



Australian  
Competition &  
Consumer  
Commission

2005—06

**Annual report**

ACCC incorporating the AER

FOSTERING COMPETITIVE, EFFICIENT, FAIR AND INFORMED MARKETS



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29 August 2006

The Honourable Chris Pearce MP  
Parliamentary Secretary to the Treasurer  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

In accordance with subsection 171(1) of the Trade Practices Act 1974, the Australian Competition and Consumer Commission is pleased to present you with its eleventh annual report, covering the ACCC's operations for the year ended 30 June 2006.

Graeme Samuel  
Chairman

Louise Sylvan  
Deputy Chair

Stephen King  
Commissioner

Jennifer McNeill  
Commissioner

John Martin  
Commissioner

David Smith  
Commissioner

Edward Willett  
Commissioner

EXECUTIVE OFFICE



# about this report

The structure of the report closely follows the outcome and output structure of the ACCC portfolio budget statement 2005–06.

## **outcome one**

**to enhance the social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets**

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

In reporting performance information this structure is aligned with the output groups:

## **output 1.1.1**

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

## **output 1.1.2**

**competitive market structures and informed behaviour**

In these chapters information is given on litigation and public settlements including court enforceable undertakings.

Summary resources tables for output groups are given on page 23.

Compliance with the requirements for annual reports of the Department of Prime Minister and Cabinet is shown on page 221.

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

To obtain copies contact the ACCC on 02 6243 1143.

For more information contact the Director of Publishing on 02 6243 1148, visit the website [www.accc.gov.au](http://www.accc.gov.au) or view the annual report on <http://www.accc.gov.au/content/index.phtml/itemid/668577>



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# part one

## overview of the ACCC



The ACCC is recognised internationally by its peers for expertise in enforcement, our success rates, our outreach and advocacy programs and our willingness to participate and share our experiences in international forums.

**Graeme Samuel** | Chairman





# review

The 2005–06 annual report for the ACCC demonstrates the central role that effective competition policy plays in the efficient functioning of the economy. Vigorous targeted enforcement action, effective compliance measures and an ongoing commitment to refining the regulatory process ensures that we meet our goal of an honest, fair and competitive economy for all. Some of the highlights for this financial year include:

- > the review of our leniency policy and the subsequent introduction of an immunity policy for cartel conduct which led to more applicants seeking amnesty. The high level of business consciousness of the revised policy and its use by applicants have greatly assisted the ACCC in detecting and investigating cartels
- > the review of the informal merger assessment process which generated greater transparency, accountability and timeliness in merger reviews while still preserving the current system's benefits
- > the successful launch of a streamlined collective bargaining authorisation process for small business, setting timelines for dealing with requests for interim authorisation and final decisions
- > additional support for small business through the launch of the small business easy access point on the ACCC website, an electronic small business complaints form and a dedicated small business helpline
- > the establishment of the Australian Energy Regulatory (AER) and progress in the debate on investment in infrastructure
- > commencement of a major review of the regulation of key network and wholesale services provided over the fixed telecommunications network.

## enforcing the law

The ACCC's enforcement activities, including litigation, remain the cornerstone of the agency. This financial year, we reinforced the seriousness of price fixing, market sharing and resale price maintenance commencing litigation in relation to each of these forms of anti-competitive conduct.

Unconscionable conduct, cartels and exercise of market power all have everyday victims—consumers and businesses who have a right to expect an open market and fair competition instead of illegal deal-making and abusive behaviour.

As an effective enforcer we understand that litigation is only one of the tools available to us. We are also committed to strong liaison, outreach and advocacy programs, for which we are internationally recognised.

Some of the litigation highlights for the 2005–06 financial year include the decision on 31 January 2006 by the Federal Court to impose a penalty of \$8.9 million on Australian Safeway Stores Pty Ltd for price fixing and misuse of market power in the bread market. Following the penalties awarded against Liquorland in the previous financial year for five contraventions of s. 45 of the *Trade Practices Act 1974* (the Act) in its response to liquor licensing applications by smaller competitors, the Federal Court found in June 2006 that Woolworths had contravened the exclusionary conduct provisions and entered into anti-competitive agreements over dealings with operators of licensed premises in New South Wales. A penalty hearing is pending.

The Federal Court imposed penalties totalling more than \$1 million against Chaste Corporation Ltd, Mr Peter Foster and other individuals for engaging in resale price maintenance in conducting a weight-loss business. Agreements between the company and distributors of the weight-loss products had contained provisions preventing the sale of the products at a discount. The penalty of \$600 000 against Chaste Corporation and the penalty of \$150 000 imposed on Mr Foster were the highest penalties imposed by the Federal Court on a corporation and an individual for resale price maintenance. The court also found that the company had engaged in misleading and deceptive conduct and made misrepresentations about the profitability of area manager distributorships.

Internationally based companies who attempt to mislead Australian consumers are not immune from prosecution under the Trade Practices Act. This was underscored by a decision of the Federal Court which declared that L&L Supply, an international office supply company based in Florida and selling into Australia, misled its customers about the supply of packing tape. The court made the orders sought by the ACCC by default after L&L failed to meet its obligations under the court-ordered timetable. The ACCC had previously obtained a court order freezing L&L Supply's funds in Australia.

The court declared that L&L Supply misled its customers and had contravened ss. 52, 53, and 64 of the Act. Orders were made for injunctions, compensation from the frozen funds, publication of corrective notices and costs.

Applications by the ACCC for special leave were not granted by the High Court in either *ACCC v Apco Service Stations Pty Ltd & Mr Peter Anderson* or *ACCC v Australian Communications Network Pty Ltd*.

In the first case, the ACCC sought special leave to appeal the decision of the Full Federal Court that Apco and Mr Anderson were not part of a Ballarat petrol price cartel. The ACCC appealed the finding that the court was not satisfied that Apco's conduct demonstrated a necessary commitment to the pricing conduct of the other parties and therefore did not amount to an 'understanding' with Apco's competitors. The High Court found that the Full Court's decision turned on its view of the facts as pleaded and argued by the ACCC, and the case did not raise any issue of law suitable to grant special leave. The courts' decisions raise some important issues in relation to the level of commitment required for there to be a price fixing arrangement which will need to be considered in the light of future investigations and court judgments on price fixing allegations.

The composition of the ACCC's litigation activities has shifted with a greater proportion of s. 87B undertakings being accepted. The reason for this is threefold. First, in the interests of public efficiency and accountability, the ACCC will accept enforceable undertakings when the outcome is broadly the same as could be achieved through a court-based resolution. Second is the issue of timeliness—the court process can lead to significant delays in, and a dilution of, the remedies for unlawful conduct. However, if the conduct is particularly serious and/or blatant a court-based resolution will be sought. Third, following the case of *Cassidy v Medibank Private*, the ACCC cannot obtain refunds through a civil court-based outcome unless it takes a representative action, whereas it can obtain refunds through an undertaking. Other more innovative outcomes are also achievable through undertakings such as compliance training programs for directors, employees, businesses and corporations. Of the 50 s. 87B undertakings accepted during 2005–06 in consumer protection matters 13 involved outcomes—primarily refunds—that would not have been achieved through court orders.

The ACCC is consistent in its choice of enforcement action. Priority is given to cases which are most likely to improve overall compliance with the Act. Matters we choose to litigate lead to widespread consumer outcomes. Significant, difficult or complex matters

such as cartels, require a recognition that enforcement actions will involve complex investigations and the most effective application of our investigative and legal resources. In some recent cartel cases the ACCC has had to persuade the court to draw an inference that there was a contract, arrangement or understanding from circumstantial evidence. We are still waiting to see whether the courts will be prepared to continue to accept such evidence.

## criminal prosecutions

The ACCC has been giving more serious consideration to criminal prosecutions for breaches of the consumer protection provisions. This is particularly where we can see consumers have been deliberately defrauded, and where we believe that it is appropriate to elevate the level of prosecution. The choice to prosecute criminally affects the process of investigation undertaken, in terms of the admissibility of evidence, and involves collaboration with the Commonwealth Director of Public Prosecutions (CDPP). In close collaboration at the most senior levels of the CDPP, we have established protocols for working well to ensure the efficiency of taking matters through to the criminal prosecution stage. The advantage of criminal prosecutions is twofold. First they create a criminal record for the offending business. Second, they enable us to secure fines, which are not available under the civil prosecution process for the consumer protection provisions.

## investigation processes

The ACCC's compulsory evidence-gathering powers (s. 155) are being used more widely than just enforcement, including in mergers investigations and adjudication processes. This is not an entirely new development but it is one which is quite within our legislative powers and appropriate in certain circumstances.

To be an effective enforcement agency, the ACCC must take action to counter conduct designed to obstruct investigations. Such obstruction includes:

- > providing false or incomplete response to ACCC officers seeking information on a voluntary basis
- > agreeing to cooperate with ACCC investigations but then not responding to specific requests for information or assistance in a complete or timely manner
- > providing incomplete responses to requests for documents under s. 155 notices and destroying or altering documents subject to requests
- > not responding to s. 155 notices within the timeframes required without a reasonable excuse
- > providing false responses in formal interviews
- > agreeing in principle to resolve matters by way of administrative settlement or enforceable undertakings but then delaying the negotiation of the details.

The ACCC fully recognises the need to have proper and accountable investigative processes and to provide those who are the subject of investigation with their administrative law rights and a reasonable opportunity to respond to allegations.

However where an investigation is being obstructed, the ACCC will take action. The ACCC is liaising with the CDPP in relation to referrals, when appropriate:

- > of non-compliance with s. 155 notices for criminal prosecution under the Act
- > for action under other criminal provisions for giving false or misleading evidence to a Commonwealth Officer or false testimony, fabrication of evidence, etc.

## product safety

The ACCC has continued to be active in the area of product safety. This past year has seen action in areas as diverse as basketball hoops, tobacco labelling, ladder safety and hot water bottles.

A new mandatory safety standard for basketball rings and backboards was introduced. This requires that a warning notice and symbol be displayed at the time of sale and be permanently fixed to the backboard. The standard and an associated consumer safety education campaign follow three deaths and numerous injuries caused by structures supporting basketball rings collapsing.

Amendments were made to the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations which include new graphic warnings for tobacco products. A revised mandatory standard for children's cots was also introduced.

Reviews of the mandatory safety standards for bean bags, trolley jacks, vehicle support stands, bicycle helmets, flotation toys and swimming aids began. The supply of 'No Holes Tongue Studs', and similar products, are the subject of an unsafe goods notice issued in February 2006, which will run for 18 months.

The ACCC continued to deliver and maintain the product safety recalls website, [www.recalls.gov.au](http://www.recalls.gov.au), which provides consumers and state and territory regulators with up-to-date access to information on all Australian safety-related recalls. In 2005–06, 746 recalls were notified; 188 general consumer product recalls were monitored and assessed; and nine consumer product recalls audits were conducted.

The Productivity Commission's Review of the Australian Consumer Product Safety System was finalised and will be important in shaping the future legislative framework for Australia's product safety regulation.

## international

International cooperation and coordination on competition and consumer protection enforcement is a key priority of the ACCC. Increasingly the ACCC's enforcement of competition and consumer protection laws requires greater cooperation and coordination with authorities around the world. In particular, the detection of and action against global cartels is becoming a key part of the ACCC's enforcement program. Through the International Competition Network (ICN) the ACCC has played an important role in developing best practice techniques for the detection and enforcement of cartels. Using the ICN's Merger Committee work the ACCC has implemented some changes to the way in which we analyse and assess merger clearances. The work of the ACCC in business education and consumer outreach is now being used as a model by a number of international authorities.

The ACCC finds that many developing competition authorities want to learn from it. The ACCC's technical assistance program for developing competition authorities has seen many international delegations learn firsthand of our experiences. The ACCC is also active in programs run by multilateral organisations such as the OECD, APEC, ASEAN and UNCTAD. The development of regional trade agreements between Australia and our trading partners involves increased cooperation and coordination by the ACCC and the respective competition authorities. These agreements are important developments which allow the ACCC to establish strong working relationships with these countries' competition authorities.

## communicating with consumers and businesses

The ACCC's Infocentre plays an integral role in responding quickly to allegations of breaches of the competition, fair trading and consumer protection provisions of the Act. The introduction in December 2005 of a dedicated small business helpline, an ancillary to the Infocentre, provided detailed advice on a vast array of small business and franchising related matters.

Calls to the ACCC's Infocentre, and feedback from regional outreach managers, showed that consumers and businesses are continually exposed to many forms of scam conduct. The ACCC continued to make scams a high priority, through its ScamWatch website, and particularly in relation to small business, delivering a Competing Fairly Forum presentation on scams, frauds and your business. It focused on the three main forms of scams perpetrated against small business, as well as providing information on ways businesses can protect themselves.

The ACCC was the secretariat for and chaired the Australasian Consumer Fraud Taskforce (ACFT) representing 17 Commonwealth, state and territory consumer protection and related agencies. A key focus of ACFT during the year was sponsoring Australia's participation in international scams awareness month.

The ACCC produced 83 new publications and distributed more than one million hard copy publications. Product safety, compliance programs and small business were among the popular topics covered by the ACCC's new publication range. Two suites of publications, focusing on cartels and compliance programs were aimed at specific audiences such as consumers, business enterprises and government.

In September 2005 the ACCC issued a booklet on understanding petrol pricing in Australia, presenting answers to some frequently asked questions. From September to December 2005 the ACCC also produced a weekly petrol snapshot on the ACCC website. This provided additional information to consumers following the significant increases in domestic and international petrol prices in early September 2005 (principally because of Hurricane Katrina).

Commissioners and senior staff undertook 162 speaking engagements and extensive briefings, both private and public. This was complemented by the ACCC's rural and regional program which underpins our commitment to informed markets in regional Australia.

The ACCC developed and implemented a \$9 million national consumer awareness campaign to correct what, in the ACCC's view, were misleading claims about the perceived health benefits of smoking 'low yield' cigarettes compared to full strength cigarettes. This campaign was funded following enforcement action against Australia's three main tobacco companies in the previous financial year.

The ACCC liaised with its key stakeholders through its consultative committees. It finds it extremely beneficial to work with these committees to promote greater awareness of, and compliance with the Act. By making the ACCC more accessible, it can focus its activities on promoting compliance with the Act, address current industry concerns, and encourage and develop a better understanding of the ACCC's role and functions. Two additional consultative committees were formed to focus on infrastructure and energy. They will be an important point of contact for the ACCC in its regulatory work.

## mergers

One year on, the informal review guideline has been extremely well-received by business, its advisors and the community at large. The guideline explains how the merger review process works for merger parties who request 'informal clearance' from the ACCC. The guideline provides clarity, certainty and transparency to all interested parties, including the parties directly involved in the merger, customers, suppliers and shareholders. It forms part of the ACCC's ongoing commitment to matching and hopefully influencing world best practice in merger evaluation.

During 2005–06 the ACCC examined 272 mergers, acquisitions and asset sales for their compliance with s. 50 of the Act; 261 were not opposed, two were opposed but were subsequently resolved through undertakings, six were resolved through undertakings during the course of their review and three had concerns expressed on a confidential basis and did not proceed. The 261 not opposed includes 26 that were withdrawn during the course of their consideration by the ACCC before a final decision was made. Some of the major matters were:

### *Those not opposed*

- > Woolworths Limited's proposed acquisition of 22 Foodland Associated Limited supermarkets
- > Lion Nathan Limited's proposed acquisition of Coopers Brewery Limited
- > Australian Stock Exchange Limited's proposed acquisition of Sydney Futures Exchange Limited

### *Those initially opposed but ultimately resolved by court enforceable undertakings*

- > Toll Holdings Limited's proposed acquisition of Patrick Corporation Limited
- > Patrick Corporation Limited's proposed acquisition of FCL Interstate Transport Services Pty Limited

### *Those resolved during their review by court enforceable undertakings*

- > ABC Learning Centres Limited's proposed acquisition of Kids Campus Limited
- > The Australian Gas Light Company's proposed acquisition of Alinta Limited
- > Ramsay Health Care Limited's acquisition of Affinity Health Limited.

## adjudication

Through 2005–06 the ACCC continued to undertake its important functions of assessing public interest immunity through the authorisation and the exclusive dealing notification processes. The ACCC also devoted resources to preparing for the collective bargaining notification process and other legislative changes proposed by the government.

In the 2005–06 financial year the ACCC received 26 new authorisation matters (including one regulatory and 25 other). The ACCC made 35 final determinations for authorisation (including one regulatory and 34 other matters).

The ACCC received 1113 notifications for exclusive dealing, the vast majority of which concerned third line forcing; and issued four draft revocation notices in relation to exclusive dealing notifications.

The ACCC has endeavoured to enhance three core principles associated with the authorisation and notification process—timeliness, consistency and transparency.

In February 2006 the ACCC sought comments on a six-month indicative timetable for authorisation matters. At the same time, enhancing consistency and transparency, the ACCC issued exposure drafts of guides to both the authorisation and notification processes. Following comments from interested parties, the ACCC will issue a complete suite of guidelines in the next financial year.

As mentioned earlier, the ACCC also launched its streamlined collective bargaining authorisation process for small business in December 2005. The streamlined process provides small businesses with greater certainty about the timelines within which the ACCC will conduct its assessment of their application.

The ACCC has also sought to offer small businesses a better indication of the sorts of collective bargaining arrangements which are less likely to raise concerns and are more likely to be authorised.

## regulation

The major change in infrastructure regulation was the establishment of the the AER. Commencing operation on 1 July 2005, this new independent regulatory body is responsible for the economic regulation of Australian energy markets and compliance with the electricity and gas rules at a national level.

Governments have agreed that the AER's role will expand over the next two years. The AER is to replace the various jurisdictional regulators and become a 'one stop shop' regulator for the energy sector on a national basis. A single and independent national regulator will reduce regulatory costs and uncertainty to business and allow both the gas and electricity markets to develop, as much as possible, within a consistent regulatory framework.

The AER has released its *Strategic plan 2006–08* and *Work program 2006–07* which set out the key projects of focus for the AER and outline general timeframes to enable stakeholders to plan for and participate in regulatory processes.

In the courts the ACCC's appeal against the Australian Competition Tribunal's decision on the Moomba to Sydney gas pipeline was heard. The Federal Court overturned the tribunal's decision to set aside the ACCC's access arrangement for the Moomba to Sydney pipeline and its decision to establish a regulatory value of the pipeline at \$835 million. This decision vindicated the ACCC's professionalism and integrity in making regulatory decisions. The interpretation has provided direction on the task of setting the regulatory value of a pipeline under the gas code.

Changes to the National Access Regime (Part IIIA) were introduced into parliament this year. The proposed changes are of a diverse nature but critically for the ACCC the amendments give specific direction to the ACCC about the principles that should be taken into account when making regulatory decisions. They include new objects clauses, pricing principles and immunity from declaration for services delivered by government sponsored infrastructure where the ACCC approves the tender process.

The broader advisory role of the Telecommunications Branch was reflected in a decision to change its name to the Communications Group. The group now works in communications markets beyond specifically telecommunications markets. It recognises the emergence of new technologies, which compete with, and complement, traditional telecommunications services.

In December 2005 the ACCC commenced its fixed services review, a broad-ranging inquiry into the regulation of key network and wholesale services provided over the fixed telephone network. The review was initiated because of the pending expiry of various declarations as well as significant developments in the industry such as Telstra's fibre-to-the-node (FTTN) proposals. In June 2006 the ACCC issued a position paper that contained a draft view to continue the regulation of the unconditional local loop service and the public switched telephone network origination and termination service for a further three years. This position paper also proposes that the ACCC would conduct a stocktake of competitive infrastructure, and that the conditioned local loop service declaration be discontinued. The paper concluded that the case for a declaration of a wholesale ADSL service was not compelling and sought industry comment on the factors that should be considered in rolling back regulation.

The ACCC successfully defended its regulation of the line sharing service (LSS) in Australian Competition Tribunal proceedings brought by Telstra. Telstra had applied for review of the ACCC's decision to reject an access undertaking proposed for the LSS. In an important decision that will have implications for the ACCC's regulation of telecommunications generally, the tribunal found that the methods by which Telstra had calculated its proposed access prices were not reasonable.

## corporate

The provision of economic and financial advice within the ACCC has been enhanced by the establishment of the Regulatory Development Branch this year. The group will provide advice and ensure the use of consistent economic principles across all regulated sectors.

The broadening scope of the ACCC's work placed extensive demands on its 596 staff. The ACCC is indebted to our staff all around Australia for their professionalism, knowledge and dedication. We have a very strong culture of public service, support for the public interest and a commitment to the principles of competition law. We are determined to ensure that we recruit, retain and develop capable and enthusiastic people.

Our Chief Executive Officer, Mr Brian Cassidy was awarded a Public Service Medal for his outstanding public service in the conception, development and application of national competition policy. The award recognises the key role he played in the development of national competition policy.

The 2005–06 budget provided the ACCC with \$85.5 million for operating expenses and \$1 million for capital funds. Further funding was received in the additional estimates process for the transfer of the product safety and consumer information function from Treasury and funds relating to its regulatory role in telecommunications. The total appropriation for 2005–06 was \$89.8 million for departmental expenditure and \$1.98 million for capital funds. The litigation contingency fund, from which adverse cost orders are met, has an end-of-year balance of \$16.7 million. The 2006–07 budget provides the ACCC with \$105.5 million for operating expenses and \$3.8 million per



capital funds. This included new measures for the ongoing funding for the AER, new funding for criminal cartel enforcement, new funding for the Downstream Petroleum Reform Package (Oilcode) and new funding for Canberra accommodation.

## looking forward

Each year a substantial effort is made by the ACCC to confront new issues that have the potential to affect the ACCC's performance and its enforcement of the law. I believe the ACCC has dealt with the challenges faced last year and is well positioned to meet the likely demands in 2006–07.

The foreshadowed introduction of criminal sanctions for cartel conduct will significantly enhance the effectiveness of the ACCC's immunity policy in breaking cartels and introduce appropriate penalties for conduct which is little more than theft.

The ACCC will continue to develop its intelligence, research and analytical capacity to better inform all aspects of our enforcement and compliance activities. This will include obtaining access to information held by other agencies through the development of appropriate protocols and memorandums of understanding.

Recent reforms made by government and decisions made by the courts are helping the ACCC to form a more complete picture of the future direction of regulation. It is very clear that governments want to move the regulatory environment towards greater consistency and there is little doubt that a by-product of greater consistency is greater certainty. Certainty has been increased as various court cases have been concluded and issues of interpretation and regulatory practice have been clarified. As competition increases, in some network sectors, it becomes even more crucial for regulators to achieve timely, transparent decisions to avoid 'holding up' markets.

A number of factors from the ACCC's external environment are likely to significantly affect the ACCC's communications regulatory work. Substantial network upgrades and technological change more broadly, have the potential to fundamentally change the way that key communications services, including media content, are delivered in the future. The implementation and continued development of Telstra's operational separation plan and pricing protocols may present substantial challenges.

We will remain an active and leading player in key international forums, chairing working groups and helping to further develop cooperation as members of various steering committees.

The welfare of all Australians is greatly enriched by having a competitive and fair business environment and appropriate consumer protection. I believe that the ACCC has maintained the high standard expected of it by business, government and the community. There are many challenges facing the ACCC and its administration of the Act and, as those challenges evolve, the Act will also have to continue to adapt to remain the relevant, important legislation it is today. One aspect that will not change, however, is the driving force behind our actions—the aim of a vigorous, lawful, competitive business environment.

**Graeme Samuel**

Chairman

# who we are

## Australian Competition and Consumer Commission

<b>chairman</b>	Graeme Samuel AO
<b>deputy chair</b>	Louise Sylvan
<b>commissioners</b>	Stephen King, John Martin, Jennifer McNeill, David Smith, Edward Willett
<b>chief executive officer</b>	Brian Cassidy

### enforcement and compliance division

executive general manager	Mark Pearson
general managers	Nigel Ridgway, compliance strategies branch Lee Hollis, criminal enforcement and cartel branch Rose Webb, enforcement and coordination branch Robert Antich, policy and liaison branch
regional directors	Chris Hanlon, New South Wales, Bob Weymouth, Victoria Alan Ducret, Queensland Kim McBey, North Queensland Sam Di Scerni, Western Australia George Kamencak, South Australia Peter Clemes, Tasmania Derek Farrell, Northern Territory

### regulatory affairs division

executive general manager	Joe Dimasi
<b>communications group</b>	
group general manager	Michael Cosgrave
general managers	Robert Wright, compliance and regulatory operations branch Richard Home, strategic analysis and development branch

### regulatory development branch

general manager	Anne Plympton
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### transport and prices oversight branch

general manager	Margaret Arblaster
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### office of the AER

group general manager	Michelle Groves
general managers	Sebastian Roberts, markets branch Mike Buckley, network regulation north branch Chris Pattas (acting), network regulation south branch

**adjudication branch**

general manager	Scott Gregson
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**mergers and asset sales branch**

general manager	Tim Grimwade
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**corporate branch**

general manager	Helen Lu
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**finance and services branch**

chief finance officer	John Bridge
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**legal group**

executive general manager	Margaret Micallef
general counsel	Robert Alexander, trade practices and litigation unit
general manager	Bruce Cooper, corporate and regulatory law unit

**media relations unit**

director	Lin Enright
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## Australian Energy Regulator

<b>chairman</b>	Steve Edwell
<b>member</b>	Geoff Swier
<b>member</b>	Edward Willett

# 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

## promoting 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

assess mergers, asset sales and joint ventures

authorise 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

## encouraging fair trading and protect consumers

prevent misleading and deceptive conduct and misrepresentation

ensure products comply with mandatory safety standards; advise government on product recalls, bans and warning notices

improve business and consumers' understanding of their rights and obligations

support the ability of small business to trade with larger firms in a fair environment

## regulating infrastructure service markets and other markets where competition is restricted

promote competition in the network industries: energy markets, communications, aviation and airports, waterfront and shipping, rail and post

- > energy markets (current and future roles)
  - > monitoring compliance and investigating and prosecuting breaches by registered participants and other persons with the National Electricity Law (NEL), National Electricity Rules (NER) and the regulations
  - > monitoring the wholesale electricity market
  - > economic regulation of electricity transmission and distribution (except in Western Australia and the Northern Territory)
  - > economic regulation of gas transmission and distribution (except in Western Australia)
- > communications (telecommunications carriage services and the content and applications delivered by them)
  - > examine the competition implications of converging technologies
  - > maintain competitive and consumer safeguards across the industry
  - > determine which services should be subject to access regulation
  - > consider access undertakings and 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
  - > monitor 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, monitor medical indemnity premiums and bank fees and charges

## consultation and liaison

The ACCC convenes several committees with external stakeholders. As well as being successful and inclusive forums for policy development and industry discussion, these groups also provide accountability and transparency to the ACCC's decision making.

The **ACCC Consultative Committee** is an overarching committee that brings together business, consumer groups, unions and peak industry bodies to discuss the activities of the ACCC. The other external committees to meet during 2005–06 were the Consumer Consultative Committee, Small Business Advisory Group, Franchising Consultative Panel, the Infrastructure Consultative Committee, the Energy Consultative Committee and the Utility Regulators Forum.

For details of committee membership and functions, see appendix 6 of this report.

## what we don't do

The ACCC deals with competition and consumer protection matters of national and international significance and therefore does not:

- > pursue issues such as the pricing of particular goods or services, warranties and refunds that are more effectively dealt with at local or state level
- > mediate disputes between individuals and the suppliers of goods and services
- > advise whether a company or individual is honest
- > approve individual business conduct
- > disclose the number or nature of complaints received about a company or individual
- > give legal advice
- > settle employment disputes
- > register business names

The ACCC also does not handle complaints about misleading or deceptive conduct in financial transactions. The Australian Securities and Investments Commission (ASIC) has this responsibility.

## AER

The Australian Energy Regulator is an independent statutory authority and a constituent part of the ACCC. It is made up of one Commonwealth member and two state/territory members. They are appointed by the Governor-General for terms of up to five years, and one of them is appointed as chair of the AER.

The AER is responsible for the economic regulation of Australian energy markets and compliance with the electricity and gas rules at a national level.

# the law

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

## effective competition and informed markets

### parts of the Trade Practices Act dealing 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
VII	authorisations and notifications
XIA	the competition code

### enforcement

The ACCC is the only government agency that deals with anti-competitive conduct—which is illegal for all businesses in Australia. 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
- > pecuniary penalties of up to \$10 million for companies and \$500 000 for individuals

## fair trading and consumer protection

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

IVA	unconscionable conduct in commercial and consumer transactions
IVB	industry codes of conduct; the Franchising Code of Conduct 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
VC	criminal conduct in fair trading and consumer protection

### enforcement

State legislation largely mirrors parts of the fair trading and consumer protection provisions of the Trade Practices Act. To enforce the provisions of the 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 may apply.



# infrastructure service markets

parts of the Trade Practices Act dealing with regulated industries and prices surveillance

IIIA	access to the services of essential national infrastructure facilities, such as access to transmission wires networks, natural gas pipelines, rail tracks and airport facilities
VIIA	price monitoring and surveillance in relation to industries or businesses declared by the Australian Government
X	establishes limited exemptions in relation to international liner cargo shipping
XIB	anti-competitive conduct in telecommunications
XIC	access to services for telecommunications

## regulation

The regulatory functions of the ACCC and the AER include: regulating the electricity, gas telecommunications and transport sectors to ensure equality of access to infrastructure, and monitoring of services and prices.

