part

one

overview of the ACCC

I want the ACCC to promote lawful, vigorous, honest and fair competition between all businesses, small and big. If we can be successful in achieving this objective, we will have contributed to ensuring continued growth, stability and international competitiveness of the Australian economy.

Graeme Samuel
Chairman

review

This has been a challenging yet rewarding year for the ACCC.

Along with our basic function business of fostering competitive, efficient, fair and informed Australian markets, various government reviews had an impact on the ACCC. The Dawson, Wilkinson and Parer reviews were undertaken and the reports delivered to government. Dawson reviewed the competition provisions of the Trade Practices Act; Wilkinson reviewed the health and medical sectors in rural and regional Australia; and Parer reviewed the energy market. The recommendations from these reviews will have a significant effect on the Act and the operations of the ACCC as they are implemented by the government.

Dawson

The Dawson report provided a review of the competition provisions of the Trade Practices Act. The nature of the inquiry meant that many activities of the ACCC came under intense scrutiny, as did business and other sectors' submissions on the ACCC's accountability, transparency and approach to publicity. The Treasurer released the government's response in April this year, endorsing the report.

It recommended giving courts the option of sending to prison those involved in hard core cartels, and that maximum pecuniary penalties for such conduct be substantially increased—a position which the government has accepted in principle, setting up a working party to further examine the issue. The possibility of criminal sanctions and higher penalties to deter cartel behaviour is a major step forward for Australian trade practices law.

The government has agreed with the Dawson report that, for assessing mergers, the section 50 test and the public benefit test did not need to be changed. The government is intending to introduce an additional formal clearance process for mergers and will allow companies to apply directly to the Australian Competition Tribunal for authorisation. The Act will be amended to include a time limit of six months for the consideration of non-merger applications for authorisation.

The Dawson Committee did not accept the ACCC's proposal to change section 46 of the Act, dealing with misuse of market power, but acknowledged the extensive consideration given to possible amendments and supported the development of guidelines by the ACCC.

Rural and regional stakeholders and small business have welcomed the government's endorsement of a notification process to allow collective bargaining by small businesses dealing with large businesses, as proposed by the ACCC. Such notification will give small businesses immunity from the Act for such conduct when it is in the public interest.

The review also recommended a more effective consultative committee and a media code of conduct for the ACCC. The ACCC welcomed the Dawson committee's acknowledgment that it was appropriate and cost effective to use the media to educate consumers and business about their rights and obligations.

leniency

The ACCC's leniency policy for hard core cartel participants came into force on 30 June 2003. The operation of the policy will be enhanced by criminal sanctions for hard core cartel conduct, as proposed by the Dawson review.

The offer is, report cartel conduct such as price fixing, bid rigging and/or market sharing to the ACCC in return for a clear, transparent and certain offer of leniency. The policy applies only to the first company or executive to come forward and cooperate with the ACCC. People who coerced others to participate in cartels, or were clearly the cartel leader, are not eligible for leniency. Corporate lawbreakers should now think hard, but not for long, if they are engaging in cartel activity.

competition, misuse of market power and unconscionable conduct

The High Court made important rulings in a case alleging misuse of market power by Boral Masonry Limited and another alleging unconscionable conduct by CG Berbatis Holding Pty Ltd. In both the cases the victims of the alleged conduct were small businesses, and the ACCC was unsuccessful. With the Boral judgment the ACCC has concerns about the application and effectiveness of the misuse of market power provision. The ACCC has reviewed a number of its investigations following the judgment and discontinued some of these. Further reviews will occur as a number of other misuse of market power judgments are handed down by the courts, including appeal courts, in the coming year.

communicating

While the ACCC promotes effective competition in the market place by enforcement when necessary, it also works hard to inform markets and market participants of their rights and obligations under the Act and to safeguard businesses from inadvertently breaching the law. Prevention, after all, is better than cure.

The ACCC undertook further initiatives this year to achieve voluntary compliance with the Trade Practices Act, seeking innovative ways to inform markets, particularly in rural areas. The competing fairly forums were once again an integral part of this strategy. This year the program took on a new look; a video production sent to 450 regional contacts for wider viewing and a hypothetical hosted by Geoffrey Robertson broadcast via satellite to regional and metropolitan areas.

