

PART 2

OVERVIEW OF THE ACCC AND AER

About the ACCC and the AER

The Australian Competition and Consumer Commission is an independent Commonwealth statutory authority whose role is to enforce the *Competition and Consumer Act 2010* (the Competition and Consumer Act) and a range of additional legislation, promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians. The commission has seven members, including the chair and two deputy chairs, all of whom are full-time members of the ACCC 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 AER is also an independent Commonwealth statutory authority and is Australia's national energy market regulator. The AER's functions are set out in national energy market legislation and rules, and mostly relate to electricity and gas markets in eastern and southern Australia. The AER has one Commonwealth member and two state/territory members, any one of whom may be appointed as the chair. The AER has an independent Board, with its staff, resources and facilities provided by the ACCC.

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

The ACCC makes decisions through formal meetings of its commissioners and the AER through its board. ACCC commissioners and AER board members are statutory officers. The staff of the ACCC forms part of the Australian Public Service.

Both agencies are within the Treasury portfolio.

The responsible minister is the Hon David Bradbury MP, Assistant Treasurer.

Role and functions

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

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

LEGISLATIVE FRAMEWORK

In addition to administering the Competition and Consumer Act, the ACCC has responsibilities under the following legislation:

Airports Act 1996

Australian Postal Corporation Act 1989 and *Australian Postal Corporation Regulations 1996*

Broadcasting Services Act 1992

Copyright Act 1968

Radiocommunications Act 1992

Telecommunications Act 1997

Telecommunications (Consumer Protection and Service Standards) Act 1999

National Broadband Network Companies Act 2011

Trade Marks Act 1995

Water Act 2007

Water Charge (Termination Fees) Rules 2009

Water Market Rules 2009

Water Charge (Infrastructure) Rules 2010

Water Charge (Planning and Management Information) Rules 2010

Wheat Export Marketing Act 2008

The AER has responsibilities under the:

National Electricity Law

National Electricity Rules

National Electricity Regulations

National Gas Law

National Gas Rules

National Gas Regulations

National Energy Retail Law*

National Energy Retail Rules*

National Energy Retail Regulations*.

* While taking effect from 1 July 2012, the AER has engaged in extensive preparatory and compliance work, including preparing and consulting on guidelines during 2011–12.

PURPOSE

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

The AER works to promote efficient investment in, and efficient operation and use of, energy services in the long-term interests of consumers. It does this through setting network prices that are efficient, ensuring wholesale energy markets operate competitively, and by providing education and guidance to assist energy customers to participate in a more informed and confident way in the market.

VALUES

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

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

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

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

Trustworthy: We communicate honestly and directly and act respectfully.

Organisational model

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

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

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

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

INVESTIGATING BREACHES OF THE LAW

Possible breaches of competition and consumer law come to the ACCC's attention through complaints and information from members of the public, the media, ACCC staff and other agencies.

The ACCC's Infocentre provides the initial response for all inquiries and complaints to the ACCC on competition and consumer issues.

If the matter is sufficiently serious, the case is investigated and may ultimately lead to the ACCC accepting a court enforceable undertaking from the company involved, or the issue of an infringement notice under the Australian Consumer Law, or the ACCC instigating civil or criminal court action. In doing this, the ACCC applies its compliance and enforcement policy, which is available on the ACCC's website.

The AER monitors compliance with the national energy market laws and undertakes investigations when possible breaches are identified. The AER has a range of enforcement options available if it is satisfied that a breach has occurred.

MAKING DECISIONS IN THE PUBLIC INTEREST

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

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

PROMOTING A CULTURE OF COMPLIANCE

The ACCC and AER foster a culture of compliance through an integrated approach to administering and enforcing the law.

Depending on the circumstances, the ACCC chooses from a range of compliance strategies—court action, court enforceable undertakings and administrative resolutions, education and liaison programs, media communications, and working with business (both big and small) on specific programs to change conduct.

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

The AER works with energy market participants and other energy market bodies to promote compliance. Strategies range from court action, issuing infringement notices and reporting on conduct, through to industry workshops, compliance bulletins and other educational tools.

Outcome and program structure

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

- Outcome: Lawful competition, consumer protection, and regulated infrastructure markets and services through regulation, including enforcement, education, price monitoring and determining the terms of access to infrastructure services.
- Program: Australian Competition and Consumer Commission.

Goals and strategies

The goals and strategies of the ACCC and AER under the 2011–12 corporate plan are:

Promote vigorous, lawful competition and informed markets

- Detect, pursue and stop anti-competitive conduct—including cartels—and misuse of market power.
- Promptly deliver authorisation and notification decisions, particularly on small business collective bargaining arrangements.
- Assess mergers promptly and efficiently across all industries, taking effective action to address substantial competition concerns arising from mergers where competition may be affected.