From 1 July 2005 the AER has had direct responsibility for the regulation of revenues in the electricity transmission networks. Responsibility for regulating gas transmission networks will also be transferred to the AER in 2006–07.

It is expected that the AER will also eventually have responsibility for the retail and distribution networks in the energy sector. The AER is a separate statutory authority established by the Trade Practices Act. It is a constituent part of the ACCC.



# part two performance



# achieving outcome one

enhancing social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets

## Australian Competition and Consumer Commission

### overall outcome

Strong, sustainable economic growth and the improved wellbeing of Australians

### outcome one

To enhance the social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets



### output group 1.1

#### **output 1.1.1**

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

#### **output 1.1.2**

Competitive market structures and informed behaviour

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

# how we do it

## outcome one:

**to enhance the social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed markets**

## financial results

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

### resource table

	output 1.1.1 compliance with competition, fair trading and consumer protection laws			output 1.1.2 competitive market structures and informed behaviour			output group 1.1		
	2004-05	2005-06	2006-07	2004-05	2005-06	2006-07	2004-05	2005-06	2006-07
budget \$'000	64 741	<b>56 627</b>	62 990	33 690	<b>33 167</b>	41 994	98 431	<b>89 794</b>	104 984
additional revenue \$'000	5 930	<b>760</b>	345	2 757	<b>636</b>	230	8 687	<b>1 396</b>	575
revenue from gains \$'000	51	<b>56</b>		27	<b>38</b>		78	<b>94</b>	
total revenue \$'000	70 722	<b>57 443</b>	63 335	36 474	<b>33 841</b>	42 224	107 196	<b>91 284</b>	105 559
actual expenditure \$'000	61 650	<b>52 955</b>		31 752	<b>31 213</b>		93 402	<b>84 168</b>	105 559
net surplus \$'000	9 072	<b>4 488</b>		4 722	<b>2 628</b>		13 794	<b>7 116</b>	

### average staffing level

	total
2004-05	457
<b>2005-06</b>	<b>507</b>
2006-07	578

## revenue

The main source of revenue for the ACCC is government appropriation with a small proportion of departmental revenue. In 2005–06 the ACCC had total revenue of \$91.3 million, with \$89.8 million being appropriation funding and the remaining \$1.5 million being external funds (refer to figure below). This compares to the previous year's departmental revenue of \$0.8 million.

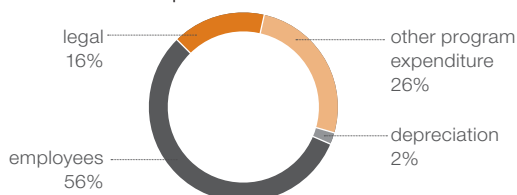
figure 1 ACCC revenue 2005–06



## expenditure

The ACCC is a knowledge-based organisation and as such spends approximately 56 per cent of total expenditure on employee costs. This has increased from 47 per cent in 2004–05. Traditionally legal expenditure has been the second largest expenditure category, however significant work has been undertaken to reduce the cost of external legal services by: in-sourcing some expertise (which increases employee expenses); negotiating with a panel of legal firms; and following the Commonwealth's model litigant guidelines to negotiate settlements where possible. Legal expenditure is also subject to volatility depending on the timing and outcome of litigation proceedings. All these factors combined have resulted in a reduction in the legal expenditure proportion from 30 per cent in 2004–05 to 16 per cent in 2005–06. The depreciation proportion has remained unchanged from last year at 2 per cent of total expenditure with other program expenditure accounting for the remaining 26 per cent.

figure 2 ACCC expenditure 2005–06



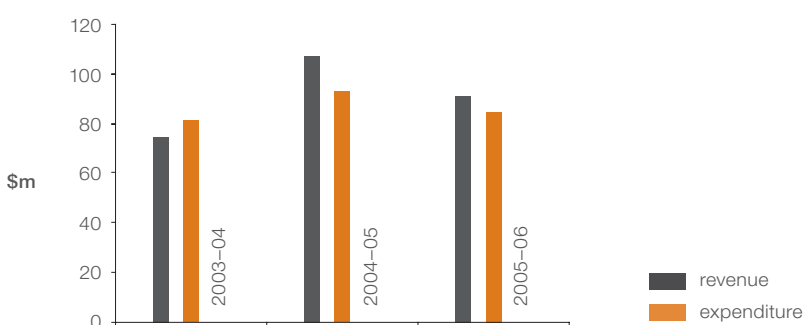
## operating statement

The ACCC operating result for 2005–06 was a \$7.1 million surplus. The surplus was largely generated by:

- > deferred expenditure due to delays in the passage of legislation
- > delays in gearing up for the ACCC's expanded regulatory role in telecommunications
- > deferred expenditure from the litigation contingency fund as cases budgeted to settle during 2005–06 are now expected to be finalised during 2006–07
- > legal services expenditure being lower than expected (refer above for details).

It is expected that some of these surpluses will be expended during 2006–07.

figure 3 ACCC revenue and expenditure 2005–06



## balance sheet

The ACCC's net assets at 30 June 2006 was \$35.1 million (up from \$26.0 million in 2005). Total assets increased by \$2.6 million to \$51.1 million. The increase was largely driven by the increase in appropriation receivable due to lower than expected expenditure. This has further improved the liquidity of the ACCC.

## administered revenue

Revenues administered on behalf of the government during 2005–06 amounted to \$21.1 million, which is an increase of 66 per cent from last year (\$12.7 million). This amount includes court-imposed fines and costs for the following cases: Safeway Supermarkets and George Weston Foods P/L (\$8.9 million), Liquorland (Australia) Ltd (\$5 million), Boral Ltd (\$1.36 million) and Toll Holdings Ltd (\$1.0 million).

## administered expenditure

Expenses administered on behalf of the government increased in 2005–06 by \$3.0 million to \$4.1 million (2004–05: \$1.1 million), as a result of increased write-off of unrecoverable debts.

# enforcement and compliance

promoting effective competition and informed markets  
encouraging fair trading and consumer protection

The core function of the ACCC Enforcement and Compliance Division is to ensure compliance with the competition and consumer protection provisions of the *Trade Practices Act 1974*. This function is supported by a wide variety of activities undertaken in support of the ACCC's role in the promotion of competition and informed markets; the encouragement of fair trading; and the protection of consumers. While the enforcement function, including litigation, is the cornerstone of the division, the range of education, outreach and liaison tasks that make up the work of the division are fundamental to engendering a culture of compliance in Australian business. Voluntary compliance, especially a corporate culture of compliance within businesses, remains the preferred outcome.

The ACCC understands that litigation is but one of the tools available to it in being an effective enforcer. We remain committed to our efforts to maintain and further develop strong liaison, outreach and advocacy programs. The ACCC is also working to build a more effective intelligence and analytical capability to ensure that we become even more effective in identifying and addressing areas of major competition and consumer harm.

In regard to its **enforcement** role the ACCC continues to use its powers in a focused manner to prevent and deter unlawful conduct and so ensure that Australian businesses and consumers can operate with confidence in Australian markets. Businesses that breach the law are obtaining an unfair advantage over their competitors and cause great harm to consumers and to other businesses.

**Cartel detection and prosecution** remain a major priority for the ACCC and, with the imminent arrival of criminal penalties for cartel conduct, the ACCC has invested widely in education programs. Included in this campaign has been a well-received program aimed at government procurement, numerous speeches and presentations and a number of articles identifying the harm arising from cartels, how to identify potential cartel conduct and the systems in place to address them.

A new **immunity policy** aimed at cartel members was released in September 2005. It has adopted world best practice in its provisions, including allowances for markers and hypothetical approaches to the ACCC.



The ACCC continues to operate a substantial outreach program based on an Australia-wide network of partners aimed at supporting and educating **small business operators** about their rights and responsibilities under the Act. The small business program has been in place since 1998 and continues to evolve in response to challenges in the marketplace and the demands of the small business community.

Misleading and deceptive conduct remains a key concern for the ACCC in **protecting consumer rights**. This is especially so where the conduct is blatant and widespread consumer detriment is identified. The ACCC is working closely with state and territory counterparts through various forums to ensure the consumer protection regime remains effective and responsive to emerging marketplace challenges.

**Product safety** also remains a high priority activity area for the ACCC. We have worked to develop our expertise in this area following the transfer of product safety policy and recall functions from the Commonwealth Treasury to the ACCC in November 2004. This past year has seen the ACCC act on products as diverse as basketball hoops, children's nightwear, tobacco labelling, ladder safety, hot water bottles and vehicle jacks.

**Mark Pearson**, executive general manager, enforcement and compliance division

## communicating with businesses and consumers

### output 1.1.1

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

### this year the ACCC

#### performance indicator

publicise litigation and education activities

- > issued 315 media releases—of these 86 explained the institution and/or outcome of specific enforcement activities, 19 related to product safety issues and 36 related to educational activities
- > undertook 162 speaking engagements and extensive briefings, both private and public, by the chairman, commissioners and senior staff
- > produced 37 consumer and small business articles for external publications

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

## this year the ACCC

### performance indicator

liaise with and inform business and consumers about the law so that they can, in turn, inform their members and customers

- > held 514 meetings with business and consumer groups on Trade Practices Act issues, including consumer and small business education and proposed amendments to the Act
- > delivered 92 presentations (many in rural and regional areas) on business issues and scams
- > attended 52 expos, field days and workshops providing participants with information on the ACCC and the Trade Practices Act
- > launched 2 product safety consumer education campaigns addressing basketball rings and backboards, and ladders; distributed 30 000 safety alert brochures to Basketball Australia members; distributed 150 000 ladder safety alerts for consumers through ladder retail outlets
- > commenced work with the Insolvency Practitioners Association of Australia to develop guidelines on the application of the Franchising Code of Conduct to insolvency practitioners
- > continued liaison with the Jewellery Association of Australia to produce an advertising and promotion guideline and checklist for the industry, and a consumer brochure on buying jewellery
- > developed and implemented the franchising awareness strategy designed to target industry associations, individual franchisors and franchisees
- > assessed 87 trade practices compliance programs, considered and accepted 45 compliance program review reports and finalised 18 compliance program matters
- > hosted 2 meetings each of the Small Business Advisory Group and the Franchising Consultative Panel; attended 6 roundtable meetings with the small business minister; sponsored and participated in the Victorian Small Business Festival 2006
- > hosted 3 meetings each of the ACCC Consumer Consultative Committee and Health Services Advisory Committee

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

## this year the ACCC

### performance indicator

issue publications and media releases, speak to the public, conduct public meetings and conferences and use the latest technology to reach business and consumers throughout Australia

- > produced 83 new publications and distributed more than 1 million copies of publications; produced videos and CD-ROMs on compliance issues
- > issued 315 media releases; undertook 162 speaking engagements and extensive briefings, both private and public, by the chairman, commissioners and senior staff
- > produced 37 consumer and small business articles for external publications
- > received 1 457 612 visits to its website
- > developed and implemented an \$8.5 million national consumer awareness campaign on what the ACCC believed to be misleading claims about the perceived health benefits of smoking 'low yield' cigarettes compared to full strength cigarettes
- > developed 2 joint ACCC—ASIC guidelines for debt collectors and consumers, supported by the Office of the Privacy Commissioner (Federal) and the Insolvency Trustee Service Australia
- > presented talks on the debt collection guidelines to the Queensland Financial Counsellors Association and the Institute of Mercantile Agents annual conference
- > distributed over 5000 flyers and 150 posters about scam awareness and prevention to community organisations and businesses; updated, and reprinted the *Little Black Book of Scams*
- > attended and made presentations to the National Consumer Congress in July 2005 and March 2006
- > revised and republished *Fair.com*—a guide for business on advertising and promoting internet services—in collaboration with the Telecommunications Industry Ombudsman (TIO) and other stakeholders
- > participated in a national seminar program to promote and explain the Trade Practices Act to manufacturers, wholesalers, retailers and valuers in the jewellery industry
- > created the small business easy access point on the ACCC website, introduced a dedicated 1300 small business helpline and launched the electronic small business complaints form

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

## this year the ACCC

### performance indicator

issue publications and media releases, speak to the public, conduct public meetings and conferences and use the latest technology to reach business and consumers throughout Australia

- > issued 5 editions of *News for business* and 6 editions each of 2 email newsletters, *ACCC briefing* and *ACCC Infolink*, to a subscription list of 1952 business operators
- > distributed more than 7000 guides on component price advertising addressing the information needs of the travel industry members
- > responded to 389 email inquiries about product safety and product recalls; these inquiries are additional to those answered by the ACCC Infocentre

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

## this year the ACCC

### performance indicator

work with other competition, fair trading and consumer protection agencies in Australia and overseas

- > was the secretariat for and chaired the Australasian Consumer Fraud Taskforce (ACFT) representing 17 Commonwealth, state and territory government consumer protection and related agencies; the ACFT is aimed at preventing and educating the community about consumer scams and fraud; a key focus of the ACFT was the international Scams Awareness Month
- > coordinated the annual International Consumer Protection and Enforcement Network (ICPEN) internet sweep, involving 65 agencies from 22 countries; a total of 725 031 websites were searched across all participating countries, resulting in 3784 websites being flagged for further investigation for matters concerning consumer rights, warranties, refunds, pricing and false or misleading disclaimers
- > developed and hosted the ICPEN investigation course at the network's November meeting in Korea
- > presented 3 briefings on e-commerce, m-commerce and spam/scams to the Canadian Commerce Bureau and the OECD
- > attended 2 meetings of the Ministerial Council on Consumer Affairs (MCCA); the Standing Committee of Officials on Consumer Affairs (SCOCA) and contributed to 7 SCOCA working parties on matters including industry codes, property investment advisers, false billing and Indigenous consumer strategies
- > attended and chaired 2 meetings and 8 teleconferences of the Consumer Product Advisory Committee (CPAC)
- > attended and chaired 2 meetings and 8 teleconferences of the Fair Trading Officers Advisory Committee (FTOAC)
- > held regular liaison meetings with the Australian Securities and Investments Commission (ASIC) at commissioner and officer level and developed, in conjunction with ASIC, an internal guide to assist consumer agencies investigate and deal with complaints in relation to Indigenous consumers
- > entered into a Memorandum of Understanding with the Australian Building and Construction Commission establishing procedures for referral of complaints and information, mutual assistance on matters of interest and regular liaison meetings; formal liaison meetings began in March 2006 and joint education sessions for the staff of each organisation began in May 2006
- > worked with the Small Business Answers network to present a series of seminars to Queensland small businesses on the topics of cartels, collective bargaining and petrol pricing

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

## this year the ACCC

### performance indicator

work with other competition, fair trading and consumer protection agencies in Australia and overseas

- > co-chaired the International Competition Network (ICN) cartels sub-group responsible for enforcement techniques; led the development of the best practice leniency chapter for the ICN cartels work manual on enforcement techniques; made strong contributions to the ICN cartels workshop; participated in the ICN's two merger sub-groups; and compiled a report for the ICN business outreach sub-group for presentation to the ICN annual conference in Cape Town, South Africa
- > co-chaired the OECD's Joint Group on Trade and Competition and continued an active role in the OECD Competition Committee helping to develop a workshop on the interaction between competition authorities and public prosecutors
- > assisted the UK Cabinet Office review of pecuniary penalties
- > received 91 requests for information from 24 countries and made 41 requests to 14 countries
- > conducted staff exchanges with Canada, New Zealand and the UK and a three-month secondment to the US Department of Justice

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

## output 1.1.2

### competitive market structures and informed behaviour

#### this year the ACCC

<p>performance indicator</p> <p>develop industry specific codes of conduct</p>	<ul style="list-style-type: none"><li>&gt; provided technical assistance to 16 industry bodies engaged in developing and reviewing voluntary industry codes of conduct</li><li>&gt; participated in and provided technical assistance to a government-appointed taskforce for the development of a voluntary industry code of conduct for the smash repair and insurance industry</li><li>&gt; continued to liaise with and provide technical assistance to the Department of Agriculture, Fisheries and Forestry regarding the development of a proposed horticulture business code of conduct addressing supply chain issues</li><li>&gt; continued to liaise with the Department of Industry Tourism and Resources regarding the development of the proposed prescribed Oilcode which will regulate the conduct of suppliers, distributors and retailers in the downstream petroleum marketing industry</li></ul>
<p>performance indicator</p> <p>assist parliamentary inquiries and government agencies to develop policies and processes that are consistent with the competition, fair trading and consumer protection laws</p>	<ul style="list-style-type: none"><li>&gt; made a submission to the Senate Legal and Constitutional Committee and liaised with the Attorney-General's Department on the regulation of access to stored communications</li><li>&gt; made a submission to the Administrative Review Council on its draft report on government agency coercive information gathering powers</li><li>&gt; provided its seventh report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance, and provided a submission to the independent review of the Health Services Advisory Committee</li><li>&gt; provided a final report to the Senate on the ACCC's 'mild' and 'light' cigarette investigation and contributed to government amendments to the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations concerning new graphic warnings for tobacco products</li></ul>

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

## this year the ACCC

### performance indicator

assist parliamentary inquiries and government agencies to develop policies and processes that are consistent with the competition, fair trading and consumer protection laws

- > made a submission to the Standing Committee of Officials of Consumer Affairs (SCOCA) Working Party on the need for civil pecuniary penalties for contraventions of Australia's consumer protection laws
- > participated in 5 working parties of the Fair Trading Officer Advisory Committee (FTOAC), on the framework and principles for seeking nationally beneficial outcomes, cross-jurisdictional protocols and procedures, overseas scams, false billing and misleading price claims
- > contributed to the Productivity Commission's review of the Australian consumer product safety system; provided a submission to the commission's study into the Australian Government's relationship with Standards Australia Limited and the National Association of Testing Authorities Australia
- > made submissions to the review of the Australian consumer product safety system conducted by the Ministerial Council of Consumer Affairs
- > drafted a warning notice under s. 65B of the Trade Practices Act, issued in September 2005, on the possible risks associated with the use of hot water bottles
- > made a submission to, and appeared before, the Senate Rural and Regional Affairs and Transport References Committee inquiry into the operation of the wine-making industry
- > made submissions to, and appeared before, the Senate Economics Legislation Committee on the proposed Petroleum Retail Legislation Repeal Bill 2006
- > actively worked with the Department of Industry, Tourism and Resources in the development of the government's New2Business initiative and whole of government initiative [www.business.gov.au](http://www.business.gov.au)
- > participated in the National Competition Policy Working Group on Liquor
- > prepared 4 regulation impact statements resulting in a new safety standard for children's household cots, an updated standard for motor vehicle child restraints, a revised mandatory standard for children's nightwear and the introduction of an 18-month ban on 'No Holes Tongue Studs'
- > drafted a new mandatory standard for basketball rings and backboards and spearheaded government reviews of 8 mandatory product safety standards
- > investigated complaints about the safety of several consumer products including three-wheel strollers, sky lights/fragile roofing, spa pools and webbing tie-down straps

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*



## this year the ACCC

### performance indicator

liaise with other regulators, business and consumer associations, speak to the public, participate in meetings and conferences, nationally and internationally

- > participated in 30 international events such as International Bar Association conferences, meetings with international regulators, international energy and telecommunications conferences and various competition and consumer protection forums including OECD, ICPEN and ICN
- > liaised with the Commonwealth Department of Health and Ageing (DoHA), the national Quit network and the ACCC's Health Services Advisory Committee regarding the ACCC's 'light' and 'mild' cigarettes consumer awareness campaign
- > provided ongoing assistance on trade practices issues to Food Standards Australia New Zealand (FSANZ), particularly in relation to the development of FSANZ publications on country of origin labelling and food; attended quarterly meetings of the Commonwealth Food Regulatory Officials Group organised by the Food Regulation Secretariat of DoHA
- > continued to work with Standards Australia Committee on an Australian standard for compliance programs; participated in a Standards Australia Committee on an Australian Complaints Handling Standard and contributed to the development of the publication *Guidelines for complaints handling for organisations*
- > participated in Standards Australia committee meetings and contributed significantly to reviews of Australian/New Zealand standards for bunk beds, children's cots, motorcycle helmets, nursery furniture, pedal bicycles, toys and vehicle jacks
- > liaised with the Australian Consumers Association, the Australian Toy Association, and the Infants and Nursery Products Association of Australia on current or proposed mandatory safety and information standards
- > presented to the Society of Consumer Affairs Professionals (SOCAP) annual conference and continued to be actively involved in the work of the organisation
- > attended and addressed the annual conference of the Infants and Nursery Products Association of Australia; the National Consumer Congress; the International Consumer Product Safety and Health Organisation; the Consumer Policy Committee of the International Standards Organisation (ISO); and the Australasian Compliance Institute's regulators' conference
- > liaised with overseas government product safety authorities including the US Consumer Product Safety Commission on product safety issues
- > presented at Legal Master Classes and Compliance Roadshow—a series of events held in three national capitals. The presentation sought to inform industry and the legal community about the ACCC's approach to compliance programs and their monitoring

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

## this year the ACCC

<p>performance indicator</p> <p>help overseas trading partners to develop and implement effective competition regimes to benefit Australian industry</p>	<ul style="list-style-type: none"> <li>&gt; provided information to the Canadian Competition Bureau on the role of voluntary and mandatory industry codes in achieving industry compliance with the Act</li> <li>&gt; undertook the first phase in an AusAid-funded program for the Independent Consumer and Competition Commission (ICCC) in Papua New Guinea, assessing ICCC infrastructure and preparation of tender specifications to introduce a computer-based records management system within the ICCC</li> <li>&gt; provided capacity building assistance to officials from: China, Chinese Taipei, Fiji, Hong Kong, Indonesia, Malaysia, Papua New Guinea, Singapore, Thailand and Vietnam; the ACCC is a regular contributor to a Joint Regional Centre on Competition operated by the OECD and the Korean Fair Trade Commission</li> <li>&gt; hosted study visits by officials from China, Indonesia, Japan, Malaysia, New Zealand, South Africa, South Korea, Singapore and Thailand</li> <li>&gt; attended Free Trade Agreement negotiation rounds between Australia and the United Arab Emirates, NZ/ASEAN countries, Malaysia and China, including the delivery of presentations on competition policy and the ACCC's role as a national regulator</li> </ul>
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*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

## liaison activities

The ACCC continued as secretariat for the TPA Consumer Trust. The trust fund was established by the ACCC to disburse money arising from enforcement outcomes for research on consumer issues of relevance to the Act.

Through meetings of the **Small Business Advisory Group** and the **Franchising Consultative Panel** the ACCC liaised with small business **industry groups** and other key industry **stakeholders**. This is a two-way process where the ACCC provides guidance on when and how it will enforce the law, and industry groups relay concerns to appropriate areas of the ACCC. The Small Business Advisory Group met in November 2005 and May 2006. The Franchising Consultative Panel meetings were held in October 2005 and March 2006.

Meetings of the **Health Services Advisory Committee** were held in September and December 2005.

## publications and reports

The ACCC developed and launched a number of new publications in electronic, paper and CD-ROM formats in 2005–06. These initiatives included:

- > *Franchisee start-up checklist* to help potential franchisees with their investment decision—the checklist is a practical guide to requirements under the Franchising Code of Conduct and other important franchising issues.
- > *Trade practices start-up checklist for small business* to help ensure that all legislative requirements are considered at a time when emotions and excitement at the prospect of a new business venture are running high.
- > Two guides to trade practices compliance programs, one designed for the small business sector, the other targeting medium-to-large business environments.

The ACCC announced its new immunity policy for cartel members with the launch of the companion publications *ACCC immunity policy for cartel conduct* and *ACCC immunity policy interpretation guidelines*. The new policy imperatives, and moreover the activity of the ACCC criminal enforcement and cartel branch, was supported by a suite of outreach publications including:

- > *Cartel conduct—warning signs during the procurement process* (CD-ROM), August 2005
- > *Cartels—what small businesses need to know*, February 2006
- > *Cartels—a guide for consumers on cartel conduct*, March 2006.

Calls to the ACCC Infocentre, as well as feedback from regional outreach managers, show that businesses and consumers are continually exposed to many forms of scam conduct. As a result, the ACCC's 2006 Competing Fairly Forum, *Scams, frauds and your business*, focuses on the three main forms of scams perpetrated against small business, providing information on ways to protect your business against this conduct. ACCC regional outreach managers are hosting screenings of *Scams, frauds and your business* throughout the year.

The ACCC continued to deliver and maintain the product safety recalls website, [www.recalls.gov.au](http://www.recalls.gov.au), which provides consumers and state and territory regulators with up-to-date access to information on all Australian safety related recalls. In 2005–06, 746 recalls were entered on the database; 188 general consumer product recalls were monitored and assessed; and nine audits of consumer product recalls were conducted.

The ACCC produced revised editions of *Keeping baby safe* and *Safe toys for kids*, two of the ACCC's most requested publications. The revised *Keeping baby safe* contains updated information on relevant safety standards for a range of products discussed in the book; the new *Safe toys for kids* includes information on basketball rings and backboards, and trampolines.

The ACCC published a *Product safety guide: baby walkers* which provides guidance to suppliers on the mandatory performance and labelling requirements for baby walkers. *Product safety bulletin—no holes tongue stud* was a new title published this year describing the banned product and providing information for suppliers.

The ACCC worked with Job Watch and the Australian Publishers' Bureau to publish a revised edition of *Misleading job and business opportunity ads—how to handle them*. This manual aims to assist advertising staff of newspapers, websites and other places where job advertisements are found, to stop publishing misleading job and business opportunity ads.

## responding to businesses and consumers

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

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

The information received from business and consumers is recorded in the ACCC complaints and inquiries database, with Infocentre project officers creating about 90 per cent of those entries. The quality of information available in the database depends on the recorder asking the right questions to establish what, if any, breach of the Trade Practices Act may have occurred and what evidence is available to support the allegations. Additionally, correct and consistent classification of information is an enormous aid to accurate reporting and analysis.

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

The overwhelming majority of people who contact the Infocentre do so as consumers, who are seeking information or wishing to make a complaint. All matters alleging a breach of the anti-competitive conduct provisions of the Act are passed directly through to an investigator. When a caller has a complaint about circumstances for which the ACCC, or the Trade Practices Act, has no remedy, Infocentre staff act to find another agency or organisation that is able to help that caller.

In December 2005 the ACCC introduced a dedicated small business helpline, operating as an ancillary to the Infocentre, to encourage small business operators to keep informed of their rights and obligations under the Act.

ACCC Infocentre

1300 302 502

Small business helpline

1300 302 021

ACCC website

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

**output 1.1.1****compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed****this year the ACCC Infocentre****performance indicator**

respond quickly to allegations of breaches of competition, fair trading and consumer legislation

- > received 57 601 telephone calls; of these 52 644 queries were served by Infocentre staff, 4453 were referred to the ACCC website; 468 were unanswered due to congested incoming lines or telephone system breakdown, resulting in 38 voicemail calls; of the 52 644 calls served, 407 were received on the ACCC small business line introduced as part of the small business easy access point on the ACCC website
- > responded to 73 per cent of calls in less than 20 seconds
- > entered 42 668 matters in the complaints and inquiries data base (81 per cent of calls served)
- > received 17 718 emails
- > sent out 221 446 publications to callers

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

**telephone calls**

	this year	last year
received	57 601	57 308
served	52 644	53 417
abandoned/advised to visit website	4 453	3 710
engaged	468	122
voicemail	38	59

**email complaints**

	this year	last year
number of emails received	17 718	10 923
answered by telephone response	4 589	3 564
answered by return email	2 225	3 493
sent elsewhere for response	560	621
no response required (predominately spam)	10 344	3 245

## business information complaints or inquiries

	this year	last year
about a small business	2 971	2 587
from a small business	3 941	6 018
about a franchise matter	747	1 236
about an online trader or e-commerce	2 883	3 479
escalated for investigation	991	1 862
flagged for future review	1 244	1 498

## top ten industries for complaints and inquiries

	this year	last year
business services generally	4 590	3 836
telecommunication services	4 391	5 592
domestic appliance retailing	3 617	3 688
retailing generally	1 929	1 835
automotive fuel retailing	1 835	1 279
car retailing	1 404	1 236
lotteries	1 059	895
services to finance and investment	819	902
banks	767	549
real estate agents	748	889

## top ten possible contraventions of the Trade Practices Act

*predominately fair trading and consumer protection part V*

	this year	last year
misleading or deceptive conduct	13 193	11 735
retail warranties	4 741	4 713
price misrepresentation	1 188	1 348
accepting payment non-supply	854	875
misrepresentation of performance	761	939
misrepresentation of grade, quality	613	583
harassment and coercion	588	399
manufacturers and importers warranties	447	283

*predominately effective competition and informed markets part IV*

	this year	last year
exclusive dealing	458	673
misuse of market power	451	484

## publications sent to callers

	this year	last year
Fire safety at home: be prepared	36 788	10 919
Keeping baby safe	34 857	2 826
Safety alert: blind and curtain cords	29 950	7 576
Safe toys for kids	25 522	3 528
The little black book of scams	11 041	N/A
Safety alert: baby bath aids	10 725	8 027
Cot safety	8 661	2 843
Toy safety	6 010	3 043
Baby walker safety	5 835	N/A
Safety alert: using a ladder	4 643	N/A

## geographic location of inquirers and complainants

Figures include complaints where there is an allegation of more than one contravention. In cases where a complainant alleges more than one contravention, each contravention is counted separately.

