

Goal 4: Deliver results through the ACCC's investment in its people and systems

Significant outcomes in 2011–12

- The AER has developed benchmarking models to enhance its analytical capability and has used these models to assess capital expenditure proposals
- Extensive and ongoing collaboration with other regulators domestically and internationally including co-chairing the International Competition Network cartels working group
- Provided extensive input assistance to parliamentary inquiries and to other government agencies
- Increased the number of legal firms on the ACCC legal services panel
- Convened the 12th annual ACCC Regulatory Conference
- Upgraded desktop IT systems across the ACCC and AER.

Strategy 4.1 Increase the efficiency and effectiveness of our operations

Measures:

- 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

Overview

The ACCC has a very broad mandate, a range of responsibilities unique among like agencies internationally. With such a broad range of functions the scrutiny on the ACCC is intense and the demands and expectations of the community high. The strength of the ACCC lies in its expert dedicated professional people, coupled with its positive work environment, climate of rigorous debate and the way we continually strive to improve. In this year's annual report, the ACCC has chosen to include a range of measures relating to action taken to improve the ACCC's systems, processes and people.

4.1.1 Enhanced use of data analysis and intelligence to inform our regulatory approaches and interventions

In performing its functions, the ACCC makes a number of information requests, including requests for data. Given that considerable effort is usually put in to providing this information, the ACCC strives to make the best possible use of it and is always looking for ways to increase its use of data analysis and intelligence to better fulfil its functions. In 2011–12 a number of these initiatives progressed across the organisation.

INFOCENTRE

The ACCC Infocentre is the initial contact point for telephone, email and written inquiries and complaints to the ACCC on competition, consumer and fair trading issues.

Infocentre officers, who are required to have a good working knowledge of all ACCC functions and current issues, record information received from businesses and consumers in the ACCC complaints and inquiries database.

The overwhelming majority of contacts are by consumers seeking information or wishing to make a complaint about business conduct they believe may represent a breach of the Competition and Consumer Act.

All complaints are assessed against the ACCC compliance and enforcement policy and, where appropriate, escalated for further assessment or investigation.

Information in the complaints and inquiries database is available to all staff for the purpose of analysing complaint trends, identifying issues for further inquiry and developing compliance responses.

Responding to inquiries and complaints

The ACCC's Infocentre received 197 963 telephone calls, of which 112 556 were served by Infocentre staff. 61 520 were referred to the ACCC website or abandoned by the caller and 16 900 were unanswered due to congested incoming lines.

The Infocentre received 70 891 emails, of which 42 360 were received via the SCAMwatch 'report a scam' online complaint form. The Infocentre responded to 18 842 emails, 148 098 matters were entered in the complaints and inquiries database, of which 87 060 were received via telephone (77 per cent of calls served).

Thirty-eight per cent of phone calls were answered within 30 seconds.

Sixty-three per cent of emails were responded to within seven days.

Seventy-four per cent of letters were responded to within 28 days.

The level of complaints about Infocentre staff was less than one for every 1000 contacts.

There was a significant increase (38 per cent) in the number of calls received. The number of calls answered remained about the same. The number of calls answered in 30 seconds fell short of the projected target of 70 per cent and in fact decreased from 2010–11. In part, this reflected staffing levels had not kept pace with increases in contact volumes (45 per cent) and there was a need for additional resources to respond to a significant increase in the number of emails.

Escalation to investigations

Some complaints that may require further investigation are placed under assessment and reviewed by senior enforcement and compliance staff. This review may result in a decision being made to take no further action in a matter or to progress it to an initial investigation.

An initial investigation represents the first stage of a detailed assessment of a complaint by Enforcement Operations staff. An initial investigation may be further escalated to an in-depth investigation, alternatively it may be resolved administratively or the decision made to take no further action. The most serious matters may become in-depth investigations. Although it may also ultimately be decided to take no further action in relation to an in-depth investigation, these most resource intensive cases may involve the use of the ACCC's coercive investigative powers and may be resolved with court enforceable undertakings or infringement notices or by the institution of proceedings.

The different investigative stages helps ensure appropriate resource allocation, consistent handling of matters and that the range of matters is balanced appropriately having regard to the ACCC's compliance and enforcement policy. Table 3.5 provides the number of matters created at each of these stages within the financial year.

Table 3.5: ACCC complaints, investigations and litigation

Category	2011–12
Contacts received (phone, email and letters)	270 817
Contacts recorded in the database	148 098
Under assessments commenced	2 591
Initial investigations commenced	562
In-depth investigations commenced	145
Litigation commenced	26

