** | those selling goods must not misrepresent any associated tax benefits consumers may receive.

**Children's bath robes****Cotton Dreams Pty Ltd**

Melbourne | 1 July 2008

**Conduct** | supply of bath robes that did not comply with the relevant mandatory safety standard for children's nightwear.

**Undertaking** | Cotton Dreams Pty Ltd has provided court enforceable undertakings to:

- > refrain from selling any children's nightwear products that are not compliant
- > destroy all non-compliant garments returned by consumers and in stock
- > implement a trade practices law compliance program.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

**Children's bath robes****Lincraft Australia Pty Ltd**

Melbourne | 1 July 2008

**Conduct** | supply of bath robes that did not comply with the relevant mandatory safety standard for children's nightwear.

**Undertaking** | Lincraft Australia Pty Ltd has provided court enforceable undertakings to:

- > refrain from selling any children's nightwear products that are not compliant
- > destroy all non-compliant garments returned by consumers and in stock
- > conduct an independent review of its existing trade practices compliance program and upgrade it accordingly.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Children's toys****Kyberguard Pty Ltd, trading as Soldsmart**

Brisbane | 20 February 2009

**Conduct** | supply of certain children's ride-on car toys which did not comply with the mandatory consumer product safety standard for toys for children up to and including 36 months of age.

**Undertaking** | Kyberguard Pty Ltd has provided court enforceable undertakings to:

- > recall the products and offer a refund to all customers who have purchased these products
- > establish and implement a trade practices compliance program
- > ensure that all products sold by Soldsmart that are subject to a prescribed consumer product safety standard or information standard under the Act comply with the relevant standard
- > ensure that any test reports for products advertised for sale by Soldsmart are not more than 12 months old, and are supplied by an Australian National Association of Testing Authorities accredited testing agency or equivalent overseas agency.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Clothing and homewares****Ezibuy Ltd (New Zealand)**

Canberra | 6 August 2008

**Conduct** | incorrect labelling regarding the fibre content of certain acrylic throws and cotton/polyester shawls, considered to be likely to mislead or deceive consumers.

**Undertaking** | Ezibuy Ltd (New Zealand) has provided court enforceable undertakings to:

- > ensure all future advertising for all of its product range will accurately describe the composition, quality or standard of the product range
- > place corrective advertising on its websites and in its catalogues
- > offer refunds to customers
- > implement a trade practices corporate compliance program for Ezibuy employees.

**Significance** | misleading advertising affects consumers and damages businesses advertising within the law.

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## Cosmetics and children's toys

### The Reject Shop (Aust) Pty Ltd

Perth | 12 January 2009

**Conduct** | supply of an unsafe children's toy, the Knights Playset, and supply of a cosmetic product that did not comply with the relevant mandatory information standard for cosmetics.

**Undertaking** | The Reject Shop (Aust) Pty Ltd has provided court enforceable undertakings to:

- > ensure that its products comply with the relevant mandatory consumer product safety and information standards
- > publish a notice in the *Australian* newspaper regarding the excess lead in the Knights Playset, offering consumers a full refund
- > establish, implement and maintain a trade practices law compliance program for three years, and provide reports about the program to the ACCC.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

## Cosmetics

### Natural Products of Australia Pty Ltd

Brisbane | 8 April 2009

**Conduct** | labelling of hair and skincare products likely to mislead or deceive consumers and non-compliance with the relevant mandatory information standard for cosmetics.

**Undertaking** | Natural Products of Australia Pty Ltd has provided court enforceable undertakings to:

- > publish corrective notices
- > cease the contravening conduct
- > provide refunds to affected customers
- > implement a trade practices compliance program.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Cosmetics****Mildon Pty Ltd, trading as Challenge International (Aust)**

Adelaide | 19 December 2008

**Conduct** | supply of 10 mouthwash and toothpaste products which were not labelled in accordance with the relevant mandatory information standard for cosmetics.

**Undertaking** | Mildon Pty Ltd has provided court enforceable undertakings to:

- > refrain from supplying cosmetic products which do not comply with the cosmetics standard
- > refrain from supplying toothpaste products that do not comply with any applicable prescribed consumer product safety standard or in respect of which a relevant ban applies
- > put in place procedures to ensure that, when supplying cosmetic products, it complies with prescribed consumer product safety standards and prescribed consumer product information standards
- > develop and implement a trade practices compliance program which includes trade practices compliance training for relevant staff and a corporate complaints handling system to ensure similar potential breaches of the Act do not occur in the future.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Cosmetics retail****Natural Beauty Enterprise Pty Ltd**

Perth | 28 January 2009

**Conduct** | supply of the cosmetic product 'Pearl Cream with Vitamin E' in Australia depicting an 'Australia made' logo without approval of the Australian Made Campaign Ltd (AMCL) and the supply of the product without a list of ingredients as required by the Consumer Product Information Standards (Cosmetics) Regulations 1991.

**Undertaking** | Natural Beauty Enterprise Pty Ltd has provided court enforceable undertakings to:

- > refrain from supplying cosmetics products which do not comply with the cosmetics standard or applicable mandatory product safety standards
- > refrain from using or depicting the 'Australian made' logo without certification from the AMCL
- > implement a trade practices law training program
- > maintain a corporate complaints handling system.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers. Country of origin claims are considered by consumers to be premium claims and must comply with the Trade Practices Act.

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**Cosmetics retail****Natural Green Pty Ltd**

Perth | 28 January 2009

**Conduct** | supply of the cosmetic product '24 Hour Time Release Cream with Placenta and Vitamin E' in Australia depicting an 'Australia made' logo without approval of the AMCL and the supply of the product without a list of ingredients as required by the Consumer Product Information Standards (Cosmetics) Regulations 1991.

**Undertaking** | Natural Green Pty Ltd has provided court enforceable undertakings to:

- > refrain from supplying cosmetics products which do not comply with the cosmetics standard or applicable mandatory product safety standards
- > refrain from using or depicting the 'Australian made' logo without certification from the AMCL
- > implement a trade practices law training program
- > maintain a corporate complaints handling system.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Cosmetics retail****Australia The Gift Pty Ltd**

Perth | 5 November 2008

**Conduct** | supply of 'Tattoo Gel Pens 6 Pack' that did not comply with the relevant mandatory information standard for cosmetics.

**Undertaking** | Australia The Gift Pty Ltd has provided court enforceable undertakings to:

- > refrain from supplying the Tattoo Gel Pens 6 Pack unless it has the ingredients listed on the packaging
- > conduct an audit of its range of products to identify any products that do not comply with the cosmetics standard and, if any products are found, ensure they are immediately withdrawn from sale
- > cause an information notice to be displayed at the main service counter of each of its retail outlets that sold the product advising consumers that the product did not comply with the mandatory information standard for cosmetics and offering consumers a full refund on return of the product
- > develop and implement a trade practices compliance program.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Cosmetics retail****Jeune International Pty Ltd**

Perth | 12 November 2008

**Conduct** | use of the AMCL 'Australian made' logo in the supply of cosmetic products to retail outlets throughout Australia and overseas, without obtaining certification from the AMCL do so.

**Undertaking** | Jeune International Pty Ltd has provided court enforceable undertakings to:

- > refrain from using or depicting the 'Australian made' logo without certification from AMCL
- > implement and maintain a trade practices compliance program.

**Significance** | consumers should be provided with accurate information about approvals and affiliations of products and services and misleading advertising affects consumers and damages businesses advertising within the law.

**Cosmetics retail****Look Direct International Pty Ltd**

Perth | 5 November 2008

**Conduct** | supply of 'Tattoo Gel Pens 6 Pack' that did not comply with the relevant mandatory information standard for cosmetics.

**Undertaking** | Look Direct International Pty Ltd has provided court enforceable undertakings to:

- > refrain from supplying the Tattoo Gel Pens 6 Pack unless it has the ingredients listed on the packaging
- > conduct an audit of its range of products to identify any products that do not comply with the cosmetics standard and, if any products are found, ensure they are immediately withdrawn from sale by the retailer
- > cause an information notice to be published in the *Australian* newspaper advising consumers that the product did not comply with the mandatory information standard for cosmetics and that the product should be returned to the retail outlet the product was purchased from for a full refund
- > cause an information notice to be displayed at the main service counter of each of the Australia The Gift and Chickenfeed Bargain Stores retail outlets that sold the product advising consumers that the product did not comply with the mandatory information standard for cosmetics and offering consumers a full refund on return of the product
- > develop and implement a trade practices compliance program.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Footwear retail**
**Cotton On Clothing Pty Ltd**

Perth | 5 September 2008

**Conduct** | incorrect labelling of Home Boots as lambskin when the product was made of synthetic materials, considered to be likely to mislead or deceive consumers.

**Undertaking** | Cotton On Clothing Pty Ltd has provided court enforceable undertakings to:

- > refrain from representing their products contain wool or sheepskin unless those products do in fact contain the represented materials
- > cause a corrective notice to be displayed at the main service counter of each of its Australian retail outlets advising consumers of the incorrect lambskin labelling
- > offer a refund of the purchase price to all Cotton On Clothing customers who purchased a lambskin labelled Home Boot who advise Cotton On Clothing staff they believe they had been misled by the lambskin labelling
- > develop and implement a trade practices compliance program which includes trade practices law compliance training for relevant staff and a corporate complaints handling system to ensure similar potential breaches of the Act do not occur in the future.

**Significance** | consumers should be provided with accurate information about products as misleading advertising affects consumers and damages businesses advertising within the law.

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## Furniture

### Super A-Mart Pty Ltd

Townsville | 26 June 2009

**Conduct** | alleged misleading or deceptive conduct arising from representations which were qualified by fine print disclaimers which were not sufficiently prominent and were too imprecise to adequately qualify the representations.

**Undertakings** | Super A-Mart Pty Ltd has undertaken to:

- > clearly label display stock as not for sale
- > review the size of symbols used in its catalogues (such as asterisks) which are intended to refer consumers to qualifying terms and conditions located elsewhere in the catalogue
- > review the wording used in disclaimers (written and oral)
- > display public notices in store and on its website
- > review and, if necessary, improve its internal catalogue review process and TV and radio advertisement review process, to increase the accuracy and consistency of its advertising
- > implement a trade practices compliance program, including trade practices training.

**Significance** | exclusions and limitations to offers of goods and services must be prominently displayed to prevent consumers from being misled.

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## Hair replacement

### Narnia Investments Pty Ltd and Simon Charles Clarke

Hobart | 30 April 2009

**Conduct** | false and misleading representations regarding a vulnerable consumer's rights under his contract.

**Background** | undertaking ancillary to court proceedings.

**Undertaking** | Narnia Investments Pty Ltd and Mr Simon Clarke have provided court enforceable undertakings to:

- > pay the affected consumer the \$5000 balance of \$10 000 damages previously agreed between the ACCC and Mr Clarke
- > refund the affected consumer his \$1800 deposit
- > pay the ACCC's legal costs in the sum of \$12 785.

**Significance** | care must be taken to ensure vulnerable consumers are dealt with fairly.

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## Home entertainment appliances

### Kogan Technologies Pty Ltd

Melbourne | 20 April 2009

**Conduct** | comparative 'two-price' representations in the advertising of home entertainment products, considered likely to mislead or deceive consumers.

**Undertaking** | Kogan Technologies Pty Ltd has provided court enforceable undertakings to:

- > refrain from representing price comparisons without clearly identifying the brand and model of the good with which the price comparison is made
- > refrain from offering or advertising any goods as being on sale, by reference to a price, unless those goods have been offered for sale or sold at the higher price in reasonable quantities for a reasonable amount of time within a reasonable period of the date of the offer or advertisement
- > ensure that all future advertising and other forms of promotion by Kogan complies with Part V of the Act
- > implement a trade practices compliance program.

**Significance** | price saving claims should accurately reflect a comparison between recent historical selling prices and advertised discounted price.

## Horticulture

### Atkinson Produce Pty Ltd

Brisbane | 3 December 2008

**Conduct** | non-compliance with the mandatory Horticulture Code.

**Undertaking** | Atkinson Produce Pty Ltd has provided court enforceable undertakings to:

- > not trade in horticulture produce subject to the code without having in place code compliant horticulture produce agreements
- > prepare, publish and make publicly available code compliant terms of trade
- > write to affected growers advising them of the undertakings to the ACCC and the revisions to the horticulture produce agreements and terms of trade
- > conduct a trade practices seminar, focusing on the code and ss. 52 and 53 of the Act, for its directors, company officers and employees authorised to trade in horticulture produce on its behalf, and for growers with whom it trades who wish to attend.

**Significance** | compliance with the minimum mandatory requirements of the Horticulture Code is important.

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## Horticulture

### LaManna Bananas Pty Ltd

Brisbane | 20 May 2009

**Conduct** | non-compliance with the mandatory Horticulture Code.

**Undertaking** | LaManna Bananas Pty Ltd has provided court enforceable undertakings to:

- > advise potentially affected growers of the ACCC's concerns
- > establish a special process to deal with any growers who raise concerns about sales of their produce
- > report to the ACCC on any grower's complaint that it could not resolve under that process
- > implement a trade practices compliance program to help it avoid future code breaches
- > refrain from selling between themselves horticultural product assigned to them by growers without first having growers' express consent to the transaction
- > implement a complaint resolution process to deal with growers' complaints.