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Australian Capital Territory	Tasmania	Northern Territory	others	total
<b>part IV</b>										
last year	1 471	1 139	929	493	352	159	114	58	29	4 744
this year	1 258	991	736	359	297	121	79	41	11	3 893
<b>part V</b>										
last year	9 099	9 020	7 137	2 861	2 435	1 240	740	425	249	33 207
this year	8 978	8 744	7 196	2 831	2 329	1 236	797	302	284	32 697
<b>part IVA/B</b>										
last year	406	318	280	105	119	44	25	18	8	1 323
this year	302	250	233	104	98	23	22	13	5	1 050
<b>prices</b>										
last year	6	5	26	9	1	2	1	0	0	50
this year	1	0	1	0	0	1	0	0	0	3
<b>other</b>										
last year	3 165	2 649	2 069	879	710	398	203	130	163	10 366
this year	2 947	2 516	2 222	828	663	365	198	133	128	10 000
<b>total</b>										
last year	14 147	13 131	10 441	4 347	3 618	1 843	1 083	631	449	49 690
this year	13 486	12 501	10 388	4 122	3 387	1 746	1 096	489	428	47 643



# enforcing for business and consumers

## output 1.1.1

compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed

### this year the ACCC

performance indicator

seek appropriate remedies when there is a breach of the law

- > concluded 23 cases of the 53 matters before the court during the year, plus accepted 54 public undertakings (one of which has not been disclosed for operational reasons); commenced 14 new cases, 1 of which was concluded this year; 30 cases are currently before the courts; the ACCC did not intervene in any proceedings in the reporting period
- > monitored performance of court orders and undertakings; took action to ensure that remedies ordered in concluded litigation and agreed to in public settlements were honoured; as part of this work the ACCC assessed 87 trade practices compliance programs, considered and accepted 45 compliance program review reports and finalised 18 compliance program matters
- > considered a number of applications for immunity and marker placements under the ACCC immunity policy for cartel conduct; substantial serious cartel investigations are in progress
- > reinforced the seriousness of price fixing and market sharing, concluding litigation regarding barge operations, petrol prices, amusement services and recyclable waste paper
- > stopped wholesalers from limiting discounting on bread, porcelain figurines and paragliders
- > stopped misleading, deceptive and unconscionable conduct regarding various consumer products and services and obtained refunds for consumers where relevant
- > accepted court enforceable undertakings for a wide range of prohibited conduct relating to products and services
- > in investigations, issued 347 notices under its powers to compulsorily acquire information (s. 155); 124 notices to provide information in writing (s. 155(1)(a)), 135 notices to provide documents (s. 155(1)(b)), 88 notices to appear in person (s. 155(1)(c)) and no authorities were issued to enter premises and inspect documents (s. 155(2))

Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06

## this year the ACCC

<p>performance indicator</p> <p>enforce mandatory product standards and information standards</p>	<ul style="list-style-type: none"> <li>&gt; conducted 33 surveys at retail outlets across Australia for products subject to 17 mandatory standards and 12 surveys on 4 bans</li> <li>&gt; completed proactive detection and complaint investigations that led to the withdrawal from sale and/or recall of 12 different types of products</li> <li>&gt; undertook enforcement action resulting in the withdrawal from sale and/or recall of baby bath aids, baby walkers, bunk beds, children's cots, children's dart gun sets, children's nightwear, elastic luggage straps, flotation toys and swimming aids, pedal bicycles, sunglasses, high lift jacks and trolley jacks</li> <li>&gt; accepted 7 court enforceable undertakings relating to the supply of baby walkers, children's nightwear, cosmetics and elastic luggage straps</li> <li>&gt; undertook administrative action over breaches in relation to children's nightwear, disposable cigarette lighters, flotation toys and swimming aids, pedal bicycles and high lift jacks</li> </ul>
<p>performance indicator</p> <p>develop new consumer protection and investigative initiatives for e-commerce</p>	<ul style="list-style-type: none"> <li>&gt; continued the domain name education campaign for consumers and small businesses</li> <li>&gt; presented 7 papers/submissions to domestic government agencies on e-commerce and m-commerce issues, including the mobile premium number draft code of conduct</li> <li>&gt; coordinated 65 agencies from 22 countries for the 2006 International Consumer Protection and Enforcement Network's internet sweep; approximately 725 000 websites and 80 000 spam emails were swept with 3784 sites and 19 000 emails tagged for follow-up investigation over their terms and conditions dealing with consumer rights, warranties, refunds, pricing and false and misleading disclaimers</li> <li>&gt; expanded the ACCC website 'Hot Topics' feature to alert consumers of current cyberscams</li> <li>&gt; resourced fast-track processing of 'slam-a-cyberscam' email complaints</li> <li>&gt; worked with industry to develop strategies to ensure that internet sites comply with trade practices provisions/guidelines</li> </ul>

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

## litigation matters and undertakings accepted

	effective competition and informed markets	fair trading and consumer protection	total
litigation concluded during 2005–06	8	15	23
litigation continuing at end of 2005–06	13	17	30
undertakings accepted during 2005–06	4	50	54
<b>total matters: concluded and continuing</b>			<b>107</b>

## snapshots of litigation and administrative settlements

The following information provides a brief summary of enforcement activity undertaken by the ACCC during the year. Information is also available on the website [www.accc.gov.au](http://www.accc.gov.au), in the *ACCC ejournal* or by contacting the Infocentre on 1300 302 502. The information is grouped:

1. litigation concluded during 2005–06
2. litigation continuing at end of 2005–06
3. undertakings accepted during 2005–06

### effective competition and informed markets

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

### fair trading and consumer protection

part IVA	unconscionable conduct in commercial and consumer transactions
part IVB	industry codes of conduct; the franchising code is a mandatory code prescribed under Part IVB
part V	unfair practices, misleading and deceptive conduct, pyramid selling, country of origin representations, product safety and information, conditions and warranties in consumer transactions
part VC	criminal conduct in fair trading and consumer protection

## 1. litigation concluded during 2005–06

effective competition and informed markets

<b>fuel retailing</b>	<p><b>Apco Service Stations Pty Ltd and another (formerly reported under Leahy Petroleum Pty Ltd and others)</b></p> <p><b>commenced</b> 21 May 2002   <b>concluded</b> 2 June 2006</p> <p>alleged price fixing of petrol in the Ballarat area</p> <hr/> <p>High Court of Australia</p> <hr/> <p><b>result</b>   dismissed with costs the ACCC's application for special leave to appeal the Full Federal Court decision allowing appeals by APCO and Mr Anderson</p>
<b>bread retailing</b>	<p><b>Australian Safeway Stores Pty Ltd</b></p> <p><b>commenced</b> 20 December 1996   <b>concluded</b> 31 January 2006</p> <p>price fixing and misuse of market power in relation to bread retailing</p> <hr/> <p>Justice Goldberg   Federal Court Melbourne</p> <hr/> <p><b>result</b>   penalties of \$8.9 million for Australian Safeway Stores and \$50 000 for Mr Mark Jones</p> <p><b>significance</b>   misuse of market power and price fixing are serious contraventions</p>
<b>weight loss</b>	<p><b>Chaste Corporation Pty Ltd and others</b></p> <p><b>commenced</b> 26 November 2001   <b>concluded</b> 2 September 2005</p> <p>resale price maintenance (also misleading or deceptive conduct and misrepresentation in relation to profitability of area manager distributorships—see later entry under fair trading and consumer protection)</p> <hr/> <p>Justice Spender   Federal Court Brisbane</p> <hr/> <p><b>result</b>   penalties of over \$1 million, injunctions and costs; Mr Peter Foster's appeal of one injunction was rejected by the Full Federal Court with costs</p> <p><b>significance</b>   retailers should be able to determine selling price and representation made about profitability of business opportunities must be accurate</p>

barge services	<p><b>Eurong Beach Resort Ltd and others</b></p> <p><b>commenced</b> 5 September 2002   <b>concluded</b> 15 December 2005</p> <p>misuse of market power, price fixing, market sharing, exclusive dealing and harassment and coercion through predatory pricing regarding barge operations to Fraser Island</p> <hr/> <p>Justice Kiefel   Federal Court Brisbane</p> <hr/> <p><b>result</b>   orders by consent: declarations, penalties totalling \$900 000 and \$100 000 towards ACCC costs</p> <p><b>significance</b>   misuse of market power is not restricted to larger markets involving only large corporations but also occurs in regional markets</p>
petrol retailing	<p><b>Gullyside Pty Ltd and others</b></p> <p><b>commenced</b> 24 May 2005   <b>concluded</b> 30 November 2005</p> <p>agreements lessening competition in relation to petrol prices in the Brisbane area</p> <hr/> <p>Justice Kiefel   Federal Court Brisbane</p> <hr/> <p><b>result</b>   orders by consent: penalties of \$470 000, injunctions, declarations and costs</p> <p><b>significance</b>   price fixing and collusion are serious contraventions</p>
sporting goods	<p><b>High Adventure Pty Limited and another</b></p> <p><b>commenced</b> 19 December 2003   <b>concluded</b> 2 December 2005</p> <p>resale price maintenance by preventing discounting of paragliders by retailer</p> <hr/> <p>Full Federal Court Melbourne</p> <hr/> <p><b>result</b>   allowed the ACCC appeal against penalties imposed on the corporate respondent in June 2005 and imposed a new penalty of \$20 000</p> <p><b>significance</b>   resale price maintenance is a serious form of anti-competitive conduct and is penalised accordingly to provide specific and general deterrence</p>
agricultural shows	<p><b>The Showmen's Guild of Australasia and others</b></p> <p><b>commenced</b> 19 February 2004   <b>concluded</b> 9 May 2006</p> <p>boycott through an arrangement not to supply amusement services to independent organisers of amusement areas for certain events</p> <hr/> <p>Justice Graham   Federal Court Sydney</p> <hr/> <p><b>result</b>   orders by consent: injunction, declaration and payment of \$155 000 of ACCC costs; court enforceable undertaking; trade practices compliance program</p> <p><b>significance</b>   boycotts entered into by industry bodies have the potential to inhibit competition</p>

## recyclable waste paper

### Visy Paper Pty Ltd and others

**commenced** 18 November 1998 | **concluded** 19 November 2005

market sharing through an attempt to induce a competitor into a market sharing agreement for recyclable waste paper collection

Full Federal Court Sydney

**result** | appeal on penalty dismissed with costs; penalty of \$500 000 against Visy and \$25 000 in total against 2 individual respondents confirmed

**significance** | collusion is a serious breach

## porcelain figurines

### Westminster Retail Pty Ltd and others

**commenced** 17 August 2004 | **concluded** 16 September 2005

resale price maintenance imposed on franchisees selling Armani figurines

Justice Mansfield | Federal Court Adelaide

**result** | orders by consent: declarations; injunctions; trade practices compliance program; court ordered penalties of \$136 000

**significance** | retailers are able to make pricing decisions regarding discounts

## fair trading and consumer protection

### franchising

#### Archem Australia Pty Ltd and others

**commenced** 22 December 2004 | **concluded** 13 March 2006

misleading or deceptive conduct through misrepresentation of expected incomes for potential franchisees, prior business experience and product performance

Justice Spender | Federal Court Brisbane

**result** | orders by consent: declarations, injunctions, trade practices compliance program and costs; 11 former franchisees to receive compensation through a private settlement brokered by the ACCC

**significance** | franchisors have an obligation to deal honestly with their franchisees

### telecommunications

#### Australian Communications Network Pty Ltd and others

**commenced** 15 November 2004 | **concluded** 2 June 2006

alleged pyramid selling scheme

High Court of Australia

**result** | refused with costs the ACCC request for special leave to appeal the judgment of the Full Federal Court in relation to a marketing system operated by the company

pyramid scheme	<p><b>1Cellnet LLC and others</b></p> <p><b>commenced</b> 16 August 2004   <b>concluded</b> 6 December 2005</p> <p>pyramid selling through promoting online pyramid selling scheme</p> <p>Justice Nicholson   Federal Court Perth</p> <p><b>result</b>   declarations, injunctions, corrective notices, trade practices compliance program</p> <p><b>significance</b>   overseas companies are subject to Australian laws</p>
weight loss	<p><b>Chaste Corporation Pty Ltd and others</b></p> <p><b>commenced</b> 26 November 2001   <b>concluded</b> 2 September 2005</p> <p>misleading or deceptive conduct and misrepresentations in relation to profitability of area manager distributorships (also resale price maintenance—see earlier entry under ‘effective competition and informed markets’)</p> <p>Justice Spender   Federal Court Brisbane</p> <p><b>result</b>   penalties of over \$1 million, injunctions and costs; Mr Peter Foster’s appeal of one injunction was rejected by the Full Federal Court with costs</p> <p><b>significance</b>   retailers should be able to determine selling price and representations made about profitability of business opportunities must be accurate</p>
employment services	<p><b>Contact Plus Group Pty Ltd, Mr Arthur Spencer</b></p> <p><b>commenced</b> 11 August 2004   <b>concluded</b> 6 June 2006</p> <p>contravention of Franchising Code of Conduct, false misleading and deceptive conduct in relation to the franchising of recruitment/employment business and contempt of a court order</p> <p>Justice Weinberg, Justice Young   Federal Court Melbourne</p> <p><b>result</b>   orders by consent; declaratory and injunctive relief and ACCC costs; individual respondent fined for contempt of court</p> <p><b>significance</b>   franchisors must comply with the Franchising Code of Conduct and orders made by the court</p>
information storage	<p><b>Daniel Albert trading as Photosafe, Datavault and IE Networks</b></p> <p><b>commenced</b> 28 April 2005   <b>concluded</b> 4 April 2006</p> <p>misleading or deceptive conduct relating to representations made about business opportunities</p> <p>Justice Jacobson   Federal Court Sydney</p> <p><b>result</b>   orders by consent: declarations, trade practices compliance program; costs</p> <p><b>significance</b>   representations made about profitability of business opportunities must be accurate</p>

debt management	<p><b>Fox Symes &amp; Associates Pty Ltd and others</b></p> <p><b>commenced</b> 13 April 2004   <b>concluded</b> 10 June 2006</p> <p>misleading or deceptive conduct and unconscionable conduct in the provision of services in relation to debt agreements</p> <hr/> <p>Justice Lander   Federal Court Adelaide</p> <hr/> <p><b>result</b>   undertakings to the court</p> <p><b>significance</b>   those providing services in relation to debt agreements must inform consumers accurately about the consequences of entering into a debt agreement</p>
office consumables and cleaning products	<p><b>Globex Systems Pty Ltd and others</b></p> <p><b>commenced</b> 17 December 2004   <b>concluded</b> 12 August 2005</p> <p>asserting a right to payment for unsolicited goods, falsely representing that consumers had agreed to acquire goods and demanding payment for those goods</p> <hr/> <p>Justice Lander   Federal Court Adelaide</p> <hr/> <p><b>result</b>   orders by consent: declarations, injunctions, corrective notices, trade practices compliance program; costs</p> <p><b>significance</b>   a company cannot demand payment for unsolicited goods</p>
clothing	<p><b>H &amp; Y Trading Pty Ltd</b></p> <p><b>commenced</b> 9 March 2006   <b>concluded</b> 22 May 2006</p> <p>alleged misleading and deceptive conduct with respect to the fibre content labelling of certain Aussiesox brand socks</p> <hr/> <p>Justice Heerey   Federal Court Melbourne</p> <hr/> <p><b>result</b>   discontinued by consent of the parties</p>
specialised drink retailing	<p><b>Ikuson Trading Company Pty Ltd, Ixon Japan KK</b></p> <p><b>commenced</b> 28 November 2003   <b>concluded</b> 29 August 2005</p> <p>misleading or deceptive conduct and misrepresentations in claims that honey drink was a 'product of Australia', 'A gift from Tasmania', when only 2 per cent of the honey in the drink came from Australia, the balance of honey being Chinese</p> <hr/> <p>Justice Wilcox   Federal Court Sydney</p> <hr/> <p><b>result</b>   orders by consent: injunctions, declarations, costs and undertaking to write to affected customers</p> <p><b>significance</b>   representations regarding product attributes must be accurate</p>



office supplies	<p><b>L&amp;L Supply Pty Ltd</b></p> <p><b>commenced</b> 10 March 2005   <b>concluded</b> 28 March 2006</p> <p>misleading or deceptive conduct in relation to the supply of packing tape</p> <hr/> <p>Justice Madgwick   Federal Court Sydney</p> <hr/> <p><b>result</b>   declarations, injunction, compensation, write to affected customers informing them of the court orders, publish corrective notices and costs</p> <p><b>significance</b>   overseas companies are subject to Australian law; their assets can be frozen and preserved for compensation payments to affected businesses and individuals</p>
property investment seminar	<p><b>Morgan Pacific Pty Ltd and others</b></p> <p><b>commenced</b> 26 October 2004   <b>concluded</b> 14 July 2005</p> <p>misleading or deceptive conduct in relation to property investment seminar advertising</p> <hr/> <p>Justice Bennett   Federal Court Sydney</p> <hr/> <p><b>result</b>   orders by consent: undertakings and costs</p> <p><b>significance</b>   claims regarding wealth creation should not be exaggerated</p>
household appliance hire	<p><b>Radio Rentals Ltd, Walker Stores Pty Ltd</b></p> <p><b>commenced</b> 11 December 2003   <b>concluded</b> 17 August 2005</p> <p>alleged unconscionable conduct in relation to multiple rental agreements with an intellectually disabled individual</p> <hr/> <p>Justice Finn   Federal Court Adelaide</p> <hr/> <p><b>result</b>   case dismissed; ACCC to pay costs</p> <p><b>significance</b>   judicial consideration of unconscionable conduct</p>
educational supplies	<p><b>Raymon Lal Keshow</b></p> <p><b>commenced</b> 15 September 2004   <b>concluded</b> 21 July 2005</p> <p>consumer unconscionable conduct in relation to maths tutoring programs that Indigenous people in the Northern Territory had been signed to</p> <hr/> <p>Justice Mansfield   Federal Court Darwin</p> <hr/> <p><b>result</b>   banning orders and costs; compensation orders to 8 Indigenous women totalling \$26 530</p> <p><b>significance</b>   care must be taken to ensure vulnerable consumers are dealt with fairly</p>

## business opportunities

### StoresOnline International Inc. and others

**commenced** 1 June 2005 | **concluded** 9 May 2006

misleading or deceptive conduct in relation to seminars conducted promoting online web-based business opportunities

Justice Moore | Federal Court Sydney

**result** | court enforceable undertakings; refunds to affected customers; contribute to the ACCC's legal costs

**significance** | representations made about business opportunities must be accurate

## 2. litigation continuing at end of 2005–06

effective competition and informed markets

### commercial air-conditioning

#### Admiral Mechanical Services Pty Ltd and others

**commenced** 17 December 2004

entering agreements lessening competition through bid rigging with respect to commercial air-conditioning contracts in Western Australia

Justice Nicholson | Federal Court Perth

declarations and injunctions made against consenting respondents with penalty decision reserved; court processes continuing against contesting respondents

### timber merchant

#### Auspine Limited and others

**commenced** 4 August 2005

price fixing of timber estimating services in South Australia

Justice Besanko | Federal Court Adelaide

court processes continuing

### marine fishing (abalone)

#### Australian Abalone Pty Ltd and others

**commenced** 9 November 2005

anti-competitive agreements among abalone quota holders

Justice Goldberg | Federal Court Melbourne

court processes continuing

### garnet supply

#### Barton Mines Corporation and others

**commenced** 15 March 2005

entering into agreements containing exclusionary provisions in relation to the international supply of industrial garnet

Justice Gray | Federal Court Melbourne

court processes continuing

<b>medical fluids</b>	<b>Baxter Healthcare Pty Ltd</b> <b>commenced</b> 1 November 2002 misuse of market power and exclusive dealing in relation to the supply of health products to state government purchasing authorities Full Federal Court judgment reserved
<b>kitchenware</b>	<b>Cambur Industries Pty Limited and another</b> <b>commenced</b> 22 September 2005 resale price maintenance in the wholesale supply of kitchenware Justice Besanko   Federal Court Adelaide judgment reserved
<b>construction</b>	<b>Construction Forestry Mining &amp; Energy Union (CFMEU) and others</b> <b>commenced</b> 24 November 2005 secondary boycott at Holiday Inn construction site in Western Australia Justice French   Federal Court Perth court processes continuing
<b>electrical services</b>	<b>Edison Mission Operation and Maintenance Loy Yang Pty Ltd and another</b> <b>commenced</b> 7 February 2005 agreement between the company and union regarding contractor engagement conditions was in breach of secondary boycott provisions Justice Young   Federal Court Melbourne hearing scheduled to commence 2 October 2006
<b>sports apparel</b>	<b>Fila Sport Oceania Pty Ltd and others</b> <b>commenced</b> 5 September 2002 misuse of market power and exclusive dealing through imposition of selective distribution policy Justice Young   Federal Court Melbourne hearing scheduled for August 2006 against the second respondent

fuel retailing	<p><b>Leahy Petroleum Pty Ltd and others</b></p> <p><b>commenced</b> 7 November 2003</p> <p>price fixing of petrol in the Geelong area</p> <hr/> <p>Justice Gray   Federal Court Melbourne</p> <hr/> <p>proceedings against 3 of the 18 respondents discontinued by consent; trial against the remaining respondents completed on 11 November 2005; judgment reserved</p>
liquor retailing	<p><b>Liquorland (Aust) Pty Ltd &amp; Woolworths Ltd</b></p> <p><b>commenced</b> 27 June 2003</p> <p>anti-competitive agreements and primary boycotts through restrictive agreements with operators of licensed premises for the purpose of substantially lessening competition in packaged takeaway liquor markets</p> <hr/> <p>Justice Allsop   Federal Court Sydney</p> <hr/> <p>judgment handed down on 30 June 2006; penalty hearing is pending</p>
vitamins	<p><b>Merck KGaA, F Hoffmann-La Roche Ltd, BASF Aktiengesellschaft and Takeda Chemical Industries Ltd</b></p> <p><b>commenced</b> 24 August 2001</p> <p>price fixing and market sharing in the global market for vitamin C</p> <hr/> <p>Justice Goldberg   Federal Court Melbourne</p> <hr/> <p>court processes continuing</p>
corrugated fibreboard container industry	<p><b>Visy Industries Holdings Pty Limited and others</b></p> <p><b>commenced</b> 21 December 2005</p> <p>entering into anti-competitive arrangements</p> <hr/> <p>Justice Heerey   Federal Court Melbourne</p> <hr/> <p>court processes continuing</p>

<b>medical claims</b>	<p><b>Advanced Medical Institute Pty Ltd (AMI) and another commenced</b> 19 July 2004</p> <p>misleading or deceptive conduct regarding impotence and erectile dysfunction treatments</p> <hr/> <p>Justice Lindgren   Federal Court Sydney</p> <hr/> <p>judgment reserved</p>
<b>waste disposal</b>	<p><b>Brambles Australia Limited and another commenced</b> 1 December 2004</p> <p>misleading or deceptive and unconscionable conduct relating to the signing up of customers to waste disposal contracts</p> <hr/> <p>Justice Greenwood   Federal Court Queensland</p> <hr/> <p>hearing scheduled for September 2006</p>
<b>internet service provider</b>	<p><b>Dataline.net.au Pty Ltd and others commenced</b> 21 December 2001</p> <p>misleading, deceptive and unconscionable conduct, misrepresentations, resale price maintenance, and undue harassment regarding supply of internet-related services to small businesses and consumers</p> <hr/> <p>Justice Kiefel   Federal Court Brisbane</p> <hr/> <p>judgment reserved</p>
<b>mobile phone accessories</b>	<p><b>Dynacast (INT) Pty Ltd (formerly phoneflasher.com Pty Ltd) commenced</b> 4 October 2005</p> <p>contempt proceedings in relation to non-compliance with court orders</p> <hr/> <p>Justice Finn   Federal Court Adelaide</p> <hr/> <p>court processes continuing</p>
<b>muscle stimulation</b>	<p><b>Emerald Ocean Distributors Pty Ltd and others commenced</b> 19 July 2000</p> <p>misleading or deceptive conduct and misrepresentations regarding health and cosmetic benefits of an electronic muscle stimulation product</p> <hr/> <p>Full Federal Court Perth</p> <hr/> <p>judgment on 17 March 2006 by Justice Nicholson found contraventions of ss. 52 and 53 of the Act; the court granted declarations, injunctions, corrective notices; a trade practice compliance program and costs; the respondents have appealed and the appeal has been set down for the August sittings of the Full Federal Court in Perth</p>

<b>pre-paid telephone card vending</b>	<b>Global Prepaid Communications Pty Ltd and others</b> <b>commenced</b> 19 March 2003 misleading or deceptive conduct including misleading representation regarding profitability and risk in relation to sale of phone card vending machine distributorships Full Federal Court in February 2006 the Federal Court ordered declarations, injunctions and costs; compensation totalling \$3 538 243.94 in compensation to be paid to 23 small businesses and costs; the third and fifth respondents have appealed
<b>poultry farming (eggs)</b>	<b>G.O. Drew Pty Ltd and another</b> <b>commenced</b> 4 November 2005 misleading and deceptive conduct and misrepresentations in relation to the supply of eggs Justice Gray   Federal Court Melbourne court processes continuing
<b>health insurance</b>	<b>IMB Group Pty Ltd and others</b> <b>commenced</b> 2 March 2006 ACCC and others are being sued for malicious prosecution, misfeasance in public office, defamation, negligence and unlawful inference with contractual relations; claims arise from a Federal Court action in September 2004 in which the ACCC was successful at first instance but not on appeal Supreme Court of Appeal court processes continuing
<b>computers</b>	<b>Info4pc.com Pty Ltd and James Rae</b> <b>commenced</b> 22 January 2001 misleading and deceptive conduct, bait advertising, accepting payment not intending to supply in relation to computers Justice Nicholson   Federal Court Perth hearing scheduled to commence 20 September 2006
<b>mobile phones</b>	<b>LG Electronics Australia Pty Ltd</b> <b>commenced</b> 29 December 2005 misleading and deceptive conduct and false representations made in online LG mobile phone user manuals in relation to the existence, exclusion or effect of consumer statutory warranties, conditions, rights or remedies Justice Siopis   Federal Court Perth judgment reserved

<b>introduction services</b>	<p><b>Rural Network Pty Ltd and another</b></p> <p><b>commenced</b> 28 April 2005</p> <p>misleading or deceptive conduct in relation to the promotion of introduction agency services</p> <hr/> <p>Justice Spender   Federal Court Queensland</p> <hr/> <p>court processes continuing</p>
<b>property investment</b>	<p><b>Seven Network Ltd and others</b></p> <p><b>commenced</b> September 2005</p> <p>misleading or deceptive conduct in the promotion of a millionaire property investment mentoring program 'Wildly Wealthy Women'</p> <hr/> <p>Justice Bennett   Federal Court Sydney</p> <hr/> <p>court processes continuing</p>
<b>takeaway food retailing</b>	<p><b>The Original Mama's Pizza and Ribs and others</b></p> <p><b>commenced</b> 25 November 2005</p> <p>misleading and deceptive conduct in relation to fast food systems</p> <hr/> <p>Justice Madgwick   Federal Court Sydney</p> <hr/> <p>court processes continuing</p>
<b>vehicle jacks</b>	<p><b>Trade Quip Pty Ltd and another</b></p> <p><b>commenced</b> 31 March 2006</p> <p>breach of the prescribed consumer product safety standard relating to hydraulic trolley jacks and alleged misleading and deceptive conduct by making false representations in relation to the supply of certain automotive products</p> <hr/> <p>Justice Gray   Federal Court Melbourne</p> <hr/> <p>court processes continuing</p>
<b>vehicle jacks</b>	<p><b>TWM Imports Pty Ltd</b></p> <p><b>commenced</b> 23 December 2005</p> <p>breach of the prescribed consumer product safety standards relating to vehicle jacks</p> <hr/> <p>Justice Heerey   Federal Court Hobart</p> <hr/> <p>court processes continuing</p>

## criminal proceedings

### fair trading and consumer protection

<b>diamond industry</b>	<b>Carrerabenz Diamond Industries Pty Ltd and another</b> <b>commenced</b> 20 December 2005 misleading price comparisons in advertising diamond clearance sales Justice Dowsett   Federal Court Brisbane court processes continuing
<b>baby walker</b>	<b>Skippy Australia Pty Ltd</b> <b>commenced</b> 20 April 2006 non-compliance with mandatory consumer product safety standards for baby walkers; false representations that goods were of a particular standard; and false representations as to the existence or exclusion of rights Justice Sundberg   Federal Court Melbourne court processes continuing