Figure 3.9: Complaints and inquiries, 2011–12 compared to previous years

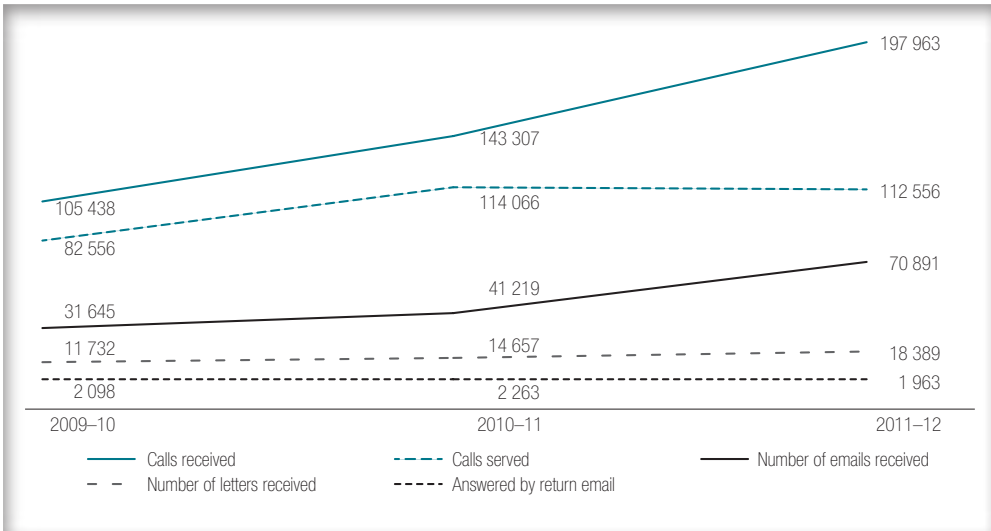


Figure 3.10: Business information complaints or inquiries

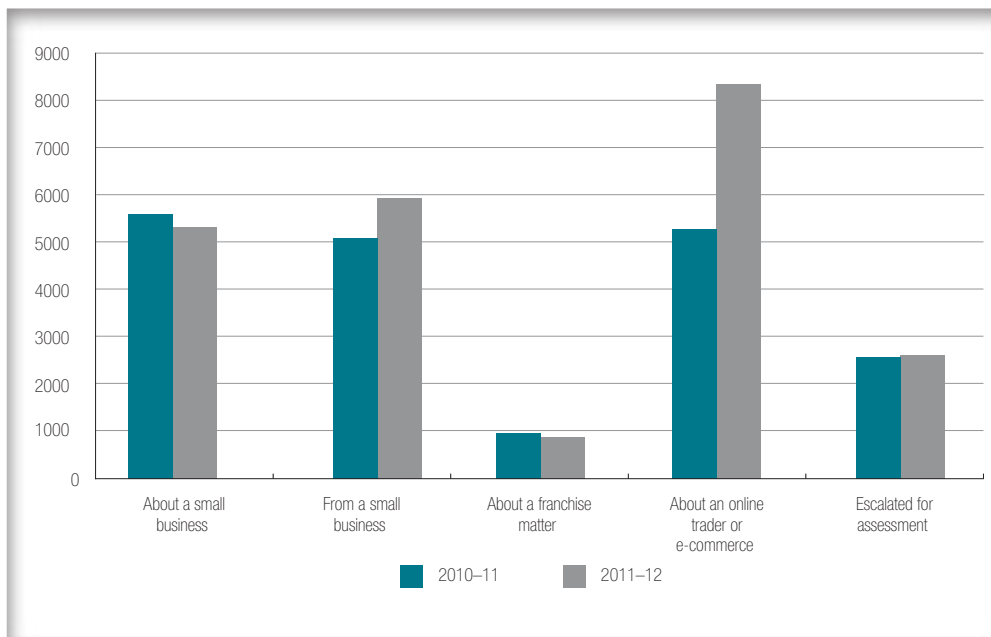


Table 3.6: Top 10 industries excluding scams for complaints and enquiries

Industry	Contacts
Non-store retailing	4733
Other store-based retailing	4448
Other auxiliary finance and investment services	3221
Car retailing	3164
Electrical, electronic and gas appliance retailing	3128
Central government administration	2656
Computer and computer peripheral retailing	1579
Air and space transport	1559
Fuel retailing	1526
Furniture retailing	1350

Table 3.7: Top 10 possible contraventions of the Competition and Consumer Act

Predominately fair trading and consumer protection including Australian Consumer Law	Contacts
Scam based activity	79 299
Misleading and deceptive conduct	16 294
Consumer guarantee as to acceptable quality	9 582
Wrongly accepting payment	4 355
Consumer guarantees relating to the supply of goods	3 283
Consumer guarantees as to due care and skill etc.	2 536
Consumer guarantees relating to the supply of goods by description, sample or demonstration	1 358
Consumer guarantees as to fitness for any disclosed purpose etc.	1 287
False representation price	1 150
False representations goods—standard, quality, value, grade, composition, style etc.	1 072
Predominately effective competition and informed markets part IV and IVB	Contacts
Exclusive dealing	558
Contravention of Industry Codes	492
Misuse of market power	471

Table 3.8: Top 10 publications sent to callers

Publication	Distribution 2011–12
<i>The little black book of scams</i>	29 571
<i>Keeping baby safe: a guide to infant and nursery furniture</i>	17 563
<i>Blind/curtain cords (Safety Alert)</i>	14 157
<i>Tips for a fine time shopping online</i>	4 261
<i>Refunds and returns (ACL) counter display</i>	3 393
<i>Working under a vehicle—Don't be a Jackass with jacks (Safety Alert)</i>	3 251
<i>Baby slings (Safety Alert)</i>	2 861
<i>Prams and strollers (Safety Alert)</i>	2 663
<i>Help cut mobility scooter accidents</i>	1 875
<i>Consumer guarantees—a guide for consumers</i>	1 239

Table 3.9: Geographic location of inquirers and complainants recorded in the national database

State	ACL		Scams		Consumer Protection Total		Restrictive Trade Practices		Industry Codes		Other		Total
	2011–12	2011–12	2011–12	2011–12	2010–11	2011–12	2010–11	2011–12	2010–11	2011–12	2010–11	2011–12	
New South Wales	17 948	22 571	32 730	40 519	795	738	164	146	3 786	4 125	50 273		
Queensland	14 448	20 291	26 910	34 739	569	463	173	113	2 717	2 757	41 531		
Victoria	17 490	14 242	24 523	31 732	612	579	157	114	3 629	3 688	40 511		
Western Australia	6 978	7 285	9 942	14 263	267	181	80	59	1 057	1 222	17 129		
South Australia	5 128	7 325	10 389	12 453	182	159	52	35	871	966	14 718		
Australian Capital Territory	2 699	3 432	4 338	6 131	106	80	15	9	587	664	7 592		
Tasmania	1 131	2 339	2 924	3 470	60	34	8	12	262	217	4 063		
Other	648	976	4 269	1 624	22	9	3	2	314	271	2 245		
Northern Territory	655	838	1 133	1 493	20	23	4	2	138	111	1 791		

Complaints data collection and analysis

The ACCC's Intelligence and Infocentre and Policy Liaison Branch undertook a range of activity to inform decision makers of current and emerging issues through regular reporting of complaints data and broader analysis of specific issues identified as strategic priorities and outlined in the compliance and enforcement policy. In particular, an overview of the work undertaken by the Enforcement and Compliance Division and an environmental scan of key issues and traders were provided to assist with a strategic review undertaken in November 2011. The strategic review resulted in updated priorities for the ACCC's enforcement and compliance activities in the short to medium-term. In May 2012, the strategic review was revisited and a further examination of the work undertaken, together with an analysis of emerging issues, was provided as a basis for Commissioners to reconsider compliance and enforcement priorities.

