



Australian
Competition &
Consumer
Commission



AUSTRALIAN
ENERGY
REGULATOR

ANNUAL REPORT

2013–14

Australian Competition and Consumer Commission and
the Australian Energy Regulator



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28 August 2014

The Honourable Bruce Billson MP
Minister for Small Business
Parliament House
CANBERRA ACT 2600

Dear Minister

We are pleased to present to you the Annual Report of the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) in accordance with section 63 of the *Public Service Act 1999*.

This report, covering operations for the year ended 30 June 2014, is in accordance with sections 44AAJ(1) and 171 of the *Competition and Consumer Act 2010*.

We certify that the ACCC and AER have prepared fraud risk assessments and fraud control plans. We have in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the specific needs of the agency and comply with the Commonwealth Fraud Control Guidelines.

A handwritten signature in black ink that reads "Rod Sims".

Rod Sims

Chairman, ACCC

A handwritten signature in black ink that reads "Andrew Reeves".

Andrew Reeves

Chairman, AER

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Part 1

Year in review



Introduction

In 2013–14 the objectives of the Australian Competition and Consumer Commission (ACCC) were to:

- build on our already significant body of competition, consumer protection and product safety outcomes
- increase engagement with a broad range of stakeholders
- promote economically efficient operation of, use of, and investment in monopoly infrastructure, and
- navigate important organisational change through a period of constrained resources in line with the (previous and current) Government's expectations.

This report sets out the actions we have taken to achieve these goals over the past year.

The ACCC has encountered a range of challenges in 2013–14, including operating in a constrained financial environment. We have undertaken a series of measures to ensure that we can continue to provide high quality outcomes, while operating with significantly fewer resources. While the ACCC is now a smaller organisation, having reduced staff numbers by 12.5 per cent, along with increased government funding we are now in a sustainable position and able to achieve critical outcomes for the Australian public into the future.

Promoting competition

Competition is critical for preserving the integrity of markets. It provides businesses with the incentive to operate more efficiently, price competitively and offer better products to customers. Our revised *Compliance and Enforcement Policy* lists stopping cartel conduct, preventing anti-competitive agreements and misuse of market power as enduring priorities.

The ACCC treats cartel conduct extremely seriously. At the end of June 2014, the ACCC had seven cases alleging cartel conduct before the courts. This year we were successful in taking court action against cartel conduct operating in the market for ball bearings used in motor vehicles and industrial applications. The Federal Court ordered NSK Australia Pty Ltd and Koyo Australia Pty Ltd to pay \$3 million and \$2 million respectively.

We were also successful against Flight Centre with the Federal Court finding they repeatedly attempted to enter into anti-competitive arrangements with airlines to eliminate differences in the international airfares offered to customers. Flight Centre appealed the finding and we have cross-appealed aspects of the \$11 million penalty.

A number of the ACCC's critical investigations progressed significantly over the past year.

- In December 2013, we instituted proceedings against **Colgate-Palmolive Pty Ltd**, **PZ Cussons Australia Pty Ltd**; a former sales director of Colgate, **Mr Paul Ansell**; and **Woolworths Limited** regarding alleged cartel conduct and anti-competitive arrangements in the supply of laundry detergents.
- In February 2014, the ACCC instituted proceedings against Pfizer Australia Pty Ltd for alleged misuse of market power and exclusive dealing regarding its supply of atorvastatin to pharmacies. Atorvastatin is a medication used to lower cholesterol.
- In May 2014, the ACCC instituted Federal Court proceedings against a number of parties, including the Australian Egg Corporation Limited (AECL), for an alleged egg cartel attempt. The ACCC alleges that the parties attempted to induce egg producers who were members of AECL to enter into an arrangement to cull hens or dispose of eggs, for the purpose of reducing the egg supply to Australian consumers and businesses.

The ACCC plays a critical role in assessing mergers to determine whether they will lead to a substantial lessening of competition in any market. We have been successful again in 2013-14 in pre-assessing more Mergers.

