



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Accountability Framework for Investigations

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Australian Competition and Consumer Commission
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1. Introduction

The Australian Competition and Consumer Commission (ACCC) is an independent Commonwealth statutory authority responsible for enforcing the [Competition and Consumer Act 2010](#) (CCA) and a range of additional legislation, promoting competition, fair trading and product safety, protecting consumers and regulating national infrastructure.¹ The ACCC has offices located in each Australian state and mainland territory.

The role of the ACCC is not to act as a complaints resolution agency. It cannot act on behalf of consumers or businesses to resolve their individual disputes with businesses or organisations.

This document outlines the governance, management structures, systems and processes that enable the ACCC to exercise its powers as a competition and consumer regulator in a transparent and accountable manner.

Some of these systems and processes bind all agencies of the Australian Government, such as processes for the selection and appointment of staff and the use of legal services. Others are particular to the ACCC, such as many of the processes that the ACCC undertakes in exercising its enforcement functions. The full spectrum of these accountability and transparency approaches, spanning from the establishment of the ACCC, the appointment of Commissioners and staff, corporate planning, investigative procedures, and the public reporting of decisions and outcomes are discussed in the sections to follow.

¹ The ACCC works closely with another independent statutory authority, the Australian Energy Regulator (AER). The AER is also established under the CCA. The AER is Australia's national energy regulator and its functions are set out in national energy market legislation and rules. These functions relate mostly to electricity and gas markets in eastern and southern Australia. While specific functions vary according to the legislated responsibilities that underpin the ACCC and AER, the two bodies share many common objectives, both working to protect, strengthen and supplement competitive market processes. The AER and ACCC also share resources and staffing and some of the ACCC's operational guidelines and policies are joint ACCC and AER publications.

2. Background

Australia has a federal system of government with six states and two territories. Australia's national government is often referred to as the Australian Government. Each of the states and territories have their own governments and parliaments. References to 'whole of government' legislation refers to legislation that applies to all Australian Government agencies, including the ACCC.

Australia has a common law legal system. A key feature of this system is that judges' decisions in cases are informed by legal precedent, where decisions are informed by previous cases. Australia also has an adversarial court system, where two opposing parties present their cases before an impartial judge or jury. Laws are made by the federal and state parliaments, and an independent judiciary interprets and applies them.

Australia's highest court is the High Court of Australia, which interprets and applies the laws of Australia, decides cases of federal significance, and hears appeals from the federal, state and territory courts. Australia has a number of Federal courts, including the Federal Court of Australia. In addition, each state and territory has its own independent court system.

Matters dealt with by the ACCC that proceed to litigation are in most cases heard before the Federal Court of Australia. The Federal Court has jurisdiction for most civil matters arising under Australian federal law and some summary criminal matters.

The Australian Competition Tribunal, a tribunal administered by the Federal Court, hears applications for the review of determinations by the ACCC to grant, deny or revoke merger and non-merger authorisations. Certain decisions by the ACCC in respect of notifications and other functions are also reviewable by the Tribunal.

2.1 Australia's competition legislation—the Competition and Consumer Act

The CCA came into force in January 2011, superseding the *Trade Practices Act 1974* (TPA). The object of the CCA is to enhance the welfare of Australians through the promotion of competition, fair trading and provision for consumer protection.

2.2 Enforcement provisions: detecting, pursuing and stopping anti-competitive conduct

Part IV of the CCA contains the substantive provisions of the Act that protect and enhance competition. It contains provisions against:

- anti-competitive contracts, arrangements and understandings
- price-fixing and other cartels
- monopolisation and misuse of market power
- anti-competitive mergers
- resale price maintenance, and
- secondary boycotts affecting competition.

2.3 Exemptions under the CCA

Part VII of the CCA contains provisions that allow businesses to apply for exemption from the competition provisions where the conduct or arrangements that might otherwise breach the CCA should nevertheless be allowed provided they are likely to result in a net public benefit, and/or are unlikely to substantially lessen competition.

Businesses may apply for an 'authorisation' or lodge a 'notification' to obtain the exemption. The relevant process depends on the proposed conduct being engaged in. More information about authorisations and notifications is available in chapters 7 and 8.

The ACCC also has the power to issue class exemptions which provide a 'safe harbour', so businesses can engage in the conduct specified by the class exemption without breaching the competition law. This removes the need for eligible businesses that propose to engage in the specified conduct to separately seek an authorisation or lodge a notification with the ACCC.

Section 51 of the CCA contains other general exemptions which apply in relation to restrictive trade practices. These include conduct that is specified in, and authorised by federal legislation or by state and territory legislation, some matters relating to remuneration and conditions of employment, provisions requiring a person to comply with standards specified by the Standards Association of Australia, and some arrangements between non-corporate partners relating to terms of partnership and conduct of the partnership business. Section 51 is limited in scope, and has been drafted carefully to ensure that the exemptions provided are not interpreted as having a broad application.

2.4 The Australian Consumer Law

Australia has a strong history of protecting consumer rights, with the former TPA paving the way for the successful implementation of nationally consistent consumer laws.

In 2011, the Commonwealth, state and territory governments all adopted the Australian Consumer Law (ACL) which is set out in Schedule 2 of the CCA. The ACL is a single national law which ensures that consumers have the same protections, and businesses have the same obligations and responsibilities across Australia. State and territory consumer affairs and fair trading agencies have concurrent responsibilities for administering the ACL and may often pursue more localised matters.

The ACL is complemented by a number of consumer regulations specific to particular products, markets or industries. Examples at the national level include the Food Standards Code and the [Therapeutic Goods Act 1989](#). Examples at the state and territory level include Acts and regulations addressing electrical product safety, the operations of motor vehicle dealers and the licencing of tradespeople. An array of bodies administer and enforce these regimes. In some cases, dedicated specialist agencies are responsible. However, in the states and territories, the ACL regulator will also often have responsibility for enforcing some specialist regulations, in addition to the ACL.

The ACCC also regulates mandatory industry codes that are prescribed under the CCA. Current mandatory industry codes include Franchising, Horticulture, Wheat Port, Oil and Unit Pricing. The ACCC also provides guidance and assistance to industries looking to develop their own voluntary industry codes.

In recognising that mandatory codes can impose additional red tape burdens on business, mandatory codes will only be prescribed in very limited circumstances where there is a compelling case for intervention, supported by robust evidence. The decision-making process involves public consultation and detailed analysis to determine whether a code can provide the right regulatory support without imposing unnecessary burden on business. The 2017 Treasury publication [Industry Codes of Conduct—Policy Framework](#) includes information to assist industry stakeholders to understand the role of industry codes, when they might be appropriate, and the factors that the Government takes into account before prescribing them in law.

3. Independent ACCC, Commission, staffing and structure

The ACCC structure is established under the CCA and consists of the Chair and Commissioners, who are assisted by ACCC staff.

3.1 ACCC established under statute

The ACCC is an independent statutory authority whose role is to enforce and administer the CCA and a range of additional legislation which collectively promote competition, fair trading, product safety and regulate national infrastructure. The ACCC's powers and functions, as well as its governance structure, are drawn from various provisions within the CCA.

3.2 Appointment of Chair and Commissioners through a transparent and consultative process

The ACCC's Chair and Commissioners are appointed by Australia's Governor-General for a fixed term of up to five years. Appointments are made following a recommendation by the relevant Minister that the nominated person qualifies for the appointment on the basis of their relevant knowledge or experience, and after consultation with all Australian states and territories. The process for consultation and approval by state and territory governments is set out in the [1995 Intergovernmental Code of Conduct Agreement](#).

The Governor-General may also appoint a Deputy Chair to the Commission, and the Minister may appoint Associate Commissioners to the Commission.

The Chair and Commissioners are expected to adhere to the [ACCC's Code of Conduct for Commission Members and Associated Members](#).

Refer to the [ACCC's website](#) for information on the current membership of the Commission.

3.3 Governance structure—separation of decision making

The ACCC's governance structure is outlined in the CCA. The Commission, comprised of the Commissioners, is responsible for making decisions under the CCA, and other decisions relevant to its powers and functions, unless the Commission has delegated its powers to others or where legislation provides for an individual Commissioner to be the decision maker.

ACCC staff are responsible for conducting investigations and making recommendations to the Commission on matters before the Commission, as well as carrying out other day to day functions of the ACCC as an agency. ACCC management and staff are employed under the [Public Service Act 1999](#) (PS Act).

The Chair of the ACCC is the agency head of the ACCC under the PS Act and the [Public Governance, Performance and Accountability Act 2013](#) (PGPA Act). The Chair delegates most of their powers as agency head under the PGPA Act, PS Act and other legislation to the Chief Operating Officer and other ACCC senior positions.

The ACCC's Commission meets regularly, usually weekly, to make decisions, including on matters investigated by the ACCC, under the CCA. The meetings are usually chaired by the Chair (or the Deputy Chair) and must be attended by at least three full time members of the Commission (including the Chair or Deputy Chair). The Commission considers and provides direction on matters brought before it by ACCC staff, which may include proposed enforcement action (including whether to institute court

proceedings in a matter), reviews of merger cases, authorisation applications and notifications, and decisions about access to infrastructure facilities.

The ACCC has a number of specialist committees that assist the Commission in its decision making functions. These include the areas of compliance, enforcement, mergers, communications, adjudication, regulated infrastructure and consumer data. These committees comprise full-time Commissioners and consider particular issues arising in the respective subject areas to make decisions and/or recommendations about appropriate courses of action to the Commission.

The ACCC's current organisational chart can be found on the [ACCC's website](#).

3.4 ACCC employees employed by the Australian Public Service and covered by the Code of Conduct and other whole of government legislation

Staff of the ACCC are members of the Australian Public Service (APS) and employed under the PS Act. As public servants engaged under this Act, ACCC staff must adhere to the [Australian Public Service Code of Conduct](#).