**Significance** | compliance with the minimum mandatory requirements of the Horticulture Code is important.

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## Leather lounge retail

### Lisat Holdings Pty Ltd

Townsville | 22 October 2008

**Conduct** | comparative 'two-price' representations in the advertising of furniture, considered likely to mislead or deceive consumers.

**Undertaking** | Lisat Holdings Pty Ltd has provided court enforceable undertakings to:

- > refrain from using comparative two-price representations where goods have not previously been offered for sale at the higher price for a reasonable period of time prior to the period of commencement of the discount
- > display an information notice in all stores for a period of six weeks
- > establish and implement a trade practices compliance program
- > ensure that all future advertising and other forms of promotion comply with Part V of the Act.

**Significance** | price saving claims should accurately reflect a comparison between recent historical selling prices and advertised discounted price.

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**Liquor retail****Moving Juice Pty Ltd**

Adelaide | 24 December 2008

**Conduct** | representations regarding a promotion of ‘free beer’ and ‘was/now’ pricing, considered to be likely to mislead or deceive consumers.

**Undertaking** | Moving Juice Pty Ltd has provided court enforceable undertakings to:

- > refrain from engaging in similar advertising practices in the future
- > publish corrective notices in the *Advertiser*, in its sale catalogue and on its website
- > publish an information article in a wine industry magazine
- > make a donation to a registered youth charity
- > implement a trade practices compliance program.

**Significance** | offers with ‘free’ products as part of a package should be genuine; the price of other goods in the package should not be inflated to cover all or part of costs of a ‘free’ product.

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**Luggage strap****Brilliant Signs Pty Ltd**

Melbourne | 17 February 2009

**Conduct** | wholesale supply of certain SSA branded elastic luggage straps which did not comply with the prescribed consumer product safety standard for elastic luggage straps.

**Undertaking** | Brilliant Signs Pty Ltd has provided court enforceable undertakings to:

- > ensure the goods it supplies that are subject to a prescribed consumer product safety standard comply with that standard
- > establish and implement a trade practices compliance program designed to minimise its risk of breaching s. 65C of the Act.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Luggage strap****Bunnings Group Ltd**

Melbourne | 17 February 2009

**Conduct** | supply of a rubber luggage strap known as 'Quickties Tie Down Strap' which did not comply with the prescribed consumer product safety standard for elastic luggage straps.

**Undertaking** | Bunnings Group Ltd has provided court enforceable undertakings to:

- > ensure any goods it supplies that are subject to a prescribed consumer product safety standard comply with the standard
- > conduct a review of the product compliance component of its trade practices compliance program to ensure it is designed to minimise future breaches the Act.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Luggage strap****Coast to Coast Imports Pty Ltd**

Perth | 16 April 2009

**Conduct** | supply of '6 Pce Stretch Cord 12'18'24' elastic luggage straps which did not comply with the prescribed consumer product safety standard for elastic luggage straps.

**Undertaking** | Coast to Coast Imports Pty Ltd provided court enforceable undertakings to:

- > cease the supply of the elastic luggage strap that does not comply with the mandatory standard
- > conduct an audit of its range of products to identify any products that do not comply with the mandatory standard and, if any products are found, ensure they are immediately withdrawn from sale
- > display an information notice at the main service counter of each of the bargain/discount retail outlets that sold the product advising consumers that the product did not comply with the mandatory standard and offering consumers a full refund on return of the product
- > develop and implement a trade practices compliance program which includes trade practices law compliance training for relevant staff and a corporate complaints handling system to ensure similar potential breaches of the Act do not occur in the future.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Luggage strap****Jarvis Walker Pty Ltd**

Brisbane | 5 May 2009

**Conduct** | supply of elastic luggage straps which did not comply with the prescribed consumer product safety standard for elastic luggage straps.

**Undertaking** | Jarvis Walker Pty Ltd has provided court enforceable undertakings to:

- > ensure that each product it supplies complies with any relevant consumer product safety standard
- > implement a trade practices compliance program.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Luggage strap****Mark Hawkins, Merin Hawkins and Medalist (Victoria) Pty Ltd**

Melbourne | 17 February 2009

**Conduct** | wholesale supply of certain 'Medalist' branded elastic luggage straps which did not comply with the prescribed consumer product safety standard for elastic luggage straps.

**Undertaking** | Mark Hawkins, Merin Hawkins and Medalist (Victoria) Pty Ltd have provided court enforceable undertakings to:

- > ensure all goods supplied that are subject to a prescribed consumer product safety standard comply with the standard
- > establish and implement a trade practices compliance program designed to minimise the risk of future breaches of s. 65C of the Act.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Luggage strap****Mitre 10 Australia Ltd**

Melbourne | 17 February 2009

**Conduct** | supply of 'Warrior Bungee Cord' elastic luggage straps which did not comply with the prescribed consumer product safety standard for elastic luggage straps.

**Undertaking** | Mitre 10 Australia Ltd has provided court enforceable undertakings to:

- > refrain from supplying, offering to supply or entering into an agreement for the supply of elastic luggage straps that do not comply with the Trade Practices (Consumer Product Safety Standards) Regulations 1979
- > establish and implement a trade practices compliance program designed to minimise the risk of future breaches of s. 65C of the Act.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Luggage strap****Service Station Supplies (Aust) Pty Ltd**

Melbourne | 17 February 2009

**Conduct** | wholesale supply of certain SSA and MGR branded elastic luggage straps which did not comply with the prescribed consumer product safety standard for elastic luggage straps.

**Undertaking** | Service Station Supplies (Aust) Pty Ltd has provided court enforceable undertakings to:

- > refrain from supplying or offering to supply any good subject to a prescribed consumer product safety standard unless the good complies with the prescribed standard
- > establish and implement a trade practices compliance program designed to minimise the risk of future breaches of s. 65C of the Act.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Luggage strap****Sontax Australia (1988) Pty Ltd**

Melbourne | 10 March 2009

**Conduct** | wholesale supply of certain Sontax branded elastic luggage straps which did not comply with the prescribed consumer product safety standard for elastic luggage straps.

**Undertaking** | Sontax Australia (1988) Pty Ltd has provided court enforceable undertakings to:

- > ensure all goods it supplies that are subject to a prescribed consumer product safety standard comply with the standard
- > establish and implement a trade practices compliance program designed to minimise the risk of future breaches of s. 65C of the Act.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Luggage strap****Timbermate Products Pty Ltd**

Melbourne | 24 February 2009

**Conduct** | wholesale supply of a rubber luggage strap known as 'Quickties Tie Down Strap' which did not comply with the prescribed consumer product safety standard for elastic luggage straps.

**Undertaking** | Timbermate Products Pty Ltd has provided court enforceable undertakings to:

- > refrain from supplying or offering to supply elastic luggage straps that do not comply with the prescribed standard
- > contact all its wholesale and retail customers who purchased Quickties to notify them of the ACCC's concerns and to remove non-compliant Quickties from sale
- > establish and implement a trade practices compliance program designed to minimise the risk of future breaches of s. 65C of the Act.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Medical**
**Global Web Enterprises Pty Ltd and  
Mr Brendon Nicholas**

Canberra | 26 September 2008

**Conduct** | development and publication of the website cashfororgans.com.au that contained representations that were likely to mislead or deceive consumers.

**Undertaking** | Global Web Enterprises Pty Ltd and Mr Brendon Nicholas have provided court enforceable undertakings to:

- > refrain from causing to be republished or otherwise be involved in the republication of the website
- > refrain from soliciting any person to make a payment for membership and represent that persons can lawfully buy or sell organs through the use of the website
- > refrain from representing that the site is in any way affiliated with medical professionals and representing via a website that a person has provided a testimonial in relation to the goods or services when that is not the case
- > attend a trade practices compliance seminar within six weeks of commencing or joining the operations of any new business, trading via a website or joining the operations of any new training company, and within six months of this undertaking coming into effect complete 20 hours of volunteer work with a registered health charity.

**Significance** | consumers should be provided with accurate information about approvals and affiliations of products and services.

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**Mobile phones**
**Dodo Australia Pty Ltd**

Melbourne | 5 May 2009

**Conduct** | advertising of mobile telephone plans considered likely to be false, misleading or deceptive.

**Undertaking** | Dodo Australia Pty Ltd has provided court enforceable undertakings to:

- > write to the consumers affected by the conduct
- > pay refunds to certain consumers
- > reduce the monthly fee for each of the free offer plans
- > implement and maintain a revised trade practices compliance program.

**Significance** | offers with 'free' products as part of a package should be genuine; the price of other goods in the package should not be inflated to cover all or part of costs of a 'free' product.

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**Mobile phones****JB Hi-Fi Pty Ltd**

Sydney | 20 February 2009

**Conduct** | representations to the effect that the mobile phones it supplies are new when this was not the case, considered to be false, misleading or deceptive.

**Undertaking** | JB Hi-Fi Pty Ltd has provided court enforceable undertakings to:

- > refrain from making any representation to the effect that the mobile phones it supplies are new when this is not the case
- > publish a corrective notice to be displayed in the Kotara Westfield store for eight weeks offering either a refund or a replacement to affected customers
- > publish a corrective notice in the *Newcastle Post* newspaper for eight weeks offering either a refund or a replacement to affected customers
- > extend its existing trade practices compliance program to cover mobile phones.

**Significance** | retailers should not make misrepresentations that goods are new when they are not.

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**Mobile phones****M2 Telecommunications Pty Ltd**

Adelaide | 17 April 2009

**Conduct** | representations regarding statutory rights, preconfigured software and network compatibility of mobile phones, considered likely to mislead or deceive consumers.

**Undertaking** | M2 Telecommunications Pty Ltd has provided court enforceable undertakings to:

- > refrain from making similar representations in the future
- > offer certain affected consumers redress in the form of replacement mobile phones or refunds
- > publish a corrective notice on its website
- > publish an information article in a telecommunications industry journal
- > review and maintain its trade practices compliance program.

**Significance** | retailers should not make misrepresentations about the existence of consumers' statutory warranty rights.

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**Mobile phones****TPG Internet Pty Ltd**

Melbourne | 9 February 2009

**Conduct** | advertisement of its 'Unlimited Cap Saver' mobile telephone plan, considered likely to be false, misleading or deceptive.

**Undertaking** | TPG Internet Pty Ltd has provided court enforceable undertakings to:

- > refrain from publishing an advertisement for a mobile telephone plan which states that for a specified price there will be unlimited calls and text when certain calls and text are excluded or additional charges will apply for some calls and text without including an appropriately prominent disclaimer to the effect that exceptions, terms and conditions apply
- > publish a corrective notice on its website
- > implement a trade practices law compliance program which requires all relevant staff and management to take part in training.

**Significance** | exclusions and limitations to offers of goods and services must be prominently displayed to prevent consumers from being misled.

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**Mobile premium services****ACP Magazines Ltd**

Canberra | 10 February 2009

**Conduct** | publication of advertisements for mobile premium content services in *Dolly*, *Cosmopolitan* and *Cleo* magazines, considered likely to mislead or deceive.

**Undertaking** | ACP Magazines Ltd has provided court enforceable undertakings to:

- > ensure advertisements for mobile premium services published in their magazines targeted at young readers state that the service is a subscription service, the cost of the service, and the eligibility of consumers to receive the benefit of the service.

**Significance** | advertisements for goods and services must be accurate to prevent consumers from being misled.

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**Mobile premium services**
**Pacific Magazines Pty Ltd**

Canberra | 10 February 2009

**Conduct** | publication of advertisements for mobile premium content services in *TV Hits* and *Girlfriend* magazines, considered likely to mislead or deceive.

**Undertaking** | Pacific Magazines Pty Ltd has provided court enforceable undertakings to:

- > ensure advertisements for mobile premium services published in their magazines targeted at young readers clearly state that the service is a subscription service, the cost of the service, and the eligibility of consumers to receive the benefit of the service.

**Significance** | advertisements for goods and services must be accurate to prevent consumers from being misled.

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**Mobile premium services**
**TMG Asia Pacific Pty Ltd and Mobile Generation I BV**

Canberra | 3 October 2008

**Conduct** | promotion of mobile premium subscription services via an internet pop-up, considered likely to mislead or deceive consumers.

**Undertaking** | TMG Asia Pacific Pty Ltd and Mobile Generation I BV have provided court enforceable undertakings to:

- > clearly communicate in any future promotions who is eligible to enter the competition, the nature of the services provided, who the services are being promoted by, and the terms and conditions (including as to price) to which consumers agree when they acquire the services
- > implement a trade practices compliance program.

**Significance** | advertisements for goods and services must be accurate to prevent consumers from being misled.

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## Motorsport

### V8 Supercars Australia Pty Ltd

Brisbane | 16 September 2008

**Conduct** | representations that carbon emissions would be entirely offset by the planting of trees, considered to be likely to mislead or deceive consumers.

**Undertaking** | V8 Supercars Australia Pty Ltd has provided court enforceable undertakings to:

- > ensure any future claims about 'green marketing' will be considered by a solicitor with experience in trade practices law before being made
- > ensure any future claims about trees being planted to offset carbon emissions will include an explanation about the period of time before those emissions would be offset
- > place an acknowledgement of the ACCC's concerns on its website for a period of no less than two months.