## 3. undertakings accepted during 2005–06

### effective competition and informed markets

<b>ice cream products</b>	<b>Mr Yummy Australia Pty Ltd and International Catering Pty Ltd</b> Brisbane   9 November 2005 <b>conduct</b>   attempted price fix involving ice cream products <b>undertaking</b>   court enforceable undertaking not to enter into price fixing arrangements; write to competitors and customers about the conduct; trade practices training for company directors <b>significance</b>   small businesses should not seek to have their competitors agree on prices
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## gestalt training services

### Northern Rivers Gestalt Institute Incorporated

Brisbane | 24 May 2006

**conduct** | attempting to fix, control or maintain the price for gestalt training services

**undertaking** | court enforceable undertaking not to enter into, or attempt to enter into any agreements with its competitors about the prices to be charged for the provision of gestalt training services; write to all the parties who received the email in which the attempted price fix was communicated retracting the contents; trade practices compliance program

**significance** | small businesses should not seek to have their competitors agree on prices

## news agents

### Queensland Newsagents Federation Ltd—variation

Brisbane | 14 December 2005

**conduct** | the Queensland Newsagents Federation Limited (QNF) suspended members for taking another member's territory in breach of the QNF Code of Ethics; the ACCC was concerned that the suspension was at risk of contravening s. 45 of the Act

**undertaking** | the ACCC has accepted the withdrawal of undertakings offered by QNF in 2001 on the basis that there was no sunset clause; it is now more than 4 years since the undertaking came into effect and in that time QNF has fulfilled the terms of the undertaking and has not engaged in conduct contrary to the Act

## fair trading and consumer protection

## clothing

### AAA Embroidery & Screen Printing

Brisbane | 11 October 2005

**conduct** | false or misleading representations about the place of origin of goods

**undertaking** | court enforceable undertaking that the company will not make representations that goods are made in Australia, unless the goods meet the test for country of origin claims; advise resellers to remove incorrect labels and; undertake trade practices compliance program

**significance** | country of origin claims must be accurate

outdoor adventure equipment	<b>Adventure One Pty Ltd</b> Hobart   11 October 2005 <b>conduct</b>   misrepresenting that down-filled sleeping bags contained a specified percentage of goose down or down when they did not <b>undertaking</b>   court enforceable undertaking not to make representations about down content percentage that cannot be substantiated; corrective notices; trade practices compliance program <b>significance</b>   representations regarding product content/ composition must be accurate
debt collection	<b>Alliance Factoring Pty Ltd</b> Melbourne   17 August 2005 <b>conduct</b>   the ACCC was concerned that some of Alliance Factoring's debt collection practices may be misleading or deceptive and involve undue harassment or coercion <b>undertaking</b>   court enforceable undertaking by Alliance Factoring to implement a trade practices compliance program; review internal procedures; undertake compliance audit; establish a recourse for debtors to lodge a dispute and sponsor an industry forum <b>significance</b>   debt collectors must comply with the Act when taking action to recover payment for goods or services
fruit juice	<b>Andrew Binneter (Tamarama Fresh Juices Australia Pty Ltd)</b> Sydney   28 February 2006 <b>conduct</b>   Andrew Binneter is a director of Tamarama Fresh Juices Australia Pty Ltd; the ACCC was concerned that the labelling of certain of Tamarama's fresh juice products (sold from July 1999 until 27 May 2004) may have been misleading or deceptive in contravention of ss. 52, 53(a) or 55 of the Act; Tamarama informed the ACCC that it was of the view that the labelling did not contravene the Act; Andrew Binneter agreed to provide a court enforceable undertaking that he will attend trade practices training covering ss. 52 and 53 of the Act <b>undertaking</b>   court enforceable undertaking to attend trade practices training <b>significance</b>   representations regarding product attributes must be accurate

## outdoor adventure equipment

### Arthur Ellis Limited trading as Fairydown and Zone

Hobart | 20 October 2005

**conduct** | misrepresenting that down-filled sleeping bags contained a specified percentage of goosedown or down when they did not

**undertaking** | court enforceable undertaking not to make any representations about down content percentage that cannot be substantiated; corrective notices; trade practices compliance program

**significance** | representations regarding product content/ composition must be accurate

## children's cosmetics

### Austwide Wholesalers Pty Ltd

Canberra | 23 November 2005

**conduct** | Austwide Wholesalers Pty Ltd supplied children's cosmetics which did not contain lists of ingredients, or contained ingredients lists that were too small to be legible

**undertaking** | court enforceable undertaking to upgrade the company's existing trade practices compliance program

**significance** | mandatory product safety standards must be adhered to

## baby walker

### Baby Dynamics Pty Ltd

Canberra | 10 May 2006

**conduct** | Baby Dynamics Pty Ltd distributed to retailers approximately 280 baby walkers under the description '3 in 1 Walker' which did not comply with the baby walkers standard

**undertaking** | court enforceable undertaking to recall any non-compliant baby walkers purchased by consumers; cease supply of the baby walkers until labelled correctly in accordance with the standard; publish an article in parenting magazine alerting consumers to the existence and importance of safety standards for baby products; trade practices compliance program

**significance** | mandatory product safety standards must be adhered to

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**tourism**
**Break Free Holidays Pty Ltd**

Brisbane | 11 November 2005

**conduct** | misleading and deceptive conduct through asserting its rights over the trademarks relating to the word 'schoolies' regardless of the context in which the word 'schoolies' was used

**undertaking** | court enforceable undertaking not to threaten legal proceedings against third parties who make use of the word 'schoolies' in circumstances where Break Free Holidays has no right to do so; establish a Register of Communications to document any approaches made to third parties about use of 'schoolies'; trade practices compliance program

**significance** | claims regarding ownership of trademarks must be accurate

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**business directory Business Pages Pty Ltd**

Melbourne | 2 August 2005

**conduct** | the ACCC considered Business Pages' application form for listing on its online internet business directory did not sufficiently draw the cost of the standard listing to the attention of the reader and could have led a person to incorrectly conclude that there was no charge for the standard listing

**undertaking** | court enforceable undertaking to use forms which disclose prominently, and in close proximity to the service being offered, the full cost of that service

**significance** | the full price of a good or service should be clearly stated

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**clothing****CGS Trading Australia Pty Ltd**

Melbourne | 16 May 2006

**conduct** | false, misleading and deceptive representations with respect to the fibre content composition of certain 'Aussiesox' brand socks

**undertaking** | court enforceable undertaking to refrain from supplying or offering to supply socks in the future that carry false or misleading fibre content labelling; trade practices compliance program

**significance** | representations regarding product content/ composition must be accurate

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**debt collection****Collection House Limited & Lion Finance Pty Ltd**

Brisbane | 1 February 2006

**conduct** | misleading and deceptive conduct in relation to the collection of 'statute extinguished debt' in NSW during the period 2001 to 2004

**undertaking** | court enforceable undertaking to offer ex gratia payments in aggregate totalling up to \$660 000 to a group of approximately 500 NSW debtors from whom it collected 'old debts' between 2001 and 2004; establish and maintain a Register of Communications and provide a copy of the register to the ACCC

**significance** | debt collectors must not misrepresent a person's liability for a debt when seeking to collect the debt

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**fruit juice****Dannon Pty Ltd**

Perth | 6 December 2005

**conduct** | illustrations and representations on packaging created the overall impression that juices contained 100 per cent of the characterising fruit, when in fact those juices contained a number of different juices and also contained the addition of vitamin C

**undertaking** | court enforceable undertaking not to create an overall impression that a juice product contains 100 per cent of a particular fruit juice when that is not the case; not to represent a fruit juice to be a 100 per cent product when vitamin C has been added; publish a corrective notice; trade practices compliance program

**significance** | the overall impression created by packaging must not be misleading

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**bedding****Forty Winks Franchising Pty Ltd**

Brisbane | 18 October 2005

**conduct** | use of comparative pricing in advertisements where the claimed savings for the advertised products may have been overstated because the products are usually sold at below the ticketed prices and the fine print disclaimer was not prominent enough to qualify the overall impression of the advertisement

**undertaking** | court enforceable undertaking to only advertise price reductions calculated by reference to the usual selling prices for the advertised products unless a clear and prominent explanation specifies the alternative price reference point used for the advertised price reduction; trade practices compliance program

**significance** | price saving claims should accurately reflect a comparison between recent historical selling prices and advertised discounted price

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**nursery**
**GardenWay Nurseries (Qld) Pty Ltd**

Brisbane | 21 December 2005

**conduct** | GardenWay Nurseries (Qld) Pty Ltd advertised its products by making price comparisons when products had not been sold at the higher price or for a reasonable period previously or in reasonable quantities to justify making the price comparisons to the public; GardenWay also advertised that some of its products were 'new' when the products were not new because they had been stocked for a considerable period previously

**undertaking** | court enforceable undertaking to refrain from making false or misleading representations in price comparison advertising; to advertise the price of a product as a 'liquidation price' only when the product is being sold in a genuine liquidation and at a genuine liquidation price; to advertise that its products are 'new' only when the product advertised is a genuinely new product line that has not been stocked and offered for sale for a reasonable period of time previously; publish corrective notices; directors to undertake trade practices education and training in relation to Part V of the Act

**significance** | price saving claims should accurately reflect a comparison between recent historical selling prices and advertised discounted price

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**motor vehicle**
**GM Holden Ltd**

Melbourne | 11 April 2006

**conduct** | GM Holden Ltd launched a 'Holden Employee Pricing' promotion with advertisements stating 'Holden employee pricing for all Australians. For the first time ever, all Australians can enjoy the financial benefit of Holden Employee Pricing.' when members of the public were not provided with the discount on factory fitted options and accessories, the discounted dealer delivery fee or the special discount on selected vehicles that were available to Holden employees at the time. The ACCC formed the view the misleading impression given by the headline statement could not be cured by the further information given in the disclaimer

**undertaking** | court enforceable undertaking to write to each person who purchased a vehicle subject to the special discount offering them the opportunity to return the vehicle for a full refund; endeavour to comply with any industry standards developed by the ACCC that are generally adopted by the industry; make improvements to its trade practices compliance program; engage an independent third party to review its trade practices compliance program

**significance** | advertising must not mislead consumers about the level of savings

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## children's nightwear

### Harris Scarfe

Adelaide | 23 November 2005

**conduct** | Harris Scarfe retailed children's nightwear labelled 'Low fire risk' which, when tested, failed to comply with the mandatory product safety standard

**undertaking** | court enforceable undertaking to remove garments from sale; public recall; inform relevant consumer authorities throughout Australia of the recall and extend the company's existing trade practices compliance program

**significance** | mandatory product safety standards must be adhered to

## cigarettes

### Imperial Tobacco Australia Limited

Canberra | 7 November 2005

**conduct** | misleading or deceptive conduct in representations about the attributes of low-yield cigarettes

**undertaking** | court enforceable undertaking to remove 'light' and 'mild' descriptors and related numbers from all cigarettes produced for Australian consumers; not make claims about the health benefits of low-yield cigarettes when compared to high-yield cigarettes and pay \$1 million to the ACCC to fund anti-smoking consumer education campaigns and programs concerning low-yield cigarettes

**significance** | representations regarding product attributes must be accurate

## aviation

### Janue Pty Ltd trading as All Modes Dangerous Goods Training

Canberra | 14 October 2005

**conduct** | misleading and false representations regarding All Modes Dangerous Goods Training's (AMDGT) accreditation with the International Air Transport Association (IATA)

**undertaking** | court enforceable undertaking not to make representations that the company has accreditation as an 'approved school' with IATA unless it did in fact have such IATA accreditation; write to all AMDGT customers who believed they were completing IATA accredited courses with AMDGT and offer those customers a refund; and strengthen the existing corporate trade practices compliance program

**significance** | affiliation claims must be accurate

fruit juice	<b>Just Squeezed Fruit Juices Pty Limited and Just Squeezed Fruit Juices (NSW) Pty Limited</b>
	Sydney   27 March 2006
	<b>conduct</b>   Just Squeezed Group prominently displayed the words 'just Squeezed' on their labels, together with the images of fruit and words such as 'Orange juice' and 'Apple juice', creating the overall impression to consumers that each product was produced directly from the fruit shown on the labels and did not contain reconstituted juice
	<b>undertaking</b>   court enforceable undertaking to cease manufacturing fruit juice products under the brand name 'just Squeezed FRUIT JUICES'; supply all fruit juice products manufactured on or after 1 April 2006 under the new brand name 'just Delicious FRUIT JUICES'; injunctions; publish corrective notices; and implement a trade practices compliance program
	<b>significance</b>   representations regarding product attributes must be accurate
outdoor adventure equipment	<b>Kathmandu Pty Ltd trading as Kathmandu</b>
	Hobart   20 October 2005
	<b>conduct</b>   misrepresenting that down-filled sleeping bags contained a specified percentage of goose down or down when they did not
	<b>undertaking</b>   court enforceable undertaking not to make any representations about down content percentage that cannot be substantiated; corrective notices; trade practices compliance program
	<b>significance</b>   representations regarding product content/ composition must be accurate
hot water bottles	<b>Livingstone International Pty Ltd</b>
	Adelaide   16 November 2005
	<b>conduct</b>   certificates of compliance with the British Standard were being provided to importers of hot water bottles by overseas manufacturers but the certificates were either false or were generic and did not necessarily apply to the imported hot water bottles
	<b>undertaking</b>   court enforceable undertaking to only supply hot water bottles representing compliance with the British Standard when it can provide genuine certification for each specific model; trade practices compliance program
	<b>significance</b>   importers need to check compliance with standards and not rely on certificates provided by overseas manufacturers



outdoor adventure equipment	<p><b>Macpac Wilderness Equipment Limited trading as Macpac</b></p> <p>Hobart   20 October 2005</p> <p><b>conduct</b>   misrepresenting that down-filled sleeping bags contained a specified percentage of goosedown or down when they did not</p> <p><b>undertaking</b>   court enforceable undertaking not to make any representations about down content percentage that cannot be substantiated; corrective notices; trade practices compliance program</p> <p><b>significance</b>   representations regarding product content/ composition must be accurate</p>
real estate	<p><b>Manningham Real Estate Pty Ltd trading as Barry Plant Doherty</b></p> <p>Sydney   8 July 2005</p> <p><b>conduct</b>   misleading conduct and false representations regarding the applicability of GST to the sale of real estate</p> <p><b>undertaking</b>   court enforceable undertaking to refrain from making false or misleading representations to potential purchasers regarding the applicability of GST to the sale of real estate; offer refunds representing half of the GST liability that was collected amounting to \$24 175; trade practices compliance program</p> <p><b>significance</b>   statements about price should accurately state the applicability of GST</p>
woodheaters	<p><b>Masport Ltd</b></p> <p>Perth   5 August 2005</p> <p><b>conduct</b>   misleading or false representations regarding the standard, quality or performance characteristics of woodheaters</p> <p><b>undertaking</b>   court enforceable undertaking to ensure that all woodheaters supplied comply with standard AS/NZS 4013; and implement a trade practices compliance program</p> <p><b>significance</b>   claims relating to standard, quality and performance characteristics must be accurate</p>
hot water bottles	<p><b>Mayvic Pty Ltd</b></p> <p>Adelaide   21 November 2005</p> <p><b>conduct</b>   certificates of compliance with the British Standard were being provided to importers of hot water bottles by overseas manufacturers but the certificates were either false or were generic and did not necessarily apply to the imported hot water bottles</p> <p><b>undertaking</b>   court enforceable undertaking to only supply hot water bottles representing compliance with the British Standard when it can provide genuine certification for each specific model; trade practices compliance program</p> <p><b>significance</b>   importers need to check compliance with standards and not rely on certificates provided by overseas manufacturers</p>

hot water bottles	<p><b>McGloins Pty Ltd</b></p> <p>Adelaide   15 February 2006</p> <p><b>conduct</b>   certificates of compliance with the British Standard were being provided to importers of hot water bottles by overseas manufacturers but the certificates were either false or were generic and did not necessarily apply to the imported hot water bottles</p> <p><b>undertaking</b>   court enforceable undertaking to only supply hot water bottles representing compliance with the British Standard when it can provide genuine certification for each specific model; trade practices compliance program</p> <p><b>significance</b>   importers need to check compliance with standards and not rely on certificates provided by overseas manufacturers</p>
woodheaters	<p><b>Melton Craft Pty Ltd</b></p> <p>Perth   5 September 2005</p> <p><b>conduct</b>   misleading or false representations about the standard, quality or performance characteristics of woodheaters</p> <p><b>undertaking</b>   court enforceable undertaking to ensure that all woodheaters supplied comply with standard AS/NZS 4013; trade practices compliance program</p> <p><b>significance</b>   claims relating to standard, quality and performance characteristics must be accurate</p>
outdoor adventure equipment	<p><b>Mont Adventure Equipment Pty Ltd trading as Mont</b></p> <p>Hobart   11 October 2005</p> <p><b>conduct</b>   misrepresenting that down-filled sleeping bags contained a specified percentage of goosedown or down when they did not</p> <p><b>undertaking</b>   court enforceable undertaking not to make any representations about down content percentage that cannot be substantiated; corrective notices; trade practices compliance program</p> <p><b>significance</b>   representations regarding product content/ composition must be accurate</p>
outdoor adventure equipment	<p><b>Mountain Designs Pty Ltd</b></p> <p>Hobart   24 October 2005</p> <p><b>conduct</b>   misrepresenting that down-filled sleeping bags contained a specified percentage of goosedown or down when they did not</p> <p><b>undertaking</b>   court enforceable undertaking not to make any representations about down content percentage that cannot be substantiated; corrective notices; trade practices compliance program</p> <p><b>significance</b>   representations regarding product content/ composition must be accurate</p>

## clothing

**Mr Won Mo Yoon**

Melbourne | 16 May 2006

**conduct** | Mr Won Mo Yoon, the sole director of CGS Trading Australia Pty Ltd which imports, distributes and supplies 'Aussiesox' brand socks admitted to being knowingly concerned in the false, misleading and deceptive representations made by the company with respect to the fibre content composition of certain Aussiesox brand socks

**undertaking** | court enforceable undertakings that, in his capacity as a director or office holder of any corporate entity he is involved with, Mr Yoon will refrain from supplying or offering to supply socks in the future that carry false or misleading fibre content labelling; trade practices compliance programs

**significance** | representations regarding product content/ composition must be accurate

outdoor  
adventure  
equipment**Paddy Pallin Pty Ltd trading as Paddy Pallin**

Hobart | 11 October 2005

**conduct** | misrepresenting that down-filled sleeping bags contained a specified percentage of goosedown or down when they did not

**undertaking** | court enforceable undertaking not to make any representations about down content percentage that cannot be substantiated; corrective notices; trade practices compliance program

**significance** | representations regarding product content/ composition must be accurate

## footwear

**Pegasus Investments & Holdings Pty Ltd trading as Coastline Agency**

Perth | 15 February 2006

**conduct** | making false or misleading representations on a range of footwear indicating the footwear was '100% Wool Lining' and further that the lining was 'Australian Merino Wool' when test results indicated the lining was made up of 99.5 per cent polyester and 0.5 per cent polypropylene

**undertaking** | court enforceable undertaking that it will not supply and sell in Australia any footwear product that is labelled '100% Wool Lining' and/or 'Australian Merino Wool' where to the knowledge of Pegasus that representation is or may be false; offer consumers who were misled by the conduct a refund equal to the cost of the footwear purchased; publish a corrective notice; trade practices compliance program

**significance** | representations regarding product content/ composition must be accurate

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**cosmetics****Priceline Pty Limited**

Sydney | 24 April 2006

**conduct** | Priceline Pty Limited sold a number of cosmetic product brands that did not comply with the Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991

**undertaking** | court enforceable undertaking to implement and maintain in all of its stores a permanent fixture on cosmetic display units that has plastic pockets for the insertion of ingredient lists; appoint a Priceline cosmetic manager in each Priceline store who will be responsible for authorising all cosmetic purchases and systems of display where cosmetics are displayed outside main cosmetic display units; conduct a weekly check of the cosmetic display units; trade practices compliance program; implement an effective complaints handling system

**significance** | mandatory product safety standards must be adhered to

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**woodheaters****R. J. Metal Pty Ltd trading as Jarrahdale Solid Fuel Heating**

Perth | 5 July 2005

**conduct** | misleading or false representations regarding the standard, quality or performance characteristics of woodheaters

**undertaking** | court enforceable undertaking to ensure that all woodheaters supplied comply with standard AS/NZS 4013; and implement a trade practices compliance program

**significance** | claims relating to standard, quality and performance characteristics must be accurate

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**children's  
clothing****R.J.N. Australia Pty Ltd**

Adelaide | 21 September 2005

**conduct** | misleading or false representations regarding the standard, quality or performance characteristics of children's nightwear; R.J.N. Australia Pty Ltd (RJN) imported and supplied children's dressing gowns labelled as 'Strictly Sleep by RJN' and 'Low Fire Risk'; when tested, the garment failed to meet the consumer product safety standard for children's nightwear and further, may have misled consumers by stating that the garment was a low fire risk when in fact it was a high fire risk

**undertaking** | court enforceable undertaking to refrain from selling or offering for sale children's nightwear products which do not fully comply with the prescribed product safety standard; product recall; provide the ACCC with product test reports; trade practice compliance program

**significance** | importers need to ensure compliance for each item that is subject to a mandatory product safety standard before supplying

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## magazine subscription

### Reader's Digest (Australia) Pty Limited—variation

Sydney | 23 August 2005

**conduct** | demanding payment for unsolicited mail order products when the company did not have reasonable cause to believe that it was entitled to payment

**undertaking** | the ACCC has accepted the variation of undertakings offered by Reader's Digest in December 2003; conduct independent audits of the trade practices compliance program and the probation program

## car accessories

### Repco Limited

Melbourne | 22 December 2005

**conduct** | Repco undertook a promotional campaign in which they advertised significant price reductions on 5 products that were not widely available to consumers across Repco's 290 stores

**undertaking** | court enforceable undertaking to maintain and continue to implement a trade practices compliance program; public disclosure notice; publish an article in the *Australian Automotive Aftermarket Association Magazine* focusing on the lessons learnt by Repco from the concerns raised by the ACCC; provide alternative stock or a \$100 Repco gift voucher to consumers who made written complaints to either the ACCC or to Repco before the undertaking and who have not otherwise received compensation from Repco

**significance** | reasonable stock of advertised products must be available

## footwear

### Rogue Footwear Pty Ltd

Perth | 15 February 2006

**conduct** | making false or misleading representations on a range of footwear indicating the footwear was '100% Wool Lining' and further that the lining was 'Australian Merino Wool' when test results indicated the lining was made up of 99.5 per cent polyester and 0.5 per cent polypropylene

**undertaking** | court enforceable undertaking that it will not supply and sell in Australia any footwear product that is labelled '100% Wool Lining' and/or 'Australian Merino Wool' where to the knowledge of Pegasus that representation is or may be false; offer consumers who were misled by the conduct a refund equal to the cost of the footwear purchased; publish a corrective notice; trade practices compliance program

**significance** | representations regarding product content/ composition must be accurate

## furniture and homewares

### Samsara Furniture and Homewares Pty Ltd

Brisbane | 4 April 2006

**conduct** | Samsara engaged in comparison price advertising for products that had not been sold by it at the previous or 'was' price recently enough to justify making the price comparisons to the public

**undertaking** | court enforceable undertakings to refrain from making false or misleading representations in price comparison advertising; publish corrective notices on its website; refunds to customers who relied on the comparison price advertising in exchange for the return of the product purchased; trade practices compliance program

**significance** | price saving claims should accurately reflect a comparison between recent historical selling prices and advertised discounted price

## sporting goods

### Sheldon Park Pty Ltd

Melbourne | 2 August 2005

**conduct** | two price advertising involving comparison of its price with the recommended retail price (RRP) when the advertised products had never been sold at the RRP

**undertaking** | court enforceable undertaking to not use two-price comparative advertising where the company has not recently sold the advertising goods at the higher of the two comparative prices, or for a reasonable period of time; if referring to a RRP to clearly and prominently identify that the company does not usually retail the product at the RRP

**significance** | price saving claims should accurately reflect a comparison between recent historical selling prices and advertised discounted price

## motor vehicles

### Sken Pty Ltd trading as Premier Suzuki

Perth | 28 February 2006

**conduct** | Premier Suzuki made price representations that did not state that dealer delivery charges were applicable to the advertised price when such charges did apply

**undertaking** | court enforceable undertaking to disclose any dealer delivery fees that are payable by consumers which are not included in the price of the motor vehicle advertised for sale by Sken; corrective advertisement; update existing trade practices compliance program

**significance** | advertisers must state the price including any mandatory components that need to be paid before the good or service can be purchased

**motor vehicles****Southern Motors Pty Ltd trading as Jason Mazda**

Perth | 15 May 2006

**conduct** | Jason Mazda made price representations that did not state that dealer delivery charges were applicable to the advertised prices of various Mazda vehicles when such charges did apply

**undertaking** | court enforceable undertaking to disclose any dealer delivery fees that are payable by consumers to Southern Motors and which are not included in the price of the motor vehicle advertised for sale by Southern Motors; publish a corrective advertisement; update existing trade practices compliance program

**significance** | advertisers must state the price including any mandatory components that need to be paid before the good or service can be purchased

**children's  
nightwear****Spotlight Stores Pty Ltd**

Melbourne | 12 August 2005

**conduct** | failure to comply with the mandatory product safety standard for children's nightwear and limited daywear

**undertaking** | court enforceable undertaking by Spotlight Stores Pty Ltd to refrain from selling or offering for sale children's nightwear and limited daywear products without the correct fire hazard and size labels affixed to the garments; undertake corrective advertising; in-store advisory signage; trade practices compliance program

**significance** | prescribed consumer product safety standards must be adhered to

**e-commerce  
website  
software****StoresOnline International, Inc. and StoresOnline, Inc.**

Sydney | 9 May 2006

**conduct** | misleading or deceptive conduct in relation to seminars promoting online web-based business opportunities

**undertaking** | court enforceable undertaking to offer refunds to affected customers; not to make false or misleading statements about its website packages nor make statements about the future performance of the packages without having reasonable grounds for so doing; give future customers a three-day 'cooling off' period; contribute to the ACCC legal costs

**significance** | representations made about business opportunities must be accurate

vehicle jacks	<p><b>Super Cheap Auto Pty Ltd—variation</b></p> <p>Brisbane   15 December 2005</p> <p><b>conduct</b>   failure to comply with mandatory product safety standard for vehicle jacks</p> <p><b>undertaking</b>   the ACCC has accepted a variation of undertakings offered by the company Super Cheap Auto Pty Ltd in February 2005 enabling Super Cheap Auto Pty Ltd to utilise the services of a non-NATA accredited agency for annual batch testing of their trolley jacks, provided the test is still performed in accordance with the standard</p>
bedding	<p><b>Target Australia Pty Ltd</b></p> <p>Hobart   14 June 2006</p> <p><b>conduct</b>   misrepresenting that Target own-brand quilts contained 100 per cent goose down</p> <p><b>undertaking</b>   court enforceable undertaking not to make representations about down content percentage that cannot be substantiated; corrective advertisements; refunds; and upgrade its trade practices compliance program</p> <p><b>significance</b>   representations regarding product content/ composition must be accurate</p>
tarp straps	<p><b>TriMas Corporation Pty Ltd</b></p> <p>Melbourne   11 January 2006</p> <p><b>conduct</b>   supplying rubber tarp straps without the correct warning label as prescribed under the Elastic Luggage Straps standard</p> <p><b>undertaking</b>   court enforceable undertaking that it will not supply non-compliant goods subject to a consumer product safety standard or information standard prescribed for the purposes of the Act</p> <p><b>significance</b>   mandatory product safety standards must be adhered to</p>
woodheaters	<p><b>Ultimate Engineering Australia Pty Ltd</b></p> <p>Perth   5 July 2005</p> <p><b>conduct</b>   misleading or false representations regarding the standard, quality or performance characteristics of woodheaters</p> <p><b>undertaking</b>   court enforceable undertaking to ensure that all woodheaters supplied comply with standard AS/NZS 4013; and implement a trade practices compliance program</p> <p><b>significance</b>   claims relating to standard, quality and performance characteristics must be accurate</p>



banking

Wizard Home Loans Pty Ltd

Melbourne | 5 July 2005

**conduct** | misleading or deceptive conduct in relation to representations made to applicants regarding earning capacity

**undertaking** | court enforceable undertaking to stop making representations to any mobile lending manager candidate about the annual commission that a person may earn unless there are reasonable grounds for doing so; trade practices compliance program

**significance** | remuneration representations require complete and accurate information reflecting relevant material considerations

woodheaters

Woodland Home Products Pty Limited

Perth | 13 July 2005

**conduct** | misleading or false representations regarding the standard, quality or performance characteristics of woodheaters

**undertaking** | court enforceable undertaking to ensure that all woodheaters supplied comply with standard AS/NZS 4013; trade practices compliance program

**significance** | claims relating to standard, quality and performance characteristics must be accurate

Note: The ACCC accepted one further undertaking in 2005–06 which has not been disclosed for operational reasons.

# mergers and asset sales

**promoting effective competition and informed markets  
encouraging fair trading and consumer protection**

A primary aim of the ACCC is to encourage competitive market structures and informed behaviour. The Mergers and Asset Sales Branch supports this objective through its work in the assessment of mergers, acquisitions, asset sales and certain collaborative arrangements under ss. 50 and 45 of the Trade Practices Act.