We considered 297 matters under s. 50 of the Act in 2013-14. Of these, 242 were assessed as not requiring a public review (pre-assessed), an increase of 14 per cent on 2012-13. The ACCC conducted a public review of 48 mergers and a confidential review of seven, a decrease of 25 per cent on public reviews and decrease of 42 per cent on confidential reviews in 2012-13.

Protecting consumers and small businesses

In 2013-14, the ACCC was involved in 53 proceedings relating to consumer protection enforcement. We sent strong deterrence messages securing over \$12 million in penalties and other remedies.

The decision to take enforcement action is guided by the ACCC's *Compliance and Enforcement Policy*.

We have recently focused on comparator websites and the incremental disclosure of fees and charges by traders, referred to as drip pricing. We are developing both business and consumer guidance about price comparison websites. On 19 June 2014, we instituted our first drip pricing court action against Jetstar Airways Pty Ltd and Virgin Australia Airlines Pty Ltd for alleged contraventions of the ACL.

Credence claims are a powerful marketing tool used to appeal to consumer values such as health, ethics and sustainability. False claims about where products are from, how they are made and by whom they are made, mean consumers and honest small businesses lose out. In the second half of the year, we accepted a court enforceable undertaking from Carlton & United Breweries (CUB) following concerns that it represented that Byron Bay Pale Lager was brewed by a small brewer in Byron Bay. The beer was actually brewed by CUB at its brewery in Warnervale, some 630 km away.

In December 2013, the High Court allowed an appeal by the ACCC in relation to whether TPG's Unlimited ADSL2+ advertisements adequately disclosed the full cost to consumers of bundled offers. As well as finding the advertisements were misleading, the High Court reinstated the \$2 million penalty ordered by the trial judge, a penalty amount which in our view will deter future breaches.

We want to ensure Indigenous Australians enjoy the same protections as non-Indigenous Australians. In April 2014, Startel Communication Co Pty Ltd was ordered, by consent, to pay \$320 000 for misleading consumers about their rights under the ACL when cold calling consumers. The investigation was initiated by a complaint made during an ACCC outreach visit to a remote Indigenous community.

In 2013, the ACCC received almost 92 000 scam-related contacts with reports of financial losses of around \$89 million. These statistics represent the tip of the iceberg in terms of the prevalence of scams in our community. Given the size of the problem, this is not something that we can tackle alone. We will continue close collaboration with state and territory consumer agencies, many of which are already doing excellent work in this area.

Product safety

A critical area of work for the ACCC is protecting consumers from the potential significant harm that can be caused by unsafe products.

A total of 267 recalls of consumer goods were received by the ACCC in 2013-14. We are equally vigilant in taking enforcement action to ensure compliance with product safety standards. For example, Brand Republic Pty Ltd (which operates three GAP retail stores) paid five infringement notices totalling \$51 000 and provided a court enforceable undertaking after supplying children's nightwear that failed the mandatory standard.

Along with our state counterparts, we liaise closely with suppliers about standards. This year we ushered in a new standard for baby walkers, covering construction, performance and labelling requirements and a new standard for portable pools, covering labelling requirements.

Efficient monopoly infrastructure

Economic regulation focuses on replicating, as far as possible, the outcomes of a competitive market where competition is not feasible. Economic regulation creates a system of incentives to drive economically efficient conduct, protecting the long-term interests of users where the supplier has market power.

Consumer engagement in economic regulation has been a big theme for us both at our annual Regulatory Conference and in practice. Customer involvement cannot be bolted on to what already occurs, but needs to be integrated into the overall regulatory design. Deeper consumer involvement is needed to understand the trade-offs that must be made in terms of price and reliability, and price and quality.

In communications, we accepted NBN Co's Special Access Undertaking, which is a key part of the framework for prices and other terms of services supplied to access seekers over the NBN until 2040. We also approved a range of measures to protect competition and consumers during the migration to the NBN.