**Significance** | environmental claims are increasingly important to consumers and must be accurate.

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## Online advertising

### Fairfax Digital Australia and New Zealand Pty Ltd

Perth | 23 July 2008

**Conduct** | publication of banner advertisements considered to be likely to mislead or deceive consumers.

**Undertaking** | Fairfax Digital Australia and New Zealand Pty Ltd have provided court enforceable undertakings to:

- > refrain from publishing any advertisement or promotional information on websites representing that Domain mobile phone services are free, in circumstances where consumers may incur charges or fees when using those services
- > publish a corrective notice on the Domain homepage
- > update its trade practices law compliance program to ensure it will continue to meet its obligations under the Act.

**Significance** | advertisements for goods and services must be accurate to prevent consumers from being misled.

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**Pamphlet delivery****PMP Home Media Pty Ltd trading as PMP Distribution**

Canberra | 17 June 2009

**Conduct** | alleged misleading or deceptive conduct with regard to reports which contained incorrect pamphlet delivery statistics.

**Undertaking** | PMP Home Media Pty Ltd has undertaken to:

- > implement business procedures and processes to ensure information PMP Distribution provides to its customers is accurate
- > provide the ACCC with an independent auditor's report of its business procedures and processes relating to information PMP Distribution provides to its customers
- > establish and implement a trade practices compliance program.

**Significance** | information used to market goods and services must be accurate.

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**Personal digital breathalyser****Autobarn Pty Ltd**

Brisbane | 5 November 2008

**Conduct** | representations on the packaging of the AL6000 Lite personal digital breathalyser supplied by Autobarn that the product met an Australian standard for personal alcohol testing devices, when it did not, considered likely to mislead or deceive.

**Undertaking** | Autobarn Pty Ltd has provided court enforceable undertakings to:

- > cease to engage in similar conduct in the future
- > publish corrective notices in national newspapers and in store
- > provide refunds to customers in certain circumstances
- > establish, implement and maintain a trade practices compliance program for three years, to minimise the risk of future breaches of the Act.

**Significance** | descriptions of goods and services must be accurate to prevent consumers from being misled.

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**Property development****Graeme Angus Ingles and the Ingles Group (Qld) Pty Ltd**

Brisbane | 5 September 2008

**Conduct** | representations made to residents and potential purchasers as to the status of the council approval and otherwise to the progress of the construction of the golf course at a residential golf course community, considered to be likely to mislead or deceive consumers.

**Background** | undertaking ancillary to court proceedings.

**Undertaking** | Graeme Angus Ingles and the Ingles Group (Qld) Pty Ltd have provided court enforceable undertakings to:

- > place corrective notices in the *Gold Coast Bulletin* newspaper and on its websites
- > place a notice on its websites advising of the progress of the construction of the golf course on a quarterly basis
- > mail out a notice to residents of the estate advising of the progress of the construction of the golf course on a quarterly basis
- > establish, implement and maintain a trade practices compliance program for five years, to minimise the risk of future breaches of Part V of the Act.

**Significance** | information used to market goods and services must be accurate to prevent consumers from being misled.

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**Seafood retail****Austrimi Seafoods Pty Ltd**

Sydney | 16 September 2008

**Conduct** | packaging of a 'Kalamari' product which gave an impression the product was made predominately of calamari or squid whereas the ingredients list stated it contained only 4 per cent squid, considered to be likely to mislead or deceive consumers.

**Undertaking** | Austrimi Seafoods Pty Ltd has provided court enforceable undertakings to:

- > refrain from supplying the product in its current packaging
- > refrain from using the name 'Kalamari' in relation to the product
- > refrain from supplying seafood products in packaging and/or with labelling that conveys an overall impression that the product consists mainly of, or includes a not insubstantial proportion of, a particular seafood ingredient when this is not the case

- > place a corrective notice on its website
- > use its best endeavours to have its retail customers place corrective notices at point of sale for a period of 28 days
- > implement a trade practices compliance program.

**Significance** | product descriptions should be accurate to prevent consumers from being misled.

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#### Small appliances

#### GAF Control (Sales) Pty Ltd

Melbourne | 6 May 2009

**Conduct** | representations on warranty cards in small appliances supplied by GAF Control, considered likely to mislead or deceive consumers about their statutory warranty rights.

**Undertaking** | GAF Control (Sales) Pty Ltd has provided court enforceable undertakings to:

- > refrain from making false or misleading representations concerning the existence, exclusion or effect of any condition, warranty, right or remedy implied by the Act
- > replace its warranty cards by 1 July 2009
- > send a letter to retailers of its small electrical appliances enclosing the new warranty card
- > place a notice on its website informing consumers about the misrepresentations on its warranty card
- > implement a trade practices compliance program for GAF employees and other persons involved in its business.

**Significance** | retailers must not mislead consumers about their warranty rights.

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#### Soft drink

#### Coca-Cola South Pacific Pty Ltd

Canberra | 2 April 2009

**Conduct** | publication of an advertisement entitled, 'Kerry Armstrong on motherhood and myth-busting' aimed at discrediting certain health concerns that consumers associate with Coca-Cola. The advertisement was considered likely to mislead or deceive consumers.

**Undertaking** | Coca-Cola South Pacific Pty Ltd has provided court enforceable undertakings to:

- > publish the correct advertisement to the same presentation standard as the original advertisement, including page location and advertisement sizing
- > ensure, for a period of three years, that it will not make the claims that:
  - > consumption of Coca-Cola cannot contribute to weight gain, unless that claim can be substantiated

- > consumption of Coca-Cola cannot contribute to tooth decay or that tooth decay is declining globally, unless the particular claim made can be substantiated
- > 250 ml of the Coca-Cola product bearing the brand name Diet Coca-Cola contains only one half of the amount of caffeine as that contained in a cup of tea, without further qualification, unless that claim can be substantiated
- > instruct a law firm with trade practices expertise, or a suitable professional with trade practice compliance experience and expertise, to undertake a review of Coca-Cola South Pacific Pty Ltd's procedures, as they relate to the application of Part V of the Act to advertising and promotional material for Coca-Cola products
- > provide a report to the ACCC in respect of the review and the implementation of any recommendations, with Coca-Cola South Pacific Pty Ltd to use its best endeavours to provide the report to the ACCC within six months of the undertaking coming into effect.

**Significance** | information used to market goods and services must avoid the potential to mislead consumers.

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**Sports compression garments**

**Fuller, Jaimie Royston**

Adelaide | 25 May 2009

**Conduct** | misleading and deceptive conduct in the retail sports goods industry by Skins Compression Garments Pty Ltd.

**Background** | undertaking ancillary to court proceedings.

**Undertaking** | Mr Fuller has given court enforceable undertakings to:

- > attend trade practices compliance training.

**Significance** | misleading advertising affects consumers and damages businesses advertising within the law.

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**Sunglasses**
**Busby Distribution Pty Ltd, trading as Aldo Australia**

Melbourne | 29 July 2008

**Conduct** | supply of sunglasses which did not comply with the relevant mandatory consumer product safety standard.

**Undertaking** | Busby Distribution Pty Ltd has provided court enforceable undertakings to:

- > ensure sunglasses supplied by it that are subject to a mandatory safety and/or information standard prescribed under the Act comply with the relevant standard
- > obtain compliance certificates, or otherwise seek assurance, from Busby's suppliers or through engaging independent testing from an accredited testing agency that sunglasses supplied to Busby comply with any applicable mandatory safety and/or information standard prescribed under the Act
- > implement procedures to ensure display and sales stock of sunglasses are appropriately labelled
- > implement a trade practices compliance program to minimise the risk of future breaches of Part V of the Act.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Tobacco products—retailing**
**Raktos Distribution Services Pty Ltd and others**

Sydney | 16 September 2008

**Conduct** | supply of tobacco products which did not comply with the tobacco labelling requirements prescribed by the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004.

**Undertaking** | Raktos Distribution Services Pty Ltd, Alla Arraf, Esam Arraf, Naffa Arraf and Eddie Saba have provided court enforceable undertakings to:

- > refrain from supplying tobacco products which do not comply with the tobacco regulations which are in force at any particular time
- > remove non-complying tobacco products from sale
- > offer a full refund of the purchase price or replacement tobacco products to retailers who bought non-complying tobacco products from Raktos or its directors
- > implement and maintain a trade practices law compliance program.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Tobacco products—  
retailing****Thompson, Colin Richard**

Darwin | 28 April 2009

**Conduct** | supply of retail tobacco products which did not comply with the prescribed consumer product information standards for the labelling of tobacco products.

**Undertaking** | Colin Thompson has provided court enforceable undertakings to:

- > refrain from supplying retail tobacco products where the consumer product information, as prescribed by the regulations, is in any way obscured
- > comply with any consumer product information standard relating to retail tobacco products as prescribed
- > prominently display three 'Quitline' posters of A3 size in any retail outlet from which he supplies retail tobacco products.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Vehicle jacks****Clyde-Apac Automotive Products Pty Ltd**

Melbourne | 14 November 2008

**Conduct** | supply of caravan/trailer jacks which were not marked with their nominated capacity as required by the mandatory consumer product safety standard for vehicle jacks, and false or misleading representations in relation to compliance with the 2007 standard.

**Undertaking** | Clyde-Apac Automotive Products Pty Ltd has provided court enforceable undertakings to:

- > refrain from representing that any good subject to a mandatory consumer product safety standard that it supplies complies with the standard, and supply or offer to supply the good when it does not comply with the standard
- > implement and maintain a trade practices compliance program.

**Significance** | compliance with mandatory product safety standards is essential to ensure the safety of consumers.

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**Water cooler**
**Awesome Water Pty Ltd**

Melbourne | 23 December 2008

**Conduct** | conduct revealed potential non-compliance with the Trade Practices Act in the documentation provided by Awesome Water to franchisees; the adequacy of disclosure documents; the income level guarantee; representations concerning franchisee income and working hours; and the process relative to seeking independent legal, accounting and business advice by prospective franchisees.

**Undertaking** | Awesome Water Pty Ltd has provided court enforceable undertakings to:

- > continue to provide current and prospective franchisees of Awesome Water with disclosure documents which comply with the Franchising Code of Conduct
- > refrain from entering into a franchise agreement with a prospective franchisee unless Awesome Water has received a signed statement that the prospective franchisee has received appropriate independent advice or been advised to seek such advice but has chosen not to
- > ensure that its employees, agents and officers are aware that all verbal representations or information provided in addition to the disclosure documents to prospective franchisees are true and accurate
- > ensure that all representations concerning prospective franchisees' income are based upon actual performances of other full-time franchisees over a 12-month period
- > implement a trade practices compliance program.

**Significance** | disclosure documents and information provided to prospective franchisees must be accurate.

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**Woollen blankets****Creswick Woollen Mills Pty Ltd**

Hobart | 18 December 2008

**Conduct** | false or misleading Australian origin claims for merino wool blankets, including the display of the official 'Australian made' logo. In the ACCC's view, substantial transformation of Creswick's merino wool blankets did not take place in Australia.

**Undertaking** | Creswick Woollen Mills Pty Ltd has provided court enforceable undertakings to:

- > refrain from representing that its merino wool blankets are made in Australia unless it has first established that the goods meet the test for country of origin claims (s. 65AB)
- > amend the packaging and labelling of its merino wool blankets to remove all 'Australian made' claims
- > remove from its website and promotional material any representations that make reference to the Australian origin of its merino wool blankets
- > instruct its retailers to remove all 'Australian made' claims from the packaging of Creswick merino wool blankets that the retailers currently have in stock
- > publish an ACCC approved corrective notice on its website for three months and in major capital city newspapers
- > undertake a trade practices education and training course.

**Significance** | accurate country of origin claims are relied upon by consumers and must conform with the requirements of the Trade Practices Act.

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**Woollen blankets****Waverley Woollen Mills Pty Ltd**

Hobart | 29 May 2009

**Conduct** | false or misleading 'product of Australia' labelling on casual jumpers woven in Vietnam and sold at its factory outlet.

**Undertaking** | Waverley Woollen Mills Pty Ltd has provided court enforceable undertakings to:

- > not represent its products are products of Australia unless it has first established the goods meet the test for country of origin claims
- > publish an ACCC approved corrective notice on its website and in local newspaper
- > undertake trade practices compliance training.

**Significance** | accurate country of origin claims are relied upon by consumers and must conform with the requirements of the Trade Practices Act.

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# Appendix 9

## Mergers matters during 2008–09—some major assessments

### Vodafone Group plc and Hutchison 3G Australia Pty Limited—proposed merger of Australian mobile operations

**Result** | proposed merger not opposed.

**Summary** | on 29 May 2009, the ACCC decided not to oppose the proposed merger.

On 11 February 2009 the ACCC commenced a public informal review of the proposal for Vodafone and Hutchison to merge their Australian telecommunications businesses into a joint venture company, in which each party would acquire a 50 per cent interest. Vodafone and Hutchison are mobile network operators and their services include the retail supply of mobile telecommunications services, including mobile telephony and mobile broadband services.

After a comprehensive review, including an examination of internal strategy documents from Vodafone, Hutchison and their competitors, the ACCC formed the view that the proposed merger was not likely to substantially lessen competition in the relevant markets. The relevant markets were considered to be:

- > national markets for the supply of:
  - > retail telecommunications services (including mobile telephony services and mobile broadband)
  - > mobile terminating access services
  - > roaming services
  - > wholesale mobile services for the purposes of resale to retail customers
- > national markets for the acquisition of:
  - > 3G mobile and internet content
  - > transmission capacity services.