Additionally, work started on the introduction of a Customer Relationship Management (CRM) system to help handling Infocentre contacts' and this will replace the ACCC's current contact data collection system. The CRM is expected to be operational in the first month of 2012–13 and will result in improvements to the quality of information capture due to more accurate and consistent classification of data as it is collected. Accompanying this development was a re-examination of current data collection practices to determine whether existing data and reports continue to deliver information needs. Work ongoing to develop tools within the CRM that will make available an enhanced capacity to interrogate and report on the data collected.

A major review of the ACCC's internal case management systems identified the need to review the current reporting functionality and work has commenced to:

- identify essential reporting requirements
- de-commission obsolete reports, and
- develop a flexible reporting mechanism to enable the extraction and analysis of case management data.

These enhancements are aimed at streamlining reporting processes to ensure the current portfolio of cases continues to address identified areas of focus.

The ACCC continues to invest in developing its intelligence capacity, producing a number of information briefs on emerging issues. These briefs assist in case selection, provide context for operational areas and inform on a range of options for regulatory intervention to achieve targeted compliance in identified areas of non-compliance.

DATABASE DEVELOPMENT PROJECT

In carrying out its regulatory roles and responsibilities the ACCC/AER receives a great deal of regulatory information. This information needs to be managed appropriately and in a way that ensures that the integrity and usefulness of regulatory data are preserved over time.

To facilitate this, the Regulatory Affairs Division commenced a Database Development Project. The aim of the project is to create a central knowledge base of information about infrastructure areas regulated by the ACCC/AER—information that could then be used for internal operational work, reporting, and research.

The project has identified and reviewed the types of data that are available both internally and externally for the seven infrastructure areas in which the ACCC/AER has a regulatory role (i.e. energy, telecommunications, post, water and wastewater, rail, airports and ports).

As a first step, a data report evaluated the availability, quality, and consistency of regulatory information. A dataset register was then developed to document useful datasets in each regulatory area. This was followed by examination of these datasets, including compilation, documentation and high-level audit, for possible inclusion in the database. A guideline was produced to promote the implementation of good data management within the Regulatory Affairs Division.

By providing an understanding of available regulatory data and documenting it, this project will significantly enhance the use of data analysis to inform the ACCC/AER's regulatory decisions and other projects.

AER MODELLING

To regulate effectively, the AER uses information from regulated businesses about their activities and costs. The AER analyses information collected to inform its regulatory decisions, such as revenue determinations, access determinations and distribution determinations.

The AER has developed benchmarking models to enhance its analytical capability and has used these models to assess capital expenditure proposals made by Powerlink and Aurora. The AER has also developed a network augmentation model which it will use in future determinations.

Information collected may also be published in comparative reports, showing details of service performance, and financial performance. Publication of performance reports enhances the ability of stakeholders to participate in the regulatory process, by providing details of each regulated business's activities, and allowing for comparison between different businesses.

The AER has published the *State of the Market Report*, a performance report for NSW and ACT electricity distribution businesses, a performance report for Victorian electricity distribution businesses, a performance report for all electricity transmission businesses and, in conjunction with the ACCC, a working paper which reviews the benchmarking techniques commonly used by regulators of energy networks.

COMMUNICATIONS

In performing its responsibilities in relation to telecommunications regulation, the ACCC has enhanced its use of data analysis and intelligence to inform its regulatory approaches and intervention, particularly in the following way:

- The ACCC has extended the operation of the Access to Telstra Exchange Facilities record keeping and reporting rule (RKR). The RKR informs the ACCC about delays and availability of access for other companies to access Telstra's exchanges to install their equipment.
- The ACCC is currently consulting on implementing the Building Block Model Record Keeping Rules to obtain data to assist the ACCC in its functions under Part XIC of the Competition and Consumer Act, in particular, in relation to the ACCC's pricing decisions for regulated fixed-line services.
- The ACCC receives data from telecommunications companies under the record keeping and reporting rules in performing its functions under Parts XIB and XIC of the Competition and Consumer Act. It has used this data in making regulated access pricing decisions in Final Access Determinations and in considering the geographic scope of regulation for fixed-line services.
- The ACCC monitors international developments and engages regularly with stakeholders around emerging regulatory issues in communications.

FUEL

The ACCC uses data analysis to monitor whether pricing behaviour in a particular fuel market may indicate potentially anti-competitive activity. This data also allows the ACCC to keep informed of emerging issues in the marketplace.

Fuel pricing data is used to inform environment scanning and enforcement activities. This information is widely used in merger reviews, enforcement activities and market surveillance work. For example, the ACCC conducted market analysis to assess the impact of sales of retail petrol sites on the competitiveness of fuel prices in regional areas.

TRANSPORT

Airport monitoring provides information about the performance of major airports that can indicate whether further inquiry may be required.

Container stevedoring monitoring enables the ACCC to present observations about the role of competition to achieve a more efficient operation of, use of and investment in Australian container stevedoring services.

WATER

The ACCC has further refined and streamlined its Request for Information from water supply operators to acquire data for Commonwealth Water Rules compliance monitoring and analysis of regulatory reform outcomes in the Murray-Darling Basin.

4.1.2 Collaboration and partnerships with international and domestic regulators and other stakeholders

The ACCC actively engages with regulators domestically and internationally, to cooperate on enforcement and regulatory matters, and to contribute to and learn more about improvements in regulatory practices.

COLLABORATION AND PARTNERSHIPS WITH AUSTRALIAN REGULATORS

In 2011–12, the ACCC participated in ongoing and substantial consultation with various government agencies and external stakeholders. In particular, the ACCC continued to liaise with Commonwealth government agencies on the operation of the Competition and Consumer Act, Australian Consumer Law and any proposed legislative amendments.

The ACCC continued to actively support the Council of Australian Governments Legislative and Governance Forum on Consumer Affairs (CAF); and participated in Consumer Affairs Australia and New Zealand (CAANZ) and its advisory committees: the Education and Information Advisory Committee (EIAC), the Compliance and Dispute Resolution Advisory Committee (CDRAC), the Policy and Research Advisory Committee (PRAC) and the Product Safety Consultative Committee (PSCC).