We finalised a number of inquiries, reports and declared mobile and fixed line services. Regulating fixed line services has promoted competition over bottleneck infrastructure; fundamental to increases in competition in retail voice and broadband markets, which benefits Australian consumers. In mobile services we extended our declaration to include SMS termination charges for the first time, which we believe will provide a basis for lowering these rates.

Sometimes less is more in economic regulation. This year we reduced the prescriptiveness of regulation at GrainCorp's bulk wheat terminal in Newcastle in light of the increased competition from other facilities at that port.

We continue to provide accurate, targeted and accessible information to inform stakeholders and consumers about water issues in the Murray-Darling Basin, the petroleum industry, container stevedoring and major airports. Often our monitoring program has dual purposes; increasing transparency and discouraging operators from increasing prices excessively and/or offering low quality services.

Increasing our engagement

We have continued to invest in and focus on the way we engage with stakeholders, recognising that understanding our stakeholders is critical to fulfilling role.

With more than 160 000 contacts recorded in 2013-14, our Infocentre continues to be the heart of the organisation in terms of providing a service to the public. These contacts are used to inform our enforcement and compliance activities.

One of the ACCC's most important partnerships is with our fellow Australian Consumer Law regulators from the state and territory governments. This year, we have collaborated on many consumer issues, but none more pressing than product safety. Whether it be alerting parents to the choking hazards of button batteries or liaising with suppliers about the recall of faulty electrical cables, effective agency cooperation is the key to safeguarding consumers.

We continue to take the view that prevention of a breach of the Act is always preferable to taking action after a breach has occurred. As part of this, the ACCC seeks to ensure that businesses are fully aware of both their rights and responsibilities under the Act, including through the production of guidance on a range of issues.

As well as our consultative committees, we reach small business through our website, a dedicated small business hotline, targeted publications and online education modules. During 2013-14 small business education and outreach activities included more than 90 speeches and presentations by ACCC Commissioners and staff to small business audiences. The ACCC also offers three free online education programs aimed at small businesses, tertiary students and potential franchisees. In the year ahead we are preparing for amendments to the Franchising Code of Conduct and possible changes to laws around unfair contract terms to cover small businesses.

On the international stage, we continued to build on our already strong credentials with the Global Competition Review naming us as the 2014 agency of the year for our region. At a regional level, we see huge benefits in assisting our neighbours to establish effective regimes to encourage competition and protecting consumers.

In April 2015, the ACCC will host the International Competition Network's Annual Meeting in Sydney. The annual meeting occurs at a time when many of our regional counterparts are implementing competition law as a way to drive productivity and promote consumer welfare.

Senior changes

After an outstanding career in the public service, Chief Executive Officer Mr Brian Cassidy announced his retirement in February. The ACCC owes a considerable amount of its professionalism and success to Mr Cassidy who had been with the agency since 2000. With his retirement, as the official Agency Head under our legislation, I have taken an even more active role in managing the organisation.

There have also been changes at the Commission table. In August 2013, we farewelled Commission member Mr Joe Dimasi. As a staff member and as a Commissioner, Mr Dimasi's contribution to our regulatory work was enormous and spanned almost two decades.

In June 2014, we welcomed Mr Roger Featherston as a member of the ACCC. Mr Featherston brings a wealth of experience in competition and communications law.

Looking ahead

The commencement of the Harper Review marks an important and exciting time for competition policy in this country. We believe the Australian Government's review, chaired by Professor Ian Harper, provides an ideal opportunity to reinvigorate Australia's competition culture. We look forward to the competition review unfolding and the continuing debate about how to elevate competition in our public policy.

We believe effective competition policy depends on using competition and other incentives to boost productivity; it requires effective competition laws and the need to be creating processes and institutions that continually foster competition. In addition to the Harper Review, the Vertigan Review is critical to the communications landscape.

While the ACCC operates as an independent statutory authority, the ACCC maintains a close relationship with Treasury and our responsible Minister, the Hon. Bruce Billson MP, Minister for Small Business. The ACCC recognises the importance of the Government's deregulation agenda and in this regard, we have already taken a number of steps to seek to reduce the regulatory burden on business.

