



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION



AUSTRALIAN
ENERGY
REGULATOR

Annual Report

2019-20

**Australian Competition and Consumer Commission
and the Australian Energy Regulator**

October 2020



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& CONSUMER COMMISSION



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Contact us

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2 September 2020

The Hon. Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

ACCC and AER Annual Report 2019-20

We are pleased to present to you the Annual Report of the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) for the year ended 30 June 2020. This report has been prepared in accordance with s. 46 of the *Public Governance, Performance and Accountability Act 2013* and s. 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 mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet our specific needs. We certify that all reasonable measures have been taken to appropriately deal with fraud relating to the ACCC and AER.

Yours sincerely

Handwritten signature of Rod Sims in black ink.

Rod Sims
Chair, ACCC

Handwritten signature of Clare Savage in black ink.

Clare Savage
Chair, AER

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01

Year in review





2019–20 review: ACCC Chair, Rod Sims

The past 12 months have been both extraordinary and dreadful for many people and businesses in Australia. Many parts of the country experienced severe drought in 2019. This was followed by catastrophic bushfires over the summer and then the global COVID-19 pandemic from early 2020.

The public health crisis caused by the pandemic has been awful for so many in a range of different, unpredictable ways. But it has impacted everyone.

We have all had to make changes and, like many businesses and organisations, the Australian Competition and Consumer Commission (ACCC) has shifted the focus of our work and resources. Over 97 per cent of our employees moved to work from home over a two-week period in March, utilising and building on our pre-existing flexible work practices. It is a source of pride to us all that we have been able to maintain a high-quality level of work and productivity despite the challenges that working from home can bring.

The ACCC's immediate response to the crisis was to refocus our resources on two broad areas: the authorisation of collaboration between competitors under the existing authorisation process; and the establishment of the ACCC's COVID-19 Taskforce to tackle consumer problems arising from the crisis, particularly relating to travel and event and membership cancellations caused by the COVID-19 pandemic or resulting government restrictions. This included responding to over 20 000 COVID-19-related phone calls, emails and webforms, plus many more social media reports, from consumers and businesses.

The work of the COVID-19 Taskforce has benefited many consumers, including through Flight Centre's decision to stop charging \$300 cancellation fees and Qantas' clarification that consumers whose flights were cancelled are entitled to refunds. While we have had some excellent public outcomes, the vast majority of work has been occurring behind the scenes through discussions and negotiations with industry associations, businesses and consumer advocacy bodies.

The ACCC has published COVID-19 information and guidance for consumers and businesses in a number of industry areas, including travel, events, sporting and gym memberships, telecommunication services and supply chain issues. We are reviewing and updating these as the environment changes to ensure they remain current and respond to emerging issues.

The interim authorisations we issued allowed competing businesses to collaborate in activities that might ordinarily be anti-competitive but that, during a crisis like the pandemic, can result in a net public benefit. These authorisations, for example, allowed banks to jointly provide debt relief to borrowers, supermarkets to coordinate to ensure our supermarkets were safe, and medical equipment manufacturers to coordinate the supply and manufacture of equipment.

Additionally, the ACCC provided warnings about the inevitable scams and misinformation that appeared online. Further, even where we are not able to take action against some particular conduct, we have on occasion called out poor behaviour, including in relation to excessive pricing. The COVID-19 Taskforce also engaged with major platforms such as Amazon, Gumtree, eBay and Facebook Marketplace to ensure they were taking appropriate measures to disrupt individuals seeking to sell certain essential items at excessive prices, such as hand sanitiser and toilet rolls.

While the pandemic has necessitated a shift in our priorities, it has not stopped our day-to-day work. In 2019–20 the ACCC recorded some significant wins in the courts, which has led to record total penalties of \$232.7 million being imposed in proceedings brought by the ACCC, providing significant deterrence. Penalties are returned to the Australian Government.

Cartel conduct

The ACCC continued to build on its criminal and civil cartel expertise and there were some significant outcomes during the 2019–20 year.

In August 2019 Kawasaki Kisen Kaisha Ltd (K-Line) incurred a \$34.5 million fine, the largest ever criminal sanction imposed under the *Competition and Consumer Act 2010* (Cth).

Also in August 2019 civil proceedings were instituted against BlueScope Steel Limited and its former sales and marketing general manager Mr Jason Ellis for alleged cartel conduct in relation to the supply of flat steel products. The Commonwealth Director of Public Prosecutions (CDPP) also charged Mr Ellis with two counts of inciting the obstruction of a Commonwealth official in the performance of their functions. These matters remain before the courts.

In August 2019 the CDPP also laid criminal cartel charges against Wallenius Wilhelmsen Ocean AS, a Norwegian-based global shipping company, concerning the international shipping of vehicles to Australia. Its recent guilty plea is an indication of the focused and forensic work of our cartel investigation teams, and marked an end to matters relating to this shipping cartel that date back to 2012.

In September 2019 we published our revised ACCC Immunity and Cooperation Policy for Cartel Conduct, which came into effect on 1 October 2019. The policy covers cartel conduct such as price-fixing, market sharing, bid rigging and customer allocation but does not extend to anti-competitive concerted practices. In July 2019 the ACCC established a separate anonymous reporting portal for reporting anti-competitive conduct in the construction industry.

Mergers

In September 2019 we announced that we would oppose the acquisition of B&J City Kitchen by Jewel Fine Foods on the basis that it would be likely to substantially lessen competition, because they were the two largest competitors in chilled ready meals and the proposed acquisition would concentrate most of the manufacturing capacity for chilled ready meals. Subsequently, B&J City Kitchen was acquired by a Coles Group company.

There were other examples of our merger control being effective, with several matters withdrawn after the ACCC issued statements of issues outlining concerns. These included Assa Abloy's acquisition of E Plus building products, Bis Industries' acquisition of Cougar Mining Group, and the proposed merger between Cengage Learning and McGraw-Hill Education.

There were also some high-profile setbacks.

The Federal Court found against us in the TPG-Vodafone merger case. And the Full Federal Court dismissed our appeal to stop Pacific National's acquisition of Aurizon's key Acacia Ridge Terminal in Brisbane. We are seeking leave to appeal to the High Court against the Full Federal Court's ruling in the Pacific National case.

We stand by our decisions to oppose these mergers, and we will continue to oppose mergers that we consider will substantially lessen competition.

In this context, I cannot fail to mention the debate Australia needs to have about how concentrated we want our economy to be and therefore how we approach assessments of the competition effects of mergers.

Despite the ACCC's lack of success in blocking mergers in the Federal Court and the Australian Competition Tribunal, we maintain the importance of taking action to preserve competitive market structures. Without a strong merger regime, there is a risk of higher market concentration as dominant firms acquire competitors to enhance their market power. Ultimately, this could lead to price increases and harm to innovation, productivity and inequality.

In 2020-21 we will pay particular attention to the potential for opportunistic purchases of distressed or failing firms caused by the worsening economic climate to ensure that acquisitions of assets or businesses do not substantially lessen competition. Competition must and will survive the current COVID-19 pandemic crisis, as it is fundamental for the recovery phase of the crisis. An open, well-functioning economy is essential to the prosperity of all Australians, and such an economy depends completely for its success on robust competition.

ACL and competition enforcement

The ACCC enforces the Australian Consumer Law (ACL) to deter contraveners and others from breaching the ACL in the future and to obtain redress for consumers and small businesses.

Over the past year the ACCC achieved a number of 'firsts'.

Following ACCC action, in August 2019 the Federal Court imposed a \$350 000 penalty against Europcar in the first proceedings under the excessive surcharging provisions.

The Federal Court also imposed the first pecuniary penalty for a breach of the 2017 Horticulture Code of Conduct, ordering Australia's largest potato wholesaler, Mitolo Group Ltd, to pay a penalty of \$240 000.

In September 2019 the Federal Court imposed \$26.5 million in penalties—a record amount at that time—against Cornerstone Investments Aust Pty Ltd, trading as Empower Institute, after the Court found that the training college had engaged in a system of unconscionable conduct when it enrolled consumers in VET FEE-HELP funded courses. The Court also ordered Empower to repay more than \$56 million to the Commonwealth for funding it had received to provide the courses.

However, the record set by the penalties against Empower was short-lived: in December 2019 the Federal Court imposed penalties of \$125 million against Volkswagen AG as a result of admitted conduct related to the 'Dieselgate' emissions scandal. This is the highest ever total penalty amount imposed for breaches of the ACL. Volkswagen has appealed against this penalty, and the appeal is to be heard in August 2020.

In December 2019 the ACCC instituted Federal Court proceedings against Tasmanian Ports Corporation Pty Ltd (TasPorts) in its first case taken under the amended misuse of market power provision. The case involves allegations that TasPorts sought to stop a new entrant from competing effectively with TasPorts' marine pilotage and towage businesses, with the purpose, effect and likely effect of substantially lessening competition. This matter is still before the Court.

We continued our work in identifying potentially unfair contract terms, which has led to businesses removing them from their contracts.

In July 2019 Uber Eats agreed to change its contracts with restaurants in response to our concerns that some parts of their standard form contracts were likely to be considered unfair contract terms. We also achieved a number of other successful outcomes which saw unfair contract terms being removed from standard form contracts with small business, including contracts in the stevedoring, dairy and waste management industries.

In September 2019 the Federal Court declared that terms in three Ashley & Martin standard form contracts were unfair and therefore void. Under one of the terms found unfair by the Court, consumers who wished to terminate the contracts more than two days after they accepted the program and consulted with a doctor were required to pay 100 per cent of the total price payable.

In 2019–20, the ACCC was, as always, active in looking at the franchising sector.

In June 2020 the Federal Court imposed freezing orders against Megasave Couriers Australia Pty Ltd and its sole director, and in July 2020 we issued proceedings against Megasave and its director alleging that false or misleading representations were made to franchisees.

In January 2020 the Federal Court ordered \$4.2 million in penalties against former carwash and detailing franchisor Geowash Pty Ltd and two executives for breaches of the ACL. The two executives have appealed.

There were several other notable enforcement outcomes:

- In March 2020 the Federal Court ordered debt collection agency Panthera Finance Pty Ltd to pay \$500 000 in penalties for unduly harassing three consumers over debts they did not owe and for misleading one of the three consumers.
- In April 2020 the Federal Court ordered STA Travel to pay \$14 million in penalties for making misleading representations in MultiFLEX Pass advertising that consumers who bought the airfare add-on could change their flights without paying fees or charges.
- In May 2020 the court ordered Novartis Consumer Health Australasia (Novartis) and GlaxoSmithKline Consumer Health Australia Pty Ltd (GSK) to pay penalties of \$4.5 million for false or misleading representations in the marketing of Voltaren Osteo Gel and Voltaren Emulgel pain relief products.

The ACCC also accepted a court enforceable undertaking from TEG Live Pty Limited in which it committed to refunding over \$5 million to about 5000 consumers who bought approximately 20 000 tickets to watch basketball games featuring the USA men's national basketball team in August 2019.

Consumer product safety

Consumer safety is paramount, and we take our responsibilities in protecting Australians from unsafe goods very seriously.

Our Takata Taskforce continued to facilitate the replacement of well over three million faulty Takata airbags from Australian vehicles pursuant to a compulsory recall. While we made good progress with the largest ever recall in Australia, with over 2.6 million of the three million affected vehicles having had airbags replaced, we will continue working to ensure faulty airbags are replaced or the affected vehicles are no longer on the road.

We commissioned research from the Australian National University on the Takata recall, and it showed the recalls are significantly less likely to be responded to in locations where disadvantaged consumers are over-represented. We are doing a number of things to address this, including outreach work in Indigenous and culturally and linguistically diverse communities to find owners of vehicles with affected airbags.

We have also been working with the Department of Infrastructure, Transport, Regional Development and Communications to assist in transitioning full responsibility to them for motor vehicle safety from 1 July 2021. We are also assisting the department on other airbag recalls not covered by the compulsory recall notice. This work continues to be a high priority.

The ACCC inspected 12 480 product lines at 1624 retailers to assess compliance with 18 mandatory safety standards. As a result of this proactive surveillance program, many products have been recalled, including trolley jacks, nightwear for children and treadmills.

Following a two-year ACCC investigation, in October 2019 the federal government accepted the ACCC's recommendation to introduce a new mandatory safety standard for quad bikes. The standard requires that, within 12 months, all new (and second-hand) bikes will need to have information affixed to them about the angle at which they might start to overturn. Within 24 months all new general use quad bikes will need to meet minimum standards for stability and be fitted with an operator protection device to reduce the risk of serious crush injuries and deaths in the event of a rollover.

Telecommunications

During 2019–20 we focussed on issues arising from poor consumer experience with the National Broadband Network (NBN). We progressed two key inquiries, one in relation to NBN Co's wholesale service standards to address gaps in service standards and the second into NBN wholesale pricing to restore competitive pricing of entry-level plans on the NBN.

This work is supported by our Measuring Broadband Australia (MBA) reports, which provide Australian consumers with accurate and independent information about broadband speeds. During the surge in demand on the NBN as a result of workers and students relying on online methods of communication due to the COVID-19 pandemic, information on NBN performance has been of particular importance. In May 2020 we enhanced our broadband performance monitoring by releasing our first MBA monthly key indicators report to provide further insights into NBN performance.

We were also active in taking enforcement action in the telecommunications sector.

On 8 October 2019 the ACCC issued a formal warning to NBN Co under s. 103(4) of the *Telecommunications Act 1997* (Cth) relating to NBN Co's supply of NBN business services. To address the ACCC's concerns, NBN Co gave an undertaking to offer consistent contract terms to anyone seeking upgraded NBN infrastructure and to give the same information to them at the same time.

NBN Co subsequently provided a further court enforceable undertaking in which it admitted that it misled Canberra consumers that their telephone and internet services supplied over the TransACT Network would be disconnected if they did not move to the NBN. As part of the undertaking, NBN Co made a commitment to reimburse consumers and businesses for the early termination costs they paid where they moved to NBN Co and then chose to return to the TransACT Network.

The Federal Court imposed penalties of \$6.4 million against Optus in relation to misleading claims made about NBN internet disconnections to consumers, which followed earlier penalties of \$10 million against Optus in relation to its third-party billing service.

Telecommunication provider BVivid Pty Ltd provided the ACCC with a court enforceable undertaking in which it admitted that NBN telemarketing calls likely breached the ACL and paid \$25 200 in penalties following the issue of two infringement notices.

In June 2020 we instituted Federal Court proceedings against Dodo Services Pty Ltd (Dodo) and Primus Telecommunications Services Pty Ltd (iPrimus), both owned by Vocus Group (Vocus), alleging they made false or misleading claims about the NBN broadband speeds their customers could achieve during busy evening hours. This matter is still before the Court.

Energy and fuel

The *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Act 2019* (Cth) came into effect on 10 June 2020. The new provisions prohibit a range of conduct in the electricity retail and wholesale markets and provide for a series of graduated remedies which can be imposed against companies that breach the provisions. This will be a continuing area of focus for the ACCC in 2020. The ACCC's role is to enforce compliance with these laws, and competition and consumer issues in electricity are key compliance and enforcement priorities for the ACCC. In May 2020 we issued guidelines to assist electricity retailers and generators to comply with laws aimed at protecting consumers and businesses from excessive electricity prices.

The ACCC will continue to closely monitor the behaviour of companies in the electricity markets. We have a range of enforcement tools available, including public warning notices, infringement notices and commencing legal proceedings in the Federal Court alleging that companies have breached these laws.

The past year also saw the release of the new Electricity Retail Code, with the ACCC responsible for monitoring and enforcing compliance with the code for retailer price setting and marketing activities.

We also achieved a number of enforcement outcomes in relation to energy. For example:

- Amaysim Energy Pty Ltd, trading as Click Energy, was ordered to pay penalties of \$900 000 for making false or misleading marketing claims about potential discounts and savings
- M2 Energy Pty Ltd, trading as Dodo Energy, and CovaU Pty Ltd paid penalties totalling \$37 800 and \$12 600 after the ACCC issued infringement notices for alleged misleading claims about discounts available on their energy plans.

The extension of our Gas Inquiry until December 2025 enabled us to continue our work providing greater transparency in the east coast gas market. In 2019–20 we published two interim reports around the supply and pricing of gas, particularly for commercial and industrial users. We also conducted a detailed review of the effectiveness of Part 23 of the National Gas Rules, and continued to publish our liquefied natural gas netback price series to improve transparency of gas prices.

Our role in fuel price monitoring took on even more significance with the advent of the COVID-19 pandemic. Around half of the fuel-related enquiries and complaints we received in 2019–20 were received between March and April 2020, aligning with the initial period of the pandemic. In response to the pandemic we enhanced our petrol price monitoring in March 2020 to determine whether recent falls in international crude oil and refined petrol prices were flowing through to consumers.

Digital platforms

In July 2019 the Treasurer released the ACCC's final report on the current and future impact of the digital platforms—in particular, on the media and advertising sectors. A particular focus of our Digital Platforms Inquiry (DPI) was the disruption of journalism and media businesses by Google and Facebook and their unprecedented market power.

The DPI report made 23 recommendations spanning competition law, consumer protection, media regulation and privacy law, reflecting the intersection of issues arising from the growth of digital platforms.

In December 2019 the federal government adopted the key recommendations the ACCC made, including the establishment of a specialist digital platforms branch within the ACCC to proactively monitor and investigate potentially anti-competitive conduct by digital platforms and any conduct that may breach consumer laws.

In October 2019 the ACCC instituted proceedings against Google LLC and Google Australia Pty Ltd alleging they engaged in misleading conduct and made false or misleading representations to consumers about the personal location data Google collects, keeps and uses.

We also commenced two major merger reviews of acquisitions by Facebook and Google of Giphy Inc and Fitbit respectively. Both acquisitions have the potential to further entrench buyers' dominant position and adversely affect competition in digital advertising markets.

Transparency and inadequate disclosure issues involving digital platforms and consumer data were a major focus of the DPI and remain one of the ACCC's top priorities.

In April 2020 the federal government directed the ACCC to develop a mandatory code of conduct to address bargaining power imbalances between Australian news media businesses and digital platforms. The government asked for the draft code to be released for public consultation before the end of July 2020, with a final code to be settled soon thereafter.

Consumer Data Right

We made significant progress implementing the Consumer Data Right (CDR) in banking over the past year. Under the Consumer Data Right, individual customers can request their bank to share their data for deposit and transaction accounts and credit and debit cards. Crucially, on 25 May 2020 we launched the CDR Register and Accreditation Application Portal, the IT backbone of the Consumer Data Right, ahead of live consumer data sharing which commenced on 1 July 2020. From 1 November 2020 consumers will be able to share their data relating to home loans, investment loans, personal loans and joint accounts.

This is a key milestone for competition in Australia in banking. The Consumer Data Right will be extended to other sectors in the future.

Now the critical infrastructure is in place, we are looking forward to seeing a greater number of eligible participants entering the CDR ecosystem. This will provide consumers with more control over their financial data and give them greater choice and access to more personalised financial products and services.

Market studies and inquiries

Because of our experience and expertise as the competition and consumer regulator, the ACCC plays a key role in a number of important government-initiated inquiries and market studies.

In September 2019 we completed our inquiry into the supply of foreign currency conversion services in Australia. The inquiry highlighted issues with transparency and impediments to effective price competition in the sector.

In October 2019 the federal government directed the ACCC to commence an inquiry into home loan pricing. In April 2020 we issued a Home Loan Price Inquiry interim report, which looked into the pricing of home loans by the big four banks between January and October 2019. The interim report shows that the big four banks considered various factors as they decided whether to pass on the Reserve Bank of Australia's June, July and October 2019 rate cuts. But recovering profits was central to their decisions to not always fully pass through the lower rates to mortgage customers.

The rural sector and regional Australia have become an increasing focus of our work.

In September 2019 we released our final report from the agricultural Wine Grape Market Study. We made 10 recommendations to improve the efficiency and fairness of wine grape markets in Australia's warm climate grape growing regions, where most of Australia's wine is produced.

In July 2019 we released an update report of the Northern Australia Insurance Inquiry finalising a further 13 recommendations aimed at boosting price transparency and consumer choice in northern Australia, whose residents pay considerably higher premiums for home, contents and

strata insurance. In December 2019 we released our second interim report, which assessed a range of possible government interventions to improve insurance affordability and availability. The inquiry's main focus in 2019–20 was on how to achieve real and meaningful change for northern Australian communities.

In August 2019 the government directed the ACCC to commence an inquiry into markets for tradeable water rights in the Murray–Darling Basin. The final report of the Murray–Darling Basin Water Markets Inquiry is due to be handed to government by November 2020. The interim report, which was handed to the government on 30 June and published on 30 July 2020, will do much to frame the issues in this complex but vital area of activity.

On 19 June 2020 the federal government gave the ACCC a new role to actively monitor and regularly report on the domestic air travel market. The COVID-19 pandemic has severely impacted the domestic aviation industry and the ACCC will be looking for any early signs of damage to competition that could harm the long-term interests of consumers.

In parallel, the ACCC is also continuing to investigate whether Qantas' acquisition of a 19.9 per cent ownership stake in Alliance Airlines was in breach of the merger law.

Competition and consumer advocacy

There is much going on in the area of competition and consumer advocacy. For example, at the most basic level, we remind consumers they can save a lot of money by regularly shopping around for new home loans and electricity supply, as new customers clearly pay less than loyal customers.

As Australia's general infrastructure regulator, we are also drawing attention to the lack of an effective general regulatory regime for infrastructure monopolies that are not vertically integrated. We have Part IIIA for vertically integrated infrastructure but no 'Part IIIB' where the monopoly owners are not vertically integrated.

There are also government reforms underway to consider laws dealing with unfair contract terms and a national safety provision, which we are contributing to. And the debate has just started on whether Australia should follow the United States, the United Kingdom, Europe and other jurisdictions by introducing a law against unfair practices by large businesses against consumers and small businesses.

Farewells

In 2020 we said farewell to two of the ACCC's valued leaders.

In late April the ACCC's Chief Operating Officer Rayne de Gruchy retired after almost 10 years at the ACCC. I thank her for her outstanding public service career and the pivotal role she played during her tenure. We owe much of our governance structures, culture and flexible working practices to Rayne. Her work in these areas provided us with a solid foundation that allowed us to continue our work during the COVID-19 pandemic.

I also want to particularly thank Commissioner Cristina Cifuentes, who departed the ACCC on 3 July 2020 after more than seven years in the role, which she held concurrently with nine years as a Board member of the Australian Energy Regulator (AER). Cristina has for a long time been one of Australia's leading infrastructure regulators and her extraordinary breadth of experience and knowledge, particularly in the energy, transport, telecommunications and finance sectors, has been invaluable in shaping many key decisions of both the ACCC and AER.

We also saw some departures from the AER in the past year.

First, Paula Conboy departed in September 2019. In her four years as Chair of the AER, Paula's calm and sage leadership steered the AER to a position of strength.

In May 2020 we saw the departure of Michelle Groves as the AER's Chief Executive Officer. For 15 years Michelle provided the leadership and vision that has seen the AER develop into the highly professional, trusted agency it is today.

While the effects of the COVID-19 pandemic continue to ripple through and damage the economy, we will maintain our focus on enhancing the welfare of Australians by promoting competition, and assisting in mitigating the damage to businesses, consumers and the economy, to ensure the recovery is as swift as possible.

Rod Sims
Chair, ACCC

ACCC year in review 2019-20

Consumer Data Right

Consumer Data Right ready for 1 July 2020 launch

Enforcement

Total penalties from litigated consumer protection matters
\$198.2m

Total penalties and fines from litigated competition matters
\$34.5m



94

In-depth investigations concluded

12

Court cases commenced

10

Immunity applications received

Market studies and inquiries



11

Market studies and inquiries completed or progressed

Consumer product safety

6911

Reports regarding product safety received, **12** of which were subject to initial or in-depth investigation

1711

Mandatory injury reports assessed

633

Voluntary recall notifications published

1624

Supplier inspections for compliance with 18 mandatory safety standards, bans or product types

2.8m

Defective Takata airbags rectified since July 2017



Infocentre



312 773

Infocentre contacts served

12 143

Small business Infocentre contacts served

Mergers and authorisations

288

Mergers assessed

31

Mergers subject to public review

24

Non-merger authorisation applications assessed

2

Merger authorisation applications assessed

257

Mergers finalised by pre-assessment

Infrastructure

12

Investigations into breaches of industry-specific rules

7

Infrastructure monitoring reports

6

Petrol monitoring reports

533 540

Views of the ACCC petrol price cycles website



10

Number of reports on broadband markets

ACCC websites

14.8m

ACCC website page views

7.6m

Scamwatch website page views

7.1m

Product safety website page views



2019–20 review: AER Chair, Clare Savage

Never before has a reporting period contained so many unexpected events. The financial year of 2019–20 has been defined by drought, bushfires, super storms and the COVID-19 global pandemic.

In this time of uncertainty, the statutory remit of the AER has never been more important in ensuring the interests of energy consumers are protected. The AER has shown great leadership at a time of significant organisational change.

In October 2019 I had the tremendous privilege of assuming the role of AER Chair. I thank my predecessor, Paula Conboy, for her outstanding contribution not only to the AER but also to the sector more broadly. Also during this financial year, long-time AER Board member Cristina Cifuentes stepped down as part of the transition from a three-person to a five-person Board. Cristina's insight will be missed. We experienced further generational change with the retirement of our inaugural Chief Executive Officer, Michelle Groves. The AER is, without question, Michelle Groves's legacy. The continued growth and strength of the AER, and its role within the broader governance framework, is testament to her tenacity and foresight.

Our new Chief Executive Officer, Dr Liz Develin, commenced in May 2020 as COVID-19 lockdowns came into effect across Australia. Liz would be one of few chief executive officers in Australia to commence in such extraordinary circumstances. I warmly welcome the dedication and experience she brings to the AER.

In this financial year we also welcomed a new and bigger Board that includes me as Chair, Jim Cox PSM as Deputy Chair, and Eric Groom PSM, Justin Oliver and Catriona Lowe as members.

In addition to significant leadership change, the number of employees in the AER grew from 253 to 272. We have had a special focus on increasing the breadth and depth of the skill set within the AER. Our workforce is 49 per cent female and 51 per cent male; 19 per cent are culturally and linguistically diverse; and 4 per cent identify as having a disability.

Despite such significant change both internally and across the energy sector, I am proud that we have continued to work hard at serving the long-term interests of energy consumers.

We have continued to deliver above and beyond our statutory remit. I want to pay special tribute to all the employees working from home at this time. I appreciate that, for many, it feels like they are living at work. There is no question this has been, and will continue to be, a tough time for our employees—schooling children, looking after at-risk relatives and living with isolation and uncertainty while also remaining committed to their roles in the AER.

I am especially proud of how quickly we released our Statement of Expectations of energy businesses in the early days of the COVID-19 pandemic in March 2020. Our statement sets out our expectations of market participants to offer payment plans to all residential and small business consumers in financial stress and to prevent their disconnection. Pleasingly, both network service providers and retailers quickly adopted these expectations. Energy providers were also asked to provide more information on consumer payment plans, hardship, disconnections and credit referral activity.

With the potential for increased volume of deferred payments from energy consumers, the AER also submitted a proposal to change the National Electricity Rules to help reduce the risk of retailer failures by allowing them to defer payment of network charges. Significant work was also undertaken between the AER and Australian Energy Market Commission on the financial resilience of retailers, and the AER will continue to monitor and report on this going forward.

Our market and regulatory frameworks exist to serve Australian energy consumers. There remains a significant portion of Australian consumers who either cannot or do not want to engage in a complicated energy market. To protect these consumers from unjustifiably high prices, the Australian Government introduced the Default Market Offer (DMO). The AER sets the DMO in south-east Queensland, New South Wales and South Australia. From July 2019 to January 2020 standing offer prices for residential consumers fell by 11–13 per cent in New South Wales, 12 per cent in South Australia and 10 per cent in south-east Queensland. Our second DMO decision, which further reduces prices in Queensland and South Australia, came into effect on 1 July 2020.

During the year we completed our \$8 million project to enhance the Energy Made Easy website. New features include translation into more than 30 languages, factoring solar tariffs into plans, and easier uploading of energy bills.

During the reporting period the AER commissioned a study from the Consumer Policy Research Centre (CPRC) on vulnerability. Vulnerability is multifaceted and all consumers can move in and out of vulnerability at different points, as demonstrated by the COVID-19 pandemic. The CPRC report was published in February 2020 and will help inform our future approach to consumer vulnerability.

The AER actively monitors and reports on energy market participants and takes action to ensure compliance with the law and rules. In 2019–20, for the first time, the AER set out five compliance and enforcement priorities. Since 1 July 2019 the AER has instituted eight civil proceedings against six energy businesses and secured enforceable undertakings from three energy businesses. Six energy businesses have paid a combined \$500 000 in infringement notice penalties. In addition to its enforcement action, the AER completed 10 retail compliance audits targeting life support and explicit informed consent obligations. The AER also published guidance on implementing new, more stringent [hardship protections](#) and ensuring consumers are not [denied energy supply](#) due to poor payment history. Further, the AER required a number of retailers and distributors to undertake audits of compliance with life support obligations and to address identified areas for improvement. This is almost twice as many compliance and enforcement actions as the AER has initiated in the past.

We have a range of obligations to monitor and report regularly on the performance of the national wholesale electricity and gas markets. In the last year a number of sentinel reports have been released, including the first wholesale markets quarterly and the annual retail market reports in November 2019. Quarterly reporting on performance issues is a fundamental part of fulfilling our reporting obligations. It bridges the gap between our shorter term high price event reports and our longer term biennial *Wholesale electricity markets performance report*.

The AER also produced a report on affordability in retail energy markets. We continue to publish reports on high wholesale electricity prices across the National Electricity Market (NEM), including two relating to events in January and one in March this year.

All of our work over the past year has been underpinned by exceptional market and consumer insight. There are few better examples of this than the AER's signature publication, *State of the energy market*. This report is in its 12th year and continues to serve as a valuable resource for market participants and decision-makers across the policy, legal and regulatory spheres.

We continue to prepare annual benchmarking reports as required by the National Electricity Rules to examine the relative efficiency of distribution and transmission network service providers. We use this information to inform our network revenue determinations. We have also continued to make a greater level and better quality of information available to stakeholders so they can test the value of their investment in networks. We have published the raw data submitted to us by network businesses. We are now in the late stages of preparing our performance report for electricity businesses, which will highlight the main trends we are seeing across the sector.

As an economic regulator, a key feature of the AER's work is determining appropriate levels of network revenue. This role will need to change and evolve as the culture of regulation changes and as regulated businesses and stakeholders find new, more cooperative ways of working together.

However, network regulation currently remains very intensive and is high volume, with numerous revenue determinations, pricing proposals and tariff structure statements to be decided each year. This year was no different, with 21 tariff proposals approved and five completed revenue decisions.

In June 2020 we issued our final electricity distribution determinations on how much revenue SA Power Networks, Ergon Energy and Energex can recover from consumers in South Australia, regional Queensland and south-east Queensland respectively over the 2020-25 regulatory period. Our determinations ensure that consumers pay no more than necessary for a safe and reliable electricity supply and that projects are delivered as efficiently as possible. Consequently, electricity consumers in South Australia and Queensland will see a reduction in their distribution network charges in the first year of the next regulatory period.

In June 2020 we also issued our [final decision on revenues for Jemena Gas Networks](#) (JGN), which will be likely to result in gas bills for New South Wales consumers falling for almost 1.4 million homes and businesses to which JGN distributes gas.

During the reporting period the AER released our first financial reporting guideline for light regulation gas pipelines. This will help improve transparency and facilitate mutually beneficial negotiations between shippers and pipeline service providers. We continue to monitor non-scheme pipeline operator compliance with the reporting guidelines.

This is in addition to our continuing work in supporting the development of a Regulation Impact Statement to revise the tests used to apply gas pipeline regulation, examine the number and forms of regulation, and examine the governance arrangements for pipeline regulation.

We also maintain public registers for exemptions from Part 23 reporting obligations for non-scheme pipelines, and published five exemptions and revisions to exemptions in 2019–20. In recognition of the potential for significant change in the gas industry, the AER recently supported the future recovery of Jemena's investment in trialling the production of hydrogen from renewable energy for injection into its Sydney network.

This year we released the final report on our first Value of Customer Reliability (VCR) Review. This is the largest VCR study ever conducted in Australia, with more than 9000 residential, small business and industrial energy consumers completing the survey.

In December 2019 we released and invited stakeholder feedback on our first rate of return annual update, specifying how we determine the allowed rate of return on capital invested in regulated electricity and gas networks for the following four-year period.

We have released a discussion paper on our treatment of inflation in our regulatory framework. The discussion paper invited stakeholder feedback and explored the treatment of inflation in our determination of revenue and prices for electricity and gas network services. Importantly, we established the Consumer Reference Group for the [Inflation Review 2020](#) and [Rate of Return Instrument Review 2022](#). The group will play a critical role in representing the perspectives and interests of consumers in these important review processes. We also published a document setting out the process for reviewing the Rate of Return Instrument along with an early working paper on the treatment of debt.

Increased volumes of renewable energy continue to present both opportunities and challenges. This year we approved innovative network tariffs, such as the SA Power Networks' 'solar sponge', to encourage energy use when the supply of renewable energy is high. We also approved, in record time, the cost benefit analysis for two transmission interconnectors that will support the more efficient transportation of renewable energy to meet the future needs of consumers. Our approval of the Contingent Project Application for the proposed \$230 million upgrade of the Queensland to New South Wales Interconnector will allow TransGrid and Powerlink to increase the availability of reliable electricity across the national grid.

The AER has been an active participant in policy development and has regularly engaged with its partner regulators, the Energy Security Board (ESB), the Australian Energy Market Commission (AEMC) and the Australian Energy Market Operator (AEMO) to progress the development of regulatory frameworks to support the energy transition. This includes contributing to the ESB's NEM 2025 market design project. The AER also submitted a rule change proposal to the AEMC on system restart arrangements which contribute to the overall resilience of the power system by enabling recovery following a major blackout. The AEMC accepted the rule change proposal. The AER also raised a proposal seeking arrangements for the deferral of network charges payments by retailers in the context of the COVID-19 pandemic.

The AER also made 19 policy-related submissions, primarily on AEMC rule change processes, including on issues such as wholesale demand management response and the coordination of transmission and generation investment.

During the year we released an issues paper that presents analysis on the Council of Australian Governments (COAG) Energy Council's request for us to develop two rule change proposals to support system security in the NEM. The AER is consulting on the proposed rule change(s) before submitting them to the AEMC. AEMO's management of the power system depends on being able to rely on participants providing energy as forecast, and on which the total market dispatch solution and price has been predicated.

Also at the request of the COAG Energy Council, the AER has worked with the ESB on the development of new, actionable rules to provide a coordinated whole-of-system plan for the efficient development of the power system. In May 2020 the AER began consultation on the draft Integrated System Plan guidelines to support these new rules.

The AER has published guidelines to support the Retailer Reliability Obligation (RRO). Four interim guidelines—the Reliability Instrument Guidelines, the Market Liquidity Obligation (MLO) Guideline, the Contracts and Firmness Guidelines, and the Forecasting Best Practice Guideline—were published within three months of commencement of the RRO. A fifth guideline—the Opt-in Guideline—was published in June 2020.

The MLO in South Australia commenced on 7 February 2020. The AER is receiving ‘traffic light’ reports from the Australian Securities Exchange (ASX) while additional data-sharing arrangements between the ASX and AER are being finalised. At this stage it appears that participants are meeting their MLO obligations. We are also ensuring that classification of MLO generators and groups remains accurate during this interim period while we develop final MLO guidelines.

It has been a challenging but exciting year for the AER. We have managed to do some excellent work and achieve some amazing outcomes in a changing environment and in unusual times.

I am proud of what we achieved this past year and I am very grateful to all our employees for their incredible dedication and contribution to making all Australian energy consumers better off now and in the future.

Clare Savage
Chair, AER

AER year in review 2019-20



2 835 980

EME website engagements

530 000

AER website views



25 Infringement notices paid



22 Retail authorisations assessed

14 Individual exemptions assessed

100%

Percentage of offers published on EME website within two business days of receipt



59 Retailers' hardship policies and proposed amendments assessed (13 new and 46 amending existing retailers' policies)



52 Weekly electricity and gas monitoring reports



5 Completed revenue decisions for electricity networks and gas pipelines



3 Targeted reviews of compliance with the national energy rules



Published *State of the energy market 2020*

Finance and staffing snapshot

The ACCC received an unqualified audit report on the 2019–20 financial statements from the Australian National Audit Office. These statements can be found in part 5.

In 2019–20 revenue from government increased by \$30.3 million and expenditure on ACCC activities increased by \$67.1 million. The additional revenue was appropriated by government to fund a number of new measures and resulted in corresponding increases in employee expenses of \$22.6 million and supplier expenses of \$4.5 million. In 2019–20 the ACCC also recognised \$33.3 million in litigation cost orders that are primarily funded using the ACCC's Litigation Contingency Fund. A comparison of revenue and expenditure trends over the last four years is illustrated in figure 1.1 below.

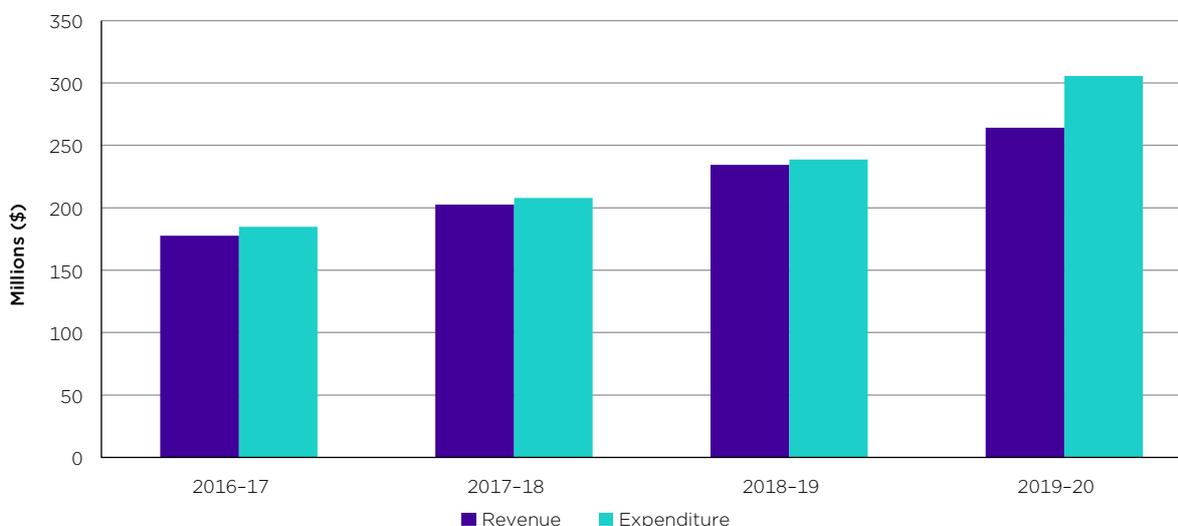
The ACCC incurred an operating deficit of \$41.5 million in 2019–20. Despite incurring an operating deficit, the ACCC remains in a sound financial position and is well placed to pay its debts as and when they fall due. A major contributing factor to the deficit in 2019–20 was the recognition of \$33.3 million of litigation cost orders. The ACCC is permitted to incur an operating loss for litigation cost orders as they are funded through equity using the ACCC's Litigation Contingency Fund. The Litigation Contingency Fund is periodically replenished by government through equity injections to ensure sufficient funds are available at the time payment is made. The operating deficit also includes unfunded depreciation and amortisation expenses that are excluded when determining the ACCC's actual operating result in accordance with the government's 'Net Cash Appropriation Arrangements'.

Factoring in the above adjustments, the ACCC incurred an underlying operating deficit of \$3.7 million. This residual underlying deficit is primarily due to a one-off increase in employee expenses of \$3.0 million following a decrease in the government bond rate used to discount employee leave provisions. Additional costs of \$2.5 million have also been recognised in 2019–20 as a result of adopting AASB 16 *Leases*.

On 1 July 2019 the ACCC adopted new accounting requirements for lease arrangements in accordance with AASB 16. The application of the new requirements has resulted in the recognition of significant lease assets and liabilities and has changed the way lease expenses are recognised and presented in the Statement of Comprehensive Income.

The ACCC's net cost of services for 2019–20 was \$300.7 million (2018–19: \$233.2 million), with revenue from government of \$259.2 million (2018–19: \$228.9 million).

Figure 1.1: ACCC revenue and expenditure 2016–17 to 2019–20



Key financial results for the ACCC (incorporating the AER) for the current and comparative financial year are reported in the entity's annual Financial Statements in part 5.

Appendix 1 of this report details the entity's financial results by outcome and program as outlined in its Portfolio Budget Statement 2019–20.

Expenditure

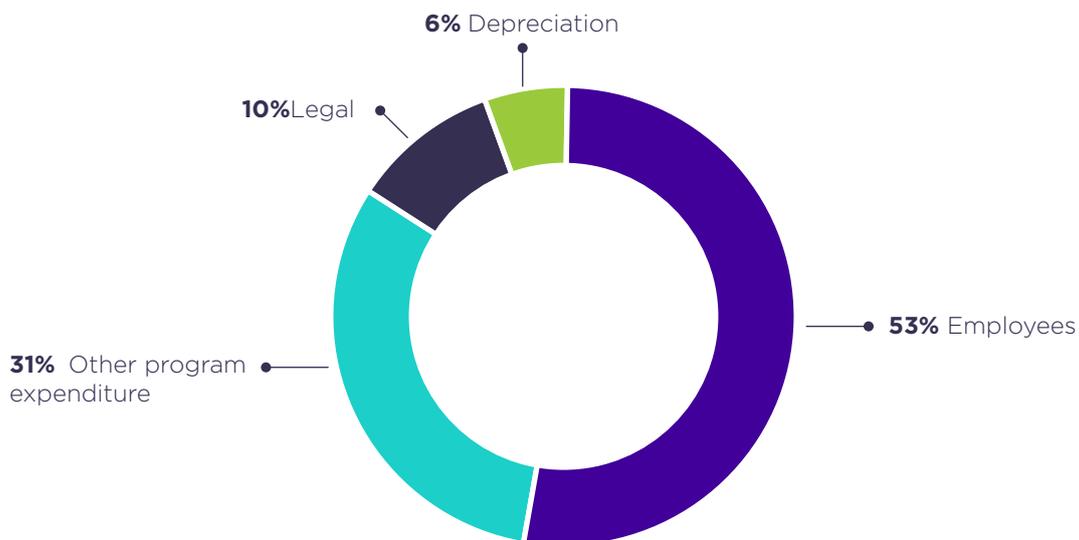
The ACCC is a knowledge-based organisation and, as such, it spends approximately 53 per cent of total expenditure on employee costs (2018–19: 58 per cent).

Legal expenditure increased by \$5.7 million in 2019–20, with costs subject to movement between years depending on the number, nature and status of litigation proceedings.

Other expenses (excluding depreciation and amortisation) increased by \$26.3 million as the ACCC utilised additional funding received in 2019–20 to deliver on its strategic priorities. Other expenses also increased as a result of one-off litigation cost orders incurred in 2019–20.

Depreciation and amortisation increased by \$12.4 million largely due to recognition of depreciation on right-of-use assets arising from leasing arrangements, following the adoption of AASB 16.

Figure 1.2: ACCC expenditure, 2019–20



Operating statement

During 2019–20 the ACCC recorded a comprehensive operating deficit of \$41.5 million compared with an operating loss of \$4.2 million in 2018–19. After adjusting for unfunded expenses, the ACCC's operating deficit for 2019–20 was \$3.7 million. This was primarily due to additional expenses arising from technical accounting adjustments for employee provisions and application of AASB 16.

Balance sheet

The ACCC's net assets as at 30 June 2020 totalled (\$1.0) million compared with \$6.2 million as at 30 June 2019. This decrease largely relates to a decrease in appropriation receivable and reflects the use of accumulated reserves to fund current year litigation cost orders.

Assets

Total assets as at 30 June 2020 were valued at \$169.1 million compared with \$91.6 million on 30 June 2019, representing an 85 per cent increase. This variance is largely the result of a \$63.9 million increase in leasehold improvements largely due to the recognition of right-of-use assets on adoption of AASB 16.

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

Liabilities

Total liabilities increased to \$170.1 million in 2019–20 from \$85.3 million in 2018–19. This increase primarily relates to the recognition of \$75.1 million of lease liabilities on adoption of AASB 16. Liabilities also increased due to higher employee provisions and additional litigation provisions recognised as at 30 June 2020. These increases were partially offset by a decrease in other payables of \$18.6 million due to de-recognition of existing lease liabilities on adoption of AASB 16.

Administered revenue

In 2019–20 the ACCC received \$203.8 million in administered revenue, representing an increase of \$111.7 million from 2018–19. This amount includes court-imposed fines and costs.

Staffing summary

Table 1.1: Average staffing level 2015–16 to 2019–20

	Budgeted	Actual
2015–16	739	752
2016–17	739	772
2017–18	868	874
2018–19	964	976
2019–20	1 113	1 113

Developments affecting our operations or financial results

No developments during or since the end of the financial year have affected, or may affect, our operations or financial results.



02

Overview of the ACCC and AER



The ACCC and AER at a glance

Who we are

The ACCC is an independent Commonwealth statutory authority whose role is to enforce the *Competition and Consumer Act 2010* (Cth) and a range of additional legislation, promoting competition and fair trading, and regulating national infrastructure for the benefit of all Australians.

The AER regulates energy markets and networks under national legislation and rules which aim to promote efficient investment in, and operation and use of, energy services for the long-term interests of energy consumers with respect to price, quality, safety, reliability and security.

Our purpose

The ACCC and the AER work in close coordination to achieve our common purpose: making markets work for consumers, now and in the future.

Our strategies

- Maintaining and promoting competition.
- Protecting the interests and safety of consumers, and supporting fair trading in markets affecting consumers and small business.
- Promoting the economically efficient operation of, use of, and investment in infrastructure; and identifying market failure.
- Undertaking market studies and inquiries to support competition, consumer and regulatory outcomes.
- Promoting efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers with respect to price, quality, safety, reliability and security.

Our people



There were 1286 ACCC and AER employees as at 30 June 2020.

Since late March 2020 around 98 per cent of employees have worked from home due to the COVID-19 pandemic.

Our values

The ACCC and AER appreciate and uphold the APS Values: Impartial, Committed to Service, Accountable, Respectful and Ethical (ICARE), and hold four additional complementary values as unique and meaningful to our work:



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.

About the ACCC and the AER

The Australian Competition and Consumer Commission (ACCC) is an independent Commonwealth statutory authority whose role is to enforce the *Competition and Consumer Act 2010* (Cth) (CCA) and a range of additional legislation, promoting competition and fair trading, and regulating national infrastructure for the benefit of all Australians.

The Commission is the primary decision-making body of the ACCC and comprises six full-time members: the Chair, two Deputy Chairs and three members. Members are appointed by the Governor-General for terms of up to five years, and appointments are made after the majority of state and territory jurisdictions support the selection. Further information on the Commission is provided in part 4 of this report.

The Australian Energy Regulator (AER) is Australia's national energy market regulator. The AER has its own independent Board, comprising two Commonwealth members and three state/territory members. One member is appointed as the Chair and another member is appointed as the Deputy Chair. The Board is supported by employees who are engaged exclusively on energy matters. It also has access to the ACCC's legal and economic specialists. The AER's functions are set out in national energy market legislation and rules. Its functions mostly relate 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.

ACCC Commissioners and AER Board members are statutory officers. ACCC and AER employees are Australian Public Service employees. Both agencies are within the Treasury portfolio.

Purpose

The ACCC and the AER work in close coordination to achieve our common purpose: making markets work for consumers, now and in the future.

The competition and infrastructure regulation roles of the ACCC and AER should be seen in the context of the thinking that underpins National Competition Policy—that competition provides the best incentive for businesses to become more efficient, innovative and flexible and to operate in the long-term interests of consumers. Where competition is not feasible, effective regulation is required to deliver outcomes in line with those achieved by competitive markets. Together the ACCC and AER champion strong, efficient and effective markets.

Legislative framework

In addition to administering the CCA, the ACCC has responsibilities under many other Acts and rules. The AER regulates under the national energy legislation. The legislation and associated functions and responsibilities are outlined in appendix 7 on page 266.

Role and functions

For competition to remain healthy, businesses need to operate within the boundaries of acceptable and fair behaviour towards their customers, competitors and suppliers. Those boundaries are set out in the CCA and the other Acts the ACCC enforces. The ACCC's role is critical in making markets work for consumers now and in the future by:

- maintaining and promoting competition by preventing anti-competitive mergers and cartels, intervening when misuse of market power is identified, and implementing the Consumer Data Right
- protecting the interests and safety of consumers and supporting a fair marketplace—addressing misleading behaviour, removing unsafe goods and tackling unconscionable dealings
- driving efficient infrastructure through industry-specific regulation and access regimes
- undertaking market studies and inquiries to support competition, consumer and regulatory outcomes.

The AER's functions as set out in national energy legislation include:

- regulating electricity networks and covered gas pipelines in all jurisdictions except Western Australia. We set the amount of revenue that network businesses can recover from customers for using these networks
- enforcing the laws for the National Electricity Market (NEM) and spot gas markets in southern and eastern Australia. We monitor and report on the conduct of energy businesses and the effectiveness of competition
- protecting the interests of household and small business consumers by enforcing the National Energy Retail Law. Our retail energy market functions cover New South Wales, South Australia, Tasmania, the Australian Capital Territory and Queensland.

Government expectations

The Australian Government has issued a [Statement of Expectations](#) for the ACCC. The statement outlines the government's expectations of the ACCC's role and responsibilities; its relationship with the government, the responsible minister and the Commonwealth Treasury; issues of transparency and accountability; and organisational governance and financial management. The government states that it is imperative that the ACCC act independently and objectively in performing its functions and exercising its powers as set out in the CCA.

The government's vision is for the ACCC to be a high-performing and responsive agency that administers a principles-based regulatory framework.

The ACCC provides a [Statement of Intent](#) responding to the government's Statement of Expectations for the ACCC.

The Statement of Expectations and Statement of Intent are available on the ACCC website.

The ACCC also takes on additional roles and responsibilities at the direction of the government, including:

- using inquiry powers to increase transparency in the gas market, including by identifying the use of market power and other obstructions to the efficient supply of gas to households and businesses as part of a wide-ranging inquiry into the supply of and demand for wholesale gas in Australia
- the ACCC's inquiry into the prices, profits and margins in the supply of electricity in the NEM. The ACCC will report on this every six months until the conclusion of the inquiry in 2025. The ACCC is also responsible for enforcing the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Act 2019* (Cth), which prohibits certain misconduct in electricity markets
- undertaking inquiries into specific competition issues across the financial sector to assess whether competition is sufficient to drive the best outcomes for consumers. This has included inquiries into foreign exchange currency conversion services and home loan pricing
- undertaking an inquiry into the supply of residential building, contents and strata insurance products to consumers in northern Australia. Our inquiry is looking into the industry's prices, costs and profits to address concerns about the high price of insurance in the region
- undertaking an inquiry into competition in markets for the supply of digital platform services, with particular regard to the concentration of power, the behaviour of suppliers, mergers and acquisitions, barriers to entry or expansion, and changes in the range of services offered by suppliers of digital platform services. The ACCC will provide the Treasurer with interim reports every six months until the inquiry concludes with a final report in 2025. We are also undertaking an inquiry into markets for the supply of digital advertising technology services and digital advertising agency services
- producing industry reports on aspects of consumer interest in the fuel market, including an in-depth petrol report detailing the financial performance of the industry from 2002 to 2018, and preparing quarterly reports on price movements in capital cities and over 190 regional locations across Australia
- undertaking an inquiry into markets for tradeable water rights in the Murray–Darling Basin, including recommending options to enhance their operations, transparency, regulation, competitiveness and efficiency
- monitoring and regularly reporting on the domestic air travel market, particularly in relation to its competitiveness.

As at 30 June 2020 the responsible minister for the ACCC was the Treasurer, the Hon. Josh Frydenberg MP.

In 2019–20 the AER was accountable to the Australian Government and Council of Australian Governments (COAG) Energy Council, which was a ministerial forum responsible for pursuing priority issues of national significance and key reforms in the energy and resources sectors.

On 2 June 2020 the National Cabinet agreed to continue as the forum for first ministers, to form the National Federation Reform Council and to cease COAG. Six National Cabinet Reform Committees (NCRCs) were formed to oversee six initial priority areas of reform, including energy. The NCRC for Energy will take the place of the COAG Energy Council. Specific arrangements for the transition to the new NCRC structure are still under consideration.

To strengthen accountability and performance frameworks, the former COAG Energy Council and the Australian Government have previously issued [Statements of Expectations](#) for the AER. The AER responded by providing Statements of Intent to respond to these Statements of Expectations. The most recent [Statement of Intent](#) can be found on the AER website. The AER reported against this Statement of Intent to the former COAG Energy Council through the [AER annual report](#) in December 2019.

Setting priorities

The ACCC cannot pursue all possible breaches of the CCA that come to our attention. The ACCC's role is to focus on those matters that will, or have the potential to, harm the competitive process or result in widespread consumer or small business detriment. The ACCC exercises discretion to direct resources to matters that provide the greatest overall benefit. To aid the decision-making process, every year the ACCC identifies the compliance and enforcement priorities and the product safety priorities on which we will focus our efforts.

The ACCC's compliance and enforcement priorities are determined following external consultation and an assessment of existing or emerging issues and their impact on consumer welfare and the competitive process. There are also some forms of conduct that are so detrimental to consumer welfare and the competitive process (for example, cartel conduct) that the ACCC will always regard them as a priority. Our [compliance and enforcement priorities](#) are on our website and are discussed further at page 73.

Each year the ACCC identifies priorities to minimise the risks posed by unsafe consumer goods. The product safety priorities reflect the ACCC's role in conducting consumer product safety investigations and surveillance, administering consumer product safety recalls and making recommendations on product safety regulations, including standards and bans. Our [product safety priorities](#), and the principles we use to prioritise and address product safety risks, are on our website.

Outcome and program structure

Under the outcome and program framework as presented in the Portfolio Budget Statement, we have one outcome and two programs:

Outcome: Lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation, including enforcement, education, price monitoring and determining the terms of access to infrastructure services.

Program 1.1: Australian Competition and Consumer Commission: To achieve compliance with the CCA and other legislation to protect, strengthen and supplement the way competition works in Australian markets and industries to improve the efficiency of the economy and to increase the welfare of Australians.

Program 1.2: Australian Energy Regulator: The AER's priorities and work program are guided by the objectives of national energy legislation and rules. The common objective through the legislation is to promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of end users of energy with respect to price, quality, safety, reliability and security.

The details of the ACCC and AER strategies, deliverables and performance indicators are listed in our annual performance statement (page 32).

Organisational structure 2019-20

Commissioners

Table 2.1: Australian Competition and Consumer Commission

Chair	Rod Sims
Deputy Chairs	Delia Rickard Mick Keogh
Members	Cristina Cifuentes Sarah Court Stephen Ridgeway
Associate members	Paula Conboy (until 13 September 2019) Clare Savage (since 14 October 2019) Jim Cox PSM Nerida O'Loughlin James Cameron

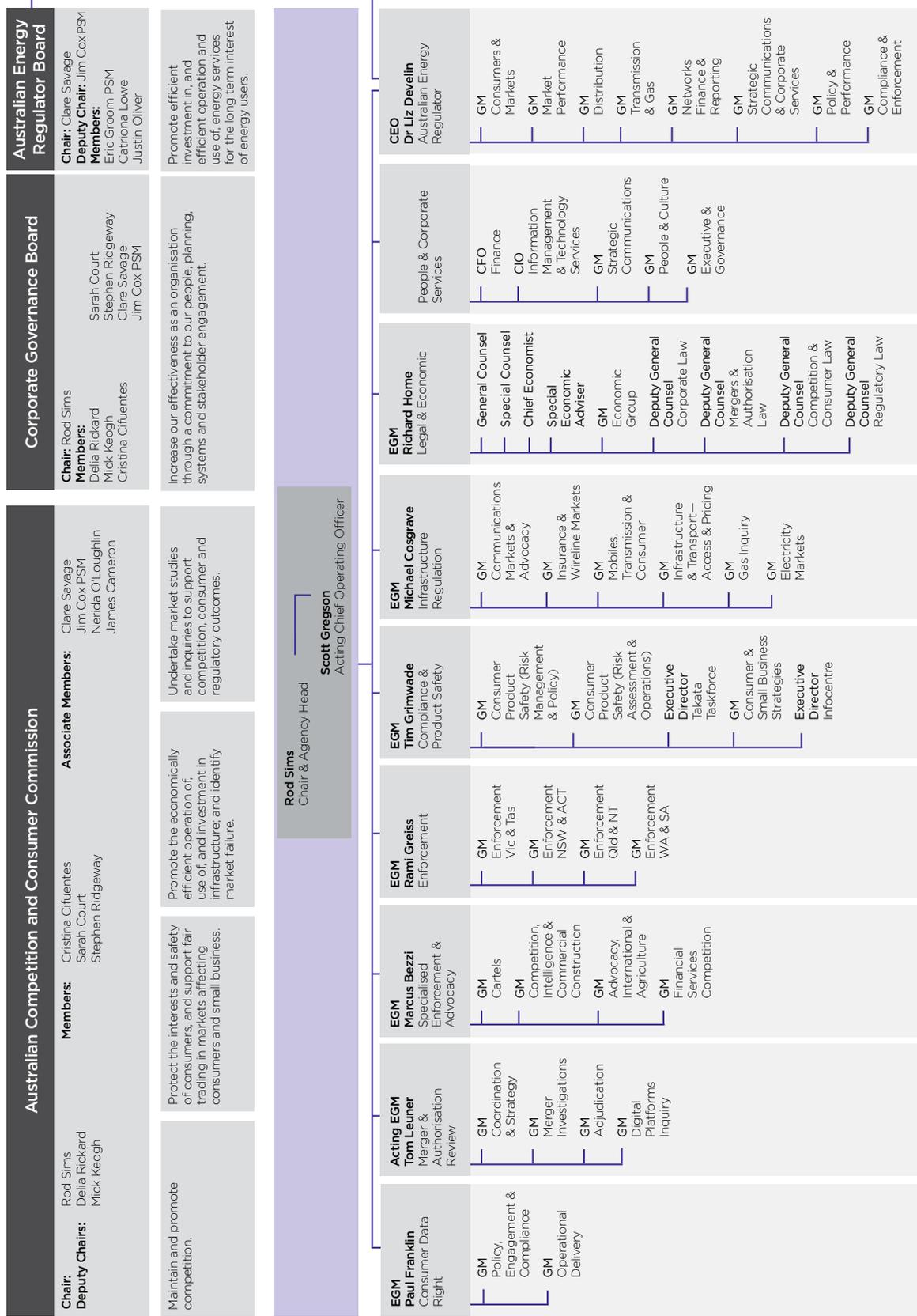
Australian Energy Regulator

Table 2.2: Australian Energy Regulator Board

Chair	Clare Savage (since 14 October 2019) Paula Conboy (until 13 September 2019)
Deputy Chair	Jim Cox PSM* (since 26 June 2020)
Members	Cristina Cifuentes (until December 2019) Catriona Lowe (since 3 February 2020) Eric Groom PSM (since 3 February 2020) Justin Oliver (since 3 February 2020)

Note: * Jim Cox PSM has been a Board member since 2013. He was formally appointed Deputy Chair from 26 June 2020.

Figure 2.1: Organisational structure of the ACCC and AER (at 30 June 2020)





03

Annual performance
statement



Performance reporting framework

This chapter reports on our performance in achieving our outcome and purpose for 2019–20 using the framework and performance indicators reflected in both the 2019–20 ACCC Portfolio Budget Statement (PBS) (contained in the Treasury portfolio PBS) and the *ACCC and AER Corporate Plan 2019–20*. The ACCC and the AER jointly¹ report against one outcome, with the ACCC reporting against program 1.1 and the AER against program 1.2, as shown in table 3.1.

Table 3.1: Performance reporting framework

Drivers	<i>Public Governance, Performance and Accountability Act 2013</i> (Cth) (PGPA Act) <i>Competition and Consumer Act 2010</i> (Cth) (CCA) ACCC Portfolio Budget Statement ACCC and AER Corporate Plan 2019–20
Outcome 1	Lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation, including enforcement, education, price monitoring and determining the terms of access to infrastructure services.
Purpose	The ACCC and the AER work in close coordination to achieve our common purpose: making markets work for consumers, now and in the future.
Program 1.1	Australian Competition and Consumer Commission
Program 1.2	Australian Energy Regulator

Strategies to achieve our purpose

The ACCC and AER each pursue a program employing specific strategies to ensure we achieve our purpose. These strategies are:

1. maintaining and promoting competition
2. protecting the interests and safety of consumers, and supporting fair trading in markets affecting consumers and small business
3. promoting the economically efficient operation of, use of, and investment in infrastructure; and identifying market failure
4. undertaking market studies and inquiries to support competition, consumer and regulatory outcomes
5. promoting efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers with respect to price, quality, safety, reliability and security.

Below are deliverables we use to progress each strategy as we work towards achieving our outcome and purpose.

¹ The ACCC and AER are a single listed entity for the purposes of the finance law (within the meaning of the PGPA Act) under s. 44AAL of the CCA.

Program 1.1 ACCC

Strategy 1: Maintaining and promoting competition

To maintain and promote competition, we:

Deliverable 1.1	Deliver outcomes to address harm to consumers and businesses resulting from anti-competitive conduct
Deliverable 1.2	Assess mergers to prevent structural changes that substantially lessen competition
Deliverable 1.3	Make decisions on authorisation, notification and certification trade mark applications in the public interest

Strategy 2: Protecting the interests and safety of consumers, and supporting fair trading in markets affecting consumers and small business

To protect the interests and safety of consumers and support fair trading in markets affecting consumers and small business, we:

Deliverable 2.1	Deliver outcomes to address harm to consumers and small businesses resulting from non-compliance with the Australian Consumer Law and industry codes
Deliverable 2.2	Enhance the effectiveness of the ACCC's compliance and enforcement initiatives through partnerships
Deliverable 2.3	Identify and address the risk of serious injury and death from safety hazards in consumer products
Deliverable 2.4	Support a vibrant small business sector
Deliverable 2.5	Empower consumers by increasing their awareness of their rights under the Australian Consumer Law

Strategy 3: Promoting the economically efficient operation of, use of, and investment in infrastructure; and identifying market failure

To promote the economically efficient operation of, use of and investment in infrastructure; and identify market failure, we:

Deliverable 3.1	Deliver network regulation that promotes competition in the long-term interests of end users
Deliverable 3.2	Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets
Deliverable 3.3	Improve the efficient operation of markets by enforcing industry-specific competition and market rules

Strategy 4: Undertaking market studies and inquiries to support competition, consumer and regulatory outcomes

Relevant ministers may direct the ACCC to undertake certain activities, including market monitoring, inquiries and studies. These enable the ACCC to develop a sophisticated understanding of how well competition and markets are working in particular sectors. The ACCC can also undertake self-initiated market studies.

Program 1.2 AER

Strategy 5: Promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers with respect to price, quality, safety, reliability and security

To promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers with respect to price, quality, safety, reliability and security, we:

Deliverable 5.1	Drive effective competition where it is feasible
Deliverable 5.2	Provide effective regulation where competition is not feasible
Deliverable 5.3	Equip consumers to participate effectively, and protect those who are unable to safeguard their own interests
Deliverable 5.4	Use our expertise to inform debate about Australia's energy future, the long-term interests of consumers and the regulatory landscape
Deliverable 5.5	Take a long-term perspective while also considering the impact on consumers today

How we measure our performance

The ACCC and AER draw on a number of sources to measure and report on how effective we are in achieving our purpose:

- We have a suite of performance indicators.
- We analyse the activities we have undertaken and how they contribute to achieving our purpose.
- We conduct surveys of our stakeholders.
- We draw on assessments of our performance by external bodies.

Drawing on a broad range of qualitative and quantitative measures enables us to provide a well-rounded analysis of our performance in achieving our purpose.

Performance indicators

Our Corporate Plan contains a suite of performance indicators (with targets, where applicable) that measure the activities we undertake to achieve our purpose and our timeliness in delivering them.² Our results are reported with comparative results for the previous three years (where available) to provide a picture of our performance over time.

We also provide an assessment of how we have performed in achieving our targets for the year. Each performance indicator is assessed as per the following table.

Table 3.2: Assessment of performance results

Rating	Symbol	Assessment
Met or exceeded	✓	Result is 100% or above of target
Partially met	○	Result is between 75% and 99% of target
Not met	✗	Result is less than 75% of target
Not assessed	●	No target set

While our performance indicator results provide readers with a quantitative indication of the significant outputs from our activities, the results should be read in conjunction with the case studies and other information about our activities and outcomes achieved.

² A subset of these indicators is included in our Portfolio Budget Statement.

Activities undertaken and outcomes achieved

In assessing our effectiveness, we also look at our key activities and outcomes achieved under our strategies and deliverables over the reporting period. These are discussed in the 'Analysis of performance' sections. Key highlights and case studies in the 'Actions undertaken to achieve our purpose' sections provide more detailed discussion of our activities and achievements.

Performance surveys

ACCC Effectiveness Survey

In 2018-19 the ACCC engaged ORIMA Research to undertake a survey and conduct interviews with key stakeholders to qualitatively measure our effectiveness in achieving our purpose. The key findings from this research were incorporated into the annual performance statement for 2018-19 and have substantially enhanced our performance measurement and reporting.

The ACCC will undertake this survey every three years to provide a consistent qualitative measure of our effectiveness in achieving our purpose to supplement our other measures of performance.

Perceptions Survey

In 2020 we commissioned Faster Horses to conduct market research on consumers' and small business operators' perceptions and knowledge of the ACCC. The research also explored consumers' understanding of their consumer rights and willingness to exercise them. This follows similar studies conducted in 2018 and 2017. The research involved a survey of approximately 1600 consumers, four online consumer focus groups and a survey of approximately 400 small business operators. The findings are used to understand the usefulness of content that the ACCC provides and the effectiveness of current communication channels.

AER stakeholder surveys

The AER has commissioned major surveys of its stakeholders at regular intervals. To date, five stakeholder surveys have been undertaken. The surveys have been conducted by an independent market research agency and have comprised a quantitative survey and in-depth telephone interviews with senior people in consumer groups, businesses, peak bodies and government agencies. They examined, among other things, satisfaction with how the AER performs its functions; the extent to which it has a clear direction and purpose, shows leadership and is seen as trustworthy; and how well it engages with stakeholders. The findings of our last stakeholder survey were included in the AER 2017-18 annual report and a full survey report is available on the AER website. Due to the implications of the COVID-19 pandemic, the survey has been delayed this year.

Other measures of performance

We also monitor assessments of our performance provided by external bodies such as the Global Competition Review (GCR). This provides an added layer of qualitative assessment of our effectiveness. We discuss these other measures of our performance on page 41.

ACCC self-assessment under the Regulator Performance Framework

The ACCC also measures its performance by undertaking a comprehensive annual self-assessment against the six key performance indicators (KPIs) specified in the Australian Government's Regulator Performance Framework. The framework's purpose is to encourage regulators to impose the minimum burden on regulated entities while undertaking their functions to achieve regulatory objectives. The six KPIs are therefore primarily concerned with how regulators administer regulation. More information about the KPIs and the results from the ACCC's most recent self-assessment is on page 39.

Structure of annual performance statement

This annual performance statement separately covers program 1.1 (ACCC) and program 1.2 (AER). The performance reporting sections for each program are organised according to the strategies and deliverables outlined above.

For **strategy 1** we have divided our performance reporting into four areas of activity:

- taking enforcement action to promote competitive markets (deliverable 1.1)
- ensuring competitive arrangements between businesses, including through merger and authorisation review (deliverables 1.2 and 1.3)
- implementing the Consumer Data Right
- other work we do that promotes and enhances competition.

For **strategy 2** our reporting aligns directly with the five deliverables under this strategy.

For **strategy 3** our reporting is organised by industry, noting the deliverables as they apply.

For **strategy 4** we discuss the work we have undertaken on market studies and inquiries and other research work we have done during the year.

For **strategy 5** our reporting aligns directly with the five deliverables under this strategy.

We have provided '**Performance results and analysis**' for each strategy. These sections:

- outline our role and functions, priorities and powers
- present our results against the performance indicators, and assess whether the targets have been met
- provide an analysis of our performance, including any factors contributing to our performance during the reporting period.

We have also provided details of '**Actions undertaken to achieve our purpose**' for each strategy. In these sections we discuss our work in more detail and give examples that demonstrate how we carry out the strategies to achieve our purpose.

Statement of preparation

As the accountable authority of the ACCC and AER, I present the 2019–20 financial year annual performance statement of the ACCC and AER, prepared for paragraph 39(1)(a) of the PGPA Act. In my opinion, this annual performance statement accurately presents the entity's performance in the reporting period and complies with s. 39(2) of the PGPA Act.



Rod Sims
Chair, ACCC



Program 1.1—Australian Competition and Consumer Commission

Overview of the ACCC's performance

Perceptions Survey

Overall the market research findings reflect a strong awareness of the ACCC and positive perception of the agency generally. This is consistent with the previous study in 2018.

The key findings are as follows:

- ACCC brand awareness remains strong, with 84 per cent of Australian consumers aware of the ACCC.
- More than half of all consumers (54 per cent) think the ACCC is doing a good or very good job—an increase from 43 per cent in 2017 and 2018.
- Among the minority dissatisfied with the ACCC's performance, there is a desire for more action against big businesses and a more competitive petrol market.
- There was an increase in the number of consumers using social media to access news.
- Facebook was the second most common channel for news access behind free-to-air TV, overtaking hard-copy and online newspapers.
- As a source of news for consumers, free-to-air TV is at 47 per cent, down from 61 per cent in 2018; hard-copy newspapers are at 16 per cent, down from 25 per cent in 2018; and online newspapers are also at 16 per cent, down from 25 per cent in 2018.
- For small businesses, 52 per cent of business operators are happy with the ACCC's performance.
- Of the small business operators who recalled a specific issue related to the ACCC, one in five mentioned the banking industry.

ACCC Effectiveness Survey

As noted on page 35, the ACCC's Effectiveness Survey will be conducted every three years. ORIMA Research's [report](#) on its April 2019 study of stakeholder views of the ACCC's effectiveness concluded that 'the assessment feedback shows that the ACCC is achieving its purpose of making markets work for consumers, now and in the future. External stakeholder perceptions of its operations are also generally strong'. The full report is published on our website.

The 35 stakeholders that participated in the research reflected a broad cross-section of the ACCC's key stakeholder groups.

Stakeholders were asked to rate to what extent they agreed with statements related to particular aspects of the ACCC's effectiveness using a five-point scale ranging from 'strongly agree' to 'strongly disagree'. For example, 97 per cent of respondents either agreed or strongly agreed that consumers are better off, and that markets are more competitive, due to the ACCC's work.