The ACCC circulated more than 800 000 printed publications many of which targeted businesses and relevant consultative committees, informing them of their rights and obligations, and provided guidance to industry bodies on issues including voluntary industry codes of conduct, collective bargaining and franchising**.** We also communicated with businesses and consumers through voluntary codes, round tables, seminars on collective bargaining, business and consumer forums, and monthly electronic newsletters.

The ACCC consulted with its small business advisory group, the newly established franchising advisory panel and the consumer consultative committee, which launched a campaign to better protect vulnerable and disadvantaged consumers.

The ACCC conducted and participated in seminars, round tables and information campaigns for specific industry groups such as primary production, franchising, motor vehicle retailers, and smash repair and insurance.

In running its program of seminars and consultation, as well as pursuing breaches of the Act, the ACCC relies extensively on its regional office network.

Most people's initial contact with the ACCC is through the information centre. This year the infocentre handled more than 60 000 inquiries and complaints, down from last year when the ACCC was responsible for administering the new tax system price exploitation laws. Notably 83 per cent of all callers were answered within 20 seconds. Beyond the infocentre other ACCC staff deal directly with inquirers and in total it is conservatively estimated that staff answered nearly 90 000 business and consumer inquiries and complaints.

Wilkinson

The Wilkinson review of the impact of Part IV of the Trade Practices Act on recruitment and retention of medical practitioners in rural and regional Australia made comprehensive recommendations to help medical practitioners and others in the health and medical sectors better understand the implications of the Act generally. The ACCC will be consulting with the Health Services Advisory Committee, being established by the Treasurer, to deliver outcomes on the recommendations of the review

cooperating internationally

The ACCC liaised extensively with international government agencies, including coordinating an internet sweep day for misleading travel claims by 87 agencies in 24 countries. This was the highest participation to date in a sweep coordinated by us. Worldwide, 1269 suspicious websites were identified.

In 2002–03 the presidency of the International Consumer Protection and Enforcement Network, a network of consumer protection enforcement agencies from over 30 countries, was held by the ACCC. Two network meetings were hosted in Australia which focused on effective cross-border enforcement actions to benefit consumers around the world.

Productive working relationships with overseas enforcement counterparts are crucial to the ACCC's effective enforcement of Australian competition and consumer law in a global economy.

enforcing the law

The ACCC much prefers compliance with the Trade Practices Act to chasing unlawful conduct with court action. Effective enforcement encourages compliance because individuals and companies know that the ACCC will take forceful action when a breach of the Act occurs. Enforcement stops anti-competitive activities, penalises the perpetrators and compensates victims. In total 48 cases were concluded this year; 30 public undertakings were accepted to remedy possible contraventions; 39 new cases were commenced, 10 of which were concluded during the year, while 71 cases are continuing.

The ACCC's investigation and litigation profile reflects particular concerns about all anti-competitive conduct, and about issues such as product safety, health and medical claims, retail price advertising and use of fine print, place of origin claims, unconscionable conduct, telephone and internet services, claims about contents of foods and beverages, and income-earning and business opportunities.

Outcomes from litigation and public undertakings included:

- discouraging collusion, in cartels supplying electricity transformers following a final penalty hearing on one participant the total penalties are now $20 million with further action still continuing against one alleged participant
- reinforcing the seriousness of price fixing and market sharing with fines of $700 000 imposed on compressor suppliers
- halting an attempt to prevent bulk-billing and after-hours services in a medical practice, and stopping an agreement by obstetricians to boycott no-gap billing arrangements
- pursuing companies who made incorrect headline price claims, revealing fictitious claims in was/now prices and challenging the use of fine print
- checking on the accuracy of information provided to internet and mobile phone users
- stopping spurious fitness, weight loss and miracle health claims. One internet health promoter was jailed for failure to comply with conditions of a one-month suspended sentence.

Companies proceeded against include: Telstra, Allans Music Group, Australian Safeway Stores, Dell Computer, Mitre 10, NRMA Health, Signature Security Group, Western District Health Fund, Wizard Mortgage, Crackerjack Productions, Sensis, Skybiz.Com, Will Writers Guild, Michigan Group, Daewoo Australia, Internet Registrations Australia, Info4pc.com, Internet Name Protection, Internet TV Australia, Virgin Mobile Australia and Woolworths.