ACCC staff must also follow and abide by Australian Government legislation which ensures Australian Government employees act in an accountable and transparent manner and in the public interest. The PGPA Act, for example, sets out the financial management, accountability and audit obligations of agencies that are financially part of the Commonwealth. This Act requires that public resources are managed efficiently, effectively and ethically, and that proper accounts and records of receipt are kept in respect of any expenditure of public money. In addition, chief executives of Australian Government agencies are accountable to the Commonwealth Finance Minister, who is entitled to full and free access to agencies' accounts and records, subject to any law that prohibits disclosure of particular information.

3.5 ACCC corporate values

The ACCC has identified additional complementary values the ACCC considers are unique and meaningful to its work and culture as an organisation. They are:

- **Independent:** we pursue the interests of the Australian community, objectively and transparently.
- **Expert:** we make timely decisions based on evidence and rigorous analysis.
- **Strategic:** we make best use of our resources by taking considered and targeted action.
- **Trustworthy:** we communicate honestly and directly and act respectfully.

3.6 Employees recruited under a transparent merit based process

Under the PS Act, the recruitment decisions of Australian Government agencies must comply with the PS Act, the [Public Service Regulations 1999](#) and the [Australian Public Service Commissioner's Directions 2016](#).

The PS Act requires that all employment decisions in the APS are based on merit and that all eligible members of the Australian community have a reasonable opportunity to apply for APS employment. Merit-based decisions are required, at a minimum, to be made following an assessment of a person's work-related qualities and the work-related qualities required for efficient and effective organisational performance.

Decisions relating to engagement and promotion require a competitive assessment of the relative suitability of candidates against the genuine requirements of the duties, focusing on the capacity of candidates to achieve outcomes related to the duties. More information on the APS recruitment processes can be found at www.apsc.gov.au.

3.7 Declaration of conflicts of interest by Commissioners and staff

The ACCC Commissioners and staff are required by their respective Codes of Conduct and the PGPA Act to disclose and take reasonable steps to avoid any conflict of interest, real or apparent, in connection with their duties.

The requirements for the Chair and Commissioners to disclose pecuniary interests is set out in s. 17 of the CCA. The ACCC's Code of Conduct for Commission Members and Associated Members contains additional information to assist Commissioners to identify situations for potential conflict and how these should be disclosed.

ACCC staff are required to complete and submit an online conflict of interest self-assessment module within one month of commencing work at the ACCC. Updates are then required annually, and after a change in duties or interests where relevant. In addition, all Senior Executive Service employees provide an annual statement of interests, in accordance with established APS practice.

If, at any time, a Commissioner or staff member identifies an issue of real or apparent conflict of interest, they must bring the issue to the attention of their manager to take appropriate action.

4. Transparent articulation of organisational priorities

Each year the ACCC's corporate and organisational intentions and expected expenditure are published in public documents. The ACCC's outcomes are reviewed and reported in an annual report. The ACCC develops and implements an annual corporate plan to achieve its goals. Activities are tracked and managed using an integrated information management system. All staff contribute to the ACCC achieving its outcomes through an organisation wide individual performance management framework.

4.1 Portfolio Budget Statements

The ACCC, along with all Australian Government agencies, publishes its intended annual expenditure for each financial year in a Portfolio Budget Statement. The projected expenditure is based on the ACCC's expected revenue which is received via allocations through the Australian Government's annual budget processes. Portfolio Budget Statements are publicly available on the internet and are submitted for consideration to the Parliament. As a portfolio agency of the Australian Treasury, the ACCC's Portfolio Budget Statement is published along with other Treasury portfolio agencies on the Treasury's website.

The ACCC publishes an annual report following the end of each financial year. This includes a report on how the ACCC's actual expenditure compares to its projected expenditure as outlined at the commencement of the financial year in the Portfolio Budget Statement. More information about the ACCC's Annual Report is at section 14.7.

4.2 Corporate Plan

The [ACCC Corporate Plan](#) sets out the ACCC's purpose and goals, and the strategies it will pursue in the coming financial year. It also sets out the actions the ACCC will take under those strategies.

4.3 Compliance and Enforcement Policy

Each year, the ACCC reviews and updates its Compliance and Enforcement Policy. This policy is described in more detail at section 5.1. The delivery of outcomes under the policy is reinforced through the ACCC's Corporate Plan and subsidiary business plans.

4.4 Annual business plans

Each division within the ACCC prepares an annual business plan which provides further detail about how the division intends to implement particular strategies and actions aligned with the ACCC's Corporate Plan. These plans assess external and organisational risks associated with undertaking the ACCC's activities. These plans are not made publicly available but are accessible by all ACCC staff. In this way, ACCC staff have available to them information about how each division within the ACCC collectively works towards the organisation's broader goals.

4.5 Activities managed using an information management system

The ACCC uses an information management system to manage its activities. This includes recording activities across all stages of an investigation, from the time an initial assessment is undertaken through to the outcome of any enforcement activity. Staff also use the system to record the time spent on various tasks, allowing the ACCC to manage and prioritise resource allocation across matters and projects.

This system is used to record all Infocentre contacts (see section 5.4). Staff also use the system to manage a range of projects. This integrated system allows the ACCC to run a number of real-time reports which are useful for both internal and external reporting purposes.

4.6 Individual Performance Framework to encourage quality performance and skill development and manage under-performance

All APS agencies are required to have a fair and open performance management framework. The requirements are set out in the [Public Service Commissioner's Directions](#) and the [Australian Public Service Bargaining Framework](#).

The ACCC's performance management framework supports performance at the individual level and provides the opportunity for staff and their supervisors to discuss and confirm their respective roles and contribution to the ACCC's broader business outcomes. The objective of the framework is to enhance productivity, accountability, leadership and learning and development. Central to this process is the completion of an Individual Performance Plan which is followed up by periodic discussions between a staff member and their manager to review progress against agreed goals.

5. Identifying and assessing the conduct of traders under the Competition and Consumer Act

The ACCC ensures its approach to identifying and assessing potential contraventions of the CCA are handled in a consistent and high quality manner.

Transparency and accountability in these processes is achieved through the capture of information from all contacts into an information management system. Guidance is provided to staff to ensure consistency in the approach taken when assessing this information for potential investigation. The ACCC's approach to compliance and enforcement is published in an annual policy and consistent procedures surrounding the assessment and escalation process for matters are overseen by senior management.

5.1 ACCC approach to prioritising compliance and enforcement published in Compliance and Enforcement Policy

The ACCC's approach to achieving compliance with the CCA and the exercise of its enforcement powers and functions are outlined in the [ACCC's Compliance and Enforcement Policy](#) (the policy).

The ACCC reviews its enforcement and compliance priorities annually following consultation with industry, consumer and other stakeholder groups. The policy sets out the principles the ACCC adopts to achieve compliance with the CCA and ACL, and outlines its functions, strategies and tools. The policy also sets out the current priorities and those that the ACCC considers to be enduring.

The ACCC pursues matters that fall outside these priority areas where they meet other factors outlined in the policy, including:

- conduct that is of significant public interest or concern
- conduct that results in substantial consumer or small business detriment
- national conduct by large companies, recognising the potential for greater consumer detriment and the likelihood that conduct of large businesses can influence other market participants
- conduct involving a significant new or emerging market issue or where action is likely to have an educative or deterrent effect, and
- where action will assist to clarify aspects of the law, especially newer provisions of the CCA and ACL.

In undertaking any enforcement action, the ACCC ensures that the action is proportionate to the conduct and resulting harm, and that the ACCC's enforcement powers are exercised independently, in the public interest, with integrity and professionalism, and without fear, favour or bias. This approach is consistent with the Australian Government's Legal Services Directions and Model Litigant Policy, which establish a binding set of rules about the performance of legal work undertaken by, and on behalf of Australian Government agencies. These policies are discussed further at section 10.5.

The policy also outlines the principles underlying the ACCC's approach to compliance and enforcement. They include:

- **Transparency:** the ACCC's decision making takes place within rigorous corporate governance processes and is able to be reviewed by a range of agencies and the Courts, and the ACCC does not do private deals, hence every enforcement matter that is dealt with through litigation or formal resolution is made public.
- **Confidentiality:** in general, investigations are conducted confidentially and the ACCC does not comment on matters it may or may not be investigating.

- **Timeliness:** the investigative process and the resolution of enforcement matters are conducted as efficiently as possible to avoid costly delays and business uncertainty.
- **Consistency:** the ACCC does not make ad hoc decisions; it sets its focus clearly to give business certainty about its actions.
- **Fairness:** the ACCC seeks to strike the right balance between voluntary compliance and enforcement while responding to many competing interests.

5.2 Product Safety Priorities

The ACL governs the safety of consumer goods. Regulation is a shared responsibility between the ACCC and state and territory regulators. The ACCC's approach to minimising the risks posed by unsafe consumer goods, including the principles adopted by the ACCC for prioritising and addressing product safety risks, is outlined in the ACCC's [Product Safety Priorities](#).

The ACCC reviews its Product Safety Priorities annually, following consultation with the ACL and other product safety regulators, industry, consumer and other stakeholder groups. These priorities expand on the Compliance and Enforcement Policy by setting out how the ACCC approaches its product safety role under the ACL. As outlined at section 2.4, the ACL is complemented by a number of other consumer regulations specific to particular products, markets or industries. Where a product safety matter does not fall within the ACCC's scope, these matters are referred to the relevant agency as appropriate.

5.3 Infocentre

The ACCC Infocentre is the primary initial contact point for telephone, email and written enquiries and reports to the ACCC about competition, consumer, product safety and fair trading issues. ACCC staff working in the Infocentre are required to have a good working knowledge of all ACCC functions and current issues.