The results were transformed into a 0-100-point scale index. The higher the index score, the more positive respondents' perceptions of the ACCC's performance.³

³ Index scores of 51-100 indicate that, on average, respondents provided a favourable assessment. Index scores of 0-49 indicate that, on average, respondents provided an unfavourable assessment.

ORIMA Research also constructed composite index⁴ scores for each strategy in the ACCC's Corporate Plan, as well as for the ACCC's engagement with stakeholders and achieving the ACCC's four core values.

Key index score results are shown in table 3.3.

Table 3.3: ACCC 2018–19 Effectiveness Survey key results

Performance measure	Index score
Effectiveness in achieving ACCC's purpose	
The ACCC is effective at achieving its purpose of making markets work for consumers, now and in the future	80.1
Markets in Australia are more competitive due to the ACCC's work	80.5
Consumers are better off due to the ACCC's work	85.7
The ACCC liaises effectively with partner organisations and stakeholders to achieve its purpose	75.0
The ACCC is effective in advocating for change to regulatory frameworks that assist it to achieve its purpose	71.4
Composite index for each strategy	
Maintaining and promoting competition	74.5
Protecting the interests and safety of consumers and supporting fair trading in markets affecting consumers and small business	73.5
Infrastructure regulation and industry monitoring	71.1
Market studies and inquiries to support competition, consumer and regulatory outcomes	77.4
ACCC practices	
Effective communication	75.7
Engagement with stakeholders	80.8
Achieving the ACCC's core values	80.0

The ACCC was rated highly on the five measures directly related to achieving our overall purpose—particularly the first three measures, for which we achieved index scores above 80. Stakeholders also rated the ACCC favourably on achieving our four strategies, with an index score above 70 for all.

Regulator Performance Framework

In December 2019 the ACCC published its fourth annual self-assessment under the Australian Government's [Regulator Performance Framework](#). The [ACCC self-assessment report 2018–19](#) is available on our website.

The framework requires regulators to assess their performance against the following six KPIs:

1. Regulators do not unnecessarily impede the efficient operation of regulated entities.
2. Communication with regulated entities is clear, targeted and effective.
3. Actions undertaken by regulators are proportionate to the regulatory risk being managed.
4. Compliance and monitoring approaches are streamlined and coordinated.
5. Regulators are open and transparent in their dealings with regulated entities.
6. Regulators actively contribute to the continuous improvement of regulatory frameworks.

⁴ A composite index incorporates stakeholders' views in relation to multiple questions that are relevant to the overall performance measure. For example, the composite index for 'maintaining and promoting competition' incorporates stakeholders' views about the effectiveness of the ACCC's enforcement action in addressing harm to consumers and businesses resulting from anti-competitive conduct, as well as whether the ACCC's assessment of mergers is effective in preventing structural changes in markets that would substantially lessen competition.

These KPIs are concerned with how regulators administer regulation. The framework's purpose is to encourage regulators to undertake their functions with the minimum burden necessary to achieve regulatory objectives. It does not seek to measure the performance of the ACCC in achieving outcomes for Australian consumers and the economy.

In recognition of the breadth of functions performed by the ACCC and the broad range of stakeholders with which the ACCC engages, the self-assessment is broken down by function area. This approach provides a comprehensive picture of the ACCC's performance across each of its major functions. Performance is rated using a five-point scale that ranges from 'very poor' to 'very good'.

A key element of the ACCC's self-assessment was an online survey to obtain the views of business stakeholders. The survey was conducted independently by market research firm ENGINE in April 2019. Nearly 300 businesses, or their legal representatives, provided feedback on what the ACCC is doing well and what we can improve. We published the results of the survey in conjunction with the ACCC's self-assessment on our website.

The self-assessment also relied on a wide range of other evidence, such as quantitative performance data and descriptive information that provides stakeholders with a greater appreciation of the systems and processes the ACCC has in place to support our engagement with businesses.

The self-assessment is externally reviewed and validated by the ACCC Performance Consultative Committee (APCC). The APCC comprises 16 business, legal and consumer representatives who collectively cover the broad range of stakeholders that the ACCC engages with in undertaking its various functions.

The 2018-19 self-assessment found that, in general, substantially more of the ACCC's business stakeholders agree than disagree that the ACCC is achieving each KPI across the core ACCC functions. Table 3.4 shows the individual rating for each KPI across each of the ACCC's functions.

Table 3.4: Regulator Performance Framework self-assessment ratings 2018-19

KPI	Merger and authorisation review	Small business	Product safety	Infrastructure regulation	Enforcement	Market studies and inquiries
1	Good	Good	Good	Good	▲Good	Very good
2	Very good	▼Good	Very good	▲Very good	Very good	Very good
3	Good	Satisfactory	▲Very good	▲Very good	Good	Good
4	Good	Good	Good	Satisfactory	Satisfactory	Good
5	Very good	Very good	Very good	▲Very good	Very good	Very good
6	Very good	Good	Good	Satisfactory	Good	Very good

▲Rating moved up one level from last year ▼Rating moved down one level from last year

Rating scale	Very good	Good	Satisfactory	Poor	Very poor
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Other measures of performance

Rating by the Global Competition Review

The GCR, the world's leading antitrust and competition law journal and news service, undertakes an annual survey of the world's leading competition authorities. In its publication *Rating enforcement 2019* it awarded the ACCC four and a half stars out of five—an improvement on the four stars awarded in the previous year—and noted that our performance for 2018 was an improvement on our previous accomplishments. This puts the ACCC in the top 10 agencies worldwide.

To determine star ratings, the GCR's editorial team measures competition enforcement programs around the world, combining data supplied by the agencies with its own reporting and the feedback of lawyers, economists and local journalists who interact with competition authorities. The GCR looks at how well agencies prioritise the use of limited resources and how effective they are within the scope of their powers. In *Rating enforcement 2019* the GCR explains:

We aim to measure and explain how each competition authority enforcer brought its legal powers, resources and influence to bear against anticompetitive activity. This is not merely an exercise in counting cases or fines—the most obvious indicators of enforcement and the ones sometimes touted by agencies themselves in justifying their budgets. We care about due process, independence, transparency and analytical sophistication in reviewing mergers and investigating conduct. Competition can also be promoted by means beyond enforcement actions, such as advocacy against regulations that entrench incumbents and impede new entrants.⁵

In reviewing the ACCC's performance for 2018, the GCR noted the preliminary recommendations of the Digital Platforms Inquiry, the increase in numbers of misuse of market power cases, and higher cartel penalties. The GCR assessment reflects both the praise of the ACCC from Australian practitioners and the shortcomings identified by practitioners. For example, while it recognises the ACCC's strong stance on cartel behaviour, ambitious recommendations and 'media savvy' in making our voice heard on all issues, it also notes our unsuccessful court challenges of mergers. However, the GCR acknowledges observations that the ACCC recognises that it will lose some cases and is not deterred by that fact. Noting that most of the feedback is positive, the GCR concludes:

With a dedicated financial services team, a sharp focus on the substantial lessening of competition standard and the power to conduct far-reaching market studies, the ACCC will likely remain one of the most active enforcers in the world for the foreseeable future.⁶

5 Global Competition Review, *Rating Enforcement 2019*, 'Introduction', 4 September 2019, <https://globalcompetitionreview.com/survey/rating-enforcement/2019/article/introduction>.

6 Global Competition Review, *Rating Enforcement 2019*, 'Australia's Competition and Consumer Commission', 4 September 2019, <https://globalcompetitionreview.com/benchmarking/rating-enforcement-2019/1197030/australias-competition-and-consumer-commission>.

Strategy 1: Maintaining and promoting competition

Competitive markets lead to lower prices, better quality products and services and other innovations, greater efficiency and more choice, all of which benefit consumers.

As Australia's national competition regulator, the ACCC works to enhance the welfare of Australians by maintaining and promoting competition and addressing market failures.

We do this by enforcing Part IV of the *Competition and Consumer Act 2010* (Cth) (CCA), which prohibits:

- cartels and other anti-competitive agreements
- concerted practices that substantially lessen competition
- misuse of market power
- exclusive dealing and resale price maintenance
- mergers that substantially lessen competition.

We also do this through the Consumer Data Right (CDR) provisions of Part IVD of the CCA. The Consumer Data Right aims to create more choice and competition by:

- allowing consumers to request businesses to disclose the consumer's own data to an accredited person who can use that data to provide services to the consumer
- requiring businesses to make product information easily accessible to any person.

The Consumer Data Right currently applies to banking data and products. It will be extended to energy data and products and other sectors in the future.

Our reporting on this strategy is in four sections:

- our competition enforcement function (see below)
- our merger and authorisation review function (see page 50)
- our work on the Consumer Data Right (see page 63)
- other work we do to promote competition (see page 67).

Enforcement action to promote competitive markets

Performance results and analysis

Role and functions

The ACCC investigates and takes compliance and enforcement action in relation to suspected breaches of the competition provisions in Part IV of the CCA.

We encourage compliance with the law by educating and informing consumers and businesses about their rights and responsibilities under the CCA. We work with other agencies to implement these strategies, including through coordinated approaches.

Our deliverable for the competition enforcement function under strategy 1 is:

Deliverable 1.1	Deliver outcomes to address harm to consumers and businesses resulting from anti-competitive conduct
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Priorities

With the finite resources available to us, we prioritise our actions to address conduct that does the greatest harm to competition.

Our annually revised Compliance and Enforcement Policy sets out competition and consumer priorities for the year and the factors we take into account when deciding whether to pursue particular matters.

We revised and released our Compliance and Enforcement Policy in February 2019 and again in February 2020. In relation to competition priorities, our 2019 and 2020 policies focused on the following areas in the reporting period:

- issues in the financial services sector, including issues with respect to foreign exchange services
- issues in the funeral services sector
- issues arising from the pricing and selling of essential services, with a focus on energy and telecommunications
- issues relating to digital platforms
- issues arising from customer loyalty schemes
- issues in the agriculture sector
- issues in the commercial construction sector
- cartel conduct (enduring priority)
- anti-competitive agreements and practices (enduring priority)
- misuse of market power (enduring priority).

We focus on these areas because of their potential for significant harm to consumer welfare and competition.

Powers

We have the power to take court action, refer alleged serious cartel conduct to the Commonwealth Director of Public Prosecutions (CDPP), accept court enforceable undertakings, resolve matters administratively and prevent breaches through education and advice. A description of these powers and our approach to using them is in appendix 7.

Performance indicators

Deliverable 1.1: Deliver outcomes to address harm to consumers and businesses resulting from anti-competitive conduct

This deliverable is about the court or other actions we take to deliver outcomes that help to maintain or promote competition.

Table 3.5: Performance indicators for deliverable 1.1

Performance indicator	2016-17	2017-18	2018-19	2019-20		Met?
	Result	Result	Result	Target	Result	
Number of in-depth competition investigations completed	43	28	23	40	28	X
Percentage of initial competition investigations completed within 3 months	75%	60.6%	44.7%	60%	33.3%	X
Percentage of in-depth competition investigations completed within 12 months	65.1%	73%	78.3%	60%	71.4%	✓
Number of competition enforcement interventions (court proceedings commenced, s. 87B undertakings accepted, administrative resolutions)**	12	8	5	6	6	✓
Percentage of competition enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy	100%	100%	100%	80%	100%	✓
Percentage of competition enforcement interventions in the priority areas, or demonstrate the priority factors, outlined in the Compliance and Enforcement Policy	100%	100%	100%	100%	100%	✓

Notes: # Before 2018-19 market studies were included in this performance indicator. From 2018-19 market studies and inquiries are discussed under a standalone performance indicator under strategy 4.
 * Administrative resolutions involve some change to a trader's behaviour and can range in the level of formality. For an administrative resolution to be included as an enforcement intervention for reporting purposes, it must be a formal resolution reached with a trader and noted publicly by way of an ACCC media release.

Analysis of performance

We achieved six new competition enforcement interventions in 2019–20 (against a target of six). These were:

- instituting proceedings against BlueScope Steel Limited for alleged cartel conduct in relation to the supply of flat steel products (see page 47)
- the CDPP laying criminal cartel charges against Norway-based global shipping company Wallenius Wilhelmsen Ocean AS for alleged cartel conduct concerning the international shipping of certain vehicles to Australia (see page 47)
- instituting proceedings against Tasmanian Ports Corporation Pty Ltd (TasPorts) for allegedly seeking to stop a new entrant from competing effectively with TasPorts' marine pilotage and towage businesses. This is the first case the ACCC has brought under the amended misuse of market power provision (see page 49)
- court enforceable undertakings from two Sydney roofing contractors who acknowledged that their conduct was likely to constitute an attempt to fix prices and may have raised concerns under the new concerted practices prohibition (see page 48)
- a court enforceable undertaking from Bromic Pty Ltd, a national distributor of outdoor heating products, which admitted to engaging in resale price maintenance when it introduced a 'minimum advertised pricing' policy.

All competition enforcement interventions were within the priority areas or demonstrated the priority factors as outlined in the Compliance and Enforcement Policy.

In August 2019 Japanese shipping company [Kawasaki Kisen Kaisha Ltd](#) (K-Line) was convicted of criminal cartel conduct. The Federal Court ordered K-Line to pay a fine of \$34.5 million. K-Line pleaded guilty in August 2018 following an extensive investigation by the ACCC and the laying of charges by the CDPP. This is largest ever criminal fine imposed under the CCA to date.

The ACCC was unsuccessful in proceedings previously instituted against [Ramsay Health Care Australia Pty Ltd](#) and in our appeal against [Cascade Coal Pty Ltd](#) and others. While respecting the decisions of the courts in those matters, the ACCC remains committed to pursuing matters where we consider conduct has a detrimental effect on competition in an Australian market.

In 2019–20 the ACCC undertook four market studies with a significant focus on competition: the [Murray-Darling Basin Water Markets Inquiry](#), [Foreign Currency Conversion Services Inquiry](#), [Home Loan Price Inquiry](#) and [Wine Grape Market Study](#). Further details on market studies are provided at page 144.

In 2019–20 a number of longstanding and continuing competition cases continued to require considerable ACCC resources. They include:

- proceedings in relation to an alleged [banking cartel](#). The CDPP laid criminal cartel charges against Australia and New Zealand Banking Group Ltd (ANZ), Citigroup Global Markets Australia Pty Limited (Citigroup) and Deutsche Bank Aktiengesellschaft (Deutsche Bank) and several senior executives in June 2018. The charges involve alleged cartel arrangements relating to trading in ANZ shares held by Deutsche Bank and Citigroup. ANZ and each of the individuals are alleged to have been knowingly concerned in some or all of the alleged conduct
- proceedings against money transfer business [Vina Money Transfer Pty Ltd](#) and five individuals who were charged with criminal cartel conduct in April 2019 for allegedly fixing the Australian dollar/Vietnamese dong exchange rate and fees they charged their customers
- progressing criminal cartel charges against [The Country Care Group Pty Ltd](#) and two individuals who were charged in February 2018 for alleged cartel conduct involving assistive technology products used in rehabilitation and aged care
- progressing criminal cartel charges against the [Construction, Forestry, Maritime, Mining and Energy Union](#) and one individual charged in August 2018 with attempting to induce suppliers of steel-fixing and scaffolding services to agree to contracts, arrangements or understandings

containing cartel provisions in relation to services provided to builders in the Australian Capital Territory

- proceedings against [NSW Ports Operations Hold Co Pty Ltd](#) and its subsidiaries for making agreements with the State of New South Wales that the ACCC alleges had an anti-competitive purpose and effect
- continuing to pursue [PT Garuda Indonesia Ltd](#) (Garuda) for payment of \$19 million in penalties ordered by the Federal Court in May 2019. This followed an earlier finding that Garuda colluded on fees and surcharges for air freight services. The ACCC first took action against Garuda in September 2009.

Criminal and civil competition proceedings often raise particular challenges, including the provision and protection of the ACCC's cartel immunity policy, evidentiary and investigatory requirements of criminal investigations, the appropriate use of overlapping parallel civil and criminal provisions, and navigating the Federal Court's nascent criminal jurisdiction. The ACCC will continue to explore and develop new ways of meeting these challenges.

Further details of litigation commenced, concluded and continuing during the period are in appendix 10.

Finally, in addition to investigations, other project and policy work was undertaken to promote competition as outlined on page 67 in this section.

Impact of the COVID-19 pandemic

The ACCC completed 28 in-depth investigations in 2019–20—fewer than the annual target of 40. This reflected disruption, resourcing and operational challenges, primarily in response to the COVID-19 pandemic. We have been highly conscious of the impact of COVID-19 on consumers and businesses and have adjusted the focus of our regulatory activities accordingly. We acknowledge that most businesses are facing severe disruption and the future is uncertain for many. We have factored these circumstances into our consideration of competition matters in the short term to assist businesses to remain viable in the long term.

The ACCC has sought to minimise regulatory burden as far as possible. When we make decisions on the scope and timing of statutory notices for the production of information and documents during our investigations, we carefully consider the impact on businesses that are already under pressure. Where compulsory examinations are necessary, we are using online platforms to ensure that these can occur consistently with social distancing. As a result, anticipated timeframes for many of our continuing investigations have been extended.

Managing the impact of the COVID-19 pandemic will continue to be a challenge for our competition investigations. However, a competitive economy will be critical to the recovery and vital to Australia's future. Therefore, as much as is possible, the ACCC will work to ensure that any changes to the competitive landscape arising from COVID-19 are temporary and that the ACCC is ready to play its role in supporting competition as the economy recovers.

Actions undertaken to achieve our purpose

Deliverable 1.1: Deliver outcomes to address harm to consumers and businesses resulting from anti-competitive conduct

Court proceedings

In 2019–20 the ACCC was involved in 16 court proceedings relating to competition enforcement.

These proceedings relate to competition matters in a range of industries, including financial services, construction, shipping, ports and marine pilotage. A complete list of commenced, completed and continuing proceedings is in appendix 10.

Of the competition enforcement proceedings:

- 12 cases were carried over from 2018–19
- four cases were commenced in 2019–20
- three cases were finalised in 2019–20
- 13 cases were continuing at the end of June 2020.

Cartels

The ACCC will always prioritise enforcement action against cartel conduct causing detriment in Australia. Cartel behaviour involves businesses agreeing with their competitors to fix prices, rig bids, share markets or restrict supply or acquisition of products or services. By conspiring to control markets in these ways, a cartel protects and rewards its inefficient members while penalising honest, innovative and well-run companies.

The ACCC has extensive powers to investigate cartels. We can compel relevant individuals and companies to provide information or documents relating to suspected cartels and, under warrant, we can search company offices and the homes of company officers.

In 2019–20 our cartel investigations resulted in the following actions:

- The ACCC instituted civil proceedings in the Federal Court against [BlueScope Steel Limited](#) and its former general manager of sales and marketing [Mr Jason Ellis](#) for alleged cartel conduct in relation to the supply of flat steel products. The CDPP also laid two charges against Mr Ellis for inciting the obstruction of a Commonwealth official in the performance of their functions. These charges relate to actions Mr Ellis allegedly took during the ACCC's investigation of BlueScope.
- The CDPP laid criminal cartel charges against [Wallenius Wilhelmsen Ocean AS](#), a Norway-based global shipping company, for alleged cartel conduct concerning the international shipping of certain vehicles to Australia between June 2011 and July 2012. These charges follow an extensive investigation undertaken by the ACCC.
- Japanese shipping company [Kawasaki Kisen Kaisha Limited](#) (K-Line) was convicted of criminal cartel conduct by the Federal Court and ordered to pay a fine of \$34.5 million. Following an extensive investigation by the ACCC and the laying of charges by the CDPP, K-Line pleaded guilty to engaging in cartel conduct with other shipping companies in order to fix prices for the transportation of cars, trucks and buses into Australia between 2009 and 2012.

- The [ACCC's appeal](#) against a Federal Court judgment in relation to alleged bid rigging conduct involving [Cascade Coal Pty Ltd](#), Paul and Moses Obeid and others was dismissed. The appeal focused on whether parties associated with the Obeid family members and Cascade were 'in competition' at the time they withdrew a bid for Mount Penny and Glendon Brook mining exploration licences. The Full Federal Court concluded there was no error of law on that issue.

Further details of ACCC litigation are in appendix 10.

Immunity and cooperation policy for cartel conduct

Companies and individuals, including cartel participants, help us to detect cartels. Under the [ACCC immunity and cooperation policy for cartel conduct](#), participants can apply for immunity from civil and criminal prosecution by reporting their own involvement in a cartel.

On 1 October 2019 the ACCC launched an updated immunity policy with amendments that enhance transparency and clarify the scope of the policy. The updated immunity policy, and answers to frequently asked questions about the policy, are available on the [ACCC website](#).

Anonymous online cartel reporting portal

In July 2019 the ACCC launched an additional, completely anonymous, way for people to report cartel conduct. It allows whistleblowers to contact the ACCC via an online portal ('Whispli'). The portal encrypts the information a whistleblower gives and removes the person's internet protocol (IP) address.

The portal gives whistleblowers control over their communications with ACCC investigators regarding their initial report. They can check for responses from the ACCC and provide further information while remaining anonymous. The portal is available on the [Whispli platform](#).

We will report on the numbers of investigations generated by these contacts in future annual reports.

Anti-competitive agreements and practices

The CCA prohibits a range of conduct and practices that have a requisite anti-competitive purpose, effect or likely effect of substantially lessening competition. The ACCC will always prioritise anti-competitive conduct and practices due to the potential detriment they cause.

In 2019–20 the ACCC accepted court enforceable undertakings from two Sydney roofing companies in which they acknowledge that discussions on social media about setting minimum rates for the repair of hail-damaged homes were likely to constitute an attempt to fix prices and in some circumstances could raise concerns under the new concerted practices prohibition. [ANZ Roofing Pty Ltd](#) and [Ivy Contractors Pty Ltd](#), and their directors Mark Lee Burtenshaw and Brent Cameron Callan-Kerkenezov, have acknowledged the ACCC's concerns about the messages, which appeared on two Facebook groups in December 2018. This was the first enforcement action utilising the concerted practices provisions.

Further details of ACCC litigation are in appendix 10.

Misuse of market power

The misuse of market power remains a priority for the ACCC because of the potential detriment it causes. Since 6 November 2017 a contravention of the misuse of market power prohibition in the CCA occurs where a business with substantial power in a market engages in conduct that has the purpose, effect or likely effect of substantially lessening competition.

In 2019–20:

- the ACCC instituted proceedings against [Tasmanian Ports Corporation Pty Ltd](#) (TasPorts) under the amended misuse of market power provision. This is the first case the ACCC has brought under this provision. It is alleged that TasPorts, which owns all but one port in northern Tasmania, sought to stop a new entrant, Engage Marine Tasmania Pty Ltd, from competing effectively with TasPorts' marine pilotage and towage businesses, with the purpose, effect and likely effect of substantially lessening competition
- the ACCC's case against [Ramsay Health Care Australia Pty Ltd](#) (Ramsay) was dismissed by the Federal Court. The ACCC alleged that Ramsay misused its market power and engaged in exclusive dealing when senior Ramsay executives told a group of surgeons planning to establish a competing private day surgery facility in Coffs Harbour that their access to operating theatre times at Baringa Private Hospital would be substantially reduced or withdrawn if they proceeded with their plans.

Further details of ACCC litigation can be found in appendix 10.

Merger and authorisation review

Review arrangements between businesses, including mergers and authorisations, to maintain competition and/or the public interest

Performance results and analysis

Role and functions

To ensure that markets work well for consumers, the ACCC reviews mergers and acquisitions to determine whether they are likely to substantially lessen competition. Competition can be reduced when one firm buys another firm or its assets, potentially resulting in fewer competitors; increased prices; lower product quality; or less service, choice or innovation for consumers.

However, many mergers and acquisitions do not raise competition issues. Section 50 of the CCA only prohibits those that are likely to substantially lessen competition in any market in Australia.

Merger parties can seek 'informal' clearance from the ACCC, and we will provide our view on whether an acquisition is likely to substantially lessen competition. The ACCC provides an early clearance for matters when it determines that they do not require a detailed review because there is a low risk of the merger substantially lessening competition. This is known as pre-assessment. Acquisitions that are in the public domain and that the ACCC has determined cannot be pre-assessed undergo a public merger review.

The merger authorisation process provides an alternative clearance option to the informal merger review process. In November 2017 amendments to the CCA restored the ACCC's role as first-instance decision-maker for merger authorisations and changed the legal test for authorising proposed acquisitions.

The amended merger authorisation test enables the ACCC to grant authorisation if we can be satisfied that the proposed acquisition would not be likely to substantially lessen competition or, alternatively, the likely public benefit from the proposed acquisition outweighs the likely public detriment. The ACCC has received and determined two applications for merger authorisation since the revisions to the CCA came into effect in 2017.

Before the amendments to the CCA, merger parties could seek legal protection from court action under s. 50 of the CCA by applying to the Australian Competition Tribunal for authorisation of the merger proposal. The test applied by the Tribunal was a net public benefit test, meaning there was no express provision to grant authorisation solely on the basis that a merger was not likely to substantially lessen competition.

The (non-merger) authorisation, notification and class exemption functions provide three different means by which the ACCC can allow or exempt certain non-merger conduct that might otherwise breach competition law. These functions help competition law to work more effectively in the interests of the community. They provide a degree of flexibility so that, after appropriate scrutiny and analysis, the ACCC can allow arrangements that might otherwise be prohibited by competition law if they will benefit the public or are not likely to substantially lessen competition.

Upon application, the ACCC's decisions to grant or dismiss merger authorisation and non-merger authorisation applications may be reviewed by the Tribunal. We have a role in assisting the Tribunal in its review of these decisions.

We also assess the rules for certification trade marks to determine whether they may be to the detriment of consumers and competition.

Our deliverables for the merger and authorisation review function under strategy 1 are:

Deliverable 1.2	Assess mergers to prevent structural changes that substantially lessen competition
Deliverable 1.3	Make decisions on authorisation, notification and certification trade mark applications in the public interest

Priorities

Our priority is to assess and review mergers and acquisitions to prevent structural changes that substantially lessen competition in any market. Our particular focus is on concentrated markets and proposed acquisitions arising through privatisation of public sector assets.

Mergers are usually brought to our attention by merger parties that request informal clearance or authorisation (in the latter case assessing net public benefits to be considered in addition to considering competition effects). Alternatively, we may become aware of a merger proposal through the media, from complaints or by referral from other regulatory bodies.

Our task in assessing and making decisions about applications for authorisation and notifications is to evaluate whether the arrangement or conduct is likely to result in a net public benefit. In assessing certification trade marks, our focus is on ensuring that the trade mark and associated rules do not harm competition or mislead consumers.

Our ability to make class exemptions does not depend upon an application and does not involve case-by-case assessment of a particular proposal. Rather, our priority in deciding whether to make a class exemption is to reduce or remove regulatory burden where a class of conduct is likely to result in a public benefit or unlikely to substantially lessen competition.

Powers

Section 50 of the CCA prohibits mergers and acquisitions that substantially lessen competition in any market in Australia or are likely to do so.

There is no process set out in the legislation for the informal clearance regime: this process has developed over time so that merger parties can seek the ACCC's view before they complete a merger. Appendix 7 has more details on informal clearance and pre-assessments.

As part of our role to review mergers and acquisitions under s. 50 of the CCA, we have the power to bring court proceedings where we consider that an acquisition is likely to breach s. 50. We are also able to accept court enforceable undertakings offered by merger parties to address or 'remedy' competition concerns that an acquisition raises.

In response to an application for merger authorisation, Part VII of the CCA gives the ACCC the power to grant an authorisation that exempts the applicant from s. 50.

Part VII also gives the ACCC the power to make a class exemption, grant authorisation or allow notifications involving non-merger conduct that may otherwise risk breaching the competition provisions of the CCA but are not likely to substantially lessen competition and/or are likely to be in the overall public interest. An outline of our authorisation function is in appendix 7.

Additionally, under the *Trade Marks Act 1995* (Cth) the ACCC is responsible for assessing the rules for certification trade marks. The ACCC's assessment includes determining whether the certification trade mark rules are not to the detriment of the public and are satisfactory having regard to the principles of competition and consumer protection.

Performance indicators

Deliverable 1.2: Assess mergers to prevent structural changes that substantially lessen competition

This deliverable is about assessing proposed or completed mergers and acquisitions to determine whether they are likely to substantially lessen competition.

These performance indicators are from the ACCC and AER Corporate Plan 2019–20. Additional performance indicators (those without a target) provide additional transparency on the volume of our work and on our timeliness.

Table 3.6: Performance indicators for deliverable 1.2

Performance indicator	2016–17	2017–18	2018–19	2019–20		Met?
	Result	Result	Result	Target	Result	
Number of merger matters considered (externally driven)	288	281	331	N/A	288	●
Percentage of merger matters considered (under the informal merger review process) that were finalised by pre-assessment	88%	90%	92%	80%	89%	✓
Percentage of merger matters subject to Phase 1 only of public review that were finalised within 8 weeks (excluding time periods where information is outstanding)	80%	45%	41%	50%	67%	✓
Percentage of merger matters subject to Phase 2 of public review that were finalised within 20 weeks (excluding time periods where information is outstanding) [#]	94%	71%	88%	90%	40%	✗

Note: [#] Phase 2 involves release of a statement of issues and/or acceptance of a court enforceable undertaking to remedy competition concerns.

Deliverable 1.3: Make decisions on authorisation, notification and certification trade mark applications in the public interest

This deliverable is about assessing and making timely decisions on applications for authorisation, on notifications of exclusive dealing or collective bargaining, and on certification trade marks to maintain competition and the public interest.

These performance indicators are from the ACCC and AER Corporate Plan 2019–20. Additional performance indicators (those without a target) provide additional transparency on the volume of our work and on our timeliness.

Table 3.7: Performance indicators for deliverable 1.3

Performance indicator	2016-17	2017-18	2018-19	2019-20		Met?
	Result	Result	Result	Target	Result	
Number of authorisation applications assessed (externally driven)	29	27	18	N/A	24	●
Percentage of authorisation applications assessed within statutory timeframe(s) (excluding time periods where information is outstanding) [#]	100%	100%	100%	100%	100%	✓
Number of exclusive dealing notifications assessed (externally driven)	407	268	5*	N/A	4	●
Number of collective bargaining notifications assessed (externally driven)	1	3	13	N/A	8	●
Number of resale price maintenance notifications assessed (externally driven)	N/A [^]	0	2	N/A	1	●
Number of certification trade marks assessed (externally driven)	37	32	36	N/A	23	●

Notes: # The ACCC is required to assess the validity of an authorisation application within five business days of lodgment and to issue a final determination about a new authorisation application within six months (unless extended).

* Following revisions to the CCA that came into effect in November 2017, third line forcing conduct—a form of exclusive dealing—will in many circumstances no longer require notification. This has meant that the number of exclusive dealing notifications received by the ACCC has decreased significantly since the revisions came into effect.

[^] Notification for resale price maintenance conduct was introduced in 2017-18.

Analysis of performance

The informal clearance process allows merger parties to seek the ACCC's views on a merger before they proceed with it. By doing this they can manage the risk of regulatory intervention at a later time. In 2019-20 we assessed 288 mergers that were submitted to the ACCC under the informal clearance regime or identified through monitoring and intelligence gathering.

We aim to deal with non-contentious mergers expeditiously. Consistent with this, we determined that 89 per cent of transactions did not require a detailed review because of the low risk that competition concerns will be raised. This exceeded our target of 80 per cent. The vast majority of these assessments were completed within four weeks, excluding time taken for merger parties to respond to information requests.

The remaining 11 per cent of mergers that underwent a public review were the more contentious and potentially more complex matters. A number of these involved mergers in concentrated markets where the competition concerns were likely to be greater, and these were also transactions which the public expects the ACCC to scrutinise closely.

Significant decisions made by the ACCC on transactions following a public review included:

- Bunnings Group Limited—proposed acquisition of Adelaide Tools and Oaklands Mower Centre
- Asahi Group Holdings—proposed acquisition of Carlton & United Breweries (owned by Anheuser Busch InBev SA/NV)
- Global Forest Partners LP—proposed acquisition of Resource Management Service LLC’s Tasmanian hardwood plantations
- Emergent Cold—proposed acquisition of AB Oxford Cold Storage Company
- Saputo Dairy Australia Pty Ltd—proposed acquisition of Lion Dairy and Drinks Pty Ltd’s cheese business
- ANZ Terminals Pty Ltd—proposed acquisition of GrainCorp Liquid Terminals Australia Pty Ltd
- Landmark—proposed acquisition of Ruralco Limited
- Bauer Media Pty Ltd—proposed acquisition of Pacific Magazines Pty Ltd.

In some cases the parties will decide not to proceed with the transaction after the ACCC releases a statement of issues outlining competition concerns. The following transactions were withdrawn by the merger parties at this point:

- iNova Pharmaceuticals (Australia) Pty Ltd—proposed acquisition of Juno PC Holdings Pty Ltd
- Cengage Learning and McGraw-Hill Education—proposed merger
- Bis Industries Holdings Limited—proposed acquisition of Cougar Mining Group
- Assa Abloy Australia Pacific Pty Ltd—proposed acquisitions of Seal Doors Group and E Plus Building Products Pty Ltd
- New Forests Asset Management managed forestry investment fund—proposed acquisition of Resource Management Service LLC’s Tasmanian hardwood plantations.

While the ACCC endeavours to complete merger reviews as quickly as possible, the focus is on getting the right decision. The ACCC has signalled that it will use its compulsory information-gathering powers more in merger investigations where its concerns warrant increased evidence gathering to reach a decision and, for some matters, prepare for possible litigation. We exercised these powers in 15 reviews this year.

The ACCC exceeded its target of completing 50 per cent of Phase 1 reviews within eight weeks. However, it was not able to achieve its target of reviewing 90 per cent of Phase 2 public merger investigations within 20 weeks (although four of these exceeded the target by fewer than 10 days). This reflects the increased complexity of Phase 2 public reviews and the need to use compulsory information-gathering powers in these contentious matters.

We consulted on all authorisation applications, published applications and submissions on our public register and actively contacted market participants to allow applicants and interested parties to have their say. Significant authorisation decisions included:

- a series of interim authorisations relating to the impacts of COVID-19 disruption
- authorisation for the New Energy Tech Consumer Code
- authorisation for the Australian Banking Association’s Banking Code
- authorisation for the Mortgage and Finance Association of Australia’s disciplinary rules.

All publicly reviewed merger decisions for 2019–20 are published on the [ACCC’s mergers public registers](#). All notifications and applications for authorisation are published on the [ACCC’s authorisations and notifications registers](#).

Impact of COVID-19 pandemic on our performance

During the emerging COVID-19 pandemic, the ACCC implemented additional measures to ensure that it continued to meet its objective of protecting competition in these extraordinary circumstances. The most significant of these was to prioritise consideration of the large number of authorisation applications from firms seeking immunity from competition laws to coordinate their responses to COVID-19. These applications included requests for urgent interim authorisation, which needed to be dealt with expeditiously. The ACCC granted interim authorisation within days in most cases. Significant resources were diverted from within the agency to undertake the substantive reviews of these authorisation applications over the following months.

To assist transparency we also published guidance for firms and their advisors on potential changes to the ACCC's timing and processes for assessing merger clearance requests and applications for merger authorisation and non-merger authorisation as a result of the pandemic.

Actions undertaken to achieve our purpose

Deliverable 1.2: Assess mergers to prevent structural changes that substantially lessen competition

How we conduct merger reviews

In reviewing mergers, the ACCC aims to work efficiently, transparently and effectively, taking account of the commercial needs of the parties involved. We take a scaled approach to merger assessments whereby merger proposals are triaged to ensure that non-contentious mergers are dealt with expeditiously and information required from merger or other parties is tailored according to the complexity of the issues raised.

The ACCC also seeks to inform the public, businesses and their advisors about the merger review process. We publish indicative timelines for assessments of proposed mergers under public consideration on our online mergers register unless the merger is cleared after an initial assessment (that is, pre-assessed) or subject to a confidential review. Our approach to informal merger reviews is outlined in appendix 7.

Statements of issues

When the ACCC reaches a preliminary view that a merger raises competition concerns requiring further investigation, it releases a 'statement of issues'. A statement of issues provides our preliminary views, drawing attention to particular issues of varying degrees of competition concern and identifying the lines of further inquiry that we wish to take. The purpose of the statement of issues is to provide guidance to the merger parties and other interested parties and to invite further information that may either alleviate or reinforce our concerns.

After public consultation on a statement of issues, our concerns may be validated. Where competition concerns remain, we may consider any undertakings put by the merger parties to us to resolve them.

Public competition assessments

After we make a decision on a merger, we may publish a public competition assessment. A public competition assessment gives a detailed summary of the issues that we considered when deciding whether a merger would substantially lessen competition or would be likely to do so.

We use public competition assessments to help the public to understand our analysis of the competition issues involved in certain merger reviews. We generally publish a public competition assessment on our online mergers register when:

- we oppose a merger
- a merger is subject to enforceable undertakings
- a merger is cleared but raises important issues that we believe should be made public.

Public competition assessments are published on the [ACCC's public competition assessments page](#).

Merger remedies

The ACCC can accept court enforceable undertakings under s. 87B of the CCA to resolve competition concerns raised by an acquisition.

Merger matters we considered

We considered 288 matters under s. 50 of the CCA in 2019–20—a decrease of 13 per cent on the 331 matters in 2018–19. Of the 288 mergers considered:

- 257 mergers were assessed as not requiring a public or confidential review (pre-assessed)—compared with 305 pre-assessments in 2018–19
- 31 mergers were subject to a public review—compared with 25 public reviews in 2018–19.

Of the 31 public reviews that were conducted in 2019–20:

- we opposed one merger outright
- we accepted court enforceable undertakings in relation to four mergers to address competition concerns, resulting in these mergers being cleared subject to an undertaking
- eight reviews were discontinued because either the transactions did not proceed or the parties withdrew their request for clearance. In five of these matters our reviews were discontinued because the parties did not continue with the transaction after we released a statement of issues identifying issues of concern or issues that may raise concerns
- we did not oppose 18 other mergers that underwent a public informal review.

We unconditionally cleared 58 per cent of mergers that underwent a public review. This figure increases to 95 per cent when all mergers (including pre-assessments) are included. In 15 matters we used our formal information-gathering powers under s. 155.

► **Case study: Proposed acquisition of Juno PC Holdings Pty Ltd by iNova Pharmaceuticals (Australia) Pty Ltd**

On 6 January 2020 the ACCC discontinued its public review of the proposed acquisition of Juno PC Holdings Pty Ltd (Juno PC) by iNova Pharmaceuticals (Australia) Pty Ltd (iNova). We discontinued the review after the parties notified us that they no longer intended to proceed with the acquisition.

The parties' decision to abandon the deal came shortly after the ACCC published a statement of issues on 19 December 2019. In the statement of issues we raised preliminary concerns that the proposed acquisition would be likely to limit future competition in the market for phentermine-based weight-loss medications and weight-loss medications more broadly.

iNova supplied a branded and a generic version of phentermine-based weight-loss medication. iNova's products Duromine and Metermine were the only Therapeutic Goods Administration approved phentermine products sold in Australia.

Juno PC was a special purpose joint venture established for the development of a patent-protected, branded weight-loss phentermine product. At the time of the assessment, Juno PC's product was not yet approved for sale.

The ACCC's preliminary concern was that the proposed acquisition would remove the opportunity for Juno PC's new product to enter the market as a strong competitor to iNova. The acquisition of a potential future competitor can raise concerns in the same way that the acquisition of an existing competitor can. The ACCC considered that, if the acquisition did not take place, it was likely that another pharmaceutical company would acquire or partner with Juno PC and compete with iNova.

The ACCC's public review examined the constraint provided by other weight-loss medications, including Saxenda—a prescription product supplied by Novo Nordisk—and over-the-counter products such as Xenical (supplied by Roche Australia). However, our preliminary view was that, if not for the proposed acquisition, Juno PC's phentermine-based product would be likely to compete more vigorously with iNova's phentermine-based product than these alternatives.

The ACCC also examined the likelihood of other generic phentermine-based weight-loss medications entering the market and competing with iNova. However, the ACCC's preliminary view was that, even if such entry was to occur in the absence of the proposed acquisition, Juno PC's product would be likely to provide an additional competitive constraint on iNova, due to the claimed advantageous features of Juno PC's new patent-protected product, including a consistent slow-release profile.

► **Case study: Merger authorisation conditionally authorised with divestitures—AP Eagers Limited’s proposed acquisition of Automotive Holdings Group Limited**

In July 2019 the ACCC conditionally authorised AP Eagers’s proposed acquisition of Automotive Holdings Group (AHG), following an undertaking from AP Eagers to sell its existing new car dealerships in the Newcastle and Hunter Valley region to a third party. AP Eagers’s application was the first merger authorisation application following reforms in 2017 to the merger authorisation process.

AP Eagers and AHG were the two largest automotive retailers in Australia. The combined AP Eagers and AHG dealership group would represent around 12 per cent of new vehicle sales in Australia. AP Eagers and AHG supplied new and used cars, trucks and buses, as well as associated products and services such as car repairs and servicing, authorised car parts, insurance and finance. Their operations overlapped in Brisbane, Melbourne, Sydney and the Newcastle and Hunter Valley region of New South Wales (which includes Cessnock, Maitland/Rutherford, Singleton and Port Stephens). AP Eagers was the largest shareholder of AHG, holding around 29 per cent of AHG’s listed securities in April 2019.

Concerns about the proposed acquisition were raised in the Newcastle and Hunter Valley region, where AHG was found to be AP Eagers’s closest competitor. The transaction would result in the combined AP Eagers and AHG owning about half of the 78 dealerships in the Newcastle and Hunter Valley region and about three-quarters of the dealerships that sell the top 10 car brands in metropolitan Newcastle.

The ACCC was not satisfied that the likely public benefits from the proposed acquisition outweighed the likely public detriment, including from a lessening of competition in the Newcastle and Hunter Valley region.

To address these concerns, AP Eagers offered a court enforceable undertaking to divest a number of its dealerships and related business sites in the Newcastle and Hunter Valley region.

In the other areas of overlap, the ACCC considered there would be enough alternative dealers to prevent a combined AP Eagers and AHG dealership group resulting in a substantial lessening of competition in those areas.

Having accepted the court enforceable undertaking from AP Eagers to address the competition concerns in the Newcastle and Hunter Valley region, the ACCC granted conditional authorisation on 25 July 2019. Authorisation is conditional on AP Eagers complying with the undertaking to divest.

Deliverable 1.3: Make decisions on authorisation, notification and certification trade mark applications in the public interest

How we make non-merger authorisation and notification decisions

Non-merger authorisations

The CCA primarily aims to prevent conduct that damages or is likely to damage competition. However, if markets are not working efficiently and are failing to maximise the welfare of Australians, some arrangements which may affect competition may be allowed in the public interest. Authorisation provides businesses with protection from legal action arising from potentially anti-competitive arrangements.

The ACCC can, upon application, grant an authorisation for conduct where the likely public benefit outweighs any likely public detriment. With the revisions to the CCA which came into effect on 6 November 2017, the ACCC may now also grant authorisation for certain forms of conduct if it is satisfied that no substantial lessening of competition is likely.

In assessing an authorisation application, the ACCC consults with the public (including contacting many businesses that may have an interest in the matter) and publishes submissions on a public register, unless they have been excluded because they are confidential or for other reasons.

After considering submissions, we issue a draft decision, which the applicant and interested parties can discuss with us in a conference. We then consider the application in light of any further submissions and release a final decision.

Managing the impacts of COVID-19 disruption via interim authorisation

From mid-March 2020 the ACCC granted numerous urgent interim authorisations to businesses in a number of sectors in response to the COVID-19 pandemic. We recognised that coordination and cooperation in the supply of medical services and equipment and other essential goods and services is important when supply chains and the economy are facing unprecedented disruption and that this can provide relief to affected businesses and consumers.

Five broad categories of proposed conduct emerged from these authorisation applications:

- **Response to medical needs arising from treating patients**—conduct to secure supply of COVID-19-related medicines and medical equipment.
- **Hospital capacity management between governments and private providers**—arrangements to allocate hospital capacity efficiently in the event of a surge of COVID-19 cases.
- **Adjusting supply chains and market operation, especially to respond to economic and social disruption from adjusting to lockdown**—broad sector responses to changes in business and consumer behaviour, particularly with more people working from home.
- **Promoting consistent relief or benefits for economic issues and hardship**—competitors agreeing on standard minimum relief to alleviate financial hardship caused by the economic fallout from the pandemic, or standard extensions of health-related coverage.
- **Conduct responding to issues resulting from the medical, economic or social consequences of the COVID-19 pandemic**—collaboration to promote efficient actions in response to the financial issues caused by COVID-19, such as collective bargaining by tenants with landlords.

The ACCC will closely monitor the activities being undertaken and may review a decision to grant interim authorisation at any time. In granting these interim authorisations urgently, the ACCC considered the current circumstances caused by the COVID-19 pandemic to be exceptional.

The ACCC's final decision on whether to grant authorisation will follow a period of public consultation and depends on whether the public benefit from the conduct outweighs any public detriment. The ACCC expects that authorisations granted on the basis of the pandemic will be relatively short term, reflecting the temporary need to respond to the pandemic. The ACCC will be careful to avoid any long-term consequences for competition in the affected markets.

More information about these applications and the ACCC's authorisation process can be found on the [ACCC's public register](#).

► Case study: New Energy Tech Consumer Code

In April 2019 the Clean Energy Council, the Australian Energy Council, the Smart Energy Council and Energy Consumers Australia (together the applicants) sought authorisation for the New Energy Tech Consumer Code, which sets minimum standards of good practice and consumer protection that signatories must comply with. The code applies to all aspects of customers' interactions with participating retailers, including marketing, sales, finance and payments, warranties and complaints handling processes. It covers retailers of products such as solar generation systems, energy storage systems, electrical vehicle charging and other emerging energy products and services, subject to conditions.

The ACCC received many submissions on this matter, particularly about requirements under the code relating to responsible finance and 'buy now pay later' (BNPL) finance arrangements. Based on the information received, on 5 December 2019 the ACCC granted conditional authorisation for the code until 31 December 2024. The final determination contained the following conditions:

- a condition relating to the consumer safeguards that the code requires BNPL finance providers to have in place in order for signatories to the code to offer BNPL finance arrangements from those providers
- a condition clarifying the intended effect of the code in relation to BNPL finance being offered in unsolicited sales of new energy tech products
- a condition requiring the applicants to report to the ACCC on the operation of the code. Reporting is intended to enable the applicants, as well as the ACCC, to assess whether the code is operating as envisioned, including whether there are sufficient protections against harms that may arise from unsuitable financial arrangements.

The applicants must report to the ACCC on the operation of the code. Reporting is intended to enable the applicants, as well as the ACCC, to assess whether the code is operating as envisioned, including whether there are sufficient protections against harms that may arise from unsuitable financial arrangements.

On 30 December 2019 Flexigroup (an interested party in this authorisation) lodged an application for review of the ACCC's determination with the Australian Competition Tribunal, so the ACCC determination did not come into force. As at 30 June, the application has been heard by the Australian Competition Tribunal and the Tribunal's decision is pending.

Notifications

Notification is an alternative to authorisation for certain arrangements such as exclusive dealing. Like authorisation, the notification process provides protection from legal action under the CCA if the conduct is in the public interest or, in some cases, is not likely to substantially lessen competition.

Notification remains in place unless we revoke it. At any time, we can review the public benefit and detriment from the notified conduct to assess whether the notification should continue.

Certification trade marks

We assessed 23 certification trade mark applications in 2019–20.

Businesses use certification trade marks to indicate to consumers that a product or service has particular attributes or has been produced according to particular standards.

The *Trade Marks Act 1995* requires the ACCC to assess certification trade marks and rules before they can be registered by IP Australia. Under the Trade Marks Regulations 1995 (Cth), the ACCC must make an initial assessment of an application as soon as practicable after receipt.

Our role is important, as we ensure that competition and consumer protection issues are appropriately assessed. In particular, we consider the effectiveness of certification trade mark rules in ensuring that the specified standards are met; that the rules do not unfairly exclude those that meet the requirements to use the mark; and that the certification bodies are competent to decide whether the requirements are being and continue to be met.

Notifications we assessed

Exclusive dealing notifications

We assessed four exclusive dealing notifications in 2019–20.

Under the revisions to the CCA which came into effect on 6 November 2017, third line forcing (a particular form of exclusive dealing) is no longer an automatic breach of the CCA. This means that parties need only notify the ACCC of third line forcing conduct if it risks substantially lessening competition. This has meant that the number of notifications that the ACCC has received has decreased significantly since the revisions came into effect.

Resale price maintenance notifications

We assessed one resale price notification in 2019–20.

In broad terms, resale price maintenance occurs when a supplier of goods or services (for example, a manufacturer or wholesaler) specifies a minimum price below which a reseller must not onsell, or advertise for sale, those goods or services.

Resale price maintenance is prohibited outright under the CCA, regardless of whether it has the purpose, effect or likely effect of substantially lessening competition.

Collective bargaining notifications

We assessed eight collective bargaining notifications in 2019–20.

For the purposes of the CCA, collective bargaining is an arrangement where two or more competitors come together to negotiate with a supplier or a customer over terms, conditions and prices. The CCA generally requires businesses to act independently of their competitors when making these decisions. Competitors that act collectively in these areas are at risk of breaching the competition provisions of the CCA.

However, small businesses can seek legal protection from the ACCC to engage in collective bargaining by lodging a notification or by applying for authorisation.

Consumer Data Right

Role and functions

The Consumer Data Right is a competition and consumer reform announced by the Australian Government in November 2017.

The ACCC is leading the implementation of the Consumer Data Right in the Australian economy.

The Consumer Data Right will give consumers more control over data relating to them that is held by businesses providing services to them. Consumers will therefore have more choice in where they take their business and more convenience in how they manage their services. In turn, this will drive innovation and competition across the whole economy.

The Consumer Data Right's objective is to provide consumers with the ability to efficiently and conveniently consent to data held by businesses (data holders) that relates to them being securely disclosed to trusted third parties (accredited data recipients). It also requires businesses to provide public access to information on specified products that they offer.

As the lead implementation agency, the ACCC has a number of roles to support and establish the regime, including:

- developing the rules
- designing, implementing and operating the register and accreditation application platform
- accrediting trusted third parties
- onboarding industry participants and supporting participant testing
- educating and engaging consumers and stakeholders
- monitoring compliance and taking enforcement action.

Consumer data sharing will commence in the banking sector in July 2020 and be progressively rolled out to cover a wider range of data holders and products. That work will be substantially completed in the 2021 calendar year. The Consumer Data Right will also be implemented in the energy sector. Other sectors will also be designated by the responsible minister over time.

Powers

The CDR regime was established by the *Treasury Laws Amendment (Consumer Data Right) Act 2019 (Cth)*⁷, which inserted Part IVD, 'Consumer data right', into the CCA.

Making the rules

The CCA empowers the ACCC to make rules regarding the Consumer Data Right, with the consent of the responsible minister. The CDR Rules create the framework for how the Consumer Data Right operates. They may deal with all aspects of the CDR regime, including the accreditation process, the use and disclosure of CDR data, dispute resolution, and in relation to the privacy safeguards.

The ACCC is required to have regard to certain matters before making the rules, including the likely effect of the rules on the interests of consumers, the efficiency of relevant markets, the privacy and confidentiality of consumers' information, and the regulatory impact of the rules.

⁷ The *Treasury Laws Amendment (Consumer Data Right) Act 2019 (Cth)* commenced on 13 August 2019.

Accreditation

The ACCC is the designated CDR Data Recipient Accreditor under the CCA. Any person in Australia or overseas who wishes to receive CDR data to offer products or services to consumers must be accredited to ensure that data sharing is safe and secure. Accredited data recipients are subject to continuing obligations.

The CDR Rules set out the criteria that the ACCC will apply when considering whether to grant an application for accreditation. Applicants must demonstrate that they have satisfied the requirements of accreditation under the CDR Rules, including requirements to have information security safeguards in place to protect consumers' data; to be a fit and proper person to manage CDR data; to have dispute resolution processes; and to maintain adequate insurance.

The CDR Rules also give the ACCC the power to suspend or revoke accreditation in certain circumstances.

Further information about the exercise of the ACCC's CDR accreditation powers is in appendix 8.

Register

As the designated CDR Accreditation Registrar under the CCA, the ACCC is responsible for building and maintaining the Register of Accredited Persons (the CDR Register).⁸ The Registrar ensures that certain information recorded on the Register is made publicly available. Accredited persons and data holders are able to access information on the Register that facilitates their processing of consumer data requests for CDR data.

To maintain the security, integrity and reliability of the CDR Register, the ACCC undertakes and facilitates a range of other activities as necessary—for example, system monitoring and conformance testing, which may require the participation of accredited persons from time to time.

Further information about the exercise of the ACCC's powers as CDR Accreditation Registrar is in appendix 8.

Compliance and enforcement

The CDR regulatory framework establishes clear principles of liability to ensure that data holders and accredited data recipients comply with their obligations. This framework provides that CDR enforcement is a co-regulatory effort between the ACCC and the Office of the Australian Information Commissioner (OAIC).

The ACCC is responsible for enforcing compliance with Part IVD of the CCA, the CDR Rules and the data standards. This includes responsibility for taking strategic enforcement action to address conduct causing systemic detriment; and enforcing accredited data recipients' compliance with their continuing obligations.

The OAIC is primarily responsible for complaint handling and for strategic enforcement relating to the protection of privacy and confidentiality. The OAIC will also receive and handle notifications from consumers of CDR data breaches.

⁸ This includes an associated database of data holders.

Actions undertaken to achieve our purpose

The ACCC has worked closely with the other CDR co-regulators⁹ and industry to prepare for the implementation of the Consumer Data Right.

The ACCC's focus in the start-up phase of the Consumer Data Right has been on significant stakeholder consultation and the development of the CDR Rules for the first designated CDR sector: banking. The CDR Rules (Banking) were made on 4 February 2020. They provide for the Consumer Data Right to be implemented in phases in the banking sector. The 'big four' banks¹⁰ will begin sharing consumer data with a limited number of accredited data recipients in July 2020.

During 2019–20 the ACCC:

- designed, built and implemented the backbone of the Consumer Data Right: the [CDR Register and Accreditation Application Platform](#), which ensures that data can be shared securely only between authorised CDR participants. The system was released on 25 May 2020
- through an expression of interest process, selected 10 entities to undertake extensive testing and assurance activities with the initial data holders (the big four banks) to ensure that the ecosystem would be secure and robust when launched and would function as intended
- gave those 10 entities an opportunity to apply for accreditation to become data recipients on the launch of the Consumer Data Right. Two entities applied and were accredited: Regional Australia Bank Ltd and Frollo Australia Pty Ltd. One entity applied and, as at 30 June 2020, was still under assessment. Five entities progressed significantly through testing but decided not to apply for accreditation at this time, for reasons including the impact of the COVID-19 pandemic. Two entities did not progress significantly through testing and did not apply for accreditation
- following the completion of extensive testing and assurance activities, entered details of each accredited person on the [CDR Register](#) and details of the initial four data holders on the associated database
- for the purpose of maintaining the CDR Register, approved the terms and conditions for digital certificates required by accredited persons and data holders
- collaborated with other bodies (including the OAIC and the Data Standards Body) to develop consistent messaging and consumer education material through a [CDR website](#) and the CDR Register and Accreditation Application Platform (RAAP)
- worked with the co-regulators and energy industry stakeholders to plan for the implementation of the Consumer Data Right in the energy sector, including preparing a rules framework for consultation.

The launch of the CDR RAAP in May 2020 enabled entities to apply to become accredited data recipients.

Through March 2020 the ACCC worked closely with testing participants, the Department of the Treasury (Treasury) and other areas of the Australian Government to evaluate and respond to the impacts of the COVID-19 pandemic. Under the CCA the ACCC has the power to exempt participants from their obligations under certain circumstances. Due to the impact of COVID-19 we granted a number of exemptions to each of the non-major banks, which will have the effect of delaying the commencement date of some obligations. We also granted two banks exemptions particular to their circumstances. Further information is available on the [public register for exemptions](#).

⁹ The Office of the Australian Information Commissioner and the Data Standards Body.

¹⁰ Australia and New Zealand Banking Group, Commonwealth Bank of Australia, National Australia Bank Limited, Westpac Banking Corporation.

► Case study: Building the RAAP

In 2019–20 the ACCC worked extensively with stakeholders to design and build the CDR Register and Accreditation Application Platform (RAAP), which is the IT backbone of the Consumer Data Right. The RAAP has two main functions:

- it provides a trusted data environment where encrypted data is only shared between approved participants
- it provides a portal where businesses can apply to be accredited.

The ACCC oversaw a testing and assurance program to facilitate the safe implementation by initial participants (following a competitive process to select suitable data recipients) and ensure technical readiness before going live. The priority was the safety and security of the technical architecture. Additional functionality included functions that defined interactions with the register, data application programming interfaces, and integration points between all participants.

The ACCC administered an intensive engagement and collaboration program to work through complex challenges, maintain momentum and ensure readiness for launch.

A test working group was established in September 2019 to create a single forum for subject matter experts representing all parties participating in the testing program. It met 20 times during 2019–20. The group provided guidance and made recommendations specific to industry testing. The Open Banking Implementation Advisory Committee (OBIAC), comprising senior representatives of government and initial data holders, was established in October 2019. The OBIAC convened 25 times during 2019–20 to discuss and inform the ACCC's strategic decision-making and advice to government.

We also maintained continuous and transparent engagement and support through the collaboration platform GitHub. We used GitHub to consult on 31 items and clarify 45 issues. Consultation through GitHub also assisted prospective data recipients who were not participating in the testing and assurance program to prepare for their adoption of the Consumer Data Right following its launch.

The ACCC supported prospective participants' adoption of the Consumer Data Right by responding to a substantial number of enquiries to clarify and provide specific guidance on the application of rules and standards and on matters such as accreditation application processes.

Despite the impact of the COVID-19 pandemic on the CDR program and participants, the RAAP was opened to receive applications for accreditation on 25 May 2020 and was ready to facilitate safe and secure live data sharing between data holders and accredited data recipients from 1 July 2020.

The Consumer Data Right will be expanded beyond banking into energy and then other sectors of the economy. A key underlying policy objective of the framework is therefore the interoperability of consumer data sharing between different sectors. The technical architecture has been built to allow it to be scaled as the Consumer Data Right expands to other sectors.

Other work promoting competition

We use our expertise to advise on and advocate for competition in Australia, working with government and other organisations and agencies on legislative or policy reforms affecting competition law.

Internationally we work with counterpart agencies by collaborating, sharing information and working to improve competition and consumer protection practices. We also advise on competition regimes, particularly in the Asia-Pacific region.

Key matters where we sought to promote competition or worked to improve the competitive environment, either domestically or internationally, are discussed below.

Competition and consumer issues in the agriculture sector

Addressing competition and consumer issues in the agriculture sector was one of our 2019–20 priorities.

Aside from our enforcement work in the agriculture sector (see deliverable 2.4 on page 120), the ACCC's Agriculture Unit undertook a range of activities to increase our engagement and enforcement in the agriculture sector.

Engagement with the agriculture sector

Our activities to promote compliance with competition and consumer laws in the agriculture sector included:

- conducting industry engagement and compliance work for the implementation of the mandatory Dairy Code of Conduct, which commenced on 1 January 2020. This mandatory code was a key recommendation in the ACCC's *Dairy Inquiry final report*, which found significant imbalances in bargaining power at each level of the dairy supply chain, particularly between processors and farmers. The ACCC is responsible for enforcing the code
- examining potential competition and consumer issues in the agricultural machinery industry
- commencing an inquiry into markets for tradeable water rights in the Murray–Darling Basin, as directed by the government on 8 August 2019. Further information on this work is on page 151.

Key outcomes in the agriculture sector included:

- education and engagement to inform the industry about the Dairy Code of Conduct and encourage compliance
 - establishing a Dairy Consultative Committee comprising farmers, processors and key industry groups. Three Dairy Consultative Committee meetings were held during 2019–20. The purpose of the meetings was to discuss strategies to educate the industry, especially farmers and processors, on compliance with the newly introduced code
 - producing guidance material relating to the code, including information published on the ACCC website and a fact sheet targeted at farmers
- releasing the ACCC's *Wine Grape Market Study final report* in September 2019 and advocating for the recommendations made in the report. More information on the study is on page 151
- releasing an issues paper on the ACCC's inquiry into markets for tradeable water rights in the Murray–Darling Basin and holding 10 public forums in locations across the Murray–Darling Basin to consult with stakeholders.

Agricultural machinery after-sales markets

An additional key outcome of our work in the agriculture sector was progressing a research project looking into agricultural machinery after-sales markets. Since April 2018 the ACCC has consulted with various stakeholders including farmers, machinery dealers and industry bodies about their experiences with purchasing and repairing agricultural machinery.

On 28 February 2020 we released a [discussion paper](#) that set out a number of initial observations and concerns about issues which may be harmful to competition and to purchasers of agricultural machinery, including the following:

- Access to independent repairs is limited.
- Agreements between manufacturers and dealers may limit access to repairs.
- Farmers may lack recourse in the event of a problem.
- Data ownership and management may raise privacy and competition concerns.

To better understand the extent of the issues, the ACCC is seeking further information and feedback from stakeholders via a survey for machinery purchasers and submissions on the discussion paper. The survey closed on 22 April 2020 and the due date for submissions on the paper was 31 May 2020. The consultation timeframes for the agricultural machinery research project were extended in response to stakeholders' requests in light of the disruptions caused by the COVID-19 pandemic.

We are analysing the information collected and will use this to inform next steps.

Anti-competitive practices in commercial construction

The Commercial Construction Unit (CCU) of the ACCC was established in June 2017. Since then it has assessed and investigated a number of matters of alleged anti-competitive and unfair practices that impact on competition in construction markets. The CCU has also continued a significant compliance and engagement program that has included stakeholder education sessions and targeted outreach, including meeting with government bodies, industry associations and industry participants.

The CCU has assessed a number of matters that it has identified through proactive work or that industry members have raised with it, including allegations of cartel conduct, other types of potentially anti-competitive arrangements, coercion, unconscionable conduct and unfair contract terms.

In 2019-20 the CCU:

- continued to support the CDPP in its prosecution of the Construction, Forestry, Maritime, Mining and Energy Union and its Australian Capital Territory Divisional Branch Secretary, Jason O'Mara, in relation to alleged cartel conduct
- obtained court enforceable undertakings from two Sydney roofing companies relating to price discussions on industry social media groups that raised concerns under cartel and concerted practices prohibitions. Further details are on page 48.

Misuse of market power and concerted practices

Anti-competitive conduct and misuse of market power are enduring priorities for the ACCC. In October 2017 we established the Substantial Lessening of Competition Unit (SLC Unit) to focus on anti-competitive conduct. The SLC Unit works particularly on investigations that could give rise to cases under the new s. 46 misuse of market power provision and ‘concerted practices’ provisions that came into force in November 2017.

In addition to carrying out investigations, the SLC Unit has a broader mandate to enhance the ACCC’s investigation of competition cases and consider the way it handles such investigations. It seeks to develop techniques to maximise the commercial relevance of the ACCC’s competition enforcement work by completing investigations quickly.

In 2019–20 the SLC Unit undertook investigations in several industries. For example, the ACCC instituted proceedings against Tasmanian Ports Corporation Pty Ltd (TasPorts) after a six-month investigation by the SLC Unit (see page 49). This is the first case brought by the ACCC under the amended misuse of market power provision.

Competition in financial services

The ACCC’s Financial Services Competition Branch (FSCB) has a mandate to improve competition in the financial services sector through investigations and enforcement action as well as market studies and advocacy.

The FSCB is responsible for the ACCC’s investigations and enforcement action relating to suspected breaches of the competition provisions of the CCA by those in the financial services sector. This includes assisting the CDPP in the criminal cartel prosecution of Citigroup, Deutsche Bank, ANZ and relevant executives referred to on page 45.

The FSCB undertook extensive work on two market studies in 2019–20: the Foreign Currency Conversion Services Inquiry and the Home Loan Price Inquiry. For details on these, see pages 152 and 153.

In conducting its work in the financial services sector, the FSCB engages closely with members of the Council of Financial Regulators.

Electronic conveyancing market reform report

On 2 December 2019 the ACCC released an electronic conveyancing (e-conveyancing) [market reform paper](#) to assist the Australian Registrars’ National Electronic Conveyancing Council and the relevant state and territory policy-makers in their consideration of e-conveyancing and the design of this emerging market.

The ACCC has no formal role in establishing the regulatory framework for the conveyancing market. This reform paper was released in response to numerous requests by diverse stakeholders to provide guidance on designing a new framework that will allow competition to develop in the market.

Overall, the ACCC observed that:

- the existing regulatory framework for e-conveyancing is no longer fit for purpose
- unless policy-makers urgently move to implement a regulatory framework that facilitates competition and provides certainty, it is likely that new entrants will be unable to sustain their presence in the market, to the detriment of end users
- in the event that competition is not facilitated, the monopoly provider of e-conveyancing services will need to be subject to robust regulatory requirements to protect the interests of stakeholders and end users. This regulation could be complex, costly and time consuming, and would be a suboptimal result compared to effective competition.

The ACCC concluded that, while it has a strong preference for a nationally consistent approach to e-conveyancing, if this cannot be achieved soon then individual state and territory governments should progress their own approaches, as it is preferable that some markets benefit from competition rather than none.

News media bargaining code

In December 2019 the ACCC was tasked with facilitating the development of voluntary codes to address bargaining power imbalances between digital platforms and news media businesses. The government indicated that, if an agreement was not forthcoming, alternative options would be considered.

On 20 April 2020 the Australian Government announced that it had directed the ACCC to develop a mandatory code of conduct to address bargaining power imbalances between Australian news media businesses and digital platforms. The government asked that a draft mandatory code be released for consultation before the end of July 2020, with a final code to be settled soon thereafter.

The elements to be covered in the code include data sharing, ranking and display of news content, and monetisation and sharing of revenue generated from news. The code will also establish appropriate enforcement, penalty and binding dispute resolution mechanisms.

The ACCC is developing the draft mandatory code framework in collaboration with Treasury and the Department of Infrastructure, Transport, Regional Development and Communications and is carrying out consultation with industry stakeholders.

International collaboration on competition

Effective enforcement of Australia's competition laws in a global economy requires cooperation with similar agencies across the world.

The ACCC works closely with global counterparts on international cartel, merger and other competition enforcement matters that affect Australian consumers.

The ACCC collaborates with international counterparts through forums such as the International Competition Network (see page 101) and the Competition Law Implementation Program in the Association of Southeast Asian Nations (ASEAN) region (see page 99).

Bannerman Competition Lecture

On 25 February 2020 the ACCC and the Business Law section of the Law Council of Australia hosted the annual Bannerman Competition Lecture in Melbourne.

The lecture was delivered by Isabelle de Silva, President of the French Competition Authority. It focused on the effectiveness of competition policy in the digital economy.

The Bannerman Competition Lecture is named in honour of Ronald Bannerman AO, the first and only Commissioner of Trade Practices and the inaugural Chairman of the ACCC's forerunner, the Trade Practices Commission. The lecture provides an annual forum for an eminent speaker to reflect on competition and consumer law in Australia and to deliver new ideas and perspectives that the community can debate.

Annual Competition Law and Economics Workshop

On 18-19 October 2019 the ACCC and the University of South Australia School of Law hosted the 17th annual Competition Law and Economics Workshop in Adelaide.

The theme of the workshop was 'Competition Law: The Penicillin of Public Policy?'. The workshop [program](#) is on our website.

The workshop is an annual event providing a high-level forum for debate on emerging issues in competition policy, encompassing practice and theory, law and economics, and domestic and international best practice.

Strategy 2: Consumer protection and fair trading

Protecting the interests and safety of consumers and supporting fair trading in markets affecting consumers and small business

Performance results and analysis

Role and functions

The Australian Consumer Law (ACL) governs a range of conduct that can have a negative impact on both consumers and small business. The law is designed to enable all businesses to compete on their merits in a fair and open market while ensuring consumers are also treated fairly.

The ACCC supports consumers and small businesses by:

- addressing harm done by non-compliance with the ACL
- ensuring that consumers know their rights under the ACL
- ensuring that small businesses know their rights and responsibilities under the ACL
- educating and warning consumers and small businesses about scams.

We also take action to minimise the risks of unsafe consumer goods harming Australian consumers. This includes negotiating recalls of unsafe consumer goods, recommending regulatory action by the minister and taking action against traders and suppliers where warranted.

We use educational campaigns to ensure that consumers and small businesses are fully aware of their rights and responsibilities under the *Competition and Consumer Act 2010* (Cth) (CCA) and to encourage businesses to comply with the CCA.

We also work closely with state and territory counterparts to educate, monitor and enforce compliance with the ACL under a one-law, multi-regulator model.

Our deliverables in this area are:

Deliverable 2.1	Deliver outcomes to address harm to consumers and small businesses resulting from non-compliance with the Australian Consumer Law and Industry Codes
Deliverable 2.2	Enhance the effectiveness of the ACCC's compliance and enforcement initiatives through partnerships
Deliverable 2.3	Identify and address the risk of serious injury and death from safety hazards in consumer products
Deliverable 2.4	Support a vibrant small business sector
Deliverable 2.5	Empower consumers by increasing their awareness of their rights under the Australian Consumer Law

Priorities

While we carefully consider all reported matters, we rarely get involved in individual disputes and complaints; rather, we dedicate our resources and litigation funding to matters that affect significant numbers of people and that have the potential to provide the greatest overall benefit for competition and consumers. This includes pursuing matters that can influence broader industry behaviour.

The ACCC's [Compliance and Enforcement Policy](#) sets out our priorities for the calendar year and the factors we take into account when deciding whether to pursue matters. It can be found on our website.

Enduring priorities

There are some forms of conduct that are so detrimental to consumer welfare and the competitive process that we will always regard them as a priority. Our enduring priorities include:

- product safety issues which have the potential to cause serious harm to consumers
- conduct affecting vulnerable and disadvantaged consumers
- conduct affecting Indigenous Australians.

2019–20 compliance and enforcement priorities

Our annually revised Compliance and Enforcement Policy sets out competition and consumer priorities for the year and the factors we take into account when deciding whether to pursue particular matters. We also release specific priorities relating to our product safety work. These are discussed further on page 108.

We revised and released our Compliance and Enforcement Policy in February 2019 and again in February 2020. In relation to consumer and small business related priorities, our 2019 and 2020 policies focused on the following areas in the reporting period, in addition to our enduring priorities.

2019 compliance and enforcement priorities

- Consumer guarantees on high-value electrical and whitegoods products—in particular, those supplied by large retailers and manufacturers.
- Conduct that may contravene the misuse of market power provisions and the concerted practices provisions.
- Anti-competitive conduct and competition issues in the financial services sector, including issues with respect to foreign exchange services.
- Consumer and competition issues arising from opaque and complex pricing of essential services—in particular, those in energy and telecommunications.
- The impact on consumers arising from the collection and use of consumer data by digital platforms, with a focus on the transparency of data practices and the adequacy of disclosure to consumers.
- Competition and consumer issues arising from customer loyalty schemes.
- Emerging consumer issues in advertising and subscription service practices on social media platforms, with a focus on the impact on younger consumers.