This work includes:

- > developing and maintaining competitive market structures by promptly assessing mergers, acquisitions, asset sales and collaborative joint ventures
- > instigating appropriate enforcement action for mergers considered to contravene s. 50, and providing appropriate assistance to the Australian Competition Tribunal in relation to merger authorisations being considered by it
- > educating the public, business and its advisers on the role of the ACCC and the mergers and collaborative arrangement provisions of the Act, and publicising the ACCC's merger and authorisation decisions.

The ACCC seeks to minimise uncertainty and risk for business and consumers through fair, predictable and consistent processes, and to be flexible in its strategies for improving market outcomes. In June 2006 the ACCC issued its *Merger review process guidelines*, which replaced the *Guideline for informal merger review*. The process guidelines refine and expand on the processes followed by the ACCC when considering mergers and acquisitions. Key changes to the guidelines include expansion of the types of mergers (including confidential proposals) for which processes are detailed in the guidelines, clarification of the processes applied to different types of mergers that the ACCC will review and clearer indicative timelines for informal reviews. The *Merger review process guidelines* became effective on 1 July 2006.

The ACCC also aims to improve market processes more generally by:

- > providing information to the market to limit imbalances in information
- > liaising with other regulators (for example through the International Competition Network's merger workgroup), business and consumer associations
- > speaking to the public
- > participating in meetings and conferences
- > helping our overseas trading partners to develop and implement effective merger regimes.

**Tim Grimwade**, general manager, mergers and asset sales branch

# assessing mergers, asset sales and joint ventures

The Trade Practices Act prohibits mergers, acquisitions and joint ventures that would substantially lessen competition and prevents businesses accumulating market power that could lead to anti-competitive conduct. The test applied by the ACCC rests on recognition of the link between market structure and resulting market power, and the need to be able to respond to potential threats from the exercise of unilateral or coordinated market power.

## output 1.1.2

### competitive market structures and informed behaviour

#### this year the ACCC

performance  
indicator

publicise merger  
and authorisation  
decisions,  
arbitrations,  
undertakings  
and access  
arrangements  
and monitoring  
activities and  
inquiry findings

- > issued 39 media releases on mergers; all public merger decisions for 2005–06 were published on the ACCC website

performance  
indicator

assess the  
competition  
effects of mergers,  
acquisitions and  
asset sales

- > examined 272 mergers, acquisitions and asset sales for their compliance with s. 50 of the Trade Practices Act; 261 were not opposed including 26 that were withdrawn before a final decision was made, 2 were initially opposed following the ACCC’s review, and 6 were resolved during their review with court enforceable undertakings; the 2 which were initially opposed were subsequently resolved through the acceptance of court enforceable undertakings; of 141 matters which were considered on a confidential basis, 3 were opposed or had concerns expressed confidentially

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

## those not opposed included

- > Snowy Hydro's proposed acquisition of Valley Power
- > Woolworths Limited's proposed acquisition of 22 Foodland Associated Limited supermarkets
- > Lion Nathan Limited's proposed acquisition of Coopers Brewery Limited
- > Australian Stock Exchange Limited's proposed acquisition of Sydney Futures Exchange Limited
- > Arrow Pharmaceuticals Limited's proposed acquisition of Sigma Company Limited
- > Queensland Rail's proposed acquisition of certain assets from Australian Railroad Group Pty Ltd

## those initially opposed but ultimately resolved by court enforceable undertakings were

- > Toll Holdings Limited's proposed acquisition of Patrick Corporation Limited
- > Patrick Corporation Limited's proposed acquisition of FCL Interstate Transport Services Pty Limited

## those resolved during their review by court enforceable undertakings were

- > Lake Imaging Pty Limited's proposed acquisition of St John of God Healthcare Inc.
- > National Australia Bank Limited's proposed acquisition of Cash Services Australia Pty Limited
- > ABC Learning Centres Limited's proposed acquisition of Kids Campus Limited
- > The Australian Gas Light Company (AGL)'s proposed acquisition of Alinta Limited
- > A.P. Moller-Maersk's proposed acquisition of shares in Koninklijke P&O Nedlloyd N.V.
- > Ramsay Health Care Limited's acquisition of Affinity Health Limited

## mergers and joint ventures

	this year	last year
total	272	189
not opposed*	261	178
opposed outright	3	2
resolved during review through undertakings	6	9

\* This includes matters that were not opposed plus matters withdrawn before a decision was made and reviews of variations to undertakings.

**Mergers, acquisitions and asset sales** were assessed for their compliance with s. 50 of the Act. In total 272 matters were examined with 2 being initially opposed and 6 being allowed to proceed after the acceptance of undertakings to address anti-competitive detriment. The 2 that were initially opposed were subsequently resolved through the acceptance of court enforceable undertakings. Three were opposed or had concerns expressed confidentially. During the past financial year some of the more substantial mergers the ACCC considered fell within the transport and healthcare sectors.

The ACCC worked with overseas competition authorities, particularly through its active participation in the **International Competition Network**, a global forum through which individual national competition agencies are able to liaise on common issues. The ACCC is a member of the steering committee of the International Competition Network and its working groups, including those dealing with merger notification and procedures and merger analysis and investigative techniques.

## statement of issues

If the ACCC comes to a preliminary view that a proposed merger raises competition concerns that require further investigation, it may release a statement of issues outlining the basis and facts on which the ACCC has reached this view. This process is aimed at increasing the transparency of the informal review process. It allows for obtaining further information that may alleviate or reinforce the concerns of the ACCC and/or provide an opportunity to consider any undertakings submitted by the merger parties to resolve competition concerns. In 2005–06, the ACCC released eight statements of issues.

## public competition assessments

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

- > a merger is rejected
- > a merger is subject to enforceable undertakings
- > the merger parties seek such disclosure
- > a merger is approved but raises important issues that the ACCC considers should be made public.

Public competition assessments aim to provide the market with a better understanding of the ACCC's analysis of various markets and associated merger and competition issues. Assessments will also alert the market if the ACCC is changing, or is likely to change, its assessment of the competitive conditions in particular markets because of, for example, technological developments or previous mergers in those markets. In 2005–06 the ACCC released 15 public competition assessments.

## major mergers assessed included

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### Toll Holdings Limited and Patrick Corporation Limited

**result** | acquisition initially opposed. ACCC instituted legal proceedings. Acquisition subsequently not opposed following acceptance of s. 87B undertaking.

**summary** | On 11 March 2006 the ACCC announced its decision not to oppose the proposed acquisition of Patrick Corporation Ltd (Patrick) by Toll Holdings Ltd (Toll), after Toll provided comprehensive court enforceable undertakings to the ACCC.

On 18 January 2006 the ACCC announced it was opposing the proposed merger, and on 9 February 2006, the ACCC instituted proceedings in the Federal Court to prevent the proposed acquisition on the basis that it had significant concerns about the proposed transaction in several markets.

These undertakings contained, among other things, a commitment to divest 50 per cent of the shares in Pacific National, and a suite of assets to facilitate competition in East-West non-bulk rail line haul services including train paths and locomotives, divestment of Patrick's Bass Strait shipping and freight forwarding operations, divestment of Toll's interest in Prixcar and divestment of either Toll's or Patrick's vehicle transport distribution business. The undertakings also contained a number of behavioural commitments to counter potential discrimination issues.

Accordingly, the ACCC decided to withdraw its opposition to the proposed acquisition. The ACCC is actively monitoring the implementation of Toll's undertakings.

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### Woolworths Limited and 22 Foodland Associated Limited supermarkets

**result** | acquisition not opposed

**summary** | Woolworths proposed to purchase Foodland Associated Limited's (FAL) New Zealand business and 22 Action stores (3 of which were currently development sites) in Australia. The remaining 60 Action stores and FAL's Australian wholesale distribution business were to be acquired by Metcash Trading Limited. On 27 January 2005 the ACCC indicated that it would not challenge the proposed acquisition of FAL, including Action stores, by Metcash. The ACCC released a statement of issues outlining its preliminary findings that the proposed acquisition was likely to substantially lessen competition in some retail and procurement markets. After further market inquiries, evidence was not forthcoming from market participants to substantiate the view that the proposed acquisition would be likely to substantially lessen competition and the ACCC received additional information which supported its final decision, including detailed information on Woolworths' pricing practices, a review of Woolworths' pricing, and information on potential new entry in some markets.

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### Australian Stock Exchange Limited and Sydney Futures Exchange Limited

**result** | acquisition not opposed

**summary** | On 24 May 2006 the ACCC did not oppose the proposed merger between Australian Stock Exchange Ltd and Sydney Futures Exchange Ltd. Local and overseas experience strongly suggested that network effects in exchange markets mean that ASX and SFE were only in minimal competition with each other. It was not evident that the presence of SFE as a potential entrant acted as a constraint on the ASX or vice versa.

There was very little evidence that the expectation, when the ACCC rejected a similar proposal in 1999, that the ASX and SFE were likely to compete strongly in the future had eventuated.

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### Patrick Corporation Limited and FCL Interstate Transport Services Pty Limited

**result** | acquisition initially opposed but subsequently resolved through acceptance of s. 87B undertaking

**summary** | On 7 September 2005 the ACCC announced it would oppose Patrick Corporation's proposed acquisition of FCL Interstate Transport Services (FCL). It considered the acquisition likely to cause a substantial lessening of competition in the market for the provision of Australia-wide freight forwarding services through foreclosure of the merged entity's freight forwarding rivals, through the raising of entry barriers in the market for East-West rail line haul of non-bulk freight, and by reducing competition between Patrick and Toll. Subsequently the ACCC accepted a s. 87B undertaking from Patrick and decided not to oppose the proposed acquisition. The undertaking contemplated FCL being held separate and the ACCC having broad powers to order divestment of FCL in certain circumstances. The undertaking also required Patrick to quickly divest FCL through an agent should Toll acquire a controlling interest in Patrick shares. The transaction never eventuated as Toll successfully acquired Patrick.

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### Lake Imaging Pty Limited and St John of God Healthcare Inc.

**result** | acquisition not opposed subject to s. 87B undertaking

**summary** | On 3 March 2006 the ACCC decided not to oppose Lake Imaging Pty Ltd's proposed acquisition of the radiology practices of St John of God Health Care Inc. (SJGHC) ultrasound and nuclear medicine facilities in Ballarat, and radiology practice in Geelong.

In reaching this decision, the ACCC accepted s. 87B undertakings received from Lake Imaging and SJGHC addressing potential competition concerns about the supply of ultrasound services in Ballarat.

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### National Australia Bank Limited and Cash Services Australia Pty Limited

**result** | acquisition not opposed subject to s. 87B undertaking

**summary** | National Australia Bank (NAB) proposed to acquire a 25 per cent shareholding in Cash Services Australia Pty Ltd (CSA), a joint venture between Westpac, ANZ and Commonwealth Bank.

On 25 November 2005 the ACCC announced that the proposed acquisition was unlikely to substantially lessen competition in any of the relevant markets. This follows the offer of a s. 87B undertaking by CSA that removes pricing restrictions and provides a period of advance notice to the ACCC before it accepts NAB as a member, as well as a written commitment by NAB not to acquire armoured carrier services from CSA without first giving the ACCC six weeks' notice. Accordingly, the ACCC decided not to oppose the proposed acquisition.

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### ABC Learning Centres Limited and Kids Campus Limited

**result** | acquisition not opposed subject to s. 87B undertaking

**summary** | On 10 May 2006 the ACCC accepted a court enforceable undertaking offered by ABC Learning Centres Limited under s. 87B in relation to its proposed acquisition of Kids Campus Limited. The ACCC focused its assessments on local markets, which is where any market power by ABC had the potential to be exercised. The court enforceable undertaking requires ABC to divest 5 long-day child care centres in regional markets where the ACCC considers that post-acquisition, a substantial lessening of competition is likely to occur.

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### The Australian Gas Light Company (AGL) and Alinta Limited

**result** | acquisition not opposed subject to s. 87B undertaking

**summary** | On 15 June 2006 the ACCC decided not to oppose AGL's proposed acquisition of Alinta, after accepting court enforceable undertakings from AGL. The ACCC considered 3 different proposals relating to AGL and Alinta. The first is Alinta's proposed acquisition of AGL, the second is the joint merger proposal reflecting the signed Merger Implementation Agreement between the AGL and Alinta. Finally there is AGL's proposed acquisition of Alinta. The decision to accept undertakings announced on 16 June 2006 related only to the third proposal.

The undertakings offered by AGL commit it to a demerger that separates the key gas transmission assets and infrastructure management assets where the ACCC found competition concerns. If for any reason the demerger cannot occur, AGL is required to divest its interests in the Australian Pipeline Trust and associated management contracts.



## A.P. Moller-Maersk and proposed acquisition of shares in Koninklijke P&O Nedlloyd N.V.

**result** | acquisition not opposed subject to s. 87B undertaking

**summary** | On 4 August 2005 the ACCC did not oppose A.P. Moller-Maersk's proposed acquisition of shares in Koninklijke P&O Nedlloyd N.V. following the acceptance of an undertaking from A.P. Moller-Maersk. The ACCC considered that the proposed acquisition would not result in a substantial lessening of competition in the market for containerised shipping on individual trade routes because the merged entity would not have a substantial market share on a number of trade routes and would be constrained by competitors on each of these trade routes. The ACCC also considered barriers to expansion to be low.

Before the ACCC made this decision, A.P. Moller-Maersk indicated that it intended to withdraw P&O Nedlloyd from several conferences, consortia and discussion agreements to which P&O Nedlloyd is a member and A.P. Moller-Maersk is not. A.P. Moller-Maersk undertook to withdraw P&O Nedlloyd from each of the identified agreements. The undertaking also included a provision on the prohibition of re-entry and/or entry into certain agreements between shipping lines. On 2 September 2005 and again on 1 November 2005 the ACCC accepted variations to the undertaking given by A.P. Moller-Maersk.

## Ramsay Health Care Limited and Affinity Health Limited

**result** | acquisition not opposed subject to s. 87B undertaking

**summary** | Ramsay and Affinity were the second largest and the largest operators of private hospitals in Australia. Both operated private hospitals in Western Australia, Victoria, New South Wales and Queensland. In early April 2005 Ramsay informed the ACCC that it intended to acquire Affinity. It submitted that, due to commercial imperatives, it should be permitted to acquire Affinity if it gives an undertaking to the ACCC to remedy any competition concerns that the ACCC may identify following the ACCC's competition analysis.

On 13 April 2005 the ACCC accepted an undertaking from Ramsay, the key feature being that Ramsay would divest a number of private hospitals and any other hospitals or assets that gave rise to competition concerns following the ACCC's assessment of the matter. The ACCC also retained the right to reject any proposed purchaser of the hospitals to be divested on competition grounds. Ramsay also undertook that, in the meantime, it would hold and manage the Affinity hospitals separately until the ACCC made its final decision. A company called New Affinity also provided an undertaking in support of its intention to purchase several of the hospitals Ramsay was to divest.

On 24 August 2005, after conducting extensive market inquiries, the ACCC formed the view there was a substantial lessening of competition in certain areas and directed Ramsay to divest Lingard Hospital in Newcastle, North Gosford Hospital in Gosford and Belmont Psychiatric Hospital in Brisbane in addition to 16 private hospitals that Ramsay had undertaken to divest.

# adjudication

**promoting effective competition and informed markets  
encouraging fair trading and consumer protection**

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

The Act, however, allows immunity to be afforded to arrangements or conduct at risk under the competition provisions of the Act, if the parties can demonstrate that they are in the public interest. Businesses may obtain immunity by applying for an **authorisation** or submitting an **exclusive dealing notification** to the ACCC.

In 2005–06 the Adjudication Branch continued to focus on its core function of assessing public interest immunity through the authorisation and the exclusive dealing notification processes. The branch also devoted resources to preparing for the collective bargaining notification process and other legislative changes proposed by government.

The branch has endeavoured to enhance three guiding principles of its work—timeliness, consistency and transparency.

While further improvements can be made, the branch has addressed past criticisms over the timeliness of authorisation decisions. Assisting this goal, in February 2006, the ACCC sought comments on a six-month indicative timetable for authorisation matters.

The ACCC also launched its streamlined collective bargaining authorisation process for small business, setting targets for dealing with requests for interim authorisation (four weeks) and the making of final decisions (three months).

Enhancing consistency and transparency, the ACCC issued exposure drafts of guides to both the authorisation and notification processes in February 2006. Following comments from interested parties, the ACCC will issue a complete suite of guidelines early in the 2006–07 financial year.

The review and extension of guidelines is part of the branch's wider role in supporting the ACCC's objectives of promoting effective competition and informed markets and ensuring fair trading. The branch continues to provide information to business and consumer organisations and the general public on the ACCC's adjudication functions. The ACCC continues to ensure that all applications and ACCC decisions are available on its website and that the matters it considers are in the public domain.

**Scott Gregson**, general manager, adjudication branch

# authorising anti-competitive conduct

the adjudication process is an important and unique feature of the ACCC's work

Under the authorisation process, in response to an application, the ACCC can grant immunity for potential breaches of most of the competition provisions of the Act if it is satisfied the conduct delivers a net public benefit. The process is open and transparent involving public registers, consultation with interested parties and the issuing of draft determinations.

The notification process provides immunity for potential breaches of the exclusive dealing provisions of the Act. It differs from the authorisation process in that parties do not have to wait for a decision from the ACCC. The immunity from a notification operates from the date it is lodged with the ACCC (or soon after in the case of third line forcing conduct) and remains in force unless revoked by the ACCC. Again, the process is open and transparent with notifications and ACCC decisions placed on a public register. When considering the revocation of a notification, the ACCC is required to consult interested parties and to provide a draft decision document setting out the reasons why it is considering revocation.

Decisions under the authorisation process and decisions to revoke notifications may be reviewed by the Australian Competition Tribunal.

output 1.1.2  
competitive market structures and informed behaviour

## this year the ACCC

performance indicator	> issued 55 media releases on authorisation and notification decisions
publicise merger and authorisation decisions, arbitrations, undertakings and access arrangements and monitoring activities and inquiry findings	

Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06

## this year the ACCC

performance indicator	> made 35 final determinations on authorisation matters including 1 regulatory and 34 other matters; 26 new authorisation matters were received including 1 regulatory and 25 other matters
adjudicate authorisation applications (where anti-competitive behaviour is claimed to deliver public benefits)	> received 1113 notifications for exclusive dealing, the majority of which concerned third line forcing; and issued 4 draft revocation notices in relation to exclusive dealing notifications

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

## authorisation applications

all authorisations including gas, electricity, mergers and general

	authorisation applications	minor variation applications	revocation and substitution applications	revocations of authorisations previously granted	total	last year
opening balance	16 (27)	2 (2)	7 (14)	0 (0)	25 (43)	27 (63)
new applications	13 (23)	8 (9)	5 (12)	0 (0)	26 (44)	45 (88)
applications withdrawn	3 (6)	0 (0)	0 (0)	0 (0)	3 (6)	2 (5)
applications decided	18 (28)	8 (9)	9 (20)	0 (0)	35 (57)	45 (103)
balance	8 (6)	2 (2)	3 (6)	0 (0)	13 (24)	25 (43)*

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

\* The opening balance figure differs to the closing balance figure reported in last year's annual report due to an oversight in the number of gas-related authorisations counted in that reporting period.

## general authorisations not including gas and electricity

	authorisation applications	minor variation applications	revocation and substitution applications	revocations of authorisations previously granted	total	last year
opening balance	10 (19)	2 (2)	7 (14)	0 (0)	19 (35)	17 (44)
new applications	12 (20)	8 (9)	5 (12)	0 (0)	25 (41)	32 (49)
applications withdrawn	1 (4)	0 (0)	0 (0)	0 (0)	1 (4)	0 (0)
applications decided	17 (27)	8 (9)	9 (20)	0 (0)	34 (56)	30 (58)
balance	4 (8)	2 (2)	3 (6)	0 (0)	9 (16)	19 (35)*

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

## applications for review by the Australian Competition Tribunal

	this year	last year
opening balance	2	1
new applications	0	2
applications withdrawn	0	0
applications decided	2	1
balance	0	2

While no new appeals were lodged with the tribunal, it heard and made decisions in relation to the Victorian Farmers Federation application for collective boycott arrangements in the chicken growing industry and 12 separate authorisations relating to exclusive dealing conduct by various taxi networks.

## notifications

	this year	last year
new notifications	1113	733
notifications withdrawn	6	2
notifications revoked	0	0

While the majority of new notifications received have been allowed to stand, certain matters are still being considered by the ACCC. Two matters were withdrawn following draft decisions to revoke being issued. The ACCC continues to consider a further two notifications for which a draft decision to revoke has been issued.

## certification trade marks

ACCC approval is required before certification trade marks (CTMs) can be registered under the *Trade Marks Act 1995*. Consistent with its role in enforcing the Trade Practices Act, the ACCC assesses whether CTM applications and rules raise consumer protection, competition or associated concerns.

	this year	last year
opening balance	24	44
new applications	21	36
applications withdrawn	4	8
applications decided	27	28
balance	14	24

## selected authorisation final decisions

Consistent with trends in recent years, the ACCC has been asked to make a high number of decisions in relation to authorisation matters.

Collective bargaining arrangements have comprised a significant proportion of decisions. This reflects a growing awareness by business of the authorisation process for collective bargaining arrangements that deliver public benefits, often through facilitating increased input into contracts. Over the past year ACCC authorisation has enabled collective bargaining arrangements between dairy farmers, professional swimmers, hotel operators and truck owner-drivers, among others.

Considerable resources were devoted to assessing an application for a system to reduce the vessel queue at Dalrymple Bay Coal Terminal—a key infrastructure issue that required urgent attention. The ACCC provided immediate relief granting interim authorisation in 24 days while it considered the full merits of the matter.

Final determinations were also issued in relation to a number of applications relating to industry and professional codes of conduct. These included applications by associations representing architects, homeworkers and the direct marketing sector.

The ACCC continues to assess key applications from Qantas and Air New Zealand lodged in April 2006 for a cooperation agreement referred to as the Tasman Networks Agreement (TNA). The TNA involves the coordination of activities between Qantas and Air New Zealand in respect of any flight operated on the trans-Tasman route.

## collective bargaining

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### The Board of Airline Representatives of Australia A30232

**result** | 7 July 2005 | granted authorisation until 29 July 2010

**background** | authorisation to allow BARA to negotiate and bargain collectively, on its own behalf and on behalf of its member airlines, with the airport operators and providers of other essential airport services over various terms and conditions.

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### CSR Building Products Ltd A90964–5

**result** | 31 August 2005 | granted authorisation until 30 June 2011

**background** | two authorisations, one to allow collective negotiations between CSR and a group of lorry owner-drivers, and another to allow collective negotiations between CSR and a group of semi-tipper owner-drivers; both related to small groups of owner-drivers in the Brisbane area.

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### Premium Milk Ltd A90972

**result** | 9 November 2005 | granted authorisation until 1 December 2010

**background** | authorisation to allow collective bargaining by dairy farmers of farm-gate prices and milk standards through the representative body Premium in direct negotiations with Parmalat (formerly Pauls).

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### Dairy WA A90962

**result** | 20 February 2006 | denied authorisation

**background** | application to enable Dairy WA to establish a milk negotiating agency to represent Western Australian dairy farmers in their dealings with milk processors.

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### The Tasmanian Forest Contractors Association Ltd A90974

**result** | 22 February 2006 | denied authorisation

**background** | application for the TFCA to establish groups of forest contractors to collectively bargain with various wood companies in Tasmania.

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### Australian Hotel Association A90987

**result** | 1 March 2006 | granted conditional authorisation until 31 March 2011

**background** | application for authorisation to allow several AHA divisions to engage in collective bargaining with nominated broadcasting and wagering service providers on the terms and conditions of their services.

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### Australian Swimmers Association A40106

**result** | 22 March 2006 | granted authorisation until 30 April 2011

**background** | the ASA lodged an application for authorisation seeking to collectively bargain on behalf of its members with Swimming Australia Limited. This project was considered under the ACCC's streamlined approach to collective bargaining. The project was finalised in two months, well within the three-month target.

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### Australian Dairy Farmers Ltd A90966

**result** | 26 April 2006 | granted conditional authorisation until 30 June 2011

**background** | application for revocation and substitution to extend authorisation previously granted permitting collective negotiations between groups of dairy farmers and the processors that they supply.

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## infrastructure, mining and resources

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### Perkins Properties/Perkins Shipping and Alcan—Port of Gove A90951, A90953

**result** | 6 July 2005 | granted authorisation until 30 June 2008

**background** | Perkins applied for authorisation to give effect to an agreement with Alcan under which it will manage a new heavy lift wharf at the Port of Gove.

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### Dalrymple Bay Coal Terminal Pty Ltd A30239–41

**result** | 15 December 2005 | granted until 31 December 2008

**background** | authorisation for a queue management system designed to address the imbalance between the demand for coal loading services at the Dalrymple Bay Coal Terminal and the capacity of the Goonyella coal chain.

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### BHP Billiton Iron Ore Pty Ltd A90981–3

**result** | 1 February 2006 | granted authorisation for a period of 15 years

**background** | BHP Billiton Iron Ore Pty Ltd sought authorisation for arrangements made under various joint venture contracts for the supply of iron ore to a Japanese steel manufacturer.

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### Woodside Energy Ltd, Benaris International Pty Limited and CalEnergy Gas (Australia) A90990

**result** | 29 March 2006 | granted authorisation until 20 April 2009

**background** | an arrangement to negotiate common terms and conditions (including price) for the sale of LPG from the Otway Gas Project and to jointly market and sell the LPG.

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## codes of conduct

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### The Royal Australian Institute of Architects A90946

**result** | 27 October 2005 | granted authorisation until 19 November 2011

**background** | authorisation permitting the RAlA and its current and future members to engage in conduct provided for in the RAlA's code of professional conduct; memorandum and articles of association; regulations and by-laws; guidelines for RAlA endorsed architectural competitions; and standard form client and architect agreements and related documents.

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### Homeworkers Code of Practice Committee Inc. A90975–8

**result** | 12 December 2005 | granted authorisation until 3 January 2011

**background** | authorisation for a voluntary self-regulatory scheme to assist in ensuring that homeworkers are employed according to relevant award conditions.

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### Australian Direct Marketing Association A90876

**result** | 29 June 2006 | granted conditional authorisation until 30 September 2009

**background** | application for revocation and substitution in respect of ADMA's 2006 Direct Marketing Code of Practice.

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## licensing/royalty arrangements

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### Australasian Performing Right Association Ltd A90918–20, A90922, A90924–5 and A90944–5

**result** | 8 March 2006 | granted authorisation until 30 March 2010

**background** | APRA sought re-authorisation of its arrangements for the acquisition and licensing of performing rights in its music repertoire.

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### Australian Nurserymen's Fruit Improvement Company (ANFIC) A90992

**result** | 7 June 2006 | denied authorisation

**background** | a marketing and production proposal for the supply of certain protected fruit varieties. The arrangements detailed royalty collection proposals and also sought to restrict the quantity of fruit produced by fruit growers.

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## levies

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### South Australian Oyster Growers Ltd A60024–5

**result** | 3 August 2005 | granted conditional authorisation until 24 August 2010

**background** | The South Australian Oyster Growers Association Inc. proposed an agreement to add a levy on oyster spat sold by them to fund industry research.

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### Agsafe Ltd A90963

**result** | 24 August 2005 | granted conditional authorisation until 31 December 2008

**background** | application for revocation of authorisation A90871 and substitution with A90963 to allow Agsafe to fund both chemical and chemical container collection from a levy placed on the sale of agricultural and veterinary chemicals.

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### The Federation of Australian Wool Organisations A90984–5

**result** | 11 January 2006 | granted authorisation until 2 February 2008

**background** | a proposal to establish arrangements for a levy to be imposed on all wool sold at auction or by private treaty to raise funds for a test marketing campaign to promote the wool industry.

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### Australian Brick and Blocklaying Training Foundation A90993

**result** | 26 April 2006 | granted authorisation until 17 May 2009

**background** | the ABBTF, Clay Brick and Paver Institute and the Concrete Masonry Association of Australia sought authorisation to impose levies on sales of bricks and concrete masonry products to fund a national program designed to alleviate shortages of skilled bricklayers.

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## matters before the Australian Competition Tribunal

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### Victorian Farmers Federation A90931

**result** | the Australian Competition Tribunal denied authorisation to the Victorian Farmers Federation in respect of its application to allow chicken growers to collectively boycott their respective chicken meat processors.

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### Review of taxi authorisations A30112, A90441, A90531, A90447–9, A90455, A90463, A40047, A90498, A90472

**result** | the Australian Competition Tribunal decided to revoke the authorisations

**background** | review of authorisations granted to a number of taxi networks across New South Wales, Victoria and South Australia to allow them to require their drivers to accept certain forms of non-cash payment.

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## major notifications of exclusive dealing

The ACCC received 1113 exclusive dealing notifications in 2005–06, the majority of which concerned third line forcing. While most notifications are allowed to stand, the ACCC undertakes an assessment of each notification, consulting more broadly on those notifications that raise apparent concern and ultimately moving to revoke notifications where the ACCC considers the conduct to fall short of the relevant public interest test.