Combatting cartel conduct is an enduring priority for the ACCC and our resolve to enforce these laws has never been stronger. We have recently established an internal unit solely dedicated to examining potentially serious cartel conduct. Furthermore, we are working closely with the Commonwealth Department of Public Prosecutions in circumstances where criminal action may be appropriate.

Over the next year the ACCC has a key role in ensuring that savings are passed on to consumers following the repeal of the carbon tax. The ACCC has been given new powers to monitor prices and enforce the pass through of all cost savings in regulated sectors; namely the electricity, natural gas and synthetic greenhouse gas sectors. The ACCC has dedicated significant resources to achieving this goal. This work is underway and will be a significant focus in the coming year.

Having navigated the challenges of 2013-14, the ACCC is now well placed organisationally and financially to engage with the issues posed by the ever-changing economy and we look forward to tackling these issues head-on in the coming year.

Rod Sims
Chairman
Australian Competition and Consumer Commission

Finance and staffing snapshot

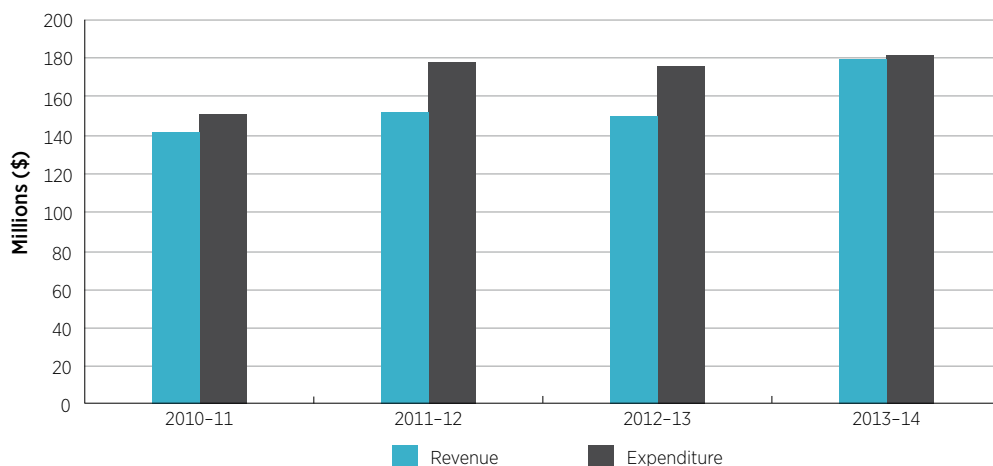
The ACCC received an unqualified audit report on the 2013–14 financial statements from the Australian National Audit Office. These statements can be found in part 5 from pages 227 to 304.

The ACCC's net cost of services for 2013–14 was \$181.9 million, with revenue from Government of \$179.5 million, resulting in an operating loss of \$2.4 million. This result was impacted upon by a provision being recognised for a newly onerous lease, along with legal settlements being made for \$3.5 million.

Revenues from other sources increased by \$0.3 million in 2013–14.

Expenditure on ACCC activities increased by \$5.98 million in 2013–14 and was primarily related to the recognition of a provision for an onerous lease of \$3.3 million and legal settlements of \$3.5 million. A comparison of revenue and expenditure trends over the last four years is illustrated in figure 1.1 below.