- Ensuring that small businesses receive the protections under the CCA, with a focus on the Franchising Code of Conduct and unfair contract terms.
- Competition and fair trading issues in the agriculture sector, with a focus on unfair contract terms in supply agreements and the viticulture sector.
- Ensuring the effectiveness of the compulsory recall of vehicles with Takata airbags.
- Improving the safety of quad bikes.
- Anti-competitive conduct and unfair business practices impacting competition in commercial construction markets.

2020 compliance and enforcement priorities

- Competition and consumer issues in the funeral services sector.
- Competition and consumer issues relating to digital platforms.
- Competition and consumer issues arising from the pricing and selling of essential services, with a focus on energy and telecommunications.
- Misleading conduct in relation to the sale and promotion of food products, including health and nutritional claims, credence claims and country of origin.
- Conduct affecting competition in the commercial construction sector, with a focus on large public and private projects and conduct impacting small business.
- Ensuring that small businesses receive the protections of the competition and consumer laws, with a focus on the Franchising Code of Conduct.
- Ensuring compliance with the Dairy Code of Conduct.
- Empowering consumers and improving industry compliance with consumer guarantees, with a focus on high-value goods such as motor vehicles, electrical products and whitegoods.
- Pursuing regulatory options to prevent injuries and deaths to children caused by button batteries.
- Finalising the compulsory recall of vehicles with Takata airbags.

2019–20 product safety priorities

Each year we also release a standalone product safety policy setting out the principles we adopt to prioritise and address product safety risks. In 2019–20, in addition to the product safety related priorities included in the compliance and enforcement priorities, we focused on the following two sets of product safety priorities.

2019 product safety priorities

- Supporting strategies that help prevent injuries and deaths to children caused by button batteries.
- Progressing the development of a General Safety Provision and other product safety reforms.
- Supporting strategies that help prevent injuries and deaths to infants caused by unsafe sleeping products.
- Improving product safety in the online marketplace, with a focus on improving the safety of products sold on online platforms.
- Raising awareness and building capacity to address consumer safety hazards associated with interconnected devices.
- Continuing to review and update current mandatory safety standards and bans and conduct surveillance.
- Improving product safety data through progressing the development of a national product safety incidents database.

2020 product safety priorities

- Implementing strategies to prevent injuries and deaths to infants caused by sleeping products identified as unsafe.
- Improving product safety in e-commerce through enhanced compliance commitments from online platforms.
- Scoping more effective risk controls for potential intervention to prevent injuries and deaths caused by furniture falls, including toppling furniture.

More information about the 2019 and 2020 consumer product safety priorities may be found on page 108.

Powers

Under the consumer protection provisions of the CCA, we have powers to take court action, seek court enforceable undertakings, seek corrective advertising or consumer refunds and other forms of redress, issue infringement notices and public warning notices and resolve matters administratively. A description of these powers and our approach to using them is in our [Compliance and Enforcement Policy](#) on our website and in appendix 7.

Under the ACL, the ACCC, along with state and territory regulators, can also regulate consumer goods and product-related services by issuing safety warning notices, banning products on an interim or permanent basis, imposing mandatory safety standards and issuing a compulsory recall notice to suppliers.

We also have certain powers under industry codes and schemes.

Performance indicators

The performance indicators below are from the ACCC and AER Corporate Plan 2019–20.

Deliverable 2.1: Deliver outcomes to address harm to consumers and small businesses resulting from non-compliance with the Australian Consumer Law and industry codes

Actions to achieve this deliverable include the enforcement action and other initiatives we undertake to enhance compliance with the ACL to protect consumers and small businesses from conduct that harms them. With finite resources, we direct our efforts to areas with the greatest harm, determining our priorities for action each year. As a strategic regulator, we look to intervention that can influence behaviour across industries and the economy.

Table 3.8: Performance indicators for deliverable 2.1

Performance indicator	2016–17	2017–18	2018–19	2019–20		Met?
	Result	Result	Result	Target	Result	
Number of in-depth ACL investigations completed	98	80	73	80	66	○
Percentage of in-depth ACL investigations that are in the priority areas outlined in the Compliance and Enforcement Policy	70.1%	61.25%	63%	60%	63.6%	✓
Percentage of initial ACL investigations completed within 3 months	88.1%	61.4%	66.7%	80%	59.3%	✗

Percentage of in-depth ACL investigations completed within 12 months	80.6%	80.3%	86.3%	80%	75.8%	○
Number of ACL enforcement interventions (court proceedings commenced, s. 87B undertakings accepted, infringement notices issued, administrative resolutions) ^{#**^}	48	56	49	40	50	✓
Percentage of ACL enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy	64.6%	76.8%	87.5%	60%	66%	✓
Percentage of ACL enforcement interventions in the priority areas, or demonstrate the priority factors, outlined in the Compliance and Enforcement Policy	100%	100%	100%	100%	100%	✓
Number of new or revised business compliance resources (published guidance)	26	16	25**	10	22	✓
Number of times online business education resources have been accessed	1 388 770	1 499 696	1 515 927	1 000 000	1 495 195	✓
Number of surveys and audits for CCA compliance, including in relation to product safety regulations	54	57	33	20	19 (+526 TTF audits^^)	✓
Percentage of business compliance projects that are in priority areas identified in the Compliance and Enforcement Policy	100%	100%	100%	60%	100%	✓

Notes: # ACL enforcement interventions also include enforcement interventions to protect small business—for example, action taken to address the unfair contract terms laws and actions. They may also include action taken where there is an alleged breach of both the ACL and an industry code. Matters solely involving an alleged breach of an industry code are not included in this number and are instead included in the number of interventions with substantial benefits to the small business sector under deliverable 2.4.

* Before 2018–19 market studies were included in this performance indicator. From 2018–19 market studies and inquiries are discussed under a standalone performance indicator under strategy 4.

^ In some cases the ACCC may accept an administrative resolution. Depending on the circumstances, administrative resolutions can range from a commitment by the trader in correspondence to a signed agreement between the ACCC and the trader setting out detailed terms and conditions of the resolution. For an administrative resolution to be included as an enforcement intervention for reporting purposes, it must be a formal resolution reached with a trader and noted publicly by way of an ACCC media release.

** The total number of new or revised business compliance resources has been collated by counting a new or revised publication and its multiple translations as a single resource.

^^ The high number of audits is due to surveillance of various automotive industry sectors undertaken by ACL regulators in relation to the Takata compulsory recall.

Deliverable 2.2: Enhance the effectiveness of the ACCC's compliance and enforcement initiatives through partnerships

Actions to achieve this deliverable include the partnerships we make to assist us in taking proactive, timely and effective compliance and enforcement action—for example, with the Department of the Treasury (Treasury), the Australian Securities and Investments Commission (ASIC) and state and territory consumer protection agencies, businesses, industry associations and consumer groups.

Table 3.9: Performance indicators for deliverable 2.2

Performance indicator	2016-17	2017-18	2018-19	2019-20		Met?
	Result	Result	Result	Target	Result	
Percentage of business compliance resources developed or updated in consultation with business, stakeholder groups and peak bodies	81%	100%	74%	80%	43% [#]	X
Number of business compliance projects that are delivered jointly with ACL regulators	10	10	14	5	5	✓
<i>(Business compliance projects may include one or more of the following to address an identified sector-based compliance risk: monitoring, surveillance, audits, research, stakeholder engagement, business compliance resources, consumer education resources)</i>						
Number of business compliance and consumer education projects that involve partnership or joint delivery with businesses, peak bodies, industry or consumer groups	6	13	19	5	15	✓

Note: [#] Most guidance released during the year comprised existing guidance updated for minor, procedural changes which did not justify consultation. In the second half of the financial year, the ACCC prioritised providing information to small businesses and franchises that would assist them to meet the challenges of the COVID-19 pandemic. The ACCC moved quickly to produce and publish guidance as a matter of urgency and did not consult with business, stakeholder groups and peak bodies as is usual in the absence of an emergency.

Deliverable 2.3: Identify and address the risk of serious injury and death from safety hazards in consumer products

Actions to achieve this deliverable include the methods we use to identify product safety issues and the kinds of actions we take where they are warranted.

Table 3.10: Performance indicators for deliverable 2.3

Performance indicator	2016-17	2017-18	2018-19	2019-20		Met?
	Result	Result	Result	Target	Result	
Percentage of product safety mandatory reports made by businesses of serious injury or death preliminary assessed by the ACCC within 7 days	86.6%	98.6%	99.9%	100%	100%	✓
Number of initial and in-depth investigations of emerging product safety hazards	N/A	22 [#]	13	10 [*]	12	✓
Number of reviews of mandatory product safety standards completed	6	12	4	6	3	✗
Number of new or updated published business compliance resources relating to the safety of consumer products	3	3	9 [^]	2	7	✓

Notes: [#] In the 2018 ACCC Portfolio Budget Statement this performance indicator was expressed as 'Number of detailed assessments of emerging product safety hazards'. The terms 'detailed assessments' and 'initial investigations' refer to the same activity.

^{*} In the 2018-19 ACCC Corporate Plan this performance indicator was adjusted to include initial and in-depth investigations, and the target was revised to 10. The Corporate Plan text contained an error, which was corrected in the 2019 Portfolio Budget Statement to correctly express the indicator as 'Number of initial and in depth investigations of emerging product safety hazards'.

[^] The total number of new or updated business compliance resources relating to the safety of consumer products has been collated by counting a new or revised publication and its multiple translations as a single resource.

Deliverable 2.4: Support a vibrant small business sector

The ACCC helps to ensure that small businesses understand and comply with their obligations under the ACL. It encourages them to exercise their rights under the CCA as the customers of larger suppliers. Our aim is to promote a competitive and fair operating environment for small business and, importantly, ensure small businesses understand how the legislation can help them.

Table 3.11: Performance indicators for deliverable 2.4

Performance indicator	2016-17	2017-18	2018-19	2019-20		Met?
	Result	Result	Result	Target	Result	
Number of small business Infocentre contacts served <i>(Small business contacts are contacts through a separate small business phone line and web forms)</i>	13 372	14 315	12 937	12 000	12 143	✓
Number of new or revised business compliance resources (published guidance) to empower small business	26	8	16	5	7	✓
Number of CCA and ACL enforcement interventions with substantial benefits to small business sector [#]	12	11	12	10	9	○

Note: [#] This includes enforcement interventions relating to matters solely involving an alleged breach of an industry code, as well as other action taken to protect small business included under deliverable 2.1.

Deliverable 2.5: Empower consumers by increasing their awareness of their rights under the Australian Consumer Law

Actions to achieve this deliverable include education of consumers about their consumer rights and empowering them to take action when those rights are not respected.

Table 3.12: Performance indicators for deliverable 2.5

Performance indicator	2016-17	2017-18	2018-19	2019-20		Met?
	Result	Results	Result	Target	Result	
Number of new or revised consumer education resources (published guidance)	45	19	21 [#]	10	21	✓
Number of times online consumer education resources have been accessed	3.5 million	4 075 888	4 251 129	2 000 000	4 580 452	✓
Number of Infocentre contacts served (includes Infocentre contacts served and web forms received)	264 462	290 143	314 175	200 000	312 773	✓
Number of visits to the Scamwatch website [*]	2 310 735	2 427 886	3 321 747	1 500 000	3 843 815	✓

Notes: [#] The total number of new or revised consumer education resources (published guidance) has been collated by counting a new or revised publication and its multiple translations as a single resource.

^{*} The annual figures reflect visits rather than unique visits due to the data analytics tool used for the Scamwatch website.

Analysis of performance

In 2019–20 we exceeded most of the annual targets set for ACL investigations. We achieved 50 new ACL interventions, exceeding the target of 40. We also achieved significant outcomes in a number of litigated ACL matters, including 10 matters where penalties exceeded \$1 million:

- \$125 million against **Volkswagen AG**, the highest ever penalty awarded under the ACL¹¹
- \$26.5 million against **Cornerstone Investment Aust Pty Ltd** (trading as Empower Institute, in liquidation), the second highest ever penalty awarded under the ACL
- \$14 million against **STA Travel Pty Ltd**
- \$6.4 million against **Optus Internet Pty Ltd** and **Optus Mobile Pty Ltd**
- \$6 million against **Bupa Aged Care Australia Pty Ltd**
- \$4.5 million against **Novartis Consumer Health Australasia Pty Ltd** and **GlaxoSmithKline Consumer Healthcare Australia Pty Ltd**
- \$4.2 million against **Geowash Pty Ltd**
- \$4.165 million against **Unique International College Pty Ltd**
- \$3.5 million against **Sony Interactive Entertainment Network Europe Limited**
- \$2 million against **Ultra Tune Australia Pty Ltd**.

The ACCC has now achieved total penalties of \$35.165 million to date in our action against VET FEE-HELP higher education providers.

Total penalties achieved for breaches of the ACL and industry codes during the period were \$198 265 000.¹²

The ACCC continues to prioritise work to assist Indigenous Australians. This remains an enduring priority under the ACCC's Compliance and Enforcement Policy. We continue to engage with Indigenous Australians and their representative bodies, including on important messaging around the Takata airbag recall and raising awareness of scams. As governments introduced restrictions resulting from the COVID-19 pandemic, limiting our ability to visit Indigenous communities, we moved our dedicated outreach employees into frontline customer contact roles. This added to our capacity to support vulnerable and disadvantaged consumers in our Infocentre.

The ACCC continued to focus on protections for small businesses, undertaking a number of investigations and progressing matters in relation to alleged breaches of the Franchising Code of Conduct and the Horticulture Code.

We also considered a number of instances of the alleged use of unfair contract terms (UCTs) in standard form contracts. Following ACCC action the Federal Court declared certain terms in standard form contracts used by two businesses to be unfair and therefore void. We also achieved formal administrative resolutions in two other instances, with businesses agreeing not to enforce alleged UCTs following concerns raised by the ACCC. In March 2020 we made a submission responding to Treasury's Consultation Regulation Impact Statement (CRIS) on enhancements to UCT protections. This is discussed further on page 104.

¹¹ Volkswagen AG is appealing the penalty.

¹² Note that this figure includes the \$125 million against Volkswagen AG, which Volkswagen AG is currently appealing.

We have continued efforts to pursue an integrated approach across our enforcement and compliance work. We have had successful outcomes in product safety, agriculture and small business protections during the period. Good compliance outcomes can often be achieved by educating businesses about their responsibilities. This year we exceeded our annual targets for small business, consumer and product safety compliance guidance and initiatives, including those that address working in partnership. For example, we published 22 pieces of new or revised business compliance resources this year—significantly higher than our target of 10. This reflects several factors:

- We published a number of guidance materials to educate both franchisees and franchisors on their rights and obligations in relation to disclosure practices, including the [Disclosure practices in food franchising report](#), which detailed key findings from compliance checks on 12 franchisors in the food services sector.
- We published a large number of translated fact sheets in various languages to educate suppliers about the voluntary Industry Code for Consumer Goods that Contain Button Batteries as part of our continuing work to prevent injuries and deaths to children caused by button batteries.
- We published a number of updates to our guidance for suppliers affected by the Takata airbag compulsory recall.

This result also reflects the reactive nature of some of our consumer protection work—we often need to move resources to address significant issues when they arise.

We also continue to manage a number of continuing matters at litigation and appeal stage, including matters that have now been running for multiple years. These matters continue to require ACCC resourcing, diverting resources from the investigation and progression of new matters. This has been identified as a key reason the ACCC fell slightly short of meeting its performance indicator targets in relation to the number of in-depth investigations completed, the percentage of in-depth investigations completed within 12 months, and the percentage of initial investigations completed within three months during the period. Additionally towards the end of the year, some of the ACCC's compliance and enforcement resourcing was also redirected towards work in response to the COVID-19 pandemic, as discussed further below.

Addressing the risk of harm from consumer products is an enduring ACCC priority. This year we met or exceeded the majority of the performance targets relating to this area. We undertook significant work on both the Takata airbag compulsory recall, as well as assisting the Department of Infrastructure, Transport, Regional Development and Communications with the non-azide driver inflator (NADI) airbag voluntary recall. We undertook reviews of a number of standards, including finalising new mandatory safety standards for miniature motorbikes, aquatic toys and projectile toys; and in October 2019 the minister accepted an ACCC recommendation to establish a comprehensive safety standard for quad bikes, to be implemented over a two-year period.

The ACCC faced unexpected environmental challenges during the period that impacted our enforcement and compliance work, including the COVID-19 pandemic, bushfires and drought. As noted earlier, while our 2020 compliance and enforcement priorities remain in place, we refocused our efforts on the priorities most relevant to competition and consumer issues arising from the impact of these challenges. This included the establishment of a bushfire hotline and an internal COVID-19 Taskforce, as well as enhancing our efforts to disrupt scam conduct by businesses attempting to exploit the COVID-19 crisis.

As outlined in the 'Analysis of performance section' for strategy 1 on pages 45–46, the COVID-19 pandemic has also had an impact on the ACCC's own workforce. We have transitioned the majority of our employees to working from home to assist us in maintaining social distancing, and this has affected timeframes for some of our continuing investigations and other functions. Our Infocentre employees are the initial point of contact for enquiries and reports to the ACCC by telephone, by mail and via our website, and the majority of them were involved in the transition to working from home. This was the first time the team had been mobilised to respond from home to calls and contacts.

In addition to this major transition, in March 2020 we experienced a significant increase in contacts due to the COVID-19 pandemic, with non-scam written contacts tripling as consumers and businesses sought guidance about their rights and obligations in relation to travel and event cancellations. This increase in volume continued throughout the rest of the reporting period. Following the move to working remotely, the Infocentre was able to serve 67.3 per cent of calls between April and June. In total, the Infocentre received 20 256 COVID-19-related contacts from consumers and businesses during the reporting period.

Challenges ahead for the ACCC's consumer protection work include continuing to balance project, policy and market study work with our investigative work. We will also need to continue to balance work to address consumer and small business concerns in response to the COVID-19 pandemic, while taking into account the impacts on our regulated businesses.

Education is an important aspect of our consumer protection work. A well-informed consumer is less likely to fall victim to scams or to the hazards of unsafe products, for example, this year we published 21 new or revised consumer education resources, exceeding our annual goal of 10. This outcome reflects our continued scam disruption work and our focus on providing information on button batteries to linguistically diverse consumers.

Deliver priority consumer law outcomes

Actions undertaken to achieve our purpose

Deliverable 2.1: Deliver outcomes to address harm to consumers and small businesses resulting from non-compliance with the Australian Consumer Law and Industry Codes

The ACL, Horticulture Code and Franchising Code of Conduct give the ACCC a range of remedies and powers to respond to possible breaches of fair trading and consumer protection laws. To enforce these laws we:

- institute court proceedings. This year, we commenced eight new consumer protection and small business protection related court proceedings
- accept court enforceable s. 87B undertakings where a breach, or a potential breach, might otherwise justify litigation. This year, we accepted 17 consumer protection and small business related s. 87B undertakings¹³
- issue infringement notices. This year, we received payment for 28 infringement notices from 18 traders, with penalties totalling \$579 600
- accept administrative resolutions. These generally involve a business agreeing to stop a particular type of conduct, compensate consumers and take other measures to ensure that the conduct does not recur. This year we resolved a number of matters administratively, with seven matters resolved through a formal administrative resolution.

The ACCC's actions relate to consumer issues in a range of businesses and priority areas, including in relation to essential services such as broadband, digital platforms, vulnerable and disadvantaged consumers, Indigenous Australians and product safety.

A complete list of commenced, concluded and continuing court proceedings is included in appendix 10.

Our Compliance and Enforcement Policy governs our annual priorities in this area. In line with these, in this section we have grouped our outcomes under:

- actions taken in response to the COVID-19 pandemic
- vulnerable and disadvantaged consumers
- conduct affecting Indigenous Australians
- consumer guarantees
- essential services
- digital platforms enforcement matters
- customer loyalty schemes
- scams
- country of origin labelling
- other consumer protection outcomes:
 - broadband
 - actions taken under priority factors
- product safety (see deliverable 2.3 on page 108)
- Takata airbags (see deliverable 2.3 on page 115)

¹³ This included one undertaking obtained under a delegation of ASIC's powers.

- small business protection (see deliverable 2.4 on page 117):
 - UCTs
 - Franchising Code of Conduct
- enforcement work in the agriculture sector (see deliverable 2.4 on page 120).

Actions taken in response to the COVID-19 pandemic

On 27 March 2020 the ACCC released its [response to the COVID-19 pandemic](#). As mentioned above, we decided to refocus our efforts on the priorities most relevant to competition and consumer issues arising from the impact of COVID-19.

We established an internal COVID-19 Taskforce to quickly address consumer and small business issues arising from the pandemic by:

- communicating directly with businesses and industry groups
- taking action against businesses that are not complying with the ACL
- prioritising the cessation of contravening conduct
- prioritising consumer redress.

The taskforce also seeks to educate business about their obligations in relation to remedies for cancellations and suspension of services as a result of COVID-19.

We have released advice for businesses and consumers in a number of sectors. More information on this guidance is on page 123. We will continue to update our website with advice as new issues emerge and in response to consumer enquiries via our website, Infocentre and social media channels.

In addition:

- in response to pressure from the ACCC, [Flight Centre](#) agreed to stop charging customers hundreds of dollars in cancellation fees to get a refund for travel that was cancelled due to the COVID-19 pandemic. Flight Centre will also refund thousands of customers who, from 13 March 2020, were charged \$300 per person to get a refund for a cancelled international flight or \$50 for a domestic flight
- after the ACCC raised concerns with [Qantas](#), it contacted its customers to advise they were entitled to refunds for domestic or international flights cancelled or suspended due to COVID-19 travel restrictions. The ACCC was concerned that Qantas' communications to customers between 17 March 2020 and 31 May 2020 did not adequately inform them of their right to receive a refund. In some cases, the ACCC considers Qantas' emails may have encouraged these customers to cancel bookings themselves in order to receive a credit when many would have been eligible for a refund
- we focused our attention on instances of excessive pricing (also known as price-gouging). While excessive pricing is generally not illegal, if a business makes misleading claims about the reason for price increases, it will be breaching the ACL. It is also possible that extreme excessive pricing for products essential to the health or safety of vulnerable consumers may amount to unconscionable conduct. We engaged with industry stakeholders, such as online platforms, about measures they have in place to prevent the sale of essential products at excessive prices
- we continued to raise awareness of COVID-19 scams, particularly as scammers adapt old methods to prey on new fears at a time when large parts of the community are already feeling vulnerable. More information on our scams work is on page 88
- we continued to prioritise our product safety responsibilities to keep Australians safe. We have had to temporarily suspend some of our in-store inspection work, but we have redirected resources to our online surveillance work. We are closely monitoring products that may [expose consumers to hazards in their homes](#) and products that are in greater demand as a consequence of COVID-19, such as [hand sanitiser](#) and [face masks](#).

Vulnerable and disadvantaged consumers

Conduct affecting vulnerable and disadvantaged consumers remains an enduring priority. The ACCC recognises that vulnerable and disadvantaged consumers can be disproportionately affected by conduct in breach of the ACL—in particular, misleading and deceptive conduct and unfair business practices. We take compliance and enforcement action to protect, educate and empower these consumers.

Enforcement outcomes we achieved in 2019–20 include the following:

- [Cornerstone Investment Aust Pty Ltd](#) (trading as Empower Institute (in liquidation)) was ordered to pay \$26.5 million in penalties after the Federal Court found that it engaged in a system of unconscionable conduct when it enrolled consumers in VET FEE-HELP funded courses. The Court also ordered Empower to repay more than \$56 million to the Commonwealth for funding it had received to provide VET FEE-HELP courses.
- [Unique International College Pty Ltd](#) was ordered to pay \$4.165 million in penalties after the Federal Court found that Unique engaged in unconscionable conduct against five consumers, made false or misleading representations to four of these consumers, and breached the unsolicited consumer agreements provisions in relation to six consumers.
- The Federal Court found that the [Australian Institute of Professional Education Pty Ltd](#) engaged in misleading or deceptive conduct and implemented a system of unconscionable conduct when enrolling consumers in online diploma courses under the former VET FEE-HELP loan program. We are currently awaiting the penalty judgment in this matter.
- [Bupa Aged Care Australia Pty Ltd](#) was ordered to pay \$6 million in penalties for making misleading representations and wrongly accepting payments for extra services not provided, or only provided in part, to residents at 20 aged care homes. The Court also ordered Bupa, by consent, to compensate all affected current and past residents within 12 months.
- The Federal Court ordered hair loss treatment business [Ashley & Martin](#) to refund money paid by consumers as a result of unfair terms contained in its 'Personal RealGROWTH Program' hair loss treatment program. This followed a finding by the Court that terms in three of Ashley & Martin's standard form contracts with consumers were void because they were unfair.
- [Panthera Finance Pty Ltd](#) was ordered to pay \$500 000 in penalties for unduly harassing three consumers over debts they did not owe and for misleading one of the three consumers.

Conduct affecting Indigenous Australians

The ACCC has continued to deliver outcomes against its enduring priority of matters impacting Indigenous Australians. We seek to deliver these outcomes in a collaborative and culturally respectful way through engagement with Indigenous Australians and their representative bodies.

In 2019–20:

- we continued our outreach activities to remote Indigenous communities, including important messaging around the continuing Takata airbag recall and engagement with Indigenous Australians about scams. We advised on current scams and built trust to encourage the reporting of scams to the ACCC.
- following the Federal Court's order that [Birubi Art Pty Ltd](#) (in liquidation) pay penalties of \$2.3 million for making false or misleading representations about products it sold, we continued to work with stakeholders in the Indigenous art industry to address conduct impacting Indigenous Australian artists
- ACCC representatives appeared at a Senate Environment and Communications Legislation Committee hearing on 6 November 2019 in relation to the Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill 2019.

Impact of the COVID-19 pandemic on outreach

- We made it a priority to continue to assist remote and regional Indigenous communities in managing the COVID-19 pandemic once we suspended our physical outreach visits to Indigenous communities.
- As Chair of the National Indigenous Consumer Strategy (NICS), in consultation with its members, we made the decision to suspend the implementation of the NICS 2020–22 Action Plan.
- The ACCC and NICS continued to deliver outcomes under the NICS 2017–19 Action Plan during this time, using digital platforms. For example, the ACCC’s Indigenous consumer social media platform, Your Rights Mob, was used to deliver timely and topical messaging to Indigenous consumers.

Consumer guarantees

In 2019–20 the ACCC continued to prioritise work on consumer guarantees. A particular focus has been on high-value goods such as motor vehicles, electrical products and whitegoods. The focus on these industries reflects their continued status as the industries most complained about to the ACCC.

In 2019–20:

- we instituted proceedings against [Mazda Australia Pty Ltd](#) for allegedly engaging in unconscionable conduct and making false or misleading representations in its dealings with consumers who bought any of seven new Mazda vehicle models. It is alleged that these consumers began experiencing faults with their vehicles within a year or two of purchase. These faults affected their ability to use the vehicles. We allege that Mazda repeatedly refused to provide a refund or a replacement at no cost to the consumers. It also pressured them to accept lesser offers, which were made only after multiple failures of the vehicles and repeated attempts at repairs
- [LG Electronics Pty Ltd](#) was ordered to pay \$160 000 in penalties for making misleading representations to two consumers about their consumer guarantee rights
- online spare parts retailer [Big Warehouse Pty Ltd](#) paid \$12 600 after the ACCC issued an infringement notice for allegedly breaching the ACL by misleading a consumer about their consumer guarantee rights in relation to spare parts they ordered. Big Warehouse also provided the ACCC with a court enforceable undertaking in which it admitted it was likely to have contravened the ACL. It made a commitment to provide compensation to certain affected customers
- [Woolworths Group Ltd](#) (trading as BIG W) provided the ACCC with a court enforceable undertaking in which it admitted that it may have breached the ACL by making false or misleading representations when dealing with customers who purchased faulty Dyson appliances
- [Target Australia Pty Ltd](#) provided the ACCC with a court enforceable undertaking after Target’s customer service staff told some customers who complained about faulty Sony PlayStations that they were not entitled to any remedy from Target and would have to contact Sony directly for a remedy
- ZeniMax Media Inc, ZeniMax Europe Limited and ZeniMax Australia Pty Ltd (together, [ZeniMax](#)) provided the ACCC with a court enforceable undertaking after they acknowledged that they were likely to have misled consumers about their consumer guarantee rights in relation to the online action game Fallout 76
- [Electronics Boutique Australia Pty Ltd](#) (trading as EB Games) provided the ACCC with a court enforceable undertaking in which EB Games committed to refunding consumers after acknowledging it is likely to have misled consumers about their consumer guarantee rights in relation to faults with Fallout 76

- [Sony Interactive Entertainment Network Europe Limited](#) (Sony Europe) was ordered to pay \$3.5 million in penalties for making false and misleading representations on its website and in dealings with Australian consumers about their consumer guarantee rights. Sony Europe admitted it made misleading representations by advising certain consumers it was not required to refund faulty PlayStation games once they had been downloaded, or if 14 days had passed since it was purchased; that it did not have to provide a refund unless the game developer authorised it; and that it could provide a refund using virtual PlayStation currency instead of money.

A full list of commenced, finalised and continuing litigation for the period is in appendix 10.

Essential services

In 2019 and 2020 the ACCC continued to address competition and consumer issues arising from opaque and complex pricing. Particular areas of focus were the energy and telecommunications sectors.

Extensive work was undertaken across the agency on the development of guidance and compliance monitoring for the Electricity Code and on the development of the *Guidelines on Part XICA—prohibited conduct in the energy market*. The ACCC has monitoring and enforcement roles under specific rules that apply to the electricity sector (see also page 117). These rules seek to address particular competition and consumer issues in the electricity sector.

During the reporting year, we resolved administratively a small number of instances of non-compliance with the price cap on standing offers under the Electricity Retail Code and monitored compliance with the advertising requirements of the code. We also updated our [industry guidance](#) to reflect a number of amendments to the code that came into effect during the year.

The ACCC has a role in enforcing [new prohibitions](#) on the conduct of electricity retailers and generators that came into effect on 10 June 2020.¹⁴ The prohibitions, which form part of the CCA, aim to prevent conduct that leads to consumers and small businesses facing excessively high electricity costs. We issued [guidelines](#) for industry setting out the approach we will take to our enforcement role. Detail on our Electricity Market Monitoring 2018–2025 inquiry is at page 149.

In 2019–20:

- [M2 Energy Pty Ltd \(trading as Dodo Energy\) and CovaU Pty Ltd](#) paid penalties of \$37 800 and \$12 600 respectively after the ACCC issued them with infringement notices for alleged misleading claims about discounts available on their energy plans. Dodo and CovaU both also made commitments to refund affected customers
- [Vodafone](#) provided a court enforceable undertaking after it admitted to making false or misleading representations about its third-party direct carrier billing service by charging consumers for content they had not agreed to purchase or had purchased unknowingly. The ACCC carried out the investigation under a delegation of ASIC’s powers. Vodafone undertook to contact potentially affected customers and offer refunds where appropriate
- we instituted proceedings against telecommunications provider [Superfone Pty Ltd](#) for allegedly making false or misleading representations and breaching laws designed to protect consumers from issues arising from unsolicited telemarketing sales. The ACCC alleged that telemarketers acting on behalf of Superfone cold-called consumers offering them discounted plans on their existing network if they signed up to a new contract via Superfone, making them think that its offers and services were endorsed by or affiliated with their existing telecommunications provider when this was not the case.

14 Part XICA of the CCA—The Electricity Industry.

Digital platforms enforcement matters

In 2019 and 2020 the ACCC prioritised competition and consumer issues concerning the use of digital platforms, algorithms and consumer data.

In December 2019 the Australian Government committed to adopting the key recommendations from the ACCC's [Digital Platforms Inquiry](#), including the establishment of a dedicated ACCC Digital Platforms Branch. This allows us to continue our scrutiny of digital platforms and pursue current and future consumer and competition law enforcement cases. Further information on the Digital Platforms Inquiry and the work of the Digital Platforms Branch is on pages 149–150.

In 2019–20:

- we instituted proceedings against Google Australia Pty Ltd and Google LLC (together, [Google](#)) for allegedly engaging in misleading conduct and making false or misleading representations to consumers about the personal location data Google collects, keeps and uses when certain Google account settings are enabled or disabled
- we instituted proceedings against online health booking platform [HealthEngine Pty Ltd](#) for misleading and deceptive conduct relating to the sharing of consumer information with insurance brokers and the publication of patient reviews and ratings. The ACCC claims that HealthEngine manipulated the patient reviews it published and that it misrepresented to consumers why HealthEngine did not publish a rating for some health practices.

Customer loyalty schemes

Competition and consumer issues arising from customer loyalty schemes were a new priority area for the ACCC in 2019. We completed a review of customer loyalty schemes with a focus on the schemes available in Australia.

In 2019–20:

- the ACCC conducted a review of customer loyalty schemes to gain a better understanding of how customer loyalty schemes operate; the collection, use and disclosure of consumer data; and the terms and conditions of these schemes
- we published the [Customer loyalty schemes final report](#) in December 2019. The report details the ACCC's findings and recommendations following its review, research and consultation. A summary of the recommendations made by the report, '[Changes needed to protect consumers using customer loyalty schemes](#)', is available on our website.

Scams

A scam is a fraudulent act or scheme perpetrated by businesses or individuals that takes money or other goods from an unsuspecting person or steals their personal identification information. Scams that target personal information can lead to identity theft, which is then used to perpetrate fraud or cybercrime. Scams can have a significant financial impact on individuals and businesses. They target people of all backgrounds, ages and income levels. Every year scams cost Australians hundreds of millions of dollars and cause considerable non-financial harm. The ACCC plays an important role in educating Australians about how to protect themselves from scams.

This remained a priority issue for the ACCC in 2019–20. Our approach recognises that we cannot address or respond to each instance of individual harm but are well placed to identify the scams causing the greatest harm and work with other regulators and private organisations to prevent or minimise damage caused by scams. The ACCC uses a variety of mechanisms to prevent and minimise the harm that these scams cause, including through education, communication, media stories and disruption work.

In 2019–20 we undertook the following projects.

Bushfire and COVID-19-related scams

Both the Australian bushfires in the summer of 2019–2020 and the COVID-19 pandemic created new opportunities for scammers to target Australian consumers. Scams frequently involved requesting donations and falsely selling products. Also, scammers impersonated charities, large businesses or government departments. The ACCC provided a number of resources aimed at educating consumers and small businesses about these scams:

- We operated a dedicated bushfire scam reporting phone line from 7 January to 27 March 2020. We answered over 1194 calls to this phone line and received over 331 bushfire-related Scamwatch reports through the website.
- Following the outbreak of COVID-19, we undertook targeted scams analysis to identify new scam trends taking advantage of the pandemic. We used this data to spread awareness through our media channels and liaise with other government departments and private businesses.
- Within the reporting period, we received 3228 reports of COVID-19-related scams, with \$1.6 million in losses.
- We issued a number of media releases and Scamwatch radar email alerts warning the public about both bushfire scams and COVID-19 scams:
 - [Bushfires and scams](#) (6 January 2020)
 - [Bushfires and scams](#) (9 January 2020)
 - [COVID-19 scams](#) (18 March 2020)
 - [Warning on COVID-19 scams](#) (20 March 2020)
 - [Scammers targeting superannuation in COVID-19 crisis](#) (6 April 2020)
 - [Current COVID-19 scams](#) (6 May 2020)
 - [Don't get scammed looking for a lockdown puppy](#) (18 May 2020).

Targeting scams report

On 22 June 2020 we published [Targeting scams 2019: a review of scam activity since 2009](#). The report provides key findings on 2019 scams, as well as insights into scam trends over the decade. Key findings from the report are:

- Australians lost over \$634 million to scams in 2019 (as reported to Scamwatch, other government agencies and the big four banks)
- business email compromise scams accounted for the highest losses in 2019, with reported losses of \$132 million
- based solely on reports provided to the ACCC in 2019, scams originating on social media increased by 20 per cent and contacts via mobile phone apps increased by 29 per cent.

The report also includes commentary on the psychological tactics that scammers use to manipulate victims and the lessons learned from people who reported a scam but did not lose money or personal information.

Scams Awareness Network

The ACCC is the chair of the Scams Awareness Network (SAN), which consists of 40 government regulatory agencies and departments in Australia and New Zealand. In 2019–20 we continued to share Scamwatch report data and facilitate monthly updates across the SAN to raise awareness of scams and disrupt them.

In August 2019 the SAN hosted the Scams Awareness Week campaign, which was supported by over 100 partners. The campaign theme, ‘Too Smart to be Scammed?’, urged the public to test their knowledge of scams and targeted people who might not otherwise engage with scam warnings because they regard themselves as too skilled or careful.

In 2020 the SAN worked together to plan the Scams Awareness Week Campaign scheduled for launch on 17 August 2020. The campaign focuses on raising awareness about identity crime.

Scam Technology Project

The ACCC continued its regular meetings with the Australian Communications and Media Authority (ACMA), the Australian Cyber Security Centre (ACSC) and the Department of Infrastructure, Transport, Regional Development and Communications in relation to the Scam Technology Project, which aims to find practical technological solutions to scams.

Scamwatch website and awareness raising

[Scamwatch](#) is an ACCC-run website that provides a wealth of information to consumers and small businesses about how to recognise, avoid and report scams. It contains scams information in 12 languages other than English. Scamwatch uses scam reports to spot emerging issues, and it warns the public through media releases, social media updates and radar alerts. It also engages with the community at public forums and events to provide more targeted messaging for particular groups—such as prioritising emerging issues affecting vulnerable and disadvantaged consumers.

In 2019–20:

- Scamwatch received 3 843 815 site visits and 7 639 253 page views
- the *Little black book of scams* was downloaded 14 127 times, with 102 353 hard copies distributed across Australia to financial institutions, police stations and community organisations
- we distributed 15 Scamwatch radar email alerts on emerging scams to our subscribers
- the number of subscribers to the email alerts increased by 19.4 per cent to 103 538
- using our Scamwatch Twitter profile (@Scamwatch_gov), we posted 375 tweets and retweets to our followers. In 2019–20 the number of followers increased by 22 per cent to 25 438
- we held meetings with the eSafety Office, ACMA, ACSC, Australian Taxation Office (ATO), NBN Co, National Australia Bank, Commonwealth Bank of Australia, Westpac, Australia and New Zealand Banking Group, AutoTrader, Western Union, Fraud Watch International, the Australian Financial Crimes Exchange, IDCARE, Facebook, Telstra, GoFundMe, the Telecommunications Industry Ombudsman, Fintel Alliance Australia Post, the eSafety Commission and the Cyber Security Government Stakeholder group to discuss scams prevention and awareness raising
- we distributed warnings about scams targeting the Chinese community in Australia through universities. These warnings were provided in both English and Chinese translations.

Scams disruption

The ACCC monitors scam reports and, where appropriate, shares intelligence from reports with other government agencies, law enforcement and private organisations.

Scamwatch engages with businesses that scammers use to source victims or receive money through—for example, social media platforms, online shopping platforms, financial intermediaries and telecommunications businesses. The ACCC encourages these private organisations to monitor scams, raise awareness and disrupt scams that occur on or via their services.

In 2019–20 we:

- shared intelligence with the Australian Federal Police and state police agencies in cases of cybercrime and criminal fraud
- facilitated various scam takedowns, including by providing relevant data to social media platforms and the ACSC
- met with ASIC to arrange sharing of information on superannuation and cryptocurrency scams.

Country of origin labelling

Misleading conduct in relation to the sale and promotion of food products, including country of origin claims, are a priority for the ACCC for 2020. We continue to work alongside state and territory regulators to monitor compliance with the Country of Origin Food Labelling Information Standard 2016 and to provide information about the standard and ACL safe harbours for origin claims to consumers and businesses.

In 2019–20 we:

- continued to partner with the National Measurement Institute to conduct market surveillance. This program was paused in March 2020 due to the COVID-19 pandemic but was on track to review country of origin labels on 10 000 products this financial year
- finalised the first round of compliance checks to verify the country of origin claims on 70 products sold by major supermarkets
- made a [submission](#) to the then Department of Innovation, Industry and Science regulatory reform process Clarifying Eligibility for Origin Claims in the Complementary Medicines Sector. See page 103 for more information on this process, including the introduction of a new regulation.

Other consumer protection outcomes

While the ACCC will always prioritise current priority areas under our Compliance and Enforcement Policy, we also retain capacity to pursue other matters that display [priority factors](#) and will continue important residual work in areas previously identified as priority areas.

Broadband

In 2019–20 the ACCC continued important residual work relating to consumer issues in the provision of broadband services, including addressing speed claims and statements made during the transition to the National Broadband Network (NBN). This follows the ACCC's work under our [Measuring Broadband Australia program](#) and supports our commitment to truth in advertising relating to broadband speeds.

In 2019–20:

- [Optus Internet Pty Limited and Optus Mobile Pty Limited](#) were ordered to pay \$6.4 million in penalties for making misleading claims to consumers about home internet disconnections

- we accepted a court enforceable undertaking from telecommunications provider [BVivid Pty Ltd](#) for making telemarketing calls to consumers in areas transitioning to the NBN that BVivid admitted likely breached the ACL. BVivid also paid \$25 200 in penalties after being issued with two infringement notices. The ACCC alleged that BVivid cold-called consumers and told them their internet services would be disconnected or they would lose their telephone number if they did not move to the NBN immediately
- we accepted a court enforceable undertaking from [Dodo Services Pty Ltd](#) (Dodo) in relation to claims about its retail broadband plans supplied over the NBN being 'perfect for streaming'. The ACCC considered the representations misleading because Dodo customers on some plans could not reliably stream high-quality video, particularly when others in the household were using the internet at the same time. On other plans, Dodo customers could not stream ultra-high definition (HD) video at all. As part of its undertaking, Dodo agreed to refund up to \$360 000 to around 16 000 affected customers
- [NBN Co](#) provided a court enforceable undertaking to the ACCC, admitting that it misled Canberra consumers who lived in areas where the NBN was operating into thinking that their telephone and internet services supplied over the TransACT Network would be disconnected if they did not move to the NBN. NBN Co committed to reimbursing the early termination costs paid by consumers and businesses that moved to NBN Co before 10 July 2019 and then chose to return to the TransACT Network. This undertaking is also discussed at page 7
- we instituted proceedings against Vocus Group companies [Dodo Services Pty Ltd \(Dodo\)](#) and [Primus Telecommunications Services Pty Ltd \(iPrimus\)](#), alleging they made false or misleading claims about the NBN broadband speeds their customers could achieve during busy evening hours. The ACCC is alleging that Dodo and iPrimus used a fundamentally flawed testing methodology, developed by Vocus, which was not a reasonable basis for their advertising claims about certain typical evening speeds.

Conduct involving priority factors and residual work in previous priority areas

In 2019–20:

- [Volkswagen AG](#) was ordered to pay a record \$125 million in penalties after the Federal Court declared, by consent, that Volkswagen breached the ACL by making false or misleading representations about compliance with Australian diesel emissions standards. Volkswagen admitted that, when it sought approval to supply and import more than 57 000 vehicles into Australia, it did not disclose the existence of two-mode software. When switched to 'mode 1' for the purpose of emissions testing, the software caused vehicles to produce lower nitrogen-oxide emissions. However, when driven in on-road conditions, the vehicles switched to 'mode 2' and produced higher emissions. Volkswagen has appealed this penalty
- [B.A.R Group Pty Ltd](#) (BAR Group) paid \$12 600 in penalties after the ACCC issued it with an infringement notice for allegedly misleading consumers about the running power of a portable generator. BAR Group advertised on its website that its 123 G8100-HELT portable generator was capable of achieving a running power of 6 kilowatt (kW). We allege that the generator was only capable of achieving a running power of 6 kW for a short time, not continuously for several hours
- [CLA Trading Pty Ltd](#) (trading as Europcar) paid \$350 000 in penalties for charging excessive credit and debit card payment surcharges in breach of the CCA. Europcar admitted that it charged Visa and Mastercard credit card users fees that were higher than its costs to accept payments from those credit cards. It also admitted to charging excessive surcharges on Visa and Mastercard debit cards
- [Flight Centre Travel Group Limited](#) paid \$252 000 in penalties after the ACCC issued two infringement notices for alleged misleading advertisements promoting holiday vouchers during the 2018 Christmas and 2019 Easter periods
- four [furniture retailers](#) each paid a penalty of \$12 600 after the ACCC issued each of them with an infringement notice following an investigation of the industry's use of 'was/now' price

comparisons in advertising. Plush—Think Sofas Pty Ltd, Koala & Tree Pty Ltd (trading as Koala Living), ESR Group Holdings Pty Ltd (trading as Early Settler) and Oz Design Furniture Pty Ltd each received an infringement notice

- we instituted proceedings against [Medibank Private Limited](#) (trading as ahm Health Insurance) alleging that it made false or misleading representations about benefits covered by its health insurance policies. We alleged that Medibank falsely represented to members with ahm 'lite' or 'boost' policies who were making claims or enquiries that they were not entitled to cover for joint investigations or reconstruction procedures, when in fact their policies covered these procedures
- [Novartis Consumer Health Australasia \(Novartis\) and GlaxoSmithKline Consumer Health Australia Pty Ltd \(GSK\)](#) were ordered to pay \$4.5 million in penalties for making false and misleading representations in the marketing of Voltaren Osteo Gel and Voltaren Emulgel pain relief products. Novartis and GSK earlier admitted to having marketed Osteo Gel as being specifically formulated and more effective than Emulgel in treating osteoarthritis-related pain and inflammation, even though both had the same active ingredients
- we instituted proceedings against [Oscar Wylee Pty Ltd](#) for alleged misleading or deceptive conduct and making false or misleading representations about its charitable donations and affiliations. We allege that Oscar Wylee made representations on its website, on social media, in emails and in its stores that every time a consumer bought a pair of glasses from Oscar Wylee it would donate a pair of glasses to someone in need. However, despite selling over 320 000 pairs of glasses during the period, Oscar Wylee only donated around 3000 pairs of glasses
- [Outdoor Supacentre Pty Ltd](#) (trading as 4WD Supacentre) paid \$63 000 in penalties after the ACCC issued it with five infringement notices for allegedly misleading consumers about 'was/now' price comparisons advertised on its website. The ACCC also accepted a court enforceable undertaking in which 4WD Supacentre made a commitment to not engage in similar conduct
- [Queensland Yoghurt Company Pty Ltd](#) paid \$12 600 in penalties after the ACCC issued it with an infringement notice for allegedly misleading consumers by omitting gelatine as an ingredient in some of its yoghurt products
- water filter cartridges business [Saipol Technologies Pty Ltd](#) provided the ACCC with a court enforceable undertaking acknowledging that it was likely to have engaged in misleading or deceptive conduct and made false or misleading representations regarding its water filter cartridges. Saipol is likely to have misled business customers in promotional material for its 'C grade' water filter cartridges by stating that the pore size or micron rating was compliant with a Queensland Health directive issued in 2016 to all relevant water filter providers, which we allege was not the case
- we instituted proceedings against [Samsung Electronics Pty Ltd](#) for allegedly making false, misleading and deceptive representations in advertising the water resistance of various 'Galaxy' branded mobile phones
- [Snap Send Solve Pty Ltd](#) paid \$12 600 in penalties after the ACCC issued an infringement notice to the online platform operator for alleged false or misleading advertisements. The Snap Send Solve website and mobile application allow consumers to report local issues such as damaged footpaths and potholes to relevant authorities, including local councils. Snap Send Solve's promotion of its website and app suggested that consumers could send photos and reports of issues needing to be fixed, such as cracked footpaths, directly to the relevant public authority; however, Snap Send Solve withheld consumers' photographs from councils and authorities that were not paid subscribers
- [STA Travel Pty Ltd](#) was ordered to pay \$14 million in penalties after admitting it made false or misleading claims in advertising its MultiFLEX Pass product. STA Travel advertisements included statements that consumers who bought the airfare add-on could change their flights without paying fees or charges. These claims were misleading, as STA often charged consumers hundreds of dollars for changing their flights

- [Streamotion Pty Ltd](#) (trading as Kayo Sports) paid a penalty of \$12 600 after the ACCC issued it with an infringement notice for allegedly misleading consumers about their eligibility for a subscription offer
- [TEG Live Pty Limited](#) made a commitment to refund over \$5 million to about 5000 consumers who bought tickets to watch basketball games featuring the United States of America (USA) men's national basketball team in August 2019, after providing a court enforceable undertaking to the ACCC. TEG Live promoted two games between the USA and Australian national basketball teams in Melbourne and one game between the USA and Canadian national basketball teams in Sydney. TEG Live admitted it made false or misleading claims about seating at the games held in Melbourne and acknowledged the ACCC's concerns that it may have breached the ACL by misleading consumers about which USA national basketball team players would be playing, or would be available to play, in the games
- the Federal Court found that [Trivago N.V.](#) (Trivago) misled consumers by representing that its website would quickly and easily help users identify the cheapest rates available for a given hotel. Trivago used an algorithm that placed significant weight on which online hotel booking site paid Trivago the highest cost-per-click fee in determining its website rankings, and often it did not highlight the cheapest rates for consumers. Trivago has appealed the Federal Court's judgment
- following engagement with the ACCC, [Nike Inc](#) has recently changed its Australian online check-out page so customers are alerted that they may be charged an international transaction fee. The ACCC is concerned that retailers may be engaging in misleading and deceptive conduct where Australian consumers are given the overall impression that the transaction is processed here, when it is actually processed outside of Australia. Businesses should clearly inform consumers when they are likely to be charged an international transaction fee
- the Federal Court ordered [Quantum Housing Group Pty Ltd](#) (Quantum) to pay \$700 000 in penalties for making false or misleading representations relating to the National Rental Affordability Scheme (NRAS), a government affordable housing initiative. Quantum sent a series of misleading letters and emails to at least 450 investors who had rental dwellings participating in the NRAS scheme, pressuring them to terminate their arrangements with their existing property managers and instead use property managers approved or recommended by Quantum. Quantum failed to tell investors that it had commercial links with the property managers it recommended. The Court also ordered that Quantum's sole director pay a penalty of \$50 000 for being knowingly concerned in the conduct. The ACCC had also alleged that the conduct engaged in by Quantum was unconscionable conduct. However, the Court was not satisfied that the conduct was unconscionable.¹⁵

15 The ACCC appealed this aspect of the decision in the 2020-21 financial year.

Appeals commenced

In 2019–20 the ACCC commenced the following appeals against court decisions in consumer protection matters:

- We [commenced an appeal](#) against the Federal Court's [July 2019 decision](#) to dismiss our case against Woolworths for alleged false or misleading environmental claims made about the biodegradability of its 'W Select eco' picnic products. Part of the ACCC's case was that these biodegradability claims were about future matters and that Woolworths did not have reasonable grounds to make them. We disagree with the trial judge's finding that the likely performance of Woolworths' picnic products was not a 'future matter' and the Court was therefore not required to consider whether Woolworths had reasonable grounds for making this claim. We believe that the claims made by Woolworths are predictions about what would happen to the products in future and Woolworths is therefore required to have reasonable grounds to make them.
- We [commenced an appeal](#) against the Federal Court's [October 2019 decision](#) to dismiss our case against TPG Internet Pty Ltd for alleged false or misleading representations it made about prepayments customers had to make on its prepaid internet, home telephone and mobile plans. We alleged that TPG made representations about prepayments of at least \$20 which customers had to pay up-front to cover potential usage outside what was included in their plans. The prepayment was automatically topped up to the original amount, usually \$20, when the prepaid balance fell below \$10 and was non-refundable even when a customer cancelled their plan. This meant that TPG almost always retained at least \$10. The trial judge did not accept the ACCC's argument that the operation of TPG's prepayment arrangements was not adequately disclosed to consumers. We believe that the Court made an error in deciding that TPG's representations about this mandatory prepayment were not false or misleading. As at 30 June 2020 we were awaiting judgment.¹⁶
- We [commenced an appeal](#) against the Federal Court's decision to dismiss part of our case against Kimberly-Clark Australia Pty Ltd (Kimberly-Clark), which relates to claims it made to consumers about its Kleenex Cottonelle 'flushable' wipes. We alleged that, in representing its product as 'flushable', Kimberly-Clark misled consumers about the suitability of its wipes to be flushed down the toilet. We argued that Kimberly-Clark's flushable claims should have been found to be misleading because there was evidence of the risk of harm these wipes posed to the sewerage system; and that the trial judge was wrong to require evidence that these particular wipes had caused actual harm. The Full Federal Court dismissed the ACCC's appeal and found that Kimberly-Clark did not make false and misleading claims that its wipes were flushable. However, we are pleased that our court action has brought attention to this issue. It has made consumers aware that flushing wipes can cause significant blockages to plumbing and sewerage systems, damage to equipment and environmental harm; and that water authorities can be faced with significant costs in removing the 'fatbergs'—large masses, partially composed of wipes, that collect in and block sewerage systems.

¹⁶ On 30 July 2020 the Full Federal Court handed down judgment dismissing the ACCC's appeal.

Working with partners

Actions undertaken to achieve our purpose

Deliverable 2.2: Enhance the effectiveness of the ACCC's compliance and enforcement initiatives through partnerships

The ACL is a single set of consumer protection laws that apply nationally and in all states and territories. The ACL operates under a 'one law, multiple regulator' model. It is jointly administered by the ACCC and state and territory consumer regulators.

Because the ACL is applied nationally, the ACCC is involved in partnerships to ensure that the laws are consistently coordinated and enforced in Australia and that Australian consumer law regulators can work collectively on broader issues.

We work with other government agencies (such as Treasury, ASIC and state and territory consumer protection agencies) as well as consumer groups, industry associations and businesses.

We also work with regional and international partners to develop and promote effective competition and consumer protection regimes around the globe.

This year under deliverable 2.2 we supported our priority areas by:

- partnering with specific Australian organisations to advance our priorities
- engaging with overseas agencies and regulators
- contributing to legislative development in Australia and liaising with government, including parliamentary committees.

Australian and New Zealand partnerships

We enhance the effectiveness of our compliance and enforcement initiatives by working with Australian businesses, industry associations and consumer groups to promote awareness of the ACL. We also engage with specific stakeholders, including peak industry associations, to promote industry-wide compliance with the ACL.

Much of our coordinated work has been carried out through inter-agency and other committees through the Council of Australian Governments (COAG) framework and National Cabinet.¹⁷

Law Council of Australia

We participate in the Competition and Consumer Committee of the Law Council of Australia. The Law Council is the peak national representative body of the Australian legal profession, and the Competition and Consumer Committee is a forum for discussing legal developments, policy issues and law reform. We report on ACCC activities to each committee meeting, speak at the annual conference, and engage in topic-specific consultations.

¹⁷ On 29 May 2020 the Prime Minister announced that COAG will be replaced by a National Federation Reform Council and the National Cabinet, originally formed in response to the COVID-19 pandemic.

COAG Legislative and Governance Forum on Consumer Affairs¹⁸

The COAG Forum on Consumer Affairs (CAF) consists of all the Commonwealth, state and territory and New Zealand ministers responsible for fair trading and consumer protection laws. CAF's role is to consider consumer affairs and fair trading matters of national significance and, where possible, to develop a consistent approach to addressing these issues. CAF ministers meet at least once a year. Western Australia is the current chairing jurisdiction for CAF.

National fair trading and consumer protection issues are, in practice, progressed by CAF's subcommittee Consumer Affairs Australia New Zealand (CAANZ) and its advisory committees and operational groups.

Table 3.13: COAG Legislative and Governance Forum on Consumer Affairs and associated committees

COAG BODY	
COAG Legislative and Governance Forum on Consumer Affairs (CAF)	<p>Members: all the Commonwealth, state and territory and New Zealand ministers responsible for fair trading and consumer protection laws. Western Australia is the current chairing jurisdiction.</p> <p>Role: to consider consumer affairs and fair trading matters of national significance and, where possible, to develop a consistent approach to addressing these issues.</p> <p>CAF ministers meet at least once a year.</p>
CAF SUBCOMMITTEE	
Consumer Affairs Australia New Zealand (CAANZ)	<p>Members: commissioners or senior managers from consumer protection agencies in Australia and New Zealand. Deputy Chair Delia Rickard is the ACCC's CAANZ representative. State and territory fair trading agencies, the New Zealand Commerce Commission (NZCC), Treasury and ASIC are represented by their commissioners or senior officials.</p> <p>Role: subcommittee to CAF that is responsible for progressing national fair trading and consumer protection issues.</p> <p>CAANZ generally meets face to face twice a year, and via ad hoc out-of-session teleconferences where appropriate. CAANZ provides advice to CAF. CAANZ is advised by several advisory subcommittees that each have a particular function (set out below).</p>
CAANZ SUBCOMMITTEES	
Policy and Research Advisory Committee (PRAC)	<p>Members: members from all ACL regulators in Australia, ASIC, the NZCC and Treasury. Chaired by Treasury.</p> <p>Role: aims to ensure that consumer protection research, policy development and legislative reform are best practice and undertaken in a nationally consistent and cooperative manner. Information relevant to these areas is also shared between the Australian ACL regulators and the NZCC.</p> <p>Meets via teleconference once a month and annually face to face.</p>
Education and Information Advisory Committee (EIAC)	<p>Members: members from all ACL regulators in Australia, ASIC, the NZCC and Treasury. Chaired by Treasury.</p> <p>Role: aims to ensure that consumer protection research, policy development and legislative reform are best practice and undertaken in a nationally consistent and cooperative manner. Information relevant to these areas is also shared between the Australian ACL regulators and the NZCC.</p> <p>Meets via teleconference once a month and annually face to face.</p>

¹⁸ Final changes to previous COAG forums and committees, if any, are yet to be announced.

Compliance and Dispute Resolution Advisory Committee (CDRAC)

Members: members from all ACL regulators in Australia, ASIC, the NZCC and Treasury. Currently chaired by NSW Fair Trading.

Role: to ensure that all compliance, enforcement and dispute resolution activities across Australia are coordinated, efficient, responsive and, where appropriate, consistent. CDRAC supports broader and targeted approaches to compliance and enforcement with the assistance of the FTOG and PSOG. Information relevant to these areas is also shared between Australia and New Zealand.

Meets via teleconference once a month and annually face to face.

CDRAC SUBCOMMITTEES

Product Safety Operations Group (PSOG)

Members: representatives of consumer product safety regulators from Australian states and territories and New Zealand. Currently chaired by the Queensland Office of Fair Trading.

Role: key forum through which the ACCC and state and territory consumer product safety regulators collaborate on emerging product safety issues and share reports of product safety incidents. PSOG members also form working groups to address specific product safety issues.

Meets via teleconference on a monthly basis and annually face to face.

Fair Trading Operations Group (FTOG)

Members: staff from compliance and enforcement operational areas of all ACL regulators in Australia, ASIC and the NZCC. Chaired by Consumer Protection Western Australia (within the WA Department of Mines, Industry, Regulation and Safety).

Role: a key forum through which the ACCC, ASIC and state and territory fair trading agencies collaborate on a range of emerging enforcement and compliance issues, including enforcement investigations and enforcement outcomes under the ACL. Information relevant to these areas is also shared between the Australian ACL regulators and the NZCC.

Meets via teleconference on a monthly basis.

Consumer and industry partnerships

ACCC compliance and enforcement initiatives are enriched by our partnerships with consumer groups and industry representatives. The ACCC hosts and participates in a wide range of consultative committees and forums to encourage discussion around business, consumer and regulatory issues relevant to our work. Details of the committees are on page 201.

Asia-Pacific region and other international partnerships

The ACCC recognises the benefits that efficient regional and international markets deliver to Australian consumers and businesses. This is particularly important in a global economy.

To achieve our aims under our priority areas, we work through our regional and international partnerships by:

- engaging and sharing information with overseas regulators
- helping to combat anti-competitive conduct in our region
- cooperating with international investigations and proceedings.

We have actively participated in global forums to share consumer product safety information and better practices. This helps ensure the proper functioning of Australia's regulatory framework. This has included supporting the United Nations Conference on Trade and Development (UNCTAD) consumer product safety work through participation in ad hoc expert meetings and an informal steering group.

Regional engagement

ACCC employees are also mentors to staff of overseas competition agencies in our region, and they engage in capacity development work with these agencies. This involves advising and equipping emerging competition authorities to help combat anti-competitive conduct.

A significant aspect of our regional engagement is the Competition Law Implementation Program (CLIP). Under this program the ACCC, in partnership with the Department of Foreign Affairs and Trade and the Association of Southeast Asian Nations (ASEAN), delivers a multi-year, demand-driven program of capacity-building activities for our newer competition law enforcement counterparts in ASEAN. The ACCC works with counterparts to build their capacity to enforce competition laws through projects that factor in local economic, political, legal and social conditions.

Full details of our regional engagement and participation are in our quarterly report, [ACCCount](#), available on our website.

Competition Law Implementation Program

Since 2014 the ACCC has been funded under the ASEAN–Australia–New Zealand Free Trade Area (AANZFTA) Economic Cooperation Support Programme to implement CLIP. Through CLIP we deliver targeted assistance to ASEAN Member States, supporting them as they develop national competition laws, implementing rules, institutions and procedures for their effective implementation. Through CLIP the ACCC is accepted as a trusted and reliable partner by the region's competition authorities.

This year we continued to lead an intensive program of CLIP capacity-building activities for ASEAN officials, including:

- conducting practical training workshops on remedies for competition law infringements and on drafting market studies
- delivering a regional workshop in Indonesia for competition and energy sector regulators from across ASEAN, to strengthen understanding, build networks and consider issues of overlapping jurisdiction
- bringing competition commissioners from across ASEAN, New Zealand and Australia together, for the first time, to discuss strategies for strengthening competition law institutions, agency leadership, decision-making and regional partnerships
- placing an ACCC officer in the Cambodian Ministry of Commerce to increase knowledge of competition policy and law and equip officials with the capacity to advocate for and enforce a new law
- launching two additional e-learning modules on CLIP Academy—an online learning management system with practical training modules for competition agency employees
- publishing a *Toolkit for senior competition investigators* to support the effective building and managing of investigation teams in ASEAN competition agencies
- seconding six ASEAN officials to the ACCC for 10-week work and study placements and an additional two secondees to the NZCC. A total of 23 secondees have been hosted by the ACCC since 2016, supported by CLIP
- attending the 8th ASEAN Competition Conference in Cambodia, where ASEAN competition agencies, business representatives and development partners shared practices and perspectives on a range of competition issues, including cartel enforcement, international cooperation and issues important to young competition agencies.

This year the ACCC expanded its engagement with ASEAN to also include cooperation on consumer protection. As lead implementer of the Agreement Establishing the AANZFTA Consumer Protection Scoping Project, the ACCC partnered with consumer law experts from ASEAN, Australia and New Zealand to undertake research and analysis and develop a

forward proposal for building cooperation on consumer law implementation that can support strengthened outcomes under the [AANZFTA agreement chapter on competition](#).

For the Consumer Protection Scoping Project, the ACCC hosted a very successful study visit for over 40 ASEAN officials in Sydney in September 2019. Officials were able to exchange experience and establish new connections among regional peers. The project confirmed the growing appetite for technical cooperation among regulators in our region, and the ACCC aims to continue this important work into the future.

The cooperative relationships we are developing in South-East Asia through this work are a vital part of our international engagement. The long-term cooperation that is developing now will be the platform from which future cross-border enforcement cooperation will grow.

International engagement

The ACCC and AER continue to work with the Organisation for Economic Co-operation and Development (OECD) and other key international bodies, including the International Competition Network (ICN) and the International Consumer Protection Enforcement Network (ICPEN), to address existing and emerging competition and consumer protection challenges and promote ACCC priorities. The ACCC and AER's international engagement strategy supports the effective performance of our functions by:

- fostering cooperation with international counterparts to improve outcomes in matters involving extraterritorial evidence or conduct
- encouraging an international regulatory environment that enhances the welfare of Australians
- promoting the ACCC and AER in international forums to influence action supporting agency aims
- educating employees on international practices and developments to assist them in their daily work.

The global COVID-19 pandemic significantly impacted the ACCC's international engagement activities. A number of key global events were postponed, cancelled or moved to alternative forms of delivery (for example, online platforms). In addition, the ACCC worked with counterpart agencies around the world to understand the different measures adopted in response to COVID-19 and to share experiences and best practices in relation to upholding competition and ensuring consumer protection during the pandemic.

Engagement with international regulators

Sharing Australian information about investigations and experience in best practice facilitates international enforcement, develops the capacity of counterpart agencies and strengthens relationships. Information we receive from other regulators helps us to stay abreast of international best practice and increases the efficiency and effectiveness of our merger and enforcement investigations.

An increasing number of cross-border transactions and conduct occur globally. Many of these require review by the ACCC. We regularly engage and exchange information with other regulators internationally on investigations and merger assessments.

In 2019–20 we:

- made and received requests for information from international competition, consumer protection and regulatory counterpart agencies from across the world
- prepared reports and made presentations on Australian competition, consumer and regulatory law developments at many international events.

Continuing our work with international regulators on digital platforms, we:

- engaged with counterparts in Japan and New Zealand to discuss competition in digital markets and the development of new legislation relating to digital platforms
- engaged with a number of European regulators and bodies, including the Norwegian Consumer Commission, the Autorite de la concurrence, the Bundeskartellamt, the Italian Competition Authority, DG Connect, the European Commission, the Irish Data Protection Commission, the United Kingdom (UK) Information Commissioner's Office, the French Data Protection Commission and the European Consumer Organisation (BEUC) on digital issues
- continued to work with both the United States (US) Department of Justice and Federal Trade Commission and Canadian authorities on digital issues.

We regularly facilitated and participated in important international events and secondments. Some highlights from 2019–20 were:

- completing a one-year secondment to the UK Office of Gas and Electricity Markets
- seconding an employee member to the United States Federal Trade Commission to work on digital issues
- attending the American Bar Association International Cartel Workshop in San Francisco, United States of America (USA), in February 2020
- attending the G20 International Conference on Consumer Policy in Tokushima, Japan
- attending the Fordham Competition Law Institute 46th Annual Conference on International Antitrust Law and Policy and Antitrust Economics Workshop in New York, USA
- attending the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy conference in Geneva, Switzerland
- attending the Asia-Pacific Economic Cooperation (APEC) Consumer Protection in Digital Trade Conference in Puerto Varas, Chile
- attending the ICPEN 2019 Best Practices Workshop in Cartagena, Colombia
- hosting Isabelle de Silva, head of the French Competition Authority, during her visit to Australia to attend the ICN Merger Workshop conducted in Melbourne by the ACCC in February 2020
- delivering a Merger Review in ASEAN workshop in Melbourne in February 2020 to build capacity among regional competition officials to effectively address anti-competitive mergers and acquisitions.

International Competition Network

The ACCC collaborates with international counterparts through forums such as the ICN. The ICN provides competition authorities with a specialised yet informal venue for maintaining regular contacts and addressing practical competition concerns. The ACCC is a member of the ICN Steering Group and is the ICN's Horizontal Coordinator.

Our work with the ICN in 2019–20 included actively participating in:

- the ICN Merger Workshop, which the ACCC hosted in Melbourne in February 2020
- the ICN Cartel Workshop in Foz do Iguaçu, Brazil
- the ICN Unilateral Conduct Workshop in Mexico City
- the ICN Bridging Project as a Steering Group member assisting young and small competition agencies
- the ICN's project on competition law enforcement at the intersection between competition, consumer protection and privacy, as co-chair
- the ICN's discussions on competition law enforcement during and after the COVID-19 pandemic.

Organisation for Economic Co-operation and Development

We continued to provide input to the OECD through a variety of forums. We also work with the OECD to improve regulatory practice and policy (for more information, see pages 142–143).

In 2019–20 we:

- attended meetings of the OECD Network of Economic Regulators and Regulatory Policy Committee in Paris, France
- attended the OECD Korea Policy Centre Workshop on Vertical Restraints in Ulaanbaatar, Mongolia
- continued to chair the OECD Working Party on Consumer Product Safety, the only international forum for consumer product safety regulators to discuss, plan and coordinate consumer product safety issues and initiatives
- collaborated with the OECD and the European Commission to co-lead the 2019 OECD global awareness campaign on product recalls, which ran from 21 to 25 October 2019. Around 20 international jurisdictions actively participated in the campaign
- participated in three staff-level secondments to the OECD relating to consumer product safety issues and competition
- coordinated the Australian Government's response to the OECD questionnaire on the impact of the Internet of Things on consumer product safety
- attended the OECD Working Party on Consumer Product Safety 19th meeting
- attended the OECD Committee on Consumer Policy 98th meeting
- attended the OECD Competition Committee and Global Forum on Competition
- presented at workshops hosted by the OECD Korea Policy Centre in Tokyo, Japan, and Seoul, South Korea
- presented several sessions at the OECD Competition Open Day in Paris, France
- responded to the 2019 OECD/ICN Survey on International Enforcement Co-operation
- presented the ACCC's experience to the online Roundtable on Competition Policy in the Time of COVID-19.

International Consumer Protection Enforcement Network

ICPEN comprises consumer protection authorities from over 60 countries. Its main objective is to protect consumers' economic interests around the world, share information about cross-border commercial activities that may affect consumer welfare, and encourage global cooperation among law enforcement agencies.

This year we continued our long engagement with ICPEN, presenting at conferences, co-chairing the Intelligence Steering Group, and as a member of the network's Advisory Group and as the ICPEN Webmaster.

Other work we did for ICPEN over the year included:

- gathering intelligence on consumer protection priority areas and emerging issues from members and preparing the annual intelligence report
- preparing the annual national activity report
- presenting at the ICPEN Virtual Conference in 2020 as part of the Intelligence Steering Group
- co-leading the ICPEN Project on Digital Platform Tourism and Touristic Services
- sharing the ACCC's experiences and initiatives taken to protect consumers during the COVID-19 pandemic
- supporting ICPEN's Fraud Prevention Month initiative, which was focused on education and targeted enforcement action during the COVID-19 pandemic.

United Nations Conference on Trade and Development

UNCTAD is the United Nations body responsible for dealing with development issues, particularly international trade.

The ACCC contributed to UNCTAD's activities by making available our resources and expertise in competition, consumer protection and utility regulation.

During 2019–20 the ACCC contributed to UNCTAD's activities by:

- providing information about measures we have taken to continue to promote competition and protect consumers for UNCTAD's newsletter *Competition and consumer protection during COVID-19 crisis: initiatives from around the world*
- providing input to an UNCTAD survey about cross-border cartels (to be discussed at the United Nations (UN) Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices in July 2020)
- providing responses about changes to Australia's competition law for UNCTAD's report on implementation of the UN Set of Principles and Rules on Competition
- contributing to a panel discussion at the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy Roundtable on Competition Issues in the Digital Economy.

Legislative developments and government liaison

Repeal of section 51(3) of the CCA

Section 51(3) of the CCA has been repealed pursuant to the *Treasury Laws Amendment (2018 Measures No. 5) Act 2019* (Cth). The repeal of s. 51(3) means that conduct involving intellectual property rights is no longer exempt from certain provisions in Part IV of the CCA.

To assist industry, when the repeal commenced on 13 September 2019 the ACCC released guidelines on the application of Part IV of the CCA to intellectual property.

New regulations for country of origin labelling for complementary medicine products

The [Competition and Consumer Amendment \(Country of Origin\) Act 2017 \(Cth\) \(CoO Amendment Act\)](#) amended the definition of 'substantial transformation' relevant to making a 'made in Australia' claim and using the Australian Made, Australian Grown (AMAG) logo.