The ACCC's inquiries revealed that Hutchison had been a vigorous and effective competitor in the retail market for mobile telephony and mobile broadband. Hutchison often held the price leadership 'mantle' and was an innovator in this market. The role of Vodafone for competition in the market was also important. Without the merger, price competition was likely to continue. With the merger, there was likely to be reduced pricing pressure in the market. However, the ACCC also considered evidence suggesting that current pricing levels were not sustainable going forward.

The ACCC considered a substantial amount of evidence which indicated that Hutchison and Vodafone, on an individual basis, are unlikely to continue to make the investments in their networks that are necessary for the delivery of 'bandwidth hungry' mobile broadband

services. With the merger, the merged entity has an increased incentive to make the investments given it will have the benefits of scale.

An examination of industry trends and information obtained from the four mobile network operators shows that a competitive offering in both mobile telephony and mobile broadband may be necessary going forward. This is because:

- > revenue growth for voice has tapered off and the main source of future revenue growth is data-related, particularly mobile broadband data
- > economies can be achieved from jointly supplying voice and data services
- > there will be further convergence between voice and data on newer mobile handsets as well as increased bundling of mobile telephony and mobile broadband.

On this basis, it was found that the likely state of competition if the merger occurred would not be substantially lower than the state of competition if the merger did not occur. In particular, without the merger, Vodafone and Hutchison will remain competitive on price but are likely to slowly suffer competitively as Telstra and Optus continue to widen the 'quality gap'. With the merger, the overall level of pricing pressure in the industry is likely to decrease, but the merged entity will also attempt to close the gap leading to an increase in infrastructure-based competition. An important consideration was that prices were likely to rise to some degree without the merger in the longer term.

Therefore, the ACCC concluded the proposed acquisition was unlikely to substantially lessen competition under s. 50 of the Trade Practices Act.

On 24 June 2009 a public competition assessment was released on the ACCC's website.

### **Chinalco (Aluminium Corporation of China)—proposed acquisition of interests in Rio Tinto plc and Rio Tinto Ltd**

**Result** | proposed acquisition not opposed.

**Summary** | on 25 March 2009 the ACCC decided not to oppose the proposed acquisition.

Chinalco proposed to acquire interests in relation to Rio Tinto's iron ore, bauxite, alumina, aluminium and copper assets, in addition to a potential increased equity interest of up to 18 per cent in the Rio Tinto parent entity.

The ACCC noted the potential overlap between Rio Tinto's Australian bauxite and alumina operations, and Chinalco's interest, via subsidiary Chalco, in the potential development of a bauxite mine and alumina refinery (and associated infrastructure) in Australia. The ACCC also considered whether the proposed transaction would have competitive implications in relation to iron ore.

The ACCC considered the proposed acquisition in the context of:

- > regional markets for the supply of bauxite
- > national markets for the supply of smelter grade alumina and primary aluminium
- > the global seaborne supply of iron ore lump
- > the global seaborne supply of iron ore fines
- > the national (Australian) supply of iron ore lump
- > the national (Australian) supply of iron ore fines.

The ACCC found that there was limited direct competitive overlap of the operations of Rio Tinto and Chinalco in markets within Australia for the supply of bauxite, copper, and alumina, and therefore that the proposed acquisition would be unlikely to result in a substantial lessening of competition in these markets.

With regard to the likely effect on competition from the proposed acquisition in relation to iron ore, the ACCC considered the potential for vertical integration between Rio Tinto's Australian iron ore operations and Chinese steel makers, based on the working assumption that Chinalco and various steel makers are subsidiaries of the same parent entity and therefore may have common commercial interests. The ACCC examined whether such vertical integration could provide Chinalco with the ability to control or influence Rio Tinto to decrease global iron ore prices below competitive levels to the benefit of Chinese steel makers.

On the basis of information provided to the ACCC during its review and the ACCC's recent detailed investigation of the proposed acquisition of Rio Tinto by BHP Billiton, the ACCC concluded that Chinalco and Rio Tinto would be unlikely to have the ability to unilaterally decrease global iron ore prices below competitive levels. Given this conclusion, it was not necessary for the ACCC to reach a determinative view on the extent to which Chinalco could control and influence Rio Tinto.

Therefore, the ACCC concluded the proposed acquisition was unlikely to substantially lessen competition under s. 50 of the Act.

On 25 March 2009 a public competition assessment was released on the ACCC's website.

### **P & M Quality Smallgoods Pty Ltd (Primo)—proposed acquisition of Hans Continental Smallgoods Pty Ltd**

**Result** | proposed acquisition not opposed.

**Summary** | on 18 February 2009 the ACCC decided not to oppose the proposed acquisition.

Primo proposed to acquire certain assets of Hans Continental Smallgoods from Japan Tobacco Inc. The assets acquired included the majority of the smallgoods operation and brands, including certain inventory and equipment located at the Blacktown manufacturing facility. The acquisition did not include the Hans Fresh business (which supplies fresh pork), the Blacktown manufacturing facility, or the Swickers (Qld) abattoir and associated pig-growing operations.

The ACCC considered the proposed acquisition in the context of a national market for the manufacture and supply of smallgoods.

The ACCC considered that large-scale national manufacturers of smallgoods competed vigorously to supply smallgoods to large customers including supermarkets, large distributors and other large national customers. The proposed acquisition would reduce the number of large-scale manufacturers capable of competitively supplying these customers from three to two.

However, the ACCC found that, due to its financial position, without the proposed acquisition it was likely that the Hans business would shut down, and would not be sold as a going concern or as a whole. Further the ACCC concluded that in the event that the assets were sold following the closure of Hans, while some assets might remain in the industry, it was unlikely that this would provide an actual or potential competitive constraint.

Therefore, comparing the proposed acquisition with the likely outcome without the acquisition, namely a shut-down of the Hans business and subsequent sale of its assets, the ACCC formed the view that the proposed acquisition of Hans Continental Smallgoods Pty Ltd by P & M Quality Smallgoods Pty Ltd would not be likely to result in a substantial lessening of competition in any market in contravention of s. 50 of the Act.

Notably, this review was one of the first cases in a long time where a failing firm argument (more specifically, the fact that due to the business's imminent failure, the competition provided by Hans was likely to be lost with or without the acquisition) was determinative of the clearance.

On 13 March 2009 a public competition assessment was released on the ACCC's website.

### **Baiada Poultry Pty Ltd—proposed acquisition of Bartter Enterprises Pty Ltd**

**Result** | proposed acquisition opposed.

**Summary** | on 11 February 2009, the ACCC decided to oppose the proposed acquisition.

Baiada Poultry (Baiada) proposed to acquire Bartter Enterprises (Bartter). The ACCC formed the view that the proposed acquisition was likely to substantially lessen competition in markets for the wholesale supply of processed chicken meat.

The ACCC's investigation indicated that three large national chicken processors—Baiada, Bartter and Ingham—currently supply the vast majority of processed chicken to large-volume buyers and are the closest competitors of each other.

Fast food restaurants (also known as quick service restaurants) comprise a large group of customers that are heavily reliant upon the three national processors for the supply of high volumes of processed chicken meat. The ACCC concluded that the smaller processors in the market face high barriers to expansion, and as such are unlikely to be capable of imposing an effective competitive constraint upon the merged entity.

Therefore, the ACCC concluded that the proposed acquisition would be likely to result in a substantial lessening of competition, with effects on prices for the fast food restaurants and their consumers.

On 27 February 2009 a public competition assessment was released on the ACCC's website.

Subsequent to the ACCC's decision, on 9 April 2009 Baiada offered a proposed undertaking under s. 87B of the Act to address the ACCC's competition concerns.

Under the proposed undertaking, Baiada, upon acquiring Bartter, will simultaneously divest all assets currently owned by Bartter in Victoria to La Ionica Poultry (La Ionica). The assets to be divested include Bartter's Geelong processing plant, associated breeding farms and hatcheries and Bartter's North Melbourne feed mill. The proposed undertaking commits Baiada to the divestiture of certain assets as a condition to the proposed acquisition proceeding.

La Ionica operates a chicken processing facility in Thomastown Victoria and is a major supplier of whole dressed birds to customers, predominantly in Victoria.

The proposed undertaking was accepted by the ACCC on 30 June 2009 and, on the basis of the divestitures, the ACCC rescinded its opposition to the merger.

### **Commonwealth Bank of Australia—proposed acquisition of BankWest and St Andrew's Australia**

**Result** | proposed acquisition not opposed.

**Summary** | on 10 December 2008 the ACCC decided not to oppose the proposed acquisition.

On 8 October 2008 the Commonwealth Bank of Australia (CBA) announced its proposal to acquire the Bank of Western Australia Ltd (BankWest) and St Andrew's Australia Pty Ltd. CBA executed a sale and purchase agreement with UK-based HBOS, the parent



company of BankWest and St Andrew's. The sale and purchase agreement was subject to regulatory approval by the ACCC.

On 20 October 2008 the ACCC commenced its review of the proposed acquisition upon receiving a submission from CBA. A range of interested parties provided responses to the ACCC including competitors, industry and consumer associations, mortgage brokers and interested third parties. The ACCC also held discussions and requested information from a range of parties regarding the likely future of BankWest if the acquisition did not proceed. These included the merger parties, HBOS and Lloyds TSB, Australian regulators and other possible buyers of the BankWest business.

After a comprehensive review, including an examination of internal strategy documents from both BankWest and HBOS, the ACCC formed the view that the proposed acquisition was unlikely to substantially lessen competition in the relevant markets. The relevant markets were considered to be:

- > national markets for the supply of savings/term products, home loans, personal loans and credit cards
- > local markets for the supply of transaction accounts, SME banking and agribusiness banking (with national price competition).

The ACCC's inquiries revealed that BankWest had been a vigorous and effective competitor in some national retail banking markets, particularly the home loan and savings/term products markets. However, after extensive market inquiries and analysis, the ACCC considered that, in the event that the merger did not proceed, BankWest would not continue to be aggressive in its pricing, product offering and expansion plans. On this basis, it was found that the likely state of competition if the merger occurred would not be substantially lower than the state of competition if the merger did not occur. However, in the absence of the global financial crisis, and the funding difficulties faced by BankWest's overseas parent company, the ACCC's conclusion may have been different regarding these issues.

In transaction account markets, the ACCC found that the key element of competition at the local level was the existence of a physical presence (branches and ATMs). The ACCC therefore explored the impact of the acquisition on consumer choice based on the local markets for transaction accounts. The ACCC found that there was minimal aggregation in local markets outside of Western Australia. In metropolitan Perth, the ACCC also found that consumers would retain a number of choices after the acquisition, including ANZ and Westpac, both with a significant branch and ATM presence, and, to a lesser extent, NAB and Bendigo. Similarly, in regional areas, in each of the towns where there is aggregation arising from the transaction, the ACCC noted that there is at least one other major financial institution with a branch and ATM presence.

In SME and agribusiness banking markets, the ACCC considered that a number of other competitors would remain as competitors to the merged entity post acquisition.

On 10 December 2008 a public competition assessment was released on the ACCC's website.

### **WPP Group—proposed acquisition of Taylor Nelson Sofres plc**

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

**Summary** | on 8 October 2008, the ACCC decided not to oppose the proposed acquisition after accepting court enforceable undertakings.

WPP Group proposed to acquire Taylor Nelson Sofres (TNS). The ACCC formed the view that the proposed acquisition, absent any undertaking, was likely to raise competition

concerns in the national market for the provision of television audience measurement (TAM) services.

The ACCC considered that these concerns were likely to arise because, post acquisition, the merged entity was likely to be the only significant provider capable of providing TAM services in Australia, and barriers to entry were considered to be high.

The proposed acquisition was also reviewed by the European Commission, which provided clearance on the basis of divestiture commitments from WPP.

The ACCC considered that divestiture undertakings offered by WPP were likely to alleviate its concerns. WPP offered to divest the TAM assets of TNS (which is a potential supplier to Australia) or sell its 50 per cent stake in the AGB Nielsen JV (which is the incumbent supplier of TAM services in Australia). The ACCC considered that the divestiture undertakings were likely to create a viable stand-alone competitor able to compete for TAM contracts in Australia, and able to constrain the WPP in their pricing and quality decisions in the provision of TAM services.

On 7 November 2008 a public competition assessment was released on the ACCC's website.

### **Flinders Ports Holdings Pty Ltd—proposed joint venture with DP World (SA) Pty Ltd**

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

**Summary** | on 9 September 2008, the ACCC decided not to oppose the acquisition after accepting court enforceable undertakings.

Flinders Ports Holdings Pty Ltd and DP World (SA) Pty Ltd proposed a joint venture where Flinders Ports and DP World (SA) would become shareholders in an entity called Adelaide Container Terminals (ACT), which would be granted a right to conduct container stevedoring at the container terminal until 30 April 2039.

Flinders Ports is responsible for the development, management and operation of Port Adelaide. DP World (SA) is the incumbent container stevedoring operator of the container terminal under an operating agreement with Flinders Ports until 30 April 2014.

Following market inquiries and through a statement of issues released in relation to the proposed joint venture, the ACCC was concerned that Flinders Ports, through its dual role as port manager and co-owner of the incumbent container stevedore, would have the incentive and ability to prevent prospective container stevedores from developing another terminal at Port Adelaide to serve growth in container traffic in the future.

Post transaction, Flinders Ports would be responsible for allocating the necessary land and licences for container stevedoring at Port Adelaide to parties that are also its potential competitors, giving rise to a potential conflict of interest with respect to future competition at the port.