In October 2011, the ACCC made a submission to the Productivity Commission on the impact of COAG deregulation reforms, particularly the creation of the ACL and the related national product safety regime. The Productivity Commission's research report *Impacts of COAG Reforms: Business Regulation and VET* was released in April 2012 and outlined that the consumer law and product safety reforms had been completed and would result in incremental benefits over the medium to long term.

The ACCC consulted with various stakeholders, including government agencies, in the preparation of its 13th report to the Senate on anti-competitive conduct in the private health insurance industry. The Report, tabled in the Senate in early June 2012, was developed with input from private health insurers, health providers, consumer advocate groups, government agencies and ombudsmen.

The ACCC actively participated in the development of the government's Cyber White Paper to consider how government, industry and the community can work together to address the challenges and risks arising from increased engagement in the digital economy. The ACCC also participated in the Galilee Taskforce relating specifically to investment fraud targeting Australian consumers.

AER staff have worked closely with the National Energy Customer Framework Joint Implementation Group (JIG), which has been tasked by the Standing Council on Energy and Resources with coordination of jurisdictional processes to implement the new retail market framework. AER staff have participated in monthly meetings of the JIG, and attended monthly JIG meetings with industry stakeholders. Since February 2012, staff have also joined weekly JIG teleconferences. Through these processes, and through regular contact with individual jurisdictions, the AER has provided detailed input to the development of the national framework and its intended operation in each jurisdiction.

The ACCC, with state and territory regulatory agencies, convenes a Utility Regulators Forum to exchange information, encourage consistent application of regulatory functions, and review new ideas about regulatory practices. In 2011–12 forum meetings took place in Sydney and Melbourne. The forum's newsletter, *Network*, continued to be published quarterly.

The ACCC also keeps abreast of international regulatory developments, decisions and academic literature through its publications *Regulatory Observer* and *Regulatory Monitor* (see page 152). Its annual regulatory conference (see page 152) attracts participants and speakers from around the globe.

ASSISTANCE TO PARLIAMENTARY INQUIRIES AND GOVERNMENT AGENCIES

The ACCC provides advice and assistance to parliamentary inquiries and government agencies for the development of policy and legislation, and in addition to those matters listed under the headings 'Timely assistance to government and agencies' in Goal 3, the ACCC undertook the following activities during 2011–12:

- The ACCC gave evidence to the inquiry by the House of Representatives Standing Committee on Economics into the Food Standards Amendment (Truth in Labelling-Palm Oil) Bill 2011.
- The ACCC gave evidence and provided further comment to the inquiry by the House of Representatives Standing Committee on Economics into the Constitutional Corporations (Farm Gate to Plate) Bill 2011.
- The ACCC gave evidence and provided further comment to the inquiry by the Senate Economics References Committee into the impacts of supermarket pricing decisions on the dairy industry.
- The ACCC gave evidence and provided further comment to the inquiry by the Senate Select Committee on Australia's food processing sector.
- The ACCC gave evidence and provided further comment to the inquiry by the Senate Standing Committees on Rural and Regional Affairs and Transport into Examination of the Foreign Investment Review Board National Interest Test.
- The ACCC gave evidence to the inquiry by the House Standing Committee on Health and Ageing into Registration Processes and Support for Overseas Trained Doctors.
- The ACCC provided the Senate with its 13th report on anti-competitive and other practices by health funds and providers in relation to private health insurance.
- The ACCC gave evidence to the inquiry of the Joint Committee on the National Broadband Network.
- The ACCC gave evidence and provided further comment to the inquiry by the House Standing Committee on Agriculture, Resources, Fisheries and Forestry into the Wheat Export Marketing Amendment Bill 2012.

- The ACCC gave evidence and provided further comment to the inquiry by the Senate Standing Committees on Rural and Regional Affairs and Transport into the Wheat Export Marketing Amendment Bill 2012.
- The ACCC gave evidence and provided further comment to the inquiry by the Senate Standing Committees on Rural and Regional Affairs and Transport into Operational issues in export grain networks.

CONSULTING WITH STAKEHOLDERS

The ACCC engaged with representatives of the banking industry to produce guidance material on new laws prohibiting anti-competitive price signalling and information disclosures. The ACCC wrote to every bank, building society and credit union in Australia alerting them to changes in the law. Guidance material was also posted on the ACCC's website.

The ACCC and AER continue to engage with stakeholders through regular meetings of their consultative committees.

Infrastructure Consultative Committee

The Infrastructure Consultative Committee (with representatives from the energy, telecommunication, water, rail, port and airport sectors) discusses the broad issues of infrastructure and infrastructure regulation. The committee meets twice a year to discuss issues relating to the practise of regulation.

Consumer Consultative Committee

The Consumer Consultative Committee's membership consists of members from consumer rights and advocacy organisations. In 2011–12, the committee met in December 2011 and March 2012, to discuss emerging consumer issues, with particular interest in door to door sales.

The ACCC, in conjunction with its Consumer Consultative Committee, has engaged a company to undertake research into the door to door sales industry to gain a deeper understanding of how these selling practices operate in Australia. The results of the research, anticipated in mid-2012, will be used to inform the ACCC's business and consumer education and compliance activities, and to develop targeted strategies to educate and protect vulnerable and disadvantaged community sectors.

Small Business Consultative Committee

The Small Business Consultative Committee was established by the ACCC to provide a forum through which competition and consumer law concerns related to the small business sector could be considered and addressed collaboratively.

Three meetings were held with members in 2011–12, including an out-of-session meeting in December 2011 to consult on the ACCC's compliance approach and planned educational initiatives in relation to carbon price representations.

Members' concerns about the impact of the carbon price on their respective industries (including building and construction, groceries and liquor) was a dominant theme at all meetings. The new National Energy Customer Framework was also of interest.

In February 2012, the ACCC renewed the membership of the Small Business Consultative Committee.

Franchising Consultative Committee

In February 2012, the ACCC renewed the membership of the Franchising Consultative Committee (FCC), selecting the new members from more than 30 applicants.

The FCC was established by the ACCC to provide a forum through which competition and consumer concerns relating to the franchising sector, and other franchising issues, could be considered and addressed collaboratively. The FCC is made up of a broad range of industry stakeholders with

experience as franchisors, franchisees, industry associations with a particular interest in franchising, franchise consultative businesses, academics conducting research into franchising issues and law firms which advise on franchising matters.