Following the change and the Federal Court decision in [Nature's Care Manufacture Pty Ltd v Australian Made Campaign Limited \[2018\] FCA 1936](#), the complementary medicines sector made submissions on the use of the AMAG logo. In December 2018 the then Department of Industry, Innovation and Science established a Complementary Medicines Taskforce to examine industry's concerns. This was followed by a regulatory reform process 'Clarifying Eligibility for Origin Claims in the Complementary Medicines Sector' in 2019.

The ACCC made a [submission](#) in response to the CRIS process, submitting that we considered the maintenance of the status quo was most likely to give effect to the policy considerations that led to the implementation of the CoO Amendment Act. The submission also noted that the other options presented created alternative or additional criteria for making a 'made in Australia' claim. This had the potential to confuse consumers and may allow products that have undergone minimal processing in Australia to be labelled as 'made in Australia'.

Following the regulatory reform process, on 18 December 2019 the [Competition and Consumer Amendment \(Australian-made Complementary Medicines\) Regulations 2019](#) commenced. The regulations specify when complementary medicines are 'substantially transformed' and therefore may be labelled 'made in Australia' and/or use the AMAG logo.

Under the regulations, a complementary medicine is ‘substantially transformed’ in Australia if certain manufacturing processes take place at Therapeutic Goods Administration (TGA) licensed manufacturing facilities in Australia. Processes such as encapsulating raw materials or pressing them into a tablet at a TGA-licensed facility in Australia would be likely to satisfy the regulations. It remains voluntary to make country of origin claims on complementary medicines.

The government has described the regulations as an interim measure and is preparing amendments to the ACL. The ACL amendments will require manufacturers of complementary medicines who choose to make country of origin claims to include a bar chart specifying the proportion of Australian ingredients in the products.

Policy developments and inquiries

Enhancements to unfair contract term protections

In November 2018 Treasury announced a review of the extension of the UCT protections in the ACL relating to small business contracts. The review was a requirement of the 2016 UCT legislation.

The ACCC made a [submission](#) to the review on 21 December 2018. Our principal recommendation was that inclusion of a UCT in a standard form contract should be an ACL contravention and subject to civil pecuniary penalties (along with other remedial orders commonly available to a court for ACL contraventions).

On 13 December 2019 Treasury released a [CRIS on enhancements to unfair contract term protections](#). The CRIS sought stakeholder feedback on the issues identified by the government’s UCT review, including whether any enhanced UCT protections for small business contracts should also be extended to consumer and insurance contracts to ensure consistency in the operation of the protections.

On 23 March 2020 the ACCC made a submission in response to the CRIS. Again, we recommended that the inclusion of a UCT in a standard form contract should be a contravention of the ACL and subject to civil pecuniary penalties and other remedies. The ACCC considers that this should be the case for standard form contracts with consumers and with small business. Our view is that prohibiting UCTs will provide an important incentive for compliance.

In our submission we made other recommendations that will clarify the application and operation of the UCT regime. For example, we suggested:

- replacing the definition of a small business based on headcount with one based on an annual turnover of less than \$10 million
- removing the value threshold for small business contracts to be covered by the UCT regime
- making ‘repeat usage’ a mandatory factor for a court to consider in determining whether a contract is a standard form contract.

The ACCC [continues to advocate](#) for changes to the UCT laws (for both small business and consumers), including our key position that the inclusion of a UCT in a standard form contract should be an ACL contravention and subject to penalties for non-compliance.

Ticket resale information standard

On 24 December 2019 the government issued an exposure draft of an Electronic Ticket Resale Service Information Standard for consultation.

On 18 February 2020 the ACCC provided a submission in response, supporting the draft information standard but proposing some minor amendments.

The purpose of the draft information standard is to require ticket resale websites to disclose the face value of tickets and to disclose the fact that the website is not a primary ticket seller. The draft information standard implements an August 2017 decision of the Consumer Affairs Forum ministers.

Proposed regulatory interventions in the automotive industry

The government is proposing regulatory intervention in the automotive industry in relation to two areas examined in the ACCC's December 2017 report [New car retailing industry: a market study by the ACCC](#).

The two regulatory interventions proposed are:

- a mandatory scheme under the CCA to specify minimum standards of conduct for parties sharing and accessing vehicle service and repair information. The ACCC has previously consulted with the government on this proposal
- interventions to address the significant imbalance of bargaining power between dealers and car manufacturers, such as regulations governing the franchise relationships between these parties.

Mandatory scheme for sharing motor vehicle service and repair information

In March 2019 Treasury commenced consultation on a proposed mandatory code under the CCA to specify minimum standards of conduct for parties sharing and accessing vehicle service and repair information. The ACCC made a [submission](#) and participated in the consultation process.

In October 2019 Treasury issued a consultation update advising the government's position on a number of issues following its consultation. Among other things, it advised that, in light of feedback, it would not implement the scheme through a mandatory code of conduct under the CCA but would instead progress the scheme using primary legislation. The ACCC will have enforcement responsibility for the scheme.

The ACCC continues to participate in Treasury's consultations.

Franchise relationships between car manufacturers and new car dealers

In December 2018 the then Department of Industry, Innovation and Science released a Regulation Impact Statement (RIS) discussing possible regulatory options to govern franchise relationships between car manufacturers and new car dealers. The ACCC participated in the consultation process.

On 14 February 2020 the Department of Industry, Science, Energy and Resources released an [exposure draft](#) of the Competition and Consumer (Industry Codes—Franchising) Amendment (New Vehicle Dealership Agreements) Regulations 2020 for new vehicle dealership agreements. It proposed that the regulations would be implemented as an amendment to the Franchising Code of Conduct. The stated purpose of the regulations is to address the impacts of potential power imbalances between car manufacturers as franchisors and new car dealers as franchisees.

The ACCC provided a [submission](#) in response to the exposure draft.

The regulations were subsequently made and commenced on 1 June 2020. The key reforms:

- require franchisors and dealers to provide at least 12 months' notice of whether or not they intend to extend, renew or enter into a new agreement where the original agreement is for 12 months or longer
- require franchisors to provide more detail about any significant capital expenditure that will be required and the circumstances under which the franchisee is likely to recoup the expenditure
- allow for multi-franchisee dispute resolution.

Corporate criminal responsibility

On 15 November 2019 the Australian Law Reform Commission (ALRC) released a discussion paper on reforms to the Australian corporate criminal responsibility regime. A number of the 23 proposals in the discussion paper would affect the enforcement and compliance work of the ACCC.

In January 2020 the ACCC made a submission that supported the importance of retaining a flexible regulatory toolkit including our infringement notice powers. Our submission also supported a strengthened corporate criminal responsibility regime and improved corporate prosecution processes.

The ALRC's final report is due in August 2020.

Unit pricing code of conduct review

On 28 February 2019 the ACCC made a submission to the government review of the Retail Grocery Industry (Unit Pricing) Code of Conduct. The code was due to lapse on 1 October 2019. Treasury sought submissions on whether it should be remade, either in its current form or with amendments.

On 16 September 2019 the original sunset date for the code was deferred until 1 October 2021 via the [Legislation \(Deferral of Sunsetting—Trade Practices \(Industry Codes—Unit Pricing\) Regulations\) Certificate 2019](#). This will give the government further time in which to consider its position on the code following the review. The ACCC will participate further in Treasury's consultation process when it continues.

Inquiry into the Franchising Code and Oil Code

On 14 March 2019 the Parliamentary Joint Committee on Corporations and Financial Services released its [report *Fairness in franchising*](#) following its inquiry into the effectiveness of the Franchising Code of Conduct and Oil Code of Conduct.

The committee made a number of recommendations, including that:

- an inter-agency Franchising Taskforce be established to undertake further work in the sector
- the Franchising Taskforce consider amendments to the CCA, including significantly increasing the quantum of penalties available for breaches of the Franchising Code of Conduct and Oil Code of Conduct to ensure that penalties are a meaningful deterrent and that they at least reflect the penalties currently available under the ACL.

A number of recommendations in the report align with concerns that the ACCC raised in our submission to the inquiry.

On 10 April 2019 the government established the inter-agency Franchising Taskforce, comprising representatives from Treasury, the then Department of Education, Skills and Employment, and the Department of the Prime Minister and Cabinet. The purpose of the taskforce is to examine the feasibility and implementation of the report's recommendations.

The taskforce consulted on an issues paper from 23 August to 20 September 2019. The ACCC participated in this consultation process.

Based on the feedback received in response to the issues paper, the taskforce released the [Franchising Sector Reforms Regulation Impact Statement](#) for consultation between 11 November and 6 December 2019. The RIS sought feedback on possible problems and options for government action in the franchising sector.

The ACCC made a [submission](#) in response to the RIS on 10 December 2019. Our submission calls for significant changes to the regulation of the franchising sector. Our concern is that making incremental changes to the Franchising Code of Conduct will not be enough to address the problems that have persisted in this sector. We consider that many of the problems in the sector would be better resolved through implementation of a licensing regime, which includes more effective dispute resolution rather than through ACCC enforcement.

The ACCC's other recommendations include:

- introducing civil pecuniary penalties for all provisions of the codes and for non-compliance with ACCC notices
- introducing more dispute resolution options in the regulatory framework, including by establishing a single body with the power to make binding decisions and introducing more effective alternative dispute resolution pathways
- merging the Office of the Franchising Mediation Adviser and the Australian Small Business and Family Enterprise Ombudsman to avoid duplication
- taking a more holistic approach to education in the franchising sector by introducing initiatives that enable prospective franchisees to be more informed before they invest in a franchise and that place greater emphasis on financial literacy and business education to better equip franchisees with the knowledge and skills they need to effectively operate a business
- making independent professional advice mandatory for prospective franchisees
- introducing stronger incentives for franchisors to test whether prospective franchisees are suitable for their franchise system
- not introducing the proposed national franchise register
- repealing the Oil Code of Conduct and adding specific fuel retailing provisions to the Franchising Code of Conduct.

The taskforce is currently considering stakeholder responses to the RIS and will then provide advice to the relevant ministers.

Treasury review of the effectiveness of the consumer product safety system

Treasury publicly released its CRIS on improving the effectiveness of the consumer product safety system on 8 October 2019. Consultation closed on 30 November 2019. The statement identified inefficiencies in the current system that result in unsafe products being supplied in the market. It canvassed a range of reform options to strengthen product safety interventions—for example, introducing a new safety duty (formerly referred to as a General Safety Provision), a product intervention power and more enforcement powers.

The ACCC supports reforms to strengthen and facilitate a more responsive product safety regime in Australia and to support existing consumer protection provisions in the ACL.

Consumer product safety

Actions undertaken to achieve our purpose

Deliverable 2.3: Identify and address the risk of serious injury and death from safety hazards in consumer products

Consumers expect the products they purchase to be reasonably safe and to work properly. Under the ACL, consumer products are expected to meet the consumer guarantee to be of acceptable quality, including being safe. Banned products cannot be sold. Products or product-related services that are subject to mandatory safety or information standards must comply with those standards before they are offered for sale. However, if unsafe goods are present in the market, suppliers should initiate voluntary recalls to ensure products are effectively removed from supply chains, especially when a safety issue is identified where goods may cause injury to a person.

The ACCC meets regularly with the specialist safety regulators for food, gas and electrical goods, and motor vehicles to discuss safety issues in consumer goods, including recalls, monitored by specialist regulators.

Product safety priorities

Each calendar year we release a standalone product safety policy setting out the principles we adopt to prioritise and address product safety risks. State and territory ACL regulators have endorsed these as national priorities.

In 2019 our consumer product safety priorities included:

- improving the safety of quad bikes
- ensuring the effectiveness of the compulsory recall of vehicles with Takata airbags
- supporting strategies that help prevent injuries and deaths to children caused by button batteries
- progressing the development of a General Safety Provision and other product safety reforms
- supporting strategies that help prevent injuries and deaths to infants caused by unsafe sleeping products
- improving product safety in the online marketplace, with a focus on improving the safety of products sold on online platforms
- raising awareness of and building capacity to address consumer safety hazards associated with interconnected devices
- continuing to review and update current mandatory safety standards and bans and conduct surveillance
- improving product safety data by progressing the development of a national product safety incidents database.

In 2020 our consumer product safety priorities included:

- finalising the compulsory recall of vehicles with Takata airbags
- pursuing regulatory options to prevent injuries and deaths to children caused by button batteries
- implementing strategies to prevent injuries and deaths to infants caused by sleeping products identified as unsafe
- improving product safety in e-commerce through enhanced compliance commitments from online platforms
- scoping more effective risk controls for potential intervention to prevent injuries and deaths caused by furniture falls, including toppling furniture.

We also continued our work on:

- assessing current and emerging safety hazards
- ensuring that businesses comply with mandatory reporting requirements
- reviewing product safety standards, which set safety requirements for products
- developing product safety compliance strategies.

We will always prioritise product safety issues that have the potential to cause serious harm to consumers.

Product safety enforcement

In 2019–20 our product safety enforcement outcomes included the following:

- [Hai Feng International Pty Ltd](#) (trading as Big Red Jacks Tools & Equipment) paid a penalty of \$12 600 after the ACCC issued an infringement notice. The notice was issued because we had reasonable grounds to believe that Big Red Jacks had supplied a vehicle jack that did not comply with the consumer product safety standard for vehicle jacks.
- [Three corporations](#), Grays Ecommerce Group Limited, Berwick Motor Group Pty Ltd and HG Innovations Pty Ltd, paid a combined total of \$63 000 in penalties after the ACCC issued infringement notices for allegedly selling or advertising vehicles under active recall as part of the Takata compulsory recall. Further details are on page 116.
- [Mercedes-Benz Australia/Pacific Pty Ltd](#) provided the ACCC with a court enforceable undertaking acknowledging that, due to spare parts availability, it had failed to initiate a recall of certain C class and E class vehicles with faulty Takata airbags in accordance with the timeframe required under the Takata compulsory recall. Further details are on page 116.
- e-scooter rental company [Lime Network Pty Ltd](#) (Lime) provided the ACCC with a court enforceable undertaking to address the ACCC's concerns regarding misrepresentations about the safety of its Generation 2 (Gen 2) model of e-scooters and to comply with its product safety reporting obligations. The ACCC considered Lime misrepresented that its Gen 2 e-scooters were safe to use when it had not disclosed to consumers that the e-scooters may apply excessive brake force, or locking, on the front wheel, causing it to stop suddenly. The ACCC was also concerned that Lime failed to comply with mandatory injury reporting requirements on at least 50 occasions for injuries arising from Gen 2 e-scooters; and failed to give notice of the firmware updates it applied to the e-scooters to fix the safety issue, as required by product safety laws.

Emerging hazards

The ACCC applies a proportional approach to product safety. We generate, receive and assess information about product safety issues from diverse sources, including inspections, reports, mandatory reporting, global recalls, media and the health system. We give priority to product safety issues with potential for serious or widespread harm to consumers.

In order to identify and mitigate emerging hazards through our surveillance work in 2019–20 we:

- inspected 12 480 product lines at 1624 retailers to assess compliance with 18 mandatory safety standards
- submitted 235 products for further assessment
- removed 51 unsafe products from the market from surveillance
- generated 29 recalls from ACCC surveillance.

Mandatory reports and unsafe product reports

The Consumer Product Safety Branch receives data about unsafe consumer products from various sources, including mandatory injury reports from suppliers and unsafe product reports from the public and other sources.

If a business becomes aware that a product it has supplied has caused serious injury, serious illness or death, it must report this to the ACCC. We rely on timely mandatory reporting to quickly identify product safety issues and assess whether further action is needed.

In 2019–20 we:

- received 3025 mandatory reports
- automatically referred 1310 reports to the food regulators
- assessed 1711 mandatory reports ourselves
- referred 92 reports to other regulators following assessment
- within seven days, conducted a preliminary assessment of 100 per cent of mandatory injury reports.

On average, we have received 2865 reports each year since commencement of the ACL.

Members of the public can also report concerns about potential unsafe products to the ACCC Infocentre. In 2019–20 we received 6911 reports of potentially unsafe products and related enquiries, 902 of which were escalated for hazard analysis and assessment. Each report undergoes an initial risk assessment based on the priority areas and factors outlined in the Product Safety Priorities policy. In 2019–20, 2613 reports were initially assessed. This risk assessment results in some matters being progressed for further work or assessment. Where a supplier is not considered to have adequately addressed the risk, the matter may be escalated for an initial or in-depth investigation to consider what method of intervention may be warranted.

In 2019–20 we:

- completed 83 detailed assessments
- completed 12 initial or in-depth investigations.

Our responses to hazards may include:

- encouraging the voluntary recall of goods (including reassessing the effectiveness of the recall strategy if the goods are already subject to recall)
- recommending a compulsory recall of goods if it appears that suppliers have not taken satisfactory action
- raising awareness or reminding consumers about hazards through social media, the Product Safety Australia website and campaigns
- negotiating voluntary changes to packaging, labelling or product design
- working with industry to encourage safe sourcing and supply
- introducing or reviewing mandatory safety standards and bans
- referring a matter for enforcement consideration.

Recalls and recalls monitoring

Voluntary recalls continue to be the main solution that businesses adopt when managing the continuing risks of unsafe consumer products supplied to the market. Voluntary recalls are notified via the Product Safety Australia website. When a recall is notified, we develop a short summary for posting to social media, such as Facebook and Twitter, to bring the recall to the attention of those who may have purchased the products or know of others who did.

Suppliers must advise the Commonwealth minister responsible for product safety matters within two days of commencing voluntary recall action. The ACCC applies a risk-based approach to assessing recall performance and to guide recall monitoring actions.

In 2019–20 we:

- published 633 recall notifications
- monitored 926 recalls. At 30 June 2020, 531 recalls were being monitored
- assessed 2901 progress reports submitted by suppliers
- completed 457 recall effectiveness reviews
- received 121 reports and enquiries relating to recalls that required assessment and response
- completed 26 assessments for recalls that were escalated for further assessment.

The three most successful recall postings on Facebook were:

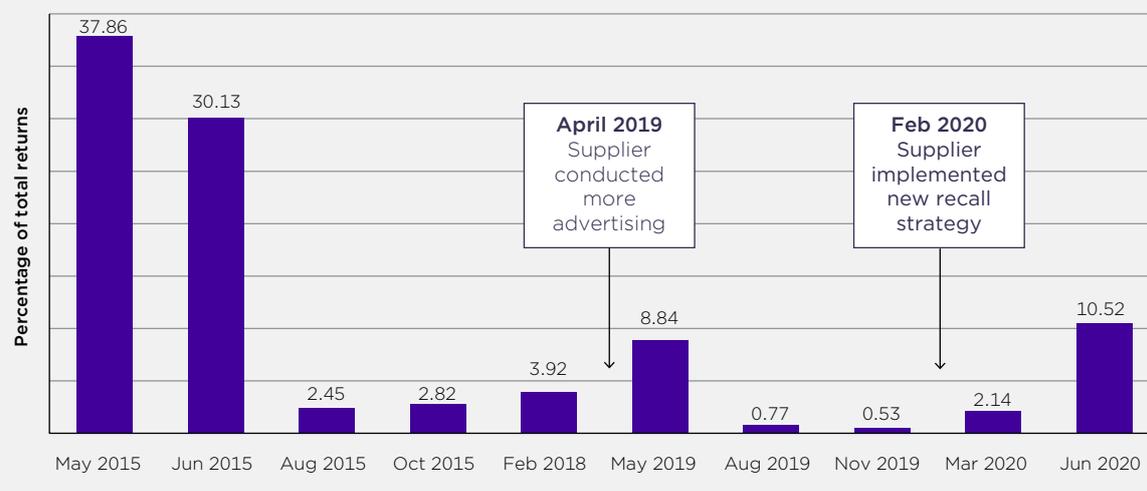
- a promoted post about the NADI 5-AT airbag inflator voluntary recalls, with a total reach of 1.152 million (1.15 million from promotion and 10 500 organic reach). This post also generated 362 000 reactions
- a post for a recall for Goannatracks Overland Expeditions Pty Ltd of the Trackmaster 37X12.5 R17 131N tyres, which achieved a total reach of 241 200 (all organic). There were 32 800 reactions to this post. This recall was for a specialist tyre used in off-road settings
- a recall for Honda Australia Motorcycle and Power Equipment Pty Ltd for the EU22i Generator, which achieved an organic reach of 75 200 and approximately 5000 reactions.

► Case study: Boosting recall returns—the Ozito Portable Electric Blower

A portable electric blower (handheld gardening tool) manufactured by Ozito Pty Ltd and sold nationally through Bunnings Warehouse stores from 2009 was voluntarily recalled in 2015 after its association with consumer injuries and near misses.

In 2019 the ACCC became concerned by a further trickle of consumer incident reports and the appearance of the product on second-hand goods sales platforms. This concern was shared by both Ozito and Bunnings. The ACCC met with Bunnings and Ozito to discuss options to boost consumers' attention to the recall and increase returns. Following collaboration from the group, an updated recall strategy was implemented. The new strategy included updating the recall notice to acknowledge that consumer injuries had occurred, offering a significant incentive for consumers to return the product, contacting second-hand sellers, and increasing national advertising of the recall and incentive offer.

Soon after commencement of the refreshed campaign the return rate demonstrated a strong upward trend, which is continuing. At the end of the financial year a further 904 products had been returned by consumers.



Mandatory safety standards and bans for consumer products

The ACCC makes recommendations to the Commonwealth minister responsible for consumer product safety about amending or developing product safety regulations to deal with products that have the potential to harm consumers. We consult with relevant stakeholders, including industry groups, consumer groups, technical experts and other government agencies, to consider the impact on business, consumers and government and improve our policy formulation and decision-making.

We periodically review mandatory safety standards and bans for consumer products to ensure that they remain effective in a changing economy and continue to provide the intended safety outcomes for consumers. These reviews are part of our continuing contribution to the Australian Government's policy objectives, including its regulatory reform agenda.

Reviewed mandatory safety standards

Continuing to review and update current mandatory safety standards and bans was a product safety priority for the ACCC in 2019.

In 2019–20 we completed three reviews of mandatory safety standards, as outlined in table 3.14. We completed fewer reviews of mandatory safety standards than in previous years. This was because the team was modestly resourced and it took time to regain momentum in a number of reviews that had been paused while resources were diverted to higher priority time-sensitive work, such as the Takata recall.

Table 3.14: Mandatory safety standards reviewed 2019–20

Mandatory safety standard	Outcome
Miniature motorbikes	A new safety standard introduced in December 2019 prescribes requirements for the design, construction and performance of miniature motorbikes, as well as for accompanying safety warnings and a user manual.
Aquatic toys	A new safety standard introduced in June 2020 prescribes design, construction and warning requirements for aquatic toys.
Projectile toys	A new safety standard introduced in June 2020 prescribes design, construction and labelling requirements for projectile toys.

Quad bikes

Sometimes a product poses a very high risk of injury to consumers and the issue requires dedicated resources to achieve a decisive and targeted outcome. Quad bike safety is one of these issues. Improving the safety of quad bikes remained a product safety priority in 2019–20.

In 2019–20 the ACCC's Quad Bike Taskforce completed a two-year safety investigation and released a draft mandatory standard for consultation with industry. After considering responses, we recommended the adoption of a mandatory safety standard for all new and imported second-hand quad bikes sold in Australia.

Based on this recommendation, in October 2019 [the Assistant Treasurer announced](#) that a new safety standard for quad bikes would be introduced under the ACL. The *Consumer Goods (Quad Bikes) Safety Standard 2019* came into effect on 11 October 2019. It aims to reduce the likelihood of quad bike related deaths and injuries by [requiring quad bikes to be supplied with enhanced stability, rollover protection and improved information for potential purchasers](#). The requirements are being introduced over two transition periods and will become mandatory on either 11 October 2020 or 11 October 2021.

By 11 October 2020 all new and second-hand imported quad bikes must:

- meet the specified requirements of the US standard for quad bikes, ANSI/SVIA 1-2017, or the European standard for quad bikes, EN 15997:2011
- provide an affixed rollover warning label; information in the owner's manual or handbook setting out the risk of rollover; and a hang tag (at point of sale) stating the angle at which the quad bike tips onto two wheels (using information from a lateral static stability test).

By 11 October 2021 all new and second-hand imported general use quad bikes are required to meet minimum stability requirements for lateral roll stability (a minimum tilt table ratio (TTR) of 0.55) and front and rear longitudinal pitch stability (a minimum TTR of 0.8). They must also be fitted with an operator protection device or have one integrated into the design by this date.

Since the introduction of the standard, we have been engaging with industry to encourage quad bike manufacturers and suppliers to comply with the standard as early as practicable to deliver the safety benefits to their customers. We will continue to do this throughout the transition periods.

We have published quad bike safety guidance material for manufacturers, dealers and consumers on the Product Safety Australia website.

We will continue to encourage consumers to take additional safety measures that complement the safety standard—for example, wearing helmets, never allowing passengers to ride single-seat quad bikes, and preventing children from riding adult-sized quad bikes.

Button batteries

[Button battery safety](#) is a key focus of the ACCC's product safety priorities for 2020, as button batteries pose a serious safety risk. Three children in Australia have died from injuries sustained after swallowing a button battery, and many more have been hospitalised with serious long-term injuries.

In 2019–20 we:

- established a taskforce to investigate button battery safety and consider the options for implementing a mandatory safety and information standard for button batteries and products containing button batteries under the ACL. The taskforce has been engaging with relevant international regulators, analysing existing national and international standards, conducting targeted consultation and reviewing stakeholder submissions
- released an [issues paper on button battery safety](#) in August 2019. The issues paper invited responses from interested stakeholders on the perceived safety risks, the effectiveness of the voluntary Industry Code for Consumer Goods that Contain Button Batteries, consumer information, and the button battery market in Australia
- released the consultation paper [consultation.accc.gov.au/product-safety/button-battery-safety-consultation-paper](https://www.accc.gov.au/product-safety/button-battery-safety-consultation-paper) on 19 March 2020. The consultation paper identified the proposed regulatory options available under the ACL to address the hazard of button batteries. This set out the ACCC's preferred option, which involves making a mandatory safety and information standard that includes a combination of requirements for secure battery compartments and child-resistant packaging, as well as the provision of warnings and information. Submissions on the consultation paper will inform the ACCC's development of a final recommendation, which will be provided to the minister in 2020. For more information please refer to [ACCCount, 1 January to 31 March 2020](#), page 26
- conducted a wide range of stakeholder consultation activities to discuss issues raised in submissions to the consultation paper and further inform the development of a final recommendation. We are expecting to make our final recommendation to the minister before the end of 2020.

Product safety in the online marketplace

Improving product safety in the online marketplace continued to be an ACCC product safety priority in 2019–20. Online shopping, or e-commerce, is a growing market, driven by convenience and competitive prices. While it offers consumers many benefits, rapid growth in this area means it is likely that non-compliance with product safety regulations will occur.

In 2019–20 we:

- progressed several elements of the Online Compliance Initiative—a strategy aimed at strengthening and improving product safety compliance in the online marketplace. This continuing initiative takes a market-wide approach to compliance at both domestic and cross-border levels, targeting consumers, online suppliers, platforms and international retailers and regulators
- released a series of translated resources to help online suppliers, particularly those offshore, to comply with their ACL product safety obligations
- conducted surveillance that identified an unacceptable number of non-compliant products for sale online
- continued to engage with online platforms to establish formal commitments that strengthen their product safety policies and processes

- facilitated an online marketplace compliance community of practice forum with state-level product safety regulators
- worked with platforms to distribute product safety information to consumers and sellers regarding banned and non-compliant goods being sold online, including small high-powered magnets, quad bikes, children's toys, vehicle jacks, decorative alcohol-fuelled devices, portable swimming pools and projectile toys.

Takata airbags

Compulsory recall

Finalising the compulsory recall of Takata airbags is an ACCC product safety priority for 2020. The Takata airbag recall is the world's largest automotive recall, affecting an estimated 100 million vehicles globally. It is the most significant recall in Australian history—it affects over four million Takata airbag inflators and involves more than three million vehicle recalls. Worldwide there have been at least 29 deaths and more than 330 serious injuries reported as associated with misdeploying defective Takata airbag inflators. One death and one serious injury resulting from misdeployed Takata airbag inflators have been reported in Australia.

The Consumer Goods (Motor Vehicles with Affected Takata Airbag Inflators and Specified Spare Parts) Recall Notice 2018 requires companies that supplied vehicles with defective Takata airbags in Australia to recall and replace affected airbags by 31 December 2020 (unless on application an alternative date is approved by the ACCC).

In 2019–20 we:

- continued to progress the compulsory recall, which has been effective in significantly reducing the number of affected airbags on Australian roads. As at 30 June 2020 around 3.66 million airbags (89.2 per cent) had been replaced in 2.68 million vehicles (87.8 per cent), leaving around 180 869 airbags (4.4 per cent) in 155 351 vehicles remaining for repair. This excludes 262 725 airbags (6.4 per cent) in 218 393 vehicles (7.1 per cent) identified by suppliers as written off, scrapped, stolen or modified and unable to have the airbag replaced
- implemented an outreach program targeting both urban and regional communities with recall response rates that fall below the national average. We continue to engage with 'trusted messengers' within communities and ask them to help by raising awareness through their existing networks. Following face-to-face meetings with around 70 different community-based partners, we are now providing information and electronic materials for distribution to key intermediaries, which include local councils, police, libraries and various community organisations
- in targeting specific areas with low recall response rates for outreach programs, the ACCC partnered with the Australian National University, which conducted research that included identifying areas and postcodes with the lowest consumer response rates in each state and territory
- continued to work through the Takata Interagency Group with state and territory fair trading agencies, vehicle registration authorities and other interested stakeholders on initiatives to increase the effectiveness of the recall. This included registration sanctions by state and territory vehicle registration authorities (please see [ACCCount, 1 January to 31 March 2020](#), page 23, for more information)

- conducted a pilot program of industry surveillance and outreach to raise awareness and take action to address non-compliance within the industry. The feedback from this program was used to inform an ACL regulator national strategy that commenced in November 2019 and was due to be completed by 30 June 2020 (noting that the COVID-19 pandemic has changed the on-site surveillance component of the program and we may seek to extend the program)
- continued our engagement with the Federal Chamber of Automotive Industries (FCAI) as part of its joint communications campaign on behalf of a number of vehicle manufacturers. The FCAI reported that as at 30 June 2020 its website's look-up tool (www.IsMyAirbagSafe.com.au) had checked more than 10.85 million vehicles, of which over 1.79 million vehicles were identified as affected by the recall.

► Case study: Takata enforcement action

In December 2019 the ACCC issued infringement notices to **Grays Ecommerce Group Limited** (Grays), **Berwick Motor Group Pty Ltd** (BMG) and **HG Innovations Pty Ltd** (HG Innovations) for allegedly selling or advertising vehicles under active recall as part of the Takata compulsory recall. This was the first enforcement action taken in relation to the compulsory recall. Penalties totalling \$63 000 were paid in January 2020.

In February 2020 the ACCC also accepted a court enforceable undertaking from **Mercedes-Benz Australia/Pacific Pty Ltd** (Mercedes-Benz), after Mercedes-Benz acknowledged that, because spare parts were not available, it had failed to initiate a recall of certain C class and E class vehicles with faulty Takata airbags in accordance with the timeframe required under the Takata compulsory recall.

For more information see [ACCCount, 1 January to 31 March 2020](#), pages 16-17.

Takata non-azide driver inflator (NADI) recall

At the end of 2019 misdeployment incidents relating to Takata airbags with NADIs using 5-aminotetrazole (NADI 5-AT) manufactured between May 1995 and August 1999 were identified. These airbags are not part of the compulsory Takata recall. They are installed in around 78 000 vehicles in Australia and pose serious safety risks. For more information see [ACCCount, 1 January to 31 March 2020](#), pages 23-24.

To address this emerging issue, in 2019-20 we:

- issued [warnings to consumers](#) about the new critical safety risk
- worked in collaboration with the Department of Infrastructure, Transport, Regional Development and Communications to negotiate voluntary recalls with Audi, BMW, Ford, Honda, Mazda, Mitsubishi, Suzuki and Toyota. Audi, Ford, Mitsubishi and Suzuki are offering to buy back vehicles at current market value (these are the first buyback recalls of road-registrable vehicles in Australia). Mazda is offering a buyback or replacement airbag. BMW, Honda and Toyota are offering a replacement airbag only. All manufacturers are offering alternative transportation for affected consumers until the buyback process is completed or replacement airbags are available
- assisted the Department of Infrastructure, Transport, Regional Development and Communications in monitoring the voluntary recalls of affected vehicles
- developed trigger points in consultation with the Department of Infrastructure, Transport, Regional Development and Communications for the escalation of issues to the ACCC for advice, including whether the use of compulsory recall powers is appropriate.

Support small business

Actions undertaken to achieve our purpose

Deliverable 2.4: Support a vibrant small business sector

The ACCC helps to ensure that small businesses understand and comply with their obligations. We encourage them to exercise their rights under the CCA as the customers of larger suppliers. Our aim is to promote a competitive and fair operating environment for small business and, importantly, ensure small businesses understand how the legislation can help them.

In 2019 and 2020 the ACCC continued to prioritise ensuring small businesses receive the protections of industry codes of conduct, including the Franchising Code of Conduct, as well as the new UCT laws.

To support the priority, we:

- enforced provisions of the ACL that relate to small business
- provided information, education and services to small businesses
- developed partnerships to help us better engage with and inform small businesses
- enforced and encouraged compliance with codes of conduct
- authorised collective bargaining in certain circumstances in the public interest.

Our Agriculture Unit undertook:

- engagement with a range of industry stakeholders, including farmers and other small agricultural businesses
- industry engagement and compliance work on the implementation of the mandatory Dairy Code of Conduct
- examination of potential competition and consumer issues in the agricultural machinery industry
- investigations and enforcement action in the agriculture sector, with a focus on addressing the inherent imbalance of power that exists between processors and their farmer suppliers.

Mandatory codes of conduct

We are responsible for promoting and enforcing compliance with seven mandatory prescribed industry codes:

- the Franchising Code of Conduct
- the Horticulture Code of Conduct
- the Oil Code of Conduct
- the Port Terminal Access (Bulk Wheat) Code of Conduct
- the Sugar Code of Conduct
- the Retail Electricity Code of Conduct (see page 87)
- the Unit Pricing Code.

We are also responsible for one voluntary prescribed industry code: the Food and Grocery Code of Conduct.

For more information on the codes, see the [Industry codes](#) page on our website.

We use a structured process to actively assess reports of misconduct that we receive in relation to industry codes, and we escalate matters for investigation where appropriate.

Franchising Code of Conduct

Ensuring that small businesses receive the protections of the competition and consumer laws, with a focus on the Franchising Code of Conduct, is an ACCC Compliance and Enforcement Priority for 2020.

Franchising Code enforcement outcomes

In 2019–20:

- following an appeal by [Ultra Tune Australia Pty Ltd](#), the Full Federal Court confirmed important franchisor obligations while upholding aspects of Ultra Tune's appeal. The Court confirmed a previous decision by the Federal Court that Ultra Tune had breached the Franchising Code of Conduct but reduced the total penalties imposed against Ultra Tune from \$2.6 million to \$2 million
- former car wash and detailing franchisor [Geowash Pty Ltd](#) was ordered to pay \$4.2 million in penalties, including penalties of \$1.04 million against Geowash's director Ms Sanam Ali and \$650 000 against franchising manager Charles Cameron. This follows an earlier finding by the Federal Court that Geowash made false or misleading representations and failed to act in good faith in relation to the sale and marketing of its franchises, in contravention of the Franchising Code of Conduct. The Court also found that Geowash acted unconscionably towards franchisees through its charging practices for the establishment and fit-out of its franchising sites. Geowash has since appealed this decision
- [Bob Jane Corporation Pty Ltd](#) provided the ACCC with a court enforceable undertaking to comply with its obligations under the Franchising Code of Conduct in relation to renewal and extension of franchising agreements. We were concerned that Bob Jane failed to comply with its obligations under the Franchising Code relating to end of term and renewal of agreements. We were also concerned that Bob Jane had extended the term of certain franchise agreements without first providing required documentation to franchisees and obtaining a written statement that the franchisees had received, read and had an opportunity to understand certain documentation
- [General Motors Holden Australia NSC Pty Ltd](#) made a commitment to negotiate with its dealers in good faith about compensation for Holden's withdrawal from the Australian market, as required under the Franchising Code of Conduct and the ACL. This commitment follows pressure from the ACCC for Holden to agree to extend the deadline for acceptance of its compensation offer and to engage in good faith negotiation with dealers
- the Federal Court made the ex-parte orders sought by the ACCC freezing the assets of franchised courier delivery business [Megasave Couriers Australia Pty Ltd](#) (Megasave), its sole director and other entities controlled by him. These orders have since been replaced by an undertaking to the Court by the sole director in broadly similar terms, which remains in place until revoked by the Court. Within 14 days after this, the ACCC instituted proceedings (in the 2020–21 financial year) against Megasave in the Federal Court, alleging that it misled prospective franchisees with false or misleading promises of guaranteed minimum weekly payments and annual income if they purchased a Megasave courier franchise. It is also alleged that Megasave's sole director was knowingly involved in the conduct.

Franchising compliance and education

The ACCC continues to provide education and information to both franchisors and franchisees to enable them to understand and comply with their rights and obligations under the ACL. In 2019–20 we focused on providing information aimed at improving disclosure practices across the franchising sector after compliance checks identified that many franchisors failed to provide adequate information to prospective franchisees in respect to key areas of disclosure, which limited franchisees' ability to conduct due diligence. As part of this work we:

- published our [Disclosure practices in food franchising](#) report, which detailed key findings from compliance checks on 12 franchisors in the food services sector
- published a [model disclosure document](#) (also included in [The franchisor compliance manual](#))
- published a [Quick guide to a franchise disclosure document](#)
- created our '[Buying a franchise? Know the risks](#)' campaign webpage, which is available in several languages
- conducted a joint agency webcast with the Australian Small Business and Family Enterprise Ombudsman, ASIC, the ATO and the Fair Work Ombudsman.

Franchising Code of Conduct review

In April 2019 the government established an inter-agency Franchising Taskforce to consider the issues raised in the Parliamentary Joint Committee on Corporations and Financial Services report [Fairness in franchising](#) and how its recommendations may be implemented. The ACCC has continued to engage with the taskforce.

In 2019–20 we:

- made a [submission](#) to the taskforce's draft Franchising Sector Reforms Regulation Impact Statement
- continued to regularly meet and consult with the taskforce.

For more information see page 106.

Unfair contract terms

The ACL protects small businesses from unfair terms in standard form contracts. The ACCC provides guidance for both small business and consumers on UCTs and may take enforcement action if necessary, in accordance with our [Compliance and Enforcement Policy](#).

In 2019–20:

- the Federal Court declared that certain terms in contracts between Australia's largest potato wholesaler, [Mitolo Group Pty Ltd](#), and potato growers were UCTs and therefore void. Further information about the Mitolo proceedings is on page 120
- [Uber Eats](#) made a commitment to change its contracts with restaurants following an investigation by the ACCC. From at least 2016 Uber Eats' contract terms made restaurants responsible for the delivery of meal orders even though they had no control over the delivery process once the food left their restaurant. We considered that contract terms that gave Uber Eats the right to refund consumers and deduct that amount from the restaurant even when the problem with the meal may not be the fault of the restaurant were likely to be UCTs within the meaning of the ACL
- [1300 Australia](#), which sells 'phonewords'—telephone numbers that also spell words on a keypad—provided the ACCC with a court enforceable undertaking acknowledging that some of the terms in its contracts may have been unfair. It has also undertaken to amend its current and future contracts with small businesses and refund part of termination fees paid by some small business customers

- the ACCC made a submission responding to Treasury's Consultation Regulation Impact Statement on enhancements to UCT protections. Our principal recommendation is that the inclusion of a UCT in a standard form contract should be a contravention of the ACL and subject to civil pecuniary penalties. This is discussed in more detail on page 104. The ACCC also encouraged small business stakeholders such as Small Business and Franchising Consultative Committee members to make submissions.

Enforcement work in the agriculture sector

In 2019–20 the ACCC prioritised competition and consumer issues in the agriculture sector, with a particular focus on the Dairy Inquiry, the Horticulture Code of Conduct, the viticulture industry and UCTs in supply agreements.

For information on other agriculture work undertaken in the period, including our work in relation to the Dairy Code of Conduct and agricultural machinery, see pages 67–68. For details on the ACCC's market studies, including the Wine Grape Market Study, see page 151.

In 2019–20:

- we reached an agreement with [Coles Group Limited](#) in which it agreed to pay approximately \$5.25 million to Norco Co-operative Limited for distribution to its dairy farmer members
- as well as declaring that certain terms in contracts between [Mitolo Group Pty Ltd](#) and potato growers were UCTs and therefore void, the Federal Court ordered Mitolo to pay penalties of \$240 000 for contraventions of the Horticulture Code of Conduct in relation to 19 contracts with potato growers. The contraventions arose from the failure of the contracts to meet minimum requirements under the code. This was the first court-imposed penalty for a contravention of the new Horticulture Code
- Mitolo also provided the ACCC with a court enforceable undertaking containing a revised form of contract. Mitolo has undertaken to contract with growers on terms no less favourable than the revised contract terms annexed to the undertaking
- we reached agreement with several of Australia's largest winemakers to change their supply agreements with grape growers after the ACCC raised concerns that the contracts contained terms that were likely to be unfair.

Collective bargaining

Decisions on small business collective bargaining proposals

We can approve collective bargaining arrangements—where two or more competing businesses wish to jointly negotiate with a supplier or a customer over terms, conditions and prices—where we are satisfied that the arrangement provides an overall public benefit. Without ACCC approval, these types of arrangements may contravene the CCA.

Potential benefits include sharing the time and cost of negotiating contracts, coordinating ordering and/or delivery, accessing new market opportunities from combining volume, and gaining better access to information.

There can also be benefits for the business with which the group negotiates, such as reduced negotiation costs, more certainty of supply, and savings from aligning transport and distribution.

During 2019–20 we considered 21 collective bargaining proposals under the authorisation and notification provisions of the CCA. The proposals we considered involving small businesses included music licensing, translation services and quarry cartage services.

Table 3.15: Overview of small business related authorisations 2019-20

Total authorisations decided (excluding minor variations)	24
Small business related authorisations decided (excluding minor variations)	2

Table 3.16: Overview of small business related notifications 2019-20

Total notifications assessed	13
Small business related notifications assessed	7

Collective bargaining class exemption

We are in the process of developing a ‘class exemption’ that will allow small businesses to collectively negotiate in certain circumstances.

Smaller businesses can sometimes be better off negotiating with their customers or suppliers as a group. Working together, they may be able to negotiate more efficiently with larger businesses and achieve better terms and conditions than they can on their own. However, without some form of legal protection, this kind of joint bargaining would be at risk of breaching the CCA.

The class exemption will effectively provide a ‘safe harbour’ so that groups of small businesses can collectively bargain without having to seek the ACCC’s approval, where the relevant eligibility criteria are met.

The proposed collective bargaining class exemption will allow:

- businesses, including agribusinesses, with turnover of less than \$10 million to form collective bargaining groups to negotiate on the supply or acquisition of goods or services
- all franchisees to collectively bargain with their franchisor.

This class exemption is in addition to the ACCC’s existing [authorisation](#) and [notification](#) processes. Businesses can continue to use these processes to obtain ACCC approval for collective bargaining arrangements (for example, if they do not fit within the class exemption eligibility criteria or they are also seeking legal protection for a collective boycott). The main difference is that businesses that fall within the scope of a class exemption get automatic exemption; they will not need to apply to the ACCC as they do with authorisations and notifications.

We can make a class exemption where we are satisfied that the type of conduct covered by the class exemption would be unlikely to substantially lessen competition or would provide an overall public benefit. We consider that certain small business collective bargaining is likely to satisfy these criteria.

Empower consumers

Actions undertaken to achieve our purpose

Deliverable 2.5: Empower consumers by increasing their awareness of their rights under the Australian Consumer Law

The ACCC's educative function is central to our role in protecting the interests and safety of consumers, because awareness and information are the tools that empower people to understand and exercise their consumer rights. Our educational and publicity campaigns help consumers to make smart choices even in complex or difficult markets.

To empower consumers by increasing their awareness of their rights, we:

- develop and distribute information materials targeted to particular groups
- publicise our enforcement actions
- conduct public education campaigns on specific issues
- operate the ACCC contact centre (the Infocentre) to respond directly to enquiries and reports on consumer issues and to gather information about current trends to inform our educational work
- gather and analyse intelligence on current trends and emerging issues relating to consumer rights.

Distributing consumer information

In 2019–20 we distributed targeted and general information through our website and Facebook, Twitter and YouTube channels to help consumers. For example:

- traffic on the Product Safety Australia website, which provides a user-friendly single entry point to national, state and territory product safety and recalls information, reached 7 058 926 unique page views in 2019–20
- the Scamwatch website, which is designed to help consumers and small businesses recognise scams and avoid them, as well as providing an avenue for scam reporting, received 3 843 815 visits and 7 639 253 unique page views in 2019–20. The site was updated in April 2020 to improve accessibility and responsiveness on mobile devices
- we published a large range of guidance material for consumers in relation to cancellations and other issues arising from COVID-19 restrictions. More information can be found on pages 84 and 123
- we continued to publish voluntary recalls through social media channels to extend their reach to affected consumers
- we engaged with key consumer and government stakeholders, such as members of the Consumer Consultative Committee and Scams Awareness Network, on campaigns
- we also engaged with a range of private businesses and peak bodies to promote consumer information
- we provided information and updates to consumers and small businesses through our information networks.

Empowering consumers through communication—campaigns

We conduct campaigns, including in our broader priority areas, to educate and empower consumers on specific issues, and we put on events to promote and discuss consumer issues with a range of stakeholders.

In 2019–20 we maintained a strong focus on educating consumers about their rights and warning people about the risks of scams and product safety hazards. We delivered a range of targeted and general information campaigns across our three websites (www.accc.gov.au, www.productsafety.gov.au and www.scamwatch.gov.au) and social media channels (Facebook, Twitter, LinkedIn and YouTube). For example:

- responding to identified consumer and business concerns resulting from the COVID-19 pandemic, we published and frequently updated a dedicated page on our website for consumers to find answers to their [frequently asked questions about their rights during this period](#), including changes to services or cancellations caused by COVID-19 restrictions. This included information about travel, event and wedding cancellations, gym memberships and product price increases. This information was communicated widely through a range of mainstream media outlets and through our social media channels
- we engaged with many private businesses and peak bodies to promote consumer rights in relation to issues brought about by the COVID-19 pandemic. In particular, we formed a COVID-19 Taskforce, which worked with travel operators; travel industry bodies; state, territory and federal government agencies; and consumer groups to address a large number of consumer complaints arising from COVID-19-related travel cancellations and advise businesses of their obligations. As a result, a number of large travel operators changed their conduct and provided clearer information and better remedies to consumers
- we notified Australians of more than 600 product recalls, as well as safety information from national, state and territory regulators, through our [Product Safety Australia](#) website—a user-friendly single entry point for consumers. Traffic reached 7 058 926 page views in 2019–20. We also promoted recalls through our corporate and product safety social media channels
- we undertook a range of communications through media and our own channels to warn consumers of a new voluntary recall of the potentially deadly Takata NAD1 5-AT airbag—a different airbag from the one subject to the existing compulsory recall of Takata airbag inflators. This recall was of particular importance in 2019–20
- we engaged in scams awareness campaigns with key government and consumer stakeholders, including the Scams Awareness Network. We promoted awareness of scams, including those thriving due to the COVID-19 pandemic—for example, superannuation, coronavirus health and puppy scams—through our social media networks and the media. We delivered an information campaign in support of [National Scams Awareness Week 2019](#), which had the theme ‘Too Smart to be Scammed?’ We produced a vox pop style video and shared information widely on social media to alert consumers to the variety of scams to which they could fall victim
- we warned the public to look out for new scams in early 2020 during the widespread Australian bushfires. The ACCC became aware of a variety of fundraising scams at that time. We set up a dedicated phone number for people to use to report bushfire-related scams. The dedicated bushfire-related scam line answered 1128 calls. Our Facebook post on this topic reached 684 199 users and had 41 492 engagements
- as a result of our surveillance activities, we identified the prevalence of unsafe baby walkers available for purchase in Australia (primarily through online retailers). These baby walkers did not comply with the mandatory safety standard. More than 100 children are injured each year in incidents involving baby walkers. We produced a video campaign that was promoted through social media and mainstream media to highlight the dangers of using baby walkers unsafely and showed consumers how to tell if their baby walker was compliant
- in addition to issues-based campaigns, we were involved in various consumer forums, including meetings of the ACCC Consumer Consultative Committee.

For further detail and examples of our targeted campaigns in 2019–20, see:

- ‘Scams’ on page 88
- ‘Working with partners’ on page 96
- ‘Conduct affecting Indigenous Australians’ on page 85
- ‘Product safety in the online marketplace’ on page 114.

As well as conducting issue-based campaigns, we use our involvement in various consumer forums to raise awareness about particular aspects of consumer law. In 2019–20 these opportunities included meetings of the ACCC Consumer Consultative Committee.

In 2019–20 we communicated to consumers through:

- 169 Mailchimp [newsletters](#)
- 439 Facebook posts
- 433 tweets
- 283 [media releases](#) and dozens of interviews
- our websites, which had 9 797 038 unique visits throughout the year.

2020 Ruby Hutchison Memorial Lecture and National Consumer Congress

The ACCC was due to host the National Consumer Congress and the Ruby Hutchison Memorial Lecture in March 2020. These annual events bring together people from the public, private and community sectors. Around 200 people were expected to attend both events.

Due to concerns regarding the spread of COVID-19 and in the interest of the continued health and safety of our stakeholders, the National Consumer Congress was cancelled and the Ruby Hutchison Memorial Lecture was postponed.

The Ruby Hutchison Memorial Lecture, co-hosted by CHOICE, will be rescheduled once COVID-19 restrictions allow and it is deemed safe to do so. The lecture will be delivered by Julian Morrow, co-founder of the satirical media empire The Chaser, the company Giant Dwarf and Executive Producer of the ABC’s *The Checkout* program.

Consumer Consultative Committee

The Consumer Consultative Committee (CCC) is a forum through which the ACCC and consumer representatives can address consumer protection issues collaboratively. The current members of the CCC are listed on the [ACCC website](#).

The ACCC held four CCC meetings in 2019–20:

- The first meeting of the 2019–20 financial year was held on 20 September 2019. The CCC discussed updates on the Digital Platforms Inquiry report, administrative tribunals and internal dispute resolution.
- The second meeting was held on 22 November 2019. Topics discussed included the right to repair and an update on preparations for the 2020 National Consumer Congress and Ruby Hutchison Memorial Lecture. AER employees also provided members with an update on the Value of Customer Reliability and Retailer Reliability Obligation projects.

- On 17 March 2020 we hosted a meeting between the CCC and the ASIC Consumer Advisory Panel via teleconference (due to COVID-19 restrictions). The CCC members discussed ASIC's design and distribution obligations, the merits of a possible unfair trading provision and the ACCC's product safety pledge (see page 114 for more information).
- The final meeting of the year was held on 26 June 2020. The CCC discussed the preliminary findings from the Consumer Policy Research Centre's research on the consumer experience of COVID-19, our COVID-19 work and our debt collection project.

Using contact data

The ACCC Infocentre is the initial contact point for enquiries and reports about competition, consumer, product safety and fair trading issues. These contacts are received by telephone, by letter and through forms on our websites. We triage contacts in line with the priorities and factors outlined in our Compliance and Enforcement Policy. In addition to identifying new issues, contact data is also a valuable source of intelligence. Regular analysis of trends and patterns provides a safety net for complaints assessment and helps to inform our enforcement and compliance priorities. It can also assist current enforcement and compliance activities by providing historical context regarding people, companies or industries of interest.

The reasons for contacting the ACCC are very broad. However, the majority of contacts are:

- reports to Scamwatch about scams
- reports made by consumers seeking information about consumer guarantees
- reports about business conduct that may breach the CCA
- from small business seeking guidance on their rights and responsibilities.

Infocentre officers record information they receive from businesses and consumers in the ACCC database. This data is used throughout the ACCC for investigation, analysis and reporting purposes.

Infocentre officers may refer customers to appropriate services or agencies if their matter is beyond the jurisdiction of the ACCC or another agency or service may be able to provide individual assistance to them.

Scam reports are generally not investigated and are used to support our intelligence gathering and awareness-raising activities. Some reports (where consent is provided) are referred to intermediaries such as financial institutions and/or government and law enforcement agencies.

Responding to enquiries and reports

Our contact statistics for 2019–20 were:

- 312 773 contacts served by telephone and received in writing
- 89 535 web form responses sent (or otherwise completed)
- 572 letter responses made
- 57 235 calls answered.

Our service level statistics for 2019–20 were:

- 28.2 per cent of calls answered within two minutes (the goal set in our Service Charter is to answer 50 per cent of all calls within two minutes). The average wait time for a call to be answered was seven and a half minutes
- 95.6 per cent of written responses sent within 15 working days.

Contacts to the ACCC

Overall, the number of responses sent (or otherwise completed) has increased by 23 per cent over the past three years.

Scam contacts decreased 15 per cent compared with the previous year, with 28 468 fewer contacts received during 2019–20 than in 2018–19.

The COVID-19 pandemic has been a significant driver for the increased number of contacts requiring a response as the ACCC has sought to provide guidance to consumers and small businesses about their rights and obligations during the pandemic. At times, additional emails have also been sent to consumers in order to advise them of changes businesses have made following engagement with our COVID-19 Taskforce.

Other events that resulted in spikes in the numbers of contacts received in 2019–20 included TEG Live's Australia v USA and USA v Canada basketball games played in August 2019. We received a record 761 contacts in August about this matter, with subsequent contacts taking the total number to 1356. Information about the ACCC's investigation of TEG Live, including the outcome, is on page 94.

Table 3.17: Contacts recorded 2019–20

Category	2016–17	2017–18	2018–19	2019–20
Contacts served by telephone and received in writing	264 462	290 143	315 491	312 773
Contacts recorded in the database	234 913	252 091	287 313	282 213
Scams contacts recorded in the database	N/A	156 993	189 006	160 538
Non-scam contacts recorded in the database	N/A	95 098	98 307	121 675

Top 10 industries, excluding scams, for complaints and enquiries 2019–20

The following analysis of contacts is based on higher level grouping of existing Australian and New Zealand Standard Industrial Classification categories. The 10 most reported industries made up more than 62 per cent of all non-scam contacts to the ACCC over the past year.

Detailed information about the ACCC's scam complaints and enquiries can be found in our report [Targeting scams 2019: a review of scam activity since 2009](#).

Table 3.18: Top 10 industries for complaints and enquiries 2019–20

Industry	2019–20
Automotive industry	13 898
Electronics and consumer whitegoods	12 556
Tourism and accommodation	12 143
Online and non-store retailing	5 734
Personal services	5 665
Ticketing and administrative services	5 600
Passenger transport—air and sea	5 148
Clothing and personal goods	4 639
Telecommunications and IT	4 396
Construction services	4 364

Breakdown of contacts to the ACCC by conduct category—excluding scams

Further analysis of the largest category, ‘Misleading and deceptive conduct and false representations’ (see table 3.19), reflects the ACCC’s continued involvement in the Automotive and Electronics and consumer whitegoods industries in addition to the ACCC’s investigative work involving TEG Live, discussed on page 94.

Table 3.19: Misleading and deceptive conduct and false representations 2019–20

Industry	2019–20	Percentage of total
Ticketing and other administrative services	4 736	11.8%
Electronics and consumer whitegoods	3 345	8.4%
Automotive industry	3 223	8.1%

A breakdown of contacts regarding guarantees and warranties (see table 3.20) shows the large proportion of contacts that relate to the Automotive industry (27 per cent) and Electronics and consumer whitegoods (26 per cent). Key outcomes relating to consumer guarantees are discussed on page 86.

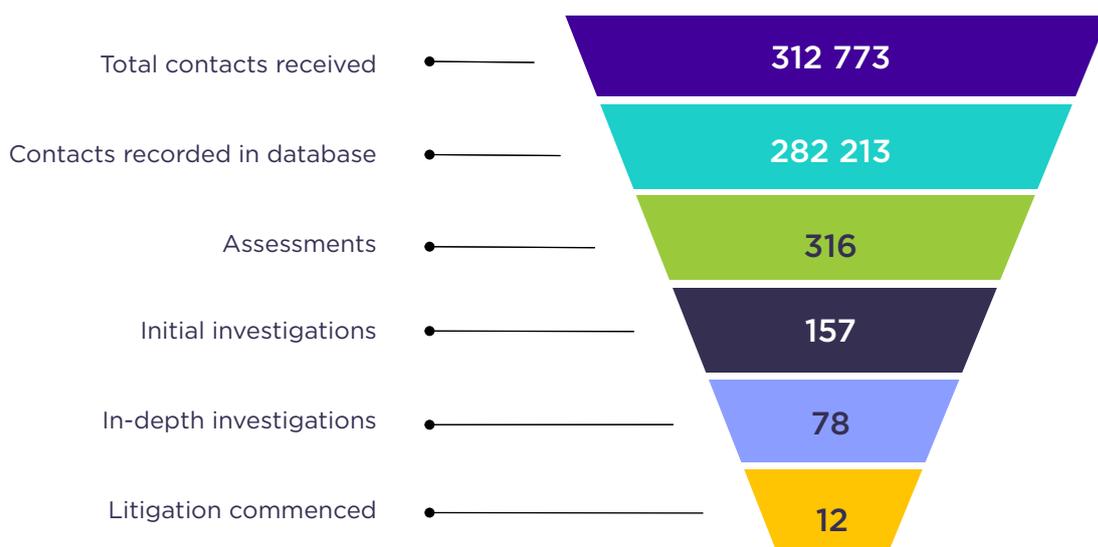
Table 3.20: Guarantees and warranties 2019–20

Industry	2019–20	Percentage of total
Automotive industry	10 098	26.9%
Electronics and consumer whitegoods	9 633	25.6%
Construction	2 574	6.8%

Investigations and litigation

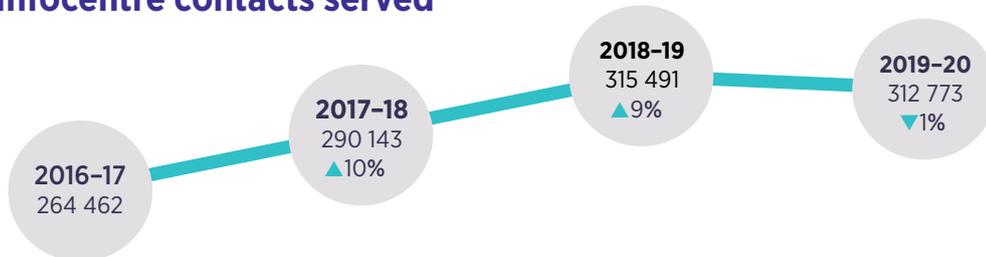
The contacts and reports we receive may go through a series of increasingly intensive investigations. We analyse the complaints data to establish trends, identify issues for further inquiry and develop compliance responses.

Figure 3.1: Contacts, investigations and litigation 2019–20



Contacts, enquiries and complaints at a glance 2019-20

Total Infocentre contacts served



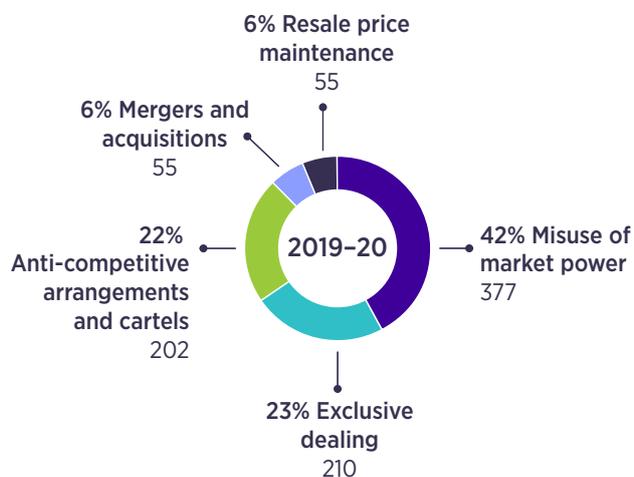
Australian Consumer Law related issues

98 318



Competition related issues

899



Small business

12 143

Contacts via the small business line and webform

▼ 6% since 2018-19

Franchising

502

Franchising contacts

▼ 10% since 2018-19

COVID-19 pandemic

Infocentre contacts

20 256

Scam reports

3228 with \$1.6 million in losses

Top 5 most reported industries 2019-20

- Automotive industry**
13 898
- Electronics and consumer whitegoods**
12 556
- Tourism and accommodation**
12 143
- Online and non-store retailing**
5734
- Personal services**
5665

Strategy 3: Promoting the economically efficient operation of, use of, and investment in infrastructure; and identifying market failure

Infrastructure regulation and industry monitoring

Performance results and analysis

Role and functions

Infrastructure plays a significant role in Australia's economic and social development and prosperity. The efficient provision and use of infrastructure—its location, availability, quality and pricing—underpins economic growth, productivity and, ultimately, consumer welfare.

Where key infrastructure is provided by only one or a few suppliers, efficient access to that infrastructure may be limited (including through pricing), thereby undermining competition and investment in relevant markets. Appropriate economic regulation of such infrastructure and the efficient provision of access contributes to the efficiency and productivity of the overall economy.

As an economic regulator, the ACCC has a central role in supporting better market outcomes. We undertake a variety of roles across the sectors we regulate, with the extent of our role determined by the nature and scope of the market failure we are seeking to address.

We engage in a range of advocacy activities regarding privatisation, market contestability and strengthening the functioning of markets to improve consumer outcomes.

Sectors where we have this role include telecommunications, petrol, rail, bulk grain export facilities, airports, container stevedoring and postal services.

Our objective is to:

- support the long-term interests of end users by promoting effective upstream and downstream competition and the proper functioning of Australian markets
- facilitate efficient investment in key infrastructure networks and services.

In pursuing this objective, our key functions include:

- regulating access to monopoly infrastructure and services that businesses need to compete in upstream or downstream markets
- regulating access prices where competitive pressures on a supplier are not sufficient to produce efficient prices
- monitoring and reporting on the prices and quality of particular goods and services to inform industry and consumers about the effects of market conditions in newly deregulated and concentrated markets
- enforcing compliance with industry-specific laws for telecommunications and electricity services
- advocating for appropriate regulation of monopoly infrastructure and for reforms to boost competition and efficiency in key sectors of the economy.

We also undertake inquiries and provide advice on a broader range of sectors when directed by the government.

Our deliverables in this area are:

Deliverable 3.1	Deliver network regulation that promotes competition in the long-term interests of end-users
Deliverable 3.2	Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets
Deliverable 3.3	Improve the efficient operation of markets by enforcing industry-specific competition and market rules

Our monitoring and reporting functions, and the detailed research and analysis underpinning them, position us to address current and emerging issues in markets that play a vital role in the economy. This work also supports our competition advice and advocacy efforts directed at ensuring Australian markets operate within a policy framework that facilitates competition and efficient investment in key infrastructure networks and services.

Priorities

Our infrastructure regulation priorities for 2019–20 were:

- promoting competition at the wholesale and retail levels by providing market information to increase transparency across the supply chain
- delivering network regulation with a continued focus on National Broadband Network (NBN) pricing and performance issues and post-build settings
- progressing regulatory decisions in relation to rail and wheat markets
- monitoring and reporting in relation to highly concentrated, newly deregulated or emerging markets, with a focus on effective consumer messaging and increased emphasis on information to aid consumer choice and switching
- advocating for appropriate regulation of monopoly infrastructure, including in areas where there are efficiency concerns independent of competition concerns.

As we progressed through the first quarter of 2020, the impacts of the COVID-19 pandemic spread to most sectors of the economy, including key infrastructure sectors. This required us to respond quickly to minimise disruption and safeguard consumer outcomes, particularly in relation to telecommunications, fuel and financial services. As the COVID-19 situation developed, we continued to review the timing of our priorities to fast-track those with the most benefit in the new environment and also to relieve pressure on stakeholders where outcomes have been less time critical.

Powers

Our powers and responsibilities to regulate infrastructure arise from several different legislative and administrative frameworks. These include:

- the National Access Regime in Part IIIA of the *Competition and Consumer Act 2010* (Cth) (CCA) (rail)
- industry-specific access regimes in the CCA (telecommunications)
- price monitoring directions from the government issued under the CCA (airports, container stevedoring, petrol)
- price notification provisions of the CCA (post, air services)
- Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019
- Electricity-specific prohibitions in Part XICA of the CCA
- rules and directions made by ministers in markets where competition is newly emerging or may not be working efficiently (gas, electricity, the northern Australian residential insurance market) or in recently deregulated markets.

Performance indicators

Deliverable 3.1: Deliver network regulation that promotes competition in the long-term interests of end users

The ACCC uses its regulatory powers to facilitate access to bottleneck infrastructure and establish efficient pricing for that access. Efficient access creates conditions for competition to emerge with flow-on impacts for consumers in the form of lower prices, higher quality products and innovation.

Table 3.21: Performance indicators for deliverable 3.1

Performance indicator	2016-17	2017-18	2018-19	2019-20		Met?
	Result	Result	Result	Target	Result	
Number of major regulatory decisions	6	1 [#]	6	3	1	✗
Percentage of regulatory decisions completed within statutory timeframes (including 'stop the clock' and timeframe extension provisions in the CCA)	100%	100%	100%	100%	100%	✓

Note: [#] Target performance indicators refer to anticipated decisions for the reporting period. Various factors during regulatory processes can affect anticipated timeframes for decisions.

Deliverable 3.2: Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

This deliverable is about keeping a close watch on the price and quality of goods and services available in markets that are at risk of being inefficient because they are highly concentrated or developing or that are otherwise an area of high consumer concern. This transparency can remedy market failure by correcting competition issues. In addition, it puts suppliers in those markets on notice that their conduct is under scrutiny and also informs any regulatory or policy responses that may be required to promote competition or protect consumers.

Table 3.22: Performance indicators for deliverable 3.2

Performance indicator	2016-17	2017-18	2018-19	2019-20		Met?
	Result	Result	Result	Target	Result	
Number of annual monitoring reports	7	6	7	7	7	✓
Number of reports on monitoring of unleaded petroleum products	7	6	6	6	6	✓
Number of reports on broadband markets	N/A	N/A	8	8	10	✓

Deliverable 3.3: Improve the efficient operation of markets by enforcing industry-specific competition and market rules

This deliverable is about the ACCC using its powers to enforce industry-specific rules that promote competitive, efficient markets. It seeks to mitigate harm to competition or consumers by stopping conduct or securing appropriate remedies. We exercise these powers, where appropriate, in response to anti-competitive conduct, abuse of market power and competitive or consumer harm.

Table 3.23: Performance indicators for deliverable 3.3

Performance indicator	2016-17	2017-18	2018-19	2019-20		Met?
	Result	Result	Result	Target	Result	
Number of investigations into potential breaches of rules	19	17	16	11	12	✓

Analysis of performance

Despite the impact of the COVID-19 pandemic, we made significant progress in our priority areas. We met our deliverables for the key performance indicators and pursued a variety of other initiatives to promote our objectives for Australia’s infrastructure sectors.

The ACCC seeks to facilitate competitive market outcomes where possible. In recent years, pure economic regulation of bottleneck and wholesale monopoly services has represented a smaller, yet still vital, proportion of our work. In contrast, our work in monitoring and reporting on key markets has expanded. This reflects our wider role in improving the functioning of markets. Depending on the market, its state of development and the source of market failure, our additional tools range from education and advocacy to monitoring and reporting, as well as enforcement and compliance.

Our advocacy and advice role is integral to the outcomes we seek to achieve. Advocacy can help prevent or address market issues and obtain more competitive and efficient outcomes that would be difficult to achieve if left to traditional regulatory measures alone. This role is important both for industries where we already have a role and for ensuring that effective regulatory frameworks are established in new and emerging concentrated or monopolistic markets. During the year, we undertook wide-ranging advocacy, from seeking reform of the National Access Regime for significant infrastructure to ensuring that competition is a key pillar in regulatory frameworks covering emerging financial services.

In dealing with some issues, a mix of regulatory approaches is necessary to bring about positive consumer outcomes. For example, suboptimal National Broadband Network (NBN) consumer experience is a multifaceted issue that has the potential to become more deeply entrenched as the NBN rollout concludes. We have sought to address the underlying causes through a combination of direct regulatory intervention; transparency through monitoring; consumer education; advocacy; and, where necessary, appropriate enforcement action.

The impact of the COVID-19 pandemic required us to refocus our priorities during the third and fourth quarters of 2019–20 to respond to immediate challenges. Broadly this involved:

- enhanced broadband performance and petrol price monitoring
- other immediate responses to assist industry and consumers, including deferring certain regulatory obligations to ensure service continuity and assessing authorisation applications for firms that need to work together to mitigate impacts on supply chains and consumers
- adjusting timeframes for less time-critical matters to reduce pressure on stakeholders.

During 2019–20 our major regulatory activities included:

- progressing two key inquiries into the NBN consumer experience to address gaps in service standards and to restore competitive pricing of entry-level plans on the NBN
- progressing and concluding several inquiries into continued regulation and setting appropriate access terms for key wholesale telecommunications services, including fixed-line, mobile and transmission services
- undertaking several regulatory assessments in relation to compliance with existing pricing regulation in sectors including rail and post
- publishing multiple monitoring reports on different infrastructure sectors, including airports, bulk grain ports, container stevedoring, telecommunications, water and petrol, to inform stakeholders of how the industry performed during the year.

Other key achievements during the year included:

- completing investigations into misleading claims, or discriminatory conduct in NBN wholesale markets, that led to financial penalties or formal warnings
- assisting broader government and industry initiatives by providing advice on suitable regulatory regimes or reforms in new, emerging or concentrated sectors
- providing guidance for consumers across various industries, including fuel, airports and telecommunications
- engaging with government and policy reform processes to promote efficient use of scarce resources, such as providing advice for allocation limits for an upcoming spectrum auction.

More information on the above outcomes and other activities we have undertaken through the year can be found in our [ACCCount](#) quarterly reports.

Telecommunications

Actions undertaken to achieve our purpose

The ACCC's work in the telecommunications sector contributes to all three of the deliverables for strategy 3, as it encompasses regulation, monitoring and enforcement.

We are responsible for the economic regulation and monitoring of the telecommunications sector. Our role is to provide effective regulation of telecommunications that will protect, strengthen and supplement competitive market processes to improve economic efficiency and increase the welfare of Australians.

We regulate access to monopoly wholesale telecommunications infrastructure and wholesale services, which helps reduce barriers for operators seeking to enter and compete in downstream markets. This creates an environment where the competitive process can develop and deliver better outcomes for consumers through more innovative and competitive services, lower prices, better quality services, more product differentiation and more investment.

Providing advice and expertise and facilitating market transparency are also key roles for the ACCC, particularly as the telecommunications market evolves.