The ACCC took into account submissions that suggested that container traffic may not grow to a level to support the development of a second container terminal at Port Adelaide for some years to come. However, the ACCC's investigation indicated that new entry was still likely to occur within the 30-year term of the joint venture, and that, in the absence of the undertakings, Flinders Ports would have the ability and incentive to prevent competition during this period.

Flinders Ports offered a s. 87B undertaking to address the ACCC's concerns. A key requirement of the undertaking was that Flinders Ports would not allocate certain land and licences at Port Adelaide until the ACCC had reviewed the impact on competition.

The ACCC concluded that the undertaking adequately addressed its competition concerns that the proposed joint venture would increase barriers to entry in the market for the supply of container stevedoring services at Port Adelaide. It ensures that the process used by Flinders Ports to allocate the necessary inputs for container stevedoring is transparent, and subject to review by the ACCC, whilst not impeding necessary investment in the existing container terminal.

The ACCC also concluded that the proposed joint venture would be unlikely to substantially lessen competition in markets for the supply of landside logistics, and the allocation of an exclusive licence to conduct container stevedoring at Port Adelaide. However, the ACCC did not conclusively define these markets.

Therefore, the ACCC concluded that the proposed acquisition, subject to the court enforceable undertaking, would be unlikely to substantially lessen competition in the relevant markets.

On 24 September 2008 a public competition assessment was released on the ACCC's website.

### **Westpac Banking Corporation—proposed acquisition of St George Bank Limited**

**Result** | proposed acquisition not opposed.

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

Westpac Banking Corporation proposed to acquire St George Bank Limited. The ACCC published a statement of issues on 23 July 2008, which identified the aggregation of the BT (Westpac) and Asgard (St George) wrap platforms as a preliminary competition concern. All other areas of aggregation arising from the transaction were noted as unlikely to raise concerns.

After a comprehensive review, including an examination of internal pricing documents and board papers, the ACCC formed the view that the proposed acquisition was unlikely to substantially lessen competition in the relevant markets, namely:

- > the national markets for the supply of deposit/term products, home loans, personal loans, credit cards, hybrid personal loans and equipment finance
- > the local markets for the supply of transaction accounts, SME banking and agribusiness banking (with national price competition)
- > the markets for the supply of corporate and institutional banking services
- > the markets for the supply of insurance products
- > the markets for the supply of:
  - > wholesale funds management
  - > multi-manager investments
  - > retail (wrap and master trust) platforms
  - > financial advice from licensed financial planners
  - > non-advisory stockbroking services.

In retail banking markets, the ACCC concluded that the level of aggregation arising from this transaction was relatively limited and a number of competitors—the other three majors, regional banks, credit unions and building societies, and other niche players—would pose a constraint on the merged entity post acquisition. While the ACCC considered barriers to national entry to be high, and apparently even more significant

for branch-centric products, St George was not found to be a particularly vigorous and effective competitor.

In the market for the supply of retail platforms, the ACCC found that a number of strong competitors including other wrap platforms as well as a number of master trust platforms would remain post acquisition. The ACCC further considers that the highly dynamic and technology driven nature of this market means that new competitive threats are likely to emerge in any case, as is already evident in the availability of SMA products.

In all other relevant markets, the ACCC found that there will remain a number of strong competitors post acquisition.

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

On 13 August 2008 a public competition assessment was released on the ACCC's website.

### **National Foods Limited and Warrnambool Cheese and Butter Factory Company Holdings Limited—proposed acquisition of Australian Co-operative Foods Limited (Dairy Farmers)**

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

**Summary** | on 24 July 2008, the ACCC decided not to oppose the proposed acquisition after accepting court enforceable undertakings.

National Foods and Warrnambool Cheese and Butter Factory Company proposed to acquire Australian Co-operative Foods Limited. The ACCC formed the view that the proposed acquisition, absent the undertaking, was likely to raise competition concerns in the New South Wales and South Australian markets for the wholesale of fresh white milk and flavoured milk and in the central New South Wales and South Australian markets for the acquisition of raw milk.

The ACCC considered that these concerns were likely to arise because, post acquisition, the merged entity was likely to be the only significant seller or acquirer of these products in the relevant state or regional markets, and barriers to entry were considered to be high.

The ACCC considered that divestiture undertakings offered by National Foods were likely to alleviate these concerns. National Foods offered to divest milk processing and distribution assets for fresh white and flavoured milk in New South Wales and South Australia and brands in these states. The ACCC considered that the divestiture undertakings were likely to create a viable stand-alone competitor able to compete for private label contracts and in the provision of branded fresh white and flavoured milks in New South Wales and South Australia, and able to constrain the merger / joint venture parties in their pricing decisions in the acquisition of raw milk.

On 19 September 2008 a public competition assessment was released on the ACCC's website.

# Appendix 10

## Authorisations and notifications during 2008–09—some significant decisions

### Authorisations

#### Selected authorisation final decisions

In 2008–09 the ACCC was asked to make a number of significant decisions relating to authorisation matters.

Collective bargaining arrangements continue to make up a large proportion of decisions. Over the past year ACCC authorisation has enabled collective bargaining arrangements between hoteliers, lottery agents, newsagents, earthmoving contractors and medical practitioners, among others.

Authorisation decisions were also made in respect of a wide range of industries including the agricultural sector, finance and insurance, health services and retailing.

#### Agricultural sector

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##### Dairy Farmers Milk Co-op and Australian Co-operative Foods Limited A91089

**Result** | 22 October 2008 | authorisation granted for a period of five years.

**Background** | authorisation sought for back-to-back milk purchasing and back-to-back pricing arrangements. These arrangements, in broad terms, formed part of the agreements entered into for the sale of Australian Co-operative Foods to National Foods Limited.

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##### AgStewardship Australia Limited A91105

**Result** | 21 January 2009 | authorisation granted for a period of five years.

**Background** | authorisation sought on behalf of the proposed signatories of the industry waste reduction scheme (IWRS) to impose a 4c levy per litre/kilogram on manufacturers and suppliers of agricultural and veterinary (AgVet) chemicals. The IWRS incorporates the drumMUSTER and ChemClear programs, which provide for the collection of unwanted empty AgVet chemical containers.

## Aviation

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### International Air Transport Association A91083

**Result** | 28 August 2008 | authorisation granted until 31 March 2009 (transitional arrangements) and 31 July 2013 (ongoing arrangements).

**Background** | authorisation sought for a new system of interline fares to replace that of the IATA passenger tariff coordination conferences. Authorisation also sought for transitional arrangements.

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### Air New Zealand Limited and Air Canada A91097 and A91098

**Result** | 21 January 2009 | authorisation denied.

**Background** | authorisation sought to give effect to a cooperation agreement to jointly promote and sell direct flights between Sydney and Vancouver, and Auckland and Vancouver. The applicants proposed to pool and share the revenue from specified flights. The cooperation agreement also provided for the applicants to harmonise sales policies, including the ability to set specific fare levels or agree to implement occasional tactical fares to stimulate additional demand.

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## Employment services

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### Job Futures Limited A91084 and A91085

**Result** | 18 September 2008 | authorisation granted until 30 June 2015.

**Background** | authorisation sought for an arrangement between its members (both current and future) to permit Job Futures to:

- > tender on behalf of members for government contracts to provide employment services
  - > develop cooperative tendering arrangements which include agreements as to the price that will be tendered and the price paid for services provided by members to Job Futures, and agreements as to the territories in which members and Job Futures will tender to deliver services.
- 

### Recruitment and Consulting Services Association Limited A91102

**Result** | 21 January 2009 | authorisation granted for a period of five years.

**Background** | authorisation sought to make a contract, arrangement or understanding by which participants agree to adhere to a code for professional practice, administered in accordance with the RCSCA's constitution and its disciplinary and dispute resolution procedures.

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## Energy sector

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### Powercor Australia Limited A91114–A91116

**Result** | 23 April 2009 | authorisation granted for a period of five years.

**Background** | authorisation sought for a proposal to require all civil contractors undertaking network electricity infrastructure works, whether employed by the applicants or third parties, to meet accreditation standards set by the applicants.

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## Finance sector

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### Mortgage and Finance Association of Australia A91118

**Result** | 27 May 2009 | authorisation granted on condition for a period of five years.

**Background** | authorisation sought for the MFAA's disciplinary rules which are part of the regime governing the conduct of MFAA members.

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### Cashcard Australia Limited and Bank of China (Australia) Limited A91119

**Result** | 4 June 2009 | authorisation granted for a period of five years.

**Background** | authorisation sought for an unincorporated joint venture to establish, market and promote a sub-network of automatic teller machines owned and developed by the applicants and any future members of the network. The applicants propose that members of the network will agree not to directly charge cardholders of other members of the network for transactions undertaken at any ATMs owned by the member.

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## Health services

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### Australian Medical Association (NSW) Limited A91088

**Result** | 13 August 2008 | authorisation granted for a period of five years.

**Background** | authorisation sought to collectively negotiate with NSW Health and public health organisations in New South Wales the terms and conditions (including but not limited to remuneration) of visiting medical officer contracts in the New South Wales public hospital system.

---

### CALMS Ltd A91092

**Result** | 15 October 2008 | authorisation granted on condition for a period of three years.

**Background** | authorisation sought for the use of a 'not to exceed' fee schedule (capped fee arrangement) for the provision of after-hours primary medical care in the Australian Capital Territory.

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### Australian Dental Association A91094 and A91095

**Result** | 10 December 2008 | authorisation granted until 28 February 2013.

**Background** | authorisation sought for the making of or giving effect to contracts, arrangements or understandings between two or more dentists and/or dental specialists who practice in a shared practice as to fees to be charged for dental services provided in the practice. The agreements relate to the fees to be charged for dental services provided within shared practices which operate as a team and share patient records, common facilities, a common trading name and common policies and procedures.

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### Australian Medical Association Limited and others A91100

**Result** | 10 December 2008 | authorisation granted until 28 February 2014.

**Background** | authorisation sought to collectively negotiate with relevant state/territory health departments the terms of contracts (including fees) for rural general practitioners providing services as visiting medical officers in public hospitals and health facilities in rural and remote areas of Australia (except New South Wales).

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### Saint Vincent's Health Australia Ltd A91099

**Result** | 28 January 2009 | authorisation granted in part for a period of five years.

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**Background** | authorisation sought for a network of Catholic health facilities for proposed collective bargaining and information-sharing arrangements. Authorisation for a proposed collective boycott was denied.

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#### Australasian College of Cosmetic Surgery A91106

**Result** | 18 June 2009 | authorisation granted on condition for a period of three years.

**Background** | authorisation sought for the ACCS code of practice and parts of ACCS by-laws. The code of practice and relevant by-laws contain advertising guidelines and guidelines for informed consent as well as processes for dealing with complaints under the code of practice.

### Gaming industry

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#### Lottery Agents Queensland Ltd A91101

**Result** | 19 November 2008 | authorisation granted for a period of five years.

**Background** | authorisation sought to collectively negotiate on behalf of members the terms and conditions of agency agreements and arrangements with Golden Casket Lottery Corporation.

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#### TAB Agents' Association of New South Wales A91125

**Result** | 26 June 2009 | authorisation granted for a period of five years.

**Background** | authorisation sought to collectively negotiate on behalf of current and future members of the association with Tabcorp (or any entity which holds the licence to conduct an off-course totalizator for the purposes of s. 12 of the Totalizator Act).

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#### Lottery Agents Association of Victoria Inc A91126

**Result** | 3 June 2009 | authorisation granted for a period of five years.

**Background** | authorisation sought to collectively negotiate on behalf of itself and its members the terms and conditions of retailer agreements and arrangements with Tattersall's Sweeps Pty Ltd and Intralot Australia Pty Ltd.

### Hotel industry

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#### Australian Hotels Association A90987

**Result** | 12 November 2008 | authorisation granted.

**Background** | authorisation of proposed minor variations sought to add the New South Wales Division of the AHA and its nominated targets, Tabcorp Holdings Limited and Sky Channel Pty Ltd, to the previously authorised arrangements.

### Independent contractors

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#### CEMEX Australia Pty Limited A91082

**Result** | 2 July 2008 | authorisation granted until 30 June 2013.

**Background** | authorisation sought for a cartage allocation system for concrete carriers in Western Australia (known as the EOT system). On a rolling 12-month basis, the system ensures that each carrier receives an even amount (within the specified margin of the Western Australian fleet average) of work from CEMEX.



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### Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland A91103

**Result** | 26 March 2009 | authorisation granted for a period of five years.

**Background** | authorisation sought for current and future owner-driver members to collectively negotiate with earthmoving contractors in relation to the terms, prices and conditions of the earthmoving services provided by the owner-drivers to the earthmoving contractors in the commercial and civil construction sectors in south-east Queensland.

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### Information Technology Contract and Recruitment Association A91063

**Result** | 3 June 2009 | authorisation denied.

**Background** | authorisation of proposed minor variations sought to alter the ITCRA code of conduct in relation to the provisions relating to contractor transitioning.

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## Infrastructure

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### Port Waratah Coal Services Limited and others A91110–A91112

**Result** | 13 May 2009 | authorisation granted until 30 June 2009.

**Background** | authorisation sought to extend the operation of a capacity-balancing system—the stage 1 allocation system—at the Port of Newcastle while the industry developed and implemented a long-term solution to ongoing capacity issues in the Hunter Valley. Authorisation was sought for the period 1 January 2009 to 30 June 2009.