The first meeting of the new committee (the second FCC meeting this financial year) occurred in April 2012, with members discussing the roles of the new state small business commissioners and the proposed state franchising reforms in South Australia and Western Australia. Members were also provided with an update from Professor Lorelle Frazer on Griffith University research into the effectiveness of pre-entry franchise education, as well as an update from psychologist Greg Nathan on his research into predictors of franchisee satisfaction and performance.

Fuel Consultative Committee

In 2011–12 the ACCC continued with its liaison activities through its Fuel Consultative Committee meetings, which enabled stakeholders in the fuel industry and the ACCC to discuss key issues. The Fuel Consultative Committee met in October 2011 and May 2012.

AER Customer Consultative Group

The AER continues to engage with stakeholders through regular meetings of its Customer Consultative Group (CCG). The CCG, established in 2009, provides advice on issues affecting consumers in the energy market. The CCG meets three times a year to discuss retail and non-price distribution regulatory issues. This year, the group discussed a range of consumer issues including energy marketing, hardship and energy affordability.

The first membership review in 2011 expanded membership from nine to ten members, to represent a broad range of consumers from each of the participating jurisdictions. The new membership held its first meeting in February 2012.

Engagement with stakeholders through public consultation processes helped the AER prepare for its new retail energy functions including:

- informing the AER's Statement of Approach to the development of its energy price comparator website, Energy Made Easy, including details of how the website would operate and website accessibility
- participating in a consumer education workshop to identify the issues of greatest importance to energy users, key messages on those issues and the most effective ways to engage specific audiences
- developing a Retail Pricing Information Guideline for energy retailers, consistent with the AER's new roles for mandating how retailers present their pricing information to customers. The guideline assists customers to compare by standardising how information about energy offers must be communicated to consumers
- informing the AER's approach to its performance monitoring and compliance and enforcement responsibilities under the National Retail Energy Law with the release of the Compliance Procedures and Guidelines, Compliance Statement of Approach and Performance Reporting Procedures and Guidelines
- contributing to the AER's approach to retailer authorisations and exemptions with the release of the Retailer Authorisation Guideline and Exempt Selling Guideline, which provide guidance on the authorisation and exemption processes
- assisting in the development of a strategy for an energy seller exiting the market with the release of the final Retailer of Last Resort (RoLR) Plan, and Statement of Approach and notice of final instrument.

International partnerships and collaboration

The ACCC continued to engage closely with competition and consumer protection counterparts around the world. The need for international cooperation has grown as trading across jurisdictional borders has become more frequent and consumers have become exposed to more complex transactions occurring across multiple jurisdictions.

The ACCC undertakes a range of activities with its international counterparts, including cooperation on specific cases and discussions on international best practice and convergence facilitated by groups such as the International Competition Network (ICN) and International Consumer Protection Enforcement Network (ICPEN). The ACCC participates actively in both the ICN and ICPEN to help promote effective competition and consumer protection policies and their enforcement around the world.

The ACCC is active in the Utility Regulators Forum (see page 144), which includes the New Zealand Commerce Commission, and participates in the East Asia and Pacific Infrastructure Regulatory Forum which aims to enhance regulatory decision making in the East Asia and Pacific. Staff from the AER participate in exchanges with international regulators such as the Office of Gas and Electricity Markets in the UK, enhancing the skills of staff involved and developing the relations between the agencies.

The ACCC is in the process of updating a major piece of research *Better Economic Regulation of Infrastructure: International Insights*. This will assist both ACCC staff and the broader community in understanding diverse regulatory practices. Staff continue to liaise with other overseas regulatory agencies and institutions in relation to this project (including making a presentation to the Florence School of Regulation).

The ACCC continues its long engagement with the International Competition Network, presenting at conferences and co-chairing the cartels working group. This work included:

- preparing and presenting at international workshops and tele-seminars on competition issues including mergers, cartels and unilateral conduct
- coordinating the work of the ICN as the ICN Horizontal Coordinator
- co-chairing the Cartels Working Group
- streamlining information sharing in cartel investigations by co-developing an information sharing charts project, identifying the information sharing mechanisms and contact points among competition regulators
- promoting a better understanding of economic analysis in merger review through a series of discussions and exchanges of practical techniques in the economic analysis of mergers.

As part of the ICN Merger Working Group (MWG) project to promote a better understanding of economic analysis in merger reviews the ACCC co-presented a teleseminar with the UK Office of Fair Trading on *Coordinated Effects Analysis in Merger Reviews*.

In 2012–13, the MWG plans to build upon those discussions and use the lessons learned to update Chapter 4 of the 2005 *ICN Investigative Techniques Handbook for Merger Review on 'The Role of Economics and Economic Evidence in Merger Analysis'*. An objective for the updated work product is to explore common practices in areas of economic analysis in merger review in a useful manner for both economist and non-economist merger case handlers.

Additionally ACCC staff have participated in exchanges with the US Federal Trade Commission, and the ACCC hosted a secondee from the Singapore Competition Commission.

The ACCC regularly engages and exchanges information with other regulators internationally. In 2011–12, the ACCC:

- Received and responded to 42 requests for information from agencies in Brazil, Canada, China, Costa Rica, Denmark, Egypt, European Commission, Finland, Germany, Indonesia, Kenya, Korea, Mauritius, Mexico, Netherlands, New Zealand, Norway, Singapore, Taiwan, Ukraine, UK, and USA. Sharing evidence of contraventions, experience in best practices and providing capacity building assistance strengthens relationships with regulators enhancing ACCC enforcement capability and improving the effectiveness of global competition and consumer protection networks.
- Made 43 requests for information, to assist ACCC activities, to various countries including: Canada, European Union, France, Germany, Ireland, Japan, Korea, Netherlands, New Zealand, Singapore, Sweden, UK and the USA. Receipt by the ACCC of this information and assistance increased the efficiency of merger and enforcement investigations.



ACCC's competition work recognised by Global Competition Review awards

In March 2012 the ACCC was named the Global Competition Review's Agency of the Year—Asia-Pacific, Middle East and Africa.

The awards celebrate particularly creative, strategic and innovative work of competition regulators around the world, and are decided by readers of the Global Competition Review following nominations from law firms, economics firms, competition authorities, corporate legal departments, and universities.