In addition to the CCA, we have responsibilities under the following Commonwealth legislation:

- *Broadcasting Services Act 1992*
- *Copyright Act 1968*
- *National Broadband Network Companies Act 2011*
- *Radiocommunications Act 1992*
- *Telecommunications (Consumer Protection and Services Standards) Act 1999*
- *Telecommunications Act 1997.*

NBN consumer experience

As the NBN build approaches its conclusion, attention is turning to the quality of services it provides and ensuring that positive competition and consumer outcomes are realised. As NBN Co is a monopoly service provider, it faces limited competitive constraint, which can result in suboptimal outcomes for downstream competition and consumers. As the economic regulator, we have made targeted interventions to address a range of issues.

During 2019–20 we progressed a number of projects directed at addressing key sources of consumer detriment. These projects are supported by a framework of monitoring of developing retail and wholesale NBN markets and providing appropriate guidance to consumers and industry.

A key issue of focus is evidence of poor consumer experience during the migration from legacy copper-based services and the subsequent poor performance of their NBN service. These outcomes were reflected in complaints to the ACCC and other bodies, with a significant number of consumers impacted by missed appointments and faults when connecting their NBN service and by slower than expected broadband speeds. We also observed entry-level plans on the NBN being withdrawn or priced higher, which left many consumers with no option but to pay more for their fixed-line communications than they had before being migrated to the NBN.

We have sought to address this via two regulatory inquiries: one in relation to NBN Co's [wholesale service standards](#) and the second into [NBN wholesale pricing](#).

On wholesale standards, we already had secured some significant outcomes, including a court enforceable undertaking from NBN Co to pay rebates for failing to meet key commitments. During the year, NBN Co made product and pricing changes in response to our concerns, including a modified entry-level product. However, we remained concerned that these changes might still not promote a smooth transition of legacy consumers to the NBN.

Both inquiries were placed on hold in April 2020 to allow stakeholders to focus on responding to the COVID-19 pandemic. While the inquiries are on hold, we have released position papers on both matters to guide commercial negotiations in the context of new longer term access arrangements. As the pandemic situation eases, we will assess developments and industry views to determine whether further regulatory terms are required.

A number of work programs aimed at supporting our objectives have continued through the COVID-19 pandemic.

Our [Measuring Broadband Australia](#) (MBA) reports provide Australian consumers with accurate and independent information about broadband speeds. The MBA program addresses information asymmetry. It has led to greater performance-based competition and contributed to improving Australia's internet performance. The data obtained through the program is a vital tool in our advocacy efforts in highlighting issues of underperformance and the extent to which consumers may be paying for speeds that are not delivered.

In May 2020 we released our first [MBA monthly key indicators report](#) to provide further insights into NBN performance. These reports have been particularly beneficial during the surge in demand on the NBN with the COVID-19 pandemic requiring workers and students to switch to online methods of communication.

In addition to the information provided by the MBA, we consider that arming consumers with information about their services and rights will support our objectives for positive NBN outcomes. On the ACCC website we provide a [plain English guide to using NBN fixed wireless](#) to help consumers impacted by congestion issues on the NBN fixed wireless network. We have supplemented this with information to help consumers select an appropriate NBN service based on their usage requirements. This consumer guidance complements the [broadband speed claims industry guidance](#), which helps retail service providers to ensure that they give prospective customers clear and accurate information on the typical speeds their services provide.

Another element of supporting our objectives is ensuring compliance with relevant legislation and taking action where consumers have been misled or anti-competitive conduct has occurred. In 2019–20 we secured significant compliance outcomes for consumers in relation to NBN issues, including two key results for Optus and Telstra customers. Optus was ordered to pay \$6.4 million in penalties for making misleading disconnection claims to its customers. Optus had emailed customers warning them they had to take up Optus NBN broadband or risk losing their broadband service. Under the terms of a court enforceable undertaking to us, in November 2019 Telstra announced that it would contact customers who had been upgraded to a plan on which they were paying for speeds that their NBN connection could not provide. For more information on these outcomes, see [ACCCount, 1 October to 31 December 2009](#), page 38.

► Case study: Ensuring fair access to key wholesale communications services

Regulating access to wholesale monopoly infrastructure is crucial to supporting our long-term objectives in communications by reducing entry barriers and promoting competition and investment in downstream retail markets. During the year, we reviewed regulated access terms for key inputs into retail markets for legacy fixed-line, mobile termination and transmission services.

In November 2019 the ACCC announced its [decision to maintain existing regulated wholesale pricing for legacy fixed-line services](#), including ADSL, until 30 June 2024. This access determination provides certainty for service providers and their consumers still using these services and delivers real wholesale price reductions.

During the year we made draft determinations with significantly lower wholesale pricing for access to the mobile terminating access service (MTAS) and the domestic transmission capacity service (DTCS).

Access to the MTAS enables providers of fixed and mobile voice services to offer their customers the ability to call customers of other mobile networks. As mobile operators have a monopoly over termination on their network, regulation of the MTAS promotes competition in downstream retail markets by ensuring termination charges are cost based.

Transmission services, also known as backhaul, are high-capacity wholesale services that carry large volumes of voice, data and video traffic, often over long distances. By accessing wholesale transmission, retail providers can offer competitive services to consumers in areas where they do not own transmission infrastructure, particularly regional areas. This is vital for a range of downstream markets, including NBN residential and business markets, as well as for mobile services.

The pricing in our draft [MTAS](#) and [DTCS](#) access determinations reflects the continuing lower costs of providing these services due to more efficient technology. We intend to make final access determinations later in 2020.

Lower regulated pricing will enable service providers to use mobile termination and transmission services at efficient costs and promote competition in a range of downstream communications markets for the benefit of consumers.

Murray–Darling Basin water markets

Actions undertaken to achieve our purpose

The ACCC has compliance, enforcement and advisory roles in the water sector under the *Water Act 2007* (Cth). In these roles, we aim to promote transparency of infrastructure operator and state regulated water charges, and limit barriers to water trade in the Murray–Darling Basin.

We monitor regulated prices charged by infrastructure operators through our annual *Water monitoring report*. In 2019–20 we also monitored and enforced compliance with the Water Charge (Termination Fees) Rules 2009, the Water Charge (Infrastructure) Rules 2010, the Water (Planning and Management Information) Rules 2010 (collectively the water charge rules), and the Water Market Rules 2009.

New water charge rules commenced on 1 July 2020. To improve pricing transparency and make it easier for infrastructure operators to comply, these new rules clarify requirements and combine the water charge rules into a single set of rules. The ACCC has prepared guidance materials to help stakeholders understand the new rules.

The ACCC also enforces infrastructure operators' and water market intermediaries' compliance with the CCA, including the Australian Consumer Law (ACL). This includes prohibitions against anti-competitive conduct under the CCA, and fair trading requirements as specified in the ACL.

The ACCC is also undertaking an inquiry into Murray–Darling Basin water markets. This is discussed on page 151.

Fuel price monitoring

Actions undertaken to achieve our purpose

The ACCC's work in fuel price monitoring contributes to deliverable 3.2, as it involves monitoring highly concentrated markets of consumer concern.

As directed by the Treasurer under Part VIIA of the CCA, the ACCC monitors the prices, costs and profits relating to the supply of petroleum products in the Australian downstream petroleum industry. The latest direction, which took effect from 19 December 2019, requires the ACCC to report at least once per quarter from 1 January 2020. Our work involves monitoring and reporting on retail prices of unleaded petrol, diesel and automotive liquefied petroleum gas (LPG) in all capital cities and over 190 regional locations across Australia.

The ACCC prepares two types of reports under the direction: quarterly reports (which look at petrol price movements in the capital cities and regional locations and the factors that led to price changes over the quarter); and industry reports (which look at particular aspects of consumer interest in the fuel market in relation to prices, costs and profits). In 2019–20 we released four quarterly reports and two industry reports: a [report on petrol prices by major retailers in 2018](#) and a report analysing the [financial performance of the Australian downstream petroleum industry between 2002 and 2018](#).

The ACCC's role is to promote effective competition and inform consumers in petrol markets, so that resources are used efficiently and markets work in the interests of consumers. Our reports and other public information help to improve consumer awareness and assist motorists to navigate complex fuel markets.

In response to the COVID-19 pandemic, on 16 March 2020 the ACCC [announced](#) that it would monitor retail petrol price movements to determine whether recent falls in international crude oil and refined petrol prices were flowing through to consumers. The announcement followed a decline in international crude oil and refined petrol prices in early January 2020 and sharp falls after early March 2020. This monitoring informed our public commentary and reporting and our responses to fuel-related enquiries.

The ACCC Infocentre received around 1340 fuel-related enquiries and complaints in 2019–20. Around half of those contacts were received between March and April 2020, coinciding with the initial COVID-19 pandemic period in the second half of the financial year. We also received more than 40 items of ministerial and general correspondence and fielded numerous media requests for interviews and comment. Enquiries were received on a range of fuel-related issues, including fuel prices in metropolitan and regional locations, time lags in retail fuel price reductions, and petrol price cycles.

Other stakeholder engagement included hosting a meeting of the ACCC Fuel Consultative Committee in November 2019.

In 2019–20 the fuel-related pages on the ACCC website received 586 511 page views—a decrease of 4491 page views (less than 1 per cent) from 2018–19. Of this total, the [petrol price cycles web page](#) received 533 540 page views—a decrease of 41 535 (around 7 per cent) from 2018–19. This was the most viewed page on the ACCC website, as it was in the previous year.

National infrastructure regulation—rail, gas, grain export, airports, stevedoring and financial markets

Actions undertaken to achieve our purpose

The ACCC has regulatory responsibilities in a number of major infrastructure sectors of the economy, in addition to telecommunications and fuel. These include:

- rail
- airports, including air traffic navigation, and aviation rescue and firefighting services
- container stevedoring and international liner cargo shipping
- bulk grain export facilities
- postal services.

The ACCC also has a role in arbitrating access disputes for services that have been declared under Part IIIA of the CCA. As with the other sectors we regulate, our activities in national infrastructure regulation seek to promote effective upstream and downstream competition and the proper functioning of markets to support efficient investment in key infrastructure networks and services.

Our work in these areas contributes to deliverables 3.1 and 3.2, as it encompasses both regulation and monitoring.

During 2019–20 we completed or progressed our major projects in various infrastructure sectors. This includes releasing monitoring reports in relation to airports, grain export and stevedoring.

Advocacy in relation to the regulation of monopoly infrastructure

Our competition advice and advocacy efforts are directed at ensuring that Australian markets operate within a policy framework that facilitates competition and efficient investment in key infrastructure networks and services.

A key focus during the year was to highlight sectors where unconstrained action by monopolists is damaging efficiency, investment and competition. In particular, we are concerned about monopoly pricing by non-vertically integrated monopolies that causes inefficiency and deters investment, which both result in higher prices for users and ultimately consumers.

The current threshold test to impose regulation under Part IIIA relates to the issue of the infrastructure owner denying access. That test limits the ability of Part IIIA to apply to monopolies where excessive pricing, not denial of access, is the issue. We have raised the potential for a market power test for declaration under the National Access Regime to address this issue. We have brought this issue to the fore, including through [speeches by the Chair](#).

► Case study: Pricing for access to Port of Newcastle infrastructure

On 28 November 2019 the ACCC announced that it would apply to the Federal Court for a review of the Australian Competition Tribunal's October 2019 decision on the terms of access by Glencore Coal Assets Australia Pty Ltd (Glencore) to certain services at the Port of Newcastle.

In 2018 the ACCC arbitrated a dispute between Glencore and Port of Newcastle Operations Pty Ltd (PNO) that centred on the charge for ships entering the port to export Glencore's coal. Both parties then applied to the Tribunal for re-arbitration of the dispute. The Tribunal handed down its decision on 30 October 2019.

A significant part of the dispute is about whether the costs that PNO is allowed to recover should include costs for dredging the shipping channel that were historically funded by various users of the port. The ACCC excluded these user-funded amounts in its original arbitration and determined an access charge of \$0.61 per gross tonne. In its re-arbitration the Tribunal included the user-funded amounts and determined an access charge of \$1.01 per gross tonne. The Tribunal's decision allows PNO to recover the user-funded amounts in its access charge.

We are seeking judicial review as to whether the Tribunal erred at law when making its arbitration award. We do not consider it to be economically efficient for a service provider to be allowed to charge any user for costs of assets that have already been funded by users. We brought the proceedings due to the importance of this issue to the principles of economic efficiency and the implications for other regulatory decisions involving bottleneck infrastructure where users have contributed to the cost of enhancements.

Rail

In the rail sector, our current responsibilities include assessing and administering undertakings submitted by the Australian Rail Track Corporation (ARTC), which set out the terms of access to its Hunter Valley and interstate rail networks. ARTC's rail access undertakings are submitted voluntarily under Part IIIA of the CCA.

In 2019-20 we completed an assessment of ARTC's compliance with the Hunter Valley Access Undertaking financial model for 2016. During the year we continued to work with ARTC and stakeholders on the development of a replacement Interstate Access Undertaking. The ARTC committed to base its replacement undertaking on a valuation of its network conducted by an ACCC-appointed consultant, who is currently carrying out the valuation.

Grain export

In relation to bulk grain export facilities, our responsibilities include monitoring and assessing compliance with the Port Terminal Access (Bulk Wheat) Code of Conduct and making determinations on whether a port terminal service provider should be exempt from certain requirements under the code. During the year, in addition to our [Bulk grain ports monitoring report 2018-19](#), we completed exemption applications for:

- [T-Ports at Lucky Bay](#)
- [Riordan Grain Services at Portland](#).

Several other exemption applications are still under assessment, including from Cargill Australia Limited and Viterro Operations Pty Ltd.

Post

Following a review of Australia Post's forecast revenues and costs, and consultation with stakeholders, we [announced that we would not object](#) to proposed increases in the prices of ordinary letters. With the minister's agreement, Australia Post increased the prices of ordinary letter services delivered to its regular timetable. This includes an increase in the basic postage rate from \$1.00 to \$1.10.

Improving regulatory practices

Actions undertaken to achieve our purpose

Each year we seek to improve effectiveness in both our own and others' regulatory practices. In 2018–19 we made improvements through a range of activities, including:

- industry consultation and engagement
- engagement with sector regulators and our international counterparts
- involvement in multilateral international forums.

Consultation with industry

Fuel Consultative Committee

The [Fuel Consultative Committee](#) (FuelCC) was established in 2010 to provide an opportunity for dialogue between the ACCC, the fuel industry and motoring organisations. The information shared increases our understanding of fuel industry issues and assists us in undertaking our role on issues related to competition and consumer protection in the fuel industry.

The ACCC hosted a meeting of the FuelCC on 8 November 2019. Topics discussed at the meeting included progress on ACCC petrol monitoring reports, developments in fuel price transparency arrangements across Australia, updates on Australian refinery and terminal capital developments, and influences on recent wholesale and retail petrol price movements.

Infrastructure Consultative Committee

The [Infrastructure Consultative Committee](#) (ICC), which was established in 2006, facilitates discussions on broad issues of infrastructure and infrastructure regulation in industries such as energy, telecommunications, water, rail, ports and airports. Membership of the group consists of representatives of both infrastructure service providers and major customer groups in these sectors.

In 2019–20 the ACCC hosted meetings of the ICC on 12 November 2019 and 21 May 2020.

Advocacy on emerging markets and financial services

In 2019–20 the ACCC continued to advocate for reforms to boost competition and efficiency in key infrastructure sectors of the economy. While these efforts continue, we recognise that the COVID-19 pandemic may impact on the timeframes for progress in these sectors.

The ACCC has had continuing engagement with stakeholders to progress reform measures in electronic conveyancing. Our advocacy seeks to support decision-makers and inform stakeholders to develop the market further and consider the merit of introducing certain regulatory arrangements, including interoperability to promote market-based competition.

In 2020 the ACCC began working with both state regulators and the Council of Financial Regulators to review elements of the regulatory framework for e-conveyancing systems, with a view to promoting financial stability, resilience and competition.¹⁹ The ACCC also participated in the Interoperability Industry Panel, which is considering how interoperability could play a role in facilitating competition in the market. More discussion of our involvement in shaping the regulatory framework for e-conveyancing is on pages 69–70, in relation to strategy 1.

¹⁹ Council of Financial Regulators, 'Quarterly Statement by the Council of Financial Regulators', March 2020, www.cfr.gov.au/news/2020/mr-20-02.html.

We also have a continuing role in advocating for the Australian Securities Exchange to design its replacement to the Clearing House Electronic Subregister System (CHES) (the platform that enables cash equity trades to be cleared and settled) in a way that does not raise barriers to competition. The CHES replacement is intended to be introduced next year.

In November 2019 the Transport and Infrastructure Council agreed to develop implementation details on a package of reforms to the way in which heavy vehicles fund road infrastructure, for consultation with industry. The reforms are being developed by a cross-jurisdictional working group that includes federal, state and territory transport departments and treasuries, the ACCC and other relevant bodies.

Utility Regulators Forum

The [Utility Regulators Forum](#) is coordinated by the ACCC and comprises the ACCC and AER and state and territory and New Zealand economic and sector regulators. Its meetings are an important opportunity to share information about priorities and regulatory approaches.

We publish the forum's quarterly newsletter, [Network](#), on our website. The newsletter features updates about regulatory issues and the latest decisions.

The forum was held twice during the year, in November 2019 and in May 2020.

ACCC and AER Regulatory Conference

The annual [ACCC and AER Regulatory Conference](#) was held in Brisbane on 1-2 August 2019, on the theme of 'Economic regulation in Australia: Still fit for purpose?'. The conference brought together industry participants, policy-makers, academics and regulators from around the world to hear and discuss the latest ideas about the theory and practice of regulation.

Bilateral engagement

The ACCC engages bilaterally with a number of its international counterparts in relation to regulatory issues. We hold periodic meetings with the New Zealand Commerce Commission to discuss various matters of interest. We also engage with sectoral regulators in jurisdictions such as the United Kingdom, United States and European Union on specific matters of mutual concern.

Strategy 4: Undertaking market studies and inquiries to support competition, consumer and regulatory outcomes

Market studies and inquiries

Performance results and analysis

Role and functions

The *Competition and Consumer Act 2010* (Cth) (CCA) provides that relevant ministers may direct the ACCC to undertake market studies, inquiries and monitoring. These studies enable us to develop a sophisticated understanding of how well competition and markets are working in particular sectors and provide advice on a broader range of competition and consumer issues. The ACCC can also undertake self-initiated market studies and conduct research on matters that affect the interests of consumers.

Market studies and inquiries involve extensive investigation and analysis, including public consultation, with the aim of improving understanding of industry practices and dynamics in those sectors. We undertake market studies and inquiries and report on emerging competition issues to:

- identify market failures and how to address them
- assess the implications of emerging competition issues
- support and inform compliance and enforcement measures
- identify areas for policy consideration.

We also monitor and report on the prices and quality of particular goods and services to inform government, industry and consumers.

We publish our findings in formal reports that help to raise awareness among consumers, encourage public debate and inform policy consideration.

Priorities

The ACCC undertakes market studies, inquiries and monitoring covering a broad range of sectors as determined by ministerial direction or guided by our Compliance and Enforcement Policy priorities. The following were completed, continued or commenced in 2019–20:

- Wine Grape Market Study—completed
- Foreign Currency Conversion Services Inquiry—completed
- Customer loyalty schemes review—completed
- Gas Inquiry 2017–2025—continued
- Northern Australia Insurance Inquiry—continued
- Private health insurance industry annual report to the Senate—continued
- Electricity Market Monitoring Inquiry 2018–2025—continued
- Digital Advertising Services Inquiry—commenced
- Digital Platform Services Inquiry 2020–2025—commenced
- Murray–Darling Basin Water Markets Inquiry—commenced
- Home Loan Price Inquiry—commenced.

Performance indicators

Before 2018–19 the number of market studies and inquiries completed was included in the number of competition enforcement interventions under deliverable 1.1. From 2018–19 this became a standalone performance indicator.

Table 3.24: Performance indicator for strategy 4

Performance indicator	2016–17	2017–18	2018–19	2019–20		Met?
	Result	Result	Result	Target	Result	
Number of completed market studies and inquiries	N/A	N/A	3	3	3	✓

Analysis of performance

In 2019–20 we completed three market studies and inquiries. We also published interim reports for the other market studies and inquiries listed above that continued or commenced in 2019–20. Due to the COVID-19 pandemic, some reporting timeframes were extended or delayed to enable stakeholders affected by the pandemic to participate in the inquiry process.

The various market studies, inquiries and monitoring we undertook in 2019–20 contributed to achieving the ACCC’s purpose of making markets work for consumers by informing stakeholders and encouraging public debate, informing policy consideration and improving the way markets function through the adoption of some recommendations.

The final report of our Digital Platforms Inquiry was provided to the Treasurer on 30 June 2019 and released by the government in July 2019. The report identified a number of adverse effects associated with digital platforms and contained 23 recommendations spanning competition law, consumer protection, media regulation and privacy law, reflecting the intersection of issues arising from the growth of digital platforms. On 12 December 2019 the government committed to adopting key recommendations from the inquiry, including the establishment of a permanent Digital Platforms Branch within the ACCC.

On 10 February 2020 the Treasurer issued a ministerial direction requiring the ACCC to undertake two public inquiries into:

- markets for the supply of digital platform services
- markets for the supply of adtech services and ad agency services.

The ACCC has begun preparing the first interim report in the Digital Platform Services Inquiry. This first report will consider competition and consumer issues that arise in respect of internet search engines, social media and online private messaging.

The Digital Advertising Services Inquiry into adtech services and ad agency services has also commenced. In March 2020 we released an issues paper regarding the inquiry. A number of industry responses to that issues paper were delayed due to the COVID-19 pandemic. The ACCC is currently undertaking further targeted consultation with industry participants regarding the inquiry and is required to produce its interim report to the Treasurer by 31 December 2020.

The ACCC's Wine Grape Market Study report was released on 24 September 2019. It identified a range of possible unfair contract terms in standard form contracts offered by winemakers to wine grape growers. Following a subsequent investigation of these issues, several winemakers voluntarily changed their contract terms, resulting in fairer contracts overall. This included changes to contract terms relating to dispute resolution, wine grape quality assessment, one-sided termination rights, unilateral variations to contracts, rights to enter growers' vineyards for inspections, and overly broad confidentiality provisions that could prevent growers from seeking legal or financial advice. However, the ACCC remains concerned about the lengthy payment periods specified in grape supply agreements, which mean that growers are waiting for long periods before being paid for their grapes.

The ACCC commenced its inquiry into the Murray–Darling Basin water trading markets with the release of an issues paper in October 2019. The reporting timeline for the Murray–Darling Basin Water Markets Inquiry interim report was extended by one month to 30 June 2020. The [report](#) was provided to the Treasurer on 30 June 2020 and released on 30 July 2020.

The interim report seeks feedback on options to address problems in water markets, including in relation to regulatory oversight, trade services and information quality and availability, market architecture, and governance.

On 2 September 2019 the ACCC released the Foreign Currency Conversion Services Inquiry final report. The report recommended that a scheme be developed to facilitate continued and efficient access to banking services by non-bank international money transfer (IMT) suppliers. We also released best practice guidance on pricing and disclosure that will allow businesses to improve their practices in this area. We will continue to monitor this sector, which will lead to improved outcomes for consumers.

We provided the Treasurer with an interim report of the Home Loan Price Inquiry on 30 March 2020, and it was released on 27 April. The interim report focused on pricing issues and made a number of findings about the pricing of home loans by the big four banks. In light of the COVID-19 pandemic, including the important role of lenders in managing aspects of the COVID-19 response, the Treasurer extended the timeframe for the final report by two months to 30 November 2020 and we adapted our stakeholder engagement approach accordingly.

On 25 July 2019 the Treasurer extended the Gas Inquiry until December 2025. The inquiry is aimed at improving the transparency and efficient operation of the gas market. In light of the evolving COVID-19 situation, we noted that we delayed our mid-year report by one month and committed to carefully considering the impact on businesses from information requests and consultation.

As part of this inquiry, the ACCC contributed to providing greater transparency in the east coast gas market by:

- providing two interim reports during 2019–20

- conducting a detailed review of Part 23 of the National Gas Rules, which aims to improve market transparency and facilitate access to pipelines on reasonable terms. The review found that Part 23 is generally working as intended; however, we identified a number of enhancements and made recommendations to improve market operations
- continuing to publish the liquefied natural gas (LNG) netback price series as one of the measures to improve transparency of gas prices.

As part of the ACCC's 2018–2025 Electricity Market Monitoring Inquiry, we released two reports during 2019–20. These reports showed that consumers were benefiting from reforms to retailer pricing and advertising that came into effect on 1 July 2019. Residential bills fell by around 4 per cent compared with the previous year but were still around 20 per cent higher than a decade ago.

The electricity inquiry work, together with the ACCC's electricity-specific enforcement roles, aimed at alleviating cost of living pressures arising from electricity prices, remained a priority as the COVID-19 pandemic developed. Our work under our electricity enforcement roles is discussed in more detail on page 87.

The ACCC's Northern Australia Insurance Inquiry continued during 2019–20, with the release of two reports that identified a number of measures to assist consumers facing unaffordable insurance premiums. The inquiry is another element of our work in seeking to address cost of living pressures for Australians by improving how markets function. The inquiry considered ideas to improve the affordability and availability of insurance from Australian and overseas suppliers and to see how they can be applied in northern Australia. A third and final report is due to the Treasurer in November 2020.

Competition and consumer issues arising from customer loyalty schemes was an ACCC compliance and enforcement priority in 2019. To address this priority, we undertook a review of customer loyalty schemes. The final report was published on 3 December 2019. It recommended that loyalty schemes—such as those offered by airlines, supermarkets and hotel operators—better inform consumers, improve their data practices and stop automatically linking members' payment cards to their loyalty scheme profiles. It also called for broader changes to consumer and privacy law. While some loyalty scheme operators made changes after the review commenced and the draft report was released, we remain concerned about certain practices that a number of loyalty schemes continue to engage in.

Market studies and inquiries

Actions undertaken to achieve our purpose

Gas

Gas Inquiry extension

The objective of the ACCC's Gas Inquiry is to improve transparency and support the efficient operation of the gas market with the aim of improving competition and lowering gas prices for energy customers. On 25 July 2019 the Treasurer [extended the inquiry](#) until 2025.

Gas Inquiry interim reports

We released two Gas Inquiry interim reports during 2019–20. They set out findings about market conditions, reported key market information and identified policy responses for governments.

The reports found that the east coast gas market is likely to have sufficient supply to meet demand in 2020. Beyond 2020 the supply outlook remains uncertain, particularly in light of significant reserve downgrades in Queensland.

The southern states are at risk of facing a supply shortfall in the medium term unless there is more exploration and development in the south or new infrastructure to bring more supply to southern states. We continue to urge state and territory governments to assess individual gas development applications on a case-by-case basis to improve supply conditions.

Domestic gas prices in the east coast states have remained high despite falling LNG netback prices, with prices under recently executed contracts higher than those in the past.

The inquiry has identified concerns about access to gas pipelines in regional areas, where some pipeline operators appear to be actively discouraging access. This has prompted us to examine this behaviour to determine whether it may constitute a breach of the CCA.

Review of gas pipeline reforms

We conducted a detailed review of Part 23 of the National Gas Rules, which were introduced in 2017 to improve market transparency and facilitate access to pipelines on reasonable terms. We made recommendations to improve the quality, reliability and accessibility of the information that is reported by pipeline operators and to strengthen the negotiation process and improve overall market operations.

Liquefied natural gas netback price series

We continued to publish the [LNG netback price series](#).²⁰

Our [January 2020 interim report](#) found that the LNG netback prices have decreased since May 2019, with forward LNG netback prices for 2020 well below netback prices seen in recent years. Prices offered in the east coast gas market have remained mostly steady within a range of \$9/gigajoule (GJ) to \$12/GJ, but domestic prices remain high and there is significant uncertainty about future supplies. We will undertake further work in 2020 to investigate and understand the divergence between domestic prices and LNG netback prices.

²⁰ An LNG netback price is a measure of an export parity price that a gas supplier can expect to receive for exporting its gas. It is calculated by taking the price that could be received for LNG and subtracting, or 'netting back', the costs incurred by the supplier to convert the gas to LNG and ship it to the destination port.

Electricity

Electricity Market Monitoring Inquiry 2018–2025

The objective of the Electricity Market Monitoring Inquiry 2018–2025 is to monitor and assess the operation of the National Electricity Market (NEM)²¹, including retail prices, wholesale prices, profits and contract market liquidity. We are also examining the effects of policy changes, including those resulting from recommendations made in the ACCC's 2018 Retail Electricity Pricing Inquiry final report.

During 2019–20 we released [two reports](#) on electricity monitoring. We observed that:

- Consumers were benefiting from reforms to retailer pricing and advertising that came into effect on 1 July 2019 (the Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019 (the [Electricity Retail Code](#)), with some automatic reductions in bills and greater ease in comparing deals.
- For 2018–19, network costs continued to contribute the largest amount to consumer bills, making up 43 per cent of the average annual bill for residential customers. Wholesale costs were next (33 per cent), then retail costs (11 per cent), environmental costs (8 per cent) and retail margins (4 per cent). ACCC analysis showed that residential bills fell by around 4 per cent in 2018–19 compared with the previous year but were still around 20 per cent higher in real value than a decade ago.

We also engaged in a number of policy processes relating to electricity market reform. We made [five submissions](#) during 2019–20, including on major reforms such as the Australian Energy Market Commission's coordination of generation and transmission investment and the Energy Security Board's post-2025 market design. Detail on our electricity-specific enforcement roles is at page 87.

Digital platforms

Digital Platforms Inquiry

On 30 June 2019 the ACCC provided the final report of the Digital Platforms Inquiry to the Treasurer, and the report was released on 26 July 2019. This 18-month inquiry was carried out at the direction of the Australian Government, which asked the ACCC to conduct an inquiry into the impact of digital search engines, social media platforms and other digital content aggregation platforms on the state of competition in media and advertising services markets.

The final report of the Digital Platforms Inquiry contained 23 recommendations spanning competition law, consumer protection, media regulation and privacy law, reflecting the intersection of issues arising from the growth of digital platforms. The report is available on the [ACCC website](#).

On 12 December 2019 the Australian Government committed to adopting the key recommendations from the Digital Platforms Inquiry, including:

- establishing a permanent Digital Platforms Branch within the ACCC to, among other things:
 - monitor and report on the state of competition and consumer protection in digital platform markets
 - undertake inquiries as directed by the Treasurer, starting with the supply of online advertising and adtech services

²¹ The NEM consists of Queensland, New South Wales, Victoria, South Australia, Tasmania, and the Australian Capital Territory.

- ensuring that digital platforms develop an industry code to counter disinformation, which has become increasingly prevalent on their services
- ensuring that digital platforms develop a privacy code for digital platforms with the Office of the Information Commissioner to address the particular uses arising from data collection on these services.

In April 2020 the Australian Government also directed the ACCC to develop a mandatory code of conduct to address bargaining power imbalances between Australian news media businesses and digital platforms. The development of a code of conduct is part of the Government's response to the ACCC's Digital Platforms Inquiry final report, which identified that there is a fundamental bargaining power imbalance between Australian news businesses and each of Google and Facebook.

The government's response to the Digital Platforms Inquiry provides a roadmap for a program of work and a series of reforms to promote competition, enhance consumer protection and support a sustainable Australian media landscape in the digital age. The program of work for the ACCC being carried out through the Digital Platform Services Inquiry 2020–25 and the Digital Advertising Services Inquiry is outlined below.

Digital Platform Services Inquiry 2020–2025

On 10 February 2020 the Treasurer issued a ministerial direction requiring the ACCC to hold a public inquiry into markets for the supply of digital platform services. The ACCC is required to provide the Treasurer with an interim report by 30 September 2020, further interim reports every six months until the inquiry concludes, and a final report by 31 March 2025. There will be 10 reports in total.

Digital platform services covered by this direction include internet search engine services, social media services, online private messaging services, digital content aggregation platform services, media referral services and electronic marketplace services (both app stores and general online marketplaces). The direction also covers digital advertising services supplied by digital platform service providers and the data practices of both digital platform service providers and data brokers.

The ACCC's first interim report, due to the Treasurer on 30 September 2020, will focus in particular on:

- internet search engines (including general search services and specialised search services)
- social media
- online private messaging.

Subsequent reports will focus on different categories of digital platforms.

Digital Advertising Services Inquiry

On 10 February 2020 the Treasurer issued a ministerial direction requiring the ACCC to hold a public inquiry into markets for the supply of adtech services and ad agency services. The ACCC is required to provide an interim report to the Treasurer by 31 December 2020 and a final report by 31 August 2021.

On 10 March 2020 the ACCC released an [issues paper](#) regarding the inquiry and began consultation with relevant stakeholders.

Agriculture

Wine Grape Market Study

On 24 September 2019 the ACCC released the final report of its Wine Grape Market Study. The study examined competition, contracting practices, transparency and risk allocation issues in the wine grape supply chain.

The ACCC initiated the market study in September 2018 in response to a variety of concerns from growers relating to price transparency, risk allocation and lack of competition between wine grape buyers.

The final report made recommendations on areas including quality assessments, price transparency, payment periods, dispute resolution and unfair contract terms. The ACCC will review the industry's progress in adopting these recommendations 12 to 18 months after the release of the report.

Murray-Darling Basin Water Markets Inquiry

The ACCC is conducting an [inquiry into markets for tradeable water rights in the Murray-Darling Basin](#), as directed by the government on 8 August 2019.

Through the inquiry, the ACCC is considering options to enhance markets for tradeable water rights, including options to enhance their operations, transparency, regulation, competitiveness and efficiency.

We have undertaken widespread consultation and information gathering as part of the inquiry to date, including receiving over 130 submissions in response to the ACCC's issues paper, holding 10 public forums and issuing compulsory information requests to a range of market participants.

The inquiry's interim report was provided to the Treasurer on 30 June 2020 and released to the public on 30 July 2020. Key problems identified included the following:

- Overarching governance arrangements, which result in regulatory fragmentation and overlapping of roles of different governing bodies, contribute to many of these problems or prevent them from being addressed in an effective and timely way.
- Water market intermediaries such as brokers and water exchange platforms operate in a mostly unregulated environment, allowing conflicts of interest to arise and opportunities for transactions to be reported improperly.
- There are scant rules to guard against the emergence of conduct aimed at manipulating market prices, and there is no particular body to monitor the trading activities of market participants.
- There are information failures that limit the openness of markets and favour better resourced and professional traders who can take advantage of opportunities such as inter-valley trade/transfer openings.
- Differences in trade processes and water registries between the five Basin States prevent participants from gaining a full, timely and accurate picture of water trade, including price, supply and demand.
- Important information, such as allocation policies and river operations policy that can significantly impact water pricing, is inadequately communicated to the irrigators and traders who rely on it to make business decisions.
- There is a disconnect between the rules of the trading system and the physical characteristics of the river system. The physical characteristics are not adequately considered in the processing of trades that change the location of water use and are instead managed through some blunt and imprecise rules.
- Enforcement of the current market rules is inconsistent and limited.

In response to these issues, the ACCC is considering a number of options for improving the operation of water markets, including to:

- address insufficient regulatory oversight, and enforcement and compliance activity, in relation to some practices of market participants
- streamline trade services and improve information quality and availability
- reform market architecture so it will keep pace with increasing trade activity
- reconsider governance frameworks to enable independent and clear decisions on the development of market settings.

The ACCC is seeking feedback on the interim report from interested parties. We must submit a final report to the Treasurer by 30 November 2020.

The ACCC also has compliance, enforcement and advisory roles in the water sector under the *Water Act 2007* (Cth), which is discussed at page 137.

Financial services

Foreign Currency Conversion Services Inquiry

In early October 2018 the ACCC commenced an inquiry examining the pricing of foreign currency conversion services in Australia and evaluating whether there are impediments to effective competition in the sector. We released the *Foreign Currency Conversion Services Inquiry final report* on 2 September 2019.

The report reveals that Australian consumers are paying too much for foreign exchange (FX) services because of confusing pricing and a lack of robust competition. It highlights important competition and consumer issues affecting individuals and small businesses that use IMTs, foreign cash, travel cards, and credit cards or debit cards for transactions in foreign currencies.

The ACCC found that it can be challenging for consumers to shop around and make informed decisions about FX services. As a result, many consumers continue to use the big four banks for FX services despite the availability of much cheaper alternatives.

We found that it is difficult for consumers to compare prices for FX services because some suppliers do not disclose their total price up front. In addition, consumers pay unexpected fees for some services. Finally, complex prices can deter consumers from shopping around because of the time and effort required to do so.

The ACCC has released guidance alongside the report to help consumers shop around for FX services. For example, the guide gives tips on sending money overseas and avoiding fees when making overseas purchases online.

The report also includes best practice guidance for businesses supplying FX services, which explains how they should disclose prices to consumers. The guidance focuses on ensuring that businesses clearly disclose the full price of an FX service to consumers up front. Following a request from the Treasurer, the ACCC will be monitoring take-up of the best practice guidance.

The report found that recent competition from newer entrants is delivering better outcomes for consumers using IMTs, despite some non-bank IMT suppliers having been denied access to bank services. It recommends development of a scheme to facilitate continued and efficient access to banking services by non-bank IMT suppliers. This scheme would include addressing the due diligence requirements of the banks, including in relation to anti-money laundering and counterterrorism financing requirements.

Home Loan Price Inquiry

On 14 October 2019 the Treasurer directed the ACCC to conduct an inquiry into home loan pricing. The inquiry is investigating a number of issues including differences between advertised prices and prices actually paid, differences in the rates paid by new and existing customers, and the pricing responses by home loan suppliers following cuts by the Reserve Bank of Australia to the official cash rate.

In addition, the Home Loan Price Inquiry is considering impediments that prevent more consumers from switching to cheaper home loan suppliers. As part of this, the ACCC is considering matters such as consumer decision-making and biases, information used by consumers, and the extent to which supplier practices and strategies may contribute to consumers paying more than they need to for home loans.

An interim report, focusing on pricing issues, was provided to the Treasurer on 30 March 2020. The report made a number of findings about the pricing of home loans by the big four banks, including that:

- a lack of price transparency, particularly in relation to discretionary discounts, makes it difficult for consumers to compare home loans
- loyalty can cost existing customers—customers with new loans pay, on average, significantly less for home loans than customers with existing loans. This highlights the importance of shopping around
- maintaining profits was a major consideration for the big four banks as they weighed whether to reduce mortgage rates in line with Reserve Bank of Australia cash rate cuts during 2019
- community expectations and competitive positioning were also considerations when making headline variable rate decisions
- cuts to headline variable rates for the big four banks were smaller than the reduction in funding costs over 2018 and 2019.

A final report, which will consider barriers to consumers switching to alternative home loan suppliers, is due by 30 November 2020.

Other inquiries, studies and research

Northern Australia Insurance Inquiry

On 25 May 2017 the Australian Government directed the ACCC to conduct a wide-ranging inquiry into the supply of residential building (home), contents and strata insurance in northern Australia. The Northern Australia Insurance Inquiry aimed to address concerns about insurance availability and affordability, promote more informed and more competitive insurance markets, and make a difference for consumers in northern Australia.

During 2019–20 we released the [second interim report](#) of the inquiry. The report detailed how home, contents and strata insurance is becoming increasingly unaffordable in northern Australia, where the rate of households going without insurance is almost double that in the rest of the country.

The report considered market interventions that could help consumers. While these measures all face challenges and would require significant public funds, they may also lead to reduced government spending in future on post-disaster relief to non-insured households.

During the year, we also published [an update](#) finalising the 13 draft recommendations set out in the December 2018 report aimed at boosting price transparency and consumer choice in northern Australia.

In preparing the third and final report to the Treasurer in late 2020 we will be examining further measures to improve insurance affordability and availability.

Private health insurance report

On 28 February 2020 the ACCC's [Private health insurance report 2018-19](#) was tabled in the Senate. The report was published on our website on 2 March 2020. It analyses key competition and consumer developments and trends in the private health insurance industry that have affected consumers' health cover and out-of-pocket expenses during the reporting period.

The report for the 2018-19 period identified a number of key industry developments and trends, including that, for the first time, the majority of hospital treatment policies held contained exclusions. The report also identified potential issues regarding the use of consumer data in the sector, similar to those detailed in the ACCC's Digital Platforms Inquiry and customer loyalty schemes review final reports.

Customer loyalty schemes review

Consumer and competition issues arising from customer loyalty schemes was a compliance and enforcement priority for the ACCC in 2019.

In February 2019 the ACCC commenced a review of consumer-facing customer loyalty schemes. The review focused on the major customer loyalty schemes available in Australia, such as those offered by airlines, supermarkets and hotel operators. Its objective was for the ACCC to gain a better understanding of how customer loyalty schemes operate; how they collect, use and disclose consumer data; and their terms and conditions.

The ACCC considered competition and consumer issues associated with participation in loyalty schemes, including:

- whether consumers are properly informed of the use and trading of their personal information
- whether consumers receive the benefits touted by many of these programs, and the extent of restrictions associated with redeeming rewards
- the impact of consumer loyalty on competing firms, particularly new entrants to the market
- new and emerging practices relating to customer loyalty schemes.

As part of the review, the ACCC commissioned [a report](#) from industry expert Loyalty & Reward Co, to help inform our analysis of customer loyalty schemes.

We released a [draft report](#) for consultation from 5 September to 3 October 2019. The report included draft recommendations which called on loyalty schemes to improve how they:

- provide consumers with information on their handling of consumer data
- provide consumers with meaningful control over their data
- communicate with their members.

The draft report also noted findings similar to issues identified in the Digital Platforms Inquiry (see pages 149-150) and included the following additional draft recommendations repeating ACCC calls for changes to the law to protect consumers:

- that the Australian Consumer Law be amended to prohibit unfair contract terms and introduce a prohibition against certain unfair trading practices
- that there be broader reform of Australian privacy law.

Twenty-eight responses to the draft report were [published](#) on the ACCC website (responses were treated as public and published unless confidentiality was claimed). We contacted major loyalty scheme operators as part of our consultation process and noted that some schemes made changes during the course of the review or announced changes after the release of our draft report.

As part of the consultation, the ACCC also prepared a brief [guide to the draft report](#) for consumers.

The [Customer loyalty schemes final report](#) was published on 3 December 2019. It was based on analysis of information voluntarily provided by loyalty scheme operators and consumers, research, and consultation and written submissions in response to the draft report.

The final report identified a range of concerns about the practices of loyalty scheme operators. These practices have the potential to cause widespread consumer detriment, including in relation to the disclosure of certain data-handling practices and terms and conditions that can prevent consumers making informed choices.

To address these concerns, the report made three recommendations for loyalty scheme operators:

- Customer loyalty schemes should improve how they communicate with their customers. Central to this recommendation is that loyalty scheme operators need to review their approach to presenting terms and conditions and ensure changes are fair and customers are adequately notified of them.
- Consistent with the recommendations of the Digital Platforms Inquiry final report, the Australian Consumer Law should be amended so that unfair contract terms are prohibited (and not just voidable) and to include a prohibition against certain unfair trading practices.
- Customer loyalty scheme operators should end the practice of automatically linking members' payment cards to their loyalty scheme profile. The report specifically states that Coles, Flybuys and Woolworths Group should end the practice of automatically linking customers' payment cards to their loyalty scheme profile to track their purchasing behaviour and transaction activities when they do not scan their loyalty card.



Program 1.2 Australian Energy Regulator

Strategy 5: Promote efficient investment in, operation of, and use of energy services

Promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers with respect to price, quality, safety, reliability and security

Performance results and analysis

Role and functions

The Australian Energy Regulator (AER) delivers strategy 5. The AER's program and priorities are guided by the objectives of the national energy legislation and rules. The common objective in the legislation and rules is to promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of end users of energy with respect to price, quality, safety, reliability and security.

The AER works across the energy supply chain to drive effective competition where it is feasible; and to provide effective regulation where it is not feasible largely because of the natural infrastructure monopoly of electricity transmission and distribution networks and gas pipelines.

Through our various regulatory, monitoring, compliance and enforcement responsibilities, our overall role is to drive the efficient delivery of energy supplies and services in a way that promotes positive price and reliability outcomes for consumers, as well as consumer confidence and trust.

The AER regulates energy businesses, equips consumers to make better choices and protects those who are unable to look after their own interests.

While the AER operates in the interests of current consumers, it also uses its expertise to inform debate about Australia's energy future, the long-term interests of consumers and the regulatory landscape.

In 2019–20 the AER regulated energy markets and networks in eastern and southern Australia, as well as networks in the Northern Territory.

The AER monitors the retail and wholesale energy markets and implements energy market reforms. Our achievements in these areas of responsibility are detailed against our strategic deliverables below.

Priorities

The AER identified the following specific priorities for 2019–20 in support of strategy 5:

Deliverable 5.1	Drive effective competition where it is feasible
Deliverable 5.2	Provide effective regulation where competition is not feasible
Deliverable 5.3	Equip consumers to participate effectively, and protect those who are unable to safeguard their own interests
Deliverable 5.4	Use our expertise to inform debate about Australia's energy future, the long-term interests of consumers and the regulatory landscape
Deliverable 5.5	Take a long-term perspective while also considering the impact on consumers today

Powers

The AER applies the following laws, regulations and rules, which together make up the national energy legislation and rules:

- National Electricity Law
- National Electricity Regulations
- National Electricity Rules (NER)
- National Energy Retail Law (Retail Law)
- National Energy Retail Regulations
- National Energy Retail Rules
- National Gas Law
- National Gas Regulations
- National Gas Rules.

The AER also assists the ACCC with energy-related issues arising under the *Competition and Consumer Act 2010* (Cth) (CCA), including enforcement and mergers.

Performance indicators

Deliverable 5.1: Drive effective competition where it is feasible

We empower consumers, look for opportunities to open up markets to competition, and shine a spotlight on the effectiveness of wholesale market competition, so that bills are as low as can be.

The AER is responsible for monitoring and enforcement in wholesale electricity and gas markets in all jurisdictions except Western Australia and the Northern Territory. We have regulatory responsibility for the National Electricity Market (NEM), which is a spot market in eastern and southern Australia; spot markets for gas in Adelaide, Sydney, Brisbane and Victoria; and gas supply hubs at Wallumbilla (Queensland) and Moomba (South Australia).

Table 3.25: Performance indicators for deliverable 5.1

Performance indicator	2016-17	2017-18	2018-19	2019-20		Met?
	Result	Result	Result	Target	Result	
Number of annual reports on compliance in, and performance of, retail energy markets	2	2	2	2	2	✓
Percentage of retail authorisation applications to sell energy assessed within 12 weeks of receiving all relevant information	100%	71%	33%	100%	50%#	✗
Percentage of individual exemption applications to sell energy assessed within 12 weeks of receiving all relevant information	89% (9 exemptions)	93% (13 exemptions)	10% (10 exemptions)	100%	50% (14* exemptions)	✗
Number of targeted reviews of compliance with the national energy rules	N/A— new indicator	N/A— new indicator	N/A— new indicator	4	3	○
Percentage of reports on wholesale electricity market high price events and significant price variations in spot gas markets activity published within statutory timeframes	N/A— new indicator	N/A— new indicator	N/A— new indicator	100%	100%	✓
Initiate compliance audits under the Retail Law targeting annual compliance and enforcement priority areas^	N/A— new indicator	N/A— new indicator	N/A— new indicator	6	10	✓
Publish quarterly data on the retail energy market	N/A— new indicator	N/A— new indicator	N/A— new indicator	4	4	✓
Percentage of weekly reports published within 12 business days of the end of the relevant week (transitioning to quarterly reports in early 2020)	N/A— new indicator	N/A— new indicator	N/A— new indicator	75%	89%	✓
Number of updates on effective competition in the wholesale electricity market for the biennial report	N/A— new indicator	N/A— new indicator	N/A— new indicator	4	3**	○

Notes: # We assessed 22 applications, which is a significant increase on the six to 14 assessed annually over the previous four years.
 * We assessed 14 applications, and in prior years we assessed between nine and 13 per annum.
 ^ The description of this indicator has been revised from that in the ACCC and AER Corporate Plan 2019-20 to provide clarity.
 ** The AER began the process in the third quarter of 2019, so only three quarterly reports were published before the end of the financial year—September, December and March. The June report was published around the end of July 2020.

Deliverable 5.2: Provide effective regulation where competition is not feasible

We drive network businesses, through our 'reset' processes and continuing oversight, to deliver good long-term outcomes for consumers in terms of price, quality, safety, reliability and security of supply, and we encourage innovation.

Table 3.26: Performance indicators for deliverable 5.2

Performance indicator	2016-17	2017-18	2018-19	2019-20		Met?
	Result	Result	Result	Target	Result	
Number of completed revenue decisions for electricity networks and gas pipelines	3	8	7	5	5	✓
Percentage of revenue reset determinations for electricity networks and gas pipelines completed within statutory timeframes [#]	67%	80%	100%	100%	0%*	✗
Number of annual benchmarking reports on electricity networks	2	2	2	1	2	✓
Percentage of disputes resolved within legislated timeframes, including on network connections, and regulatory investment tests [^]	N/A	100% (1 dispute)	100% (2 disputes)	100%	zero disputes**	✓
Number of electricity distribution annual pricing (tariff) proposals and annual gas tariff variations approved	N/A	27	24	22	21 ^{^^}	○
(14 electricity and 8 gas)						

Notes: [#] Before 2019-20 this measure also included revenue reset determinations for distribution networks.
^{*} The AER decided to delay five decisions after consultation with stakeholders to allow the AER to use updated economic data that incorporated the impact of COVID-19.
[^] Before 2019-20 this measure included network access.
^{**} No disputes were received in 2019-20.
^{^^} Ergon Energy electricity pricing proposal was approved by 30 June and published on 1 July 2020 and therefore outside 2019-20.

Deliverable 5.3: Equip consumers to participate effectively, and protect those who are unable to safeguard their own interests

We give consumers confidence that individual energy businesses are operating properly, address non-compliance, help consumers make the best choice for their circumstances, and work to protect households in vulnerable situations.

Table 3.27: Performance indicators for deliverable 5.3

Performance indicator	2016-17	2017-18	2018-19	2019-20		Met?
	Result	Result	Result	Target	Result	
Respond to contacts from the public through the AER Contact Centre within 10 business days	N/A— new indicator	N/A— new indicator	N/A— new indicator	90%	95.5%	✓
Percentage of offers published on the AER's Energy Made Easy price comparator website within two business days of receipt from retailers	100%	100%	100%	100%	100%	✓
Support the timely transfer of affected customers in the event of a retailer failure within statutory timeframes [#] (externally driven)	1 electricity RoLR* event (Urth Energy)	0	2 RoLRs (but no customer transfers)	N/A	0 [^]	●
Percentage of new and amended retailer hardship policies assessed within 12 weeks of receiving all relevant information	67%	80%	33.3%	100%	100%	✓
Annual review of compliance framework against market developments to evaluate effectiveness of consumer protections	N/A— new indicator	N/A— new indicator	N/A— new indicator	1	1	✓

Notes: [#] Indicator updated from that in the ACCC and AER Corporate Plan 2019-20 to include reference to statutory timeframes.
^{*} Retailer of Last Resort.
[^] No RoLR event occurred in 2019-20.

Deliverable 5.4: Use our expertise to inform debate about Australia's energy future, the long-term interests of consumers and the regulatory landscape

We provide an independent, expert view of energy markets to policy-makers. We also assess industry performance and work with governments, market bodies and other regulators on emerging issues.

Table 3.28: Performance indicators for deliverable 5.4

Performance indicator	2016-17	2017-18	2018-19	2019-20		Met?
	Result	Result	Result	Target	Result	
Publish the <i>State of the energy market</i> report	1	0	1	1	1 [#]	✓
Update the <i>State of the energy market</i> report data every six months	N/A— new indicator	N/A— new indicator	N/A— new indicator	1	1	✓

Note: [#] Released on 1 July 2020.

Deliverable 5.5: Take a long-term perspective while also considering the impact on consumers today

We make decisions considering the future, with the aim to foster confidence among households and businesses that the energy system is working well. We strive to be an authoritative and trusted source of information about energy markets.

This deliverable is met through projects that are not readily quantifiable. Further information about our work relevant to this deliverable is in the [ACCC and AER Corporate Plan 2019-20](#).

Analysis of performance

The COVID-19 pandemic is having a significant effect on the energy market. Social distancing measures resulted in job losses and self-isolation, meaning that more people are at home using more energy and fewer people have sufficient income to pay their energy bills. Many small businesses with restricted operations are using less energy than usual.

The AER responded by reprioritising its work and shifting its focus towards protecting and supporting small businesses and residential consumers through the pandemic. The AER's Statement of Expectations of energy businesses called on energy providers to go above and beyond their usual levels of service to support their consumers. The AER also undertook additional market monitoring and reporting to monitor the impact of the COVID-19 pandemic on consumers and energy businesses and proposed a rule change to support the economic impact on the energy supply chain. The proposed rule change to the NER was to provide support to electricity retailers by allowing them to defer payment of network charges by up to six months in respect of hardship customers or customers on deferred payment plans as a result of the COVID-19 pandemic.

The pandemic resulted in the AER adjusting timeframes in relation to its regulatory decisions. Following consultation with stakeholders, the AER decided to delay the release of the 2020-2025 network revenue determinations from 30 April 2020 to 5 June 2020 so it could incorporate the Reserve Bank of Australia's short-term inflation forecasts released on 8 May 2020. The AER delay in network determinations resulted in delays in revised retail prices that were scheduled for 1 July 2020. The AER worked closely with network businesses to minimise delays in the issue of retail prices.

The focus of the AER compliance work was to ensure that customers received the level of support they required and were entitled to. During this reporting period the AER instituted eight civil proceedings against six energy businesses and secured enforceable undertakings from three energy businesses. In addition, six businesses paid a total of \$500 000 in infringement notice penalties. The AER also undertook three targeted compliance reviews and initiated 10 compliance audits under the Retail Law, National Electricity Law and National Gas Law and the related Rules.

The annual benchmarking reports included consideration of the characteristics of each network business with comparisons in productivity and consumer outputs. Longitudinal data sets will contribute to our future assessments on the long-term benefits for consumers.

In 2019–20 the AER began releasing regular quarterly data on the retail energy market to provide more timely insights to the wholesale market and to complement the biennial effective competition report, which is scheduled for release at the end of 2020. The data showed that wholesale electricity prices across the NEM fell to their lowest first quarter level since 2015 and gas prices continue on the downward path established in 2019. The AER expects lower prices for households and businesses in the coming year.

In the 2019–20 financial year the AER published six high price event reports in the electricity market and none in spot gas markets. This is consistent with previous years. The AER reports on these events were published in line with statutory requirements and timeframes. There was a minimal delay in the release of the *State of the energy market* report (which was published on 1 July 2020) to include data from the delayed 2020–25 network revenue determinations in the analysis.

The AER continued to report on the retail market, including a first glimpse of the impact of the Default Market Offer (DMO), through quarterly reports and an annual report. Between July 2019 and January 2020 standing offer prices for residential consumers fell by 11–13 per cent in New South Wales, 12 per cent in South Australia and 10 per cent in south-east Queensland.

The AER assessed 22 retail authorisation applications and 14 individual exemption applications to sell energy. The AER has a responsibility to protect customers under the Retail Law and requires any entity selling energy to customers for use at premises to hold a retailer authorisation or have a retail exemption.

During the reporting period the AER added new features to its Energy Made Easy price comparator website. Among the new features are translation into over 30 languages, the ability to factor solar tariffs into plans, and easier ways to upload bills for comparison. The Energy Made Easy website had 2 835 980 visits by 1 671 363 users in 2019–20.

Drive effective competition where it is feasible

The AER is responsible for driving effective competition where it is feasible and acts to:

- increase competitive pressures by empowering consumers to choose the products, services and suppliers they want
- look for opportunities to open up markets to competition—the AER does not assume all network services must stay as regulated monopolies
- shine a spotlight on the effectiveness of competition in the wholesale market and enforce compliance with the rules so that bills are as low as can be.

Actions undertaken to achieve our purpose

Deliverable 5.1: Drive effective competition where it is feasible

The AER took a number of actions to drive effective competition and provide benefits to the consumer where feasible, including:

- publishing four quarterly retail and three wholesale reports, one affordability report and one annual retail report to provide market transparency and identify areas where the AER may need to act quickly
- monitoring compliance with ring fencing requirements to prevent market monopolies and granting waivers where appropriate so that distributors do not provide advantage to affiliates operating in contestable markets.

Performance reporting

To support the delivery of affordable and reliable energy for Australian consumers, the AER monitors and reports on the performance of the national wholesale and retail electricity and gas markets.

The AER [annual retail market reports](#) and [quarterly performance updates](#) provide insights on and transparency of price and behaviour.

This reporting period the AER began to publish [quarterly wholesale reports](#) to bridge the gap between the [weekly reports](#), [high price event reports](#) and longer term performance reports. These reports identify significant trends in the electricity and gas wholesale markets and facilitate independent evaluation of market developments. Since the first quarter of 2020 the AER has also reported on outcomes and trends in ancillary services markets.

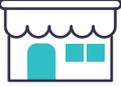
The AER publishes data collected from energy retailers on a range of indicators, including consumer numbers, contract types, complaints, energy debt, payment plans, hardship programs, disconnections and reconnections. The AER publishes this data, as well as information relating to energy affordability, on a quarterly and annual basis. Following the release of the initial Statement of Expectations of energy businesses in March 2020, the AER requested that retailers supply additional data to provide visibility of the effect of the COVID-19 pandemic on the retail energy market, including any special arrangements, such as deferred payments, being introduced by retailers to assist their consumers.

The collection and analysis of retailer performance data assists the AER to act quickly to support consumers and the market. Retail performance data provides a high level of transparency of how retailers meet their consumer obligations and informs the development of retail policy.

As detailed above, the annual [State of the energy market](#) report provides independent and reliable information on Australia's wholesale electricity and gas markets, the transmission and distribution networks and the rapidly evolving retail sector. The biennial [Wholesale electricity market performance report](#) looks at the effectiveness of competition and the efficient operation of the electricity markets.

These reports play an essential role by providing a trusted source of market information and identifying when markets are not performing effectively.

Figure 3.2: Performance reporting (wholesale and retail)

	EVENT DRIVEN	WEEKLY	QUARTERLY	BIANNUAL	ANNUAL	BIENNIAL
 WHOLESALE ELECTRICITY	\$5000 spot price reports (6) FCAS \$5000 reports (1)	Electricity weekly (52)	FCAS price reports (3)			Effective competition monitoring (2020 Focus)
 WHOLESALE GAS	Significant price variations report (0)	Gas weekly (52)	Quarterly gas and electricity wholesale markets report (3)			
 RETAIL			Retail performance data (4)		Retail Performance (1) Retail Affordability (1)	
 INDUSTRY WIDE				State of the energy market data update (2)	State of the energy market (1 full report)	

Ring-fencing

The AER's Electricity Distribution Ring-fencing Guideline places clear obligations on distributors not to cross-subsidise or provide a discriminatory advantage to affiliates operating in contestable markets. Ring-fencing aims to promote a level, efficient and competitive energy market that empowers consumers through choice. The guideline requires distribution network service providers (DNSPs) to prepare annual compliance reports, accompanied by an assessment of compliance by an independent auditor.

On 31 October 2019 the AER received compliance reports and independent assessor reports for DNSP compliance covering the 2018–19 regulatory year (except Victorian DNSPs, which report separately on a calendar year basis). In March 2020 the AER released its second [Electricity distribution ring-fencing annual report](#), highlighting aspects of DNSP compliance with the Electricity Distribution Ring-fencing Guideline and reflecting an overall improvement in ring-fencing compliance and a corresponding improvement in consumer outcomes. DNSPs (with the exception of those in Victoria) will report on compliance against the ring-fencing guideline for the 2019–20 period in October 2020.

The AER will strengthen the effectiveness and transparency of the ring-fencing framework through a review of the Electricity Distribution Ring-fencing Guideline. The AER is consulting with stakeholders on a range of updates to the guideline that are aimed at resolving ambiguities, making compliance clearer and easier to achieve, and simplifying some ring-fencing requirements. The AER will also review requirements for compliance reporting to strengthen the role of annual independent assessments of the effectiveness of the ring-fencing framework.

The AER fosters innovation by working collaboratively with distributors, providing guidance or granting waivers to undertake innovative projects where appropriate. In 2019–20 the AER granted three ring-fencing waivers. The AER has recently supported the [proposal by the Australian Energy Market Commission](#) (AEMC) to waive parts of the energy rules to support innovative trials and develop a 'sandbox' waiver mechanism through a guideline. In preparing the AER submissions to the AEMC on sandboxing waivers, the AER drew on lessons from the ring-fencing waiver process. The AER anticipates dynamic interactions between ring-fencing and sandboxing waivers in the future.

Provide effective regulation where competition is not feasible

The AER is responsible for providing effective regulation where competition is not feasible and acts to:

- drive the network businesses, through the 'reset' processes and continuing oversight, to deliver good long-term outcomes for consumers in terms of price, quality, safety, reliability and security of supply
- encourage and enable innovation by network businesses and show the same spirit of innovation in its own work
- use insight and expertise to improve the ways networks are regulated, by both developing AER approaches and proposing changes to rules and policies.

Actions undertaken to achieve AER purpose

Deliverable 5.2: Provide effective regulation where competition is not feasible

The AER took the following actions to provide effective regulation where competition is not feasible:

- We approved five revenue determinations for electricity and gas networks that will deliver efficient prices, quality, safety, reliability and security of supply to consumers and also approved tariff structure statements for a number of electricity distributors to ensure accountability.
- We undertook and approved the regulatory investment tests for the South Australia to New South Wales and Queensland to New South Wales interconnectors, ensuring the best economic outcomes were achieved.
- We assisted in the implementation of gas market reforms that resulted in lower prices for consumers when they use their appliances at home, and enhanced our regulation of gas businesses subject to light regulation and non-scheme gas pipelines, helping to facilitate negotiation with service providers and drive competition (see comments in our compliance and enforcement priorities section on page 174).
- We commenced a review of our treatment of inflation in regulatory determinations to derive the best method to estimate inflation to help us accurately understand future impacts on consumers and stakeholders.
- We developed the AER's first Value of Customer of Reliability (VCR), which sets out how much consumers are willing to pay for unplanned outages of up to 12 hours in duration and will inform network planning.

Network resets

The AER requires network businesses to submit periodically—usually every five years—regulatory proposals (for electricity networks) and access arrangement proposals (for gas pipelines) for review.

The AER's role is to assess proposals against criteria set out in the gas and electricity rules and laws while accounting for issues raised in consultation. The AER does this with the view to ensuring networks have enough money to provide safe and reliable energy and that consumers pay as little as possible. Network businesses may apply to the Federal Court for judicial review of our decisions. For more information on the final determinations and the process, see the [Determinations and access arrangements](#) web page on the AER website.

In the reporting period the AER published final decisions for five electricity and gas networks.

Table 3.29: AER energy network decisions completed in 2019–20

Network	Region	Period covered	Revenue proposed by business (\$ nominal)	Revenue allowed by AER (\$ nominal)	Difference between allowed and proposed revenues (%)	Allowed revenue in previous determination (\$ nominal)
SA Power Networks	SA	1 July 2020–30 June 2025	\$4 214 million	\$3 914.2 million	-7.1 %	\$3 837.5 million
Energex	Qld	1 July 2020–30 June 2025	\$6 541 million	\$6 009.6 million	-8.1%	\$6 599.9 million
Ergon Energy	Qld	1 July 2020–30 June 2025	\$6 516 million	\$5 925.9 million	-9.1%	\$6 295.4 million
Directlink	Qld/ NSW	1 July 2020–30 June 2025	\$89.8 million	\$77.3 million	-13.9%	\$68.7 million
Jemena Gas Networks	NSW	1 July 2020–30 June 2025	\$2 343.3 million	\$2 175.9 million	-7.1%	\$2 246.6 million

In addition to making these final revenue determinations, the AER is progressing regulatory reviews for the five Victorian electricity distribution businesses. The Victorian electricity distributors submitted regulatory proposals for review on 31 January 2020. The AER draft decisions on these determinations are expected to be published by the end of September 2020.

The Consumer Challenge Panel (CCP) contributes to the AER decision-making process by providing advice on whether proposals are in the long-term interests of consumers. The CCP also considers the effectiveness of network businesses' customer engagement activities and how this is reflected in the development of their proposals. For further detail concerning the operations of the CCP, see the [Consumer Challenge Panel](#) web page on the AER website.

In 2019–20 CCP sub-panels provided the AER with advice on a total of nine network regulatory determinations, of which four were completed in 2019–20.

Tariff structure statements

In 2019–20 the AER approved the tariff structure statements for Energex, Ergon Energy and SA Power Networks. These AER approvals progressed the network pricing objective to ensure the tariff charges to retailers reflect the cost of the service provided to their customers. The AER's involvement in the Distributed Energy Integration Program supported the work of various taskforces exploring issues such as access and pricing arrangements and the emergence of electric vehicles.

Regulatory test for the South Australia to New South Wales interconnector

In January 2020 the AER approved ElectraNet's energy transformation regulatory investment test for transmission (RIT-T) for the new interconnector from South Australia to New South Wales.

The RIT-T is a cost benefit analysis that transmission businesses apply before making network investments in excess of \$6 million. The purpose of the RIT-T is to identify the network or non-network investment option that addresses an identified need with the highest net economic benefits across the NEM. This promotes efficient investment decisions and helps ensure that consumers pay no more than necessary for electricity network infrastructure.

The preferred investment option as identified by ElectraNet through the RIT-T process is a new 330 kV transmission interconnector between Robertstown in South Australia and Wagga Wagga in New South Wales. This is expected to be completed between 2022 and 2024. The AER expects the project will provide net benefits to the participants in the NEM because it will:

- reduce the cost of providing secure and reliable electricity in South Australia
- facilitate the long-term transition of the energy sector across the NEM to low-emissions energy sources
- enhance system security in South Australia.

Regulatory test for the Queensland to New South Wales interconnector upgrade

In March 2020 the AER [approved the RIT-T](#) for the proposed upgrade to the Queensland to New South Wales interconnector. The AER completed its review of the RIT-T in three months—approximately half the statutory allowed time. The preferred investment option as identified by TransGrid in the RIT-T will increase indicative network interconnection capacity to 690 MW northwards and 1120 MW southwards and is expected to be completed by September 2021. The AER expects the project will provide net benefits to the participants in the NEM because it will:

- reduce the need for new generation and large-scale storage in New South Wales to meet demand following the closure of the Liddell power station
- reduce generator fuel costs to meet demand in the NEM
- avoid capital costs associated with the integration of renewables in the NEM.

Queensland to New South Wales interconnector upgrade contingent project

Contingent projects are significant network augmentation projects that may arise during a regulatory control period but where the need and or timing of the project is uncertain. Subject to the occurrence of defined trigger events, network service providers may apply to the AER to amend their revenue determinations to include the incremental revenue required to deliver these projects.

TransGrid applied to the AER to amend its revenue determination to account for delivery of the Queensland to New South Wales interconnector upgrade project within the current regulatory control period. In April 2020 the AER [determined](#) that TransGrid can recover the efficient costs of upgrading the interconnector from consumers.

The efficient capital cost of delivering the preferred investment option for this project identified through the RIT-T is estimated to be \$218 million. The AER's decision will allow TransGrid to recover additional revenue of \$28.2 million from energy customers in 2021–22 and 2022–23 to account for the efficient costs of delivering the upgrade. The AER fast-tracked its consideration of TransGrid's proposed investment to support the timely completion of this significant project.

This reduced the timeframe for regulatory approval by around three months, which will assist TransGrid in delivering the expanded interconnector capacity prior to the expected closure of the Liddell power station.

Review of inflation

Following stakeholder feedback, in April 2020 the AER initiated a review of the treatment of inflation in the regulatory framework, including the method likely to result in the best estimate of expected inflation. The AER applies this best estimate model in its regulatory determinations for electricity and gas networks to derive the real rate of return that service providers receive. The AER approach to choosing the best estimate of expected inflation has a direct and potentially material impact on returns to service providers and how much consumers pay for electricity and gas services.

As this decision could impact consumer prices, in June 2020 the AER appointed a Consumer Reference Group for the Inflation Review 2020. The group of eight members and their wealth of experience across consumer advocacy, economics, finance, and regulatory decision-making represent the perspectives and interests of consumers in these critical review processes.

For more information on the 2020 Inflation Review see the project [web page](#) on the AER website.

► Case study: Valuing reliable electricity supply and costing severe outages

The AER's [VCRs](#) are intended to reflect the value different types of customers place on a reliable electricity supply under different conditions. They are primarily used in network planning.

This is the largest VCR study ever conducted in Australia, with over 9000 residential, small business and industrial energy customers completing the survey.

Given that investment costs form a significant portion of customer bills, the VCRs help energy businesses to identify the right level of investment to deliver reliable services to customers.

The AER is required to conduct a review of the VCRs at least every five years for the NEM and the Northern Territory. As part of the review it must develop a methodology and publish the VCRs. On 18 December 2019 the AER released the [final report on its first VCR review](#), setting out the VCRs relating to unplanned outages of up to 12 hours in duration (that is, standard outages).

The last review of VCRs was undertaken in 2014 by the Australian Energy Market Operator (AEMO). The AER review updates the methodology AEMO employed to determine VCRs, to take account of changes in the NEM since 2014.

The AER review found:

- in general, the VCRs are similar between the 2014 and 2019 VCR studies
- business customer VCRs continue to be higher than residential customer VCRs
- residential customers have a preference to avoid longer outages and outages at peak times (defined as 7 am to 10 am and 5 pm to 8 pm)
- residential VCRs are lower in 2019 than in 2014, with the exception of customers in suburban Adelaide
- the 2019 VCRs are lower than the 2014 VCRs for agricultural and commercial customers and higher for industrial customers
- overall, the 2019 NEM-wide VCRs are higher than in 2014. This increase is primarily driven by industrial customers, who consume a significant proportion of total energy.

Our VCR reflects value customers place on reliable electricity supply. It is an important input into regulatory and network investment decision-making to ensure consumers pay no more than necessary for safe and secure energy.

Equip consumers to participate effectively, and protect those who are unable to safeguard their own interests

The AER is responsible for equipping consumers to participate effectively, and protect those who are unable to safeguard their own interests and acts to:

- give consumers confidence that individual energy businesses are operating properly and that they will be protected if things go wrong. The AER takes action against businesses that do not play by the rules, to address non-compliance and improve future behaviour
- encourage consumers to engage in the market and assist them to make the best choice for their circumstances
- help consumers to play a growing role as participants, not just recipients, in the energy system
- protect households in vulnerable situations, focusing on those who are less able to help themselves and/or might suffer more harm as a result of vulnerability.