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## Insurance

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### Insurance Council of Australia Limited A91086

**Result** | 3 September 2008 | authorisation denied.

**Background** | authorisation sought for an agreement between its members (both present and future) to voluntarily adopt a common definition of ‘inland flood’.

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## Local government

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### Central Queensland Local Government Association A91087

**Result** | 13 August 2008 | authorisation granted until 31 December 2018.

**Background** | authorisation sought for a collective tender process for the provision of waste and recyclables collection and processing from all residential premises in the combined local government areas of Rockhampton, Gladstone, Central Highlands and Isaac.

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### Council of Municipality of Ashfield and others A91096

**Result** | 29 October 2008 | authorisation granted until 31 January 2020.

**Background** | authorisation sought to jointly tender and contract for the services of a contractor or contractors deemed suitable to provide regional transfer, processing and disposal of food and garden organics, and the marketing and sale of any material or products derived from that transfer or processing in the respective local government areas.

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## Newsagency sector

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### Queensland Newsagents Federation Ltd A91117

**Result** | 22 April 2009 | authorisation granted on condition for a period of five years.

**Background** | authorisation sought to collectively negotiate on behalf of members with newspaper and magazine publishers and distributors. Authorisation also sought to allow participation in the collective negotiations by newsagents or groups of newsagents who are not members of the associations.

## Retailing

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### Myer Pty Ltd A91091

**Result** | 3 September 2008 | authorisation granted until 30 September 2013.

**Background** | authorisation sought to allow Myer to invite concession businesses operating within Myer stores to participate in store-wide and category-wide discount promotions, bonus MYER one points offers, Myer Card and Myer Visa Card promotions, a discount price-matching policy and other agreed bonuses.

### Australian National Retailers Association Limited A91093

**Result** | 13 August 2008 | authorisation granted until 30 November 2008.

**Background** | authorisation sought until 30 November 2008 to conduct a pilot program, under which retailers including Woolworths, Coles and IGA were to collectively impose a charge for lightweight plastic bags of 10c per bag. Authorisation sought to allow for the dissemination of information and data obtained from the pilot program to ANRA and its members, any other retailers that participate in the pilot program, the Victorian government and the Environment Protection and Heritage Council.

### David Jones Limited A91113

**Result** | 18 February 2009 | authorisation granted until 12 March 2014.

**Background** | authorisation sought to allow retail brand management businesses operating within David Jones stores to participate in certain promotions.

## Exclusive dealing notifications

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

Notifications may be reviewed at any time.

**Table 21: Exclusive dealing notifications, 2008–09**

	This year	Last year
New notifications	563	416
Notifications withdrawn	9	3
Notifications revoked	7	7

## Revocation notices

### National Association of Speedway Racing Incorporated and others N93297 and N93298

**Result** | 27 August 2008 | notifications revoked.

**Background** | proposal to offer and supply licences on condition that:

- > the offeree only races at tracks and venues which are sanctioned or approved by NASR
- > the offeree obtains membership of the relevant national and/or state and/or regional club or association for the offeree's relevant speedway racing category.

The related notifications N93299 and N93300 involving exclusive dealing conduct other than third line forcing were allowed to stand on 27 August 2008.

### Draft revocation notices issued

#### eBay International AG N93365

**Result** | 3 July 2008 | notification withdrawn.

**Background** | proposal to supply the services offered on the eBay site (including search, listing and transaction functions) to registered users of the eBay site on condition that users only acquire the online payment services provided by PayPal Australia Pty Ltd. The ACCC issued a draft revocation notice on 12 June 2008.

#### The Sydney Cricket and Sports Ground Trust N93527

**Result** | 19 December 2008 | notification withdrawn.

**Background** | proposal to offer customers the ability to purchase food and beverages from outlets located within the Sydney Cricket Ground and the Sydney Football Stadium using a credit or debit card payment facility on condition the credit or debit card is issued by Macquarie Bank. The ACCC issued a draft revocation notice on 27 November 2008.

#### Stadium Australia Management Limited N93500

**Result** | 29 January 2009 | notification allowed to stand.

**Background** | proposal to offer contactless payment services at ANZ Stadium on condition that the consumer acquire a Visa contactless payment card. The ACCC issued a draft revocation notice on 27 November 2008.

#### Woolworths Limited and Australian Independent Retailers Pty Ltd N93625 and N93626

**Result** | 3 April 2009 | notifications withdrawn.

**Background** | proposal to offer customers the ability to purchase fuel at certain CALTEX Woolworths and CALTEX Safeway co-branded fuel outlets using a pay-at-the-pump facility on condition that the customer pay with their Woolworths Everyday Money Credit Card. The ACCC issued a draft revocation notice on 29 January 2009.

Notifications N93889 and N93890 were lodged by Woolworths and Australian Independent Retailers on 20 March 2009 addressing the concerns raised by the ACCC in the draft revocation notice. These notifications were allowed to stand on 25 March 2009.

### Applications for review by the Australian Competition Tribunal

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

There were no new applications for review lodged with the tribunal within 2008–09.

### Certification trademarks

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

**Table 22: Certification trademarks applications, 2008–09**

	This year	Last year
Opening balance	11	13
New applications	36	25
Applications withdrawn	1	0
Applications returned	1	2
Applications decided	28	25
Balance	17	11

# Appendix 11

## Consultative (stakeholders) committees

The ACCC continued to work with its key stakeholders to promote competitive, efficient, fair and informed markets. During 2008–09 the ACCC's five consultative committees provided feedback on our enforcement, compliance and regulatory activities and provided input to our education campaigns.

Each quarter, consultative committee members receive a report detailing the ACCC's latest work. The report provides an update on recent litigation, international developments, merger reviews, arbitrations, determinations, price monitoring activities and call activity to the ACCC Infocentre.

### Small Business Consultative Committee

The Small Business Consultative Committee (formerly the Small Business Advisory Group) provides a forum through which trade practices concerns related to the small business sector can be considered and addressed collaboratively between the sector and the ACCC. Members of the SBCC represent a wide range of industry associations with a high small business membership or whose members are engaged with the sector.

At the committee's biannual meetings, members are invited to discuss and comment on:

- > the *Trade Practices Act 1974* and the ACCC's role in securing industry compliance with the Act
- > emerging issues or market developments affecting the small business sector
- > education and information strategies developed and undertaken by the ACCC to assist small business.

**Table 23: SBCC meetings 2008–09 and member attendance**

Members	November 2008	May 2009
Australian Chamber of Commerce and Industry	X	X
Australian Federation of Business and Professional Women		
Australian Hotels Association	X	X
Australian Industry Group		X
Australian Retailers Association	X	X
Council of Small Business of Australia	X	X
Housing Industry Association		
Institute of Chartered Accountants of Australia		X

Members	November 2008	May 2009
Law Council of Australia	X	X
Master Builders Association	X	
Motor Trades Association of Australia	X	X
National Farmers Federation	X	
Pharmacy Guild of Australia	X	
Real Estate Institute of Australia	X	X

Issues addressed at the meetings included:

- > amendments to the Trade Practices Act, including those related to clarity in pricing, the criminalisation of cartels and predatory pricing
- > collective bargaining and the authorisation and notification processes
- > the potential impact of the global financial crisis on the small business sector
- > ACCC action in relation to unconscionable conduct, including four cases currently being litigated
- > the National (harmonised) Consumer Law and how it may affect the small business sector
- > planned ACCC guidance and education campaigns on issues including information about the application of the Act to the operation of industry associations and the professions, the mandatory unit pricing code and clarity in pricing amendments to the Act.

## Franchising Consultative Committee (formerly Franchising Consultative Panel)

The committee was established by the ACCC to facilitate a more collaborative approach to discussing and resolving issues and concerns in the franchising sector. Members of the FCC include franchisees, master franchisees, industry associations with a particular interest in franchising, franchise consulting businesses, academics conducting research into franchising issues and law firms which advise on franchising issues.

Members are invited to discuss and comment on:

- > issues and processes affecting the franchising sector that fall within the scope of the ACCC's administration of the Trade Practices Act
- > emerging issues or market developments that may be of concern to franchisors or franchisees
- > information dissemination strategies and appropriate external networks available to enhance communication with the franchising community
- > issues as requested by the ACCC.

Committee meetings are held biannually, via video link from selected state and territory offices of the ACCC.

**Table 24: FCC meetings 2008–09 and member attendance**

Members	December 2008	May 2009
Franchise Council of Australia	X	X
Australian Retailers Association	X	X
Home Wilkinson Lowry	X	
Dibbs Abbott Stillman		X
Franchising Solutions	X	X
Franchise Advisory Centre		X
Hydrodog	X	X
Motor Trades Association of Australia	X	X
Just Cuts		
Griffith University		
Federal Chamber of Automotive Industries		X
Franchisees Association of Australia	X	X
Toyota Australia	X	X
Office of the Mediation Adviser	X	X
Department of Innovation, Industry, Science and Research	X	X
Office of the Victorian Small Business Commissioner	X	X

Issues addressed at the meetings included:

- > the impact of the global financial crisis on the franchising sector
- > membership review
- > ACCC activity in relation to franchising, including statistics on complaints, inquiries and notifications; outcomes; and upcoming publications and events
- > the recommendations of the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the operation of the Franchising Code of Conduct
- > an update from the Office of the Mediation Adviser regarding franchise mediations
- > ACCC discussion papers on unconscionable conduct in relation to unilateral variation of a franchise agreement and churning.

## Consumer Consultative Committee

The Consumer Consultative Committee comprises consumer, community and welfare organisations from around Australia that meet to advise the ACCC on issues and trends affecting consumers that fall within the scope of the Trade Practices Act.

CCC members assist the ACCC in its administration of the Trade Practices Act to enhance the delivery of consumer outcomes. Meetings are held three times per calendar year. The CCC also:

- > facilitates comment to the ACCC on issues affecting consumers that fall within the scope of the ACCC's administration of the Trade Practices Act, and allows members to inform the ACCC about issues that affect the groups they represent
- > enables the ACCC to ensure its communication and compliance strategies meet the needs of consumers

- > assists the ACCC in its dissemination strategies and appropriate external networks available to enhance communication with community and consumer groups and consumers on issues as requested by the ACCC.

**Table 25: CCC meetings 2008–09 and member attendance**

Members	November 2008	March 2009
Australian Council on the Ageing	X	X
Australian Council of Social Service	X	
Australian Federation of Disability Organisations	X	X
Australian Financial Counselling and Credit Reform Association	X	
Consumer Action Law Centre	X	X
Consumers' Federation of Australia	X	X
Consumers' Telecommunications Network	X	X
Country Women's Association of Australia	X	X
Federation of Ethnic Communities' Council of Australia	X	
Indigenous Consumer Assistance Network	X	X
National Children's and Youth Law Centre	X	
Public Interest Advocacy Centre	X	X
CHOICE		X
Kidsafe Victoria Inc.		X
National Children's and Youth Law Centre		X

Outcomes from the committee during 2008–09 included:

- > advice on emerging consumer issues including scams, warranties and refunds, product safety, and the impact on consumers of the global financial crisis
- > assistance with the development of strategies to help disadvantaged and vulnerable consumers, particularly in the area of debt collection
- > advice on consumer education initiatives including those relating to scams and telecommunications matters.

## Health Sector Consultative Committee

The Health Sector Consultative Committee was formed to strengthen the relationship between the ACCC and health and medical professionals. As well as facing competition and other business trade practices concerns, members of these professions play an important role in the lives of almost all Australians.

HSCC members are invited to discuss and comment on:

- > areas of concern to their professions (for example, legislative amendments or the business/economic climate)
- > emerging industry trends or practices affecting Australian consumers
- > information needs of their professions, and strategies for meeting those needs.



**Table 26: HSCC meeting 2008–09 and member attendance**

Members	October 2008
Australian Dental Association	X
Australian Health Insurance Association	
Australian Health Ministers Advisory Council	X
Australian Medical Association	X
Australian Physiotherapy Association	
Australian Private Hospitals Association	
CHOICE	X
Committee of Presidents of Medical Colleges	
Commonwealth Department of Health and Ageing	
National Rural Health Alliance	
Optometrists Association Australia	X
Pharmacy Guild of Australia	X

Issues addressed included:

- > recent ACCC activity in relation to consumer protection, authorisations and notifications and competition law (including court outcomes, provision of guidance and education campaigns)
- > retail leasing and other issues relevant to health professionals also operating as small businesses.

## Infrastructure Consultative Committee

The Infrastructure Consultative Committee facilitates discussions on the broad issues of infrastructure and infrastructure regulation. The committee was selected to represent the diversity of infrastructure interests. It includes representatives from the energy, telecommunications, water, rail, port and airports areas.

The ICC is an important mechanism for the ACCC/AER to gain feedback from stakeholders in the infrastructure sector. Operational issues and the specifics of decisions that are before the ACCC/AER are not the focus of this committee. Rather, the emphasis is on issues in the practical application of regulations that cross the different infrastructure sectors. The ICC also commissions research studies.

The ICC meets twice yearly.