The ACCC received 89 175 inquiries and complaints from business and consumers concerning competition and consumer issues; over 40 000 complaints were identified as possible breaches of the Act, around 660 were identified for possible investigation; overall about 220 matters were investigated in detail during the year (including matters continuing from previous years); and the ACCC commenced proceedings in 39 matters.

assessing mergers

The ACCC finalised 191 mergers, asset sales and joint ventures. Of these it objected to nine because they were likely to substantially lessen competition, and two of these proceeded following enforceable undertakings being provided.

adjudicating

Australia is one of the few countries where businesses have the option of seeking immunity from legal proceedings through authorisation and notification processes from the regulatory authority for anti-competitive conduct on the grounds of public benefit. The ACCC made 41 final determinations for 89 applications for authorisation (including gas, electricity, mergers and other authorisations) and decided 268 notifications, among other things, conditionally authorising entry restrictions imposed by the Royal Australasian College of Surgeons, and authorising collective bargaining by New South Wales hotels for wagering services from TAB Limited and broadcasting services from Sky Channel.

regulating

The ACCC promotes competition in network industries: electricity, gas, telecommunications, aviation and airports, waterfront and shipping, rail and post. Many of these industries rely on expensive infrastructure that has monopoly characteristics and the job of the ACCC is to make sure that prices are fair and reasonable in non-competitive markets and services benefit the consumer.

In regulating the electricity industry the ACCC issued its final decision on the revenue cap for Victoria's electricity transmission services. Earnings of SPI PowerNet were capped at $271 million for the first year with savings for state consumers being nearly $150 million during the next five and a quarter years. In South Australia ElectraNet SA earnings were capped at $148 million for the first year, saving South Australian consumers $278 million over five years.

For the Moomba to Adelaide gas pipeline system, Epic Energy failed to submit a complying access arrangement following the ACCC's final decision. As a result, the ACCC drafted and approved its own access arrangement, an instrument that sets out the terms and conditions including the price for pipeline services. Similarly, in Victoria the ACCC drafted and approved its own revised access arrangement for the GasNet transmission system. The ACCC approved the terms and conditions for transportation services proposed by Northern Territory Gas for the Amadeus Basin to Darwin pipeline after that company submitted a complying access arrangement.

The scope of telecommunications services regulated by the ACCC continued to be refined with the declaration of the line sharing service and the granting of two exemptions to the local carriage service declaration. A guide to the resolution of access disputes was finalised. The two arbitrations relating to pay TV services were deferred during the year as the ACCC considered a content sharing agreement between Foxtel and Optus. Undertakings were accepted regarding these arrangements that satisfied the ACCC's initial concerns that they would have anti-competitive impacts. The ACCC indicated in accepting these undertakings that it continued to have concerns about competition in the pay TV industry more broadly. These concerns were detailed in a report to the Minister for Communications, Information Technology and the Arts on emerging market structures in the communications sector, which recommended a range of changes to current regulatory structures.

The ACCC finalised an anti-competitive conduct investigation into Telstra's agency arrangements, accepted court enforceable undertakings from Vodafone regarding fastfone prepaid services and produced the *fair call* advertising guide for telecommunications businesses. It also issued a record keeping rule to Telstra requiring it to provide the ACCC with quarterly reports in relation to bundled services. In the latter half of the year the ACCC commenced implementation of a range of amendments to the telecommunications specific provisions of the Trade Practices Act passed by the legislature in December 2002 including issuing record keeping rules to Telstra for the initial accounting separation reports, draft model terms and conditions for core services and a framework for the review of current declared services.

The ACCC opposed Airservices Australia's proposal to increase prices for terminal navigation and aviation fire-fighting and rescue services. Annual regulatory reports for Melbourne, Brisbane and Perth airports showed that during the past five years, regulated charges fell by around 20 per cent in real terms at the price-capped airports. Airports are now subject only to prices monitoring and are free to set charges as they see fit. In a good result for both passengers and airlines the quality of airport services was shown generally to have been good, suggesting that service quality was not sacrificed to reduce costs under the price cap arrangements.