The Infocentre manages the process to escalate reports for investigation and possible enforcement action. All reports are assessed against the ACCC's Compliance and Enforcement Policy and, where appropriate, escalated for further assessment or investigation. The policy supports Infocentre officers in informing consumers and small business of current and enduring priorities. Where contacts are beyond the jurisdiction of the ACCC or cannot be addressed, Infocentre staff refer their customers to appropriate services or agencies and educate the consumer or business on the options available to them.

5.4 All contacts recorded in the organisation-wide information management system

Following receipt of a telephone call, email or written contact, Infocentre staff record the information received from businesses and consumers in the ACCC's information management system discussed at section 4.5. This system provides a consistent and transparent mechanism for recording all reports, enquiries and subsequent ACCC actions. Any matter that is escalated for investigation is recorded and staff also have access to the system for the purpose of analysing trends, identifying issues for further enquiry and developing compliance responses.

Applications for authorisation, notifications and merger assessments are also recorded in this system.

5.5 Consistent procedures for appropriate contact handling through staff training and guidance

Consistent procedures for handling contacts are ensured through regular and ongoing staff training and guidance. Infocentre staff receive competency based training on the Compliance and Enforcement Policy, quality standards relating to telephone calls and entering information into the ACCC's information management system. New staff work extensively with existing staff in their first few weeks on the job, after which time the quality of their responses to reports and enquiries are monitored on an ongoing basis, providing an effective system of checks and balances. In addition, comprehensive online resources are available to Infocentre staff for use when they are responding to reports and enquiries.

5.6 Cartel and industry whistleblower contacts

In addition to the Infocentre, there are other mechanisms in place for matters to be referred to the ACCC. These mechanisms have been designed specifically to protect cartel and industry whistleblowers and include the [ACCC Immunity Hotline](#), and anonymous reporting tools for the [construction](#) and [agriculture](#) sectors.

5.7 Cartel immunity and cooperation policy

In recognition that cartels usually involve secrecy and deception which makes collusion difficult to detect, the [ACCC Immunity and Cooperation Policy for Cartel Conduct](#) encourages insiders to provide information and enables the ACCC to penetrate the cloak of secrecy. The policy sets out the ACCC process for responding to the application for immunity from ACCC-initiated civil proceedings by those involved in cartel conduct, and how cooperation provided to the ACCC by cartel participants will be recognised. The immunity and cooperation policy does not offer a reward to 'good corporate citizens'. It is a detection tool designed to deliver benefits to all Australians by identifying, stopping and taking action against harmful and illegal behaviour. The [ACCC Cooperation Policy for Enforcement Matters](#) sets out the ACCC's policy on the adoption of leniency in circumstances flowing from cooperation.

5.8 Decisions to escalate and investigate matters made through a considered process and by various Commission specialist committees as appropriate

If a person who contacts the ACCC's Infocentre reports trader conduct which could amount to a breach of the CCA, the matter is considered via a triage process in accordance with the *Compliance and Enforcement Policy*, including the Product Safety Priorities.

If the conduct is initially assessed by the Infocentre as falling within the CCA and it appears to be consistent with the priority areas or factors of the policy, it may then be considered at a weekly meeting of ACCC officers and senior management who assess the allegation against the priority criteria set out in the policy. In referring matters for consideration, the ACCC is informed by intelligence it receives through its Infocentre and more generally that assists in determining emerging issues and issues of broad or significant consumer or competition harm.

If it is decided that a matter requires further investigation, the matter is referred to an investigation team for their review and initial consideration. If the investigation team considers the matter should be escalated to an in-depth investigation stage, the matter is referred to the ACCC's Enforcement Committee, which comprises the ACCC's Chair and a number of Commissioners. The Enforcement Committee meets once a week to consider compliance and enforcement matters and the recommendations made by the ACCC's staff in relation to those matters. The Committee provides direction and guidance on enforcement investigations and litigation. If the Enforcement Committee considers the investigation should be continued, staff then investigate the matter in accordance with the [Australian Government Investigation Standards](#) and ACCC procedures (see section 6). Prior to matter

to proceeding to litigation, the Enforcement Committee will refer the matter for the consideration and decision of the Commission.

The ACCC has published a visual [diagram](#) on its website which outlines the typical stages of an investigation, indicative timeframes for these stages and potential enforcement approaches.

5.9 Assessment of unsafe consumer goods and product related services

The ACCC conducts assessments and investigations of emerging product safety hazards reported by suppliers, usually through mandatory injury reports, or via consumer complaints. In deciding what action to take to minimise risks posed by unsafe goods, the ACCC will prioritise safety issues using a number of factors including whether there is a high risk to public safety due to the potential number or severity of injuries, or users or unable to perceive or safeguard against the risk of the product, or the product is targeted at vulnerable users such as children.

Where an investigation finds potential non-compliance with the ACL, the matter may be considered at a weekly meeting of ACCC officers and senior management who assess the allegation against the priority criteria set out in the Product Safety Priorities. If it is decided that a matter requires further investigation, the matter is referred to an investigation team for their review and initial consideration. The matter will then become an enforcement investigation.

Where an assessment or investigation of the consumer product identifies the need for regulatory intervention, the ACCC can make a recommendation to the responsible Commonwealth Minister to make an information standard or safety standard, impose a product ban, or issue a compulsory recall notice.

5.10 Conducting market studies and industry review

In addition to its investigation functions, the ACCC undertakes in-depth market, sector or industry reviews with the aim of improving our understanding of industry practices and dynamics in those sectors that may impact on competition and consumers. These reviews are published in a formal report to help inform consumers, encourage public debate over competition and consumer matters and inform policy consideration. These may either be self-initiated by the ACCC, or undertaken on direction from the Treasurer.

There are a number of information gathering processes and powers the ACCC may employ when conducting market studies, including the use of compulsory information gathering powers under s. 95ZK of the CCA. These powers may only be used under direction from the Treasurer. Further information is provided at section 10.9.

Market studies often give rise to enforcement investigations which rely on the detailed knowledge of markets obtained in the course of the market study as well as the specific complaints that may be received in the course of an investigation

6. Conducting investigations and reviews

Once a matter has reached investigation stage, the ACCC ensures its investigations are effectively managed and progressed on the basis of robust economic and legal reasoning. Staff guidelines and policies are in place to guarantee consistency and procedural fairness in the approach that staff take to investigate each matter.

6.1 Expert advice provided by the Legal and Economic Division and external law firms

To ensure the ACCC acts on the basis of robust economic, legal reasoning and sound data analysis, ACCC staff receive economic, legal and analytical advice from experts both within and outside the ACCC.

6.2 Economic

The ACCC has a Chief Economist who leads the work of the Economics Group in providing input and advice to ensure sound economics continues to underpin ACCC decisions. The Economics Group provides assistances with investigations, including assisting teams to engage and manage external economists.

6.2.1 Legal

The ACCC receives legal advice from in-house lawyers and an external panel of independent law firms and legal counsel. Within the ACCC, the Legal Group provides in-house specialist legal support and assists in the engagement of external legal service providers.

External legal service providers are engaged via a legal panel to provide assistance in matters where additional resources are needed, or as required under the Legal Services Directions (see section 10.3 for further information). In-house ACCC lawyers oversee the use and management of external service providers.

In accordance with Australian Government policy, the ACCC can only institute court proceedings once it has received written legal advice, usually from an external legal service provider, indicating that there are reasonable grounds to commence proceedings.

6.2.2 Data and analytics

The ACCC's Strategic Data Analysis Unit works with investigation teams to collect and analyse data. The unit helps to ensure that robust data analysis underpins ACCC decision making. The unit also examines algorithms and other source code relevant to investigations.

6.3 Investigation plan developed and followed by trained investigators

To ensure investigations are managed effectively, ACCC investigators develop and follow an investigation plan, which is a centralised resource available for all ACCC staff. Use of the investigation plan provides a framework to ensure that:

- the investigation is conducted in a manner which takes into account the specific goals of the ACCC's intervention, noting that the goals are intended to respond to the perceived harm arising from the conduct

- the investigation addresses all elements of a suspected contravention
- evidence is gathered in an effective manner and is carefully targeted to each element of the suspected contravention
- the activities of multiple staff involved in an investigation are coordinated
- senior managers and relevant Commissioners are kept up to date about the progress of the investigation and any key issues arising, and
- there is a clear record of the investigation in the event that there is a change in the staff conducting the investigation.

ACCC investigators receive targeted training so that they have the necessary knowledge and skills to conduct effective investigations. The ACCC formally accredits its investigation staff against the Australian Government Investigation Standards. These standards require that staff receive a minimum level of relevant training before they are able to exercise the enforcement powers provided by the CCA. Staff in investigation teams who have not attained this accreditation are supervised by a qualified investigator.

6.4 Consistent procedures through staff training and guidance

In addition to the targeted training for ACCC investigators, the ACCC maintains a comprehensive platform of online resources available to assist staff and ensure a consistent approach is taken in the conduct of investigations. These include guidelines, processes, templates, and various tools to assist at each stage of an investigation.

Resources are regularly reviewed and updated as necessary, including following changes to the ACCC's powers, processes or court decisions.

6.5 Evidence handling procedures

To uphold the integrity of any evidence obtained by the ACCC, the ACCC has developed comprehensive evidence handling procedures and staff guidance. A key part of these procedures is the use of a secure evidence storage room and the appointment of Evidence Officers in each ACCC office. The Evidence Officers assist staff to follow strict procedures for the storing, recording, monitoring, reporting and use of evidence. Evidence Officers also have exclusive access to the secure evidence storage rooms. Through these processes, the ACCC maintains a clear chain of custody and any evidence in the ACCC's control is preserved in its original form.

6.6 Language interpreters provided where required

In accordance with the principles of natural justice, the ACCC makes available accredited translators and language interpreters to any parties involved in an investigation as appropriate.