**Table 27: ICC meetings 2008–09 and member attendance**

Members	November 2008	April 2009
Association of Australian Ports and Marine Authorities Inc.		X
Australasian Railway Association	X	X
Australian Airports Association	X	X
Australian Pipeline Industry Association	X	X
Australian Telecommunications Users Group	X	X
Australian Water Association	X	
Board of Airlines Association of Australia		
Communications Alliance		X
Competitive Carriers' Coalition		X
Energy Networks Association	X	
Energy Users Association		X
Grid Australia	X	
Infrastructure Partnerships Australia		
Macquarie Bank		
Optus		
Standard & Poor's (Australia) Pty Ltd	X	X
Telstra	X	X
Water Services Association of Australia	X	X

Issues discussed included:

- > the global financial crisis and its impact on the network sector
- > pricing and competition issues in the urban water sector
- > the ACCC's recent role in relation to water
- > the introduction of a carbon pollution reduction scheme—possible issues for infrastructure in the energy sector
- > exemptions from telecommunications regulation in recent ACCC decisions
- > the role of Infrastructure Australia
- > transport issues and access to port terminal services for wheat exporters
- > the National Broadband Network and the government's announcement on it
- > the role of competition policy in relation to the global financial crisis, with views from the OECD and an Australian perspective.

Under the guidance of the ICC, the ACCC produced a major research report comparing the regulatory processes and practices of 11 OECD countries, focusing on seven different regulatory areas. This report is available on the ACCC website.

# Appendix 12

## ACCC staffing 2008–09

Table 28: Number of employees at 30 June 2009

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	Total this year	Total last year
<b>Graduates</b>											
<b>total</b>	7	7	17	3	2	3	0	1	1	41	28
Female	3	3	7	1	1	2	0	1	1	19	20
Male	4	4	10	2	1	1	0	0	0	22	8
<b>APS 1 total</b>											
<b>(incl. juniors)</b>	1	0	3	0	1	0	0	0	0	5	12
Female	1	0	3	0	1	0	0	0	0	5	9
Male	0	0	0	0	0	0	0	0	0	0	3
<b>APS 2 total</b>	2	1	1	1	0	0	0	1	0	6	9
Female	1	1	1	1	0	0	0	1	0	5	7
Male	1	0	0	0	0	0	0	0	0	1	2
<b>APS 3 total</b>	17	6	7	2	0	1	0	0	1	34	33
Female	11	4	4	2	0	1	0	0	1	23	27
Male	6	2	3	0	0	0	0	0	0	11	6
<b>APS 4 total</b>											
<b>(incl. L1)</b>	48	9	25	4	1	8	0	0	1	96	91
Female	30	6	18	3	1	4	0	0	0	62	64
Male	18	3	7	1	0	4	0	0	1	34	27
<b>APS 5 total</b>											
<b>(incl. L1)</b>	47	11	46	3	5	3	2	1	0	118	84
Female	33	6	25	2	4	1	1	1	0	73	50
Male	14	5	21	1	1	2	1	0	0	45	34
<b>APS 6 total</b>	38	20	53	10	7	11	1	0	3	143	149
Female	22	8	25	6	3	7	0	0	3	74	70
Male	16	12	28	4	4	4	1	0	0	69	79
<b>EL 1 total</b>											
<b>(incl. L1)</b>	47	18	81	11	3	7	0	1	0	168	153
Female	25	9	31	6	0	2	0	1	0	74	74
Male	22	9	50	5	3	5	0	0	0	94	79
<b>EL 2 total</b>											
<b>(incl. L2)</b>	49	16	54	5	3	5	1	0	2	135	116
Female	23	9	21	3	0	0	0	0	1	57	46
Male	26	7	33	2	3	5	1	0	1	78	70
<b>SES B1 total</b>	14	2	13	2	1	0	0	0	0	32	31
Female	2	0	4	0	0	0	0	0	0	6	6
Male	12	2	9	2	1	0	0	0	0	26	25
<b>SES B2 total</b>	4	1	3	0	0	0	0	0	0	8	6
Female	1	0	1	0	0	0	0	0	0	2	2

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	Total this year	Total last year
Male	3	1	2	0	0	0	0	0	0	6	4
<b>SES B3 total</b>	1	0	0	0	0	0	0	0	0	1	1
Female	0	0	0	0	0	0	0	0	0	0	0
Male	1	0	0	0	0	0	0	0	0	1	1
<b>Compensation total</b>	0	0	1	0	0	0	0	0	1	2	2
Female	0	0	0	0	0	0	0	0	0	0	0
Male	0	0	1	0	0	0	0	0	1	2	2
<b>ACCC employees total</b>	275	91	304	41	23	38	4	4	9	789	715
Female	152	46	140	24	10	17	1	4	6	400	374
Male	123	45	164	17	13	21	3	0	3	389	340
<b>Public office holders total</b>	1	2	3	0	0	1	1	0	0	8	8
Female	0	0	0	0	0	1	0	0	0	1	2
Male	1	2	3	0	0	0	1	0	0	7	6
<b>Total employees</b>	276	93	307	41	23	39	5	4	9	797	723
Female	152	46	140	24	10	18	1	4	6	401	376
Male	124	47	167	17	13	21	4	0	3	396	346

Total number of full-time equivalent employees at 30 June 2009 was 728.9.

Total number of actual employees at 30 June 2009 was 797, including eight public office holders and 44 inoperative staff (long-term leave, both paid and unpaid, or secondment to another agency).

**Table 29: Senior executive employees at 30 June 2009**

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	Total this year	Total last year
<b>SES B1</b>											
Female	2	0	4	0	0	0	0	0	0	6	6
Male	12	2	9	2	1	0	0	0	0	26	25
<b>SES B2</b>											
Female	1	0	1	0	0	0	0	0	0	2	2
Male	3	1	2	0	0	0	0	0	0	6	4
<b>SES B3</b>											
Female	0	0	0	0	0	0	0	0	0	0	0
Male	1	0	0	0	0	0	0	0	0	1	1
<b>Total this year</b>	19	3	16	2	1	0	0	0	0	41	–
<b>Total last year</b>	18	1	16	2	1	0	0	0	0	–	38

Table 30: Part-time employees at 30 June 2009

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	Total this year	Total last year
Female	39	8	22	6	0	3	1	0	1	80	59
Male	9	2	4	0	0	0	0	0	0	15	9
<b>Total this year</b>	48	10	26	6	0	3	1	0	1	95	-
<b>Total last year</b>	28	8	21	6	2	2	0	0	1	-	68

Table 31: Temporary employees at 30 June 2009

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	Total this year	Total last year
Female	19	1	7	2	2	1	0	0	0	32	29
Male	11	2	6	1	0	2	0	0	0	22	28
<b>Total this year</b>	30	3	13	3	2	3	0	0	0	54	-
<b>Total last year</b>	26	2	26	2	0	1	0	0	0	-	57

Table 32: Equal opportunity target groups at 30 June 2009

	APS 1-2	Percentage of total	APS 3-4 (incl. grad.)	Percentage of total	APS 5-6	Percentage of total	EL 1-2	Percentage of total	SES and POH	Percentage of total	Total
Non-English-speaking background											
This year	2	0.25	32	4.02	48	6.02	37	4.64	2	0.25	121
Last year	2	0.28	34	4.70	40	5.53	34	4.70	2	0.28	112
People with disabilities											
This year	0	0.00	2	0.25	3	0.38	4	0.50	0	0.00	9
Last year	1	0.14	0	0.00	5	0.69	3	0.41	0	0.00	9
Aboriginal and Torres Strait Islander peoples											
This year	0	0.00	2	0.25	1	0.13	0	0.00	0	0.00	3
Last year	1	0.14	0	0.00	1	0.14	1	0.14	0	0.00	3
TOTAL STAFF											
This year	11	1.38	171	21.46	261	32.75	305	38.27	49	6.15	797
Last year	21	2.90	152	21.02	234	32.37	270	37.34	46	6.36	723

POH: public officer holder

# Appendix 13

## Parliamentary inquiries

### Inquiries by parliamentary committees assisted by the ACCC in 2008–09

The Australian Competition and Consumer Commission reported on proposed expenditure (Estimates reports) in February and June 2009.

During the review period, the Australian Competition and Consumer Commission made submissions or gave evidence to 13 parliamentary committee inquiries, as follows.

#### House of Representatives Standing Committee on Communications

##### *Inquiry into international mobile roaming*

- > The ACCC provided a submission to the committee and appeared before it in November 2008.

#### Joint Committee on Corporations and Financial Services

##### *Inquiry into the Franchising Code of Conduct*

- > The ACCC provided a submission to the committee and appeared before it in November 2008 (see page 36).

#### Senate Economics References Committee

##### *Inquiry into foreign investment by state-owned entities*

- > The ACCC appeared before the committee in June 2009.

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

##### *Inquiry into the Australian and global fertiliser market*

- > The ACCC appeared before the committee in November 2008 and May 2009 (see page 85).

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

- > The ACCC provided a submission to the committee and appeared before it in November 2008 and March 2009.

#### Senate Standing Committee on Economics

##### *Australian Business Investment Partnership Bill 2009 and related Bill*

- > The ACCC appeared before the committee in April 2009.

##### *Inquiry into competition in the banking and non-banking sector*

- > The ACCC appeared before the committee in September 2008.

#### *Inquiry into aspects of bank mergers*

- > The ACCC provided a submission to the committee and appeared before it in March 2009.

#### *National FuelWatch (Empowering Consumers) Bill 2008 and related Bill*

- > The ACCC appeared before the committee in August 2008.

#### *Unit Pricing (Easy Comparison of Grocery Prices) Bill 2008*

- > The ACCC appeared before the committee in August 2008.

#### *Inquiry into the statutory definition of unconscionable conduct*

- > The ACCC provided a submission to the committee and appeared before it in November 2008 (see page 37).

#### *Inquiry into the Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008*

- > The ACCC provided a submission to the committee and appeared before it in February 2009 (see page 38).

#### **Senate Standing Committee on Rural and Regional Affairs and Transport**

##### *Inquiry into meat marketing*

- > The ACCC appeared before the committee in July 2008.

# Appendix 14

## ACCC member profiles

### Chairman

#### Graeme Samuel AO



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

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

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

Mr Samuel holds a Bachelor of Laws (Melbourne) and Master of Laws (Monash). In 1998 he was appointed an Officer in the General Division of the Order of Australia.



## Deputy chairs

### Peter Kell



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

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

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

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

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

## Michael Schaper



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

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

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

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

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

## Members

### Sarah Court



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

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

Ms Court holds a Bachelor of Arts (Jurisprudence), a Bachelor of Law from the University of Adelaide and a Graduate Diploma in Legal Practice from the Australian National University. She was admitted to legal practice in the Australian Capital Territory in 1996.

## Edward Willett



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

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

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

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

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

## Joe Dimasi



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

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

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

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

## Louise Sylvan

Louise Sylvan was appointed to the ACCC as deputy chair in November 2003 and completed her term on 31 July 2008.

## Pat Walker

Pat Walker was appointed to the ACCC as a commissioner with special responsibilities for petrol-related matters in March 2008 and resigned on 5 September 2008.

## Stephen King

Stephen King was appointed to the ACCC as a commissioner in June 2004 and concluded his term on 16 January 2009.

## John Martin

John Martin was appointed to the ACCC as a commissioner in June 1999 and concluded his term on 5 June 2009.

# Appendix 15

## AER member profiles

### Steve Edwell



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

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

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

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

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

### Andrew Reeves



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

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

## Edward Willett



Edward Willett is a member of the ACCC. (See members' biographies in appendix 14.)

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

# Appendix 16

## Addresses and contacts

### ACCC

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

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

### AER

<b>Address</b>	Level 35, The Tower, 360 Elizabeth Street Melbourne Central, Melbourne VIC 3000 GPO Box 520 Melbourne VIC 3001 telephone: 03 9290 1444 facsimile: 03 9290 1457
<b>AER email</b>	<a href="mailto:AERInquiry@aer.gov.au">AERInquiry@aer.gov.au</a>
<b>AER website</b>	<a href="http://www.aer.gov.au">www.aer.gov.au</a>

### ACCC regional offices (Enforcement and Compliance Division)

	regional director	address	telephone facsimile
<b>New South Wales</b>	Geoff Williams	Level 7, Angel Place 123 Pitt Street Sydney NSW 2000  GPO Box 3648 Sydney NSW 2001	02 9230 9133 02 9223 1092
<b>Victoria</b>	Robert Weymouth	Level 35, The Tower 360 Elizabeth Street Melbourne Central Melbourne Vic 3000  GPO Box 520 Melbourne Vic 3001	03 9290 1800 03 9663 3699

	regional director	address	telephone facsimile
<b>Queensland</b>	Alan Ducret	<i>Brisbane</i> Level 3, 500 Queen Street Brisbane Qld 4000	07 3835 4666 07 3832 0372
		PO Box 10048 Adelaide Street Post Office Brisbane Qld 4000	
	Kim McBey	<i>Townsville</i> Level 6, Central Plaza 370 Flinders Mall Townsville Qld 4810	07 4729 2666 07 4721 1538
		PO Box 2016 Townsville Qld 4810	
<b>Western Australia</b>	Sam Di Scerni	Third floor, East Point Plaza 233 Adelaide Terrace Perth WA 6000	08 9325 0600 08 9325 5976
		PO Box 6381 East Perth WA 6892	
<b>South Australia</b>	George Kamencak	Level 2, ANZ House 19 Grenfell Street Adelaide SA 5000	08 8213 3444 08 8410 4155
		GPO Box 922 Adelaide SA 5001	
<b>Northern Territory</b>	Derek Farrell	Level 8, National Mutual Centre 9–11 Cavenagh Street Darwin NT 0800	08 8946 9666 08 8946 9600
		GPO Box 3056 Darwin NT 0801	
<b>Tasmania</b>	Peter Clemes	Third floor, AMP Building 86 Collins Street Hobart Tas 7000	03 6215 9333 03 6234 7796
		GPO Box 1210 Hobart Tas 7001	