The ACCC consulted broadly on a number of notifications this year including in relation to notifications lodged by the Eni Australia BV and Power and Water Corporation; Central Queensland Ports Authority; Cash Converters; IAG Insurers; NSW Kashrut Authority; Coles Supermarkets Australia; Honda Australia; and Yamaha Motor Australia.

The ACCC also issued four draft decisions to revoke notifications this year. Two matters were withdrawn following the draft decisions (Juice Station and James Hardie). A further two notifications for which draft decisions to revoke have been issued remain under consideration (Nestle Australia Ltd and the Australian Baseball Federation Inc.).

## draft notices to revoke

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### Juice Station Franchising Pty Ltd N31144, N31192

**result** | 24 August 2005 | draft notice to revoke issued

**background** | Juice Station lodged two notifications requiring franchisees to purchase fruit, bottles, labels, fruit juicing machines and certain shop fit-out from nominated suppliers. The ACCC's concerns arose from product quality issues (primarily bottles) raised by franchisees. The notifications were withdrawn in December 2005.

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### Nestle Australia Ltd N31488

**result** | 3 April 2006 | draft notice to revoke issued

**background** | Nestle Australia Ltd lodged a notification in relation to the supply of instant coffee to Aldi Stores. The ACCC issued a draft notice proposing to revoke this notification on 3 April 2006. This matter remains under consideration.

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### James Hardie Australia Pty Ltd N31496

**result** | 5 April 2006 | draft notice to revoke issued

**background** | James Hardie lodged a notification concerning a new distribution policy for its fibre cement products. The distribution policy included restrictions on the resupply of fibre cement. The ACCC considered that the notified arrangements would have the effect of substantially lessening competition and was not satisfied that the public benefits claimed by James Hardie would outweigh the likely detriment. The notification was withdrawn by James Hardie in May 2006.

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### The Australian Baseball Federation Inc. N90853

**result** | 16 June 2006 | draft notice to revoke issued

**background** | the ABF operates a licensing program under which it provides a range of services to state and territory baseball associations, regional associations, clubs and players on condition that they acquire uniforms and baseballs from licensed third party suppliers. This matter remains under consideration.

# regulatory affairs

**regulate infrastructure service markets and other markets where competition is restricted**

The ACCC and AER have roles in promoting competition in network industries: communications, energy, post and transport. The ACCC is also involved in monitoring prices of selected goods and services.

Prices oversight and regulatory arrangements to secure third-party access to 'essential' services are necessary to curb the market power of monopoly infrastructure. Administering access regimes for monopoly infrastructure assets is a major area of regulation. For vertically integrated monopolies there is also an additional role in ensuring that access is provided efficiently.

Access regulation is used as a means to an end—to promote competition and to encourage new entrants into what is the contestable part of the market (for example, freight services over the monopoly infrastructure, rail track). To be sustainable, the access regime must credibly satisfy the demands of both consumers and investors and be procedurally fair while at the same time providing incentives for efficiency.

Depending on the infrastructure industry and the nature of the specific regime, access regulation can involve:

- > determining which services should be subject to access regimes
- > determining conditions of access
- > setting revenue caps
- > considering access undertakings
- > arbitrating terms and conditions in access disputes
- > disseminating information to inform market participants.

The ACCC is also involved in various forms of monitoring. The products and sectors monitored are diverse. The nature and purpose of the monitoring is different.

Monitoring can be important in providing the community with certain types of price information. It can also provide performance information to government about, for example, structural changes in particular sectors of the economy. The ACCC is committed to ensuring that price monitoring is conducted in a timely and accurate manner and follows robust methodology.

For 2005–06 the major change in infrastructure regulation was the creation of the AER. The AER has been established as a separate legal entity under Part IIIA of the Trade Practices Act, and is a constituent part of the ACCC.

A national energy market needs regulation to be undertaken on a national basis. Different approaches to regulating utilities across jurisdictions create unnecessary costs and impede certainty and clarity.

While the board of the AER is a statutorily independent decision maker, the AER's staff and resourcing are drawn from the ACCC. In practice this means the AER has a dedicated group of people with a focus on the energy sector supporting the AER and ACCC processes, together with access to practical and legal expertise spanning other regulated sectors.

The provision of economic and financial advice has been enhanced and to achieve this a new group, the Regulatory Development Branch, has been established to provide advice and ensure the use of consistent economic principles across all the regulated sectors, including energy.

It is now more than 10 years since the implementation of competition policy reforms. Since these reforms the infrastructure environment has changed massively. The effect of these changes in strengthening the Australian economy has been documented by the Productivity Commission. Regardless of past achievements, regulators and policy makers are looking to implement more effective means of regulation. The establishment of the AER is part of the process of taking stock and of determining what can be done better.

As competition develops in some sectors it becomes even more crucial for regulators to achieve timely, transparent decisions based on consistent regulatory practices in those bottleneck services which continue to be regulated.

**Joe Dimasi**, executive general manager, regulatory affairs division

## energy

Responsibility for regulation of electricity and gas transmission businesses is shared between the AER and the ACCC. The ACCC retains responsibility for regulatory decisions under the gas code pending the introduction of the new natural gas law. Responsibility for administration of Part VII (authorisations and notifications) provisions in respect of energy businesses is the function of the ACCC. The AER, however, assists the ACCC in this function.

The AER is Australia's independent national energy market regulator. It commenced operation on 1 July 2005.

The AER functions include (or will include):

- > monitoring compliance with and investigating and prosecuting breaches by registered participants and other persons of the NEL, NER and the regulations
- > monitoring the wholesale electricity market
- > economic regulation of electricity transmission and distribution (except in Western Australia and the Northern Territory)
- > economic regulation of gas transmission and distribution (except in Western Australia)
- > regulation of retail markets, to the extent determined by the Ministerial Council on Energy (MCE).

At present, the transfer of all AER functions from the ACCC and state regulators is not complete.

An amended Australian Energy Market Agreement was concluded on 2 June 2006. The amended agreement provides for the transfer of economic regulation of gas transmission networks and gas and electricity distribution networks on 1 January 2007. In the interim, the AER assists the ACCC in undertaking the gas transmission regulatory functions that will ultimately be transferred to the AER, including approval of access arrangements, applications for approval of associate contracts, approval of annual tariff changes within an access arrangement period, and gas transmission ring-fencing compliance reporting.

The AER will work closely with state regulators to ensure a smooth transfer of the economic regulation of distribution network functions to the national framework. Energy retail regulation (to the extent determined by the MCE) is scheduled to transfer to the AER from 2008. The AER assists the ACCC with energy competition matters including merger issues and energy authorisations.

The AER was established in accordance with the *Trade Practices Amendment (Australian Energy Market) Act 2004*. The AER comprises three members who are statutory appointees. The members are collectively referred to as the Board. The AER is a separate legal entity which operates as a part of the ACCC. The Australian Government is responsible for funding the AER.

## authorising environment

### National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005 (NEL)

The NEL was passed by the South Australian Parliament on 14 April 2005. The NEL contains provisions setting out the powers and functions of the Australian Energy Market Commission (AEMC) and AER as well as provisions for the operation of the National Electricity Market (NEM).

### National Electricity Rules

The initial National Electricity Rules (NER) commenced on 1 July 2005. The NER governs the operation of the NEM. As the AEMC is charged with amending the rules from time to time, the latest version of the rules can be found on the AEMC website. The AER has provided submissions to the AEMC on amendments to the NER related to its regulatory responsibilities.

### The National Third Party Access Code

The National Third Party Access Code for Natural Gas Pipeline Systems (the gas code) applies to transmission and distribution pipelines with natural monopoly characteristics. The gas code sets out the principles to be applied by the regulators in assessing an access arrangement. It also provides for binding arbitration of disputes between service providers and access seekers.

### National Gas Law and National Gas Rules

The MCE response to the Productivity Commission's review of the gas access regime was released in May 2006. The response will be given effect through the new National Gas Law (NGL) and National Gas Rules (NGR).

## output 1.1.2

### competitive market structures and informed behaviour

#### this year the ACCC

##### performance indicator

encourage competition in markets that depend on monopoly services

- > facilitated competition in energy markets (NEM monitoring/reports)
- > published weekly market analysis, looking at spot prices, rebidding, network outages and demand/supply forecasting
- > prepared longer-term statistics on the performance of the market detailing trends in demand, spot prices, contract prices, the wholesale electricity price index (WEPI), frequency control ancillary service prices (FCAS), reserve energy, settlement residue auctions and spot price
- > prepared reports on all incidents where spot prices for a region exceeded \$5000/MWh in a trading interval and analysed market conditions leading up to and during such intervals
- > conducted special investigations into spot market outcomes addressing compliance issues with results published where appropriate
- > examined all rebids through reporting functions during times where prices exceeded 3 times the volume weighted average in a week and investigated any atypical rebids, where necessary
- > published 3 quarterly compliance reports, targeting specific rule provisions each quarter, focusing on areas of the rules related to registration, market operations, security, the network connection arrangements and metering
- > monitored compliance and investigated potential breaches to recommend courses of action to AER members regarding possible enforcement actions for breaches of the NEL or NER
- > established access terms (access arrangements and revenue resets)
- > approved GasNet's Corio loop investment which provides the potential for increased competition in Victoria through increasing gas flow capability from the Otway basin fields (west of Melbourne) competing with the flow of gas from the Gippsland basin fields (east of Melbourne)

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

## this year the ACCC

<p>performance indicator</p> <p>ensure that access regulation provides incentives for efficient business investment and use of infrastructure</p>	<ul style="list-style-type: none"> <li>&gt; approved the Directlink Joint Venturers' application for conversion of the Directlink electricity transmission line to a regulated network service and an initial asset value of \$116.7 million, giving consideration to incentives for investment in the NEM</li> <li>&gt; approved investment of \$61.7 million for the Corio loop and an up-front binding agreement that the approved costs of the loop can be recovered in future transmission tariffs, providing an investment incentive and certainty to GasNet Australia</li> <li>&gt; released annual reporting information from regulated electricity transmission companies providing transparency about the financial and operational performance of transmission businesses</li> <li>&gt; released indicators of the market impact of transmission congestion for 2003–04, identifying the causes and market impacts of transmission constraints; providing information that can be used as a tool to guide behavioural decisions and promote more efficient market participant behaviour; and to develop improved service standards incentives</li> <li>&gt; assessed service standards compliance reports received from electricity transmission businesses and advised the businesses of the financial reward or penalty for their annual revenue allowance</li> <li>&gt; analysed annual ring-fencing reports from 13 service providers relating to 9 gas transmission pipelines to ensure compliance with the ring-fencing requirements of the gas code</li> </ul>
<p>performance indicator</p> <p>ensure that businesses using monopoly service pay prices that reflect efficient costs</p>	<ul style="list-style-type: none"> <li>&gt; approved 5 gas transmission service providers' tariff variations to ensure their compliance with their access arrangements and an access arrangement for a new gas transmission pipeline</li> <li>&gt; approved pass-through of SP AusNet's liability for land tax on its transmission easements ensuring the financial effect of the introduction of land taxes on transmission easements was economically neutral, facilitating efficient transmission charges</li> </ul>

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*



## ACCC energy authorisations

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### PNG gas joint venture project A40081

**result** | On 8 May 2006 the ACCC released its determination authorising the joint marketing in Australia of gas from the PNG gas project for a period of 16 years. Authorisation is also extended to future participants who meet certain criteria. Only joint marketing conduct undertaken within the framework of ring-fencing arrangements is authorised.

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### Chevron Niugini Pty Ltd & others A90667

**result** | On 8 May 2006 the ACCC decided to revoke this interim authorisation at the same time that it made its determination with respect to the PNG gas project joint venture A40081 application for authorisation.

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## AER decisions under the national electricity rules

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### Directlink conversion application

**result** | On 10 March 2006 the AER issued its final decision approving the Directlink joint venturers' application for conversion of the Directlink electricity transmission line to a regulated network service. On 17 March 2006 the Directlink joint venturers elected to convert to a regulated network service.

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### Powerlink revenue reset application

**result** | On 3 April 2006 the AER received a revenue reset application from Powerlink for the period 1 July 2007 to 30 June 2012. The AER is currently reviewing Powerlink's application. A final decision is scheduled for December 2006.

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### Administration of electricity transmission determinations

**result** | On 3 March 2006 the AER Board approved an application from SP AusNet requesting approval for it to pass through the effects of a Change in Tax Event into transmission charges for 2006–07 under the pass-through rules in SP AusNet's 2002 revenue cap decision.

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### Network service provider exemption applications

**result** | During 2005–06 the AER granted exemptions from the requirement to register under the National Electricity Law/Rules (clause 2.5.1(d)) as a network service provider to Anglo Coal (multiple parties), Oaky Creek joint venture (multiple parties), NSW Rail Corporations (multiple parties), OneSteel Manufacturing Pty Ltd and Alcoa Portland Aluminium Pty Ltd. On 24 May 2006, the AER received a revised exemption application from GridX Power Pty Ltd. The application is under consideration.

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### Appointment of National Electricity Market dispute resolution adviser

**result** | On 19 December 2005 the AER appointed Ms Shirli Kirschner of Resolve Advisors Pty Ltd as the National Electricity Market's dispute resolution adviser for a period of 2 years under clause 8.2.2 of the National Electricity Rules.

### ACCC decisions under the gas code

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#### GasNet Australia—new facilities investment (Corio loop)

**result** | On 6 June 2006 the ACCC issued its final decision under s. 8.21 of the gas code which provides an upfront binding agreement that GasNet's investment in the Corio loop meets the requirements for inclusion in GasNet's capital base.

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#### NT Gas—extension of associate contract

**result** | On 15 March 2006 the ACCC approved a 12-month extension of an associate contract between NT Gas Pty Ltd and NT Gas Distribution Pty Ltd involving the transportation of natural gas along the Amadeus Basin to Darwin pipeline.

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#### Central Ranges pipeline access arrangement

**result** | On 7 December 2005 the ACCC approved an amended access arrangement for the Central Ranges Pipeline Pty Ltd. The Central Ranges pipeline will transport natural gas from Dubbo to Tamworth, NSW.

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#### Roma to Brisbane pipeline revised access arrangement assessment

**result** | On 31 January 2006 the ACCC received the revised access arrangement from the service provider APT Petroleum Pipelines Limited (APTPPL). The proposed access period is from 29 July 2006 to 1 July 2011. The AER is currently reviewing the APTPPL's proposal.

### ACCC annual tariff resets under the gas code

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#### Moomba to Sydney pipeline, Central West pipeline and Central Ranges pipeline

**result** | On 24 May 2006 the ACCC approved the annual tariff increase for these pipelines for the year 2006–07.

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#### Approved GasNet's tariffs for 2006–07

**result** | On 14 December 2005 the ACCC approved the proposed annual transmission tariffs for the GasNet System, as the price control formula and pass-through adjustments had been correctly applied in accordance with its access arrangement.

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### Approved VENCORP's tariffs for 2006–07

**result** | On 17 May 2006 the ACCC approved the proposed annual statutory budget and tariffs for the Victorian principal transmission system. VENCORP, a Victorian Government statutory authority has responsibility for operating Victoria's gas transmission network and its wholesale gas 'spot' market.

submissions

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### AEMC reviews—review of the electricity transmission and pricing rules (revenue requirements)

**result** | Lodged on 24 March 2006 commenting on chapter 6 of the NER and the regulatory framework including incentive mechanisms and the decision-making model.

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### AEMC reviews—congestion management review

**result** | Lodged on 13 April 2006 recommending a set of principles to assist the AEMC in its consideration of the requirement for, and scope of, enhanced trading arrangements in relation to congestion management and pricing in the NEM.

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### AEMC rule changes—management of negative settlements residues in the Snowy region

**result** | Lodged on 10 February 2006 commenting on the Southern Generators' proposal to introduce a new process for managing negative settlement residues in the Snowy region.

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### AEMC rule changes—region boundaries

**result** | Lodged on 10 March 2006 supporting a rule change proposal by the MCE to amend the criteria and process for the changing of a regional boundary in the NEM.

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### AEMC rule changes—reform of regulatory test principles

**result** | Lodged on 24 February 2006 supporting a MCE rule change proposal to introduce a set of regulatory test principles to be considered by the AER when applying the regulatory test.

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### AEMC rule changes—last resort planning power

**result** | Lodged on 24 February 2006 supporting a proposed rule change to provide the AEMC with the function to direct projects assessed under the regulatory test.

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### AEMC rule changes—reform of dispute resolution process for the regulatory test

**result** | Lodged On 24 February 2006 supporting an MCE rule change proposal to streamline the dispute resolution process for regulatory test decisions; and a further submission on 2 June 2006 about the draft determination approving this proposal. Both submissions commented on the need for further clarity around the definition of reliability augmentation for the dispute resolution arrangement to work effectively.

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### AEMC rule changes—review of the Snowy regional boundary

**result** | Lodged on 24 March 2006 encouraging the AEMC to conduct a holistic approach to its review and take into account the work currently being conducted in other rule change process and reviews affecting issues involving the Snowy region.

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### AEMC rule changes—review of technical standards for wind generation

**result** | Lodged on 28 June the AER raising concerns about enforcement issues that may arise if this proposal is adopted in its current form and recommending that the implementation of aspects of this proposal which have impact beyond wind energy should be deferred pending the resolution of the known deficiencies in the current performance standards framework.

guidelines

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### Compendium of electricity transmission regulatory guidelines

**result** | In August 2005 the AER released a compendium of regulatory guidelines for electricity transmission. The compendium is largely based on approaches developed by the ACCC, but draws all of the material together as a complete set of reference documents.

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### Gas code access arrangement process guideline

**result** | In December 2005 the ACCC issued its access arrangement process guideline. The guideline has been prepared to advise service providers and other interested parties on ACCC process to meet the access arrangement approval requirements of the gas code including arrangements to conclude approvals within the specified six-month time period.

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### Position paper—regulatory accounting methodologies

**result** | In September 2005 the AER released a position paper on regulatory accounting methodologies to be applied when capital expenditure is included in the regulatory asset base. The primary consideration in finalising the choice of regulatory accounting methodology is the impact on the incentive framework for approving future capital expenditures.

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### Draft dispute resolution confidentiality guidelines

**result** | In June 2006 the AER released a draft report on confidentiality guidelines for dispute resolution under the dispute resolution process established by chapter 8 of the NER for the NEM.

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### Scoping paper—gas and electricity distribution regulatory guidelines

**result** | In March 2006 the AER released its scoping paper on gas and electricity distribution regulatory guidelines setting out the AER's proposed process in the development of regulatory guidelines for electricity and gas distribution.

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### Position paper—pass-throughs and revenue cap re-openers

**result** | In December 2005 the AER released a position paper on pass-throughs and revenue cap re-openers to clarify its position for the Powerlink review process. The AER suspended its consideration of this matter when AEMC released its draft national electricity amendment rule which substantially adopted the same pass-through categories as set out in the AER discussion paper.

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### Indicators of the market impact of transmission congestion decision

**result** | In June 2006 the AER released its decision to publish indicators of the impact of transmission network congestion on electricity markets. The indicators will identify the causes and market impacts of transmission constraints; provide information to participants that can be used as a tool to guide behavioural decisions; promote more efficient market participant behaviour; and develop improved service standards incentives.

reports issued

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### Price and network monitoring

**result** | The AER published weekly market analysis, looking at spot prices, rebidding, network outages and demand/supply forecasting. Further reports were produced in relation to trading intervals when spot prices were in excess of \$5000/MWh. The other major reports produced were quarterly compliance reports targeting specific rule provisions and focusing on areas of the rules related to registration, market operations, security, network connection arrangements and metering.

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### Indicators of the market impact of transmission congestion 2003–04 report

**result** | On 21 June 2006 the AER released the *Indicators of the market impact of transmission congestion 2003–04* report. This report includes the total cost of constraints (TCC), the marginal cost of constraints (MCC) together with a qualitative assessment of those constraints with high market impacts.

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### Ring-fencing compliance reporting program for 2004–05

**result** | In June 2006 the ACCC finalised its assessment of annual ring-fencing reports for compliance with the gas code from 13 service providers. Most service providers generally complied with the code requirements but areas for improved reporting in the future were identified.

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### Electricity regulatory report for 2004–05

**result** | In April 2006 the AER published this report which covers the operational performance of 8 transmission network service providers for the 2004–05 regulatory year: ElectraNet SA, EnergyAustralia, Murraylink Transmission Company (Murraylink), Powerlink, SPI PowerNet (now part of the SP AusNet group), Transend, TransGrid and VENCORP.

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### Service standards compliance reports

**result** | In February 2006 the AER received service standards compliance reports from TransGrid, SPI PowerNet (now part of the SP AusNet group), ElectraNet SA, Murraylink Transmission Company (Murraylink) and Transend. In April 2006 the AER advised these electricity transmission businesses of their financial reward or penalty for their respective annual revenue allowance.

### Federal Court review

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### Federal Court review of ACT decision on MSP

**result** | On 26 May 2005 the ACCC instituted proceedings in the Federal Court for judicial review of the Australian Competition Tribunal's decision of 19 May 2005 to vary aspects of the ACCC's approved access arrangement for the Moomba to Sydney pipeline (MSP). The review was heard by the Full Federal Court in August 2005 and the decision was handed down on 2 June 2006. The court ordered that the tribunal's decision be set aside. The matter will now return to the tribunal for consideration applying the court's interpretation of the gas code.

## communications

Telecommunications markets were opened to full competition in 1997. The ACCC is responsible for the **competition and economic regulation** of communications markets. The ACCC administers the competition notice and access regimes within the Trade Practices Act that apply to the telecommunications industry, as well as other legislative provisions in the *Telecommunications Act 1997* and related legislation.

Part XIB of the Act provides mechanisms to address breaches of the telecommunications-specific 'competition rule'. Under the rule, a carrier or carriage service provider (CSP) must not engage in anti-competitive conduct. Once the ACCC has reason to believe a carrier or CSP has engaged or is engaging in anti-competitive conduct, the ACCC can issue a Part A competition notice to the carrier or CSP. After a Part A notice has been issued, and until that notice expires, the ACCC may seek and recover pecuniary penalties from the carrier or CSP. An affected third party may also seek damages in relation to anti-competitive conduct during the time the notice was in force. The ACCC must take legal action to enforce any penalties that have accrued against a carrier or CSP. The ACCC can also issue a Part B competition notice (at the same time or instead of a Part A competition notice) if the ACCC has reason to believe a carrier or CSP has committed, or is committing, a contravention of the competition rule. A Part B notice is prima facie evidence of the matters contained in the notice and reverses the onus of proof.

The telecommunications **access regime** does not provide automatic rights of access. Services must first be declared by the ACCC. Once declared, disputes can be brought to the ACCC for arbitration. The regime also enables access providers to lodge undertakings regarding conditions of access and seek exemptions from the standard access obligations that apply once a service is declared. Such exemptions can be granted to services already declared or can take the form of anticipatory exemptions for new services or those that are not declared.

Content and applications services are subject to Part IV of the Act.

The communications sector includes telecommunications carriage services and the content and applications services delivered over them.

In March 2006 the Telecommunication Group which is responsible for regulating the industry became the Communications Group. This change reflects the broader advisory role performed by the group in relation to communications markets beyond strictly telecommunications markets and recognises the emergence of new technologies which compete with and complement traditional communications services.

## output 1.1.2

### competitive market structures and informed behaviour

#### this year the ACCC

<p>performance indicator</p> <p>encourage competition in markets that depend on monopoly services</p>	<ul style="list-style-type: none"><li>&gt; implemented enhanced accounting separation of Telstra's wholesale and retail operations, including the release of 6 public reports</li><li>&gt; delivered its 3 annual telecommunications reports to the Minister for Communications, Information Technology and the Arts on competition safeguards and prices as required by Divisions 11 and 12 of the Act</li><li>&gt; provided advice to the Department of Communications, Information Technology and the Arts (DCITA) on a range of price and non-price matters relating to the government's model for Telstra's proposed operational separation</li><li>&gt; issued a Part A competition notice to Telstra in relation to wholesale and retail line rental pricing</li></ul>
<p>performance indicator</p> <p>ensure that access regulation provides incentives for efficient business investment and use of infrastructure</p>	<ul style="list-style-type: none"><li>&gt; commenced a major review of the regulation of key network and wholesale services provided over the fixed telecommunications network</li><li>&gt; participated in discussions with Telstra to assist it to develop a proposal for a fibre network roll-out</li></ul>

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*



## this year the ACCC

### performance indicator

ensure that businesses using monopoly services pay prices that reflect efficient costs

- > commenced and progressed 30 new arbitrations for the unconditioned local loop service (ULLS), the line sharing service (LSS), transmission capacity, the public switched telephone network origination and termination (PSTN OTA) service and the mobile terminating access service (MTAS) lodged with the ACCC during 2005–06
- > progressed 11 arbitrations for the MTAS, ULLS and LSS lodged with the ACCC during 2004–05
- > assessed access undertakings for the local carriage service (LCS), ULLS and the PSTN OTA
- > assessed 2 access undertakings for supply of the MTAS on second generation networks
- > assessed Telstra's LSS monthly charge undertaking
- > successfully defended its regulation of the LSS in Australian Competition Tribunal proceedings brought by Telstra

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

	this year	last year
anti-competitive conduct investigations	11	14
services declared	0	0
access undertakings received	10	4
access disputes notified	30	13

## reports

The ACCC delivered its three annual telecommunications reports to the minister in March and June 2006.

In its **competitive safeguards report** the ACCC found that the telecommunications industry continued to progress towards a more competitive environment in 2004–05, signalling that the industry is on the verge of making significant advancements in service delivery. However, the ACCC remains concerned about various threats to existing and future competition, mainly involving the copper local access network.

The **changes in prices for telecommunications services report** found that, overall, average prices paid by telecommunications consumers decreased in real terms by 6.6 per cent during 2004–05. This overall decline was driven by a decrease of 13 per cent in prices paid for mobile telephony services. The average price paid for PSTN services fell by 1.2 per cent, with the average prices paid by residential and business customers decreasing by 0.3 per cent and 2.9 per cent respectively.

In its **price control report** the ACCC indicated that it is satisfied that Telstra had adequately complied with all price control arrangements established by the government for 2004–05.

The minister issued the ACCC with a direction in June 2003 requiring it to make a record keeping rule and publish reports to implement enhanced **accounting separation** of Telstra's wholesale and retail operations. Under this regime, in 2005–06 the ACCC released two sets of half-year accounts for Telstra's core services that had been prepared on a current cost and historic cost basis, and quarterly reports concerning key performance indicators and imputation analysis.

As part of enhanced accounting separation reporting, the ACCC provided two reports to the minister detailing the 'state of play' regarding competition for the supply of telecommunications services to **corporate markets**.

The ACCC also released select revenue and usage information provided by five carriers under the existing regulatory accounting framework. This information, covering the financial years 2001–02 to 2004–05, was released in a **telecommunications market indicator report**.

Throughout 2005–06, the ACCC produced a **snapshot of broadband deployment** each quarter. The report provides aggregate data for broadband rollout, take-up, and coverage (to a limited degree) based on information provided to the ACCC by broadband service providers on a voluntary basis.

## investigations

The ACCC undertook 11 **anti-competitive conduct investigations**, nine of which were concluded this financial year. In particular, in November 2005 an investigation began into Telstra's wholesale and retail line rental pricing. In December 2005 Telstra increased its wholesale line rental prices to its wholesale customers. In April 2006 the ACCC issued Telstra with a **Part A competition notice**, having formed a reason to believe Telstra had engaged, or was engaging, in at least one instance of anti-competitive conduct. In May 2006 Telstra instituted proceedings against the ACCC in the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* in relation to the ACCC's decision to issue the Part A competition notice.

Other investigations into potential anti-competitive conduct this year included allegations of **resale price maintenance** in wireless broadband services. The ACCC concluded several investigations including the issue of carriers introducing new retail products to the market before or without making them available to their wholesale customers; and carriers denying or restricting access to retail mobile services used in conjunction with fixed cellular terminals. The ACCC also concluded an investigation into alleged anti-competitive conduct regarding corporate and government telecommunications services, with a focus on alleged anti-competitive low retail pricing regarding fixed-to-mobile services. In addition, an investigation into alleged anti-competitive conduct in wholesale business grade xDSL technology was conducted. In each of these investigations the ACCC did not form the requisite reason to believe that a carrier was engaging in anti-competitive conduct.

## declarations

In December 2005 the ACCC commenced its **fixed services review**, a broad-ranging inquiry into the regulation of key network and wholesale services provided over the fixed telephone network. The review was initiated because of the pending expiry of declarations such as the **ULLS** and **PSTN OTA** service, as well as significant developments in the industry such as Telstra's **fibre-to-the-node (FTTN)** proposals. In June 2006 the ACCC issued a position paper that contained a draft view to continue the regulation of the ULLS and PSTN OTA for a further three years. This position paper also proposed that the ACCC would conduct a stocktake of competitive infrastructure, and that the conditioned local loop service declaration be discontinued. The paper concluded that the case for a declaration of a wholesale ADSL service was not compelling and sought industry comment on the factors that should be considered in rolling back regulation.