The ACCC did not object to Australia Post's request to increase the price of the basic postage stamp, for the first time in 10 years, from 45 to 50 cents. The ACCC did object, though, to Australia Post's original plan to increase the prices for bulk pre-sort mail and some other mail categories. Australia Post subsequently proposed a restructure of these prices which did not amount to an increase, to which the ACCC agreed.

To help consumers decide when the time is right to buy petrol, the ACCC provided information on its website about the regular rise and fall patterns of retail petrol prices in the major capital cities. Consumers can take advantage of this information to make significant savings by buying petrol at the bottom of the price cycle. For example, In Melbourne in 2002 the average increase from the bottom to the top of price cycles was around 6.7 cents per litre. By buying at the bottom of the price cycle instead of at the top, consumers there would have been able to save themselves around $174 a year.

The ACCC checks on stevedoring revenues, costs and profits, which provide the government and the community information on waterfront reforms. The latest ACCC report indicated that average prices for container movements across wharves for all containers on average decreased to their lowest level since data has been available. Given the change in usage to larger (40 foot) containers the collection of new revenue and container volume information has commenced. Productivity measured by container movements increased significantly.

staffing

There have been significant arrivals and departures in the ranks of Commissioners. Jennifer McNeill and Ed Willett were appointed during the year, bringing the total number of Commissioners to six. By year's end both Allan Fels and Ross Jones left the organisation. Both made significant contributions to the work of the ACCC specifically and to Australia's competition policy in general. The ACCC wishes them both well in the latest phase of their distinguished careers. A tribute to the work of Allan Fels forms part of this annual report.

The total number of staff employed was 490, 50 less than this time last year. Staffing levels reduced because of the winding up of ACCC's role in overseeing the new tax system function and a concerted effort to reshape staffing numbers within budget constraints while meeting priorities and objectives. Eleven graduates were recruited. Of 26 graduates recruited last year, 24 remained and have been promoted to permanent positions.

funding

The ACCC received $62.5 million in funding for the year. This funding included $1 million for the litigation reserve fund and $0.70 million additional funding to undertake increased regulatory work involving Australia Post and to monitor medical indemnity insurance premiums. Total operating funds for the year were $61.5 million, down from operating funds of $73.4 million in the previous year. The net operating loss for the year was $10.2 million, principally due to legal expenses.

looking ahead

The ACCC is liaising with various departments on the government's response to the outstanding reviews and their implications. We have already reinvigorated the consultative committee, as recommended in the Dawson review. The ACCC has begun to implement the Wilkinson review recommendations.

There is work to be done on implementing the new leniency policy which came into force at year's end. We will make widely known our offer of freedom from prosecution in return for revealing illegal conduct and cooperating with the ACCC. Hard core cartels are the very worst violations of competition law. Detecting, dismantling and deterring covert cartels that operate in Australia or affect our markets will continue to be one of our top priorities.

The ACCC will continue to encourage industry associations and businesses to consider implementing voluntary codes of conduct as a way of improving the standard of business conduct in areas not covered by the Trade Practices Act. The ACCC will provide official endorsement of suitable codes—an endorsement hard to get, and easy to lose.