Actions undertaken to achieve our purpose

Deliverable 5.3: Equip consumers to participate effectively, and protect those who are unable to safeguard their own interests

The AER took a number of actions to equip consumers to participate effectively in energy markets and to protect those who are less able to help themselves:

- We established our first compliance and enforcement priorities to inform where the AER will target its efforts.
- We protected vulnerable consumers by implementing new protections that ensure consumers in financial difficulty received better levels of assistance from their provider.
- We improved retailer transparency and gave consumers the power of comparison and choice through enhancing our price comparator website, Energy Made Easy. This included improved design and search functionality, as well as a dynamic language translation feature.
- We supported consumers through the COVID-19 pandemic by issuing our Statement of Expectations outlining our expectations of energy providers during the pandemic.
- We commissioned work on customer vulnerability to better understand how to deliver regulatory responses to vulnerable consumers.
- We proposed a number of rule changes to improve the operation of energy markets and provide more efficient outcomes for consumers.
- We emphasised the provision of accurate information to AEMO and the AER to help improve consumer confidence, planning and regulatory responses and undertook civil proceedings against a number of businesses for their failure to do so.
- We set DMO prices in New South Wales, south-east Queensland and South Australia to reduce bills for consumers who are less engaged with their energy purchases.

Compliance and enforcement priorities

In 2019–20, for the first time, the AER set out five [compliance and enforcement priorities](#).

The AER priorities outline its approach to promoting compliance with obligations under the National Electricity Law, National Gas Law and Retail Law and the respective rules and regulations. The compliance and enforcement priorities also provide guidance on how the AER responds to potential breaches and the factors it may have regard to when deciding whether to take enforcement action.

Our compliance and enforcement priorities for 2019–20 were:

1. ensuring that customers in financial difficulty receive the required assistance, with a focus on the new hardship guidelines
2. ensuring that customers using life support equipment are protected, with a focus on the new life support rules
3. the provision of accurate and timely information:
 - to AEMO, which is critical to ensuring power system security and/or the efficient outcomes in or effective operation of wholesale energy markets, and
 - to the AER, which is critical to the performance of the AER's economic or market monitoring functions
4. supporting the transition to metering contestability to ensure consumer and market benefits are delivered
5. implementing capacity trading markets under the East Coast Gas Reforms and improving gas market transparency through the strengthening of the Gas Bulletin Board.

Assisting customers in financial difficulty

People who are having trouble paying their energy bills have a right to protection under national energy laws. The AER prioritised this in its compliance and enforcement work, instituting civil proceedings against EnergyAustralia for alleged failures to implement its customer hardship policy and offer payment plans to customers in financial difficulty. Origin Energy paid infringement notice penalties and gave an enforceable undertaking in relation to alleged disconnections of small customers that were not permitted under energy laws.

The AER published guidance on implementing new, more stringent [hardship protections](#) and on ensuring that customers are not [denied energy supply](#) due to poor payment history.

Protection of customers using life support equipment

Energy businesses have an obligation to maintain a register of customers who are using life support equipment. This critical obligation ensures that these customers receive important protections, including from disconnection. As part of our work in this priority area, the AER instituted civil proceedings against EnergyAustralia for alleged breaches of registration requirements and failure to comply with a related enforceable undertaking. Momentum also paid infringement notice penalties for alleged failure to maintain its life support register by incorrectly removing customers requiring life support from its life support register, some for over 400 days. TasNetworks paid infringement notice penalties and gave a court enforceable undertaking in relation to alleged failures to notify life support customers of planned interruptions.

The AER also required three retailers (Mojo Power, Ergon Energy and Momentum Energy) and three distributors (Endeavour Energy, Evoenergy and Essential Energy) to undertake audits of compliance with life support obligations and to address identified areas for improvement.

Provision of accurate and timely information

Energy businesses have obligations under the law and rules to provide a range of information and data to the AER. The provision of timely data and information is critical to the AER's economic and market monitoring functions, which help ensure market transparency and effective policy-making. This information and data is also essential to AEMO's operation of wholesale energy markets in a reliable, secure and safe manner. It is critical that energy businesses have systems and processes in place to ensure that the information and data they provide can be relied on.

In 2019–20 the AER instituted civil proceedings against:

- subsidiary retailers of AGL Energy for alleged failures to submit to the AER information and data in the manner and form (including by the date or dates) required by the AER Performance Reporting Procedures and Guidelines
- Pelican Point Power Limited, for alleged failures to submit accurate generator availability information to AEMO
- several South Australian wind farm operators for alleged failure to comply with generator performance standards and obligations under the NER during the 2016 South Australian black system event.

The AER also required four energy retailers to commence independent audits of compliance with performance reporting obligations under the Retail Law.

The AER undertook an industry-wide review of network businesses' and generators' compliance with requirements to notify AEMO of risks to power system security, and published a [National Energy Market summer readiness compliance bulletin](#) setting out best-practice compliance with obligations critical to AEMO's ability to operate the NEM and manage power system security.

Support for metering contestability

The AER also monitored retailers' compliance with metering installation timeframes and undertook targeted compliance activities to establish compliance plans for high voltage meter installation testing requirements.

As a result of the AER enforcement work to ensure the delivery of consumer and market benefits of new smart meters, [M2 Energy \(Dodo Power and Gas\), Origin Energy and EnergyAustralia paid infringement notice penalties](#) for alleged failures to promptly appoint metering coordinators when notified of a faulty customer meter.

Gas market

A number of the AER regulatory functions in relation to gas pipelines address potential market failures such as information asymmetry between service providers and shippers. Addressing these issues assists market participants to achieve efficient outcomes that may not occur in the absence of regulation.

On 31 October 2019 the AER released its first [financial reporting guideline for light regulation gas pipelines](#). This guideline was released following rule changes implemented by the AEMC in July 2018. It is intended to provide prospective users of light regulation pipelines with financial information to facilitate negotiation with service providers on an informed basis. This guideline complements the guideline released in 2017 for non-scheme pipeline financial reporting. The first reporting is due in October 2020.

The AER will continue to monitor compliance with the non-scheme pipeline reporting guidelines to ensure that they are providing useful information to facilitate access to pipeline services. This is in addition to AER's continuing work in assisting the former Council of Australian Governments (COAG) Energy Council with the development of a full Regulation Impact Statement to revise the tests used to apply gas pipeline regulation (for example, the coverage test), examine the number and forms of regulations (full regulation, light regulation and Part 23) and examine the governance arrangements for pipeline regulation. Consultation on this reform is designed to identify and evaluate options to deliver a more efficient, effective and integrated regulatory framework for gas pipelines.

The AER maintains [public registers](#) of exemptions from Part 23 reporting obligations for non-scheme pipelines. In 2019–20 the AER accepted and published five exemptions and revisions to exemptions.

Energy Made Easy

Since July 2012 the AER's Energy Made Easy website (www.energymadeeasy.gov.au) has been the Australian Government's primary tool giving consumers and small businesses the power to compare energy plans from all providers.

During the reporting period the AER completed [its \\$8 million two-year project](#) to enhance the website so that it continues to help Australians to make informed energy choices.

The AER enhanced the Energy Made Easy website, with new underlying technology and software to make it more robust, efficient and flexible to accommodate future improvements. This includes the new public-facing website and a new secure data portal website. This is the portal through which retailers submit their energy plan data to Energy Made Easy and through which the AER and other authorised bodies conduct market monitoring, analysis and compliance activities.

In 2019–20 the AER continued to engage with its three project reference groups, comprising representatives from consumer, small business, and industry and government organisations and from energy retailers. The website's enhancements were informed through this stakeholder engagement process, together with previous consumer and market research the AER commissioned, and real user research and testing activities. All consumers were also given a direct opportunity to preview the new website and provide their feedback.

The improved Energy Made Easy website was made available to consumers in April 2020. The AER has since published further information on the website about the improvements and how [Energy Made Easy has changed](#). Following the new website launch, the AER sought to raise awareness of Energy Made Easy and how its new features benefit users. Communication activities, which ran throughout May 2020, included a media release, organic social media (primarily through our [@EnergyMadeEasy](#) Twitter account), two online videos, articles in newsletters and engagement with key stakeholders.

The website has been translated into over 30 languages and had 2 835 980 visits by 1 671 363 users in 2019–20.

The Default Market Offer

The DMO is a price cap to protect energy customers on electricity retail standing offers. There are between 8 per cent and 12 per cent of residential and between 15 per cent and 23 per cent of small business customers not actively engaged in the energy market.²² The DMO price also acts as a 'reference price'. When advertising offers, retailers must show the price in comparison to the DMO price to assist customers to compare deals more easily.

We are required to set the DMO prices annually for small business and residential customers in regions where there is no other price regulation: South Australia, south-east Queensland and New South Wales.

The AER's first DMO price determination came into effect on 1 July 2019. The prices balanced the goal of protecting standing offer customers from being charged excessive prices with the goal of allowing retailers to recover their costs to supply customers.

The 2020-21 DMO price determination updated the 2019-20 DMO prices to take account of the forecast changes in the costs to supply customers. These included wholesale electricity costs, network costs, the costs to comply with government environment schemes, and retailing costs.

Compared with 2019-20 the 2020-21 DMO prices were:

- lower in South Australia and Queensland
- slightly lower or generally flat in New South Wales (depending on the region).

The AER approach means the DMO prices for 2020-21 continue to protect standing offer customers from being charged excessive prices, while enabling retailers to recover their costs and compete with each other. The level at which the DMO price is set also retains incentives for customers to switch retail supplier, and the reference price makes it easier for customers to compare retail offers.

Hardship help

The AER takes a particular interest in energy providers' conduct and performance relating to hardship policies and other measures aimed at supporting customers experiencing financial difficulty.

The enforceable [Customer Hardship Policy Guideline](#) became effective on 2 April 2019. The guideline was the product of a rule change the AER initiated in 2018. The rule change required retailers to have AER-approved hardship policies in place by October 2019. The guideline requires energy retailers to:

- proactively identify consumers who are struggling early on
- issue standardised statements outlining customers' rights in relation to hardship assistance
- actively promote and provide accessible information about hardship programs so that consumers can more easily access them (and remove exclusions and unreasonable conditions to entry).

During the reporting period the AER executed a comprehensive consumer engagement strategy to connect people with information about their hardship rights and the assistance available. To raise awareness of consumers in need and enable every Australian energy consumer to access hardship support and be aware of their rights, the AER worked closely with stakeholders to deliver information in accessible formats and multiple languages, including Vietnamese, Chinese, Arabic and Nepali.

Since July 2019 we have approved 13 policies from newly authorised retailers, in addition to the 46 updated policies of existing approved retailers in 2019-20.

²² AER, 'Retail Energy Market Performance Update for Quarter 2, 2019-20', 19 March 2020.

► Case study: Supporting Australian energy consumers and industry through COVID-19

The COVID-19 pandemic has been a significant disruptor across most industries and the energy industry is no different. The AER has successfully shifted how it works and prioritised new projects to support consumers and industry during the pandemic.

A significant number of Australians have lost their jobs, taken a pay cut or had reduced working hours as a result of the COVID-19 pandemic. The AER knows this will affect people's ability to pay their current and future energy bills.

One of the ways the AER is working to support energy consumers is through the launch of our Statement of Expectations of energy businesses: protecting consumers and the energy market during COVID-19.

The statement outlines 10 key expectations, calling on energy providers to go above and beyond in supporting their customers. The expectations call for energy businesses to:

- offer any residential or small business customers who indicate they may be in financial stress a payment plan or hardship arrangement
- not disconnect any residential or small business customers who may be in financial stress (including small businesses eligible for the JobKeeper Payment), without their agreement, before 31 July 2020 and potentially beyond
- defer referrals of customers to debt collection agencies for recovery actions, and credit default listings, until at least 31 July 2020
- waive disconnection, reconnection and/or contract break fees for small businesses that have ceased operation, along with daily supply charges to retailers, during any period of disconnection until at least 31 July 2020.

The AER is pleased with the extra support energy providers have shown their consumers.

The AER has also worked with the Essential Services Commission of Victoria on a joint effort to collect real-time data to monitor the experience of energy consumers during this time. The AER is requesting that energy providers volunteer more frequent information on payment plans, hardship, disconnections and credit referrals so that we can monitor the impact of the COVID-19 pandemic on consumers and act swiftly if further measures are needed. In addition, the AER has worked closely with consumer advocates on its Customer Consultative Group to gain perspectives on consumer experiences of COVID-19, in order to ensure that the AER is best placed to support consumers and is using the best tools and mechanisms to engage with consumers in hardship.

With the AEMO and the AEMC, the AER has agreed a set of objectives and criteria for prioritising existing work and is considering altering the implementation dates for some key market reforms and rule changes. In April 2020 the AER, AEMC and AEMO wrote to the Commonwealth Minister for Energy and Emissions Reduction outlining these proposals.

These letters are on our website.

In May the AER submitted a rule change proposal to the AEMC that would allow retailers to defer for six months payment of network charges incurred by consumers whose ability to pay their bills has been impacted by the COVID-19 pandemic. This rule change aims to support the financial resilience of retailers and mitigate the risk of financial contagion as a result of increasing consumer debt levels due to the impacts of COVID-19.

The impacts of COVID-19 will continue to be felt, and the AER will continue to monitor the market to ensure that Australian energy users remain protected.

Use our expertise to inform debate about Australia's energy future, the long-term interests of consumers and the regulatory landscape

The AER uses its expertise to inform debate about Australia's energy future, the long-term interests of consumers and the regulatory landscape by acting to:

- provide an independent, expert view to government and other policy-makers, based on its in-depth, practical experience of how the market is working now and how well placed it is to deal with long-term challenges
- maintain effective relationships with the former COAG Energy Council, the Energy Security Board (ESB) and AER partners—the other market bodies, state-based regulators, Energy Consumers Australia and energy ombudsman schemes—on emerging issues and regulatory strategies
- assess and comment on industry performance and how this affects both competition and the consumer experience, to inform regulatory decision-making and improve long-term outcomes.

Actions undertaken to achieve our purpose

Deliverable 5.4: Use our expertise to inform debate about Australia's energy future, the long-term interests of consumers and the regulatory landscape

Consumer Policy Research Centre review

In July 2019 the AER engaged the Consumer Policy Research Centre (CPRC) to undertake a literature review of consumer vulnerability, with a particular focus on the approaches of other regulatory agencies in Australia and internally, and provide a report on the findings.

The report [Exploring regulatory approaches to consumer vulnerability: a report for the AER](#) explores the similarities and differences between approaches being taken to address vulnerability across consumer markets in Australia and internationally. It summarises why regulators are focusing on consumer vulnerability and on understanding and supporting consumers in vulnerable situations. It also provides key lessons and opportunities for change.

This is the first time the AER has published a research report on consumer vulnerability.

Specifically, the report finds:

- all consumers can find themselves in vulnerable circumstances due to their individual characteristics, their stage of life, or unavoidable or unpredictable events
- market features can exacerbate vulnerabilities
- understanding the lived experience of consumers in markets is needed to deliver effective regulatory responses to vulnerabilities
- data plays an important role in vulnerability strategies
- regulators are increasingly using consumer vulnerability strategies as a mechanism to help drive and monitor positive outcomes for consumers in vulnerable circumstances.

The report recommends that the AER develop a consumer vulnerability strategy to enable us to provide direction and transparency in outlining our understanding of and response to consumer vulnerability in our regulatory work.

The CPRC highlights the opportunities a consumer vulnerability strategy provides in assisting the AER to take the lead in understanding vulnerability in the energy sector and clarifying our role as the regulator in supporting vulnerable consumers.

Rule change proposals

The AER seeks to use its expertise to inform the regulatory landscape through its submissions to the AEMC on rule change proposals and reviews. Key examples in this reporting period were the AER's close engagement with and submissions to the AEMC's review of the [coordination of generation and transmission investment](#) and AER advice to the COAG Energy Council on [regulatory sandbox arrangements](#) to support proof-of-concept trials. Other examples include our proposal for an urgent change to the NER to support electricity retailers by allowing them to defer payment of network charges by up to six months in respect of hardship customers or customers on deferred payment plans as a result of the COVID-19 pandemic. AER engagement in these processes helped to shape the design and implementation of reforms. All of the [AER's submissions](#) are available on its website.

The AER also used its expertise to propose changes to the regulatory framework to ensure that it continues to be fit for purpose. As the AER role spans network regulation, market monitoring and ensuring compliance with and enforceability of the rules, the AER can identify where changes to the framework are required. In 2019 the [AER proposed several changes](#) to the regulatory framework governing system restart. These proposals arose from AER investigation of the events surrounding the 28 September 2016 black system event in South Australia. The AEMC's [final rule](#) on system restart arrangements adopted the AER's suggested changes. More information can be found in chapter 6.3 of the [AER's compliance report on the South Australian blackout](#).

In early 2020 the former COAG Energy Council asked the AER to develop two rule change proposals to support system security in the NEM. Specifically, the AER was requested to develop rule changes to ensure that:

- semi-scheduled generators be obligated to follow their dispatch targets in a similar manner to scheduled generators
- semi-scheduled generators be required to continually inform the AEMO of any restrictions on their available capacity due to physical factors, ambient weather conditions and their market intentions.

In June 2020, following a comprehensive consultation process, the AER published an [issues paper on semi scheduled generator rule changes](#). The issues paper presented an analysis on the COAG Energy Council request for the AER to develop two rule change proposals to support system security in the NEM.

Take a long-term perspective while also considering the impact on consumers today

The AER is responsible for taking a long-term perspective while also considering the impact on consumers today and acts to:

- make considered decisions about the long term—some AER decisions will have an impact for the next 50 years or more. In doing this, the AER looks beyond the immediate implications of current issues
- foster confidence among households and businesses that the energy system is working well for them, as levels of public trust now can have a long-term impact on consumer engagement and the effectiveness of competition
- remain authoritative and a trusted source of information on energy markets.

Actions undertaken to achieve our purpose

Deliverable 5.5: Take a long-term perspective while also considering the impact on consumers today

The AER took the following decisions to take a long-term perspective while considering the impact on consumers today:

- We implemented the Retailer Reliability Obligation (RRO) to support reliability in the NEM, encouraging retailers, and some large energy users, to establish contracts for their share of demand for a prescribed period.
- In partnership with Energy Networks Australia and Energy Consumers Australia, we delivered the New Reg project, which helps to ensure that customers' preferences drive energy network businesses proposals and regulatory outcomes.
- We published a benchmarking report for electricity network businesses, providing information to networks and governments to help them plan for an effective, efficient and affordable energy network. The report showed electricity distribution productivity grew by 1 per cent.
- We published performance information for electricity transmission and distribution businesses to inform the wider community about the usefulness and efficiency of the network service providers' spending decisions. The report showed transmission productivity grew by 2.2 per cent.
- We developed new rules to make AEMO's Integrated System Plan (ISP) actionable to ensure the sustainability and efficacy of an integrated 20-year NEM roadmap.
- We worked through the ESB to improve the security and reliability of electricity supply with our contribution of the VCR and our advice on developing a long-term, fit-for-purpose market framework to support reliability that could apply from the mid-2020s.

The Retailer Reliability Obligation

The RRO provides stronger incentives for market participants to invest in the right technologies in regions where it is needed, to support reliability in the NEM. It commenced on 1 July 2019. As a member of the ESB the AER was actively involved in the development of the RRO through an intensive project undertaken in 2018-19.

On 9 January 2020 the South Australian Minister for Energy and Mining triggered the RRO for the first time, issuing [reliability instruments](#) for the first quarters of 2022 and 2023. The AER has monitored trading information since the RRO was triggered in South Australia to ensure compliance with the Market Liquidity Obligations (MLO). The AER ensures MLO obligated parties make appropriate bids and offers each month with the necessary bid-offer spread that meets the necessary thresholds and volumes.

The AER has published five [guidelines](#) to support the implementation and operation of the RRO. Four interim guidelines—the Reliability Instrument Guidelines, the Market Liquidity Obligation Guideline, the Contracts and Firmness Guidelines and the Forecasting Best Practice Guideline—were published within three months of commencement of the RRO. A fifth guideline—the Opt-in Guideline—was published in June 2020.

New Reg

The New Reg project was initiated by the AER, Energy Consumers Australia (ECA) and Energy Networks Australia (ENA). This is a new approach involving a customer forum to better reflect customers' priorities and preferences in regulatory proposals through negotiation with regulated networks. It is intended that the starting point for the AER's assessment is a proposal that customers want the network to deliver.

AusNet Services (AusNet), in its 2021-2025 regulatory proposal, was the first utility to engage in the New Reg process. On 31 January 2020 AusNet and its customer forum completed negotiations, ending in the submission of the customer forum's [engagement report](#) and AusNet's [2022-2026 distribution regulatory proposal](#) to the AER.

As a result of the New Reg process and negotiations between AusNet and the forum, the parties agreed on a number of outcomes. In particular, AusNet agreed to certain customer experience initiatives, including a customer satisfaction incentive scheme to incentivise improvement of key customer service interactions and publication of an annual customer interactions and monitoring report to record its progress against these initiatives.

Given its significance, the AER, ECA and ENA have undertaken live engagement on the New Reg trial. As part of this, the trial has been monitored by an independent consultant while another consultant reviews this material to provide insights on the trial. Both consultants have released reports at key stages throughout the trial, including [monitoring and insights reports](#) at the conclusion of negotiations between AusNet and the forum.

The insights reports will be used in the evaluation report on the first trial of the New Reg process that Cambridge Economic Policy Associates Ltd (CEPA) has been engaged to prepare. The evaluation will look at the impact the New Reg had on the AER's determination, the costs of the trial and impacts on building blocks, as well as improvements to outcomes delivered to customers.

Annual benchmarking reports

In November 2019 the AER published its [annual benchmarking reports](#) for electricity distribution and transmission businesses.

The reports play an important role in both providing information to stakeholders and informing AER network determination decisions. The benchmarking reports provide network businesses with information on their relative efficiency and government policy-makers with information about the impacts of regulation on network costs, productivity and ultimately electricity prices. The benchmarking reports also provide customers with accessible information about the relative efficiency of the electricity networks.

The AER uses the benchmarking reports as a source of information to examine the efficiency of historical network expenditures and the appropriateness of basing forecasts on them as a part of its network determination decisions that set future prices.

The AER's annual benchmarking reports released in November 2019 noted the following:

- Electricity distribution productivity grew by 1 per cent over 2017-18 as measured by total factor productivity. This exceeded productivity growth for the overall economy and the utility sector and has now grown for three consecutive years. The increase was primarily due to reductions in operating expenditure.
- In 2017-18 electricity transmission productivity grew by 2.2 per cent as measured by total factor productivity. This was lower than achieved in 2016-17 (5.3 per cent) but higher than for the overall economy and the utilities sector.

Network performance reporting

In July and August 2019 respectively the AER published performance data for electricity transmission and distribution networks. This data includes key network performance indicators on network assets, expenditure and service outcomes. To support this expanded reporting, the AER undertook a series of activities that included:

- finalising the profitability measures review following extensive consultation with stakeholders resulting in a commitment to four profitability measures for inclusion in expanded network performance reporting
- consulting with stakeholders on objectives and priorities to guide forthcoming network performance reporting for electricity and gas networks, releasing a final set in June 2020
- collecting regulatory information notices to collect data to commence reporting in 2021 on the performance of gas networks.

The data assists stakeholders to undertake their own analysis of network performance against a key group of indicators.

► Case study: Integrated System Plan framework

Integrated whole-of-system planning is critical to support the efficient transition to more decentralised renewable energy generation, including renewable energy zones and innovative new technologies, to deliver the best outcomes for consumers.

The AER contributed to the Energy Security Board's development of [new rules to make the ISP actionable](#). These set out a framework for the ISP to provide a biennial whole-of-system plan for the efficient development of the power system in the long-term interests of consumers. Under the new rules, the AER has an important role in providing additional governance and oversight to the new framework, including through the development of [binding guidelines](#) on cost benefit analysis and best-practice forecasting, as well as a transparency review on the key inputs and assumptions used in developing each ISP.

Given the significance of system planning to investment in the sector and the prices consumers pay for electricity, the AER undertook a highly consultative process in developing the guidelines. This consisted of a two-stage process (issues paper and draft guidelines), supported by several stakeholder forums/webinars and offers to meet with stakeholders upon request to further explain AER positions and/or discuss issues.

AER guidelines were finalised on 21 August 2020. They aim to provide certainty, transparency and accountability for the AEMO, transmission businesses and stakeholders to promote efficient investment in electricity services. This is supported by principles aligned with the ESB's policy intent:

- rigorous cost benefit analysis to ensure investments provide net benefits to consumers
- streamlined regulatory processes to facilitate timely investment to meet power system needs
- flexibility for AEMO as the national transmission planner in developing the ISP, balanced with full transparency and informed by effective stakeholder engagement.

The AER consultative process has been well received by stakeholders, and AER guidelines will apply to AEMO's 2022 ISP.

Reliability and security of the National Electricity Market

The NEM market design relies on a shared responsibility by all market participants to deliver reliability and security. The role of the AER is to ensure all participants comply with their obligations. To assist participants we develop and publish guidelines.

The AER also draws on its expertise to support policy development to improve the market design through our role on the ESB.

Through AER participation in the ESB, the AER contributes to the implementation of the COAG Energy Council's energy market reforms and provides continuing advice on energy market development. In this reporting period the AER worked closely with the ESB on enhancing the reliability and security of the NEM, including on the following key projects.

Interim reliability and security measures

In March 2020 the former COAG Energy Council agreed to implement [interim measures](#) to deliver further reliability through a tightening of the NEM reliability standard, establishing an out-of-market capacity reserve and exploring amending triggering arrangements for the [RRO](#). The AER engaged closely in this process, and its work on the [Values of Customer Reliability](#) informed the ESB analysis of the reliability standard.

NEM post-2025 work program

The AER is using its expertise to contribute to the ESB's project to develop a fit-for-purpose, long-term electricity market framework [beyond 2025](#). Through AER involvement in the ESB and its working groups, the AER is informing the thinking on potential changes to the existing market design and alternative market designs that will enable the future provision of the full range of customer services necessary to deliver a secure, reliable and lower emissions electricity system at least cost.



04

**Management and
accountability**



Senior leadership

The ACCC's senior leadership comprises members of the Commission (appointed by the Governor-General) and Senior Executive Service (SES) employees. In 2019–20 the ACCC expanded to eight divisions with the establishment of the Consumer Data Right (CDR) Division, headed by a newly appointed Executive General Manager. The leadership team expanded with the introduction of a General Manager to oversee the operational delivery within the CDR Division.

The AER's senior leadership comprises the AER Board (appointed by the Governor-General) and SES employees who are engaged exclusively on energy matters.

Details of the leadership structure are in figure 2.1 on page 30.

Australian Competition and Consumer Commission

The ACCC has a Chair, two Deputy Chairs, three Commissioners and four Associate Members. Their names and appointment terms are shown in table 4.1.

Table 4.1: Terms of appointment—ACCC members at 30 June 2020

Position	Name	Appointed until
Chair	Rod Sims	31 July 2022
Deputy Chairs	Delia Rickard	26 July 2022
	Mick Keogh	30 May 2023
Commissioners	Cristina Cifuentes	29 May 2023 (retiring 3 July 2020)
	Sarah Court	30 April 2023
	Stephen Ridgeway	26 June 2024
Associate Members	Clare Savage	13 October 2024
	Jim Cox PSM	25 June 2022
	James Cameron	4 August 2021
	Nerida O'Loughlin	13 October 2022

Biographies—ACCC

Chair

Mr Rod Sims



Rod Sims was appointed Chair of the ACCC in August 2011 for an initial five-year term, reappointed for a further three years in August 2016, and reappointed again for a further three years until July 2022, making him the longest serving Chair of the ACCC.

Rod has extensive business and public sector experience. Immediately prior to his appointment to the ACCC, he was the Chairman of the Independent Pricing and Regulatory Tribunal of New South Wales (IPART), Commissioner on the National Competition Council, Chairman of Singapore-based InfraCo Asia, Director of UK-based Ingeus Limited, and a member of the Research and Policy Council of the Committee for Economic Development of Australia. Rod was also a Director of Port Jackson Partners Limited, where he advised the CEOs and boards of some of Australia's top 50 companies on commercial corporate strategy over many years. Rod relinquished all of these roles on becoming Chair of the ACCC.

Rod is also a past Chairman of the NSW Rail Infrastructure Corporation and the State Rail Authority and has been a director of a number of private sector companies. During the late 1980s and early 1990s Rod worked as the Deputy Secretary in the Commonwealth Department of the Prime Minister and Cabinet, responsible for economic, infrastructure and social policy and the Cabinet Office. He also worked as Deputy Secretary in the Department of Transport and Communications. Between 1988 and 1990 Rod was the Economic Advisor to Australia's Prime Minister.

Rod holds a first-class honours degree in commerce from the University of Melbourne and a Master of Economics from the Australian National University.

Deputy Chairs

Ms Delia Rickard



Delia Rickard was appointed to the position of Deputy Chair of the ACCC in June 2012 for a period of five years and reappointed for a further five years in July 2017. She is also an Associate Member of the Australian Communications and Media Authority.

Delia has extensive public service experience. Her passion is for consumer protection and she has worked in a variety of senior roles primarily at the ACCC and the Australian Securities and Investments Commission.

Delia sits on the ACCC's enforcement, adjudication, communications, compliance and product safety committees. She also chairs the ACCC's Northern Australia Insurance Inquiry and is on the Commission's digital platforms, financial services, Consumer Data Right and electricity boards.

Outside work she is a trustee of the Jan Pentland Foundation—an organisation dedicated to providing scholarships for those who want to work as financial counsellors; and a director of Fairtrade Australia New Zealand. She is also the Chair of Good Shepherd's Advisory Committee on Financial Inclusion Action Plans and a member of the Consumer Policy Research Centre's reference group.

Delia was awarded the Public Service Medal in 2011 for her contribution to consumer protection and financial services. She has also been awarded the Society of Consumer Affairs Professionals Lifetime Achievement Award. She holds bachelor's degrees in law and arts from the University of New South Wales.

Mr Mick Keogh

Mick Keogh was appointed to the ACCC in February 2016, and then as Deputy Chair of the ACCC in 2018. Mick has a long and diverse history of involvement with the agriculture sector, which has included periods of employment as a farm manager, a university researcher, an agribusiness consultant and an agriculture policy advisor.

In 2003 Mick was appointed Executive Director of the Australian Farm Institute—an independent policy research institute that conducts research into strategic policy issues of importance to Australian agriculture. Mick continued in that role until his appointment as Deputy Chair of the ACCC in June 2018.

During his time as Executive Director of the Australian Farm Institute, Mick was also appointed Chairperson of the Australian Government panel which reviewed drought support measures, and he chaired the Australian Government's National Rural Advisory Council from 2012 to 2015.

Mick was awarded the Order of Australia Medal for services to agriculture in 2015. He holds bachelor's and master's degrees in wool and pastoral sciences, both obtained at the University of New South Wales.

Mick remains involved in family farming interests in southern New South Wales.

Mick's role at the ACCC includes involvement in a range of committees, as well as oversight of the small business, franchising and agriculture units of the ACCC.

Commissioners**Ms Cristina Cifuentes**

Cristina Cifuentes was appointed a Commissioner of the ACCC in May 2013 for a five-year term. She was reappointed for a further five-year term in 2018. She is an Associate Member of the Australian Communications and Media Authority and a member of the Organisation for Economic Co-operation and Development (OECD) Network of Economic Regulators.

Cristina has a breadth of experience in both the public and private sectors across public policy, finance and utility regulation, including positions at the Reserve Bank of Australia, the New South Wales Treasury and the Australian Securities Commission. She served as the Commonwealth Member of the Australian Energy Regulator between 2010 and 2013. Cristina was a member of the IPART between 1997 and 2006.

Cristina is Chair of the ACCC's Communications Committee and the ACCC's Infrastructure Committee. She oversees the ACCC's regulatory role in relation to key infrastructure in areas such as telecommunications, wheat ports, rail and water.

Before becoming an ACCC Commissioner, Cristina held a number of directorships, including with the Hunter Water Corporation and First State Super Trustee Corporation.

Cristina holds a first-class honours degree in law and a degree in economics.

Ms Sarah Court

Sarah Court was appointed a Commissioner of the ACCC in May 2008, and reappointed for a third term in 2018. She is also an Associate Commissioner of the New Zealand Commerce Commission.

Sarah is a former senior executive lawyer with the Australian Government Solicitor. She brings to her role extensive experience in Commonwealth legal work, including restrictive trade practices, consumer protection and law enforcement litigation.

Sarah oversees the ACCC's enforcement and litigation program and is Chair of the Commission's Enforcement Committee, Compliance Committee, Consumer Data Right Committee and Legal Committee. She also sits on the Merger Review Committee and the Adjudication Committee.

Sarah holds a Bachelor of Arts (Jurisprudence) and a Bachelor of Law (Honours) from the University of Adelaide, as well as a Graduate Diploma in Legal Practice from the Australian National University. She is a Fellow of the Australian Institute of Company Directors.

Mr Stephen Ridgeway

Stephen Ridgeway was appointed a Commissioner of the ACCC in June 2019. Stephen brings a wealth of experience from his previous roles as a lawyer in the private and public sectors. He is widely recognised as one of Australia's leading competition and consumer lawyers and an expert in the field. In 2018 Stephen retired as a senior partner at King & Wood Mallesons.

Early in his career, Stephen acted for the ACCC and its predecessor, the Trade Practices Commission, in enforcement litigation as a senior lawyer with the Australian Government Solicitor. Since joining private practice in 1998, Stephen has had extensive involvement in merger clearance applications in a wide variety of industries, including energy and telecommunications. He has extensive experience in competition and regulatory enforcement actions, including a number of landmark ACCC enforcement matters in recent years.

During 2011 and 2012 Stephen was National Chairman of the Competition and Consumer Committee of the Law Council of Australia and led consultations with the ACCC and Treasury about policy and enforcement matters. He was a member of the Executive Committee of the Business Law Section of the Law Council of Australia from 2016 to 2018.

Stephen chairs the ACCC's Merger Review Committee and Adjudication Committee and is a member of the ACCC's Enforcement Committee, Competition Enforcement Board and Agriculture and Water Project Board. Stephen holds a Bachelor of Science (Honours) from the University of New South Wales and a Bachelor of Laws from the Australian National University.

Australian Energy Regulator

The AER Board has five members, including the Chair, Clare Savage; and Deputy Chair, Jim Cox.

Table 4.2: Terms of appointment—AER members at 30 June 2020

Position	Name	Appointed until
Chair	Clare Savage	13 October 2024
Deputy Chair	Jim Cox PSM [#]	25 June 2022
Member	Catriona Lowe	2 February 2025
	Eric Groom PSM	2 February 2025
	Justin Oliver	2 February 2025

Note: [#] Jim Cox has been a Board member since 2013. He was formally appointed Deputy Chair from 26 June 2020.

Biographies—AER

Chair

Ms Clare Savage



Clare Savage was appointed Chair of the AER in September 2019.

Over the last 17 years, Clare has acquired significant leadership experience in the Australian energy industry and has worked extensively on a range of energy-related matters.

Before joining the AER, Clare was Deputy Chair of the Energy Security Board.

Other previous roles include Executive Director, Policy, Energy and Climate Change, at the Business Council of Australia; executive positions within EnergyAustralia (2012–2015) spanning corporate strategy, business development, policy, public and government affairs; and several roles at the Energy Supply Association of Australia, including Chief Executive Officer.

Clare began her career in the public service—initially in the UK and then at the federal Department of the Treasury.

Clare has a Bachelor of Commerce (Economics) and a Bachelor of Arts (Politics and History) from the University of Melbourne.

Deputy Chair

Mr Jim Cox PSM



On 26 June 2020 Jim Cox was appointed as the Deputy Chair of the AER Board for a two-year term.

Prior to this appointment, Jim had been reappointed as a full-time state/territory member of the AER Board in May 2017 for a further three-year term. He was initially appointed in an acting capacity in September 2013. He was confirmed in the role for three years from 26 June 2014.

Jim has held positions with the Reserve Bank of Australia, the Department of the Prime Minister and Cabinet and the Social Welfare Policy Secretariat of the Department of Social Security. He was a principal economist at the Office of the Economic Planning Advisory Council between 1986 and 1989. Between 1989 and 1992 he was a consultant to the New South Wales Cabinet Office. Jim was Principal Adviser to the Government Pricing Tribunal of New South Wales from 1992 and was a member of IPART from January 1996 to September 2013. He was Acting Chairman of IPART in 2004, 2009–10 and 2011 and a visiting fellow at Monash University in 1985.

Jim assisted the New Zealand Government with social policy changes during the early part of 1991.

Jim has also written extensively on economic and social policy issues. This work has been published by, among others, the New Zealand Business Roundtable and the Centre for Independent Studies.

Jim was awarded the Public Service Medal in the Australia Day honours list in 2011 for outstanding public service to IPART.

Members

Ms Catriona Lowe



Catriona Lowe was appointed a member of the AER Board in February 2020.

Before joining the AER she was a non-executive director on range of boards, including the Australian Financial Complaints Authority, the Financial Adviser Standards and Ethics Authority and the Telecommunications Industry Ombudsman. She was also principal of a consumer-focused consulting practice.

Ms Lowe has over 20 years of experience in litigation and consumer advocacy. She was Co-CEO of the Consumer Action Law Centre from 2006 to 2013. She has also held senior roles with the Consumers' Federation of Australia and the ACCC.

Catriona has worked extensively on relevant matters including consumer-focused regulation, behavioural economics and effective enforcement and compliance. She has advocated for consumers across a range of markets, including financial services, telecommunications and energy.

Catriona has a Bachelor of Laws from Northern Territory University (now Charles Darwin University).

Eric Groom PSM



Eric Groom was appointed a member of the AER Board in February 2020.

Before joining the AER he was a senior advisor at Cambridge Economic Policy Associates (CEPA) and consultant to the World Bank. He was also a member of the AER's Consumer Challenge Panel. He has over 35 years of experience as an economist with a focus on regulation, energy efficiency and greenhouse gas emission reduction.

Eric formerly held senior roles at IPART and the World Bank and has managed price reviews in electricity, gas and water.

Eric has worked extensively on a range of relevant energy matters and in 2015 was awarded the Public Service Medal for his contribution to the development of regulation and reduction in greenhouse gas emissions through the Greenhouse Gas Reduction Scheme and Energy Savings Scheme.

Eric has a Bachelor of Economics (Honours) from Sydney University and a Master of Economics from Macquarie University.

Mr Justin Oliver

Justin Oliver was appointed a member of the AER Board in February 2020.

Justin was formerly a partner of MinterEllison, specialising in competition law and energy regulation. Before joining MinterEllison he was the head of the ACCC's regulatory law practice, advising on all aspects of energy, communications and transport regulation, and he became the head of legal for the AER upon its creation in 2005. Justin has also worked as a senior lawyer in the Victorian Department of Premier and Cabinet.

For two decades, Justin has acted for governments, regulators and industry participants involved in all parts of Australia's energy sector. He has worked extensively on a range of relevant issues, including gas pipeline access arrangements and electricity network determinations; energy policy reform; and a range of compliance and enforcement issues under laws governing the operation of wholesale energy markets, energy networks and energy retail businesses.

Justin holds a Bachelor of Economics and Bachelor of Laws (Honours) from Monash University.

Managing the ACCC and AER

Committees

The decision-making functions of the ACCC and AER are supported by the agency's committee framework, which comprises statutory committees and corporate governance committees. The ACCC and AER governance structure is shown in figure 4.1.

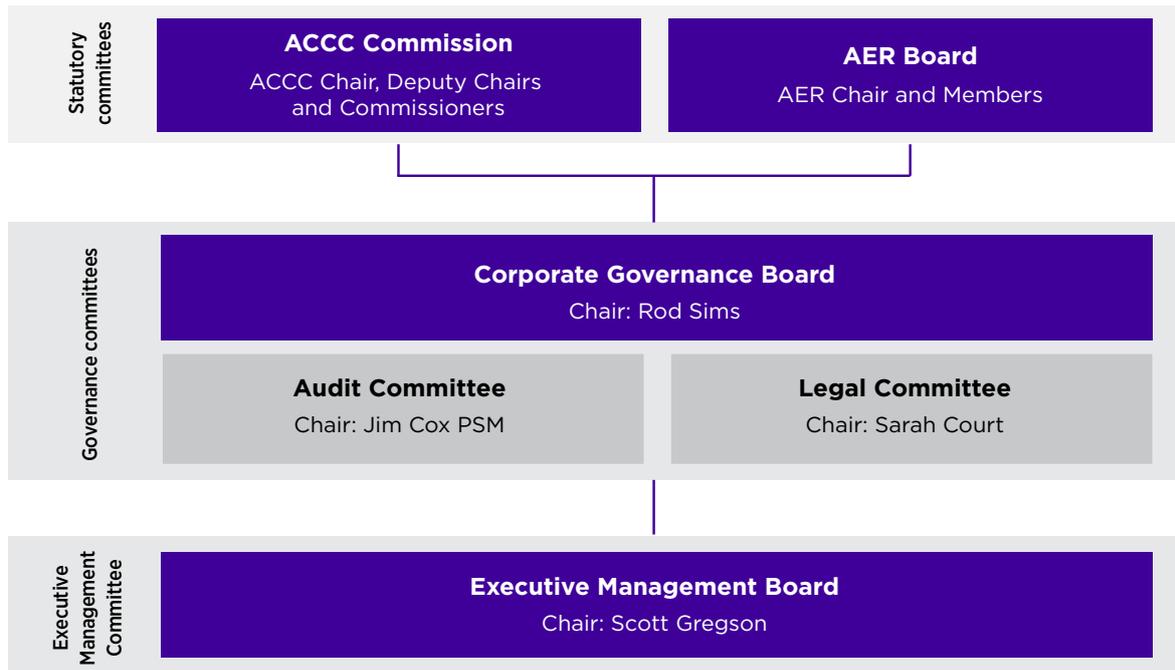
The ACCC makes statutory decisions through the Commission, aided by specialist subject-matter committees, called Commission subcommittees, comprising subgroups of Commissioners (see figure 4.2). Under the *Competition and Consumer Act 2010* (Cth) (CCA), the ACCC can be directed to undertake in-depth inquiries into certain matters. Project inquiry boards have been established to provide strategic guidance in relation to these inquiries or as a direct result of recommendations made by the ACCC to continue to monitor markets.

The AER makes its decisions through its Board.

The agency is governed and its administration is overseen by governance committees.

Both the Commission and the AER Board may delegate certain other decisions and powers to Commissioners, members or senior employees.

Figure 4.1: ACCC and AER governance structure



Statutory committees

Commission

The Commission meeting is the forum in which the ACCC exercises its decision-making role under the CCA. Matters presented to the Commission for decision include mergers, authorisations and notifications; whether to begin court proceedings; and decisions about access to infrastructure facilities.

The requirements for Commission meetings are contained in s. 18 of the CCA.

The Commission is also discussed on page 25 under 'About the ACCC and the AER'.

Commission subcommittees

The Commission is supported by several subject-specific subcommittees, which help streamline the Commission's decision-making. Each subcommittee comprises full-time members and associate members who have expertise on the particular subjects that the subcommittee considers. Table 4.3 provides a brief explanation of each subcommittee.

Inquiry project boards

Under the CCA, the ACCC can be directed to undertake in-depth inquiries into certain matters. Inquiry project boards have been established to provide strategic guidance in relation to these inquiries or as a direct result of recommendations made by the ACCC to continue to monitor markets.

Figure 4.2: ACCC operational committees

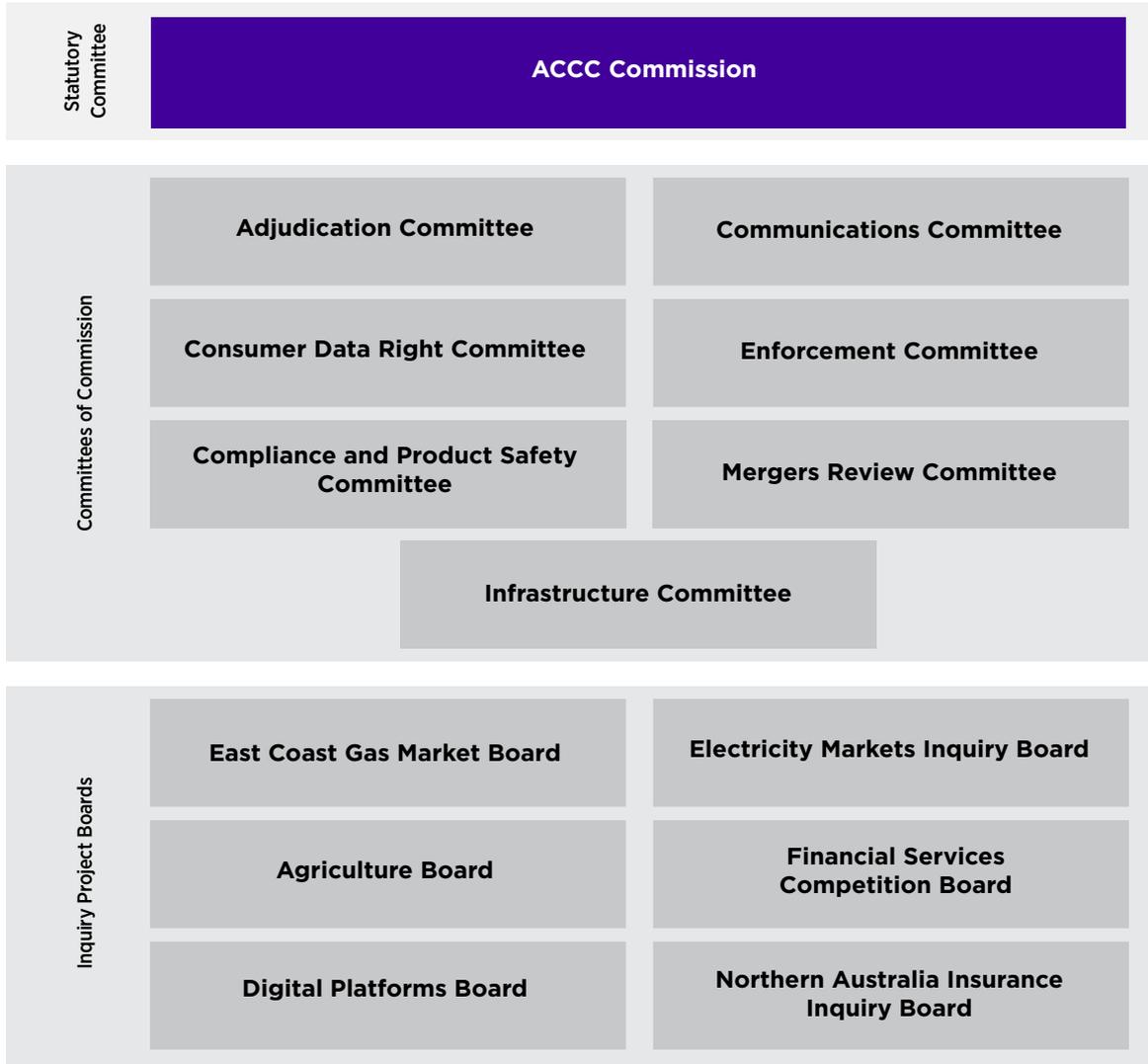


Table 4.3: Subject-matter committees of the ACCC—current roles and membership at 30 June 2020

Adjudication Committee	<p>Members: Stephen Ridgeway (Chair), Sarah Court, Mick Keogh, Delia Rickard, Rod Sims.</p> <p>Role: The committee considers authorisation applications, significant notifications of exclusive dealing and collective bargaining conduct, and significant certification trademarks applications. It subsequently refers all applications for authorisation to the Commission for decision. It meets fortnightly.</p> <p>The Adjudication Committee sits as a division of the Commission under s. 19 of the CCA.</p>
Communications Committee	<p>Members: Cristina Cifuentes (Chair), Stephen Ridgeway, Delia Rickard, Rod Sims.</p> <p>Associate members: Nerida O’Loughlin, James Cameron.</p> <p>Role: The committee considers regulatory and competition issues arising in the communications sector, and refers major statutory matters to the Commission for decision. It meets fortnightly.</p>
Consumer Data Right Committee	<p>Members: Sarah Court (Chair), Delia Rickard, Rod Sims.</p> <p>Role: The committee oversees the ACCC’s role in the implementation of the government’s Consumer Data Right policy, including the development of rules and recommendations regarding designation of future sectors. It meets fortnightly.</p>
Enforcement Committee	<p>Members: Sarah Court (Chair), Stephen Ridgeway, Mick Keogh, Delia Rickard, Rod Sims.</p> <p>Role: The committee oversees the ACCC’s enforcement program to ensure compliance with and enforcement of the CCA. Its recommendations are referred to the Commission for decision. It meets weekly.</p>
Compliance and Product Safety Committee	<p>Members: Sarah Court (Chair), Mick Keogh, Delia Rickard, Rod Sims.</p> <p>Role: The committee sets the policy and strategic direction for the ACCC’s contacts (for example, through the Infocentre) and compliance and product safety functions; makes decisions about policy recommendations, law reform proposals and the exercise of relevant statutory powers and functions; and oversees the strategic compliance and education functions that relate to consumer, small business and product safety programs. It meets fortnightly.</p>
Infrastructure Committee	<p>Members: Cristina Cifuentes (Chair), Jim Cox PSM, Mick Keogh, Rod Sims.</p> <p>Role: The committee oversees access, price monitoring, transport and water regulatory issues. It meets fortnightly.</p>
Mergers Review Committee	<p>Members: Stephen Ridgeway (Chair), Sarah Court, Mick Keogh, Rod Sims.</p> <p>Role: The committee considers whether proposed mergers and acquisitions are likely to substantially lessen competition. Decisions to oppose a merger or to accept an undertaking to remedy competition concerns are referred to the Commission. The committee meets weekly.</p>

AER Board

The AER has its own Board, which is an independent statutory entity. Board members are appointed under Part IIIAA of the CCA, following a process outlined in the Australian Energy Market Agreement. The Board now comprises two Commonwealth members and three state/territory members. One member is appointed as the Chair and another member is appointed as the Deputy Chair. The *Treasury Laws Amendment (2019 Measures No. 2) Act 2019* (Cth), which was passed in October 2019, approved the expansion of the Board from three to five members. It also established a new Deputy Chair position, which is a change from previous AER Board models.

The Board meeting is the forum in which the AER exercises its decision-making role under its statutory powers. During these meetings, the Board also provides strategic guidance and direction and oversees the AER's performance.

As of July 2020 the Board will be supported by four subject-specific committees (Policy and Governance, Networks, Compliance and Enforcement, Markets) to provide the opportunity for timely strategic direction and informal discussion between Board members and employees.

The Board is also supported by employees who are engaged exclusively on energy matters. It also has access to the ACCC's specialist legal and economic employees.

The Board is further discussed on page 25 under 'About the ACCC and the AER'.

Corporate governance

The ACCC and AER corporate governance framework provides oversight of the agency's planning, performance, financial management, resource management and accountability.

The corporate governance framework consists of two types of committees:

- governance committees
- executive management committees.

Governance committees

Corporate Governance Board

The Corporate Governance Board is at the apex of the corporate governance structure. It meets at least 10 times each year (generally on a monthly basis). All ACCC Commissioners and the AER Chair and Deputy Chair are part of the Corporate Governance Board. The Audit Committee and Legal Committee support its work. The Corporate Governance Board, aided by these committees and by executive management committees, is well equipped to oversee our strong corporate and financial performance.

Responsibilities include:

- strategy setting and corporate planning
- internal budgets and resource management
- performance monitoring and reporting
- risk oversight and management
- agency accountability.

Members: Rod Sims (Chair), AER Chair or nominated representative, ACCC Deputy Chairs, AER Deputy Chair, all other ACCC Commissioners, and Chair of the Audit Committee (for so long as this role is filled by an ACCC Commissioner or AER Board member).

Legal Committee

The Legal Committee meets monthly and oversees the ACCC's and AER's processes and systems, including:

- managing and forecasting its pipeline of investigations and cases and the resulting legal and related expenditure, within its budget, and ensuring accurate information and forecasts relating to legal expenditure are provided monthly to the Corporate Governance Board
- overseeing the ACCC and AER's pipeline of investigations and cases and the resulting legal and related expenditure and providing advice to the Board
- ensuring accurate information and forecasts relating to legal expenditure are provided monthly to the Board
- reviewing the ACCC's approaches to enhancing the effectiveness of the reporting of the ACCC's legal and related expenditure relevant to achieving outcomes in the interests of consumers and the economy
- advising the Board on the effectiveness of our internal enforcement and specialist legal and economic resourcing, coupled with our external legal services panel arrangements, to best meet the needs of the ACCC and AER
- providing advice generally to the Board on the ACCC and AER's policies, processes and systems that relate to its standing and capacity as an agency that uses litigation and refers briefs for criminal prosecution as key regulatory tools.

Members: Sarah Court (Chair), Chief Operating Officer, senior managers.

Audit Committee

The Audit Committee provides independent advice and assurance to the Accountable Authority (the ACCC Chair) through the Corporate Governance Board. Its functions are to review, report on and provide advice on the ACCC and AER's financial reporting, performance reporting, risk oversight and management, and system of internal control. The committee provides an annual written statement to the Chair setting out its views about these four areas. It meets four times per year, as well as holding an additional meeting focusing on the ACCC and AER financial statements. The committee also attends a meeting of the Corporate Governance Board at least once per year.

Members:

- Jim Cox PSM (Chair). Mr Cox has qualifications in economics and extensive experience in infrastructure regulation, economics and public policy. He has been a senior executive in state and federal government including roles with the Reserve Bank of Australia, the Department of the Prime Minister and Cabinet, and the Department of Social Security, as well as a member of the NSW Independent Pricing and Regulatory Tribunal. Mr Cox had been a Board member of the AER since 2013 and was appointed AER Deputy Chair in 2020. Mr Cox attended four of the five audit committee meetings in 2019-20. As an AER Board member he did not receive additional remuneration for his role chairing the Audit Committee.
- Kathy Grigg (independent member). Ms Grigg has qualifications in economics and accounting, and has held senior executive positions in various entities including that of Chief Financial Officer. She is a fellow of the Australian Institute of Company Directors and the Australian Society of Certified Practising Accountants. Ms Grigg is an experienced non-executive director across commercial and government entities and has significant experience as a Board chair and chair of audit, risk and compliance committees. Ms Grigg was appointed to the ACCC and AER Audit Committee commencing on 1 August 2018 and her term was renewed for a further two years commencing 1 August 2020. During 2019-20 she attended four of five audit committee meetings and received total remuneration of \$10 937.50 (excluding GST).
- Don Cross (independent member). Mr Cross has qualifications in accounting, business administration and fraud control and has strong risk management, audit and financial management expertise. He is a member of the Australian Institute of Company Directors and

the Australian Society of Certified Practising Accountants, and a fellow of the Institute of Chartered Accountants Australia and New Zealand. Mr Cross was a partner with KPMG for twenty-one years and has extensive experience delivering internal audit and assurance services to the public sector. He currently serves as chair of the Department of the Treasury Audit Committee and also its Financial Statement Sub-committee. Mr Cross was appointed to the ACCC and AER Audit Committee commencing on 1 June 2020 and attended his first meeting in July 2020.

- Clare Lewis was an independent member of the Audit Committee until 30 November 2019. During her time on the committee, Ms Lewis was a senior executive of the Australian Securities and Investments Commission (ASIC). She has extensive skills and experience in audit, finance and risk management, particularly in the context of a federal regulatory agency. Ms Lewis attended all three committee meetings in the period for which she was a member of the committee. As she served on the Audit Committee under a reciprocal arrangement with ASIC, Ms Lewis did not receive additional remuneration for this role.

The Audit Committee's terms of reference are published on the ACCC [website](#).

Executive management committees

The ACCC has a number of executive management committees that support the governance committees and help to ensure that the organisation is managed effectively.

Executive Management Board

The Executive Management Board manages the organisation in line with the expectations and limitations set by the Accountable Authority (the Chair) and the Corporate Governance Board.

Members: Chief Operating Officer (Chair), Executive General Managers, AER Chief Executive Officer, Chief Information Officer, Chief Financial Officer, General Manager Executive and Governance, General Manager People and Culture, and General Manager Strategic Communications.

The Executive Management Board is supported by subcommittees, led by senior managers, that provide advice to it as required.

Consultative committees

The ACCC and AER host and participate in a wide range of consultative committees and forums to encourage discussion around consumer, competition and regulatory issues relevant to our work.

Table 4.4: ACCC consultative committees

ACCC Performance Consultative Committee	The ACCC Performance Consultative Committee was established in 2015 to act as the ACCC's stakeholder consultation body under the Australian Government's Regulator Performance Framework. The framework has established a common set of six outcomes-based key performance indicators that allow for comprehensive assessment of Commonwealth regulators' performance and engagement with stakeholders.
Agriculture Consultative Committee	The ACCC established the Agriculture Consultative Committee to provide advice and information on issues affecting the agriculture sector that fall within the scope of the CCA and to provide a forum where competition and consumer law concerns related to the agriculture sector can be considered and addressed collaboratively.
Consumer Consultative Committee	The ACCC established the Consumer Consultative Committee in 2001 to provide a forum through which consumer protection issues could be addressed collaboratively between our organisation and consumer representatives.
Dairy Consultative Committee	The ACCC established the Dairy Consultative Committee to provide a forum for dairy industry representatives (across farming, processing and retailing) to discuss with the ACCC issues related to the implementation of the mandatory Dairy Industry Code of Conduct introduced by the Australian Government with effect from 1 January 2020.
Fuel Consultative Committee	The Fuel Consultative Committee was established in 2010 to provide an opportunity for dialogue between the ACCC, the fuel industry and motoring organisations. The information shared increases our understanding of fuel industry issues and assists us in undertaking our role on issues related to competition and consumer protection in the fuel industry.
Infrastructure Consultative Committee	The Infrastructure Consultative Committee was set up in 2006 to facilitate discussions on the broad issues of infrastructure and infrastructure regulation. The committee was selected to be representative of the diversity of infrastructure interests and includes representatives from energy, telecommunication, water, rail, ports and airports.
Small Business and Franchising Consultative Committee	The ACCC established the Small Business and Franchising Consultative Committee to provide a forum where competition and consumer law concerns related to the small business and franchising sectors can be discussed by industry and government.
Utility Regulators Forum	The Utility Regulators Forum was established in 1997 to encourage cooperation between the Commonwealth and state and territory based regulators.
Wholesale Telecommunications Consultative Forum	The Wholesale Telecommunications Consultative Forum was established in 2012 to provide an opportunity for meaningful dialogue between the ACCC and the telecommunications industry. It also provides information to increase the ACCC's understanding of structural separation and migration issues and so assists us in our role under the CCA and the <i>Telecommunications Act 1997</i> (Cth).

Table 4.5: AER consultative committees

Customer Consultative Group	The Customer Consultative Group (CCG) was established in 2009 and is one of the AER's primary forums for engagement with representatives of energy consumers. The CCG provides the AER with insight into issues facing consumers in the energy market and gives participating organisations the opportunity to inform us about issues impacting their constituents.
Consumer Challenge Panel	The Consumer Challenge Panel (CCP) was established following funding expansion of the AER in 2012. The CCP helps the AER to make better regulatory determinations by providing input on issues of importance to consumers. CCP members work in sub-panels, generally working with individual businesses on their regulatory proposals but also on 'lateral' or issues-based panels.
Consumer Reference Group	The Consumer Reference Group (CRG) has been appointed for the Rate of Return Instrument (RoR) 2022 and is working on the inflation review ahead of RoR 2022 work commencing. The role includes representing consumer perspectives and interests through the inflation review and development of the RoR instrument for 2022.
COVID-19 Working Group	The COVID-19 Working Group was established as a shorter term group to provide a vehicle for more regular and timely discussion of, and feedback on, energy consumer issues resulting from the COVID-19 pandemic.
Energy Security Board	The Energy Security Board (ESB) was established by the Council of Australian Governments (COAG) Energy Council to coordinate the implementation of the reform blueprint produced by Australia's Chief Scientist, Dr Alan Finkel AO, and to provide whole-of-system oversight of energy security and reliability to drive better outcomes for consumers. The ESB comprises an Independent Chair, an Independent Deputy Chair and the heads of the AER, the Australian Energy Market Commission and the Australian Energy Market Operator.

Corporate and business plans

The ACCC and AER Corporate Plan 2019-20 meets the requirements of the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act) and Public Governance, Performance and Accountability Rule 2014, as well as our obligations under the Regulator Performance Framework. To achieve our purpose, each division of the agency develops an annual business plan that aligns our operations and risk management with the strategies and priorities set out in the Corporate Plan and the 2019-20 Portfolio Budget Statement. Our [Corporate Plan](#) is available on the ACCC website. This annual report describes the outcomes against both the Portfolio Budget Statement and the Corporate Plan.

Internal audit and risk

Internal audit

The ACCC and the AER's internal audit function provides assurance that we are meeting our obligations and adds value to the management and governance of our operations.

The ACCC and AER Internal Audit Plan sets out a four-year internal audit work program. This plan is reviewed annually with the oversight of the Audit Committee and is approved by the Corporate Governance Board. Audit topics are selected with reference to areas of significant risk and to ensure that all major functions, systems and divisions are audited on a regular basis.

The following internal audits were conducted during 2019-20:

- Market studies and inquiries
- Criminal cartel investigations
- Managing leave.

Risk management

Risk management is a key element of our strategic planning, decision-making and business operations. The ACCC and AER aim for best practice in managing risk by identifying priority exposures, addressing them through improvement strategies and contingency planning, and monitoring and reviewing continuing risk.

The ACCC and AER Risk Management Framework has been established to deliver on our obligations under the PGPA Act and developed in accordance with the Commonwealth Risk Management Policy.

This framework formalises our risk management practices, sets out our risk appetite and tolerance statement, and details policies and strategies to strengthen risk culture and review risk management performance. It covers the agency's strategic risks, as well as agency-wide and operational risks that sit across and within the agency's business units.

Business continuity

Business continuity management strengthens business resilience, lessening the likelihood of incidents that may adversely affect ACCC and AER operations and minimising the impact if such incidents occur.

The ACCC and AER Business Continuity Plan was created in April 2017 following a substantial review of the business continuity framework. The Business Continuity Plan is subject to regular review and testing to ensure it continues to meet the needs of the agency. The agency conducted a business continuity desktop exercise in 2019, and it revised the Business Continuity Plan to incorporate findings from the exercise in early 2020.

Fraud control

The ACCC and AER Fraud Control Plan 2019–23 directs the agency's approach to fraud prevention, detection, investigation, reporting and data collection procedures in a way that meets our specific needs and complies with the PGPA Act and the Commonwealth Fraud Control Guidelines. This plan was last updated in August 2019 and will be reviewed every two years to ensure it continues to meet the needs of the agency.

Ethical standards

Conflicts of interest

The ACCC and AER are proud of our ethical standards and ensure there is continued public confidence in our integrity and that of our employees. Given that we often investigate misrepresentation of information or unconscionable business conduct and determine charges that impact on the cost of living, it is vital that we maintain the trust of the Australian people, government and businesses.

To maintain confidence in our integrity, the ACCC and AER have strict procedures to identify and properly manage any personal interests that may cause an actual or perceived conflict of interest.

As statutory office holders, Commissioners and Board members are held to high standards of conduct. These standards arise from the high ethical standards we set ourselves and are backed by legislation, codes of conduct and the common law. The [Code of Conduct for Commission Members and Associate Members](#) was recently updated and is available on the ACCC website.

ACCC members and AER Board members must provide an annual statement of material personal interests and not participate in matters in which they, or a member of their direct family, may have a real or perceived conflict of interest. ACCC members are also required to disclose interests not previously declared at Commission and committee meetings. AER Board members are required to disclose conflicts of interest at a Board meeting.

The ACCC and AER conflict of interest policy provides for all conflict of interest action to be recorded using a suite of online forms. Conflict of interest action requires a self-assessment and, where a conflict is identified, disclosure of the conflict and a plan to manage the conflict. The policy also provides for reporting on completion of the conflict of interest to senior management.

In addition, SES-level employees must declare any material personal interests in connection with their employment at the ACCC, and this must include a management plan to address any conflicts that arise from the declaration of interests.

ACCC Commissioners, AER Board members and employees cannot accept gifts or hospitality, because acceptance could compromise, or be seen to compromise, the organisation's integrity. In some limited circumstances, employees are able to accept hospitality or gifts, such as chocolates or wine. To ensure transparency, a \$50 minimum threshold is in place for formal declarations. This allows us to display a high level of integrity and ethical behaviour in our day-to-day work.

The agency has a gifts and hospitality policy for ACCC Commissioners, AER Board members and employees. The ACCC publishes a gifts register, which is updated quarterly for Commissioners and the AER Board and biannually for employees.

APS Values and Code of Conduct

The ACCC and AER are committed to driving a respectful culture throughout the organisation and upholding and promoting the behaviours specified in the Australian Public Service (APS) Values and Code of Conduct.

Employees learn about the APS Values and Code of Conduct in corporate induction sessions, and additional awareness training is incorporated into leadership programs.

Alleged misconduct by employees may be dealt with under the APS Code of Conduct. In 2019–20 the ACCC and AER investigated five potential breaches of the code. Two employees were terminated, one employee was reprimanded and reassigned, one employee was reprimanded and fined and one claim was not substantiated.

Environmental sustainability

The ACCC and the AER remain committed to the development of best practice in environmental sustainability and performance. We have established an internal Environment Network to explore ways the organisation and its employees can contribute to sustainability and environmental objectives. Our environmental strategies to improve sustainability and performance are consistent with government sustainability policies. This includes principles set out in the Australian Government Information and Communications Technology (ICT) Sustainability Plan 2010–2015, which still has relevance as a guide to minimising the impact of our operations on the environment.

Mandatory environmental reporting

The ACCC and the AER are required to report annually on their environmental performance under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). This is covered in full in appendix 6.

We adhere to the Energy Efficiency in Government Operations Policy, the Australian Government ICT Sustainability Plan 2010–2015, and the National Packaging Covenant, using recommended key performance indicators to meet requirements.

External scrutiny

As an Australian Government agency, the ACCC and AER are held to account for their activities by a variety of external bodies, including:

- courts
- tribunals
- parliament
- agencies with administrative oversight, including the Commonwealth Ombudsman.

These bodies have the power to review our decisions and work, investigate them and either uphold the decision of the ACCC or AER or order or recommend that the ACCC or AER make changes if necessary. Each year the agency reports on its interaction with these bodies to ensure transparency on external scrutiny.

Judicial decisions

Two significant merger matters were before the Federal Court during the year.

TPG and Vodafone

In September and October 2019 the Federal Court considered the merger between TPG and Vodafone (VHA). The ACCC had earlier decided to oppose the merger because it considered that, in the absence of the merger, TPG was likely to continue to roll out its own mobile network and become an innovative and disruptive competitor in Australia's concentrated mobile telecommunications market. Following this, VHA instituted proceedings in the Federal Court.

In February 2020 the Federal Court declared that the proposed merger would not substantially lessen competition. The Court held that there was no real chance that TPG would roll out a retail mobile network or become an effectively competitive fourth mobile network operator in Australia in the next five years. The ACCC decided not to appeal the decision.

Pacific National and Aurizon

The Full Court of the Federal Court heard the ACCC's appeal in February 2020 concerning Pacific National's acquisition of the Acacia Ridge Terminal from Aurizon. In 2018 the ACCC brought proceedings alleging that the acquisition would substantially lessen competition by raising the barriers to entry for potential new rail operators. While the Federal Court judgment at trial indicated that it would have found that the acquisition was likely to substantially lessen competition if an undertaking had not been offered by Pacific National, it concluded that the behavioural undertaking offered by Pacific National resolved the competition issues. The ACCC subsequently appealed this decision, and Pacific National and Aurizon lodged cross-appeals.

In May 2020 the Full Court allowed the cross-appeals by Aurizon and Pacific National, dismissed the ACCC's appeal and released Pacific National from the undertaking. While the ACCC was successful on a number of legal issues, the Full Court held that the acquisition was not likely to substantially lessen competition, even in the absence of the behavioural undertaking from Pacific National. While the majority of the Full Court agreed with the ACCC's position on the meaning of 'likely', the case hinged on the ACCC establishing the likelihood of another player seeking to enter the market in the next five to 10 years, and the Full Court considered the prospect of entry no more than speculative. On 26 June 2020 the ACCC applied for special leave to appeal the matter to the High Court.

Judicial review decisions

There were no judicial review decisions in respect of decisions made by the ACCC or AER in 2019–20.

Administrative Appeals Tribunal

There were no decisions by the Administrative Appeals Tribunal in respect of decisions made by the ACCC or AER in 2019–20.

Australian Competition Tribunal

In October 2019 the Australian Competition Tribunal delivered its [decision](#) on the applications by both Port of Newcastle Operations Pty Ltd (PNO) and Glencore Coal Assets Australia Pty Ltd (Glencore) for merits review of the ACCC's arbitral determination of an access dispute between PNO and Glencore. The access dispute concerned access charges and other conditions of access to the 'declared' shipping channel service at the Port of Newcastle. The declaration has since been revoked, but the arbitration determination remains in place. The ACCC has made a judicial review application, which will be heard by the Full Federal Court in July 2020. Glencore has also appealed the Australian Competition Tribunal's decision.

In December 2019 Flexigroup Limited (Flexigroup) filed an application with the Australian Competition Tribunal asking it to consider afresh an application for authorisation by energy organisations seeking to develop a New Energy Tech Consumer Code. The code would set minimum standards that suppliers of 'new energy tech' products must comply with when interacting with customers. The ACCC had conditionally authorised the conduct. Some of the conditions imposed by the ACCC related to the provision of 'buy now, pay later' finance. Flexigroup is a supplier of such finance. The ACCC's application has been heard by the Tribunal and its decision is pending. The ACCC determination has not come into force. More information about this application, is available from the [ACCC's public register](#).

The Australian Competition Tribunal did not consider any applications for review of merger authorisations in 2019–20. There were no AER matters before the Australian Competition Tribunal during 2019–20.

Parliamentary scrutiny

In 2019 the House of Representatives Standing Committee on Economics examined the ACCC's performance and operation as part of its review of the *ACCC and AER annual report 2017–18*. The ACCC attended a public hearing before the committee on 18 September 2019. Topics covered included competition in the financial services sector, open banking, recommendations of the new car retailing market study, airports, online travel agents, electricity generation, digital platforms and petrol prices. We responded to the committee's questions on notice on petrol prices, energy market divestiture and retail electricity prices. On 25 November 2019 the committee tabled its report *Review of the Australian Competition and Consumer Commission annual report 2018*.

The ACCC appeared before the Senate Economics Committee on 24 October 2019 for a Supplementary Budget Estimates hearing and on 4 March 2020 for an Additional Estimates hearing. Topics covered included the Northern Australia Insurance Inquiry, the Murray–Darling Basin Water Markets Inquiry, the Dairy Industry Code of Conduct, the ACCC's product safety priorities, competition law, the Consumer Data Right, open banking and banking more generally. We responded to the committee's questions on notice from the October 2019 hearings, including on the Northern Australia Insurance Inquiry, gas prices, dairy issues and the waste exports ban. We also responded to the committee's questions on notice from the March 2020 hearings on the water market and scam complaints, and to written questions on notice relating to corporate issues.

The ACCC's testimony at the 4 March 2020 hearing was subsequently referred to in the committee's report *Economics Legislation Committee: additional estimates 2019–20*, which was tabled on 8 April 2020.

The AER also appeared before the Senate Economics Committee at Supplementary Budget Estimates and Additional Estimates hearings on 24 October 2019 and 4 March 2020. During the October 2019 session, key topics of interest were stakeholder engagement, the 'big stick' legislation, gas prices, compliance, and the South Australia–New South Wales interconnector. The AER did not receive any questions during the March session.