In March 2006 the ACCC released its draft view to continue the **LCS** declaration. The draft decision also proposed to formalise the declaration of the **wholesale line rental service (WLR)**. It was proposed that the declarations would continue to exclude CBD areas. The ACCC made these decisions because it found that there were currently no effective substitutes for these wholesale services outside of CBD areas. However, the ACCC proposed to limit the period of declaration to two years in recognition of the potential for the development of facilities-based competition.

## access pricing—disputes and undertakings

Over the course of 2005–06, 15 **fixed line service access disputes** were notified to the ACCC, adding to the two disputes notified in 2004–05. For all 17 disputes Telstra is the access provider. The disputes variously relate to the ULLS (7), LSS (5), transmission capacity (1) and PSTN OTA (4) services. Interim determinations have been issued for three of these disputes (ULLS). At year end, the ACCC is arbitrating the 17 access disputes under the dispute resolution procedures in Part XIC of the Act.

In 2004–05 service providers notified 11 access **disputes involving the mobile terminating access service (MTAS)**, two of which were subsequently withdrawn.

It is expected that the final determinations for these remaining nine disputes will be completed shortly. In addition, 15 MTAS disputes were lodged with the ACCC in 2005–06, three of which have been subsequently withdrawn. Of the disputes notified this year, interim determinations have been provided to parties in seven disputes and work is progressing on the other dispute notified. Four disputes were lodged late in the year and are at a preliminary stage. At year end, the ACCC is progressing its arbitral processes in all these disputes to deliver final determinations to parties in the coming year.

The ACCC completed its assessment of Telstra's December 2004 **ULLS and LSS monthly charge and connection/disconnection charge undertakings**. The ACCC issued a draft decision in August 2005, and a final decision in December 2005 to reject the ULLS and LSS monthly charge undertakings on the grounds that the terms and conditions were not reasonable. The ACCC similarly issued a draft decision in December 2005 to reject the connection/disconnection charge undertakings on the grounds that the terms and conditions were not reasonable. Telstra subsequently withdrew the ULLS connection charge undertaking in December 2005. The ACCC issued a final decision to reject the LSS connection/disconnection charge undertaking in April 2006.

Following the ACCC's final decision in December 2005 to reject Telstra's ULLS monthly charge undertaking, Telstra submitted new ULLS monthly charge undertakings in December 2005 that proposed geographically averaged ULLS monthly charges. The ACCC issued a draft decision in June 2006 to reject the undertakings on the basis that the proposed charges were not reasonable.

In January 2006 Telstra applied to the **Australian Competition Tribunal** seeking to have the ACCC's December 2005 decision to reject Telstra's LSS monthly charge undertaking reversed. In June 2006 the tribunal rejected the application, consistent with the ACCC's decision.

Telstra also submitted **PSTN OTA and LCS undertakings** to the ACCC in 2005–06. The ACCC commenced public consultation on the undertakings in May 2006.

Hutchison lodged six MTAS undertakings with the ACCC. Four undertakings covered domestic mobile to mobile calls and two undertakings related to calls originating from fixed and overseas networks. These undertakings were rejected in June 2006.

In December 2004 Optus lodged its **domestic GSM terminating access service undertaking**. In February 2006 the ACCC released its final decision to reject the undertaking. This was followed in March by the ACCC decision to reject Vodafone's MTAS undertaking, which had been lodged on 23 March 2005.

Optus and Vodafone both sought merits review by the Australian Competition Tribunal of the ACCC decisions to reject their undertakings. These matters are currently before the tribunal, with decisions expected before December 2006.

In March 2006 the ACCC released its initial plan for making **procedural rules** to apply in relation to the telecommunications access regime. More detailed consultation will occur during the implementation of this plan.

## content, applications and convergence

The ACCC examined emerging issues and new policy approaches relating to the impact of technical convergence on communications markets. In March 2006 the Communications Group was formed to reflect the ACCC's increasing role in markets for content and applications services as convergence unfolds.

In relation to digital broadcasting, the ACCC provided input to DCITA on the formulation of an access regime for digital radio multiplex facilities and provided a submission on the Review into High Definition TV Quota Arrangements.

The ACCC also participated in meetings of the **Australian Communications Industry Forum** addressing regulatory and policy issues including convergence, voice-over internet protocol (VOIP), interconnection and quality of service, and local number portability.

**Foxtel** lodged a special access undertaking on 6 October 2005. The undertaking relates to what Foxtel describes as the **digital set top unit service (DSTUS)**. DSTUs are generally used by subscription television providers for the reception, decryption and display of content (including interactive content) at the end-user premises. The ACCC invited submissions from interested parties and is in the process of formulating a draft decision for publication.

The ACCC considered, but did not accept, a request from **Optus** to vary its s. 87B undertakings (originally given in 2002 in relation to the content sharing arrangement between Optus and Foxtel) to provide certain content over its subscription television service.

In November 2005 Telstra announced its intention to install FTTN technologies by 2009, provided it could achieve 'regulatory certainty' and sufficient returns from its investment in this new technology. The ACCC has pointed out the availability of mechanisms under the Act for Telstra to facilitate certainty about the level of regulation of telecommunications services. As at the end of the financial year the ACCC continues to participate in discussions with Telstra to assist it in deciding whether to put forward a detailed FTTN proposal for public consultation that complies with the objectives of the Act.

## consultation, monitoring and reviews

The ACCC provided advice to DCITA on a range of price and non-price matters relating to the government’s model for Telstra’s proposed operational separation. In June the minister accepted Telstra’s operational separation plan which sets out its obligations under the legislation. The ACCC will be involved in overseeing Telstra’s compliance with these obligations.

In August 2005 the ACCC and DCITA jointly released a discussion paper to industry and interested parties on the feasibility of the implementation of the *Monitoring and reporting on competition in the telecommunications industry determination 2003 (No 1)* (the determination). The determination requires the ACCC to monitor and report to the minister on matters relating to competition and **broadband services**. The ACCC’s recommendations based on this consultation process have been forwarded to the minister for consideration.

Under the **internet interconnection service record-keeping and reporting rules** issued to 19 leading internet service providers in March 2005, the ACCC is collating and analysing quarterly data. This research forms a substantial part of the ACCC’s three-year monitoring regime to determine whether internet interconnection should be a declared service.

The ACCC also continued to monitor **bundling of residential services** using RKRs introduced in March 2003.

## aviation

output 1.1.2

competitive market structures and informed behaviour

## this year the ACCC

<div>performance indicator</div> <div>ensure that businesses using monopoly services pay prices that reflect efficient costs</div>	<div>&gt; did not oppose price increases for Airservices Australia</div> <div>&gt; issued a price monitoring and financial report for the 7 major airports</div> <div>&gt; issued a quality of service monitoring report for the 7 major airports</div>
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*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

### Airservices Australia firefighting charges

**result** | 21 December 2005 | The ACCC did not object to the proposal which changed the structure of prices for the period 1 January 2006 to 30 June 2009 for aviation rescue and firefighting services

The ACCC published **airports regulatory reports** for the major seven airports: Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin. Under Part VIIA of the Trade Practices Act, the ACCC monitors the prices, costs and profits relating to aeronautical services and aeronautical-related services and under the Airports Act it reports on financial accounts and quality of service.

Monitoring involves collecting information and reporting on prices, quality and financial accounts. The ACCC has no power to prevent price increases, except for aeronautical services for regional airline services at Sydney airport. These prices are subject to a price cap. No proposal for price increases for regional services was received from Sydney airport in 2005–06.

The ACCC is also responsible for assessing proposals by Airservices Australia to increase charges for en route and terminal navigation services, and rescue and fire fighting services.

The airports **price monitoring and financial report** provided information on the prices, costs and profitability performance of the major seven airports. Key findings were that average aeronautical revenue per passenger (including landing charges and passenger processing charges) increased by between 2.6 and 11 per cent in 2004–05, following sharp increases in 2001–02 and 2002–03; increases in aeronautical revenue ranged from 10 to 28 per cent; and aeronautical operating expenses per passenger changed by between -8.8 per cent and +3.1 per cent. Aeronautical margins per passenger increased at all these airports in 2004–05, ranging from \$1.52 to \$5.22.

The ACCC monitors airport **quality of service**, collecting information from airport operators, Australian Customs Service, Airservices Australia and airlines. The information includes data from customer perception surveys and airline surveys. Results were generally satisfactory to good over the period from 2002–03 to 2004–05, with Brisbane being the top-ranked airport over this period, achieving an overall rating of good. Melbourne, Perth and Sydney airports rated between satisfactory and good, while Adelaide, Canberra and Darwin rated as satisfactory. Melbourne airport's rating has declined since 2002–03, while Canberra's rating has improved.

## rail

### output 1.1.2

#### competitive market structures and informed behaviour

### this year the ACCC

#### performance indicator

ensure that  
businesses  
using monopoly  
services pay  
prices that reflect  
efficient costs

- > monitored Australian Rail Track Corporation's compliance with its obligations outlined in its access undertaking

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

The ACCC administers the terms and conditions of **access to rail tracks** owned or leased by the Australian Rail Track Corporation. The tracks are part of the interstate mainline standard gauge track linking Kalgoorlie in Western Australia, Adelaide, Wolseley and Crystal Brook in South Australia, Broken Hill in New South Wales, and Melbourne and Wodonga in Victoria.



# waterfront and shipping

output 1.1.2

competitive market structures and informed behaviour

## this year the ACCC

<div>performance indicator</div> <div>ensure that businesses using monopoly services pay prices that reflect efficient costs</div>	<div>&gt; issued a stevedoring monitoring report showing average company costs and revenues rising</div>
<div>performance indicator</div> <div>monitor prices to assess the impact of market conditions on price levels of goods and services</div>	<div>&gt; monitored prices formally and informally for container stevedoring and freight rates for international liner cargo</div> <div>&gt; administered international liner cargo shipping arrangements</div>

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

The Treasurer directed the ACCC on 20 January 1999 under the then Prices Surveillance Act to monitor prices, costs and profits of **container stevedoring operators** in the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney to inform the community about the progress of waterfront reform at major container terminals.

The ACCC released its seventh **container stevedoring report** in November 2005 examining trends in prices, costs and profits of the three major stevedoring companies, P&O Ports, Patrick and DPI Terminals Pty Ltd for the period of July 2004 to June 2005. Industry average costs and revenues increased during 2004–05. The rate of growth in productivity improvements made since 1999 slowed over the 2004–05 period.

In April 2006 the ACCC released its report to the Minister for Transport and Regional Services into an alleged breach of Part X (**international liner cargo shipping**) of the Trade Practices Act by the members of the Australia to Europe Liner Association (AELA). The report urges both shipping lines and shipper bodies to develop arrangements to manage confidential information that is necessary to Part X negotiations.

The ACCC’s investigation was in response to a complaint from the Australian Peak Shippers Association that the members of the AELA had contravened negotiation obligations under Part X in relation to the introduction of increased origin terminal handling charges (OTHCs). OTHCs are fees levied by a shipping line on shippers (exporters) to recover the costs of stevedoring services provided to the shipping line by a container terminal operator.

## post

output 1.1.2

competitive market structures and informed behaviour

### this year the ACCC

<div>performance indicator</div> <div>ensure that businesses using monopoly services pay prices that reflect efficient costs</div>	<div>&gt; required Australia Post to keep records relevant to the ACCC’s functions of testing for cross-subsidy, assessing proposals for price increases and dispute inquiry, under recent amendments to the Australian Postal Corporation Act</div>
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*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

**Australia Post** proposals to increase charges for **monopoly postal services** are assessed by the ACCC. Australia Post did not propose to increase the price of any reserved services during 2005–06.

The ACCC also has a role in resolving disputes over the price charged to users of Australia Post’s bulk interconnection services. No disputes were notified to the ACCC this year.

The ACCC also the ability to require Australia Post to keep **records** that are relevant to its regulatory functions with respect to postal services. One of the key reasons behind the requirement on Australia Post to keep records about different parts of its business is to enable the ACCC to assess allegations raised by competitors that Australia Post is competing unfairly by subsidising competitive services with revenues raised from its monopoly services. Australia Post provided its first set of regulatory accounts, for the 2004–05 financial year, to the ACCC on 15 November 2005.

# petrol

output 1.1.2

competitive market structures and informed behaviour

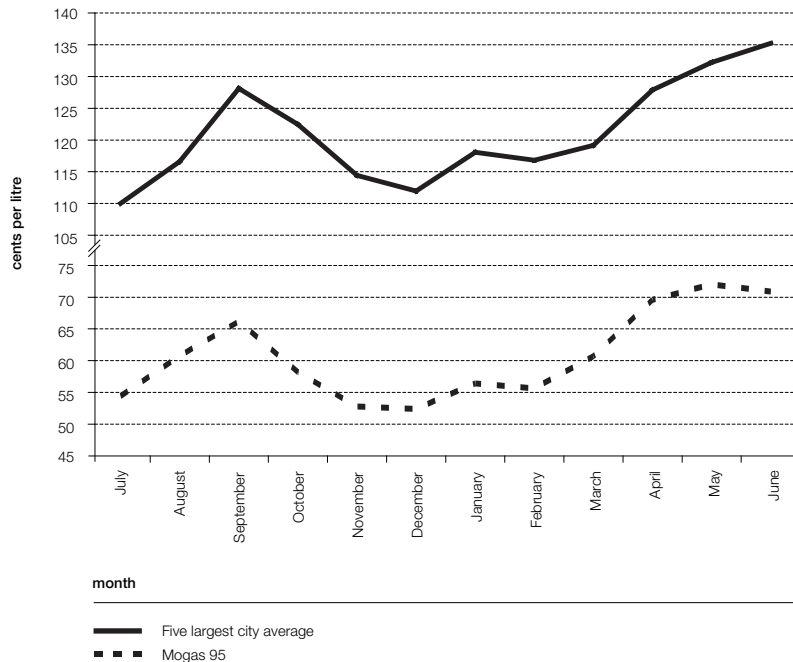
## this year the ACCC

performance indicator	<ul style="list-style-type: none"><li>&gt; monitored the retail prices of unleaded petrol, diesel and automotive liquefied petroleum gas in the capital cities and about 110 country towns</li><li>&gt; monitored international crude oil and refined product prices, published terminal gate prices of the major oil companies and the city–country price differential</li></ul>
monitor prices to assess the impact of market conditions on price levels of goods and services	

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

**Monitoring of unleaded petrol prices** indicated that movements in average retail unleaded petrol prices were particularly volatile. This can be seen in the chart. The average monthly unleaded petrol price for the five largest metropolitan cities (i.e. Sydney, Melbourne, Brisbane, Adelaide and Perth) ranged from a low of 110.0 cents per litre in July 2005 to a high of 135.2 cents per litre in June 2006. The average price during the year was 121.1 cents per litre which was 20.5 cents per litre above the average price last year. Movements in domestic petrol prices are largely driven by movements in the international refined petrol price (measured by the spot price for Singapore Mogas 95 Unleaded) and the Australian/United States dollar exchange rate. This is clearly shown in the chart. The movement in average monthly domestic petrol prices is consistent with movements in average monthly Singapore Mogas 95 Unleaded prices in Australian cents per litre.

figure 4 Monthly average unleaded petrol prices in the five largest metropolitan cities and monthly average Singapore Mogas 95 Unleaded prices: July 2005–June 2006



The average differential between average retail prices in the five largest metropolitan cities and **country areas** was 5.3 cents per litre. The monthly differential ranged from a high of 9.1 cents per litre in November 2005 to a low of 3.1 cents per litre in August 2005.

In September 2005 the ACCC released a **booklet on petrol pricing** in Australia. The booklet aims to provide an understanding of petrol prices by presenting answers to some frequently asked questions on this issue. Additionally, between September and December 2005 the ACCC produced a weekly petrol price snapshot on the ACCC website, the aim of which was to provide additional information to consumers following the significant increases in retail petrol prices and international refined petrol prices that occurred in early September 2005 (principally as a result of the effect of Hurricane Katrina).

The consumer awareness initiative on **petrol price cycles** on the ACCC website—which aims to increase consumers' understanding of petrol price cycles and how to take advantage of them—continued in 2005–06. Consumers can make significant savings by buying petrol at the bottom of the price cycle. The ACCC website provides data on unleaded petrol price cycles in the five largest metropolitan cities. It also includes information on petrol prices and has links to a number of other websites that have information about petrol prices and petrol pricing issues.

The ACCC dealt with 1250 inquiries and complaints on fuel pricing.

# insurance and bank charges

output 1.1.2

competitive market structures and informed behaviour

## this year the ACCC

performance indicator	> monitored prices for public liability, professional indemnity and medical indemnity insurance
monitor prices to assess the impact of market conditions on price levels of goods and services	

*Measured against performance indicators defined in the ACCC portfolio budget statements 2005–06*

On 5 July 2002 the then Parliamentary Secretary to the Treasurer, Senator Ian Campbell, requested that the ACCC monitor costs and premiums in the **public liability and professional indemnity** sectors of the insurance market on a six-monthly basis over a two-year period to consider the effect on insurance premiums of actions taken by governments to reduce and contain legal claims costs and to improve data available to insurers evaluating and pricing risk. In accordance with this request, the ACCC provided four reports to the Australian Government.

On 17 February 2005, the then Minister for Revenue and Assistant Treasurer, the Hon. Mal Brough MP, announced that the ACCC would continue to monitor costs and premiums in public liability and professional indemnity insurance on an annual basis for a further three years. The ACCC's fifth monitoring report, which was released by the Australian Government on 11 August 2005, is the first of the reports provided by the ACCC under this current request by government.

The fifth report found that in respect of public liability insurance, the average public liability insurance premium fell by 4 per cent in 2004, with most insurers expecting premiums to fall further in 2005. There was no substantial change in the average size of public liability claims settled in 2004, and both the number and frequency of claims incurred by insurers have remained relatively stable since 2002. Insurers' financial performance from underwriting public liability insurance declined slightly compared to business written in 2003. Most insurers believed that the number and cost of public liability claims, as well as average premiums, were lower in 2004 as a result of tort reforms than they would have been without tort reforms.

In regard to professional indemnity insurance, the report found that the average premium also decreased by 4 per cent in 2004. However, the average size of claims increased by over 60 per cent in 2004 due to a small number of high cost claims in that year. There was little change in the underwriting financial performance from writing professional indemnity insurance. The report found that most insurers believed that tort reforms had either no or minimal impact on the number and size of professional indemnity claims in 2004. Insurers said that competition was the main driver of the fall in premiums.

On 19 November 2002 the Treasurer, the Hon. Peter Costello MP, requested that the ACCC monitor, on an annual basis over a three-year period, **medical indemnity insurance** premiums to assess whether they are actuarially and commercially justified.

The Australian Government released the final of these reports on 16 February 2006. This report found that premiums written in 2005–06 (2005 in the case of Australasian Medical Insurance Limited) were considered to be both actuarially and commercially justified.

Following a request by the then Minister for Revenue and Assistant Treasurer, the Hon. Mal Brough MP, the third report also examined the actuarial and commercial justification of premiums within each jurisdiction and found that, based on the information available, jurisdictional relativities were justified.

On 29 May 2006 the Minister for Revenue and Assistant Treasurer, the Hon. Peter Dutton MP, wrote to the ACCC requesting that it continue to examine the actuarial and commercial justification of medical indemnity premiums, including within jurisdictions, for a further three years.

The ACCC also maintains a watching brief on **bank fees and charges**, including credit cards and personal transaction accounts.

## regulators forum

The ACCC, with state and territory regulatory agencies, set up a public utility regulators forum to share information and develop understanding of the activities of various regulators and industries as they implement reform. All regulators are involved. The aim of the forum is to exchange information, to encourage consistency in the application of regulatory functions and to review new ideas about regulatory practices. The forum published three *Network* newsletters with updates on regulatory activities as well as articles on common challenges. Membership is listed in appendix 6.

# when we did it

## july 05

announced charter promoting fair competition between potential buyers of independent supermarkets

invited public comment on the Ramsay Health Care's proposed acquisition of Affinity Health

allowed the WA TAB Agents' Association to represent its members in collective bargaining with Racing and Wagering Western Australia (RWWA)

launched information package to raise awareness of the signs of possible cartel behaviour affecting government procurement

allowed Perkins shipping companies to provide priority use of a new heavy lift wharf at the Port of Gove to Alcan for three years

allowed collective negotiations of airport services by the Board of Airline Representatives of Australia

received undertaking from luggage strap company to improve compliance with the mandatory safety standard

wins compensation for Indigenous consumers in the Northern Territory

refunds for Queensland real estate buyers

issued joint review with the Australian Health Workforce Officials Committee (AHWOC) on key areas of operation of Australia's specialist medical colleges

## august 05

Coles supermarkets withdraw in-store demonstrations notification following ACCC inquiries

granted authorisation to allow certain tobacco growing and supply arrangements to continue in Victoria

allowed SA oyster research and development levy

Victorian sporting goods retailer corrects its use of comparative pricing

allowed Insurance Australia Group choice of repairer policy

online business directory corrects misleading application form

released fifth monitoring report on public liability and professional indemnity insurance

launched guide to help businesses understand their trade practices law obligations, rights and responsibilities when dealing with disadvantaged or vulnerable consumers

took proceedings against timber merchants' price fixing cartel

debt factoring company corrects misleading and deceptive conduct and undue harassment and coercion in relation to its debt collection practices to recover Telstra debts it purchased in 2002 and 2003

allowed AgSafe Limited to introduce a new environmentally friendly chemical waste reduction program

required Ramsay Health to sell a further three hospitals before acquiring Affinity Health

launched revised 'first-in' immunity policy for cartel conduct

## september 05

allowed collective agreement between CSR Building Products Ltd and its owner-drivers

told the Australian Compliance Institute national conference that 'prevention is better than cure', promoting the implementation of trade practices compliance programs before breaches of the Act occur

wins record penalties for resale price maintenance of more than \$1 million imposed following ACCC proceedings

launched booklet to help consumers understand petrol pricing in Australia

instituted proceedings against discount telephone call pyramid scheme

campaigned for fair trading in jewellery industry

opposed Patrick Corporation Ltd's proposed acquisition of FCL Interstate Transport Services Pty Ltd

accepted court enforceable undertakings from 12 woodheater companies over misleading claims

WA commercial air conditioning companies found guilty of cartel conduct

issued final report on inquiry into mobile international roaming

released *Snapshot of broadband deployment* announcing take-up of broadband services has reached nearly 2.2 million

penalties totalling \$136 000 imposed on supplier of lace, giftware, figurines and other specialty decorative goods, for engaging in resale price maintenance

action instituted against Seven Network, 'Wildly Wealthy Women' over *Today Tonight* broadcasts

instituted proceedings alleging resale price maintenance by distributor of Bamix and Magimix products

published an online 'petrol price snapshot' giving consumers information on movements in Australian petrol prices in the major capital cities and how they relate to changes in international prices



## october 05

served warning on souvenir T-shirt industry to comply with country of origin labelling rules

ordered recall of potentially unsafe 'retro' style bicycles

granted authorisation for south-east Queensland dairy farmers' collective bargaining arrangements to continue

commenced arbitration of an access dispute relating to the supply of the unconditional local loop service (ULLS) from Telstra to Optus

issued Telstra accounting separation report for June quarter 2005

issued two publications jointly produced with ASIC aimed at improving standards in the debt collection industry and assisting consumers dealing with debts and debt collection

proposed to deny authorisation to Dairy WA's proposed milk negotiating agency

recovered penalties from an 'insolvent' company for price fixing contraventions

granted interim authorisation to Southern Sydney councils to collectively tender with waste management providers

proposed to authorise the Australian Direct Marketing Association's 2005 Direct Marketing Code of Practice

granted authorisation to the Royal Australian Institute of Architects for a range of activities, including its code of conduct and articles of association

## november 05

instituted proceedings against the CFMEU and CFMEUW and three union members alleging contraventions of the secondary boycott provisions

launched new publication to fight misleading job and business opportunity advertisements

allowed NAB equity purchase in Cash Services Australia

allowed dairy farmers in south-east Queensland to continue collective bargaining with Parmalat

importers of hot water bottles take steps to ensure their products are safe following the ACCC raising concerns

warned the motor vehicle industry that its advertising practices were not up to scratch

issued discussion paper on access undertakings lodged by Hutchison for MTAS

issued discussion paper on Foxtel's special access undertaking relating to its pay-TV digital set top unit service

released container stevedoring monitoring report for 2004–05

court confirms penalties of \$500 000 against Visy and penalties totalling \$25 000 against two senior executives for trying to stop a rival waste paper collection company from taking Visy's customers

1Cellnet LLC, a company incorporated in the USA, found guilty of participating in a pyramid selling scheme involving discounted telephone calls

accepted court enforceable undertakings from ice cream companies over attempted price fixing allegations

issued report on the availability and standard of airport facilities at Australia's major airports

published an interim determination setting out the charges to be paid by AAPT to Optus for the supply of the MTAS

warned of aggressive response to tactics to frustrate law processes including delaying the litigation processes, witnesses lying to ACCC investigators and the destruction of important documents

released statement of issues on Toll bid for Patrick and initiates a second phase of market inquiries into this matter

proposed to deny an application for authorisation for a proposed collective bargaining/collective boycott arrangements between Tasmanian forest contractors and wood companies

proposed to allow a system to prevent coal vessel queues returning at Dalrymple Bay

announced draft decision to reject Optus' undertaking prices for supply of its domestic GSM terminating access service

investigated alleged breach of Part X of the Act which regulates negotiations between international cargo shipping lines and exporter groups

published interim determinations in five telecommunications arbitrations notified by Hutchinson Telecommunications, Hutchison 3G, AAPT, PowerTel Ltd and Primus Telecommunications regarding the charges to be paid to Vodafone for supply of MTAS

## december 05

court action against electronics company alleging false and misleading warranty statements about mobile phones

issued Telstra accounting separation report for September quarter 2005

recall of vehicle jacks non-compliant with prescribed safety standard

announced draft decision to reject Vodafone undertaking for supply of MTAS on its 2G network

issued consultation notice to Telstra informing it that the ACCC intends to issue a Part A competition notice in relation to an increase in the price charged for wholesale line rental

proposed to allow hotels to collectively negotiate wagering and broadcasting services

issued final decisions to reject Telstra's monthly charges undertakings for the ULLS and line sharing service (LSS)

initiated broad ranging strategic review of regulation of key network and wholesale services provided over the fixed telephone network

banned toy dart gun withdrawn from Darwin shops

commenced arbitration of three access dispute with Telstra notified by Chime Communications Pty Limited and iiNet Limited

commenced arbitration of access dispute relating to price and non-price terms and conditions for the supply of ULLS from Telstra to Optus

issued expanded merger review process guidelines for consultation

launched \$9 million consumer awareness campaign advising smokers that 'light' and 'mild' cigarettes are not a healthier option

wins penalties totalling \$900 000 against a former operator of barges to Fraser Island for predatory pricing and other conduct in breach

launched new streamlined processes for small business collective bargaining arrangements

proposed to allow national dairy farmer collective bargaining arrangements to continue for a further five years

warned motor vehicle industry to improve advertising practices

proposed to authorise BHP Billiton joint venture proposal for mining of iron ore

issued revised edition of *Safe toys for kids*

commenced arbitration of an access dispute about price paid by Telstra for the domestic MTAS supplied by Optus via its mobile networks for 2006

issued fifth Telstra accounting separation current cost reports

re-authorised the Homeworkers Code of Practice

issued AER gas access arrangement process guideline

issued guide to corporate trade practices compliance programs for medium to large companies

jointly released with IPART the final decisions on Central Ranges pipeline

reported to the Senate on anti-competitive and other practices by health funds and health service providers in relation to private health insurance

Matilda Woodridge penalised \$470 000 for Brisbane petrol price fixing

issued draft determination proposing to authorise arrangements to establish a levy on bales of wool sold at auction or by private treaty

decided not to oppose the proposed global acquisition of Dyno by a Macquarie Bank-led consortium and the subsequent on-sale of Dyno Nobel's European, Middle Eastern, African, Asian and Latin American businesses to Orica

allowed a system to prevent coal vessel queues returning at Dalrymple Bay

## january 06

\$8.9 million penalty on Safeway for price fixing and misuse of market power in bread market

granted authorisation to establish a levy on the sale of wool for the purpose of wool promotion

commenced arbitration processes for four telecommunications access disputes relating to the price paid for the domestic MTAS supplied by Hutchinson Telecommunications and Hutchinson 3G

international office supply company based in Florida, USA and selling into Australia found guilty of breaching the Act by misleading customers in relation to the supply of goods

opposed Toll's proposed acquisition of Patrick Corporation Limited

made public Telstra's new ULLS monthly charge undertaking and commenced public consultation

## february 06

sued Original Mama's Pizza & Ribs and its principals for alleged small business sting

authorised BHP Billiton joint venture proposal for mining of iron ore

instituted proceedings against Toll Holdings Limited over its proposed acquisition of Patrick Corporation Limited

Australasian Consumer Fraud Taskforce launches a four-week campaign warning on scams

announced final decision to reject the Optus access undertaking to supply its domestic GSM terminating access service

issued third airport price monitoring report on the prices charged by Adelaide, Brisbane, Canberra, Darwin, Melbourne, Perth and Sydney airports