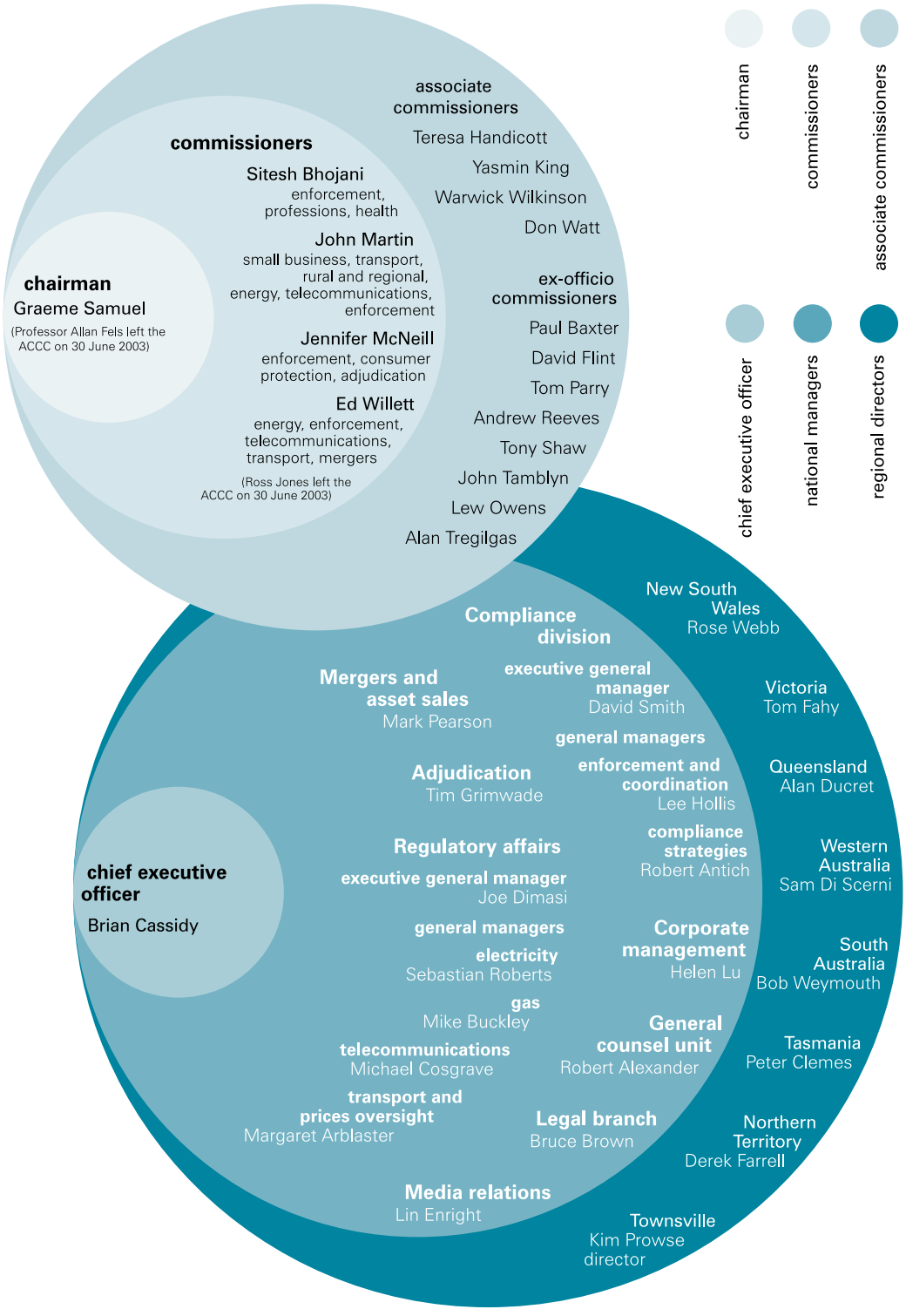
The purpose of competition law is to promote and protect competition in the interests of consumers. In enforcing the provisions of the Act, the ACCC will be mindful not to confuse the protection of competition with the protection of individual competitors.

In addition to the competitive provisions of the Act, there are also provisions that seek to protect smaller firms in dealing with larger enterprises. These provisions apply not to market conduct but seek to establish a fair and equitable trading environment. In carrying out its duties as the independent regulator, the ACCC will take account of the interests of small business and their ability to trade with larger firms in a fair, if sometimes robust, environment.

The ACCC will continue to fairly and vigorously enforce the competition and fair trading provisions and act against those engaging in anti-competitive conduct.

The Commission acknowledges the commitment, dedication, energy and the high level of professional expertise of ACCC staff in achieving our goals and contributing to the wellbeing of the community.