The award recognises the ACCC's achievements in competition regulation in Australia and reflects the ACCC's international reputation as a leading competition regulator. The ACCC's international reputation is built on its domestic work and the ACCC's engagement with its international counterparts to:

- cooperate on multijurisdictional merger reviews and cartel investigations and develop mechanisms for improved cooperation in the future
- assist new or emerging competition agencies increase their regulatory effectiveness
- share intelligence on cases and best practices in regulation.

Cooperating with competition and consumer protection agencies in the Asia Pacific

In March 2012 ACCC Chairman Rod Sims delivered the keynote address at the inaugural Global Competition Review Law Leaders Asia-Pacific 2012 conference in Singapore. Mr Sims emphasising stronger ties between regulators in the Asia-Pacific region as necessary for building competitive regional economies.

'Businesses can be more efficient operators in the region when there is confidence in regulatory decision making,' Mr Sims said.

'To ensure investment and returns to businesses and consumers in the Asia Pacific are maximised, institutions and particularly competition regulators in the region need to be seen as effective not only individually but collectively.'

Mr Sims described the wide range of experience in the region where some agencies like those in Japan and Korea are acknowledged worldwide whereas agencies in Malaysia are in the early stages of their development.

Recognising the value of effective competition and consumer protection regulation and regional cooperation, the ACCC committed significant efforts to relationship and capacity building in the region. This support included:

- senior representatives presented at 20 regional workshops, conferences and consultations on competition, regulation, consumer protection, fair trading and product safety
- co-hosting with the Association of Southeast Asian Nations (ASEAN) and the New Zealand Commerce Commission a training workshop in Sydney on implementing and enforcing competition law
- welcoming delegations from Brunei Darussalam, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Singapore, Thailand, Vietnam, and secondees from Singapore and Vietnam.

In May 2012, at the instigation of a number of our Asian counterparts, the ACCC Chairman was invited to join the annual East Asia Top Level Officials' Meeting on Competition Policy.

- Hosted study visits by officials from Brunei, China, Hong Kong, Kenya, Korea, Malaysia, Mexico, New Zealand, Poland, Singapore, South Africa, Sweden, Thailand and Vietnam. Strengthening ties and building the capacity of other agencies, including several from the Asian region, enhances the enforcement capability of the ACCC in the short and medium-term.
- Prepared reports and made presentations on Australian competition law and consumer law development at various international events, including at competition, consumer protection and regulatory forums organised by APEC, ASEAN under the ASEAN-Australia-New Zealand Free Trade Agreement, ICN, ICPEN and the OECD. The ACCC was particularly active in the South East Asian region, sharing information about best practices, influencing the development of the emerging competition regimes and promoting regime harmonisation to increase the effectiveness of international enforcement cooperation.

The AER is a founding member of the Energy Intermarket Surveillance Group, an international group that provides for coordination between energy market surveillance and enforcement bodies. The purpose of the EISG is:

- to provide a forum for the private exchange of ideas about issues, techniques, procedures and other matters by Monitors of wholesale energy markets, and
- to develop common ideas with respect to information requirements, market performance indicators and the types of conduct that should be subject to monitoring, mitigation or sanction.

The AER has been active since the inception of the group and maintains a secure website on behalf of EISG members. The group has members from 21 agencies representing energy markets in Australia, Canada, New Zealand, the United States, Singapore, Japan, Korea, the Philippines and Colombia. The group meets every 6 months. There is also frequent communication amongst members between meetings through email, working groups and the interactive website.

4.1.3 Timely delivery of high quality and strategic legal and litigation services within an integrated national framework of internal and external lawyers

The ACCC Legal Group consists of three core units providing in-house legal services to specific business areas, and General and Special Counsel. The three core units are:

- Competition and Consumer Law Unit (formerly the Trade Practices and Litigation Unit) which provides legal services to the ACCC's Enforcement and Compliance Division, and Mergers and Adjudication Group
- Regulatory Law Unit, which provides legal services to the ACCC and AER on regulatory matters
- Corporate Law Unit, which deals with corporate in-house issues, strategic development initiatives, and freedom of information requests.

Special and General Counsel provide additional high level independent strategic legal advice on highly complex and significant issues across all areas of the ACCC and AER.

The roles of in-house lawyers include provision of specialist legal skills in drafting legal documents, providing legal advice, and assistance in the preparation and management of litigation. In-house lawyers are geographically located in most ACCC offices to ensure that specialist legal services are available to staff at all times. External legal service providers are also engaged to provide assistance in matters where additional resources are needed, or as required under the Legal Services Directions. A key role of in-house lawyers is to ensure the effective use and management of external service providers.

During 2011–12 the Legal Group continued to provide in-house legal support services across the ACCC/AER and coordinate the effective use of external lawyers, particularly in conducting litigation on behalf of the ACCC. A number of initiatives were taken to enhance the capability to deliver timely, high quality and strategic legal and litigation services including:

- expanding the ACCC's in-house Counsel team providing independent, high level strategic advice to staff and the Commission
- increasing the number of external firms available to provide expert legal services through the establishment of a new ACCC legal services panel consisting of five firms able to provide legal services in relation to all aspects of the ACCC's work and in each geographic area. The panel commenced on 1 January 2012, consisting of AGS, Corrs Chambers Westgarth, DLA Piper, Baker & McKenzie, and Norton Rose. Each of the panel firms has been appointed to the Commonwealth's Legal Services Multi Use List. The current panel arrangements will remain in place until the end of 2013
- development and implementation of a legal learning and development program. In January 2012 the Legal Group commenced a continuing legal education program to develop the legal skills of in-house lawyers and the ACCC/AER more broadly. A key focus has been to develop a program that effectively used the knowledge and experience of the ACCC legal services panel to assist in the delivery of training. During the period, the Legal Group has organised three ACCC seminars on legal topics and two specific seminars based on regulatory issues. In-house lawyers have also delivered various internal presentations to staff and Commissioners, and participated in various training programs with ACCC legal services panel firms
- regular national in-house forums held to exchange information and ensure a consistent, integrated approach to the provision of high quality legal services.