Encourage fair trading, protection of consumers and product safety

- 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 conduct resulting in widespread detriment.
- Ensure that trading conditions between big and small businesses are fair.
- Promote product safety through identification and regulation of emerging hazards, active engagement in recalls, and enforcement of standards and bans.

Regulate national infrastructure and other markets where there is limited competition

- Support and protect competition in markets that rely on networks with natural monopoly characteristics.
- Provide consistent and independent regulation of the energy sector, encouraging competition in gas and electricity markets to benefit industry and consumers.
- Regulate and advise on industries where market structures are changing, including where the market structure or practices impede effective competition and efficient outcomes (for example, water, some areas of transport 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 petrol, container stevedoring and a range of airport prices including car parking.

Deliver results through the ACCC's investment in its people and systems

- Enhanced use of data analysis and intelligence to inform our regulatory approaches and interventions.
- Collaboration and partnerships with international and domestic regulators and other stakeholders.
- Timely delivery of high quality and strategic legal and litigation services within an integrated national framework of internal and external lawyers.
- Ability to incorporate the latest thinking in regulatory and competition economics into the ACCC's work.
- Enhancement of our people's capability, methodologies and tools and the effectiveness of our internal and external communication.
- Enhanced operations through effective information management practices and supporting systems.

Organisational structure

COMMISSIONERS

Chair	Rod Sims* Graeme Samuel*
Deputy chairs	Michael Schaper Peter Kell** Delia Rickard
Members	Sarah Court Edward Willett Joe Dimasi Jill Walker
Associate members	Christopher Chapman Andrew Reeves Cristina Cifuentes Mark Berry

* Rod Sims began his appointment as Chair on 1 August 2011. Mr Sims replaced former ACCC chairman, Graeme Samuel.

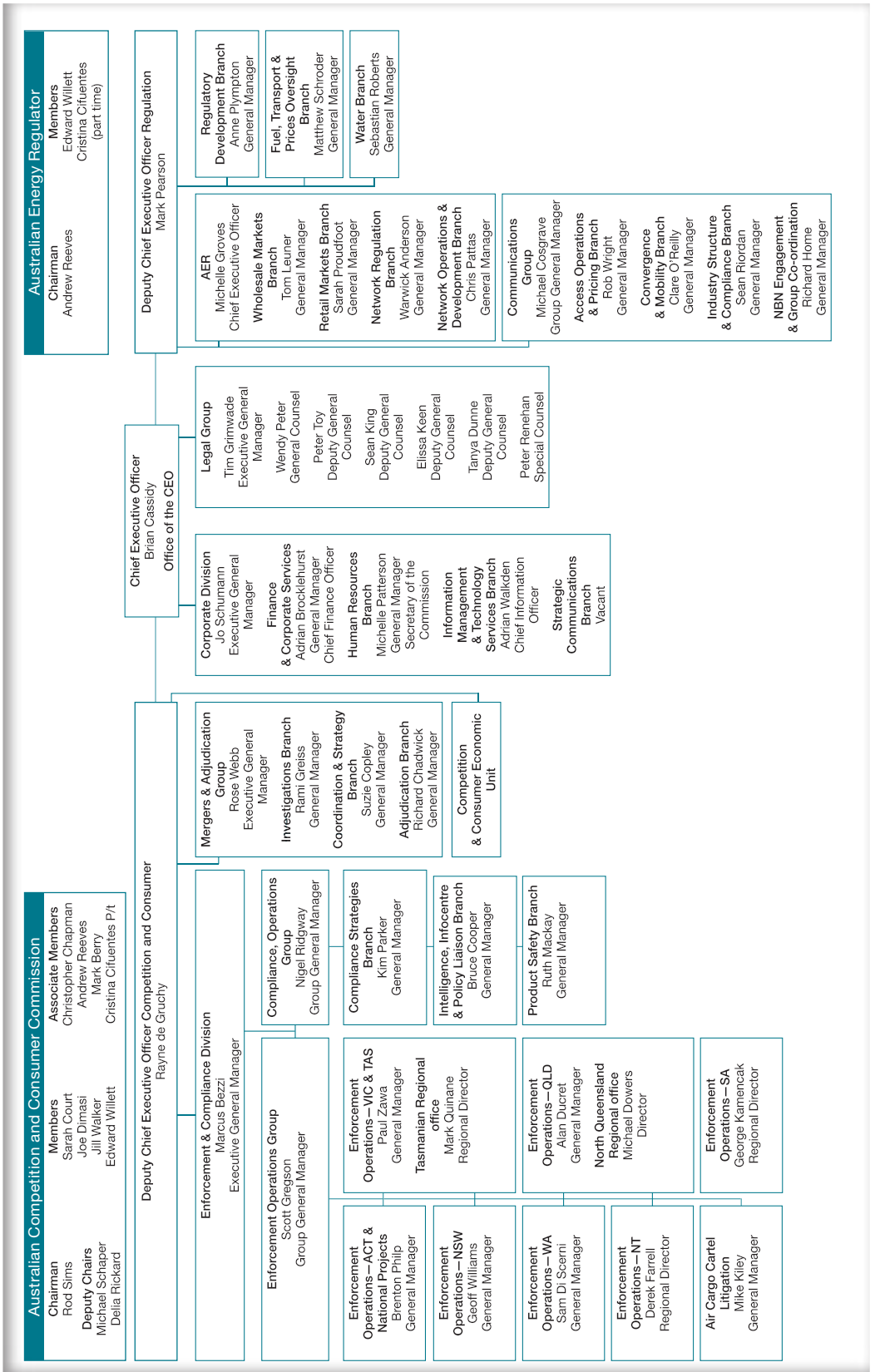
** Peter Kell left the ACCC on 28 October 2011 following his appointment to the Australian Securities and Investments Commission. Delia Rickard was appointed as deputy chair and began her five-year term on 4 June 2012.