who we are


chairman
commissioners
associate commissioners
chief executive officer
national managers
regional directors
associate commissioners
Teresa Handicott
Yasmin King
Warwick Wilkinson
Don Watt
commissioners
Sitesh Bhojani
enforcement, professions, health
John Martin
small business, transport, rural and regional, energy, telecommunications, enforcement
Jennifer McNeill
enforcement, consumer protection, adjudication
Ed Willett
energy, enforcement, telecommunications, transport, mergers
(Ross Jones left the ACCC on 30 June 2003)
chairman
Graeme Samuel
(Professor Allan Fels left the ACCC on 30 June 2003)
ex-officio commissioners
Paul Baxter
David Flint
Tom Parry
Andrew Reeves
Tony Shaw
John Tamblyn
Lew Owens
Alan Tregilgas
Compliance division
executive general manager
David Smith
general managers
Mergers and asset sales
Mark Pearson
Adjudication
Tim Grimwade
enforcement and coordination
Lee Hollis
compliance strategies
Robert Antich
Regulatory affairs
executive general manager
Joe Dimasi
general managers
electricity
Sebastian Roberts
gas
Mike Buckley
telecommunications
Michael Cosgrave
transport and prices oversight
Margaret Arblaster
Corporate management
Helen Lu
General counsel unit
Robert Alexander
Legal branch
Bruce Brown
Media relations
Lin Enright
chief executive officer
Brian Cassidy
New South Wales
Rose Webb
Victoria
Tom Fahy
Queensland
Alan Ducret
Western Australia
Sam Di Scerni
South Australia
Bob Weymouth
Tasmania
Peter Clemes
Northern Territory
Derek Farrell
Townsville
Kim Prowse
director

what we do

The Australian Competition and Consumer Commission is an independent statutory authority, set up in 1995 as part of the national competition policy reform program. It is the only national agency dealing with competition matters.

The primary responsibility of the ACCC is to ensure that individuals and businesses comply with competition, fair trading and consumer protection laws, in particular the Trade Practices Act.

The ACCC applies these laws without fear or favour, helping to make sure that competition in the market place is efficient and fair.

As an integral part of its work the ACCC:

- promotes effective competition and informed markets
- encourages fair trading and protects consumers
- regulates infrastructure service markets and other markets where competition is restricted

promote effective competition and informed markets

- prevent price fixing, market sharing, bid rigging and boycotts
- prevent the misuse of market power, anti-competitive exclusive dealing and resale price maintenance
- protect the interests of small business against anti-competitive conduct and unfair trading
- assess mergers, asset sales, joint ventures
- allow anti-competitive conduct in the public interest
- assess export agreements
- ensure compliance by the professions
- assess certification trade marks
- improve compliance through education and information
- maintain public and confidential information registers

encourage fair trading and protect consumers

- prevent misleading and deceptive conduct and misrepresentation
- ensure products comply with mandatory safety standards and bans
- improve business and consumers' understanding of their rights and obligations

regulate infrastructure service markets

and other markets where competition is restricted

[promote competition in the network industries:
electricity, gas, telecommunications, aviation and airports,
waterfront and shipping, rail, and post.]

electricity	ensure access to wire networks set revenue caps for the transmission network service providers authorise changes to the national electricity code
gas	implement the national gas code determine conditions of access to gas transmission pipelines arbitrate access disputes
telecommunications	maintain competitive and consumer safeguards across the industry determine which services should be regulated arbitrate disputes between industry members
aviation and airports	assess proposals for price increases for air traffic control services by Airservices Australia monitor prices, quality of service and administer financial reporting requirements for major private airports
waterfront and shipping	monitor stevedoring prices and administer liner cargo shipping arrangements
rail	ensure access to interstate rail track cap freight rail prices
post	approve changes to charges of postal services operated exclusively by Australia Post
petrol prices	watch the prices of petrol, diesel and liquefied petroleum gas
insurance	check costs and premiums in the public liability and professional indemnity sectors of the insurance market

what we don't do

the ACCC does not:

pursue issues such as general pricing levels, warranties and refunds that can be more effectively dealt with at local or state level

arbitrate disputes between individuals and the suppliers or acquirers of goods and services

handle misleading or deceptive conduct in financial transactions

advise whether a company is legitimate

disclose the number or nature of complaints received about a company to inquirers

give legal or professional advice or services of any sort

settle employment disputes

register business names

impose penalties—this is the province of the courts

the law

The Trade Practices Act promotes competition and fair trading and provides for consumer protection to enhance the welfare of all Australians.

The Prices Surveillance Act promotes competitive pricing and limited price rises. To secure compliance, the ACCC monitors price rises, costs and profits of any organisations, goods or services when directed by the minister, assesses prices for companies placed under surveillance by the federal government as well as conducting inquiries into pricing practices. The ACCC can informally monitor prices if it is concerned about specific markets.

effective competition and informed markets

parts of the Trade Practices Act deal with competition

IV	anti-competitive conduct: price fixing, market sharing, boycotts, agreements substantially lessening competition, misuse of market power, exclusive dealing, resale price maintenance, mergers substantially lessening competition
XIA	the competition code

enforcement

Anti-competitive conduct is dealt with only by the ACCC and is illegal for all businesses in Australia. The ACCC supports effective industry self regulation, codes of conduct and standards. It conducts merger and acquisition analysis.