7. Assessing mergers and acquisitions

To ensure that markets work well for consumers, the ACCC reviews mergers and acquisitions to determine whether they are likely to substantially lessen competition. Australian competition law does not require merger parties to notify the ACCC of a proposed merger or acquisition, and merger parties are able to proceed with the transaction without seeking the views of the ACCC. However, this will not prevent the ACCC from subsequently investigating the merger, including making public inquiries to assist its investigation and, if necessary, taking legal action for any suspected breach of the CCA. Therefore parties are encouraged to approach the ACCC regarding any merger that is likely to raise potential competition issues as soon as there is a real likelihood that the proposed transaction may proceed. The ACCC may become aware of a merger proposal through media speculation, from complainants, or from advice from other regulatory bodies.

Merger parties have two avenues for obtaining regulatory consideration of their proposal—through the informal merger review process or by applying for legal protection via a merger authorisation application (discussed further).

7.1 ACCC's approach to assessing mergers and acquisitions

The ACCC has published the following guides which set out the general principles and framework within which mergers and acquisitions are reviewed by the ACCC:

- [Merger guidelines](#)
- [Informal Merger Review Process Guidelines](#)
- [Media Merger Guidelines](#)
- [Merger Authorisation Guidelines](#).

Transactions considered by the ACCC are assessed on a case-by-case basis taking into account the nature of the transaction, the industry and the competitive impact likely to result.

7.2 Assessment of mergers and acquisitions made through considered process and reviewed by a specialist committee as appropriate

There are two avenues by which merger parties can seek clearance:

- **Informal merger review:** where merger parties may seek the ACCC's view on whether the transaction is likely to have the effect of substantially lessening competition (and therefore whether the ACCC would seek to block the acquisition by application to the Federal Court). This process is not underpinned by legislation and does not provide protection from legal action by the ACCC or other parties.²
- **Application for merger authorisation:** where merger parties can apply for legal protection from court action by lodging an application for merger authorisation. The ACCC may only grant authorisation where the proposed acquisition would not be likely to substantially lessen competition, or the likely public benefit outweighs the likely public detriment. Statutory timeframes and processes apply to the ACCC's assessment of applications for authorisation.

² Other parties may also apply to the Federal Court for a declaration or divestiture, and any person suffering loss or damage as a result of a merger that breaches s. 50 can apply for damages.

Transactions which proceed to public merger review are considered and determined by the Mergers Review Committee, comprising the Chair and nominated Commissioners, with the Committee's views being reported to the full ACCC Commission. Complex matters, decisions to institute legal proceedings, accept s. 87B undertakings or to grant or deny merger authorisations, are generally considered by the full Commission.

7.3 Informal merger review process

The informal merger review process is the predominant avenue by which mergers are assessed. Under the informal merger review process, the majority of proposed transactions that the ACCC becomes aware of are 'pre-assessed'. This means they are at low risk of substantially lessening competition and, as such, can be reviewed expeditiously without a public review. Many pre-assessments are conducted on a confidential basis, however, in some cases, the ACCC conducts targeted inquiries with a small number of market participants. The pre-assessment process involves clearance by a General Manager and then by the Commissioner who chairs the Merger Review Committee, reflecting the lower regulatory risk of these types of merger decisions.

Where the transaction is more contentious and potentially more complex the ACCC conducts a public review. Public reviews are placed on the [public register](#) (see section 7.4) and the ACCC engages with the merger parties and market participants to make its assessment of the transaction.

7.4 Public register process for informal merger reviews

The ACCC publishes details on its [website](#) of all informal public merger reviews of proposed and completed mergers. While there is no legislative requirement to maintain a public register, the ACCC does so to assist in the transparency of its processes and decision making.

At the start of a public informal merger review, the following details are ordinarily posted on the ACCC website:

- the names of the parties to the transaction
- the relevant industry involved
- ACCC staff contact details
- the commencement date of the review
- an indicative timetable of the ACCC's review, and
- market inquiry details, including a market inquiries letter outlining the key issues on which comment is invited. No details will be posted on the identity of market participants from whom comments are sought.

As the review progresses, the following details may also be posted on the mergers public register:

- a statement of issues (where necessary) where the ACCC considers competition concerns may arise, or are likely to arise, and there are issues which require further consultation with the merger parties and other relevant parties before reaching a final decision
- a final decision where the ACCC announces the outcome of its investigation—i.e. whether it has decided to oppose, not oppose, or to not oppose subject to the acceptance of undertakings. A summary of the reasons for the decision will be included on the public register
- a public competition assessment (where appropriate) outlining the ACCC's completed competition analysis for certain matters, and
- any court enforceable undertakings offered under s. 87B of the CCA. Such undertakings are generally published during the consultation phase of the proposed remedy and are published once they have been accepted by the ACCC in final resolution of the matter.

7.5 Merger authorisation

Merger parties may seek statutory protection from legal action under s. 50 of the CCA by lodging an application for merger authorisation. While the merger authorisation is in force, the authorised parties will be able to acquire the relevant shares or assets without risk of the ACCC or third parties taking legal action for a contravention of s. 50.

7.6 Public register process for merger authorisation applications

The merger authorisation process is public. The ACCC is required under the CCA to maintain a public register containing certain documents in relation to a merger authorisation application, including:

- applications for merger authorisation, minor variation, revocation and substitution, including applications that have been withdrawn or abandoned
- documents provided to the ACCC in relation to any application
- particulars of any oral submissions made to the ACCC in relation to an application, and
- final determinations.³

The ACCC will also publish an indicative timeline for its review on the public register. Parties may request that certain information be excluded from the public register, for example because of its confidential nature.

Once a valid application is received, the ACCC will:

- conduct market inquiries, including inviting interested parties to lodge written (or oral) submissions commenting on the application
- engage with the applicant, including seeking further information and evidence as needed, providing written feedback following market inquiries and inviting the applicant to lodge a written submission in response to interested party submissions, and
- issue a written determination granting such authorisation as it considers appropriate or dismissing the application.

A 90-day statutory time period applies, which may be extended if the applicant for authorisation agrees.

³ Competition and Consumer Act 2010, s. 89(4).

8. ACCC's approach to assessing non-merger authorisations and notifications

Australian competition law recognises that, in certain circumstances, particular conduct may not harm competition or may give rise to benefits to the public that outweigh the public detriment. Businesses that wish to engage in conduct that may be at risk of breaching the competition provisions of the CCA can seek an exemption from the ACCC by lodging an application for authorisation or notification.

All non-merger authorisations and notifications are assessed by the ACCC according to the relevant test and statutory process set out in the CCA. Details are provided in relevant ACCC publications:

- [Guidelines for authorisation of conduct \(non-merger\)](#)
- [Exclusive Dealing Notification Guidelines](#)
- [Small Business Collective Bargaining Notifications and the Competition and Consumer Act Guidelines](#)
- [Resale Price Maintenance Notification Guidelines](#)
- [Small business collective bargaining-Notification and Authorisation Guidelines.](#)

There are two processes under which legal protection may be obtained—these are known as 'authorisation' and 'notification'. Parties considering whether to lodge an application for authorisation or a notification are encouraged to contact the ACCC before lodging for informal discussion and guidance about the process. The relevant process will depend on the type of conduct for which legal protection is sought.

8.1 Authorisation

Authorisation provides legal protection for proposed conduct which may risk breaching the competition provisions of the CCA. Broadly, the ACCC may grant authorisation where proposed conduct is likely to result in a net public benefit (i.e. where the likely public benefit resulting from the conduct outweighs the likely public detriment). In some cases, it will also be open to the ACCC to grant authorisation because the proposed conduct would not be likely to substantially lessen competition.

Decisions to grant, deny, revoke or vary a non-merger authorisation are made by the Adjudication Division under a delegation from the Chair. More complex or contentious authorisation matters are considered by the full Commission. The Adjudication Division, which comprises nominated Commissioners, will ordinarily consider recommendations to grant, deny, revoke or vary an authorisation. Issues papers, briefings, notifications are considered by the Adjudication Committee and/or Commission as appropriate.

8.2 Procedures in place for the consideration of non-merger authorisation applications

Similar to the merger authorisation process, following receipt of a valid application and supporting submission, the ACCC will:

- place it on the public register
- invite interested parties to lodge written or oral submissions commenting on the application and submission provided in support of the application
- meet with the applicant and interested parties as appropriate
- invite the applicant to lodge a written submission in response to interested party submissions

- conducts its own market inquiries and research while consulting with interested parties
- issue a draft determination which sets out and provides reasons for whether the ACCC proposes to grant or deny the application for non-merger authorisation or whether the grant of authorisation is subject to conditions
- invite written submissions in response to the draft determination and invite the applicant or interested parties to call a conference to make oral submissions directly to a Commissioner
- hold a conference, if one is called, and
- issue a final determination.

A six month time limit applies to the ACCC's consideration of new applications for authorisation. The six month period begins on the date the ACCC receives a valid application for authorisation. Once the six month time period has begun, the ACCC will accept only minor amendments to an application. Consultation takes place according to strict deadlines for the submission of information. The six month period can be extended by the ACCC by up to a further six months if the ACCC issues a draft determination and the applicant agrees to the extension.

8.3 Notification

Notification is an alternate process for obtaining protection from legal action for collective bargaining conduct, exclusive dealing and resale price maintenance. In most cases, the statutory test for assessing notifications is the net public benefit test which is similar to the authorisation test.

Unlike authorisations, the legal protection provided by a notification commences automatically, unless the ACCC issues a draft notice objecting to the notification within the specified period. The ACCC can review, and possibly revoke, the legal protection provided by a notification at any time where it is satisfied that the relevant statutory test is met.

Decisions on whether to revoke a notification, to impose a time period for collective bargaining notifications or to impose conditions (where relevant), are made by the Adjudication Division or full Commission.