Australian National Audit Office

In March 2019 the Australian National Audit Office (ANAO) commenced a performance audit of how effectively the AER undertakes its regulatory activities. Broadly, the performance audit assesses how the AER has communicated regulatory requirements to market participants and information to consumers; its compliance strategies and activities; its performance of other regulatory activities; and its governance and performance management arrangements. The final audit report is expected to be tabled in parliament in September 2020, at which time the report will be published on the ANAO website.

Office of the Merit Protection Commissioner

No application for review of an ACCC or AER decision was made to the Office of the Merit Protection Commissioner in 2019–20.

Office of the Australian Information Commissioner

In 2019–20 the Office of the Australian Information Commissioner considered one decision made by the ACCC, and no decisions made by the AER, under the *Freedom of Information Act 1982* (Cth) (FOI Act).

Privacy Commissioner

The Privacy Commissioner did not investigate any complaints about the ACCC or AER in 2019–20.

Commonwealth Ombudsman

The Commonwealth Ombudsman (CO) conducted inspections of the ACCC's recordkeeping under the *Telecommunications (Interception and Access) Act 1979* (Cth) in relation to stored communications warrant records and telecommunications data requests to assess compliance with that legislation. The CO did not identify any significant non-compliance issues, and the ACCC has taken steps to rectify all issues raised by the CO.

Freedom of information

Agencies operating under the FOI Act must publish information for the public as part of the Information Publication Scheme. This requirement has replaced the former requirement to publish a statement in the annual report. Each agency's website must include a plan that shows the information it publishes in accordance with the scheme's requirements. The ACCC and AER's Information Publication Scheme statement pursuant to Part II of the FOI Act can be found on the ACCC's website under [Freedom of information](#).

Our people

Internal COVID-19 pandemic response

In early March 2020, in response to the COVID-19 pandemic, the ACCC and AER activated our Business Continuity Plan and established an internal Pandemic Response Team (PRT) to urgently consider and endorse actions under the plan.

Initial actions

The initial actions of the PRT included:

- repatriating (or offering to repatriate) all employees currently overseas, including those on long-term secondments
- establishing isolation protocols for employees returning from high-risk countries (later extended to all international locations)
- implementing social distancing measures in all offices
- introducing hand sanitiser stations, hand washing instructions and desk wipes in all offices
- enhancing office cleaning arrangements
- suspending all domestic work-related travel
- suspending all on-site visits, including face-to-face examinations (conducting these via video conferencing instead)
- suspending all attendance at external events
- successfully trialling remote hearings with the Federal Court
- supporting employees to work from home where possible.

Enabling remote working

By mid-March, in line with government recommendations and restrictions, the ACCC transitioned the majority of its employees to working from home.

The agency fast-tracked a number of ICT and security initiatives to better enable remote working, including procuring more bandwidth and deploying new collaboration software and video conference systems. By early April close to all ACCC and AER employees (more than 97 per cent) were working from home with full access to all systems.

The combination of improved ICT capability and existing flexible working policies allowed the ACCC to adapt quickly and maintain agency capability despite the challenging new environment for our people.

While ACCC and AER offices were closed to the public, they remained accessible to employees who did not have a safe working environment at home or needed to access the office for other appropriate reasons. We provided guidance on protective measures to those employees who did access the office at this time.

Employee wellbeing

To assist our people in this challenging environment, we provided:

- regular communications regarding the virus itself and how to stop the spread
- reassurance from leaders that employee welfare was paramount
- wellbeing articles, tools and webinars run by psychologists
- a series of sessions for managers and employees on developing strategies to deal with uncertainty
- access to additional online learning
- regular surveys to check on employee welfare and workloads as well as the level of communication and support.

We also engaged in regular consultation with other government agencies, the Community and Public Sector Union and the ACCC's Employee Council and Health and Safety Committee.

Reopening our offices

The ACCC and AER have regularly reassessed our policies as we receive further state and federal government advice.

On 8 June 2020 we decided to reopen our Perth and Darwin offices to our employees. This meant that they would no longer need to seek permission to attend the office. These offices were reopened with a limited maximum capacity to ensure social distancing. A range of other safeguards were in place, including monitoring attendance numbers and increased cleaning. To date, demand from employees wishing to return to these offices has not exceeded the new limited capacity to ensure social distancing.

As at 30 June 2020 all agency offices were closed to the public. We will continue monitoring the situation and make changes as appropriate.

Innovation

The ACCC and AER National Innovation Project, which commenced in 2018, seeks to enhance the culture and structure of the agency to support a sustained commitment and capability to innovate into the future. In 2019-20 the ACCC and AER continued to implement initiatives under the project. For example, we reviewed and updated induction processes and innovation-related performance indicators; applied for and had a team accepted into the Nesta 'States of Change' program (postponed to later in 2020 due to the COVID-19 pandemic); and held an internal 'innovation jam' to mark Public Sector Innovation Month. That session generated dozens of ideas for agency improvements, many of which have already been progressed.

A key achievement in 2019-20 was the establishment of an internal innovation forum to oversee the project. The forum, made up of senior managers from across the organisation, meets monthly to provide leadership support and create an authorising environment to enable innovation. More recently the project has turned its focus to embedding innovation into governance, working to identify the most efficient and effective strategy to manage new ideas.

Our approach to innovation is multi-layered and designed to generate inventive thought at all levels of business. The latest Australian Public Service (APS) Census results (2019) indicate that we are taking steps in the right direction. Improvements against the organisation's innovation index score, belief in individualised responsibility to innovate and support for continuous improvement reflect the emergence of a culture of innovation. The impact of the COVID-19 pandemic has triggered renewed appetite and activity to find innovative ways of working and connecting people across a completely decentralised operating structure.

Talent

During 2019–20 our talent priorities focused on overhauling our learning and development, reviewing our graduate program and enhancing performance feedback and career conversations.

Learning and development overhaul

The central learning and development program was reinvigorated to support broader modernisation and innovation initiatives and to build essential skills ranging from leadership to data.

A Leadership Development Committee was instituted to guide and support new programs such as the Commissioner and SES 360 development program, a Frontline Managers Program and the Future Leaders Program for experienced Executive Level 2 (EL 2) employees.

Online learning through LinkedIn Learning was rapidly implemented to provide continuing development opportunities during the COVID-19 isolation period.

Graduate program review

The graduate program was evaluated by an independent third party, who found that the program is highly respected by internal respondents and successful in developing skilled talent for the agency. Recommendations were accepted and incorporated to improve graduate rotation and placement processes, supervisor training and pastoral care support and to broaden the eligibility criteria to facilitate more diverse cohorts.

Performance feedback and career conversations

Phase three of our Performance Feedback Development Program was introduced, supporting employees and leaders to facilitate career conversations and align measurable goals and expectations to the ACCC Corporate Plan. A new policy and guidelines were developed to support phase three.

Wellbeing

Creating a workplace culture of psychological safety was the underlying premise of the ACCC and AER wellbeing approach. A key aspect of this was creating an effective relationship between manager and employee, demonstrating care in the workplace.

We continued to deliver employee awareness sessions on resilience, mental health and mindfulness. These sessions were complemented by mental health awareness training for managers.

Our investment and commitment supported employees along the entire spectrum of mental health, from actively promoting mental health and wellbeing to providing early intervention, treatment and return to work activities. We continued to adopt an early intervention approach to case management. The agency worked with employees experiencing discomfort or injury and exploring early medical, counselling or remedial support.

Peer support network refresh

The agency's Workplace Contact Officers network was rebranded Peer Support Advisers. The rebranding signalled more clearly that the role is to provide peer support and information coordination to employees experiencing wellbeing issues to help them make informed decisions and deal with their concerns. We have also expanded the network due to increases in employee numbers and people working flexibly. The network will have coverage across offices and classification levels.

Flexibility and work from home policy

We reviewed our people policies, including our working flexibly and home-based work policies, to ensure their continued relevance. The ‘if not, why not’ position was enhanced in both policies to assist with removing real and perceived barriers to working flexibly. The home-based work policy now incorporates guidance on working in a safe manner from home. A Working Flexibly Reference Group was also formed to promote working flexibly and to establish strategies for breaking down barriers and traditional thinking about how we work. All these initiatives have contributed to our response to the COVID-19 pandemic and supporting our people to work from home.

Diversity and inclusion

New diversity and inclusion strategy

New Senior Champions were appointed for our gender, LGBTIQ+, cultural and linguistically diverse and Reconciliation Action Plan (RAP) working groups. Diversity and inclusion initiatives focused on actions to reduce pay gaps, celebrating and sharing stories of diversity groups at national events, putting in place policies and guidelines to support employees, and education through online learning programs.

New Reconciliation Action Plan

Our 2019–22 RAP Innovate focuses on developing and strengthening relationships with Aboriginal and Torres Strait Islander peoples, engaging employees and stakeholders in reconciliation, and developing and piloting innovative strategies to empower Aboriginal and Torres Strait Islander peoples to achieve reconciliation.

Pay gap—measuring inclusion

We used the Workplace Gender Equality Agency standard to measure our gender pay gap and extended the methodology to other diversity groups. Pay gap is a measure of inclusion. Identifying pay gaps in the agency enables us to increase awareness of inclusion barriers and work with employees and senior management to develop strategies to close the gaps.

Disability reporting

Since 1994 Commonwealth non-corporate entities have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08 reporting on the employer role was transferred to the Australian Public Service Commission’s *State of the service report* and the *APS statistical bulletin*. These reports are available at www.apsc.gov.au. From 2010–11 entities have no longer been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by the National Disability Strategy 2010–2020, which sets out a 10-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high-level two-yearly report will track progress against each of the six outcome areas of the strategy and present a picture of how people with disability are faring. The first of these reports was published in 2014, and can be found at www.dss.gov.au.

Our staffing profile

Figure 4.3 Age profile of ACCC employees at 30 June 2020

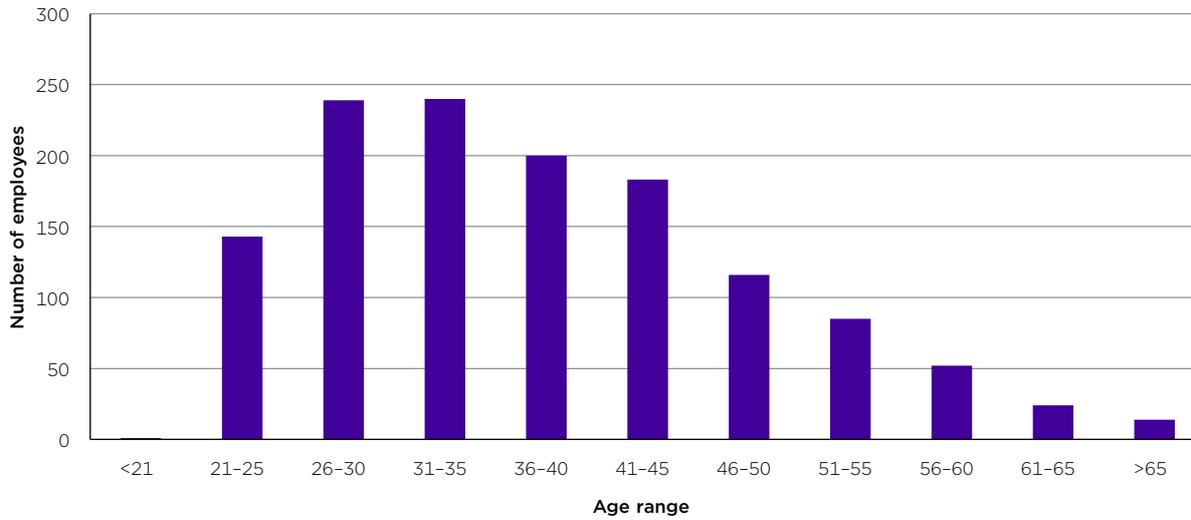
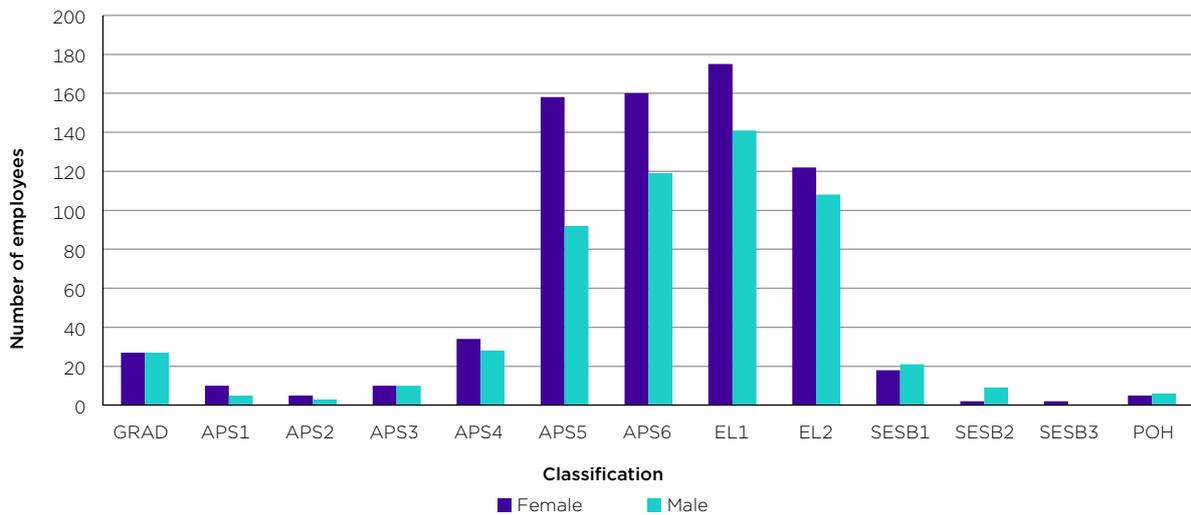


Figure 4.4: Gender profile of ACCC employees at 30 June 2020



Note: POH = public office holder.

Table 4.6: Turnover according to separation type 2019-20

Separation	Classification	Number of employees
External transfer or promotion	Non-SES	25
Retirement	Non-SES	2
Contract expired	Non-SES	38
Resignation	Non-SES	64
	SES	1
Redundancy	Non-SES	5
Other	Non-SES	5
Total		140

Employment agreements and remuneration

Enterprise agreement

The ACCC Enterprise Agreement 2016–2019, which came into effect in December 2016, continues to operate in conjunction with a *Public Service Act 1999* (Cth) s. 24(1) determination that supplements the agreement's existing salary and allowance entitlements. Some people covered by the enterprise agreement perform roles with responsibilities that are above the expectations for their classification. In some instances proposals are made to remunerate these people above the salary cap for their classification. Proposals are considered under clause 11 of the Enterprise Agreement (Individual Flexibility Arrangement), are consistent with the ACCC/AER Individual Flexibility Arrangement Policy and require endorsement by the Executive Management Board.

Senior executive remuneration

Remuneration for ACCC and AER members is determined by the Remuneration Tribunal in accordance with:

- the *Remuneration Tribunal Act 1973* (Cth)
- the [Remuneration Tribunal \(Remuneration and Allowances for Holders of Full-time Public Office\) Determination 2018](#).

Mandatory executive remuneration reporting is detailed in appendix 3.

Determinations

SES employees are subject to individual determinations covering remuneration, leave and a range of other employment conditions. Determinations are made in accordance with the *Public Service Act 1999* and ACCC/AER SES remuneration policies, and approved by the Chief Operating Officer or Chair. Other benefits covered in SES determinations can include allowances, performance pay and superannuation.

Common law contracts and Australian Workplace Agreements

No employees were covered by common law contracts or Australian Workplace Agreements in 2019–20.

Non-salary benefits

Non-salary benefits provided to employees under the Enterprise Agreement include:

- options for home-based work
- ability to work part time
- flexible working arrangements
- access to different leave types
- influenza vaccinations
- access to the Employee Assistance Program.

Table 4.7: Number of employees covered by each industrial instrument at 30 June 2020

	ACCC Enterprise Agreement 2016–2019	IFAs	Section 24 determinations
APS 1	15	0	0
APS 2	8	0	0
APS 3	20	0	0
APS 4	62	0	0
APS 5	250	0	0
APS 6	279	6	0
EL 1	316	25	0
EL 2	230	69	1
SES 1	0	0	39
SES 2	0	0	11
SES 3	0	0	2
GRAD	54	0	0

Note: IFA = individual flexibility arrangement.

Table 4.8: Salary ranges for APS employees at 30 June 2020

	ACCC Enterprise Agreement 2016–2019	Section 24 determinations
APS 1	\$48 521–\$53 631	-
APS 2	\$54 910–\$60 889	-
APS 3	\$62 539–\$67 505	-
APS 4	\$69 711–\$75 688	-
APS 5	\$77 752–\$82 443	-
APS 6	\$86 064–\$96 462	-
EL 1	\$106 931–\$118 340	-
EL 2	\$123 969–\$145 280	\$167 228
SES 1	-	\$189 487–\$207 975
SES 2	-	\$252 765–\$330 000
SES 3	-	\$339 956–\$344 978
L 1	\$67 505–\$133 019	-
L 2	\$140 573–\$148 998	-
GRAD	\$60 889–\$69 711	-

Table 4.9: Performance pay

	SES B1	SES B2	SES B3	ACCC
Number who received bonus	35	10	1	46
Total bonus	\$485 101	\$224 335	\$29 996	\$739 432
Average bonus	\$13 860	\$22 433	\$29 996	\$16 075
Range	\$1 296–\$35 272	\$12 638–\$27 930	\$29 996	\$1 296–\$29 996

Note: Four SES employees received a pro-rata amount due to the requirements of the performance pay criteria during the period.

Asset management and procurement

The Finance Branch is responsible for all ACCC financial matters and asset management. Our Corporate Operations and Property Management teams maintain our offices and plan and coordinate moves and office fit-outs.

Asset management

The ACCC's asset management framework incorporates asset policies and procedures that enable the efficient acquisition and effective management of assets.

Assets managed by the ACCC include:

- buildings, including fit-outs and leasehold improvements
- infrastructure, plant and equipment, including office equipment, furniture and fittings and computer equipment
- intangibles, including computer software.

In 2019–20 we undertook an independent fair value assessment of our buildings, infrastructure, plant and equipment to confirm the validity and value of our asset portfolio.

Purchasing

The ACCC uses Australian Government resources and spends public money in accordance with the requirements of the PGPA Act and the Commonwealth Procurement Rules.

Responsibility for procurement lies with the financial delegates in each business unit, who have support from a central procurement team. The team advises on risk management, probity, specification development and contract management. Low-risk procurements (valued at less than \$80 000) are managed by business units. Procurements of \$80 000 or more and whole-of-government and panel arrangements are managed by both the business unit and the central procurement team, ensuring that we comply with the Commonwealth Procurement Rules.

Information on all ACCC contracts awarded with a value of \$10 000 (inclusive of GST) or more is available on the AusTender [website](#).

The ACCC had no exempt contracts for the financial year.

There were no contracts of \$100 000 or more (inclusive of GST) during 2019–20 that did not provide for the Auditor-General to have access to the contractor's premises.

The ACCC supports small business participation in the Commonwealth Government procurement market through:

- the Small Business Engagement Principles (outlined in the government's Industry Innovation and Competitiveness Agenda), such as communicating in clear, simple language and presenting information in an accessible format
- the use of the Commonwealth Contracting Suite for low-risk procurements valued under \$200 000
- electronic systems or other processes used to facilitate on-time payment performance, including the use of payment cards.

Small and medium enterprise (SME) and small enterprise participation statistics are available on the Department of Finance [website](#).

Information on procurements expected to be undertaken in the coming year is included in the ACCC's annual procurement plan. This plan is updated as and when circumstances change.

Consultancy contracts

During 2019–20, 93 new consultancy contracts were entered into involving total actual expenditure of \$8.5 million. In addition, 31 ongoing consultancy contracts were active during the period, involving total actual expenditure of \$3.5 million.

The ACCC and AER engage consultants where we lack specialist expertise or when independent research, review or assessment is required. Consultants typically investigate or diagnose a defined issue or problem; carry out reviews or evaluations; or provide independent advice, information or creative solutions to assist ACCC or AER decision-making.

Before engaging consultants we take into account the skills and resources that are required for the task, the skills that are available internally and the cost-effectiveness of engaging external expertise.

The decision to engage a consultant is made in accordance with the PGPA Act and related regulations, including the Commonwealth Procurement Rules.

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender [website](#).

Table 4.10: Number of and expenditure on consultancy contracts 2019–20

	Total
No. of new contracts entered into during the period	93
Total actual expenditure during the period on new contracts (including GST)	\$8.5 million
No. of ongoing contracts engaging consultants that were entered into during a previous period	31
Total actual expenditure during the period on ongoing contracts (including GST)	\$3.5 million

Grant programs

Neither the ACCC nor the AER administer any grant programs.



05

Financial statements





INDEPENDENT AUDITOR'S REPORT

To the Treasurer

Opinion

In my opinion, the financial statements of the Australian Competition and Consumer Commission (the Entity) for the year ended 30 June 2020:

- (a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Entity as at 30 June 2020 and its financial performance and cash flows for the year then ended.

The financial statements of the Entity, which I have audited, comprise the following as at 30 June 2020 and for the year then ended:

- Statement by the Accountable Authority and Chief Financial Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement;
- Administered Schedule of Comprehensive Income;
- Administered Schedule of Assets and Liabilities;
- Administered Reconciliation Schedule;
- Administered Cash Flow Statement; and
- Notes to the financial statements, comprising a Summary of Significant Accounting Policies and other explanatory information.

Basis for opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Entity in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) to the extent that they are not in conflict with the *Auditor-General Act 1997*. I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Accountable Authority's responsibility for the financial statements

As the Accountable Authority of the Entity, the Chair is responsible under the *Public Governance, Performance and Accountability Act 2013* (the Act) for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under the Act. The Chair is also responsible for such internal control as the Chair determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Chair is responsible for assessing the ability of the Entity to continue as a going concern, taking into account whether the Entity's operations will cease as a result of an administrative restructure or for any other reason. The Chair is also responsible for disclosing, as applicable, matters related to

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going concern and using the going concern basis of accounting unless the assessment indicates that it is not appropriate.

Auditor's responsibilities for the audit of the financial statements

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with the Accountable Authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office



Lorena Skipper
Executive Director

Delegate of the Auditor-General
Canberra

24 August 2020

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AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2020 comply with subsection 42(2) of the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)* and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Australian Competition and Consumer Commission will be able to pay its debts as and when they fall due.



Rod Sims
Chair and Accountable Authority

24 August 2020



Peter Maybury
Chief Financial Officer

24 August 2020

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Statement of Comprehensive Income

for the period ended 30 June 2020

	Notes	2020 \$'000	2019 \$'000	Original Budget \$'000
NET COST OF SERVICES				
Expenses				
Employee benefits	1.1A	160,438	137,829	139,966
Suppliers	1.1B	93,400	88,897	98,959
Depreciation and amortisation	2.2A	17,704	5,268	6,816
Settlement of litigation		33,256	6,172	-
Finance costs		844	15	33
Impairment of non-financial assets	2.2A	18	425	-
Total expenses		305,660	238,606	245,774
Own-source income				
Own-source revenue	1.2	4,932	5,428	3,797
Total own-source income		4,932	5,428	3,797
Net (cost of) services		(300,728)	(233,178)	(241,977)
Departmental appropriations		259,215	228,941	235,161
Surplus/(Deficit) attributable to the Australian Government		(41,513)	(4,237)	(6,816)
Total comprehensive income/(loss) attributable to the Australian Government		(41,513)	(4,237)	(6,816)

The above statement should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Statement of Financial Position

as at 30 June 2020

	Notes	2020 \$'000	2019 \$'000	Original Budget \$'000
ASSETS				
Financial assets				
Cash and cash equivalents		1,164	1,656	1,616
Trade and other receivables	2.1	63,842	60,337	39,017
Total financial assets		65,006	61,993	40,633
Non-financial assets				
Leasehold improvements	2.2A	79,808	15,893	11,223
Plant and equipment	2.2A	3,177	3,439	4,194
Computer software	2.2A	19,451	5,624	11,792
Other non-financial assets	2.2B	1,627	4,608	4,060
Total non-financial assets		104,063	29,564	31,269
Total assets		169,069	91,557	71,902
LIABILITIES				
Payables				
Suppliers	2.3A	17,654	13,038	13,108
Other payables	2.3B	3,313	21,937	16,649
Total payables		20,967	34,975	29,757
Interest bearing liabilities				
Leases	2.4	75,076	-	-
Total interest bearing liabilities		75,076	-	-
Provisions				
Employee provisions	5.1	48,227	40,329	35,685
Other provisions	2.5	25,824	10,018	2,828
Total provisions		74,051	50,347	38,513
Total liabilities		170,094	85,322	68,270
Net assets		(1,025)	6,235	3,632
EQUITY				
Contributed equity		114,985	99,283	105,078
Reserves		4,197	4,197	4,198
Retained surplus/(Accumulated deficit)		(120,207)	(97,245)	(105,644)
Total equity		(1,025)	6,235	3,632

The above statement should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Statement of Changes in Equity

for the period ended 30 June 2020

	Retained Surplus		Contributed Equity		Asset Revaluation Reserve		Total Equity	
	2020	2019	2020	2019	2020	2019	2020	2019
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Opening balance at 1 July 2019	(97,245)	(93,008)	99,283	88,079	4,197	4,198	6,235	(732)
Changes in accounting policy	18,551	-	-	-	-	-	18,551	-
Adjusted opening balance at 1 July	(78,694)	(93,008)	99,283	88,079	4,197	4,198	24,786	(732)
Comprehensive Income								
Surplus/(Deficit) for the period	(41,513)	(4,237)	-	-	-	-	(41,513)	(4,237)
Total comprehensive income	(41,513)	(4,237)	-	-	-	-	(41,513)	(4,237)
Transactions with owners								
Contributions by owners	-	-	1,100	1,100	-	-	1,100	1,100
Equity injection	-	-	14,602	10,104	-	-	14,602	10,104
Departmental capital budget	-	-	15,702	11,204	-	-	15,702	11,204
Total transactions with owners	(120,207)	(97,245)	114,985	99,283	4,197	4,198	(1,025)	6,235
Closing balance as at 30 June								
		(105,644)	105,078	105,078	4,197	4,198	6,235	3,632

The above statement should be read in conjunction with the accompanying notes.

Accounting Policy

Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Cash Flow Statement

for the period ended 30 June 2020

	2020 \$'000	2019 \$'000	Original Budget \$'000
OPERATING ACTIVITIES			
Cash received			
Appropriations	274,770	225,864	250,301
Sale of goods and rendering of services	1,223	1,321	3,703
Interest	84	-	-
Net GST received	10,022	8,076	-
Other	3,881	3,875	-
Total cash received	289,980	239,136	254,004
Cash used			
Employees	151,004	130,404	138,165
Suppliers	102,160	95,262	102,677
Interest payments on lease liabilities	844	-	-
Section 74 receipts transferred to OPA	25,193	15,788	13,662
Settlement of litigation	14,379	-	-
Total cash used	293,580	241,454	254,504
Net cash from/(used by) operating activities	(3,600)	(2,318)	(500)
INVESTING ACTIVITIES			
Cash received			
Other	2,194	2,909	-
Total cash received	2,194	2,909	-
Cash used			
Purchase of non-financial assets	19,018	5,658	5,295
Other	224	3	-
Total cash used	19,242	5,661	5,295
Net cash from/(used by) investing activities	(17,048)	(2,752)	(5,295)
FINANCING ACTIVITIES			
Cash received			
Principal receipts on sublease receivable	743	-	-
Contributed equity	32,282	5,034	5,795
Total cash received	33,025	5,034	5,795
Cash used			
Principal payments on lease liabilities	12,869	-	-
Total cash used	12,869	-	-
Net cash from/(used by) financing activities	20,156	5,034	5,795
Net increase/(decrease) in cash held	(492)	(36)	-
Cash and cash equivalents at the beginning of the reporting period	1,656	1,692	1,616
Cash and cash equivalents at the end of the reporting period	1,164	1,656	1,616

The above statement should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Administered Schedule of Comprehensive Income

for the period ended 30 June 2020

	2020 \$'000	2019 \$'000	Original Budget \$'000
NET COST OF SERVICES			
Expenses			
Impairment and repayment of fees and fines	26,445	21,421	-
Total expenses	26,445	21,421	-
Income			
Non-taxation revenue			
Fines and costs	202,128	91,235	40,000
Other fees and charges	1,643	808	-
Total income	203,771	92,043	40,000
Surplus	177,326	70,622	40,000
Total comprehensive income	177,326	70,622	40,000

Administered Schedule of Assets and Liabilities

as at 30 June 2020

	Notes	2020 \$'000	2019 \$'000	Original Budget \$'000
ASSETS				
Financial assets				
Cash and cash equivalents		500	-	-
Trade and other receivables	3.1	37,553	22,970	32,615
Total financial assets		38,053	22,970	32,615
Total assets administered on behalf of Government		38,053	22,970	32,615
Net assets/(liabilities)		38,053	22,970	32,615

The above schedules should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Administered Reconciliation Schedule

for the period ended 30 June 2020

	2020 \$'000	2019 \$'000
Opening assets less liabilities as at 1 July	22,970	32,615
Net (cost of)/contribution by services		
Income	203,771	92,043
Expenses	(26,445)	(21,421)
Transfers (to)/from the Australian Government		
Appropriation transfers to Official Public Account		
Transfers to Official Public Account	(162,243)	(76,766)
Transfers from other entities	-	(3,501)
Closing assets less liabilities as at 30 June	38,053	22,970

Accounting Policy

Administered Cash Transfers to and from the Official Public Account

Revenue collected by the Commission for use by the Government rather than the Commission is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Commission on behalf of the Government and reported as such in the schedule of administered cash flows and in the administered reconciliation schedule.

Administered Cash Flow Statement

for the period ended 30 June 2020

	2020 \$'000	2019 \$'000
OPERATING ACTIVITIES		
Cash received		
Fines and costs	161,106	76,627
Other fees and charges	1,645	141
Total cash received	162,751	76,768
Cash used		
Refund of fees and fines	8	2
Total cash used	8	2
Net cash from operating activities	162,743	76,766
Cash to Official Public Account		
Appropriations	(162,243)	(76,766)
Total cash to Official Public Account	(162,243)	(76,766)
Cash and cash equivalents at the beginning of the reporting period	-	-
Cash and cash equivalents at the end of the reporting period	500	-

This above schedules should be read in conjunction with the accompanying notes.

OVERVIEW

The Australian Competition and Consumer Commission (ACCC) is an Australian Government controlled not-for-profit entity whose role is to enforce the *Competition and Consumer Act 2010* and a range of additional legislation, promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians.

The Basis of Preparation

The financial statements are general purpose financial statements and are required by section 42 of the *Public Governance, Performance and Accountability Act 2013*.

The financial statements have been prepared in accordance with:

- *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015* (FRR); and
- Australian Accounting Standards and Interpretations - Reduced Disclosure Requirements issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The financial statements are presented in Australian dollars.

Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in these statements the Commission has made assumptions or estimates in the following areas that have the most significant impact on the amounts recorded in the financial statements:

- With the exception of right-of-use assets that are carried at cost, the fair value of property, plant and equipment (PP&E) is assessed at market or depreciated replacement cost as determined by an independent valuer and is subject to ongoing assessment by the valuer and management between formal valuations. The real estate market continues to be impacted by uncertainty surrounding the outbreak of COVID-19. A desktop valuation conducted by an independent valuer was used at 30 June 2020 to confirm the fair value of the Commission's PP&E at reporting date. Due to higher levels of market uncertainty the fair value of PP&E after reporting date may be subject to change over a relatively short period of time, depending on further impacts of COVID-19 on the Australian economy and real estate sector.
- Lease liabilities are discounted using the interest rate implicit in the lease. Where the implicit rate cannot be readily determined the discount rate is based on zero coupon bond yields. The discount rate is established on lease commencement and is not changed during the lease term unless there has been a modification to the lease that impacts the remaining lease payments.
- Leave provisions involve assumptions based on the expected tenure of existing staff, patterns of leave claims and payout, future salary movements and future discount rates. Leave liabilities have been determined by reference to the work of an actuary as at 30 June 2018 and are subject to ongoing assessment by management.
- Litigation provisions have been determined by management based on its best estimate of the expenditure required to settle obligations at reporting date. In determining this amount management uses a combination of available information and past experience to identify a range of possible outcomes. Provisions are established at the highest potential cost outcome where there is a considerable chance that option could eventuate. Provisions are reviewed at the end of each reporting period and adjusted to reflect the current best estimate.

Other than those matters discussed above, no accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next reporting period.

Taxation

The Commission is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Reporting of Administered activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules and related notes.

Administered revenue is generated from fines and costs applied by the courts, or by agreement between the Commission and the defendant. It is recognised when awarded by the courts, or when agreement has been executed. The court costs awarded against the Commission are recorded as a departmental expense.

Authorisation and notification fees are applied when required under the relevant legislation, and are recognised upon receipt. Administered fee revenue is recognised at its nominal amount due less any allowance for bad or doubtful debts. Collectability of debts is reviewed at the end of the reporting period. Allowances are made when collection of the debt is judged to be less rather than more likely.

Except where otherwise stated, administered items are accounted for on the same basis and using the same policies as for departmental items, including the application of Australian Accounting Standards.

New Accounting Standards

AASB 16 *Leases* became effective on 1 July 2019 which has resulted in a material impact on the Commission's financial statements.

AASB 16 represents a fundamental shift in the way lessees account for leasing transactions, replacing the existing requirements under AASB 117 *Leases*. AASB 16 introduces a single accounting model for lessees, requiring the recognition of assets and liabilities for all leases, unless the lease term is less than 12 months or the underlying assets are of low value (e.g. less than \$10,000). AASB 16 substantially carries forward the lessor accounting in AASB 117, with the distinction between operating leases and finance leases being retained.

The details of the changes in accounting policies, transitional provisions and adjustments are disclosed below and in the relevant notes to the financial statements.

Application of AASB 16 Leases

The Commission has adopted AASB 16 using the modified retrospective approach, under which the cumulative effect of initial application is recognised in retained earnings at 1 July 2019. Accordingly, the comparative information presented for 2019 is not restated.

The Commission has elected to apply the practical expedient to not reassess whether a contract is, or contains a lease at the date of initial application. Contracts entered into before the transition date that were not identified as leases under AASB 117 were not reassessed. The definition of a lease under AASB 16 was applied only to contracts entered into or changed on or after 1 July 2019.

AASB 16 provides for certain optional practical expedients, including those related to the initial adoption of the standard. The Commission applied the following practical expedients when applying AASB 16 to leases previously classified as operating leases under AASB 117:

- The Commission has relied on previous assessments on whether leases are onerous as opposed to preparing an impairment review under AASB 136 *Impairment of Assets* as at the date of initial application; and
- The Commission has applied the exemption not to recognise right-of-use assets and liabilities for leases with less than 12 months of lease term remaining as of the date of initial application. Where this has been applied the remaining lease payments have been recognised and disclosed as a short-term lease.

As a lessee, the Commission previously classified leases as operating or finance leases based on its assessment of whether the lease transferred substantially all of the risks and rewards of ownership. Under AASB 16, the Commission recognises right-of-use assets and lease liabilities for most leases. However, the Commission has elected not to recognise right-of-use assets and lease liabilities where the value of the underlying asset is less than \$10,000 or the lease has a term of 12 months or less.

On adoption of AASB 16, the Commission recognised right-of-use assets and lease liabilities in relation to leases of office and data centre space that had previously been classified as operating leases.

The lease liabilities were measured at the present value of the remaining lease payments, discounted using the Commission's incremental borrowing rate as at 1 July 2019. The Commission's incremental borrowing rate is the rate at which a similar borrowing could be obtained from an independent creditor under comparable terms and conditions. The weighted-average rate applied was 1.1%.

The right-of-use assets were measured at an amount equal to the lease liability, adjusted by the amount of any prepaid rent.

Impact on transition

On transition to AASB 16, the Commission recognised additional right-of-use assets and additional lease liabilities, recognising the difference in retained earnings. The impact on transition is summarised below:

Departmental	1 July 2019
	\$'000
Initial recognition - Right-of-use assets	59,312
Initial recognition - Lease liabilities	(71,450)
Initial recognition - Net investment in sublease	8,154
Reversal of 30 June 2019 lease balances recognised under AASB 117	22,535
Retained earnings	18,551

The following table reconciles the Departmental minimum lease commitments disclosed in the 30 June 2019 annual financial statements to the amount of lease liabilities recognised on 1 July 2019:

	1 July 2019
	\$'000
Minimum operating lease commitment at 30 June 2019	86,649
Less: GST included in reported lease commitments	(7,877)
Less: short-term leases not recognised under AASB 16	(1,371)
Less: leases included in commitments that did not commence until 2019-20	(1,389)
Less: other adjustments on transition	(923)
Undiscounted lease payments	75,089
Less: effect of discounting using the incremental borrowing rate as at the date of initial application	(3,639)
Lease liabilities recognised at 1 July 2019	71,450

Departmental Appropriations

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue when the Commission gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.

Special Accounts

The Commission manages a Services for Other Entities and Trust Moneys Special Account established by *Financial Management and Accountability (Establishment of Special Account for Australian Competition and Consumer Commission) Determination 2011/02*, issued under section 78 of the *Public Governance, Performance and Accountability Act 2013*.

For both the current and comparative periods the Special Account had a balance of \$54,377 and there were no transactions debited or credited to it during either period. Cash and cash equivalents presented in the financial statements do not include amounts held within the Special Account.

The purpose of the Special Account is for:

- (a) amounts to be held on trust or otherwise for the benefit of a person other than the Commonwealth;
- (b) amounts received in the course of the performance of functions that relate to the purpose of the Services for Other Entities and Trust Moneys - Australian Competition and Consumer Commission Special Account;
- (c) amounts received from any person for the purposes of the Services for Other Entities and Trust Moneys - Australian Competition and Consumer Commission Special Account; and
- (d) amounts to be held on trust or otherwise for the benefit of a person other than the Commonwealth.

Financial Instruments

The Commission's financial assets consist of cash and goods and services receivable. Financial assets are recognised when the Commission becomes party to the contract and has a legal right to receive cash. Financial assets are derecognised when the contractual rights to cash flows expire or are transferred. The Commission classifies its financial assets as 'financial assets at amortised cost' with income recognised using the effective interest rate method.

Financial liabilities, consisting of trade payables, are initially measured at fair value net of transaction costs. Trade payables are recognised to the extent the goods and services have been received. Financial liabilities are derecognised upon payment.

Related Parties

The Commission is an Australian Government controlled entity. Related parties to this entity are Key Management Personnel including the Portfolio Minister and other Australian Government entities.

Giving consideration to relationships with related entities, and transactions entered into during the reporting period by the Commission, it has been determined that there are no related party transactions to be separately disclosed.

Regulatory Charging

Annual carrier licence charges are imposed under the *Telecommunications (Carrier Licence Charges) Act 1997* on participating telecommunication carriers under cost recovery arrangements to recover the costs incurred by the Commission, the Australian Communications and Media Authority (ACMA) and the Australian Government in regulating the telecommunications industry. ACMA undertakes the regulatory charging activity, recovering the Commission's costs on behalf of the Commonwealth. The Commission does not receive any monies direct from external parties.

The departmental costs incurred by the Commission are met out of appropriation funding. The Commission's costs being recovered by ACMA in 2019-20, subject to finalisation of the *Telecommunications (Carrier Licence Charges) Act 1997 Determination*, totals \$11,878,541 (2019: \$13,295,863). This cost includes components for the Measuring Broadband Australia program of \$1,702,406 (2019: \$1,531,854) and depreciation expense of \$0.3m (2019: \$0.4m), the latter of which is not appropriation funded.

The Cost Recovery Impact Statement for the above activity is available at:

<https://www.acma.gov.au/cost-recovery-implementation-statement-cris>

1. Financial Performance

This section analyses the financial performance of the Commission for the year ended 30 June 2020.

1.1 Expenses

	2020 \$'000	2019 \$'000
1.1A: Employee benefits		
Wages and salaries	121,287	102,364
Superannuation		
Defined contribution plans	13,856	11,334
Defined benefit plans	7,294	6,979
Leave and other entitlements	17,147	15,537
Separation and redundancies	169	1,041
Other employee benefits	685	574
Total employee benefits	160,438	137,829

Accounting Policy

Accounting policies for employee related expenses is included in the People and Relationships section.

1.1B: Suppliers

	2020 \$'000	2019 \$'000
Goods and services supplied or rendered		
Legal expenses	31,600	25,939
Consultants and contracted services	32,003	23,358
Information technology and communications	12,243	10,568
Property operating expenses	4,953	4,331
Travel expenses	4,219	5,759
Employee related expenses	2,226	2,344
Information management expenses	2,695	2,995
Other administration expenses	2,618	3,448
Total goods and services supplied or rendered	92,557	78,742
Other suppliers		
Operating lease rentals	-	9,867
Short-term leases	468	-
Workers compensation premiums	375	288
Total other suppliers	843	10,155
Total suppliers	93,400	88,897

Accounting Policy

Right-of-use assets and lease liabilities are not recognised where:

- a) the lease has a term of 12 months or less; or
- b) the underlying value of each leased asset is less than \$10,000.

Where these criteria are met lease payments are recognised evenly over the lease term.

1.2 Own-Source Revenue

	2020 \$'000	2019 \$'000
Own-Source Revenue		
International development funding	1,388	1,561
Reimbursement of legal costs	766	1,070
Secretariat Services - National Competition Council	851	850
Seminars	424	444
Sublease rental income	193	1,003
Finance income	84	-
Resources received free of charge (Remuneration of auditors)	115	115
Other revenue	1,111	385
Total sale of goods and rendering of services	4,932	5,428

Accounting Policy

Revenue from rendering of services is recognised progressively as the services are provided to the customer where it can be demonstrated that:

- a) the customer simultaneously receives and consumes the services as they are provided;
- b) the services create an asset that the customer controls as the asset is created; or b) the services have no alternative use to the ACCC and an enforceable right to payment exists for work completed to date.

The amount of revenue recognised is determined by reference to progress made in satisfying any obligations that exist.

Where the criteria is not met to recognise revenue over time, revenue is recognised at a point in time once any performance obligations are satisfied and control has transferred to the customer.

Resources received free of charge

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

Sublease income

Where a sublease is classified as an operating lease, sublease rental income is recognised on a straight-line basis over the term of the lease. Where a sublease is classified as a finance lease, finance income is recognised over the lease term, based on a pattern reflecting a constant rate of return on the Commissions net investment in the lease.

2. Financial Position

This section analyses the Commission's assets used to conduct its operations and the operating liabilities incurred as a result.

Employee related information is disclosed in the People and Relationships section.

2.1 Financial Assets

	2020 \$'000	2019 \$'000
Trade and other receivables		
Goods and services	3,694	881
Appropriation receivable	50,700	57,642
GST receivable	2,001	1,814
Net investment in sublease	7,411	-
Accrued revenue	36	-
Total trade and other receivables (net)	63,842	60,337

Sublease Arrangements

The Commission has one sublease in Sydney that meets the criteria for recognition as an operating lease that is set to expire during the 2020-21 financial year. Remaining undiscounted lease payments in relation to this lease are \$0.1m. The Commission has a sublease in Canberra that meets the criteria for recognition as a finance lease. Maturity analysis of the remaining payments is outlined below.

	2020 \$'000	2019 \$'000
Maturity analysis of finance lease receivables		
Within 1 year	799	-
One to two years	849	-
Two to three years	1,028	-
Three to four years	1,068	-
Four to five years	1,109	-
More than 5 years	2,863	-
Total undiscounted lease payments receivable	7,716	-
Unearned finance income	(305)	-
Net investment in sublease	7,411	-

Accounting Policy

Trade receivables are recognised where the right to consideration from the customer is unconditional, with only the passage of time required before payment is due. Accrued revenue is recognised where the Commission has provided services to the customer, but does not have the unconditional right to invoice the customer at reporting date.

Trade and other receivables that are not provided at below market rates and held for:

- the purpose of collecting contractual cash flows; and
- receiving payments that are solely principal and interest

are subsequently measured at amortised cost using the effective interest rate method, adjusted for any impairment allowance.

Trade receivables are assessed for impairment at the end of each reporting period. The Commission applies the simplified approach for trade and other receivables by recognising impairment equal to the lifetime expected credit losses.

Credit terms for goods and services are 30 days (2019: 30 days)

Sublease receivables are recognised where the Commission has transferred substantially all the risks and rewards of the head lease to a sub lessee. Sublease receivables are recognised equal to the lease payments receivable under the sublease, discounted using the same rate applied when calculating the lease liability for the head lease.

2.2 Non-Financial Assets

2.2A: Reconciliation of the opening and closing balances of property, plant and equipment and intangibles

	Leasehold improvements ¹	Plant and equipment	Computer software ²	Total
	\$'000	\$'000	\$'000	\$'000
As at 1 July 2019				
Gross book value	18,312	5,198	11,688	35,198
Accumulated depreciation, amortisation and impairment	(2,419)	(1,759)	(6,064)	(10,242)
Total as at 1 July 2019	15,893	3,439	5,624	24,956
Recognition of right-of-use assets on adoption of AASB 16	59,312	-	-	59,312
Adjusted Total as at 1 July 2019	75,205	3,439	5,624	84,268
Additions				
Purchase	5,524	1,477	1,111	8,112
Internally developed	-	-	14,026	14,026
Right-of-use assets	13,734	-	-	13,734
Depreciation (right-of-use assets)	(11,694)	-	-	(11,694)
Depreciation and amortisation (other assets)	(2,979)	(1,726)	(1,305)	(6,010)
Other movements of right-of-use assets	18	-	-	18
Disposals				
Other disposals/write-downs (gross book value)	(258)	(50)	(1,289)	(1,597)
Other disposals/write-downs (accumulated depreciation)	258	37	1,284	1,579
Total as at 30 June 2020	79,808	3,177	19,451	102,436
Total as at 30 June 2020 represented by				
Gross book value	96,641	6,625	25,536	128,802
Accumulated depreciation, amortisation and impairment	(16,833)	(3,448)	(6,085)	(26,366)
Total as at 30 June 2020	79,808	3,177	19,451	102,436

1. Right-of-use assets are disclosed as part of leasehold improvements.

2. The carrying amount of computer software includes \$2.1m purchased software and \$17.3m internally generated software. Leasehold improvements, plant and equipment may be sold or disposed in 2019-20 coinciding with the termination of some lease arrangements.

2.2 Non-Financial Assets (continued)

Accounting Policy

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Assets are initially measured at their fair value plus appropriate transaction costs.

Asset recognition

Purchases of property, plant and equipment are recognised initially at cost in the statement of financial position. Right-of-use assets arising from leasing arrangements are capitalised on the commencement date based on the initial lease liability less any lease incentives received. These assets are accounted for as a separate asset class to corresponding assets owned outright, but are disclosed as part of leasehold improvements.

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make good' provisions in property leases taken up by the Commission where an obligation to restore the property to its original condition exists. These costs are included in the value of the Commission's leasehold improvements with a corresponding provision for restoration.

The Commission's intangibles comprise purchased and internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Revaluations

Right-of-use assets continue to be carried at cost after initial recognition. All other property, plant and equipment is carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Commission using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates for each class of depreciable asset are based on the following useful lives:

Asset class	2020 and 2019
Leasehold improvements	Lease term
Right-of-use assets	Lease term
Furniture and fittings	10 years
Office equipment	5 years
Computer hardware	3 to 5 years
Computer software	3 to 7 years

2.2 Non-Financial Assets (continued)

Accounting Policy (continued)

Impairment

All assets were assessed for impairment at 30 June 2020. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

A write-down and impairment loss of \$0.02m (2019:\$0.43m) for non-financial assets was recognised in the Statement of Comprehensive Income.

The recoverable amount of an asset is the higher of its fair value less costs of disposal and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the entity were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use.

Fair Value Measurement

The ACCC engaged the valuation services of Jones Lang LaSalle (JLL) to conduct an independent valuation of the tangible non-financial asset classes. An annual assessment is undertaken to determine whether the carrying amount of the assets is materially different from the fair value. Comprehensive valuations are carried out at least once every three years with the previous valuation of all tangible property, plant and equipment conducted at 30 June 2018.

The methods utilised to determine and substantiate the unobservable inputs are derived and evaluated as follows:

Physical depreciation and obsolescence - assets that do not transact with enough frequency or transparency to develop objective opinions of value from observable market evidence have been measured utilising the Depreciated Replacement Cost approach. Under the Depreciated Replacement Cost approach the estimated cost to replace the asset is calculated and then adjusted to take into account physical depreciation and obsolescence. Physical depreciation and obsolescence has been determined based on professional judgement regarding physical, economic and external obsolescence factors relevant to the asset under consideration. For all leasehold improvement assets, the consumed economic benefit / asset obsolescence deduction is determined based on the term of the associated lease.

The ACCC's policy is to recognise transfers into and transfers out of fair value hierarchy levels as at the end of the reporting period. There have been no transfers during the year (2019: nil).

Contractual commitments for the acquisition of property, plant and equipment and intangible assets

The Commission has contractual commitments for the acquisition of leasehold improvements of \$0.7m (2019: \$0.5m), commitments for intangible assets of \$2.1m (2019: \$3.4m) and no commitments for property plant and equipment (2019: \$0.1m).

	2020 \$'000	2019 \$'000
2.2B: Other non-financial assets		
Prepayments	1,627	1,785
Lease incentive asset	-	2,585
Leasehold rights	-	238
Total other non-financial assets	1,627	4,608

2.3 Payables

	2020 \$'000	2019 \$'000
2.3A: Suppliers		
Trade creditors and accruals	17,309	12,198
Unearned revenue	345	840
Total suppliers	17,654	13,038

Accounting Policy

Unearned revenue relates to money that has been received from customers in advance of the services being rendered. Accounting policies for revenue recognition are disclosed in Note 1.2.

	2020 \$'000	2019 \$'000
2.3B: Other payables		
Lease incentives	-	15,017
Operating lease payment increases	-	5,138
Wages and salaries	2,805	1,426
Superannuation	340	147
Salary sacrifice payable	168	209
Total other payables	3,313	21,937

2.4 Leases

	2020 \$'000	2019 \$'000
Interest Bearing Liabilities		
Leases	75,076	-
Total interest bearing liabilities	75,076	-

Accounting Policy

Liabilities arising from leasing arrangements are initially recognised at the present value of any fixed lease payments that are not paid at that date, discounted using either:

- the interest rate implicit in the lease; or
- zero coupon bond yields released quarterly by the Department of Finance (if the implicit rate cannot be readily determined).

Following initial recognition lease liabilities are increased for accrued interest and decreased for any lease payments made. Lease liabilities are also remeasured where there has been a change in the underlying lease payments or lease term. Any adjustment to the liability is first recognised as an adjustment to the corresponding right-of-use asset. If the adjustment would reduce the carrying value of the right-of-use asset below zero, the remaining adjustment is recognised in the Statement of Comprehensive Income.

2.5 Other Provisions

	Provision for litigation \$'000	Provision for makegood \$'000	Total \$'000
As at 1 July 2019	6,173	771	6,944
Additional provisions made	25,050	238	25,288
Amounts used	(5,621)	(224)	(5,845)
Amounts reversed	(552)	(11)	(563)
Total as at 30 June 2020	25,050	774	25,824

The Commission currently has 6 agreements (2019:7) for the leasing of premises which have provisions requiring it to restore the premises to their original condition at the conclusion of the lease.

3. Assets and Liabilities Administered on Behalf of the Government

This section analyses the assets used to conduct operations and the operating liabilities the Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

3.1 Administered - Financial Assets

	2020 \$'000	2019 \$'000
Trade and other receivables		
Fines and costs	49,136	37,798
Total trade and other receivables (gross)	49,136	37,798
Less impairment allowance	(11,583)	(14,828)
Total trade and other receivables (net)	37,553	22,970

Credit terms for fines and costs were within 30 days or as stipulated by court judgements (2019: 30 days).

4. Funding

This section identifies the Commission's funding structure.

4.1 Appropriations

	2020 \$'000	2019 \$'000
4.1A: Annual appropriations ('recoverable GST exclusive')		
Ordinary annual services	259,215	228,941
Capital Budget ²	14,602	10,104
Equity Injections	1,100	1,100
Section 74 receipts	14,621	7,444
Total appropriation	289,538	247,589
Appropriation applied (current and prior years) ³	296,972	222,590
Variance	(7,434)	24,999

1. No portion of the 2019-20 annual appropriations have been withheld under section 51 of the PGPA Act and quarantined for administrative purposes.

2. Departmental Capital Budgets are appropriated through Appropriation Acts (No.1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts.

3. Appropriation applied includes use of both current and prior year appropriation funding. The variance in 2019-20 primarily relates to a use of prior year capital appropriations for current year acquisitions.

4.1B: Unspent annual appropriations ('recoverable GST exclusive')

	2020 \$'000	2019 \$'000
Departmental		
Appropriation Act (No. 4) 2017-18	-	10,000
Appropriation Act (No. 1) 2018-19	-	20,014
Appropriation Act (No. 2) 2018-19	-	1,100
Appropriation Act (No. 3) 2018-19	990	26,528
Supply Act (No. 2) 2019-20	459	-
Appropriation Act (No. 1) 2019-20	23,362	-
Appropriation Act (No. 2) 2019-20	641	-
Appropriation Act (No. 3) 2019-20	25,248	-
Total departmental	50,700	57,642

In addition to the unspent appropriations disclosed above, at 30 June 2020 the Commission had cash and cash equivalents of \$1.164m (2019: \$1.656m).

4.1C: Special appropriations - Administered ('recoverable GST exclusive')

	Appropriation applied	
	2020 \$'000	2019 \$'000
Authority: PGPA Act, 2013 s.77		
Type: Refund		
Purpose: To provide for an appropriation where an Act or other law permits repayment of an amount received by the Commonwealth and the Finance Minister is satisfied that, apart from this section, there is no specific appropriation for the repayment.	8	2

5. People and relationships

This section describes a range of employment and post employment benefits provided to our people and our relationships with other key people.

5.1 Employee Provisions

	2020 \$'000	2019 \$'000
Employee provisions		
Leave	48,227	39,480
Separations and redundancies	-	849
Total employee provisions	48,227	40,329

Accounting Policy

Liabilities for short-term employee benefits and termination benefits expected within twelve months of the end of the reporting period are measured at their nominal amounts. Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period.

Leave

The liability for employee benefits includes provision for annual leave and long service leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the Commission's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination. The leave liabilities have been determined by reference to the work of an actuary as at 30 June 2018. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and Redundancy

The Commission recognises a provision for separation and redundancies when it has committed to the terminations and having informed those employees affected that the terminations will be carried out.

Superannuation

The Commission's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), the PSS accumulation plan (PSSap), or other superannuation funds held outside the Australian Government. The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap and other superannuation funds are defined contribution schemes. The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in the Department of Finance's administered schedules and notes.

The Commission makes employer contributions to the employees' defined benefit superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The Commission accounts for the contributions as if they were contributions to defined contribution plans. The liability for superannuation recognised as at 30 June represents outstanding contributions.

5.2 Key Management Personnel Remuneration

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the Commission, directly or indirectly, including any director (whether executive or otherwise) of the Commission. The Commission assessed key management personnel to be the members of the Corporate Governance Board, Chief Operating Officer and Chief Finance Officer.

	2020 \$'000	2019 \$'000
Short-term employee benefits	4,864	4,379
Post-employment benefits	656	580
Other long-term employee benefits	115	109
Total key management personnel remuneration expenses	5,635	5,068

The total number of key management personnel that are included in the above table is 12 (2019: 10).

The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the Commission.

6. Managing uncertainties

This section analyses how the Commission manages financial risks within its operating environment.

6.1 Contingent Assets and Liabilities

As at 30 June 2020, the Commission has matters before the Courts alleging breaches of the *Competition and Consumer Act 2010*. These cases are at various stages of completion.

Departmental

In the event of an unfavourable judgement by the Courts, the Commission stands to be liable for court costs. If it had been possible to estimate the amounts of eventual payments these would have been reported as departmental liabilities. The Commission has no quantifiable contingent liabilities arising from court action to report.

The Commission is in possession of a bank guarantee in the amount of \$0.1m. This bank guarantee is a contingent asset which would be exercised in the event of a default by a sublease. It is not expected that this bank guarantee will be exercised and it is due to expire 30 September 2021.

Administered

In the event of a favourable judgement by the Courts, the Commission stands to gain by way of penalties or costs awarded. Due to the inherent uncertainty of litigation it was not possible to estimate the value of case outcomes at 30 June 2020.

However, prior to these statements being authorised court judgements have demonstrated that the Commission has quantifiable administered contingent assets totalling \$8.7m (2019: \$0.7 million).

Accounting Policy

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

7. Other Information

7.1 Budgetary Reporting

Explanations of major variances between the actual amounts presented in the financial statements and the corresponding original budget amounts.

Departmental Activities

Operational Funding

As part of 2019-20 Portfolio Additional Estimates the Commission received additional operating funding of \$25.3m compared to the 2019-20 Budget. The additional resourcing has been used to deliver on the Commission's strategic priorities, as set out in the ACCC Strategic Direction Statement (Portfolio Budget Statements) and the Commission's Corporate Plan. After accounting for differences arising from application of the new leasing standard (discussed further below), the additional funding has resulted in a greater use of employees and suppliers than had been anticipated at the time of establishing the 2019-20 Budget. The increased staffing levels and a decrease in the Commonwealth bond rate (used to discount leave provisions) has also resulted in a higher employee provision compared to budget.

An amount of \$10.0m of GST refunds has been recognised as Section 74 receipts transferred to the OPA and correspondingly drawn down as appropriation funding. Consistent with previous years, GST received from the Australian Taxation Office and swept to the OPA has not been reflected in the budgeted amounts due to its nil impact on total operating cash flows.

Affected line items: *Employee Benefits, Supplier Expenses, Revenue from Government, Employee Provisions, Cash Received - Appropriations, Cash Used - Suppliers, Cash Used - Employees, Cash Used - Section 74 Receipts Transferred to the OPA.*

Capital Funding

As part of 2019-20 Portfolio Additional Estimates the Commission received additional capital funding of \$9.9m compared to the 2019-20 Budget. The additional resourcing and unspent prior year capital appropriations have been leveraged in 2019-20 to assist the Commission in delivering on a number of initiatives, including implementation of the National Consumer Data Right.

Affected line items: *Contributed Equity, Purchase of Non-financial Assets, Non-financial Assets.*

Litigation Contingency Funding

The Litigation Contingency Fund (LCF) is used to strengthen the Commission's capability to deal with major litigation and ensure sufficient reserves are available to fund legal settlements. Additional funding added to the LCF is recognised as contributed equity when received. Settlement of litigation is recognised as an expense in the Statement of Comprehensive Income once the settlement amount can be reliably estimated. Due to the complexity and uncertainty in predicting the future outcome of litigation it is not possible to accurately budget for litigation settlements.

Affected line items: *Contributed Equity, Settlement of Litigation, Cash Used - Settlement of Litigation, Cash Received - Contributed Equity*

Appropriation Receivable

The appropriation receivable represents undrawn appropriations at 30 June and is impacted on the timing of payments. The higher than budgeted supplier payable balance has reduced cash payments made during the reporting period and has resulted in a higher appropriation receivable balance as at 30 June 2020. Unused appropriations will be drawn in 2020-21 to settle outstanding liabilities and to make payments from the LCF.

Affected line items: *Trade and other receivables, Supplier payables*

7.1 Budgetary Reporting (continued)

Application of AASB 16 Leases

The 2019-20 Budget was prepared accounting for lease transactions in accordance with AASB 117 Leases. On 1 July 2019 the Commission was required to apply the new requirements of AASB 16 Leases. The application of AASB 16 has resulted in the following major variances between actual results and amounts reported in the 2019-20 Budget:

- The 2019-20 Budget included approximately \$9.4m of lease expenses as part of supplier expenses within the Statement of Comprehensive Income. Lease expenses are no longer included in supplier expenses and are now disclosed as depreciation expense on right-of-use assets and interest expense on lease liabilities within the financial statements.
- As at 30 June 2020 the Commission disclosed right-of-use assets of \$61.4m (within leasehold improvements) and sublease receivables of \$7.4m (within trade and other receivables). These amounts are not included in the 2019-20 Budget.
- As at 30 June 2020 the Commission disclosed lease liabilities of \$75.1m in accordance with AASB 16. This amount was not included in the 2019-20 Budget.
- Other payables and other non-financial assets are lower than the 2019-20 Budget due to the derecognition of lease balances no longer reported under AASB 16.
- Lease payments are now disclosed as payment of interest (operating activities) and principal repayments on lease liabilities (financing activities). In the 2019-20 Budget lease payments were included in supplier payments (operating activities).
- An adjustment of \$18.5m was required to opening equity to eliminate balances under AASB 117 and recognise new lease balances under AASB 16.

Further details on the application of AASB 16 can be found in the overview section.

Affected line items: *Supplier Expenses, Depreciation Expenses, Trade Receivables, Other Non-financial Assets, Leasehold Improvements, Other Payables, Lease Liabilities, Other Provisions, Cash Used - Principal Payments on Lease Liabilities, Cash Used - Interest Payment on Lease Liabilities, Cash Received - Interest, Cash Received - Principal Receipts on Sublease Receivables*

Administered Activities

The Commission uses a historical average to budget for fees and fines revenue due to the complexity and uncertainty in predicting the future outcome of litigation. The resulting variance between budget and actual fees and fines is a favourable \$163.7m in 2019-20. However, the budget did not anticipate impairments for overdue debtor balances of \$26.4m resulting in a final administered outcome that is different to the budget by \$137.3m.

The final receivables balance is difficult to estimate as it is the balance as at the reporting date which is a factor of the penalties and court costs imposed as well as debtors' ability to pay and the timing of their payments. The receivable balance is higher at the end of the financial year in line with increased fees and fines compared to budgeted amounts.

Affected line items: *Fees and fines revenue, Impairment of fees and fines, Trade and other receivables.*

7.2 Aggregate Assets and Liabilities

Departmental	2020	2019
	\$'000	\$'000
Assets expected to be recovered in:		
No more than 12 months	59,740	65,809
More than 12 months	109,329	25,748
Total assets	169,069	91,557
Liabilities expected to be settled in:		
No more than 12 months	71,915	36,542
More than 12 months	98,179	48,780
Total liabilities	170,094	85,322

Administered	2020	2019
	\$'000	\$'000
Assets expected to be recovered in:		
No more than 12 months	37,182	22,085
More than 12 months	871	885
Total assets	38,053	22,970

7.3 Events After the Reporting Period

Departmental

The Commission has no departmental events after the reporting date.

Administered

The Commission has favourable judgements by the Courts which have been disclosed in note 6.1.



06

Appendixes



Appendix 1: Entity resource statement and expenses by outcome

Table A1.1: Entity resource statement 2019–20

		Actual available appropriations for 2019–20 \$'000	Payments made in 2019–20 \$'000	Balance remaining \$'000
		(a)	(b)	(a–b)
Ordinary annual services¹				
Departmental appropriation ²		336 636	285 872	50 764
Total ordinary annual services	A	336 636	285 872	50 764
Other services³				
Departmental non-operating				
Equity injections		12 200	11 100	1 100
Total other services	B	12 200	11 100	1 100
Special accounts				
Opening balance		54	0	54
Total special account	C	54	0	54
Total net resourcing and payments for ACCC (A+B+C)		348 890	296 972	51 918

- ¹ Supply Act (No. 1) 2019–20, Appropriation Act (No. 1) 2019–20 and Appropriation Act (No. 3) 2019–20, prior year departmental appropriations and retained revenue receipts under section 74 of the Public Governance, Performance and Accountability Act 2013 (Cth) (PGPA Act).
- ² Includes an amount of \$14.6 million in 2019–20 for departmental capital budget. For accounting purposes this amount has been designated as 'contributions by owners'.
- ³ Supply Act (No. 2) 2019–20, Appropriation Act (No. 2) 2019–20, Appropriation Act (No. 2) 2018–19, Appropriation Act (No. 4) 2017–18.

Table A1.2: Expenses for Outcome 1, 2019–20

Outcome 1: Lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation, including enforcement, education, price monitoring and determining the terms of access to infrastructure services	Budget ¹ expenses 2019–20 \$'000 (a)	Actual expenses 2019–20 \$'000 (b)	Variation 2019–20 \$'000 (a)–(b)
Program 1.1: Australian Competition and Consumer Commission			
Departmental expenses			
Departmental appropriation ²	194 705	230 803	(36 098)
Expenses not requiring appropriation in the budget year	7 991	6 125	1 866
Total for program 1.1	202 696	236 928	(34 232)
Program 1.2: Australian Energy Regulator (AER)			
Departmental expenses			
Departmental appropriation ²	67 461	68 732	(1 271)
Total for program 1.2	67 461	68 732	(1 271)
Outcome 1 Total by appropriation type			
Departmental expenses			
Departmental appropriation ²	262 166	299 535	(37 369)
Expenses not requiring appropriation in the budget year	7 991	6 125	1 886
Total expenses for outcome 1	270 157	305 660	(35 503)
		2018–19	2019–20
Average staffing level (number)		976	1 113

1 Full-year budget, including any subsequent adjustment made to the 2019–20 budget at Additional Estimates.

2 Departmental appropriation combines Ordinary Annual Services (Appropriation Acts Nos 1, 3 and 5) and retained revenue receipts under s. 74 of the PGPA Act.

Appendix 2: Staffing

Tables A2.1 to A2.17 provide details of the ACCC and AER employees in 2019–20.

Table A2.1: All ongoing employees, current report period (2019–20)

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	74	1	75	97	12	109	0	0	0	184
Qld	29	1	30	51	11	62	0	0	0	92
SA	38	1	39	42	8	50	0	0	0	89
Tas	3	1	4	5	0	5	0	0	0	9
Vic	216	12	228	200	31	231	0	0	0	459
WA	11	0	11	15	4	19	0	0	0	30
ACT	132	6	138	158	31	189	0	0	0	327
NT	1	0	1	4	0	4	0	0	0	5
Overseas	0	0	0	0	0	0	0	0	0	0
Total	504	22	526	572	97	669	0	0	0	1 195

Table A2.2: All non-ongoing employees, current report period (2019–20)

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	5	4	9	8	8	16	0	0	0	25
Qld	1	1	2	2	1	3	0	0	0	5
SA	5	0	5	4	0	4	0	0	0	9
Tas	1	0	1	0	1	1	0	0	0	2
Vic	10	3	13	10	3	13	0	0	0	26
WA	0	0	0	0	2	0	0	0	0	2
ACT	6	1	7	9	5	14	0	0	0	21
NT	0	0	0	1	0	1	0	0	0	1
Overseas	0	0	0	0	0	0	0	0	0	0
Total	28	9	37	34	20	54	0	0	0	91

Table A2.3: All ongoing employees, previous report period (2018-19)

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	55	3	58	80	13	93	0	0	0	151
Qld	23	1	24	38	13	51	0	0	0	75
SA	27	1	28	30	9	39	0	0	0	67
Tas	2	0	2	8	1	9	0	0	0	11
Vic	207	12	219	177	37	214	0	0	0	433
WA	10	0	10	13	3	16	0	0	0	26
ACT	123	4	127	144	42	186	0	0	0	313
NT	3	0	3	3	0	3	0	0	0	6
Overseas	0	0	0	0	0	0	0	0	0	0
Total	450	21	471	493	118	611	0	0	0	1 082

Table A2.4: All non-ongoing employees, previous report period (2018-19)

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	8	7	15	4	2	6	0	0	0	21
Qld	0	1	1	3	1	4	0	0	0	5
SA	2	0	2	4	2	6	0	0	0	8
Tas	0	0	0	0	1	1	0	0	0	1
Vic	5	7	12	10	7	17	0	0	0	29
WA	0	1	1	1	1	2	0	0	0	3
ACT	7	3	10	5	7	12	0	0	0	22
NT	1	0	1	0	0	0	0	0	0	1
Overseas	0	0	0	0	0	0	0	0	0	0
Total	23	19	42	27	21	48	0	0	0	90

Table A2.5: Australian Public Service Act ongoing employees, current report period (2019–20)

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 3	0	0	0	2	0	2	0	0	0	2
SES 2	9	0	9	2	0	2	0	0	0	11
SES 1	19	2	21	14	3	17	0	0	0	38
EL 2	96	5	101	89	28	117	0	0	0	218
EL 1	125	8	133	134	34	168	0	0	0	301
APS 6	113	5	118	138	15	153	0	0	0	271
APS 5	87	1	88	134	16	150	0	0	0	238
APS 4	23	0	23	28	1	29	0	0	0	52
APS 3	5	1	6	4	0	4	0	0	0	10
APS 2	0	0	0	0	0	0	0	0	0	0
APS 1	0	0	0	0	0	0	0	0	0	0
Graduate	27	0	27	27	0	27	0	0	0	54
Total	504	22	526	572	97	669	0	0	0	1 195

Table A2.6: Australian Public Service Act non-ongoing employees, current report period (2019–20)

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 3	0	0	0	0	0	0	0	0	0	0
SES 2	0	0	0	0	0	0	0	0	0	0
SES 1	0	0	0	1	0	1	0	0	0	1
EL 2	5	2	7	4	1	5	0	0	0	12
EL 1	8	0	8	7	0	7	0	0	0	15
APS 6	1	0	1	5	2	7	0	0	0	8
APS 5	4	0	4	7	1	8	0	0	0	12
APS 4	4	1	5	3	2	5	0	0	0	10
APS 3	3	1	4	5	1	6	0	0	0	10
APS 2	2	1	3	1	4	5	0	0	0	8
APS 1	1	4	5	1	9	10	0	0	0	15
Other	0	0	0	0	0	0	0	0	0	0
Total	28	9	37	34	20	54	0	0	0	91

Table A2.7: Australian Public Service Act ongoing employees, previous report period (2018-19)

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 3	0	0	0	1	0	1	0	0	0	1
SES 2	8	0	8	2	0	2	0	0	0	10
SES 1	18	2	20	15	1	16	0	0	0	36
EL 2	89	3	92	71	31	102	0	0	0	194
EL 1	115	8	123	129	38	167	0	0	0	290
APS 6	88	8	96	105	25	130	0	0	0	226
APS 5	69	0	69	99	16	115	0	0	0	184
APS 4	29	0	29	36	5	41	0	0	0	70
APS 3	5	0	5	11	2	13	0	0	0	18
APS 2	1	0	1	0	0	0	0	0	0	1
APS 1	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
Graduate	28	0	28	24	0	24	0	0	0	52
Total	450	21	471	493	118	611	0	0	0	1 082

Table A2.8: Australian Public Service Act non-ongoing employees, previous report period (2018-19)

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 3	0	0	0	0	0	0	0	0	0	0
SES 2	0	0	0	0	0	0	0	0	0	0
SES 1	0	0	0	0	0	0	0	0	0	0
EL 2	4	0	4	1	1	2	0	0	0	6
EL 1	2	2	4	4	1	5	0	0	0	9
APS 6	4	0	4	6	2	8	0	0	0	12
APS 5	4	1	5	8	1	9	0	0	0	14
APS 4	3	0	3	1	0	1	0	0	0	4
APS 3	2	0	2	7	3	10	0	0	0	12
APS 2	3	8	11	1	8	9	0	0	0	20
APS 1	1	7	8	0	5	5	0	0	0	13
Other	0	0	0	0	0	0	0	0	0	0
Total	23	18	41	28	21	49	0	0	0	90

Table A2.9: Australian Public Service Act employees by full-time and part-time status, current report period (2019–20)

	Ongoing			Non-ongoing			Total
	Full-time	Part-time	Total ongoing	Full-time	Part-time	Total non-ongoing	
SES 3	2	0	2	0	0	0	2
SES 2	11	0	11	0	0	0	11
SES 1	33	5	38	1	0	1	39
EL 2	185	33	218	9	3	12	230
EL 1	259	42	301	15	0	15	316
APS 6	251	20	271	6	2	8	279
APS 5	221	17	238	11	1	12	250
APS 4	51	1	52	7	3	10	62
APS 3	9	1	10	8	2	10	20
APS 2	0	0	0	3	5	8	8
APS 1	0	0	0	2	13	15	15
Graduate	54	0	54	0	0	0	54
Total	1 076	119	1 195	62	29	91	1 286

Table A2.10: Australian Public Service Act employees by full-time and part-time status, previous report period (2018–19)

	Ongoing			Non-ongoing			Total
	Full-time	Part-time	Total ongoing	Full-time	Part-time	Total non-ongoing	
SES 3	1	0	1	0	0	0	1
SES 2	10	0	10	0	0	0	10
SES 1	33	3	36	0	0	0	36
EL 2	160	34	194	5	1	6	200
EL 1	244	46	290	6	3	9	299
APS 6	193	33	226	10	2	12	238
APS 5	168	16	184	12	2	14	198
APS 4	65	5	70	4	0	4	74
APS 3	16	2	18	9	3	12	30
APS 2	1	0	1	4	16	20	21
APS 1	0	0	0	1	12	13	13
Other	0	0	0	0	0	0	0
Graduate	52	0	52	0	0	0	52
Total	943	139	1 082	51	39	90	1 172

Table A2.11: Australian Public Service Act employment type by location, current report period (2019–20)

	Ongoing	Non-ongoing	Total
NSW	184	25	209
Qld	92	5	97
SA	89	9	98
Tas	9	2	11
Vic	459	26	485
WA	30	2	32
ACT	327	21	348
NT	5	1	6
Overseas	0	0	0
Total	1 195	91	1 286

Table A2.12: Australian Public Service Act employment type by location, previous report period (2018–19)

	Ongoing	Non-ongoing	Total
NSW	151	21	172
Qld	75	5	80
SA	67	8	75
Tas	11	1	12
Vic	433	29	462
WA	26	3	29
ACT	313	22	335
NT	6	1	7
Overseas	0	0	0
Total	1 082	90	1 172

Table A2.13: Australian Public Service Act Indigenous employment, current report period (2019–20)

	Total
Ongoing	19
Non-ongoing	2
Total	21

Table A2.14: Australian Public Service Act Indigenous employment, previous report period (2018–19)

	Total
Ongoing	17
Non-ongoing	1
Total	18

Table A2.15: Australian Public Service Act employment arrangements, current report period (2019–20)

	SES	Non-SES	Total
ACCC Enterprise Agreement 2016–2019	0	1 234	1 234
Individual flexibility arrangements	0	100	100
Section 24(1) determinations	52	1	53
Total	52	1 335	1 387

Table A2.16: Australian Public Service Act employment salary ranges by classification level (minimum/maximum), current report period (2019–20)

	Minimum salary	Maximum salary
SES 3	\$339 956	\$344 978
SES 2	\$252 765	\$330 000
SES 1	\$189 487	\$207 975
EL 2	\$123 969	\$145 280
EL 1	\$106 931	\$118 340
APS 6	\$86 064	\$96 462
APS 5	\$77 752	\$82 443
APS 4	\$69 711	\$75 688
APS 3	\$62 539	\$67 505
APS 2	\$54 910	\$60 889
APS 1	\$48 521	\$53 631
Graduate	\$60 889	\$69 711

Table A2.17: Australian Public Service Act employment performance pay by classification level, current report period (2019–20)

	Number of employees receiving performance pay	Aggregated (sum total) of all payments made	Average of all payments made	Minimum payment made	Maximum payment made
SES 3	1	\$29 996	\$29 996	\$29 996	\$29 996
SES 2	10	\$224 335	\$22 433	\$12 638	\$27 930
SES 1	35	\$485 101	\$13 860	\$1 296	\$35 272
EL 2	0	0	0	0	0
EL 1	0	0	0	0	0
APS 6	0	0	0	0	0
APS 5	0	0	0	0	0
APS 4	0	0	0	0	0
APS 3	0	0	0	0	0
APS 2	0	0	0	0	0
APS 1	0	0	0	0	0
Other	0	0	0	0	0
Total	46	\$739 432			

Note: Four SES employees received a pro-rata amount due to the requirements of the performance pay criteria during the period.