To enforce the provisions of the Trade Practices 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 breaches of anti-competitive conduct:
penalties of up to $10 million for companies and $500 000 for individuals.

fair trading and consumer protection

parts of the Trade Practices Act deal with fair trading and consumer protection

IVA	unconscionable conduct in commercial and consumer transactions
IVB	industry codes of conduct; the franchising code is a mandatory code 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
VB & XIAA	price exploitation concerning GST
VC	criminal conduct in fair trading and consumer protection

enforcement

State legislation largely mirrors the fair trading provisions of the Trade Practices Act.

To enforce the provisions of the Trade Practices 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 breaches of fair trading and consumer protection:
fines of up to $1.1 million for companies and $220 000 for individuals.

infrastructure service markets

parts of the Trade Practices Act deal with regulated industries

IIIA	access to the services of essential national infrastructure facilities, such as access to transmission wires networks, natural gas pipelines, rail tracks and airport facilities
X	establishes limited exemptions in relation to international liner cargo shipping
XIB	anti-competitive conduct in telecommunications
XIC	access to services for telecommunications

regulation

Regulatory functions of the ACCC include: authorisation of the national electricity market rules (national electricity code) and gas supply arrangements under Part VII, the regulation of transmission revenues for both electricity and gas and administering access regimes under Part IIIA, services in telecommunications and airports, arbitration, audits and direct monitoring of prices.

report of the Dawson inquiry into the Trade Practices Act

some key recommendations

criminal penalties

Solutions must be found to the problems identified before criminal sanctions are introduced for serious cartel behaviour. The problems are, importantly, the development of a satisfactory definition of serious cartel behaviour and a workable method of combining a clear and certain leniency policy with a criminal regime. Subject to this proviso, the committee recommends the introduction of criminal sanctions for serious, or hard core, cartel behaviour, with penalties to include fines against any convicted corporation and imprisonment and fines, as appropriate, for implicated individuals.

The ACCC considers the recommendation that criminal sanctions be introduced for hard core cartel activities was a major step forward for Australian trade practices law as Australia will now join our many trading partners in recognising that when individuals set out to deliberately and blatantly break the cartel laws (or anti-cartel laws), they should face criminal sanctions. The ACCC is confident that remaining issues in relation to criminal sanctions will be clarified. A change to the law will benefit consumers, big and small business. Highly profitable cartels would become much less attractive to potential law breakers.

civil penalties

The Act should be amended so that: the maximum pecuniary penalty for corporations be raised to be the greater of $10 million or three times the gain from the contravention or, where gain cannot be readily ascertained, 10 per cent of the turnover of the body corporate and all of its interconnected bodies corporate (if any); the court be given the option to exclude an individual implicated in a contravention from being a director of a corporation or being involved in its management; and corporations be prohibited from indemnifying, directly or indirectly, officers, employees or agents against the imposition of a pecuniary penalty upon an officer, employee or agent.

The ACCC welcomes the recommendation that the maximum penalty for corporations be raised in line with international practice and was pleased that the court will be given the option to exclude an implicated individual from being a corporation director or manager.

mergers

The ACCC should provide adequate reasons for its merger decisions (taking care to protect any confidentiality) in the informal clearance process when requested to do so by the parties and in cases where it rejected a merger or accepted undertakings. A voluntary formal clearance process should be introduced, parallel to the existing informal clearance process, in relation to merger applications. Applications for the authorisation of mergers should be made directly to the Australian Competition Tribunal.

The ACCC welcomes the committee's endorsement of the current mergers test. The ACCC is assessing the implications of implementing the proposed clearance and merger authorisation recommendations.

collective bargaining

A notification process is to be introduced for collective bargaining by small businesses dealing with large business where it is in the net public benefit. Immunity for such arrangements would commence a short period after lodgment of a notification. A transaction value approach is proposed to restrict the notification process to small businesses. It was also recommended that third parties be able to make a collective bargaining notification on behalf of a group of small businesses.