8.4 Procedures in place for the consideration of lodged notifications

Notifications may be lodged for small business collective bargaining conduct, exclusive dealing and resale price maintenance. Following receipt of a valid notification, the ACCC will publish the notification on the public register. To make an assessment about whether the relevant statutory test is met, the ACCC will conduct a public consultation process and may also seek further information from the notifying party.

The ACCC may decide not to take any further action, and allow the legal protection afforded by the notification to continue where it is satisfied the relevant statutory test is met. Where the ACCC is not satisfied, the ACCC will take steps to remove the legal protection and revoke the notification. This includes:

- issuing a draft notice outlining the reason why it proposes to revoke the notification
- inviting the applicant and interested parties to request a conference or lodge a written submission in response to the draft notice, and
- issuing a final notice to revoke if it is satisfied the conduct is not in the public benefit.

9. Compliance and enforcement options

The CCA empowers the ACCC with the right to investigate matters and to take a variety of enforcement actions. The ultimate determination of a contravention of the CCA can only be made by a court of law, generally the Federal Court. In cases where matters are referred to the ACCC that fall outside of the ACCC's areas of responsibility, the ACCC proactively refers those matters to more appropriate regulators. As outlined in section 5.1, the ACCC's approach to achieving compliance is outlined in the Compliance and Enforcement Policy.

9.1 Compliance initiatives

The ACCC recognises that preventing breaches of the CCA is always preferable to taking action after a breach has occurred. To achieve this objective, the ACCC makes use of a range of compliance initiatives, including both general and industry specific educational campaigns, to ensure that consumers and small businesses are aware of both their rights and responsibilities.

The ACCC prioritises awareness-raising and education in relation to scam conduct, and works with government and the private sector to reduce opportunities for scams to occur. This includes through the [Scamwatch](#) website, which provides information to consumers and small businesses about how to recognise, avoid and report scams. By analysing the data collected through this service, the ACCC is able to identify trends, monitor financial losses and inform targeted scam prevention strategies.

In addition to these more general compliance initiatives, the ACCC conducts industry code audits and can request information or documents from a business required to be kept, generated or published under a prescribed industry code. This may involve the ACCC serving a business with a notice to produce documents under s. 51ADD of the CCA. While the ACCC has the power to randomly select traders for a compliance check, it will usually target those that have either a history of complaints or non-compliance, or that operate in an industry that generates a disproportionate number of complaints.

The ACCC has convened various consultative committees to facilitate ongoing consultation with consumer and industry groups. Further information is provided at section 13.3.

9.2 Addressing harm and detriment in particular markets

Under the CCA, the ACCC investigates conduct that it assesses as likely amounting to a contravention of the CCA. The ACCC cannot pursue all matters that are brought to its attention. The ACCC's role is to focus on those circumstances that will, or have the potential to harm the competitive process or result in widespread consumer detriment. The ACCC therefore exercises discretion to direct resources to matters that provide the greatest overall benefit for competition and consumer protection.

The ACCC has a signed [Memorandum of Understanding \(MOU\)](#) in place with the Commonwealth Director of Public Prosecutions (CDPP) regarding serious cartel conduct and specifying the factors that will be taken into account in determining whether cartels are serious. The ACCC is responsible for investigating cartel conduct, while the decision to prosecute is made by the CDPP following the referral of a matter by the ACCC. This is discussed further at section 9.6. The ACCC policy is to refer serious cartel conduct to the CDPP.

9.3 Determinations about a contravention of the Competition and Consumer Act are made by the courts

In determining which enforcement measures are appropriate in any given matter, the ACCC takes into account considerations such as the nature and seriousness of the conduct, the detriment caused, and how cooperative and effective the trader has been in taking action to resolve the ACCC's concerns about the conduct.

As an investigation progresses, the ACCC has the option to discontinue an investigation, to seek remedies for the conduct as provided for in the CCA, or to institute court proceedings for matters that cannot otherwise be resolved. If the ACCC elects to institute civil proceedings or refer criminal matters to the CDPP, such matters are then heard by a court of law. The court determines, on the basis of the evidence put before it by the ACCC (or another applicant) and the responding party, whether a contravention has been committed. Penalties are determined by the court on the basis of legal principle and precedent that apply to the case and on the gravity of the conduct. In a criminal cartel context, an individual may be sanctioned by a custodial sentence. If a party disagrees with the court's finding, that party has the option to lodge an appeal to a higher level court.

9.4 Range of compliance and enforcement measures available to achieve appropriate outcomes

A number of non-court based options are available to the ACCC under the CCA and are discussed here. Resolution of a matter by way of these alternative measures does not constitute a formal finding that the party engaging in the conduct has contravened the CCA. In circumstances where the ACCC has concerns regarding certain conduct and the party who has engaged in that conduct acknowledges that the ACCC is justified in its concerns, that party may consider it is in their interests to resolve the matter by way of one of the measures made available to the ACCC by the CCA.

As a statutory agency, the ACCC is bound to exercise its powers, including the use of any enforcement measures, in accordance with the principles of administrative law. These include tests of natural justice, reasonableness, proper purpose and good faith.

The enforcement measures available to the ACCC include civil and criminal proceedings, court-enforceable undertakings, infringement notices and administrative resolutions. These enforcement measures are discussed in the Compliance and Enforcement Policy and described briefly below.

The policy also outlines some of the orders that the ACCC might seek from the Court following legal action, including declarations, pecuniary penalties (civil) and fines (criminal), injunctions⁴ and disqualifications⁵. Ultimately it is up to the Court to determine the appropriate fine, penalty or order, and a number of factors are taken into account by the Court in their determination.

9.5 Civil proceedings

The ACCC may proceed to litigation in circumstances where the conduct in question is particularly serious or where there is reason to believe that the party will be unwilling to resolve the matter by way of one of the measures outlined above.

If the ACCC considers that an acquisition is likely to contravene s. 50 of the CCA and the merger parties do not agree to modify or abandon the transaction, the ACCC can apply to the Federal Court of Australia for an injunction, divestiture or penalties.

⁴ Injunctions are remedies sought to prevent injury to consumers, the business community or the Australian public at large by restraining conduct that is at serious risk of contravening the CCA pending the determination of court proceedings.

⁵ A disqualification order may include prohibiting a person from managing a corporation for a period of time.

9.6 Criminal proceedings

In many instances, civil contraventions in the CCA are replicated in criminal offences. For criminal offences, including breaches of the CCA's criminal cartel provisions, the ACCC must refer the matter for prosecution to the CDPP. If the ACCC refers a matter to the CDPP, the CDPP will make its own assessment of whether to prosecute the offence. This decision is made in accordance with the [Prosecution Policy of the Commonwealth](#), which requires the CDPP to only take on cases where there is sufficient evidence to prosecute the case, and where it is evident from the facts of the case and all the surrounding circumstances that the prosecution would be in the public interest. Further factors considered by the CDPP are outlined in the ACCC and CDPP MOU.

9.7 Court-enforceable undertakings (s. 87B undertakings)

A s. 87B court-enforceable undertaking is an agreement given by a trader to remedy the alleged conduct, accept responsibility for their actions and to establish or review and improve their compliance programs and culture. Unlike an administrative resolution, s. 87B undertakings are enforceable by the Federal Court and are published on the ACCC's [s. 87B undertakings register](#).

The ACCC does not have the power to demand or require a trader to make a s. 87B undertaking, but a trader may offer it, or the ACCC may propose it to a trader as an option it may wish to consider to resolve the matter in question. Section 87B undertakings are sought in situations where the ACCC might otherwise consider the conduct serious enough to pursue litigation should the matter not be resolved. While the undertakings are voluntary, traders may choose to make a s. 87B undertaking to avoid court action. In some cases, traders may wish to provide an undertaking to publicly demonstrate their intention to act lawfully and to amend their conduct. Section 87B undertakings also allow for the application of broad remedies, including providing a mechanism for compensation, reimbursement or other appropriate forms of redress for parties adversely affected by the conduct.

In appropriate cases, as well as accepting a s. 87B undertaking, the ACCC may also seek additional remedies to resolve its concerns, such as issuing an infringement notice/s. Competition concerns arising in a merger review can potentially be overcome by the merger parties offering the ACCC a s. 87B undertaking. The ACCC's approach to the substance of an undertaking will depend on the circumstances of each matter. The ACCC will consult on all non-confidential aspects of undertakings. Once finalised and accepted, s. 87B undertakings will be published on the register.

More information about s. 87B undertakings is available in the ACCC publication, [Section 87B of the Competition and Consumer Act](#).

9.8 Infringement Notices

An infringement notice is a notice under which a financial penalty is paid by a trader for conduct which is alleged to contravene the CCA or certain provisions of the ACL. Once the infringement notice is paid the trader avoids court action for that particular conduct.

The penalty amounts for infringement notices are fixed by the CCA and must only relate to one instance of conduct, although several notices may be issued to the same party for multiple instances of conduct. The ACCC may issue an infringement notice in circumstances where the ACCC believes a contravention of the CCA or ACL has occurred and requires a more formal sanction than an administrative resolution.

As noted above, once an infringement notice is paid the ACCC cannot take the recipient of the notice to court in relation to the contravention specified in the notice. For this reason, a trader may choose to pay an infringement notice to resolve the matter without proceeding to court. The trader receiving the notice may choose whether or not to pay. Should the recipient not pay, the ACCC may decide to commence court proceedings in relation to the alleged conduct. The ACCC maintains a [public register](#) of infringement notices.

The payment of a penalty specified in an infringement notice is not an admission of guilt and the party is not to be regarded as having contravened the CCA or ACL merely as a result of making payment.