Australian Government issues third ACCC medical indemnity report

issued cartels publication for small business at COSBOA conference

led annual internet sweep to identify hidden online shopping traps

\$3.5 million compensation ordered after ACCC stops phone card scams

denied authorisation to Dairy WA's proposed milk negotiating agency

denied authorisation to a collective bargaining proposal for Tasmanian forest contractors

issued draft guides for authorisation and notification processes

## march 06

allowed hotels to collectively negotiate wagering, broadcasting services

re-authorised collective administration of music performing rights by APRA

resolved concerns about a WA motor vehicle dealer's advertising not including all charges applicable to the advertised price through court enforceable undertakings

accepted revised undertakings from Toll in relation to proposed acquisition of Patrick and proposes to withdraw its opposition to the acquisition

conducted market inquiries on undertakings relating to Patrick's proposed acquisition of FCL

launched consumer guide to cartel conduct

issued draft decision to continue regulation of local calls services and to formalise regulation of wholesale line rentals

delivered report to the minister on Telstra's compliance with price controls

allowed joint marketing arrangement for the sale of LPG from the Otway gas project

re-authorised life insurance bar on genetic testing

allowed Southern Sydney councils to collectively tender and contract waste management services

allowed elite swimmers to collectively bargain payment terms and conditions with Swimming Australia

proposed to deny authorisation to a plant breeders group

## april 06

announced final decision to reject Vodafone undertaking for MTAS

issued *Snapshot of broadband deployment* showing take-up of broadband services is approaching three million connections

issued Part A competition notice in relation to Telstra's wholesale line rental price increase

issued a guide to resolution of disputes involving access to certain monopoly services, e.g. railway tracks, water facilities and airport facilities, under Part IIIA of Act

decided not to oppose Patrick's proposed acquisition of FCL

issued guideline to assist the small business sector understand the essential elements of trade practices law compliance programs

the Australian Competition Tribunal said no to collective boycott for Victorian chicken growers

issued a draft notice to revoke a notification lodged by Nestle Australia

issued a draft notice to revoke a notification lodged by James Hardy

proposed to re-authorise code of conduct governing drug companies' dealings with doctors

allowed Australian Dairy Farmers collective bargaining arrangements to continue

## may 06

allowed a levy on sales of bricks and concrete masonry products to fund training within the industry

commenced public consultation on Telstra's PSTN and local call service undertakings

authorised joint marketing of PNG gas

conducted nation-wide monitoring of jewellery advertising with state and territory OFTs testing representations of price savings in the lead-up to Mother's Day

settled legal actions wins refunds for some customers who bought website packages from StoresOnline International Inc.

accepted childcare centre divestitures in ABC/Kids Campus merger

decided not to oppose merger between Australian Stock Exchange and Sydney Futures Exchange

issued ladder safety alert

instituted proceedings against Skippy Australia Pty Ltd for supplying baby goods not compliant with the mandatory safety standard and the companies refund policies

granted interim authorisation to Qantas—Orangestar cooperation agreement

accepted court enforceable undertakings from the Northern Rivers Gestalt Institute Incorporated over an attempted price fixing across Australia for Gestalt counselling training services

James Hardy withdrew its notification

Published interim determination for an arbitration relating to the supply of the ULLS from Telstra to Chime Communications, a subsidiary of iiNet

## june 06

investigated baby-dummy choking hazard claims

Australian Competition Tribunal rejects Telstra's proposed price for the line sharing service

issued final decision approving a significant gas transmission investment in Victoria

denied authorisation to a fruit marketing and royalty scheme that included provisions to limit the number of fruit trees sold to growers

issued new merger process guidelines

completed initial assessment of AGL and Alinta acquisition proposals

issued draft decision to reject Telstra's ULLS monthly charges undertaking which proposed a \$30 average charge

annual reports *Telecommunications competitive safeguards* and *Changes in prices paid for telecommunications services* tabled in parliament

issued sixth Telstra accounting separation current cost report

launched *Scams, frauds and your business*, the latest of the ACCC's Competing Fairly Forums at COSBOA National Small Business Summit

issued *Trade practices start-up checklist for small business*

issued *Franchisee start-up checklist*

issued *Snapshot of broadband deployment* showing take-up of broadband services has passed three million connections

announced decision to reject access undertakings submitted by Hutchinson Telecommunications and Hutchinson 3G for the supply of MTAS on its networks

granted authorisation for Australian Direct Marketing Association's code of practice

Woolworths' agreements with liquor licence applicants anti-competitive

allowed a joint venture to develop Brisbane thoroughbred horse racing facilities

proposed to allow corporate bookmakers to collectively negotiate

issued a draft notice to revoke a notification lodged by the Australian Baseball Federation

Australian Competition Tribunal revokes taxi notification

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PERFORMANCE

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# part three management and accountability



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

### this year the ACCC

- > received total government funding of \$91.8 million, including an additional year's funding for the AER, funding for the implementation of the Dawson amendments to the Trade Practices Act and additional funds relating to its regulatory role in telecommunications
- > employed 506.6 full-time equivalent employees
- > undertook organisational restructures and created a Communications Group comprising Compliance and Regulatory Operations Branch, and Convergence, Coordination and Monitoring Branch; created the Regulatory Development Branch; and restructured its Gas and Electricity branches into Network Regulation North, Network Regulation South, and Markets branches in the newly instituted AER
- > recruited 38 graduates for its 2006 graduate training program
- > had its fifth workplace agreement, *ACCC Certified Agreement 2006–08* certified
- > upgraded its corporate records management system from TRIM Captura to TRIM Context; implemented an online recruitment portal, NGA.net
- > undertook developments to enhance the website for the AER, Product Recalls Australia, *Consumers Online* and *ScamWatch*
- > significantly increased its staff training and development activity
- > undertook a biennial staff survey
- > entered into an agreement to lease new office accommodation for its national office in Canberra

### the Australian Competition and Consumer Commission

The ACCC comprises the chairman, deputy chair and five full-time members. They were appointed by the Governor-General for terms of up to five years after a majority of state and territory governments had supported the selections. Mr Steve Edwell (23 May 2005) and Mr Geoff Swier (30 June 2005) were appointed associate commissioners on an ex-officio basis. See appendix 4 for profiles and photographs of commissioners.

## the Australian Energy Regulator

The AER commenced on 1 July 2005. It is an independent statutory authority and a constituent part of the ACCC. Its staff are employed by the ACCC. Mr Steve Edwell was appointed chairman of the AER for three years from 23 May 2005, and as a member for five years. Mr Edward Willett was appointed full-time Commonwealth member until 19 January 2008 (this appointment will be served concurrently with his ACCC appointment). Mr Geoff Swier was appointed part-time state/territory member until 29 June 2008. See appendix 5 for profiles and photographs of members.

## decision-making structure

The ACCC's decisions are made at a meeting of the commissioners held once a week and otherwise as necessary. **External scrutiny**—the ACCC is accountable for its activities through the courts, tribunals, parliament and the Commonwealth Ombudsman.

The ACCC held 58 formal meetings and considered 363 formal papers dealing with matters under investigation, litigation, mergers, access, adjudication, submissions to inquiries, compliance and education strategies and received recommendations from its committees.

The AER's decisions are made at meetings of members, held once a fortnight and otherwise as necessary. The AER held 24 formal meetings in its first year of operation.

## committees

The ACCC has **five subject matter committees**: communications, mergers, enforcement, adjudication, and transport and prices oversight. The litigation and energy committees were discontinued due to other arrangements taking their place. It has **six function committees**: corporate governance, information and liaison, internal audit, information and communications technology, people and resources and occupational health and safety. It also has an **employer-employee consultative committee**, comprising elected staff representatives, management representatives and representatives of unions.

## subject matter committees

<b>enforcement</b>	David Smith (chair), Graeme Samuel, Louise Sylvan, Jennifer McNeill, John Martin—oversees the ACCC's enforcement program; recommendations are referred to the full commission for decision; meets weekly
<b>mergers</b>	Stephen King (chair), Graeme Samuel, Louise Sylvan, Jennifer McNeill—considers most merger matters and reports to the full commission; meets weekly
<b>communications</b>	Edward Willett (chair), Graeme Samuel, Louise Sylvan, David Smith—coordinates the ACCC's media and telecommunications regulatory functions, including enforcement of competition notices with the enforcement committee; meets as required
<b>transport and prices oversight</b>	John Martin (chair), Stephen King—oversees pricing and regulatory issues in transport and other industries; meets as required
<b>adjudication</b>	Louise Sylvan (chair), Jennifer McNeill, Stephen King, John Martin, Edward Willett—considers authorisations and notifications; meets weekly

## function committees

<b>corporate governance</b>	Chairman, deputy chair, commissioners, chief executive officer, and senior staff; meets quarterly
<b>information and liaison</b>	Chief executive officer and staff involved in the ACCC's communication activities ANAO representatives, independent auditor and senior staff; meets monthly
<b>internal audit</b>	Chief executive officer, ANAO representatives, independent member and senior staff; meets quarterly
<b>information and communication technology</b>	Senior staff; meets quarterly
<b>people and resources</b>	Senior staff; meets quarterly
<b>occupational health and safety</b>	Staff representing unions and workplaces; meets quarterly

# terms of appointment

appointed until

ACCC		
chairman		
Graeme Samuel		31 July 2008
deputy chair		
Louise Sylvan		31 July 2008
commissioners		
Stephen King		6 June 2009
David Smith		6 June 2009
John Martin		6 June 2009
Jennifer McNeill		21 July 2007
Edward Willett		19 January 2008
ex-officio members		
Geoff Swier		29 June 2008
Steve Edwell		22 May 2010

AER		
chairman		
Steve Edwell		22 May 2008
Geoff Swier (part-time)		29 June 2008
ex-officio		
Edward Willett		19 January 2008

## financial management

See also pp. 23–5 in the Performance section of this report.

The financial management of the ACCC is undertaken on a sound basis of budget setting, variance analysis and reporting in a context of coordinated corporate planning, business unit planning and financial planning. Managers are provided with internal budget guidance that articulates the financial management arrangements, including framework and timetable details. Financial monitoring and reporting is undertaken on a monthly basis with more detailed reviews each quarter.

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

The ACCC received audit clearance of its financial statements from the ANAO on 29 August 2006. The ANAO issued an unqualified report with no findings being made regarding its audit of the financial statements. The ACCC has also successfully implemented the Australian Equivalents to International Financial Reporting Standards.

## purchasing performance

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

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

The ACCC continually improves the efficiency and effectiveness of the procurement to payment processes including contract management. The ACCC aims to balance the benefits of goods and services to be purchased against their costs and risks so that the best value for money is achieved.

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

## fraud control

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

During 2005–06, a fraud risk assessment was undertaken and an updated Fraud Control Plan has been produced.

## consultants

During 2005–06, 82 new consultancy contracts were entered into involving total expenditure of \$3.7 million. Twenty-three ongoing consultancy contracts were active during 2005–06, involving total expenditure of \$0.7 million. Full details of consultancy contracts let with a value of \$10 000 or more are available on the ACCC website.

A total of \$7 683 637 was paid by the ACCC for advertising during the 2005–06 financial year. A listing of payments to organisations in excess of \$1500 appears below.

organisation	description	\$
Universal McCann	tobacco education campaign	7 668 197
HMA Blaze	public notices, expressions of interest	14 685

## people management

The ACCC's budgeted **staff level** for 2005–06 was 533 (481 in 2004–05), including seven full-time holders of public office (commission members). The total average full-time equivalent employees during the year were 506.6 people (up from 457.1 in 2004–05). The difference between the budgeted and actual staff level is, in part, a result of the delay in legislative amendments affecting the ACCC's mergers and adjudication functions and delays in gearing up for the expanded telecommunications regulatory regime. The total number of staff employed (including commission members, part-time employees, employees absent on leave and secondments) at 30 June 2006 was 596 (519 on 30 June 2005). There were 146 commencements and 64 cessations during the year. See p. 146 for staffing overview.

Staffing statistics and payroll information is managed in an Aurion database. Enhancements to the database mean that the data can be used for salary budget forecasting and for queries regarding workforce planning.

The ACCC implemented NGA.net, an online recruitment portal and suite of application management tools. This system provides prospective applicants with details of ACCC vacancies through the ACCC's internet site. Applicants are able to register and submit their applications online. This system provides considerable efficiencies in the management of recruitment and associated communications. It reduces the administrative and processing workload associated with the recruitment function.

In conjunction with implementation of Superannuation Choice for 1 July 2006, the ACCC determined that PSS (Accumulation Plan) would be its default employee superannuation fund, and its employer contribution on behalf of all employees would be at the same rate as the mandated rate for employer contribution to PSS (AP)—15.4 per cent.

The ACCC's learning and development strategy for the year continued to focus on providing managers and staff with systems for planning and delivering structured professional development. These initiatives included updates to the professional development journal; an orientation program for new executive level employees; 22 multimedia productions as part of the 'Get Smart' knowledge capture initiative; delivery of management and supervision training to managers and supervisors or potential supervisors; and the advanced investigation/litigation courses. Training and development expenditure in 2005–06 totalled \$2 335 655.

This comprised salaries of staff on development activities (\$892 844); salaries of the learning and development unit employees (\$447 465); courses and conference fees and study assistance (\$582 085); costs of staff travel for training purposes (\$275 768); and venue hire and various other costs (\$137 494). These costs represent 4.97 per cent of the annual payroll, up from 3.73 per cent in the previous year. There was a 32 per cent increase in the number of staff days spent attending learning and development activities compared to the previous financial year.

### courses and seminars, number of events for 2004–05 and 2005–06

type	number of events	
	2004–05	2005–06
<b>operational skills and knowledge</b> (this incorporates the 'operational skills', 'IT skills' and 'personal development' classifications of previous years)	904	<b>1093</b>
<b>legal skills and knowledge</b>	174	<b>197</b>
<b>applying the Act</b> (this includes the 'investigations skills' course which was reported under 'legal' in previous years)	82	<b>159</b>
<b>economics and regulatory</b>	86	<b>275</b>
<b>leadership supervision and management</b>	450	<b>636</b>

Employees are eligible for **study assistance** in the form of study leave and partial reimbursement of tuition fees for approved courses of study. During the year 70 employees participated in the study assistance scheme, mainly for postgraduate studies in economics, law and business. The ACCC reimbursed \$77 035 in fees and granted leave with pay to attend lectures and tutorials equivalent to \$93 654 in paid time.

The ACCC recruited 19 **graduates** at the beginning of 2005; all 19 remained with the ACCC after the program was completed and gained promotions. The ACCC recruited 38 graduates for its 2006 program (four of whom were recruited mid-year). Each will undertake three rotations during the 10-month graduate training program.



**International exchanges:** Vanessa Young from the NZ Commerce Commission concluded a six-month secondment to the ACCC in April 2006. The 12-month staff exchange between the ACCC and the Canadian Competition Bureau, involving Joanne Palisi from the ACCC and Colette Downie from the Bureau, concluded in January 2006. A 12-month staff exchange between the ACCC and the United Kingdom Office of Fair Trading started in October 2005. Tarnya Guest from the Sydney office and Jonathon Taylor from the OFT were the selected participants.

During the year productivity improvements associated with the ACCC certified agreements 2004–05 and 2006–08 were progressively implemented, such as a review of the general classification structure and efficiencies arising from the implementation of the legal services review.

Under the ACCC certified agreement, in accordance with the *Public Service Act 1999*, staff can request a review of employment action or decision that affects them. No such requests were received this year.

The ACCC's formal employee consultative body is the **Workplace Relations Consultative Committee** (WRCC) with eight staff representatives (elected by staff), two employee organisation representatives requested by staff, and a management representative. The WRCC met during the year for consultation on a replacement agreement. On 9 December 2005 the *ACCC Certified Agreement 2006–08* was certified by the AIRC. Productivity improvements were identified in, and costed for, three areas: business processes and systems, business and structural changes and workforce planning. The agreement provided for a 12 per cent salary increase for employees across three years. Employees covered by the agreement received a 4 per cent **salary increase** in December 2005.

The ACCC's biennial employee attitudes survey was conducted by ClientWise Pty Ltd in March 2006. This survey has been run since 1994 and contributes significantly to employee–employer communication. Seventy-one per cent of employees responded—sufficient to generalise results to the organisation as a whole. Organisational health scores (commitment, satisfaction, culture, challenges) were, on average, positive. Small positive and small negative shifts in certain measures were not statistically significant. The survey highlighted significant improvements in a number of areas (managerial relations, employee growth, training options) since the 2004 survey. Among other suggestions, ClientWise recommended that the ACCC focus on regional employee opportunities.

SES employees are employed under Australian workplace agreements (AWAs). Five new AWAs were offered to non-SES employees.

**Performance pay** is not paid to non-senior executive staff. They are eligible instead for the special salary level scheme (criteria for which are in the certified agreement); during 2005–06, 33 staff received additional salary under this scheme. Performance pay was paid to 21 senior executive staff at band 1 and band 2 levels for a total of \$204 676.

The ACCC has an **occupational health and safety** agreement and policy with representatives elected for all workgroups, as well as first aid officers. Professionally qualified assessors conducted ergonomic assessments for new employees and for those employees requiring review due to injury. Influenza vaccinations were made available to all employees. In May employees were offered the opportunity to participate in a 170-day walking program. One hundred and forty staff took up this challenge which will finish in October 2006. Four injury incidents were reported in 2005–06.

The ACCC's **Comcare premium** for 2005–06 was set at 1.11 per cent of total salaries, compared with the all agencies combined rate of 1.77 per cent. The premium for 2006–07 has been set at 0.95 per cent of total salaries, compared with the all agencies combined rate of 1.77 per cent. This continues a three-year trend of achieving lower Comcare premiums, and having lower premiums compared with the average rate for Commonwealth agencies.

The **employee assistance program** was used by 17 staff and two family members. It also provided mediation services and assistance to managers.

The ACCC has **equity and diversity** officers throughout the organisation who distribute information and offer support to staff, and the workplace diversity coordinator regularly publishes articles in the ACCC's weekly staff newsletter. The ACCC also has workplace harassment contact officers in each work location.

## information and communications

2005–06 was the second year of a three-year contract with Exceed Systems Integration Pty Ltd to provide facilities management and help desk services for the ACCC's information technology environment. The ACCC enjoys a high level of user satisfaction as demonstrated by quarterly client satisfaction surveys. After the introduction of high speed data links to all offices, the consolidation of technologies to improve functionality, security and performance became a key focus for 2005–06. The ACCC updated its ICT Risk Management Plans and ICT Security Plans in line with the revised government security guidelines. This was followed by the implementation and upgrading of a number of security tools relating to spam management, email security classification, anti-spyware and Blackberry filtering processes.

The ACCC continued to review and refine its business applications and systems. The reporting and corporate knowledge information tool (TRACKIT) has been modified in line with evolving business needs. This application enables the ACCC to track matters to ensure timely progression and management. Work is continuing on the introduction of a case management application (CASEBOOK) to support our legal processes. Additional servers were also installed nationally to improve the performance of our records management application, TRIM Context.

The electronic document management software (EDMS) used by the ACCC was upgraded from TRIM Captura to TRIM Context in November 2005. The upgrade was combined with staff training nationally and will enhance our ability to meet the National Archives of Australia guidelines for electronic document management. A national file sentencing project was completed during the year, resulting in all files up to 2000 being sentenced for disposal: 6180 files were created (compared with 6780 in 2004–05) and 62 813 new records were created in the ACCC's EDMS and TRIM (compared with 71 252 in 2004–05).

During the year, changes were made to the ACCC website to reflect new procedures for the mergers public registers (launched June 2006) and changes to authorisations and notifications processes (launched April 2006). The websites *ScamWatch* and *Consumers Online* were transferred from the Department of the Treasury to new hosting arrangements under the ACCC. *ScamWatch* has been redeveloped to be compatible with our other sites and will be launched in the latter part of 2006. The intranet search engine was enhanced to enable staff to search across all ACCC information systems from a single entry point. The web team logged 226 hours on staff help activities and resolved 396 feedback requests.

The **library service** focuses on electronic resources and provides research services. Services are available to ACCC staff across Australia from the national office—1316 requests for information were received (373 were followed up with research activity), 3635 items were borrowed from the collection, 362 items were acquired on inter-library loan, 2556 journals were circulated to staff and 772 new items were added to the collection.

Eighty-three new publications for business, industry and consumers were produced during the year. The highlights of the **publishing program** included: an information campaign to assist consumers understand petrol pricing in Australia; a new range of information products to help buyers and procurement agents detect and report cartels in the private and public sectors; and information for new franchisees on their rights and obligations under the Franchising Code of Conduct when starting their business. For more information see appendix 3.

Twenty-seven statutory and voluntary **public registers** are maintained, including for s. 87B undertakings, authorisations, notifications, mergers and acquisitions, access to services, product safety conferences and telecommunications (competition notices, access undertakings and agreements, tariff information etc.). See appendix 2 for more information.

## legal services

The legal service requirements of the ACCC and AER are provided by in-house legal staff and a panel of law firms. Panel firms for the ACCC are the Australian Government Solicitor; Corrs Chambers Westgarth; Phillips Fox; and Thompson Playford.

The ACCC's panel firms provide legal services in both the enforcement and non-enforcement areas of the operations of the ACCC and the AER. The current panel arrangements are in place for an initial period to 2007.

A new organisational structure for the provision of in-house legal services was introduced in 2005. The Legal Group of the ACCC now consists of two units. The Trade Practices and Litigation Unit focuses on the provision of legal services to the enforcement, mergers, and adjudication branches of the ACCC. The Corporate and Regulatory Law Unit focuses on the provision of legal services to the ACCC and the AER on corporate in-house issues and regulatory matters.

## other governance activities

During the year the revised ACCC **service charter** was published and made available from each office and online. The ACCC received 17 compliments and two complaints from the public on its standards of service during the year.

Because public confidence in the integrity of the ACCC and its employees is vital, every employee is asked to undertake an annual **conflict of interest** self assessment. As a general rule, gifts and hospitality are not accepted because they could compromise, or be perceived to compromise, the integrity of the ACCC, its office holders and employees. When accepted, gifts and hospitality must be declared using an online register.

The ACCC orientation programs, various training events and policy and procedure documents remind employees of their conduct responsibilities set out by the **APS code of conduct**. A series of scenario-based training sessions was held for managers on the APS values. During the year, one formal misconduct investigation was completed; a breach of the code was found and a reprimand sanctioned.

The **Audit Committee** met four times during 2005–06 to oversee and control internal audit activities, risk management, fraud control, business continuity planning, adoption of the International Accounting Standards and the financial statements. During the year audits were undertaken on travel expenditure and arrangements, purchasing and procurement and FMA Act compliance. While no major control weaknesses were identified, some improvements were suggested which have been implemented.

The **Commonwealth disability strategy** is about making sure that Commonwealth departments remove barriers that stop people with disabilities having access to policies, programs and services. Through its disability action plan the ACCC has identified that it has three core business roles of regulator, purchaser and employer and has formulated actions to address its responsibilities regarding people with disabilities in these roles. The ACCC's internet site complies with most priority one requirements of the WWW Consortium web accessibility initiatives.

**Nine offices are maintained:** one in each state and territory capital, and Townsville. Public contact hours for Canberra, Melbourne and Sydney offices are 8.30 am to 5.30 pm each weekday. For other offices it is 9 am to 5 pm.

## ecologically sustainable development

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

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

## measures taken to minimise the ACCC's impact on the environment

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

- > buying 10 per cent green electricity for the Canberra office
- > procuring office equipment with low energy use and power-save modes
- > recycling paper and cardboard products including the pulping of classified waste and use-again office envelopes
- > using LCD computer screens instead of CRT screens
- > using recycled toner cartridges where possible
- > disposing of toner cartridges through a recycling outlet
- > implementing duplex printing and photocopying
- > disposing of mobile phones and batteries through a recycling outlet
- > servicing vehicles in accordance with manufacturers' specifications
- > using E10 fuels for fleet vehicles, where possible.

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

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

The ACCC has recently committed to the leasing of a new building for its Canberra office. The building will be designed and built to achieve a 4.5 star Australian building greenhouse rating. This is the recommended best practice standard for government office accommodation. Opportunities for further environmentally sound practices will be identified and implemented as the building is built, and later occupied. This will include measures to reduce power and water consumption, collect rain water for grounds maintenance, increased recycling facilities and solar contributed hot water systems.

## energy management

The ACCC's overall energy consumption is in line with the Australian Government energy consumption targets. In three of the ACCC's leased office spaces, there are mechanisms to measure actual electricity use allowing the ACCC to monitor, profile and diagnose energy consumption more effectively.

## staffing

### temporary staff as at 30/6/06

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	total 30/6/06	total 30/6/05
female	10	2	3		2	1				18	24
male	13		7	1		1				22	26
total 30/6/06	23	2	10	1	2	2				40	
total 30/6/05	30	4	10	1	4				1		50

### part-time staff as at 30/6/06

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	total 30/6/06	total 30/6/05
female	18	11	6	6		3			1	45	41
male	5	1	7		1	1				15	10
total 30/6/06	23	12	13	6	1	4			1	60	
total 30/6/05	20	14	8	6		3					51

senior executive staff as at 30/6/06

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	total 30/6/06	total 30/6/05
<b>band 1</b>											
female	3		2							5	5
male	9	1	5	2						17	14
<b>band 2</b>											
female	1		1							2	2
male	2		2							4	3
<b>band 3</b>											
female											
male	1									1	1
total 30/6/06	16	1	10	2						29	
total 30/6/05	16	1	7	1							25

## total staff as at June 2006

	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	total this year	total last year
<b>graduates total</b>	10	7	12	1	2	1			1	34	19
female	3	6	4	1					1	15	10
male	7	1	8		2	1				19	9
<b>APS1 total</b>	7		1		2					10	7
female	3		1		2					6	6
male	4									4	1
<b>APS2 total</b>	3	5	2	2		1		1		14	12
female	2	5	1	2		1		1		12	10
male	1		1							2	2
<b>APS3 total</b>	17	1	6	1	1	3			1	30	27
female	13	1	5	1	1	3			1	25	23
male	4		1							5	4
<b>APS4 total</b>	42	7	12	4	3	3				71	59
female	21	6	6	2	2					37	37
male	21	1	6	2	1	3				34	22
<b>APS5 total</b>	41	12	18	4	1	2	2	1	2	83	70
female	25	6	11	1	1	1		1	2	48	41
male	16	6	7	3		1	2			35	29
<b>APS6 total</b>	34	13	38	7	6	6	2		3	109	105
female	18	5	13	5	3	4			3	51	47
male	16	8	25	2	3	2	2			58	58
<b>EL1 total</b>	41	14	41	9	7	3		1	1	117	112
female	26	5	17	5	2			1		56	50
male	15	9	24	4	5	3			1	61	62
<b>EL2 total</b>	38	13	31		1	5	1		1	90	75
female	13	7	8			2				30	25
male	25	6	23		1	3	1		1	60	51



	Canberra	Sydney	Melbourne	Brisbane	Perth	Adelaide	Hobart	Townsville	Darwin	total this year	total last year
<b>SESB1 total</b>	12	1	7	2						22	19
female	3		2							5	5
male	9	1	5	2						17	14
<b>SESB2 total</b>	3		3							6	5
female	1		1							2	2
male	2		2							4	3
<b>SESB3 total</b>	1									1	1
female										0	0
male	1									1	1
<b>APS total</b>	249	73	171	30	23	24	5	3	9	587	511
female	128	41	69	17	11	11		3	7	287	255
male	121	32	102	13	12	13	5		2	300	256
<b>non-APS total</b>	4	1	4							9	8
female	2									2	2
male	2	1	4							7	6
<b>total staff</b>	253	74	175	30	23	24	5	3	9	596	519
female	130	41	69	17	11	11		3	7	289	257
male	123	33	106	13	12	13	5		2	307	262

The full-time equivalent employment for 2005–06 was 506.6

The number of actual employees on 30 June 2006 was 596, including 9 non-APS staff and 37 inoperative staff (long-term leave both paid and unpaid or secondment to other organisations).

## equal opportunity target groups as at 30/6/06

	APS 1–2 per cent of total		APS 3–4 per cent of total		APS 5–6 per cent of total		EL 1–2 per cent of total		SES & POH per cent of total		total	
non-English speaking												
this year	9	1.5	16	2.7	20	3.4	30	5.0	2	0.3	77	
last year	2	0.4	9	1.7	20	3.9	28	5.4	3	0.6	62	
people with disabilities												
this year	0.0		2	0.3	2	0.3	4	0.7	0.0		8	
last year	0.0		1	0.2	2	0.4	4	0.8	0.0		7	
women												
this year	33	5.5	62	10.4	99	16.6	86	14.4	9	1.5	289	
last year	26	5.0	60	11.6	88	17.0	74	14.3	9	1.7	257	
Aboriginal and Torres Strait Islanders												
this year	2	0.3	0.0		0.0		0.0		0.0		2	
last year	1	0.2	0.0		0.0		0.0		0.0		1	
total staff												
this year	58	9.7	101	16.9	192	32.2	207	34.7	38	6.4	596	
last year	38	7.3	86	16.6	175	33.7	187	36.0	33	6.4	519	