4.1.4 Ability to incorporate the latest thinking in regulatory and competition economics into the ACCC's work

The world of regulatory and competition economics is constantly evolving. The ACCC as an expert knowledge-based organisation stays at the forefront of contemporary thinking in these areas. This work is led primarily by two areas in the ACCC, the Regulatory Development Branch and the Competition and Consumer Economic Unit.

The Competition and Consumer Economic Unit (CCEU) consists of six competition economists whose role is to provide specialist economic advice to the Enforcement and Compliance Division and Mergers and Adjudication Group within the ACCC.

The CCEU has three core roles.

One is to provide economic advice and assist project teams relating to specific investigations. This involves a range of tasks including assisting the team in developing and refining an understanding of the potential effects of the conduct of interest on competition, identifying relevant information that may assist in assessing the likely competitive effects of the conduct and quantitative analysis to assess these likely effects.

Another is to provide economic advice, research support and peer review services to strategic projects within the Competition and Consumer area of the ACCC. This involves a range of activities including preparing economic research papers on issues relevant to implementing the Competition and Consumer Act.

Exchange program develops EL2 capability

One way the ACCC enhances its people's capability is by providing opportunities for executive staff to develop and rotate through different areas of the business this broadens their experience and widens both their technical and leadership skill sets.

Through feedback from staff, analysis of recruitment and promotions and a review of the Australian Public Service (APS) reform blueprint, the ACCC identified the need for a program to develop the leadership skills and widen the organisational knowledge of the key EL2 cohort. This aligned with the objective of focusing on the people of the organisation and their skills development to position the ACCC to meet future business challenges.

Thus the EL2 Exchange Program was created. The basis of the program was to provide EL2 employees with an opportunity to work in another part of the ACCC for 12 months, using their leadership, people management and strategic skills more, while learning technical knowledge in a different area of the organisation. The program is consistent with *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*, and is an important contribution to the reform agenda.

One statistic that stands out in the APS Blueprint is that 70 per cent of the leadership group of the APS is due to retire in the next decade. At the ACCC, the workforce is younger than the APS average—the median age at the ACCC is 34, whereas the median age for the APS generally is 42. Nevertheless, the ACCC needs to be positioned for the future in a way that sustains our success as an organisation.

One strategy to ensure ACCC staff develop appropriate skills as future leaders is (in the words of the APSC) 'to improve leadership development, and talent management, through targeted and sustained interventions'.

In offering the EL2 Exchange Program the ACCC is shaping its people and their range of skills, experience and leadership capabilities and this fits in well with how the APSC is trying to position the broader public service for the future.

Participant and senior management feedback indicate the program has been successful in achieving its aims.



The CCEU also plays a role in developing and educating ACCC staff to improve the understanding and application of economics and economic techniques to examining competition issues. This involves running training programs and arranging for seminars by academics and experts in the field of competition economics on topics of interest.

The Regulatory Development Branch's (RDB) key role is to provide economic (including finance) advice to the ACCC and AER on regulatory matters. As a complement to this role, RDB performs a range of other functions which have the aim of increasing the quality of regulatory economic analysis in the ACCC/AER.

For example, RDB convenes a regular internal forum which is used to raise economic issues, explore common economic principles in regulatory matters and to look (where appropriate) at the consistency of the application of economic principles across the different regulatory sectors/industries.

To increase the economic knowledge and skills of the ACCC/AER a range of formal internal training courses are offered in regulatory economics and finance. A seminar program is also offered.

A number of publications are produced by RDB to explore the latest thinking in regulatory economics. A regular internal publication, the *Regulatory Development Monitor*, reviews the latest academic literature. *Regulatory Observer* provides information and updates about international and Australian regulatory developments and decisions and is distributed externally. RDB also produces and edits *Network*, the publication of the Utility Regulators Forum, and distributes it quarterly. The Utility Regulators Forum was established in 1997 to encourage cooperation between Commonwealth, state and territory based regulators.

RDB publishes an ACCC/AER staff working paper series designed to disseminate work likely to make a valuable contribution to the public policy debate in areas of competition law, economic regulation and consumer protection. In 2011–12, the following three working papers were published:

- Public utility regulation in Australia: Where have we got to? Where should we be going?
- Evaluation of Australian Infrastructure Reforms: An Assessment of Research Possibilities.
- Benchmarking Opex (Operational Expenses) and Capex (Capital Expenses) in Energy Networks.

Also, a regulatory conference is held annually which brings together industry participants, policy makers, academics and those involved in regulation to hear and discuss the latest ideas about the theory and practice of regulation. The theme of the 2011 conference was 'Regulating for the Future'.

4.1.5 Enhancement of our people's capability, methodologies and tools and the effectiveness of our internal and external communication

In addition to the technical improvements in regulatory and economic methodology supported by Regulatory Development Branch and the Competition and Consumer Economic Unit, the ACCC sought to increase its capabilities in a number of other areas.

In July 2011 the ACCC established a Project Management Office to develop the ACCC's project, program and portfolio management practices through the implementation of a capability improvement plan. This is part of a whole of government initiative to enhance agencies ability to commission, manage and realise benefits from investment in business change. The capability improvement plan is scheduled to run through to 2013–14, but highlights from this year include: enhanced governance of projects and programs, particularly those with a significant IT component; implementation of a best practice project management framework; and awareness raising of the need for sound project management practices supported by the development and delivery of project management training.

Recognising the need to improve the effectiveness of our communications, the ACCC embarked on two projects in 2011–12, a market research project to provide evidence to support improvements to the ACCC's communications with small business and consumers, and also developing a strategic communications framework for the organisation. These projects are ongoing in 2012–13.

4.1.6 Enhanced operations through effective information management practices and supporting systems

The ACCC was one of the first Commonwealth agencies to fully implement an electronic document and records management system. In 2011–12 that system was further developed and stabilised and a number of other initiatives undertaken to improve the ACCC's information management and supporting systems.

The system—a Digital Object Repository and Information System was completed in 2011–12 and it was a challenging project for the IMTS Branch and the ACCC. It has taken 18 months to roll out this system and train staff, among all the other IT projects the ACCC has completed. It has now reached the point where it is workable and provides the ACCC with a state of the art electronic document management system. This is not only a whole of government requirement, but essential for an agency such as the ACCC where accurate record keeping is essential. While it began as an IT project, it resulted in a project in which the entire organisation was involved, since it affected the day to day work of each staff member, no matter what their level. It has been an example of how the different business areas of the ACCC can work together to deliver an outcome for the benefit of everyone.