9.9 Administrative resolutions

An administrative resolution is an agreement by a trader to stop conduct which may contravene the CCA, to compensate those who have suffered detriment as a result of the conduct and to take any other measures necessary to ensure the conduct does not recur. The terms of the agreement may be set out in correspondence between the ACCC and the trader or in a formally signed agreement. Administrative resolutions are appropriate in circumstances where the ACCC assesses that the risk of damage or harm resulting from the conduct in question is low, or where it provides a fast and effective resolution to a potential competition or consumer issue. For example, after discussions with and/or an investigation by the ACCC, a trader may elect not to proceed with a proposed merger, arrangement or other strategy.

Unlike court-enforceable undertakings (outlined here), the ACCC does not maintain a public register of administrative resolutions. In line with the [ACCC's Media Code of Conduct](#), the ACCC may publicise an administrative resolution of an enforcement investigation after providing notice to the parties. Administrative resolutions are publicly reported in the ACCC's quarterly and annual reports.

9.10 Public Warning Notices

A public warning notice is a notice issued by the Chair of the ACCC which warns the public of conduct by a trader. The purpose of a public warning notice is to reduce the extent of widespread consumer harm being suffered by the public in cases where there is likely to be a long delay before other enforcement measures can be employed. The ACCC maintains a [public warning notice register](#).

9.11 Other complaints resolution processes

The ACCC may refer parties to alternative dispute resolution schemes where appropriate. There are various ombudsmen, commissions and other bodies set up at the national and state or territory level to assist parties in resolving their disputes. Examples of sectors with these types of bodies include aged care, airlines, banking and insurance, building, disability, energy and water, franchising, horticulture, small business, privacy and telecommunications.

9.12 Referral to other regulators

The ACCC proactively refers matters to other regulators if it receives a complaint or enquiry that it assesses does not fall within the CCA or the Compliance and Enforcement Policy, or where there exists a specialist regulator. Examples of regulators to whom the ACCC regularly refers matters to include the Australian Securities and Investments Commission and state and territory based ACL regulators. The ACCC will only refer confidential information about the person making the complaint or enquiry with the consent of that person. In this way, the ACCC ensures that matters of public concern are being considered and dealt with by appropriate regulators.

10. Checks and balances

A variety of internal policies and whole of government legislation act to safeguard the integrity and accountability of the ACCC's exercise of its functions.

10.1 Oversight of all action by senior management, relevant committees and the Commission

The ACCC has a clear management and decision making structure at both staff and organisational levels. This ensures appropriate oversight and decision making authority is maintained at every stage of a matter or issue under consideration by the ACCC. This includes the use of specialist subject matter committees, including the Enforcement Committee discussed at section 5.8, and the Mergers Review Committee discussed at section 7.2.

10.2 Impartial and transparent use of external providers

The ACCC, like most Australian Government agencies, is subject to the PGPA Act and the [Commonwealth Procurement Rules](#). These rules provide a framework for the appointment of external contractors, and require the ACCC to expend public money in an effective and efficient manner.

Each time the ACCC enters a contract for over AUD\$10 000 value with an external provider, the identity of the provider and the amount of the contract must be reported via the Australian Government [Austender](#) website. This requirement applies to all government contracts. Austender is publicly available and ensures complete transparency of the ACCC's financial dealings with external service providers.

10.3 External legal service providers

In accordance with the Commonwealth Procurement Rules, the ACCC has established a panel of external legal service providers from whom it obtains legal services. The process for selecting the panel firms requires the ACCC to conduct an open tender process. The ACCC must provide annual reports to the Office of Legal Services Coordination in the Australian Government Attorney-General's Department on the amounts paid to each external legal service provider.

The ACCC has strict internal procedures in place to ensure that all ACCC expenditure on legal fees incurred from external legal service providers is formally approved prior to work being undertaken. External legal service providers are not permitted to commence any work for the ACCC until appropriate funding has been approved by ACCC senior management. To obtain this approval, ACCC investigative teams must first obtain a cost estimate from the provider, which then acts as a cap on any legal services that it can provide. If further work is required or circumstances change, a new estimate and approval is obtained. The estimate should be based on a joint assessment by the ACCC and the provider about what legal services are required.

10.4 Court as the decision maker on whether the law has been contravened

The ACCC does not have power to determine whether a trader has contravened the CCA. Only the Court may make this decision. The need to prove its case in court provides a key check on the power of the ACCC.

Except in cases where traders are willing to voluntarily alter their behaviour, the ACCC has no power to apply a remedy to address its concerns. Instead, it must commence court proceedings to prove a contravention of the CCA and seek a remedy from the court for that contravention. Decisions of the Court may be appealed by both parties to the proceedings.

The CCA provides for a private right of action in most cases, so that any individual or business can pursue their own proceedings under the CCA regardless of the ACCC's view or proposed course of action in relation to any particular issue.

In appropriate cases, the ACCC may seek leave of the Court to intervene in private proceedings. The ACCC will consider intervention in private proceedings under the CCA in one or more of the following circumstances:

- **issues of significant public interest:** for example, if there is a major detrimental effect on fair trading and competitive market forces and the ACCC wishes to make submissions to preserve the competitive process and prevent future contraventions of the CCA
- **construction of the CCA—in untested areas or to clarify its operation:** a key objective of the ACCC's enforcement functions is to seek clarification of the law. If a party contends that a provision of the CCA is ambiguous and the matter to be determined rests of the interpretation of that provision, or if there are important and novel questions of interpretation, the ACCC may wish to make submissions to clarify the CCA through precedent, and
- **international conduct:** the ACCC has strong links to relevant parts of the OECD, overseas competition, consumer protection and regulatory agencies and networks. These links are critical for the ACCC to effectively address issues such as e-commerce, other cross-border consumer protection matters and global cartels.

10.5 Legal Services Directions, and the government-wide requirement to act as a model litigant

The ACCC adheres to the Australian Government [Legal Services Directions](#), which are a binding set of rules issued by the Attorney-General about the performance of legal work undertaken by and on behalf of Australian Government agencies. The Legal Services Directions provide for appropriate oversight by the Attorney-General to ensure that Australian Government agencies receive consistent and coordinated legal services that are of a high standard, that uphold the public interest and that are sensitive to the context of Australian Government interests which are broader than any one agency. Heads of relevant agencies are responsible for ensuring that their agency adopts appropriate management strategies and practices so as to achieve compliance with the Directions.

A key element of the Legal Services Directions is a requirement not to start court proceedings unless written legal advice is received, usually from an external legal service provider, indicating that there are reasonable grounds to start proceedings. They also note the requirement to act as a model litigant. The principle of acting as a model litigant requires that Australian Government agencies, as parties to litigation act with propriety, fairly and in accordance with high professional standards. Some examples of the expected model litigant standards of conduct for Australian Government agencies include:

- not causing unnecessary delay in handling proceedings
- making an early assessment of the agency's prospects of success
- limiting the scope of proceedings wherever possible
- not requiring the other party to prove a matter which the agency knows to be true
- considering alternative dispute resolution methods to resolve the litigation e.g. settlement offers
- not taking advantage of a claimant who lacks resources
- not relying on technical defences unless the agency's interests would be prejudiced by the failure to comply with a particular requirement, and
- apologising where the agency is aware that it has acted wrongfully or improperly.

10.6 Exercise and review of investigative powers

The ACCC's coercive investigative powers, including search warrants and compulsory requests for information, are exercised within strict legislative boundaries and various mechanisms exist to review the use of these powers, including via judicial review and review by the Commonwealth Ombudsman.

Generally, the ACCC obtains most of its information through cooperation and voluntary means. This approach is preferable as it will often require the use of fewer resources and be less time consuming for both parties, and may be less disruptive to the other party.

10.7 Section 155 of the Competition and Consumer Act—legislative requirements and review

Section 155 of the CCA gives the ACCC Chair the power to require a person to provide information, documents and/or give evidence under oath or by way of affirmation in investigations carried out under the provisions of the CCA.

The decision to issue a s. 155 notice is not taken lightly by the ACCC and the ACCC must follow certain procedures when exercising its s. 155 powers. The ACCC's procedures and approach to the use of its s. 155 powers is set out in the [ACCC's Guidelines—Use of s. 155 powers](#).

A s. 155 notice cannot be issued unless the ACCC Chair has reason to believe on reasonable grounds that a person is capable of furnishing information, producing relevant documents or giving relevant evidence that relates to the subject matter of the notice. There is a careful process of internal consideration, review and sign-off prior to the Chair or Deputy Chair issuing a s. 155 notice.

Before issuing a notice, ACCC officers consider:

- whether relevant information, documents or evidence are otherwise available
- whether there is a risk that the information, documents or evidence may be compromised in the absence of the s. 155 notice
- whether the information, documents or evidence are necessary to the investigation, and
- the time and cost implications for the ACCC and the notice recipient.

The ACCC is required to and will have regard to the burden of the s. 155 notice on the recipient before exercising its s. 155 powers, in particular, the time and cost burden it imposes on the recipient. Sufficient time must be allowed for the recipient to undertake the necessary documentary searches (including electronic searches), to make appropriate enquiries and to seek any legal advice or representation.

Where possible, the ACCC limits the scope of a s. 155 notice and takes steps to minimise the compliance and cost burden on a recipient, including by targeting the notice appropriately to ensure that only material that is necessary and relevant is sought.

In appropriate circumstances, the ACCC may consult with a proposed recipient prior to a s. 155 notice being issued in order to better understand its document management system and digital environment. As appropriate, the ACCC may also engage with recipients on any proposals they make or tools used to search electronic and other document systems. This can result in efficiencies for both the recipient of the notice and the ACCC's investigative process.

Where a recipient considers there are genuine reasons why it may not be able to comply with the s. 155 notice by the due date, or considers there to be issues raised by the scope and terms of the notice, it should make contact (e.g. by phone or email) with the ACCC as soon as possible after recipient of the notice. A written application should then be made setting out the reasons for the proposed variation and a date by which it considers that it can comply. This may involve proposing a staged response to the ACCC where some information can still be provided by the due date.