Figure 1.1: ACCC revenue and expenditure



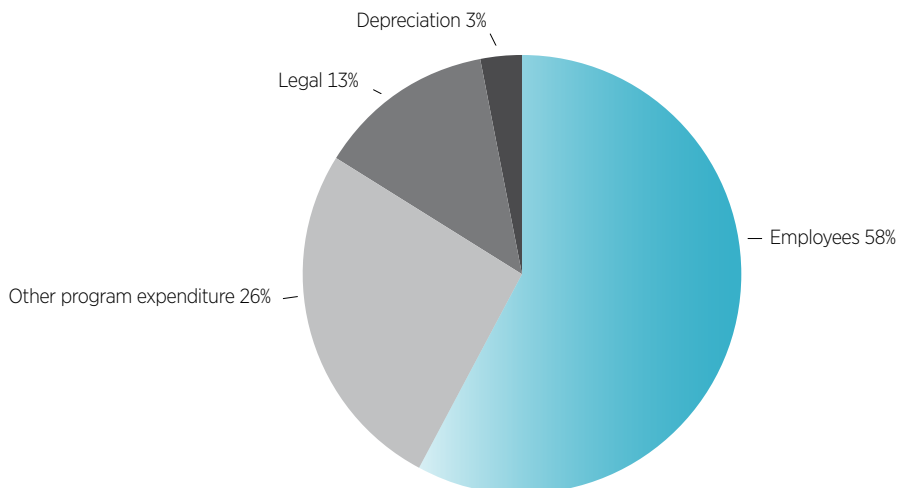
Key financial results for ACCC for the financial years 2011–12, 2012–13 and 2013–14 are shown in the following table.

Table 1.1: ACCC comparative financial results, 2011–12, 2012–13 and 2013–14

	2013–14 \$'000	2012–13 \$'000	2011–12 \$'000
Revenue from Government—appropriation receipts	179 517	150 228	151 275
Other revenues	1 161	852	1 549
Changes in asset revaluation surplus	(14)	53	142
Total income	180 664	151 133	152 966
Operating expenses	183 102	177 117	179 063
Comprising expense major categories:			
Employee costs	107 091	101 478	100 607
Legal fees	23 366	25 111	26 277
Other expenses	52 645	50 528	52 206
Net cost of services (expenses less revenues)	181 941	176 265	177 514
Net operating surplus (loss)	(2 438)	(25 984)	(26 097)
Operating cash balance	1 941	592	1 792
Receivables	26 662	11 033	32 626
Total assets	53 585	37 101	60 619
Total liabilities	49 089	46 502	46 114
Total equity	4 496	(9 401)	14 505
Revenues raised on behalf of the Commonwealth (administered fees and fines)	30 050	57 067	28 315

Expenditure

The ACCC is a knowledge-based organisation and as such spends approximately 58 per cent of total expenditure on employee costs, as compared to 57 per cent in 2012–13. Legal expenditure is subject to volatility depending on the timing and outcome of litigation proceedings. Legal expenditure decreased by \$1.7 million or 6.9 per cent in 2013–14, compared to 2012–13. Other expenses (excluding depreciation) increased by \$1.4 million or 3.2 per cent in 2013–14 (due to an increase in onerous lease provision expense offset by decreases in consulting and contracting services and travel). There has been a slight increase in depreciation and amortisation expenditure over the same period.

Figure 1.2: ACCC expenditure, 2013–14

Operating statement

The ACCC recorded an operating loss for 2013–14 of \$2.438 million, as compared to an operating loss of \$25.984 million in 2012–13.

Balance sheet

The ACCC's net assets as at 30 June 2014 totalled \$4.5 million as compared to (\$9.4) million in 2012–13.

Assets

Total assets as at 30 June 2014 were valued at \$53.6 million compared to \$37.1 million in 2012–13, representing a 44.5 per cent increase. This increase in assets primarily relates to an increase in the Appropriations receivable from additional funding provided to the Commission in the 2013–14 Financial Year.

All assets have been managed in accordance with Commonwealth policies and reported following the relevant accounting standards.

Liabilities

Total liabilities increased from \$46.5 million in 2012–13 to \$49.1 million in 2013–14. The increase was largely due to the provision for an onerous lease, along with accrued wages due at the end of the financial year (as a result of the timing of the first pay day in July 2014).

Administered revenue

Revenues administered on behalf of the government during 2013–14 amounted to \$30.1 million, a decrease of \$27 million from last year (2012–13: \$57.1 million). This amount includes court-imposed fines and costs.

Staffing summary

Table 1.2: Average staffing level

	Budgeted	Actual
2010-11	778	790
2011-12	813	807
2012-13	745	798
2013-14	802	788