AUSTRALIAN ENERGY REGULATOR

Chair	Andrew Reeves
Members	Edward Willett Cristina Cifuentes (part-time)

For more details, see Part 4 of this report.

Figure 2.1: Organisational structure of the ACCC/AER (at 30 June 2012)



Offices and contact details

ACCC NATIONAL OFFICE

Address	23 Marcus Clarke Street Canberra ACT 2601 GPO Box 3131 Canberra ACT 2601 telephone: 02 6243 1111 facsimile: 02 6243 1199
ACCC Infocentre	business and consumer inquiries 1300 302 502
ACCC website	www.accc.gov.au

Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service, telephone 13 3677 or visit the website www.nationalrelayservice.com.au

AER

Address	Level 35 The Tower 360 Elizabeth Street Melbourne Central Melbourne VIC 3001 telephone: 03 9290 1444 facsimile: 03 9290 1457
AER email	AERinquiry@aer.gov.au
AER website	www.aer.gov.au

ACCC REGIONAL OFFICES (ENFORCEMENT AND COMPLIANCE DIVISION)

		Address	Telephone/Facsimile
New South Wales	Geoff Williams General Manager	Level 20, 175 Pitt Street Sydney NSW 2000 GPO Box 3648 Sydney NSW 2001	telephone: 02 9230 9133 facsimile: 02 9223 1092
Australian Capital Territory	Brenton Philp General Manager	23 Marcus Clarke Street Canberra ACT 2601 GPO Box 3131 Canberra ACT 2601	telephone: 02 6243 1111 facsimile: 02 6243 1047
Victoria	Paul Zawa General Manager	Level 35, The Tower 360 Elizabeth Street Melbourne Central Melbourne VIC 3001 GPO Box 520 Melbourne VIC 3001	telephone: 03 9290 1800 facsimile: 03 9663 3699
Tasmania	Mark Quinane Regional Director	Third floor, AMP Building 86 Collins Street Hobart TAS 7000 GPO Box 1210 Hobart TAS 7001	telephone: 03 6215 9333 facsimile: 03 6234 7796
Queensland — <i>Brisbane</i>	Alan Ducret General Manager	Level 24, 400 George Street Brisbane QLD 4003 PO Box 12241 George Street Post Shop Brisbane QLD 4000	telephone: 07 3835 4666 facsimile: 07 3835 4653
— <i>Townsville</i>	Michael Dowers Director	Level 6, Central Plaza 370 Flinders Mall Townsville QLD 4810 PO Box 2016 Townsville QLD 4810	telephone: 07 4729 2666 facsimile: 07 4721 1538
Western Australia	Sam Di Scerni General Manager	Third floor East Point Plaza 233 Adelaide Terrace Perth WA 6000 PO Box 6381 East Perth WA 6892	telephone: 08 9325 0600 facsimile: 08 9325 5976
South Australia	George Kamencak Regional Director	Level 2, ANZ House 19 Grenfell Street Adelaide SA 5000 GPO Box 922 Adelaide SA 5001	telephone: 08 8213 3444 facsimile: 08 8410 4155
Northern Territory	Derek Farrell Regional Director	Level 8 National Mutual Centre 9–11 Cavenagh Street Darwin NT 0800 GPO Box 3056 Darwin NT 0800	telephone: 08 8946 9666 facsimile: 08 8946 9600