ACCC officers will then consider whether to recommend that a variation be issued to the notice. Where such approaches are made shortly before the due date, it is likely to be difficult for the ACCC to consider the application prior to the due date.

The ACCC's power to issue a s. 155 notice must be used in good faith, not for a collateral purpose, and only to perform ACCC functions under the CCA, ACL and other relevant legislation.⁶

In most circumstances, the ACCC's power to issue a s. 155 notice expires on the ACCC commencing proceedings in relation to the matters the subject of the notice. Section 155(4) provides that the ACCC may exercise, or continue to exercise s. 155 powers in relation to a matter until the ACCC commences proceedings in the matter (other than proceedings for an interim or final injunction) or until the close of pleadings in relation to an application by the ACCC for a final injunction in relation to the matter.

It is the ACCC's practice that a s. 155 notice requiring the recipient to furnish information or produce documents will:

- identify the matter that constitutes or may constitute a contravention of the CCA
- request information in relation to the matter
- specify the information or documents in enough detail to enable the addressee to know what is required, and
- be validly served on the addressee.

The exercise of s. 155 powers by the ACCC is subject to judicial review by the Federal Court of Australia.

Section 155AAA of the CCA provides for the protection of certain information, including information collected under s. 155. Section 155AAA is discussed in more detail in section 11.2.

10.8 Section 133D—Power to obtain information relating to the safety of goods or services

Section 133D of the CCA provides the Minister or an appointed ACCC product safety inspector powers to obtain information via a disclosure notice.

Section 133 of the CCA allows the ACCC Chair to appoint staff to the position of product safety inspector. The Chair may only appoint a person as an inspector if they are satisfied that the person has suitable qualifications and experience to properly exercise the powers of an inspector. Inspectors must be appointed in writing, and must comply with any directions of the Chair in exercising their powers as an inspector.

Section 133D notices may be issued to a person who, in trade or commerce, supplies consumer goods or product related services of a particular kind, and there is reason to believe that those consumer goods or product related services may cause injury to a person, or that a reasonably foreseeable use, including a misuse, of those goods or services will or may cause injury to a person.

Prior to issuing a disclosure notice, there must be a reason to believe that the supplier is capable of giving information, producing documents or giving evidence in relation to those consumer goods or product related services.

⁶ Riley McKay Pty Ltd v Bannerman (1977) 31 FLR 129; and Kotan Holdings Pty Ltd & Ors v Trade Practices Commission (1991) ATPR 41-134.

10.9 Section 95ZK—Power to obtain information or documents

As outlined at section 5.10, the ACCC undertakes in-depth market studies with the aim of improving understanding of industry practices or issues present in identified sectors. These studies may either be self-initiated by the ACCC, or under direction from the Treasurer.

Section 95ZK of the CCA provides the ACCC with compulsory information gathering powers that may be activated with Ministerial direction. These powers may be relied on by the ACCC when gathering information to assist it in undertaking market studies under direction from the Treasurer. The ACCC is currently unable to rely on these powers for self-initiated market studies or inquiries.

To rely on these powers, the ACCC must be acting under the direction of the Treasurer, and the Chair must have a reason to believe that a person is capable of giving information or producing documents relevant to the matter being considered. The ACCC recognises that its use of these compulsory information gathering powers will have an effect upon those receiving them, and is careful to consider and balance this burden on a recipient against the need for the information sought.

10.10 Search warrants—legislative requirements and review

The CCA provides for search warrant powers to gather evidentiary material. These are issued by a magistrate or judge. Under a search warrant, the ACCC can seize goods or documents, inspect, handle and measure the goods and equipment, take samples of the goods and make copies or extracts from documents. The ACCC inspector may also require any person on the premises to answer any questions and produce any documents that relate to the reasons for the entry of the premise.

Strict legislative requirements exist in the CCA for the proper entry to premises and the subsequent execution of a search warrant. For example, only an ACCC staff member who has been appointed by the Chair as an inspector under the CCA can execute the warrant. The executing officer must wear an identity card, announce that they are authorised to enter the premises before entering it and he or she must allow any person at the premises to also enter. The executing officer must provide a receipt to the occupier of the premises for any objects that are seized or taken for examination. Owners of electronic equipment on the premises are entitled to reasonable compensation for damage to that equipment if damage occurs to it as a result of the equipment being treated without sufficient care. Any use of force must be necessary and reasonable in the circumstances, and it is ACCC policy to avoid the use of force wherever possible. It is a criminal offence for an officer to in any way amend or falsely replicate a warrant such that their execution of the warrant goes beyond what was authorised by the magistrate or judge who issued the warrant.

10.11 Judicial review under the Administrative Decisions (Judicial Review) Act 1977 (Cth)

The ACCC has an obligation to give reasons for certain administrative decisions that it makes. This does not require the ACCC to provide reasons for decisions made as part of its investigations process.

As an Australian Government agency, the exercise of the ACCC's administrative decisions made under legislation are subject to judicial review in accordance with the [Administrative Decisions \(Judicial Review\) Act 1977](#). Under this Act, a person may seek judicial review by the Australian Federal Court of an Australian Government agency's (including the ACCC) exercise of its Administrative decision-making powers. Following an application for judicial review, the Court will determine whether the decision that is complained about is unlawful and may grant relief.

10.12 Review of the ACCC's exercise of powers—role of the Commonwealth Ombudsman

If a member of the public is unhappy with a decision made or action taken by the ACCC, he or she can make a complaint about that to the Commonwealth Ombudsman. The Commonwealth Ombudsman considers and investigates complaints from people who believe they have been treated unfairly or unreasonably by an Australian Government department or agency. More information about the Commonwealth Ombudsman can be found at www.ombudsman.gov.au.

10.13 Review of ACCC decisions to grant or deny applications for authorisation or to revoke a notification

ACCC determinations of applications for merger and non-merger authorisation, revocation and substitution, minor variation and revocation may be reviewed by the Australian Competition Tribunal. The decision by the ACCC to revoke a notification and to impose conditions on a notification may also be reviewed by the Tribunal.

Upon review, the Tribunal may make a determination affirming, setting aside or varying the determination of the ACCC. In relation to notifications, the Tribunal may affirm or set aside the ACCC's decision to revoke the notification or impose a condition.

11. Information handling

The appropriate handling and storage of information is key to ensuring the ACCC's actions are transparent and accountable. The ACCC has a number of systems and policies in place to enable this.

11.1 Information is handled and records are kept in accordance with organisational guidelines and relevant legislation

To ensure confidential and other information in the ACCC's control is handled and stored appropriately, the ACCC adheres to relevant provisions under the CCA, and relevant whole of government legislation.

11.2 Information handling

Various pieces of legislation, including the CCA, PS Act, the Commonwealth Public Service Regulations, the [Privacy Act 1988](#) and the [Privacy Code](#) contain provisions regarding the handling of confidential information which apply to the ACCC. These requirements cover the use of confidential information generally, as well as information obtained by the ACCC through the use of its compulsory information gathering powers.

Section 155AAA of the CCA provides that the ACCC and its officers must keep certain information (referred to as 'protected information') confidential, and a failure to do so in accordance with the section can attract criminal charges for the officers involved. This section also permits disclosure of protected information in limited circumstances. These circumstances include:

- when the ACCC official is performing duties or functions as an ACCC official
- when required or permitted by law, or
- as permitted by s. 155AAA.

The ACCC has published the [ACCC/AER Information Policy](#) which provides guidance for the public about the ACCC's approach to obtaining information (including the use of its statutory powers to require the provision of information), using that information (including the use of information obtained for one matter that was obtained in respect of another matter), and disclosing information to parties outside of the ACCC.

11.3 Records management

Good record keeping is a significant part of the ACCC's commitment to accountability and transparency. As with other Australian Government agencies, the ACCC is bound by the [Archives Act 1983](#), which imposes a number of record keeping requirements and provides for the public to have access to Commonwealth records that are more than 30 years old. The ACCC has also developed a Records Management Guide for ACCC staff which reflects the requirements of the Archives Act. This guide reiterates the importance of all ACCC staff, including contractors and consultants, being responsible for making and keeping good records of their work-related activities.

A key feature of the ACCC's record management systems is its organisational-wide electronic document management system. This system provides a single repository for the ACCC's electronic documents, which promotes effective information management and reduces the risk of document duplication. The security and confidentiality of documents stored in this system are maintained through the tracking of all interactions with the documents and through the setting of access controls, where necessary, to restrict the access to certain documents to certain individual or groups.

11.4 Cases recorded in an information management system

As outlined at sections 4.5 and 5.4, the ACCC has an information management system where all information received through calls, emails and letters, as well as the progress of any subsequent investigations is recorded. Through this system, ACCC staff can access information about previous complaints made about a trader, monitor the progress of an investigation and produce reports about the nature of the investigations that the ACCC has undertaken. Information on this system is also used to analyse complaint trends, identify issues for further enquiry and develop compliance responses.

This system also links to the ACCC's electronic document management system. While the document management system is available to all staff, access controls are available to ensure staff can only access information which is appropriate to their position and responsibilities in the ACCC.

12. Publication of compliance and enforcement outcomes

All significant decisions and enforcement actions made by the ACCC are made public. This is achieved through public registers, the issue of media releases and quarterly and annual reporting of outcomes.

12.1 Public registers

The ACCC remains transparent and accountable through the publication of decisions on public registers. The ACCC is required to maintain some of the registers under the CCA and also maintains several voluntary public registers of information that the ACCC considers should be made available to the public.

[Statutory and voluntary public registers](#) are available on the ACCC's website. Examples of public registers that the ACCC maintains include registers of authorisations and notifications, mergers, undertakings, and infringement notices. Further information on these public registers, including governance arrangements is provided in sections 7 and 9 .