The committee has largely adopted the ACCC's suggestions to address issues raised by small business in relation to collective bargaining with big businesses. The ACCC's preferred option was modelled on the existing notification process whereby immunity from the competition provisions of the Act is available—where it is in the public interest—through a more streamlined and cost-effective process. This has been endorsed by the committee.

misuse of market power

No amendment should be made to section 46**.**

While the committee did not endorse any change to the market power provisions, there is in the ACCC's view ongoing uncertainty about the effectiveness of this provision following the High Court's judgment in the Boral case. Further consideration will be necessary on the effectiveness of section 46 when other judgments are made by the courts.

use of the media

A media code of conduct should be based on the following principles: the public interest is served by the ACCC disseminating information about the aims of the Act and the ACCC's activities in encouraging and enforcing compliance with it. This extends to information about proceedings instituted by it, but an objective and balanced approach is necessary to ensure fairness to individual parties; while it may be necessary for the ACCC to confirm or deny the existence of an investigation in exceptional circumstances, the ACCC should decline to comment on investigations; with the object of preserving procedural fairness, commentary on the commencement of court proceedings by the ACCC should only be by way of a formal media release confined to stating the facts; and reporting the outcome of court proceedings should be accurate, balanced and consistent with the sole objective of ensuring public understanding of the court's decision.

The ACCC welcomes the committee's acknowledgment of the important and legitimate use of the media as an appropriate and cost-effective way to educate both business and consumers about their rights and obligations. The media code based on certain principles as recommended by the committee is essentially consistent with the ACCC's normal and preferred media policy.

accountability

The Act should be amended to establish a consultative committee to advise the ACCC on the administration of the Act. An associate commissioner should be appointed to the ACCC to receive and respond to individual complaints about the administration of the Act. The ACCC should review its service charter, in conjunction with the proposed consultative committee, in the light of the outcome of this review and the relevant recommendations of the Wilkinson Review.

The ACCC welcomes that the committee recognises the ACCC is a highly accountable and independent authority and that the recommendations confirm that the introduction of a further oversight board, or inspector general, was neither necessary nor appropriate. The ACCC notes the call for a stronger consultative committee, welcomes the suggestions and will move towards their implementation.

per se prohibitions

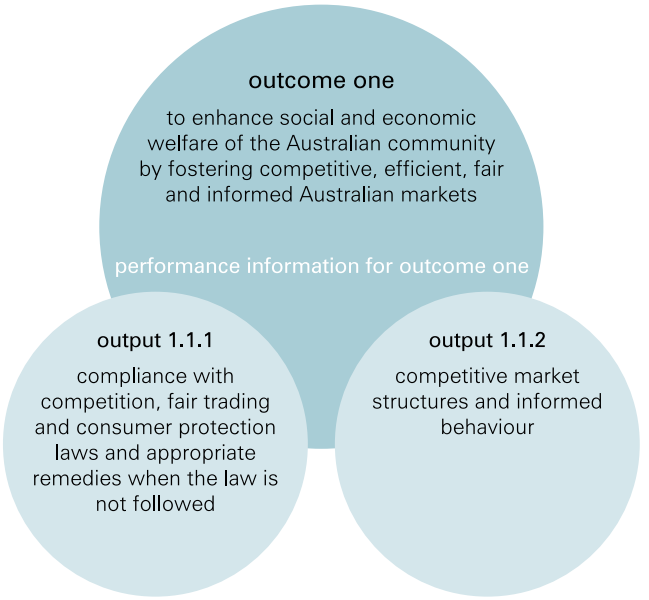
The committee also recommended substantive amendments to the third line forcing and exclusionary conduct provisions of the Act.

The ACCC has concerns that the proposed amendments to the exclusionary conduct provisions will weaken the application of the Act to conduct such as market sharing and bid rigging.

full details of the Dawson review are available on:
www.tpareview.treasury.gov.au/content/home.asp

outcome and output structure

Australian Competition and Consumer Commission



to achieve outcome one through appropriate outputs the ACCC seeks to:

promote effective competition and informed markets

encourage fair trading and protect consumers

regulate infrastructure service markets and other markets where competition is restricted