A major project in 2011–12 was to replace all desktop systems with equipment from whole of government panel providers, compliant with sustainability guidance. Along with the desktop computers, older 19" monitors were replaced with newer technology 24" monitors, reducing typical power consumption from 38W to 21W (or 2W to 0.1W in standby mode). In many cases two monitors were replaced by one of the larger screens. Larger screens also improved user experience. Concurrent with the desktop upgrade users were upgraded to MS Office 2007 limiting the need to run multiple versions of Office and having to inefficiently convert files to the correct format.

In addition to the desktop updates the ACCC replaced some laptop systems with lighter energy efficient tablet devices, reducing power consumption and weight when travelling. The trial of tablet devices and mobile device management systems also reduced the use of paper.

Work commenced on a new contact management system for the Infocentre to improve the efficiency of the call centre's data collection and management. It is expected to be operational in the first month of the 2012–13 financial year (see the entry under 4.1.1 on page 135). Using VoIP (Voice over Internet Protocol) telephones allows Infocentre calls to be handled by Perth Office, offering extended hours of service to callers. Using VoIP technology has reduced remote infrastructure, and external telephony requirements, including removing the need to use ISDN lines in both Canberra and Perth, and to pay for transferring calls between them.

The Information Management and Technology Services Branch (IMTS) embarked on a business process review of a major bespoke application in order to identify potential process improvements and quantify issues with the current system. The outcome of the review will be to understand business requirements for a commercial off the shelf case management system in the near future.

The ACCC had until recently operated its Australian Energy Regulator (AER) data centre from its Adelaide offices. During the later part of 2011–12 the AER Systems were relocated to the central Canberra data centre allowing for the Adelaide data centre to be decommissioned in 2012–13.

To improve its back end IT infrastructure, the ACCC progressed its decommissioning and reduced use of file servers across all remote sites, continued the migration from physical servers to virtual servers, sharing resources and improving efficiency, and completed migration of all ACCC users to virtual desktops, allowing simplified operation from any ACCC desktop, site or remote connection; while improving security. The ACCC also expanded the use of central repositories for information, improving discoverability and management, and removing redundancy and inefficiencies in remote offices.

During 2011–12 the ACCC also expanded its use of video conferencing, improving communication between geographically diverse teams, and reducing need for travel. The ACCC has also introduced wireless networks in Canberra, Melbourne and Sydney offices to improve staff connectivity and mobility. This will allow a reduced use of commercial mobile data services.

Targets and results for goal 4: Deliver results through the ACCC's investment in its people and systems

Measure: Enhanced use of data analysis and intelligence to inform our enforcement and regulatory approaches and interventions

TARGETS		RESULTS
70 per cent of phone calls answered within 20 seconds*		38 per cent of phone calls were answered within 30 seconds. Performance against this target is a result of staff levels in the Infocentre not increasing in line with the greater than expected growth in contact volumes (38 per cent more phone calls received than 2010–11) [see part 3, page 136]
95 per cent of emails responded to within seven days		63 per cent of emails were responded to within seven days [see part 3, page 136] Performance against this target is a result of staff levels not increasing in line with the greater than expected growth in email volume (72 per cent more emails received than 2010–11).
95 per cent of letters responded to within 28 days		74 per cent of letters were responded to within 28 days [see part 3, page 136] Performance against this target was a result of resourcing pressures within the Infocentre with staff levels not increasing in line with the increase in contact volumes (see above).
Make decisions within seven days of receipt about whether to refer written complaints to an investigative unit		Decisions were made within seven days of receipt about whether to refer written complaints to an investigative unit.
80 per cent of under assessment matters concluded or progressed to initial investigations within 28 days		76 per cent of under assessment matters were concluded or progressed within 28 days.
80 per cent of initial investigations concluded or progressed to in-depth investigations within 90 days		62 per cent of initial investigations were concluded or progressed to an in-depth investigation within 90 days. The average timeframe for initial investigations to be concluded or progressed was 96 days.
80 per cent of in-depth investigations concluded or progressed to litigation within one year		78 per cent of in-depth investigations were concluded or progressed to litigation within one year. The average timeframe for in-depth investigations to be concluded or progressed was 275 days.

* Varied to '30 seconds' for the purposes of performance reporting to more accurately reflect the ACCC's time measure for calls responses.

Measure: Collaboration and partnerships with international and domestic regulators and other stakeholders

TARGETS

RESULTS

Meet with key consumer and business groups every six months	Key consumer and business groups were met at least twice during the year. See part 3, page 143 Section 4.1.2.
Assistance to parliamentary inquiries and government agencies to develop policies and processes	Extensive assistance provided. See reports in Goal 3 pages 112–14, 116, 144–5, and section 4.1.2 ‘assistance to parliamentary inquiries’.
No specific target	Significant contact with international governmental entities which enhanced the effectiveness of the ACCC in the short and medium-term. See Goal 4 ‘international partnerships and collaboration’ pages 146–9.

Measure: Timely delivery of high quality and strategic legal and litigation services within an integrated national framework of internal and external lawyers

No specific target	In 2011–12 the ACCC expanded its in-house Counsel team, increased the number of firms on the legal services panel and implemented comprehensive skills sharing and professional development programs. See page 149.
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Measure: Ability to incorporate the latest thinking in regulatory and competition economics into the ACCC’s work

No specific target	The ACCC’s work is supported by in-house specialists in competition and consumer economics and regulatory economics, who provide ongoing education, knowledge sharing and specialist advice in these areas. See page 150.
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Measure: Enhancement of our people’s capability, methodologies and tools and the effectiveness of our internal and external communication

TARGETS

No specific target

In 2011–12 the ACCC developed a new Learning and Development strategy, implemented a Project Management Office, and initiated market research and strategic communication framework projects. See page 153.

RESULTS

Measure: Enhanced operations through effective information management practices and supporting systems

No specific target

In 2011–12 the ACCC stabilised and improved its electronic document system, delivered upgraded desktop PCs, mobile devices and improved back-end infrastructure. See pages 153–4