12.2 Enforcement actions, merger and authorisation and notification decisions reported publicly via media releases

As noted in the ACCC's Compliance and Enforcement Policy, every enforcement matter that is dealt with through litigation or formal resolution is made public. In addition to public registers available on the ACCC's website, the ACCC achieves this by issuing a media release at a formal stage of a matter (including the giving of court enforceable undertakings or the institution of court proceedings). The ACCC will usually issue a media release during a public informal merger review and may issue a media release on a final decision in relation to mergers, authorisations and notifications. In addition to ensuring the ACCC's enforcement actions are transparent, media releases have a broader educative and deterrent benefit by informing the public about what might constitute a contravention of the CCA and by highlighting the ACCC's commitment to taking appropriate action against such contraventions. Media releases are also a means by which the ACCC achieves its obligations under the CCA to make information available to the general public about matters that affect, or laws that are designed to protect their interests.

As discussed at section 9.9, the ACCC has a Media Code of Conduct which balances fairness to individuals, companies and businesses involved in ACCC investigation and enforcement action with informing the public about the ACCC's enforcement work and being transparent about what action the ACCC is taking and why.

The [Commonwealth Spent Convictions Scheme](#) allows an individual to not disclose certain criminal convictions in particular circumstances, and prohibits unauthorised use or disclosure of information about the conviction. The scheme allows for an individual's conviction to be spent where the individual has been granted a pardon for a reason other than that the individual was wrongly convicted of the offence, or a ten year period has expired. The waiting period is intended to demonstrate that an individual has displayed good behaviour since the time of their conviction. The scheme generally does not apply to more serious convictions, where the individual has been sentenced to imprisonment for more than 30 months. The scheme only applies to individuals, and does not extend to corporations.

In line with the scheme, the ACCC reviews its media releases to identify any that contain details of criminal convictions 10 years or older to which the scheme may apply and retires them as appropriate. The ACCC will write to online search engines and request that identified media releases be de-escalated from search engine results to honour the scheme.

12.3 Quarterly and annual reporting of outcomes

At the end of each financial quarter, the ACCC publishes a quarterly report on its website covering the ACCC's outcomes and major activities for that period.

These reports include, among other things, details of any:

- litigation commenced or ongoing during the period
- enforcement outcomes (such as court decisions or undertakings accepted)
- major projects commenced or completed, and
- information about mergers and acquisitions assessed and decisions on authorisations and notifications made in the quarter.

As discussed at section 14.7, the ACCC also publishes an Annual Report each financial year which reports on the ACCC's outcomes for the period. These reports are publicly available on the internet.

13. Evaluation and review

13.1 Review of investigations

Investigation teams review the handling of significant matters or matters involving adverse or unusual aspects to identify key lessons and options for shared learning or improvements in practices.

As part of these reviews, teams may develop an internal matter debrief report. Matter debriefs are a useful tool to facilitate the sharing of knowledge, processes and ideas. They enable improvements in the way investigation teams operate and assist in the refinement of the ACCC's processes, structures and procedures. Matter de-briefs are reviewed and communicated to the wider Enforcement Division to share lessons learnt and where appropriate, improvements and changes are implemented.

13.2 Recommendations for improved practices are communicated and implemented throughout the ACCC

At an organisational level, the ACCC continues to review and monitor its practices. Revised organisational processes are communicated to all affected staff by email and incorporated into ACCC resources.

13.3 Regular consultation with industry and consumer groups through consultative committees

Given the breadth of the ACCC's operations, the ACCC has convened various consultative committees to facilitate ongoing consultation with consumer and industry bodies and to ensure the issues and concerns of these groups are taken into account in the ACCC's activities. Some of the ACCC's consultative committees include the Consumer Consultative Committee, the Small Business and Franchising Consultative Committee, Performance Consultative Committee, and the Agriculture Consultative Committee.

14. Public accountability

Decisions by the ACCC are made within established corporate governance processes and, where appropriate, information about them is made available to the public. These decisions are able to be reviewed by other agencies, including the Commonwealth Ombudsman and the courts.

14.1 The ACCC's Service Charter and the role of the Ombudsman

The ACCC [Service Charter](#) sets out the role of the ACCC and the standard of service external stakeholders can expect to receive from the Commission. The Service Charter applies to general correspondence including contacts to the Infocentre, reporting information about a business, market issue or conduct. The Service Charter also sets out what external stakeholders should do if they wish to make a complaint about their dealings with the ACCC. The Service Charter demonstrates the ACCC's commitment to providing professional, unbiased and objective service to the Australian community. Comments, complaints and enquiries made via ACCC social media platforms such as Twitter and Facebook are handled in accordance with a separate social media policy.

If a member of the public is unhappy with a response provided by the ACCC, he or she may also make a complaint about the ACCC to the Commonwealth Ombudsman. The Commonwealth Ombudsman considers and investigates complaints from people who believe they have been treated unfairly or unreasonably by an Australian Government department or agency. The Ombudsman resolves disputes through consultation, negotiation or by making recommendations to senior levels of government. The Ombudsman cannot however override the decisions of the ACCC (or other agencies it deals with) or issue directions to its staff. More information about the Commonwealth Ombudsman can be found at www.ombudsman.gov.au.

14.2 Compliance with whole of government accountability requirements

As noted in section 3, ACCC staff must follow and abide by Australian Government legislation which ensures Australian Government employees act in an accountable and transparent manner and in the best interests of the public. For example the PGPA Act sets out the financial management, accountability and audit obligations of agencies that are financially part of the Commonwealth. It requires that public resources are managed efficiently, effectively and ethically and that proper accounts and records of receipt are kept in respect of any expenditure of public money. In addition, chief executives of Australian Government agencies are accountable to the Commonwealth Finance Minister who is entitled, subject to any law that prohibits disclosure of particular information, to full and free access to agencies' accounts and records.

14.3 Compliance with whole of government Freedom of Information Act and publication requirements

The [Freedom of Information Act 1982](#) confers a legal right on members of the Australian public to access information held by the Australian government. This is an important measure to ensure that individuals have the opportunity to find out what information is held about them by government agencies and to encourage transparency and accountability in government policy and decision making.

Since May 2011, government agencies are also required to make public certain operational information specified in the Act. This includes information about the agency's structure and functions, information held by the agency which is regularly submitted to Parliament and information held by the agency to assist the agency to perform or exercise the agency's functions or powers in making decisions or recommendations which affect members of the public. These may include, for example, agency rules, guidelines, practices and precedents relating to those decisions and recommendations.

To adhere to this requirement, the ACCC maintains a [Freedom of Information website](#) which contains all the ACCC's publicly released documents under the FOI Act. The ACCC regularly reviews the website to ensure new operational information produced is published.

14.4 Government-wide financial audit process

Along with other Australian Government entities, the ACCC is subject to an annual audit of its financial statements and performance. These audits are undertaken by the Australian National Audit Office on behalf of the Australian Auditor-General in accordance with the [Auditor-General Act 1997](#). The audits are intended to hold the Australian Executive to account and to improve effectiveness in the administration of Australian Government programs and entities. The audits are conducted in accordance with an Audit Work Program which is published on an annual basis and the reports from the audits are presented to Parliament and made publicly available.

The ACCC has an audit committee established in compliance with s. 45 of the PGPA Act and s. 17 of the PGPA Rules. The ACCC/AER Audit Committee comprises of three members, two of which are external to the ACCC. The Committee provides independent advice and assurance to the ACCC on the organisation's financial reporting, performance reporting, risk oversight and management and systems of internal control.

In addition to the external audit and work of the audit committee, the ACCC has an internal audit function to provide assurance and oversee the implementation of the ACCC internal audit strategy. This strategy provides a framework for how the ACCC's internal audit program is run. The ACCC aims to conduct between four to six internal audits each year in line with an internal work plan, including a combination of corporate governance, core function performance and financial audits.

14.5 Portfolio Budget Statements

The ACCC, along with all Australian Government agencies, publishes its intended annual expenditure for each financial year in a Portfolio Budget Statement. The projected expenditure is based on the ACCC's expected revenue received via allocations through the Australian Government's annual budget processes. Portfolio Budget Statements are made publicly available on the internet and are submitted for consideration to Parliament. As a portfolio agency of the Australian Treasury, the ACCC's Portfolio Budget Statement is incorporated into the Treasury's Portfolio Budget Statement and published on the Treasury's website.

14.6 Parliamentary Inquiries

The Australian Parliament examines and scrutinises the operations of government agencies through parliamentary committees and inquiries. The ACCC is required to appear before a number of such committees, both for inquiries that relate to a specific matter and for standing committees such as those involved in reviewing government expenditure for Senate estimates.

Senate estimates is a process whereby estimates of government expenditure are referred to Senate committees as part of the annual budget cycle. The ACCC is required to appear before Senate estimates hearings three times per year. At these hearings, committee members scrutinise the ACCC's expenditure and ask questions of the ACCC about its operations. The Committee is able to investigate and probe broadly on any aspect of the ACCC's work.

14.7 Annual reports

The ACCC is required under the CCA⁷ and the PGPA Act⁸ to publish an annual report on its operations for each financial year. These reports are publicly available on the internet. Among other things, the ACCC is required to report on the number of notices it issues under its compulsory information gathering powers, the numbers of proceedings that are brought against the ACCC to challenge these notices, the number of search warrants issued by a magistrate under the CCA, the number of complaints the ACCC received and how it dealt with them, and a general description of matters investigated by the ACCC.

Also included in the annual report is a report on the ACCC's actual expenditure for that financial year against the projected expenditure outlined in the Portfolio Budget Statement at the beginning of the financial year.

7 CCA, s. 171.

8 PGPA Act, s. 46.



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