# Glossary and abbreviations

AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
ACMA	Australian Communications and Media Authority
AEMC	Australian Energy Market Commission
AMCL	Australian Made Campaign Ltd
ANAO	Australian National Audit Office
APEC	Asia-Pacific Economic Cooperation
ARTC	Australian Rail Track Corporation
ASEAN	Association of Southeast Asian Nations
ASIC	Australian Securities and Investments Commission
BCP	business continuity plan
CBA	Community Broadcasters Association of Australia
CCC	Consumer Consultative Committee
CEIs	chief executive's instructions
cpl	cents per litre
CPRS	carbon pollution reduction scheme
CSPs	carriage service providers
DAFF	Department of Agriculture, Fisheries and Forestry
DBCDE	Department of Broadband, Communications and the Digital Economy
DDAS	digital data access service
DRET	Department of Resources, Energy and Tourism
DTCS	domestic transmission capacity service
ESAs	exchange services areas
FOI	freedom of information
FCP	Franchising Consultative Panel
FCIN	Franchising Code information network

EDRMS	electronic document and records management system
FTTP	fibre-to-the-premises
HFC	hybrid fibre coaxial
HSCC	Health Sector Consultative Committee
ICC	Infrastructure Consultative Committee
ICCC	Independent Consumer and Competition Commission
ID	interim determination
ICN	International Competition Network
ICPEN	International Consumer Protection Enforcement Network
ICT	information and communications technology
IIO	irrigation infrastructure operators
IMTS	information management and technology services
ISDN	integrated services digital network
LPG	liquefied petroleum gas
LSS	line-sharing services
MDB	Murray–Darling Basin
MDBA	Murray–Darling Basin Authority
MTAS	mobile terminating access service
NEMMCO	National Electricity Market Management Company Limited
NBN	National Broadband Network
NEL	National Electricity Law
NER	National Electricity Rules
NGL	National Gas Law
NGR	National Gas Rules
NICS	National Indigenous Consumer Strategy
OECD	Organisation for Economic Co-operation and Development
PAES	Portfolio Additional Estimates Statements
PBS	Portfolio Budget Statements
PPCA	Phonographic Performance Company of Australia
ppm	parts per million
PRA	Product Recalls Australia
PSTN	public switched telephone network
PSTN OA	PSTN originating access
PSTN TA	PSTN terminating access

RKR	record-keeping rule
RSS	really simple syndication
s. 65R notification forms	mandatory forms notifying voluntary recalls on the grounds of safety made under s. 65R of the Trade Practices Act
s. 87B undertaking	court enforceable undertaking made under s. 87B of the Trade Practices Act
SAOs	standard access obligations
SAN	storage area network
SBCC	Small Business Consultative Committee
SCOCA	Standing Committee of Officials on Consumer Affairs
s-factor	service term
TAM	television audience measurement
telecomms	telecommunications
ULLS	unconditioned local loop services
WACC	weighted average cost of capital
WAN	wide area network
WLR	wholesale line rental

# Index

## A

- ABC Learning Centres, 46
- Access undertaking applications, 179
- Acquisitions and mergers, 44–7
- ActewAGL, 57
- Adjudication, 48–51
- Airports, 77
- Anti-competitive conduct, 24
- APA GasNet Australia, 56, 57
- Audit Committee, 102
- Australasian Consumer Fraud Taskforce, 37
- Australia Post
  - Australia Post Business Forum, 36
  - price increase, assessment of, 81
- Australian Collectors and Debt Buyers Association, 25
- Australian Competition and Consumer Commission (ACCC), 11, 91
  - addresses, 284–5
  - collective agreement, 97
  - committees, 92
  - contacts, 284–5
  - decision-making, 91–2, 93
  - establishment, 13, 91
  - financial management, 9, 15, 22, 94–5
  - fraud control, 94–5
  - functions, 13
  - future challenges, 9–10, 13–14
  - governance, 8–9
  - learning and development, 95–6
  - members, 8, 11, 91, 93, 277–81
  - organisational structure, 12
  - outcome and outputs, 21–2
  - people management, 95–7
  - powers, 13
  - purchasing performance, 94
  - regulatory role, 6, 11, 52–87
  - role, 11
  - service charter, 182–4
  - staff level, 17, 95, 272–4
  - 2008–09, review of, 3–10
  - values, 11
- Australian Consumer Law, 7–8, 9, 38
- Australian Co-operative Foods Ltd (Dairy Farmers), 46, 257
- Australian Customs and Border Protection Service, 33
- Australian Energy Market Commission (AECM), 54, 55
- Australian Energy Regulator (AER), 11, 91
  - addresses, 284
  - contacts, 284
  - decision-making, 93
  - energy regulation, 54–63
  - establishment, 13, 91
  - financial management, 94–5
  - functions, 13–4
  - future challenges, 9–10, 14
  - gas regulation, 56–63
  - members, 93, 282–3
  - organisational structure, 12
  - regulatory role, 7, 52–87
  - staff level, 95
  - 2008–09, review of, 3–10
- Australian Independent Record Labels Association Ltd, 50
- Australian Made Campaign Ltd, 36
- Australian National Audit Office, 94
- Australian Newsagents' Federation, 50
- Australian Retailers Association, 5, 36
- Australian Securities and Investments Commission, 25, 37
- Australian Taxation Office, 36
- Australian Toy Association, 33
- Authorisations, 48, 51, 258–65
- Aviation, 6, 8

## B

Baiada Poultry, 45, 253  
Balance sheet, 16  
BankWest, 46, 253–4  
Bartter Enterprises Pty Ltd, 45, 253  
Baxter Healthcare, 4  
BFC Stores Pty Ltd, 49

## C

Cabcharge Australia Ltd, 4  
Carbon pollution reduction scheme, 7, 10, 37, 52  
Cartel conduct, 13, 27–8  
    criminalisation of, 3  
    proceedings concerning, 4, 24  
Cement Australia Pty Ltd, 4  
Central Ranges Pipeline, 57  
Chapman, Mr Chris, 91  
Chinalco, 46, 251–2  
CHOICE, 33  
ClubsNSW, 49  
Code of conduct, 102  
Collective agreement, 97  
Collective bargaining notifications, 48, 49–50  
Collective business arrangements, 6  
Commonwealth Bank of Australia, 46, 253–4  
Communication, 100  
    businesses, with, 35–43  
    consumers, with, 35–43  
    stakeholders, with, 35–43  
Communications  
    regulation of, 64  
Competition  
    economy, effect on, 6  
    lawful, and informed markets, 168  
    promotion of, 13  
    public competition assessments, 47  
Complaints and inquiries, 185–7  
Compliance, 23–43  
Consultation, 35–6, 266–71  
Consultants, 95

Consumer Consultative Committee, 35, 268–9

## Consumers

    communication with, 35–43  
    complaints and inquiries, 185–7  
    disadvantaged and vulnerable, 41  
    protection actions, 24–7, 169

Container stevedoring, 8, 78

Contempt of court, 4

Copyright Tribunal, 87

Country Energy, 57

Court, Sarah, 279

Craftmatic, 4

## D

Debt collection practices, 25, 37

Department of Health and Ageing, 33

Dimasi, Joe, 8, 280

DP World (SA) Pty Ltd, 46, 255–6

Dukemaster, 4

## E

E Dobson Pty Ltd, 50

Ecologically sustainable development, 101–2

Education, 35

Edwell, Mr Steve, 91, 282

ElectraNet, 57

Electricity distribution businesses, 59–60

Electricity transmission networks, 7

Emerson, Hon Dr Craig MP, 11

Energy utility regulation, 54–63

EnergyAustralia, 57, 58

Enforcement, 23–43, 168–9

    action, 24–7

    product safety, 34–5

Enforcement and Compliance Division, 95

## Engagement

    consumers, of ACCC with, 5

    government, of ACCC with, 7

    industry stakeholders, of ACCC with, 5

Essential Services Commission, 7

Exclusive dealing notifications, 48

Expenditure, 15–6, 17  
External scrutiny, 103

## F

Fair trading, 169  
Fertiliser sector, 8, 85  
Finance, 9

- assets, 16
- balance sheet, 16
- expenditure, 15–6
- operating statement, 16
- performance, financial, 22
- revenue, 15
- summary of performance, 15–7

Financial statements, 105–61  
Flinders Ports Pty Ltd, 46, 255–6  
Forums, AER, 63  
Franchise Council of Australia, 5, 36  
Franchisees Association of Australia, 5, 36  
Franchising Code of Conduct, 28–9, 36, 39  
Franchising Consultative Committee, 36, 267–8  
Freedom of information, 175–8  
Fuel prices, 81–4

## G

Gas

- market fees, 56
- tariff variations, annual, 56
- utility regulation, 54–63

GasNet, 57  
Gorgon Joint Venture, 6  
Governance, 8–9  
Grocery pricing, 7, 8, 86

## H

Hans Continental Smallgoods Pty Ltd, 46, 252–3  
Health and safety, 97  
Health Sector Consultative Committee, 36, 269–70  
Horticulture Code, 29, 36, 37, 39  
Hutchison 3G Australia Pty Ltd, 46, 250–1

## I

Immunity policy, 27–8  
Industry codes of conduct, 28–30  
Infant Nursery Products Association of Australia, 33  
Infocentre, 40–1  
Information management and information technology, 9, 98–9  
Infrastructure Consultative Committee, 270–1  
Insurance, price monitoring, 86  
Integral Energy, 57  
Intellectual property, 87  
International Consumer Protection and Enforcement Network, 9–10, 42, 43, 47

## J

Joint venture reviews, 45

## K

KE Viney Traffic and General Consultancy Pty Ltd, 50  
Kell, Peter, 8, 278  
King, Dr Stephen, 9, 281

## L

Law, 168–74  
Legal services, 101  
Liabilities, 17  
Liaison, 35–6, 47

- AER, by, 63
- international, 42

Litigation matters, 188–214

## M

Market power, prosecutions for misuse, 4  
Martin, John, 9, 281  
Medical indemnity, 8  
Mergers, 6, 14, 44–7, 250–7  
Milk, price monitoring, 86  
Ministerial Council on Consumer Affairs, 7  
Ministerial Council on Energy, 55  
Murray–Darling Basin, 7, 8, 10, 52

## N

National Association of Testing Agencies, 33  
National Broadband Network, 7, 8, 10, 52, 67  
National consumer law, 7–8, 9, 38  
National Electricity Market Management Company, 54  
National Electricity Rules, 41, 55, 61–2  
National Foods and Warrnambool Cheese and Butter Factory Company, 46, 257  
National Gas Law, 7  
National Indigenous Consumer Strategy, 41  
National Industrial Chemicals Notification and Assessment Scheme, 33  
Notifications, 258–65

## O

Office of Consumer and Business Affairs, 37  
Oilcode, 29, 37, 39  
Organisation for Economic Cooperation and Development, 10, 42, 43

## P

P&M Quality Smallgoods Pty Ltd (Primo), 46, 252–3  
Parliamentary inquiries, 36–8, 275–6  
Performance pay, 97  
Performance reporting structure, 22  
Performance targets, 164–7  
Post, 81  
Powerlink, 58  
Price monitoring, 85–6  
    fertilisers, 85  
    fuel, 82–4  
    groceries, 86  
    insurance, 86  
    milk, 86  
Product Recalls Australia website, 32, 33  
Product safety, 30–5  
Public competition assessments, 47  
Public registers, 99

Publications, 38, 100  
Publicity, 35  
Publishers defence, 4

## R

Rail, 78–80  
Reeves, Mr Andrew, 9, 91, 282  
Regional outreach, 39  
Regulators forum, 87  
Reliability panel, 54, 55  
Retail Policy Working Group, 54  
Revenue, 16, 17  
Review proceedings, 188–214  
Rio Tinto plc, 46, 251–2

## S

Samuel, Graeme, 25, 91, 277  
Scams, 25–6  
SCAMwatch, 5, 40  
Schaper, Michael, 279  
Service charter, 102, 182–4  
Small Business Consultative Committee, 36, 266–7  
South Australian Farmers Federation, 50  
St Andrew's Australia, 46, 253–4  
St George Bank Limited, 46, 256–7  
Staffing, 17, 95, 272–4  
Standards Australia, 33, 36  
Standing Committee of Officials of Consumer Affairs, 32, 37  
Statements of issues, 46  
Sylvan, Louise, 9, 281

## T

Taylor Nelson Sofres plc, 46, 254–5  
Telecommunications, 4, 26–7, 64–71  
Telstra, 10, 64–71  
Therapeutic Goods Administration, 33  
Trade Practices Act  
    parts of, 168–70  
    s. 171(3), information required under, 179–81  
Transend, 57

TransGrid, 57  
Transport, regulation of, 77–80  
Tribunal proceedings, 188–214

## U

Unconscionable conduct, 4, 24, 39  
Undertakings, 215–249

## V

Vodafone Group plc, 46, 250–1

## W

Walker, Pat, 8, 281  
Water  
    regulation of, 72–6  
    trading, 8  
Weighted average cost of capital, 7, 52, 58  
Westpac Banking Corporation, 46, 256–7  
Wheat  
    export marketing, 52  
    ports, 80  
Willett, Mr Edward, 91, 280, 282  
WPP Group, 46, 254–5