Appendix 3: Mandatory executive remuneration reporting

Executive remuneration policies and practices and governance arrangements are disclosed in the annual report on pages 213–214.

In 2020 key management personnel comprised members of the Corporate Governance Board, Chief Operating Officer and Chief Finance Officer as set out in the table below.

Table A3.1: Key management personnel

Name	Position	Term
Rod Sims	Chair	Full year
Delia Rickard	Deputy Chair	Full year
Mick Keogh	Deputy Chair	Full year
Cristina Cifuentes	Member	Full year
Sarah Court	Member	Full year
Stephen Ridgeway	Member	Full year
Paula Conboy	Associate Member	Part year—ceased on 30 September 2019
Clare Savage	Associate Member	Part year—appointed 14 October 2019
James (Jim) Cox PSM	Associate Member	Full year
Scott Gregson	Acting Chief Operating Officer (COO)	Part year—appointed 1 April 2020
Rayne de Gruchy	Chief Operating Officer (COO)	Full year—on leave from 28 April 2020
Peter Maybury	Chief Finance Officer (CFO)	Full year

The ACCC disclosed key management personnel remuneration in note 5.2 to the financial statements for the period ending 30 June 2020.

Table A3.2: Information about remuneration for key management personnel

Name	Position title	Base salary ¹ (\$)	Bonuses ² (\$)	Short-term benefits			Post-employment benefits			Other long-term benefits			Termination benefits (\$)	Total remuneration (\$)
				Other benefits and allowances ³ (\$)	Superannuation contributions ⁴ (\$)	Long service leave (\$)	Other long-term benefits (\$)	Long service leave (\$)	Other long-term benefits (\$)	Termination benefits (\$)				
Rod Sims	Chair	711 374	0	0	99 612	17 058	0	0	0	0	0	0	828 044	
Delia Rickard	Deputy Chair	472 095	0	6 379	74 710	12 640	0	0	0	0	0	0	565 824	
Mick Keogh	Deputy Chair	543 333	0	0	77 997	12 426	0	0	0	0	0	0	633 756	
Cristina Cifuentes	Member	471 809	0	15 514	73 498	11 805	0	0	0	0	0	0	572 625	
Sarah Court	Member	513 810	0	0	73 498	12 184	0	0	0	0	0	0	599 491	
Stephen Ridgeway	Member	538 440	0	0	74 357	12 184	0	0	0	0	0	0	624 981	
Paula Conboy	Associate Member	105 919	0	0	5 577	3 260	0	0	0	0	0	0	114 756	
Clare Savage	Associate Member	365 387	0	0	54 422	8 630	0	0	0	0	0	0	428 439	
James (Jim) Cox PSM	Associate Member	394 979	0	0	21 164	9 725	0	0	0	0	0	0	425 869	
Scott Gregson	Acting COO	91 408	5 687	1 667	11 647	1 557	0	0	0	0	0	0	111 966	
Rayne de Gruchy	COO	336 687	30 296	6 811	52 095	8 295	0	0	0	0	0	0	434 184	
Peter Maybury	CFO	228 408	17 096	6 550	37 765	4 956	0	0	0	0	0	0	294 775	

Notes

This table was prepared on an accrual basis.

- 1 Base salary includes gross salary earned while working plus annual leave accrued.
- 2 Bonuses are based on an accrued estimate at 30 June 2020. The actual cash bonus paid during 2020-21 may differ from this amount following final assessment and approval processes.
- 3 Other benefits and allowances includes car parking benefits that form part of an individual's remuneration package.
- 4 For individuals in a defined contribution scheme, superannuation includes superannuation amounts. For individuals in a defined benefits scheme, superannuation includes the relevant notional employer contribution rate and employer productivity superannuation contribution.

Table A3.3: Information about remuneration for senior executives

Total remuneration bands	Number of senior executives	Average base salary ¹ (\$)	Short-term benefits			Post-employment benefits			Other long-term benefits			Termination benefits		Total remuneration	
			Average bonuses ² (\$)	Average other benefits and allowances ³ (\$)	Average superannuation contributions ⁴ (\$)	Average service leave (\$)	Average long-term long-term benefits (\$)	Average long-term long-term benefits (\$)	Average long-term long-term benefits (\$)	Average termination benefits (\$)	Average total remuneration (\$)				
\$0-\$220 000	11	116 319	8 371	294	19 009	2 904	0	0	0	146 898					
\$220 001-\$245 000	1	179 709	16 570	2 100	35 965	4 827	0	0	0	239 171					
\$245 001-\$270 000	11	209 972	8 733	513	34 713	4 709	0	0	0	258 640					
\$270 001-\$295 000	19	224 983	15 211	1 128	35 117	4 711	0	0	0	281 151					
\$295 001-\$320 000	3	241 780	22 453	2 962	36 691	4 810	0	0	0	308 696					
\$320 001-\$345 000	0	0	0	0	0	0	0	0	0	0					
\$345 001-\$370 000	4	276 721	21 611	1 287	46 851	6 186	0	0	0	352 656					
\$370 001-\$395 000	1	309 755	24 474	0	51 226	6 734	0	0	0	392 189					
\$395 001-\$420 000	1	308 292	24 790	3 647	51 827	6 821	0	0	0	395 376					
\$420 001-\$445 000	1	351 300	28 070	0	48 358	7 723	0	0	0	435 451					
\$445 001-\$470 000	1	370 957	28 070	3 548	37 798	7 723	0	0	0	448 096					

Notes

This table was prepared on an accrual basis.

- 1 Base salary includes gross salary earned while working plus annual leave accrued.
- 2 Bonuses are based on an accrued estimate at 30 June 2020. The actual cash bonus paid during 2020-21 may differ from this amount following final assessment and approval processes.
- 3 Other benefits and allowances includes car parking benefits that form part of an individual's remuneration package.
- 4 For individuals in a defined contribution scheme, superannuation includes superannuation amounts. For individuals in a defined benefits scheme, superannuation includes the relevant notional employer contribution rate and employer productivity superannuation contribution.

Table A3.4: Information about remuneration for other highly paid staff

Total remuneration bands	Number of other highly paid staff	Short-term benefits			Post-employment benefits		Other long-term benefits		Termination benefits		Total remuneration	
		Average base salary ¹ (\$)	Average bonuses ² (\$)	Average other benefits and allowances ³ (\$)	Average superannuation contributions ⁴ (\$)	Average long service leave (\$)	Average other long-term benefits (\$)	Average termination benefits (\$)	Average total remuneration (\$)			
\$225 001–\$245 000	4	198 190	0	910	28 063	4 141	0	0	0	231 304		
\$245 001–\$270 000	2	212 887	0	1 814	38 278	5 041	0	0	0	258 021		
\$270 001–\$295 000	3	232 199	0	916	40 771	5 678	0	0	0	279 564		
\$295 001–\$320 000	0	0	0	0	0	0	0	0	0	0		
\$320 001–\$345 000	1	274 571	0	0	41 828	6 660	0	0	0	323 059		

Notes

This table was prepared on an accrual basis.

- 1 Base salary includes gross salary earned while working plus annual leave accrued.
- 2 Bonuses are based on an accrued estimate at 30 June 2020. The actual cash bonus paid during 2020–21 may differ from this amount following final assessment and approval processes.
- 3 Other benefits and allowances includes car parking benefits that form part of an individual's remuneration package.
- 4 For individuals in a defined contribution scheme, superannuation includes superannuation amounts. For individuals in a defined benefits scheme, superannuation includes the relevant notional employer contribution rate and employer productivity superannuation contribution.

Appendix 4: Work health and safety

Work health and safety management

The ACCC and AER have continued to enhance policies, guidelines and practices to meet the requirements of the *Work Health and Safety Act 2011* (Cth) (WHS Act) and the Work Health and Safety Regulations 2011 (Cth).

Work health and safety activities have been included in the wellbeing holistic measures identified in part 4 of this report.

Health and safety outcomes

Comcare premiums

The ACCC's Comcare premium for 2019–20 was 0.25 per cent of payroll. This rate is well below the rate for the whole scheme, which was 0.85 per cent.

Compensation claims

There were three new compensation claims lodged with Comcare from the ACCC and AER during 2019–20. The ACCC and AER had five open compensation claims at the end of 2019–20.

Non-compensable cases

The ACCC and AER support employees suffering from non-compensable physical and psychological injuries or illnesses to maintain or resume attendance at work. During 2019–20 early intervention assistance and psychological support was provided to 18 employees.

Incident statistics

There were 24 reports of incidents of an injury or a 'near miss' involving employees in 2019–20. There were no notifiable incidents during the year.

Investigations, directions and notices

The ACCC received no notices under the WHS Act and did not conduct any investigations during 2019–20.

Rehabilitation Management System Audit

The ACCC's and AER's Rehabilitation Management System (RMS) achieved 100 per cent compliance in audits conducted in 2017 and 2018. The next external RMS audit was originally scheduled for mid-2020. However, due to re-prioritisation of work and unavailability of the auditor as a result of the COVID-19 pandemic, it has been rescheduled for 2020–21. This is within the timeframe recommended by the auditor in 2018.

Appendix 5: Advertising and market research

During 2019–20 the ACCC conducted the following advertising campaigns: baby walker safety, Scams Awareness Week 2019 and a franchising information campaign. Further information on these campaigns is available at www.accc.gov.au and www.productsafety.gov.au. The ACCC did not undertake any advertising campaigns with expenditure in excess of \$250 000.

Under s. 311A of the *Commonwealth Electoral Act 1918* (Cth), the ACCC is required to provide details of payments over \$14 000 (GST inclusive) to advertising agencies, market research organisations, polling organisations, direct mail organisations and media advertising agencies.

Table A5.1 sets out payments that the ACCC made to external organisations for advertising and market research services in 2019–20.

Table A5.1: Advertising and market research payments of more than \$14 000 in 2019–20

Advertising and market research organisation	Description of advertising and market research services	Amount \$
Universal McCann	Advertising for the baby walkers campaign 2019–20	14 760
Universal McCann	Advertising water inquiry consultation events 2019–20 (non-campaign advertising)	21 464
Universal McCann	Recruitment advertising (non-campaign advertising)	23 766
Universal McCann	Advertising for the franchising awareness campaign 2018–19 and 2019–20	40 000
Universal McCann	Advertising for the Measuring Broadband Australia campaign 2018–19	40 000
Universal McCann	Advertising for the Energy Made Easy campaign 2018–19	44 061
Orima Research Pty Ltd	2019 ACCC Effectiveness Survey	50 600
Roy Morgan Research	Market research on scams reporting and petrol prices	29 040
Consumer Utilities Advocacy Centre	Desktop research on consumer vulnerability	30 000

Appendix 6: Ecologically sustainable development

How the ACCC's activities and administration of legislation accord with principles of ecologically sustainable development

The ACCC administers legislation that ensures lawful competition, consumer protection and regulated national infrastructure markets and services. At all times the ACCC pursues its outcomes and objectives in a manner that provides the maximum benefit to the maximum number of consumers with the least impact on resources and the environment.

How the ACCC's outcome contributes to ecologically sustainable development

In achieving its outcome the ACCC employs decision-making which, in line with s. 3A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), factors in the economic, environmental, social and equitable considerations over both the short and the long term.

ACCC activities that affect the environment

To ensure the ACCC is able to effectively administer legislation and regulate national infrastructure markets and services, it has established offices at 10 locations around Australia. The ACCC's work aims to foster competitiveness and fairness, leading to more efficient and sustainable markets. The ACCC operates in line with the Energy Efficiency in Government Operations Policy and the Australian Public Service Information and Communications Technology (ICT) Strategy and remains committed to environmental sustainability and performance.

Measures taken to minimise the effect of activities on the environment

The ACCC is committed to reducing the environmental impact of its activities in a range of areas.

Property

- Optimising environmental opportunities through refurbishment and new building projects.
- Exploring energy-efficient building options for new leases, reducing fit-out size, using sustainable materials where possible, and reusing or recycling office furniture.
- Using efficient, low-energy LED lighting when opportunities arise.
- Programming supplementary air conditioning to reduce energy and water consumption.
- Installing programmable and efficient office lighting, including motion sensors, in new fit-outs.
- For existing commercial offices over 2000 m², maintain a minimum energy performance standard of 4.5 stars from NABERS (National Australian Built Environment Rating System).
- Focusing on sustainable waste management practices and improving employee awareness through behaviour change programs.
- Continuing monitoring and reporting of the ACCC's whole property portfolio energy consumption.

Information technology

- Retaining main servers in offsite locations, reducing onsite energy consumption.
- Using power-saving modes for ICT equipment when not in use.
- Increasing use of ISO 14001 accredited printers for external printing services where appropriate.
- Reducing printer numbers and improving printing efficiency in accordance with government requirements.
- Using follow-me printing, duplex printing and photocopying as a default setting on all printers and multi-function devices.

Travel

- Using ICT options as an alternative to business travel.
- Reducing vehicle fleet and servicing vehicles in accordance with manufacturers' specifications.
- Using E10 fuels for lease vehicles where possible.

Workplace efficiencies

- Placing emphasis on electronic records and electronic working arrangements.
- Promoting access to ACCC publications electronically rather than in print.

Purchasing and procurement

- Purchasing 100 per cent post-consumer recycled content copy paper.
- Procuring office equipment with low energy consumption.

Waste management

- Improving waste segregation practices, including paper, commingled recycling, general waste, e-waste and, in some offices, organic waste.
- Recycling paper and cardboard products, including pulping classified waste and providing use-again office envelopes.
- Disposing of toner cartridges through a recycling outlet.
- Recycling all fluorescent tubes.
- Disposing of mobile phones and batteries through a recycling outlet.

Information and education

- Collaborating regularly with building management to identify initiatives and participate in local environmental activities.

Mechanisms for reviewing and increasing the effectiveness of measures

The ACCC environmental strategy focuses on better environmental and sustainable practices. The ACCC utilises a process of informal, continuous review of the various measures it employs to reduce the environmental impact of its activities.

Where further efficiencies are identified in the course of business, the ACCC endeavours to put in place the measures required to realise these efficiencies. All of the above is done in accordance with both the applicable funding and environmental guidelines available to the ACCC.

Appendix 7: Competition and Consumer Act 2010 and other legislation

Competition and Consumer Act and key legislation

Airports Act 1996 (Cth)

Australian Postal Corporation Act 1989 (Cth)

Competition and Consumer Act 2010 (Cth) (CCA)

Competition and Consumer (Consumer Data Right) Rules 2020

National Electricity Law and Rules

National Gas Law and Rules

National Energy Retail Law and Rules

Telecommunications Act 1997 (Cth)

Water Act 2007 (Cth)

Water Market Rules 2009 (Cth)

Water Charge (Termination Fees) Rules 2009 (Cth)

Water Charge (Infrastructure) Rules 2010 (Cth)

Water Charge (Planning and Management Information) Rules 2010 (Cth)

Lawful competition and informed markets

Table A7.1: Parts of the Competition and Consumer Act 2010 dealing with competition

IV	Cartel conduct: price fixing; output restrictions; bid rigging; allocating customers, suppliers or territories Other anti-competitive conduct: boycotts; agreements substantially lessening competition; anti-competitive disclosure of pricing and other information; misuse of market power; exclusive dealing; resale price maintenance; mergers substantially lessening competition
IVD	Consumer Data Right
VI	Enforcement and remedies for anti-competitive conduct
VII	Authorisations and notifications
XIA	The Competition Code

Consumer Data Right

Part IVD of the CCA establishes the Consumer Data Right (CDR) framework and provides the ACCC with a range of functions and powers to implement and administer the Consumer Data Right.

The ACCC's powers relate to:

- developing and making the Competition and Consumer (Consumer Data Right) Rules 2020 (Cth) (CDR Rules) (Part IVD, Division 2, Subdivisions A and C)
- accreditation of data recipients (Part IVD, Division 3, Subdivisions A, and C)
- establishing and maintaining the CDR Register (Part IVD, Division 3, Subdivisions B and D)
- compliance and enforcement (Part IVD, Division 2, Subdivision B).

Developing and making the CDR Rules

The ACCC is empowered to make rules for the operation of the Consumer Data Right in relation to designated sectors by legislative instrument, with the consent of the responsible minister.²³ The ACCC made the CDR Rules in February 2020. The CDR Rules have general application, with specific rules for the banking sector—the first sector designated by the minister—contained in Schedule 3.

The ACCC can make rules dealing with:²⁴

- the disclosure, collection, use, accuracy, storage, security or deletion of CDR data
- designated gateways for CDR data
- accreditation of data recipients
- reporting, recordkeeping and auditing
- matters incidental or related to any of the above matters.

The rules must require accredited data recipients to delete CDR data on a request from a CDR consumer.

The ACCC must consider certain matters before making the rules, including the likely effect of the rules on the interests of consumers and the privacy and confidentiality of their information, as well as the promotion of competition and data-driven innovation. The ACCC is also required to consult with the public, the Information Commissioner, the primary regulator of a particular designated sector, and any other prescribed person or body. The ACCC undertakes best-practice regulatory processes including Privacy Impact Assessments and Regulatory Impact Assessments for the CDR Rules and amendments to the CDR Rules.

Data Recipient Accreditor

Entities that wish to collect consumer data under the Consumer Data Right must be accredited by the Data Recipient Accreditor. The Data Recipient Accreditor is provided with a number of functions and powers related to this accreditation role by the new Part IVD of the CCA and by the CDR Rules. The Data Recipient Accreditor can accredit an accreditation applicant if satisfied that the applicant meets the accreditation criteria specified in the CDR Rules; impose, vary or remove conditions on an accreditation; and revoke or suspend an accreditation. The CDR Rules also allow the Data Recipient Accreditor to accept the surrender of an accreditation, approve the form in which an accreditation application can be made, consult with other regulators and request further information from applicants.

²³ Sections 56BA(1) and 56BR of the CCA. Because the CDR Rules are a legislative instrument, the ACCC is required to comply with the *Legislation Act 2003* (Cth), including the requirement to have an explanatory statement pursuant to s. 15J of that Act.

²⁴ Part IVD, Division 2, Subdivision A of the CCA provides further detail on matters the rules may deal with.

The ACCC published accreditation guidelines to assist applicants with lodging a valid application to become an accredited person.

Accreditation Registrar

The Accreditation Registrar has a number of functions and powers under Part IVD of the CCA and specified in the CDR Rules. The Registrar must establish and maintain the Register of Accredited Persons.²⁵ Information in the register must be made publicly available by the Registrar as required by the CDR Rules. The CDR Rules also require the Registrar to create and maintain a database of data holders associated with the register. This will contain a list of data holders and associated technical information.

The CDR Rules²⁶ give the Registrar additional functions to:

- manage the process of onboarding the accredited data recipients and data holders to the register by requiring them to provide information to be stored in the register that is necessary for the processing of requests for CDR data
- maintain the security, integrity and stability of the register, including undertaking and facilitating testing of accredited data recipients and data holders
- issue requests to data holders and accredited data recipients to do specified things where necessary or convenient in order for the Registrar to exercise its powers or, where this is necessary, to ensure the security, integrity and stability of the register
- inform the Data Recipient Accreditor of any failure of an accredited data recipient to comply with a condition of its accreditation or to do things requested by the Registrar.

CDR compliance and enforcement

There are a range of enforcement options available to respond to and resolve breaches of the CDR legislation (including the privacy safeguards), CDR Rules and data standards. These are detailed below, including enforcement by the Office of the Australian Information Commissioner (OAIC) as co-regulator.

Administrative resolutions

- Accepting a voluntary written commitment from a business to address a non-compliance issue
- Recommending improvements to a CDR participant's internal practices and procedures (for example, by implementing a compliance program, improving internal operational procedures or ensuring appropriate employee training)
- Monitoring compliance with voluntary commitments

Infringement notices

- Issuing data holders or accredited data recipients with infringement notices if the ACCC considers a breach of a civil penalty provision has occurred²⁷

Court enforceable undertakings

- Accepting a formal undertaking (see s. 87B of the CCA) from a CDR participant that it will take or refrain from certain action. For example, an undertaking may include commitments to do an internal audit to ensure that the CDR participant has identified the root cause of a breach and the risk of future breaches is mitigated
- Seeking court orders, including declarations of a breach, injunctions and penalties, if a CDR participant has not complied with an enforceable undertaking

²⁵ Section 56CE(1) of the CCA.

²⁶ Rules 5.30 and 5.31.

²⁷ Section 56BM of the CCA.

Suspension or revocation of accreditation

- The Data Recipient Accreditor (the ACCC) may suspend or revoke an accredited person's accreditation status under certain circumstances (see rule 5.17 for details)—for example, if the Data Recipient Accreditor reasonably believes that a revocation or suspension is necessary in order to protect consumers
- An accredited data recipient is prohibited from seeking to collect data while a suspension is in effect

Determination and declarations power (OAIC)

- Making a determination to either dismiss or substantiate a breach of a privacy safeguard or rule relating to the privacy or confidentiality of CDR data, following an investigation
- The determination may include a declaration or order that the CDR participant should not repeat or continue the conduct, should take relevant steps within a specified period to ensure the conduct is ceased, and should redress any loss or damage suffered by consumers, including compensation

Court proceedings

- Initiating legal action for a breach of the legislation (including the privacy safeguards), CDR Rules and/or data standards
- A court can make a range of orders including civil penalties, action to remedy a breach, an injunction to restrain a CDR participant from engaging in the conduct, and orders disqualifying individuals from being directors of corporations
- The ACCC is more likely to initiate court proceeding where the conduct:
 - results, or has the potential to result, in competitive harm or substantial consumer detriment
 - is widespread, such that enforcement action is likely to have a significant deterrent effect
 - involves a CDR participant that has a history of previous breaches of competition, consumer or privacy laws.

Enforcement

The ACCC investigates cartel and other types of anti-competitive conduct—which are illegal for all businesses in Australia.

Court cases

The ACCC takes court action where, after considering all aspects of a matter, we see it as the best way to achieve our enforcement and compliance objectives. We are more likely to litigate where we see the conduct as particularly bad, where we are concerned about likely future behaviour or where the party involved fails to resolve the matter satisfactorily.

The ACCC may refer matters involving alleged criminal cartel offences to the Commonwealth Director of Public Prosecutions for possible criminal prosecution.

For individuals, a cartel offence is punishable by imprisonment for up to 10 years and/or fines up to \$420 000 per contravention. Corporations found guilty of a cartel offence may be fined up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual Australian sales turnover (whichever is the greater).

In relation to civil cartel prohibitions and other forms of anti-competitive conduct, the ACCC may initiate court action for contraventions of the CCA.

To enforce the civil provisions of the CCA relating to anti-competitive conduct, the ACCC can seek:

- declarations of contraventions
- findings of facts
- injunctions
- damages and compensation
- community service orders
- probation orders
- divestiture orders
- disqualification of a person from managing corporations
- adverse publicity orders
- corrective advertising, public notices and disclosure
- penalties of up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater) for companies; and \$500 000 for individuals.

Enforceable undertakings

The ACCC often resolves alleged breaches of the CCA by accepting court enforceable undertakings from the business involved. In these undertakings, which we record on a public register, the businesses often undertake to:

- make good the harm they have caused
- accept responsibility for their actions
- establish or review and improve their compliance programs and culture.

If necessary, we can take action to enforce the undertaking in the Federal Court of Australia.

We may also accept court enforceable undertakings to address our competition concerns about a proposed merger or acquisition.

The ACCC maintains a public register of enforceable undertakings.

Administrative resolution

In some cases—for example, where we assess the potential risk of harm to competition or consumer detriment from particular conduct as low—we may accept an administrative resolution. Administrative resolutions generally involve the business agreeing to stop the conduct, compensate those who suffered, and take other measures needed to prevent future recurrences.

Education and advice

We believe that preventing a breach of the CCA is better than acting after a breach has occurred. Therefore, the ACCC runs regular educational campaigns to inform and advise consumers and businesses about their rights and obligations under the CCA and to encourage compliance. Our campaigns aim to educate both big and small businesses.

The ACCC publishes targeted and general information, including tips and tools, to encourage businesses to comply with the CCA. We use a wide range of channels to disseminate this information. We also liaise extensively with business, consumer and government agencies about the CCA and our role in its administration.

Mergers

Section 50 of the CCA prohibits mergers and acquisitions that substantially lessen competition in any market in Australia or are likely to do so.

To assist business, the ACCC has an informal clearance process that enables parties who are planning a merger or acquisition to seek the ACCC's view on whether the proposed transaction is likely to have the effect of substantially lessening competition. Businesses may also apply to the ACCC for an authorisation of a merger or acquisition which, if granted, provides statutory protection from s. 50.

There is no legislation underpinning the informal process; rather, it has developed over time so that merger parties can seek the ACCC's view before they complete a merger.

The ACCC assesses mergers that come to our attention where they potentially raise concerns under s. 50. These mergers are generally notified by the merger parties via a request for informal clearance. Alternatively, the ACCC may become aware of a proposed or a completed acquisition by monitoring media reports, from complaints or through referrals from Australian and overseas regulators.

We use the information available to us to determine whether a public review is required. Where we are satisfied that there is a low risk of a substantial lessening of competition based on an initial assessment, we may decide that a public review of the merger is unnecessary. These mergers are described as being 'pre-assessed'. A significant proportion of the mergers we consider are pre-assessed. Clearing mergers by pre-assessment enables the ACCC to respond quickly where there are no substantive competition concerns.

Mergers can be pre-assessed, without conducting a public review, on the basis of the information from the parties or other information before us. Alternatively, in some non-confidential mergers we may conduct targeted inquiries to help inform the decision.

Where pre-assessment is not considered suitable or possible, the ACCC conducts a public review for non-confidential mergers.

Merger authorisation provides an alternative clearance option to the informal merger review process. In order to grant merger authorisation, the ACCC must be satisfied that either:

- the proposed acquisition would not be likely to substantially lessen competition, or
- the likely public benefit from the proposed acquisition outweighs the likely public detriment, including any lessening of competition.

The ACCC's power to grant merger authorisation is limited to proposed acquisitions.

While a merger authorisation is in force, the authorised parties will be able to acquire the relevant shares or assets without the risk of the ACCC or third parties taking legal action for a contravention of s. 50 of the CCA.

Non-merger authorisations and notifications

The CCA primarily aims to prevent conduct that damages or is likely to damage competition. However, if markets are not working efficiently and they are failing to maximise welfare, some restrictions on competition may be allowed in the public interest.

Authorisation provides businesses with statutory protection from legal action to engage in potentially anti-competitive arrangements.

The authorisation process 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.

The ACCC may, if the authorisation test is met, grant authorisation to conduct to which one or more provisions in Part IV of the CCA would or might apply, including:

- contracts, arrangements, understandings or concerted practices that have the purpose, effect or likely effect of substantially lessening competition
- anti-competitive arrangements, including cartel provisions (such as price fixing, controlling output, sharing markets or collective bargaining)
- secondary boycotts (where two or more parties prevent a third party such as a potential customer or supplier from doing business with a target)
- conduct that may be considered to fall within the misuse of market power provisions
- exclusive dealing (where a person trading with another imposes restrictions on the other's freedom to choose with whom, in what or where they deal)
- resale price maintenance (where the supplier specifies a minimum price below which goods or services may not be resold)
- dual-listed company arrangements that affect competition.

The legal test that the ACCC must apply when assessing an application for authorisation depends upon the conduct for which authorisation is sought.

For conduct that is prohibited outright (such as cartel conduct), the ACCC may grant authorisation if it is satisfied that the likely public benefit from the conduct outweighs the likely public detriment.

For other conduct, the ACCC may grant authorisation if it is satisfied that either:

- the conduct would not be likely to substantially lessen competition, or
- the likely public benefit from the conduct outweighs the likely public detriment.

As an alternative to authorisation, the CCA allows parties to obtain statutory protection from legal action under the notification regime in relation to exclusive dealing, certain collective bargaining and collective boycott arrangements, and resale price maintenance. In some cases the notification process can be faster than seeking authorisation, but it is not available for all types of conduct.

For exclusive dealing notifications, the ACCC will assess whether the notified conduct:

- has the purpose, effect or likely effect of substantially lessening competition, and
- if so, will result in a likely public benefit that would outweigh the likely public detriment.

For collective bargaining and resale price maintenance notifications, the ACCC will assess whether the likely benefit to the public from the conduct will outweigh the likely detriment to the public from the conduct.

Both the notification and authorisation processes are public. The ACCC publishes the applications, public submissions and ACCC decisions on the public register on our website.

Fair trading and consumer protection

Table A7.2: Parts of the Competition and Consumer Act 2010 (including the Australian Consumer Law) dealing with fair trading and consumer protection

Competition and Consumer Act 2010	
IVB	Industry codes of conduct: the franchising, horticulture, dairy, oil and unit pricing codes are mandatory codes prescribed under Part IVB
Australian Consumer Law—Schedule 2 to the Competition and Consumer Act 2010	
Chapter 2	General protections: misleading or deceptive conduct; unconscionable conduct; unfair contract terms
Chapter 3	Specific protections: false or misleading representations; unsolicited supplies; pyramid selling; pricing display; consumer guarantees; unsolicited consumer agreements; lay-by agreements; gift cards; product safety, bans, recalls, reporting, and safety and information standards
Chapter 4	Criminal conduct relating to fair trading and consumer protection
Chapter 5	Enforcement and remedies for contraventions of the Australian Consumer Law

Enforcement

To enforce the civil provisions of the CCA (including the Australian Consumer Law) relating to fair trading and consumer protection, the ACCC can seek:

- declarations of contraventions
- findings of facts
- injunctions
- damages and compensation, including for non-party consumers
- community service orders
- probation orders
- disqualification of a person from managing corporations
- adverse publicity orders
- corrective advertising, public notices and disclosure
- penalties of up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater) for companies; and \$500 000 for individuals.

Court enforceable undertakings

To protect consumers and resolve matters under investigation, in appropriate circumstances we can accept court enforceable undertakings, rather than taking litigation.

Under a court enforceable undertaking, a company or an individual will generally agree to:

- remedy the harm caused by the conduct
- accept responsibility for their actions
- establish or review and improve their compliance programs and culture.

Court enforceable undertakings may also include:

- corrective advertising in the print and electronic media
- refunds to affected customers
- community service remedies, such as industry-wide education programs funded by the company providing the undertaking.

Infringement notices

Where we have reasonable grounds to believe that a person has contravened a relevant provision of the CCA but we consider that a resolution is possible without going to court, we can also issue an infringement notice. We may also issue infringement notices in combination with a court enforceable undertaking.

The penalty amount in each infringement notice will vary depending on the alleged contravention, but in most cases for the period of this report, was fixed at \$12 600 for a corporation (or \$126 000 for a listed corporation) and \$2520 for an individual for each alleged contravention.²⁸

Administrative resolutions

In some cases—for example, where we assess the potential risk of harm to competition or consumer detriment from particular conduct as low—we may accept an administrative resolution.

Depending on the circumstances, administrative resolutions can range from a commitment by a trader in writing to a signed agreement between the ACCC and a trader setting out detailed conditions.

Administrative resolutions generally involve the trader agreeing to stop the offending conduct, compensate those adversely affected and take other measures necessary to ensure that the conduct does not recur. If a trader reoffends after they have accepted an administrative resolution, we are likely to resolve the new matter differently.

Infrastructure services and markets where competition is limited

Table A7.3: Parts of the Competition and Consumer Act 2010 dealing with regulated industries and prices surveillance

IIIAA	Regulatory and enforcement responsibilities under Commonwealth laws, the National Energy Laws and Rules
IIIA	Access to the services of essential national infrastructure facilities such as rail tracks and port terminals
IVB	Industry codes of conduct
VIIA	Price inquiries and surveillance in relation to industries or businesses as directed by the Australian Government
X	Limited exemptions for anti-competitive conduct in relation to international liner cargo shipping
XIB	Anti-competitive conduct in telecommunications
XIC	Access to services for telecommunications

²⁸ As a result of indexation of the Commonwealth penalty unit amount effective 1 July 2020, these penalties will be fixed in most cases at \$13 320 for a corporation or \$133 200 for a listed corporation, and \$2664 for an individual.

Regulation

The ACCC and AER regulate access to monopoly infrastructure services and the price for that access where there is no or limited competition.

The ACCC has regulatory responsibility in relation to a number of key infrastructure services in the economy, including telecommunications, rail, water, fuel, bulk wheat export, postal services, ports and airports. As the infrastructure in each of these sectors is generally provided by one or a small number of suppliers, regulation by the ACCC will promote the economically efficient operation of, use of and investment in Australia's key infrastructure. The effect of competition and investment will therefore enhance community welfare and promote the long-term interests of Australian consumers.

The AER regulates the electricity and gas industries. The AER promotes the economically efficient operation of, use of and investment in Australia's key energy infrastructure by setting the amount of revenue that network businesses can recover from customers for using electricity networks and setting the prices that pipeline operators can charge users of fully regulated gas pipelines. The AER regulates the costs of electricity network services in eastern and southern Australia and electricity networks in the Northern Territory. The AER regulates access prices for covered pipelines in jurisdictions other than Western Australia.

The AER monitors the wholesale electricity and gas markets for compliance with the National Electricity Law and Rules and the National Gas Law and Rules, and takes enforcement action for breaches.

The AER has roles and functions under the National Energy Retail Law and the National Energy Retail Rules in the Australian Capital Territory, Tasmania, South Australia, New South Wales and Queensland. These include authorising retailers to sell energy; administering the national Retailer of Last Resort scheme aimed at protecting customers and the market in the event of retailer failure; monitoring the performance and compliance of energy businesses and taking enforcement action where appropriate; and maintaining a price comparator website (Energy Made Easy) to help residential and small business energy customers choose an energy plan that suits their needs.

The AER and ACCC also have roles under the Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019. The AER, through the Default Market Offer, sets price caps for standing offers for retail electricity supply in certain distribution zones in Australia. The ACCC has enforcement responsibility for compliance with the code, which includes additional controls over the advertising and presentation of discounts for market offers in relation to retail electricity supply.

The ACCC also has a role in enforcing Part XICA of the CCA, introduced by the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Act 2019* (Cth), which came into effect on 10 June 2020.

Appendix 8: Information required under the Competition and Consumer Act 2010

Section 171(2) reporting requirements

Section 51(1) of the *Competition and Consumer Act 2010* (Cth) (CCA) provides that conduct that would normally contravene the law may be permitted if it is specifically authorised under other Commonwealth, state or territory legislation. Section 171(2) of the CCA requires this report to list all such laws.

Exceptions under Commonwealth, state and territory legislation

Below is a list of the legislation that allows such conduct or provides for regulations to be made authorising particular conduct. The list includes legislation of which the ACCC has been notified or has otherwise become aware.

Commonwealth

Australian Postal Corporation Act 1989

Banking Act 1959

Competition and Consumer Act 2010

Customs Act 1901

Financial Sector (Business Transfer and Group Restructure) Act 1999

Insurance Act 1973

Life Insurance Act 1995

Liquid Fuel Emergency Act 1984

Payment Systems (Regulation) Act 1998

Social Security (Administration) Act 1999

Stronger Futures in the Northern Territory Act 2012

Telecommunications Act 1997

Australian Capital Territory

Cemeteries and Crematoria Act 2003

Competition Policy Reform Act 1996

Financial Management Act 1996

Government Procurement Act 2001

Health Act 1993

Insurance Authority Act 2005

Racing Act 1999

Road Transport (Public Passenger Services) Act 2001

Territory Records Act 2002

Waste Management and Resource Recovery Act 2016

New South Wales

Australian Jockey and Sydney Turf Clubs Merger Act 2010

Betting and Racing Act 1998

Casino Control Regulation 2019

Coal Industry Act 2001

Competition Policy Reform (New South Wales) Act 1995

Electricity Generator Assets (Authorised Transactions) Act 2012

Gaming Machines Act 2001

Health Services Act 1997

Hunter Water Act 1991

Industrial Relations Act 1996

Industrial Relations (Ethical Clothing Trades) Act 2001

James Hardie Former Subsidiaries (Winding up and Administration) Act 2005

Land and Property Information NSW (Authorised Transaction) Act 2016

Liquor Act 2007

Major Events Act 2009

Passenger Transport Act 2014

Point to Point Transport (Taxis and Hire Vehicles) Act 2016

Rice Marketing Act 1983

Sporting Venues Authorities Act 2008

Thoroughbred Racing Act 1996

Totalizator Act 1997

Waste Avoidance and Resource Recovery Act 2001

Northern Territory

Competition Policy Reform (Northern Territory) Act 1996

Consumer Affairs and Fair Trading Act 1990

Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations 1996

Electricity Reform Act 2000

Environmental Protection (Beverage Containers and Plastic Bags) Act 2011

Liquor Act 2019

Water Supply and Sewerage Services Act 2000

Queensland

Competition Policy Reform (Queensland) Act 1996

Gladstone Power Station Agreement Act 1993

Racing Act 2002

Sugar Industry Act 1999

Sugar Industry Regulation 2010

Transport Operations (Passenger Transport) Act 1994

Waste Reduction and Recycling Act 2011

South Australia

Authorised Betting Operations Act 2000

Competition Policy Reform (South Australia) Act 1996

Cooper Basin (Ratification) Act 1975

Roxby Downs (Indenture Ratification) Act 1982

Tasmania

Competition Policy Reform (Tasmania) Act 1996

Electricity Reform Act 2012

Electricity Supply Industry Act 1995

Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995

Gaming Control Act 1993

Rail Company Act 2009

TOTE Tasmania (Sale) Act 2009

Water and Sewerage Corporation Act 2012

Victoria

Gambling Regulation Act 2003

Gas Industry (Residual Provisions) Act 1994

Health Services Act 1988

Legal Profession Uniform Law Application Act 2014

Liquor Control Reform Act 1998

Outworkers (Improved Protection) Act 2003

Owner Drivers and Forestry Contractors Act 2005

State Owned Enterprises Act 1992

Western Australia

Competition Policy Reform (Western Australia) Act 1996

Electricity Corporations Act 2005

Electricity Industry (Wholesale Electricity Market) Regulations 2004

Electricity Industry Act 2004

Energy Coordination Act 1994

Fair Trading Act 2010

Fair Trading (Fitness Industry Interim Code) Regulations 2019

Liquor Control Act 1988

North West Gas Development (Woodside) Agreement Act 1979

Owners-Drivers (Contracts and Disputes) Act 2007

Surveillance Devices Amendment Regulations 2020

TAB Disposal Act 2019

Waste Avoidance and Resource Recovery Act 2007

Section 171(3) reporting requirements

Time taken to make final determinations and decisions

Final determinations on access disputes under section 44V

No decisions were made under s. 44V during 2019–20.

Decisions on access undertaking applications and access code applications

Rail

In response to an application from the Australian Rail Track Corporation (ARTC) on 29 July 2019, on 26 September 2019 the ACCC published a notice extending the ARTC 2008 Interstate Access Undertaking (IAU) to 30 June 2020. On 23 August 2019 ARTC sought the ACCC's views on revaluing the regulated asset base (RAB) of the interstate network using the depreciated optimised replacement cost (DORC) methodology. Following consultation, the ACCC gave written guidance on 8 November 2019 that undertaking a DORC revaluation was the most appropriate approach to valuing the RAB for the replacement IAU, with the ACCC engaging a consultant.

On 25 November 2019 ARTC provided a public commitment to adopt the DORC value in its replacement IAU. The ACCC engaged GHD Advisory on 23 April 2020 to undertake the DORC valuation. In response to an application from ARTC on 5 May 2020, on 19 June 2020 the ACCC published a notice extending the 2008 IAU to 30 June 2021, thereby allowing time for both the DORC process and the assessment of the next IAU to be completed.

Decisions on applications under section 44PA(1)

No decisions were made on applications under s. 44PA(1).

Notices under the CCA

General description of matters for which notices were given

In 2019–20, a total of 583 notices were issued during ACCC/AER market studies and investigations of conduct potentially in contravention of restrictive trade practices provisions, industry codes and consumer and small business protection provisions in the CCA.

Types of notices issued

- No notices under s. 51ADD (requiring the provision of information or documents that the addressee is required to keep, generate or publish under an applicable industry code).
- 208 notices under s. 95ZK (requiring the provision of information and/or documents relating to the affairs of the addressee that may be relevant to an ACCC inquiry or ACCC monitoring, as set out in the provision).
- No notices under s. 133D (requiring the provision of information and documentation relating to the safety of consumer goods).
- 209 notices under s. 155(1)(a) and (b) (requiring the addressee to furnish information in writing and produce documents).
- 22 notices under s. 155(1)(a) (requiring the addressee to furnish information).
- 65 notices under s. 155(1)(b) (requiring the addressee to produce documents).
- 79 notices under s. 155(1)(c) (requiring the addressee to appear in person and give evidence).
- No notices under s. 155A (requiring the provision of information and documents relating to a matter that may constitute a misuse of market power in a trans-Tasman market).

Challenges to the validity of notices

No proceedings were instituted to challenge the validity of a notice.

Search warrants issued or signed

No search warrants were issued by a judge under s. 135Z or signed by a judge under s. 136.

There were 15 warrants issued by a magistrate under s. 154X (Part XID). No search warrants were signed by a magistrate under s. 154Y.

General description of matters for which search warrants were issued or signed

Fifteen search warrants were issued pursuant to s. 154X during 2019–20 in relation to four investigations. All of the warrants were in relation to alleged contravention of prohibitions on the making and giving effect to contracts, arrangements or understandings containing cartel provisions. Six of the warrants also related to alleged contravention of the prohibition on engaging in a concerted practice that has the purpose, effect or likely effect of substantially lessening competition.

Challenges to the validity of search warrants

There were no challenges to the validity of the search warrants.

Entry to premises

There were 923 entries onto premises under s. 133B, s. 133C or Division 6 of Part XI.

There were no entries to premises with consent under s. 154D (Part XID).

Inspectors appointed under ss. 133(1) and 133(2) of the CCA may enter the premises from which a person in trade or commerce supplies consumer goods and service, if the public has access to the premises at the time of entry. While on the premises, the inspector may take photographs, inspect consumer goods and equipment or purchase consumer goods and services. During 2019–20 surveillance employees appointed as inspectors undertook 923 entries to premises under ss. 133B or 133C as part of the ACCC routine surveillance program.

Complaints received by the ACCC

Details of the number of complaints received by the ACCC in 2019–20 and a summary of the kinds of complaints received and how they were dealt with are on pages 125–128, 'Responding to enquiries and reports'.

Matters investigated by the ACCC

Details of the major matters investigated by the ACCC in 2019–20 are in part 3—Annual Performance Statement.

Substantiation notices issued

Three substantiation notices were issued pursuant to s. 219(2)(a) and (c) of the CCA requiring addressees to provide a written signed statement or produce documents substantiating or supporting their claims relating to the performance characteristics of engine-alternator sets (portable generators).

Audit notices issued

In 2019–20, no notices were issued under s. 51ADD (requiring the addressee to give information or produce documents).

Intervention in proceedings

Neither the ACCC nor the AER intervened in any proceedings during 2019-20.

Section 56CH(4) reporting requirements

Section 56CH(4) of the CCA requires this report to include information about the performance of the Consumer Data Right (CDR) Data Recipient Accreditor's functions, and the exercise of the Data Recipient Accreditor's powers (see the description of functions on page 267).

During the 2019-20 financial year, the Data Recipient Accreditor:

- approved both full and streamlined forms for persons to use when applying to be accredited at the unrestricted level
- accredited two persons.

Section 56CL(4) reporting requirements

Section 56CL(4) of the CCA requires this report to include information about the performance of the CDR Accreditation Registrar's functions and the exercise of the Accreditation Registrar's powers (see the description of functions on page 268).

During the 2019-20 financial year, the Registrar:

- established and maintained the Register of Accredited Persons and associated database
- published information on the register about four data holders and two accredited persons (see further information on page 65)
- maintained the security, integrity and stability of the Register of Accredited Persons and associated database by making a written request to accredited persons and data holders to do a specified thing.

Appendix 9: Undertakings accepted, adverse publicity orders issued and infringement notices paid in 2019-20

Competition and Consumer Act 2010 section 87B undertakings

Undertakings accepted by the ACCC are available in full on the [undertakings public register](#) on the ACCC website.

[Undertakings accepted by the AER](#) are available in full on the AER website.

Competition and Consumer Act 2010 section 86D adverse publicity orders

There were no public warning notices issued in 2019-20. Information on public warning notices is available on the [public warning notice register](#).

Competition and Consumer Act 2010 infringement notices

Details of [infringement notices](#) are available on the ACCC website.

Telecommunications Act 1997 section 103(4) formal warnings

The ACCC issued a [formal warning](#) to NBN Co for breach of non-discrimination obligations on 8 October 2019.

Water Act 2007 section 163 undertakings

No [undertakings](#) were accepted under s. 163 of the *Water Act 2007* (Cth).

Water Act 2007 section 156 infringement notices

No [infringement notices](#) were issued under s. 156 of the *Water Act 2007*.

Water Act 2007 administrative actions

No administrative actions took place under the *Water Act 2007*.

Infringement notices paid under National Energy Retail Law

Details of infringement notices paid in 2019-20 under the National Energy Retail Law are available on the [Enforcement matters](#) page of the AER website.

Infringement notices paid under National Electricity Law

Details of infringement notices paid in 2019-20 under the National Electricity Law are available on the [Enforcement matters](#) web page of the AER website.

National Energy Retail Law section 288 undertakings

Details of National Energy Retail Law undertakings are available on the [Enforcement matters](#) web page of the AER website.

National Electricity Law section 59A undertakings

Nil.

Appendix 10: Litigation matters, review proceedings and tribunal proceedings in 2019-20

ACCC

Strategy 1: Maintain and promote competition

Table A10.1: Proceedings commenced in 2019-20

Competition		
Cartel (enduring priority)	BlueScope Steel Limited & Anor	
	commenced	30 August 2019
	jurisdiction	Federal Court Melbourne
Misuse of market power (2019 priority)	Tasmanian Ports Corporation Pty Ltd	
	commenced	9 December 2019
	jurisdiction	Federal Court Melbourne
Cartel (enduring priority)	Wallenius Wilhelmsen Ocean AS	
	commenced	23 August 2019
	jurisdiction	Federal Court Sydney
Non-compliance and other proceedings		
Inciting the obstruction of a Commonwealth official in the performance of their functions	Jason Ellis	
	commenced	8 October 2019
	Jurisdiction	NSW Local Court

Table A10.2: Proceedings concluded in 2019–20

Competition		
Cartel (enduring priority)	Cascade Coal Pty Ltd & Ors (appeal)	
	commenced	25 May 2015
	concluded	4 September 2019
	jurisdiction	Federal Court Sydney
	outcome	ACCC appeal dismissed
Cartel (enduring priority)	Kawasaki Kisen Kaisha Ltd	
	commenced	15 November 2016
	concluded	2 August 2019
	jurisdiction	Federal Court Sydney
	outcome	Convicted of criminal cartel conduct and ordered to pay a fine of \$34.5 million
Anti-competitive conduct (enduring priority)	Ramsay Health Care Australia Pty Limited	
	commenced	1 May 2017
	concluded	12 March 2020
	jurisdiction	Federal Court Sydney
	outcome	ACCC case dismissed

Table A10.3: Proceedings continuing in 2019–20

Competition		
Cartel (enduring priority)	Australia and New Zealand Banking Group Ltd (ANZ)	
	commenced	5 June 2018
	jurisdiction	Downing Centre Local Court Sydney
Cartel (enduring priority)	Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) & Anor	
	commenced	16 August 2018
	jurisdiction	ACT Magistrates Court
Cartel (enduring priority)	Citigroup Global Markets Australia Pty Limited	
	commenced	5 June 2018
	jurisdiction	Downing Centre Local Court Sydney
Cartel (enduring priority)	Country Care Pty Ltd & Ors	
	commenced	14 February 2018
	jurisdiction	Magistrates' Court of Victoria
Cartel (enduring priority)	Deutsche Bank Aktiengesellschaft (Deutsche Bank)	
	commenced	5 June 2018
	jurisdiction	Downing Centre Local Court Sydney
Anti-competitive conduct (enduring priority)	NSW Ports Operations Hold Co Pty Ltd & Ors	
	commenced	10 December 2018
	jurisdiction	Federal Court Sydney
Cartel (enduring priority)	PT Garuda Indonesia Ltd (appeal)	
	commenced	18 April 2016
	jurisdiction	Federal Court Sydney
Cartel (enduring priority)	Vina Money Transfer Pty Ltd & Ors	
	commenced	11 April 2019
	jurisdiction	Melbourne Magistrates' Court
Anti-competitive conduct (acquisition)	ACCC v Pacific International Pty Ltd & Ors (High Court special leave application—pending)	
	commenced	18 July 2018
	jurisdiction	High Court of Australia

Strategy 2: Protect the interests and safety of consumers and support fair trading in markets affecting consumers and small business

Table A10.4: Proceedings commenced in 2019–20

Consumer and small business protection		
Misleading or deceptive conduct, false or misleading representations Broadband services (2018 priority)	Dodo Services Pty Ltd & Anor commenced jurisdiction	22 June 2020 Federal Court Melbourne
Misleading or deceptive conduct, false or misleading representations Digital platforms, algorithms and consumer data (2018 priority)	Google Australia Pty Ltd & Anor commenced jurisdiction	29 October 2019 Federal Court Sydney
Misleading or deceptive conduct Digital platforms, algorithms and consumer data (2018 priority)	HealthEngine Pty Ltd commenced jurisdiction	7 August 2019 Federal Court Sydney
False or misleading representations, unconscionable conduct New car retailing (2017 priority)	Mazda Australia Pty Ltd commenced jurisdiction	31 October 2019 Federal Court Melbourne
False or misleading representations Priority factor—conduct of significant public interest or concern	Medibank Private Limited (t/a ahm) commenced jurisdiction	3 September 2019 Federal Court Melbourne
Misleading or deceptive conduct, false or misleading representations Priority factor—national conduct by large trader	Oscar Wylee Pty Ltd commenced jurisdiction	13 December 2019 Federal Court Sydney
False or misleading representations Consumer guarantees involving large or national traders (2018 priority)	Samsung Electronics Australia Pty Ltd commenced jurisdiction	4 July 2019 Federal Court Melbourne
Unsolicited consumer agreements Broadband services (2018 priority)	Superfone Pty Ltd commenced jurisdiction	10 December 2019 Federal Court Melbourne
Misleading or deceptive conduct Priority factor—conduct of significant public interest or concern	TPG Internet Pty Ltd (appeal)²⁹ commenced jurisdiction	8 November 2019 Full Court of the Federal Court
Misleading or deceptive conduct Priority factor—conduct of significant public interest or concern	Woolworths Limited (appeal) commenced jurisdiction	2 August 2019 Full Court of the Federal Court Melbourne

²⁹ On 30 July 2020, the Full Federal Court handed down judgment dismissing the ACCC's appeal.

Table A10.5: Proceedings concluded in 2019–20

Consumer and small business protection		
Unfair contract terms	Ashley & Martin Pty Ltd	
Vulnerable and disadvantaged consumers (enduring priority)	commenced	29 November 2017
	concluded	24 October 2019
	jurisdiction	Federal Court Perth
	outcome	Standard contract terms in three standard form consumer contracts are void after being declared unfair contract terms (UCTs). Court ordered Ashley & Martin to refund money paid by consumers as a result of these UCTs.
False or misleading representations	Bupa Aged Care Australia Pty Ltd	
Vulnerable and disadvantaged consumers (enduring priority)	commenced	17 April 2019
	concluded	12 May 2020
	jurisdiction	Federal Court Melbourne
	outcome	Penalties of \$6 million Bupa also ordered, by consent, to compensate all affected current and past residents within 12 months.
False or misleading representations, systematic unconscionable conduct	Cornerstone Investment Australia Pty Ltd (t/a Empower Institute)	
Vulnerable and disadvantaged consumers (enduring priority)	commenced	9 December 2015
	concluded	14 August 2019
	jurisdiction	Federal Court Sydney
	outcome	Penalties of \$26.5 million and repayment of \$56 million to the Commonwealth
Excess surcharging (2017 priority)	CLA Trading Pty Ltd (t/a Europcar)	
	commenced	25 July 2018
	concluded	14 August 2019
	jurisdiction	Federal Court Melbourne
	outcome	Penalties of \$350 000
False or misleading representations, unconscionable conduct, failure to act in good faith	Geowash Pty Ltd	
Industry codes (2015 priority)	commenced	26 May 2017
	concluded	24 January 2020
	jurisdiction	Federal Court Perth
	outcome	Penalties of \$4.2 million, including penalties of \$1.045 million against director Ms Sanam Ali and \$656 0000 against franchising manager Mr Charles Cameron. Ms Ali and Mr Cameron were ordered to pay \$1 million as partial redress to affected franchisees. Ms Ali was disqualified from managing corporations in Australia for five years and Mr Cameron for four years.
False or misleading representations	GlaxoSmithKline Consumer Healthcare Australia Pty Ltd & Novartis Consumer Health Australasia Pty Ltd	
Consumer issues in the health and medical sector (2016 priority)	commenced	5 December 2017
	concluded	28 May 2020
	jurisdiction	Federal Court Sydney
	outcome	Penalties of \$4.5 million (\$1.5 million against GSK and \$3 million against Novartis)

False or misleading representations	Kimberly-Clark Australia Pty Ltd (appeal)	
Priority factor—conduct of significant public interest or concern	commenced	26 July 2019
	concluded	15 June 2020
	jurisdiction	Full Court of the Federal Court Sydney
	outcome	ACCC appeal dismissed
False or misleading representations	LG Electronics Australia Pty Ltd (appeal)	
Priority factor—conduct of significant public interest or concern	commenced	25 September 2017
	concluded	6 September 2019
	jurisdiction	Full Federal Court Sydney
	outcome	Penalties of \$160 000
Unfair contract terms	Mitolo Group Pty Ltd & Anor	
Industry codes (2017 priority)	commenced	25 June 2018
	concluded	2 August 2019
	jurisdiction	Federal Court Melbourne
	outcome	Penalties of \$240 000 and declaration that certain terms in standard form contracts are UCTs and therefore void
False or misleading representations	Optus Internet Pty Limited & Anor	
Priority factor—conduct of significant public interest or concern	commenced	24 June 2019
	concluded	2 December 2019
	jurisdiction	Federal Court Melbourne
	outcome	Penalties of \$6.4 million
False or misleading representations, unconscionable conduct	Panthera Finance Pty Ltd	
Vulnerable and disadvantaged consumers (enduring priority)	commenced	4 July 2019
	concluded	16 March 2020
	jurisdiction	Federal Court Sydney
	outcome	Penalties of \$500 000
False or misleading representations	Sony Interactive Entertainment Network Europe Limited & Anor	
Priority factor—conduct of significant public interest or concern	commenced	23 May 2019
	concluded	5 June 2020
	jurisdiction	Federal Court Melbourne
	outcome	Penalties of \$3.5 million
Misleading or deceptive conduct	STA Travel Pty Ltd	
Priority factor—conduct of significant public interest or concern	commenced	28 March 2019
	concluded	23 April 2020
	jurisdiction	Federal Court Melbourne
	outcome	Penalties of \$14 million
False or misleading representations, failure to act in good faith	Ultra Tune Australia Pty Ltd (appeal)	
Industry codes (2015 priority)	commenced	19 May 2017
	concluded	23 September 2019
	jurisdiction	Full Federal Court Sydney
	outcome	Confirmed franchisor obligations, but reduced penalties from \$2.6 million to \$2 million

False or misleading representations, unconscionable conduct, unsolicited consumer agreements	Unique International College Pty Ltd (appeal)	commenced	13 December 2017
Vulnerable and disadvantaged consumers (enduring priority)		concluded	31 October 2019
		jurisdiction	Federal Court Sydney
		outcome	Penalties of \$4.165 million

Table A10.6: Proceedings continuing in 2019–20

Consumer and small business protection			
Misleading or deceptive conduct, unconscionable conduct	Australian Institute of Professional Education Pty Ltd	commenced	31 March 2016
Vulnerable and disadvantaged consumers (enduring priority)		jurisdiction	Federal Court Sydney
Misleading or deceptive conduct, unconscionable conduct	Employsure Pty Ltd	commenced	21 December 2018
Priority factor—conduct that results in substantial consumer or small business detriment		jurisdiction	Federal Court Sydney
Misleading or deceptive conduct	iSelect Limited	commenced	11 April 2019
Energy services (2018 priority)		jurisdiction	Federal Court Melbourne
False or misleading representations, unconscionable conduct	Jayco Corporation Pty Ltd	commenced	29 November 2017
Consumer guarantees (2016 priority)		jurisdiction	Federal Court Melbourne
Misleading or deceptive conduct	Jump Loops Pty Ltd & Ors	commenced	18 June 2019
Franchising Code (2018 priority)		jurisdiction	Federal Court Melbourne
Misleading or deceptive conduct	Kogan Australia Pty Ltd	commenced	23 May 2019
Priority factor—conduct demonstrating a blatant disregard for the law		jurisdiction	Federal Court Melbourne
Misleading or deceptive conduct, false or misleading representations, unconscionable conduct	NIB Health Funds Limited	commenced	30 May 2017
Vulnerable and disadvantaged consumers (enduring priority)		jurisdiction	Federal Court Melbourne
False or misleading representations, unconscionable conduct	Phoenix Institute of Australia Pty Ltd & Anor	commenced	24 November 2015
Vulnerable and disadvantaged consumers (enduring priority)		jurisdiction	Federal Court Sydney
Unconscionable conduct	Productivity Partners Pty Ltd (t/a Captain Cook College)	commenced	9 November 2018
Vulnerable and disadvantaged consumers (enduring priority)		jurisdiction	Federal Court Sydney

Misleading or deceptive conduct	Quantum Housing Group Pty Ltd	
Priority factor—conduct of significant public interest or concern	commenced jurisdiction	16 May 2019 Federal Court Perth The Federal Court handed down judgment imposing penalties of \$700 000 against Quantum and \$50 000 against sole director Cheryl Howe, and ordering that she be banned from managing a corporation for three years, after finding that Quantum made false or misleading representations. The ACCC has since filed an appeal against an aspect of the Federal Court’s judgment, being the decision that Quantum did not engage in unconscionable conduct.
Misleading or deceptive conduct	Service Seeking Pty Ltd	
Priority factor—where action is likely to have an educative or deterrent effect	commenced jurisdiction	14 December 2018 Federal Court Perth
Misleading or deceptive conduct, unconscionable conduct, unfair contract terms	Smart Corporation Pty Ltd (t/a Australian 4WD Hire)	
Priority factor—conduct of significant public interest or concern	commenced jurisdiction	17 April 2019 Federal Court Perth
False or misleading representations	Trivago N.V.	
Priority factor—conduct resulting in substantial consumer or small business detriment	commenced jurisdiction	23 August 2018 Federal Court Melbourne The Federal Court previously handed down judgment on liability, finding that Trivago engaged in almost all of the conduct alleged. On 4 May 2020 Trivago appealed the liability judgment. The appeal is being heard in 2020-21.
Misleading or deceptive conduct, false or misleading representations	Viagogo	
Priority factor—conduct resulting in substantial consumer or small business detriment	commenced jurisdiction	28 August 2017 Federal Court Sydney
False or misleading representations	Volkswagen AG	
Truth in advertising (2015 priority)	commenced jurisdiction	31 August 2016 Federal Court Sydney The Federal Court previously ordered a pecuniary penalty of \$125 million against Volkswagen AG. On 11 February 2020, Volkswagen AG appealed the penalty judgment. The appeal will be heard in 2020-21.

Strategy 3: Promote the economically efficient operation of, use of, and investment in infrastructure; and identify market failure

Table A10.7: Proceedings commenced in 2019–20

Consumer and small business protection		
False or misleading claims about the NBN broadband speeds their customers could typically achieve during busy evening hours.	Dodo Services Pty Ltd (Dodo) and Primus Telecommunications Services Pty Ltd (iPrimus) (both part of the Vocus Group)	
	commenced	22 June 2020
	jurisdiction	Federal Court Melbourne

AER

Strategy 5: Promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers with respect to price, quality, safety, reliability and security

Details of civil proceedings instituted by the AER in 2019–20 under the National Electricity Law and National Energy Retail Law.

Table A10.8: Proceedings commenced in 2019–20

Obligation to comply with Generator Performance Standards and obligations under the National Electricity Rules	Subsidiaries of AGL Energy Limited, Neoen SA, Pacific Hydro Pty Ltd and Tilt Renewables Limited commenced jurisdiction	6 August 2019 Federal Court Adelaide
Obligations to submit accurate generator availability information to the market operator under the National Electricity Rules	Pelican Point Power Limited commenced jurisdiction	26 August 2019 Federal Court Adelaide
Obligation of regulated entities to submit information and data about their performance and activities in the retail energy market to the AER in accordance with the National Energy Retail Law	Subsidiaries of AGL Energy Limited commenced jurisdiction	11 November 2019 Federal Court Melbourne
Obligations to maintain and implement a customer hardship policy and offer and apply payment plans under the National Energy Retail Law and the National Energy Retail Rules	EnergyAustralia Pty Ltd commenced jurisdiction	20 November 2019 Federal Court Melbourne
Obligation to register premises as requiring life support equipment and related obligations under the National Energy Retail Rules	EnergyAustralia Pty Ltd commenced jurisdiction	8 April 2020 Federal Court Melbourne

There were no Australian Competition Tribunal matters that took place during 2019–20.

Appendix 11: Correction of material errors in previous annual reports

Nil.

Glossary and abbreviations

AANZFTA	ASEAN-Australia-New Zealand Free Trade Area
AASB	Australian Accounting Standards Board
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ACMA	Australian Communications and Media Authority
ACSC	Australian Cyber Security Centre
ACT	Australian Capital Territory
ADSL	asymmetric digital subscriber line
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
ALRC	Australian Law Reform Commission
AMAG	Australian Made, Australian Grown
ANAO	Australian National Audit Office
Anor	another
ANZ	Australia and New Zealand Banking Group Limited
AO	Order of Australia
APCC	ACCC Performance Consultative Committee
APEC	Asia-Pacific Economic Cooperation
APES	Accounting Professional and Ethical Standard
APS	Australian Public Service
ARTC	Australian Rail Track Corporation
ASEAN	Association of Southeast Asian Nations
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
BNPL	buy now pay later
CAANZ	Consumer Affairs Australia New Zealand
CAF	COAG Legislative and Governance Forum on Consumer Affairs
CCA	<i>Competition and Consumer Act 2010</i>
CCC	Consumer Consultative Committee
CCG	Customer Consultative Group
CCP	Consumer Challenge Panel
CCU	Commercial Construction Unit

CDPP	Commonwealth Director of Public Prosecutions
CDR	Consumer Data Right
CDRAC	Compliance and Dispute Resolution Advisory Committee
CEO	Chief Executive Officer
CEPA	Cambridge Economic Policy Associates Ltd
CFMMEU	Construction, Forestry, Maritime, Mining and Energy Union
CFO	Chief Finance Officer
CHES	Clearing House Electronic Subregister System
CLIP	Competition Law Implementation Program
Co	company
CO	Commonwealth Ombudsman
COAG	Council of Australian Governments
COO	Chief Operating Officer
CoO Amendment Act	<i>Competition and Consumer Amendment (Country of Origin) Act 2017</i>
CPRC	Consumer Policy Research Centre
CRG	Consumer Reference Group
CRIS	Consultation Regulation Impact Statement
CSS	Commonwealth Superannuation Scheme
Cth	Commonwealth
DCB	Departmental Capital Budget
DMO	Default Market Offer
DNSPs	distribution network service providers
DORC	depreciated optimised replacement cost
DPI	Digital Platforms Inquiry
DTCS	domestic transmission capacity service
ECA	Energy Consumers Australia
EGM	Executive General Manager
EIAC	Education and Information Advisory Committee
EL	Executive Level
EME	Energy Made Easy
ENA	Energy Networks Australia
ESB	Energy Security Board
FBT	Fringe Benefits Tax
FCAI	Federal Chamber of Automotive Industries
FCAS	frequency control ancillary services
FOI Act	<i>Freedom of Information Act 1982</i>

FRR	<i>Public Governance, Performance and Accountability (Financial Reporting) Rule 2015</i>
FSCB	Financial Services Competition Branch
FTOG	Fair Trading Operations Group
FuelCC	Fuel Consultative Committee
FX	foreign exchange
GCR	Global Competition Review
GJ	gigajoule
GM	General Manager
GRAD	graduate
GST	Goods and Services Tax
HD	high definition
Hon.	honourable
IAU	Interstate Access Undertaking
ICC	Infrastructure Consultative Committee
ICN	International Competition Network
ICPEN	International Consumer Protection and Enforcement Network
ICT	information and communication technology
IMT	international money transfer
ISP	Integrated System Plan
IT	information technology
IFA	individual flexibility arrangement
IP	intellectual property
IP	internet protocol
IPART	Independent Pricing and Regulatory Tribunal of NSW
KPI	key performance indicator
kV	kilovolt
kW	kilowatt
L	lawyer
LCF	Litigation Contingency Fund
LED	light emitting diode
LGBTIQ+	Lesbian, Gay, Bisexual, Trans, Intersex, Queer and other sexual and gender identities
LNG	liquefied natural gas
LPG	liquefied petroleum gas
Ltd	Limited
MBA	Measuring Broadband Australia
MLO	Market Liquidity Obligations

MTAS	mobile terminating access service
MP	Member of Parliament
MW	megawatt
N/A	not applicable
NABERS	National Australian Built Environment Rating System
NADI	non-azide driver inflator
NADI 5-AT	NADIs using 5-aminotetrazole
NBN	National Broadband Network
NEM	National Electricity Market
NER	National Electricity Rules
NICS	National Indigenous Consumer Strategy
NCRC	National Cabinet Reform Committee
NRAS	National Rental Affordability Scheme
NSW	New South Wales
NT	Northern Territory
NZCC	New Zealand Commerce Commission
OAIC	Office of the Australian Information Commissioner
OBIAC	Open Banking Implementation Advisory Committee
OECD	Organisation for Economic Co-operation and Development
OPA	Official Public Account
Ors	others
PBS	Portfolio Budget Statement
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	Public Governance, Performance and Accountability Rule 2014
PNO	Port of Newcastle Operations Pty Ltd
POH	Public Office Holder
PP&E	property, plant and equipment
PRAC	Policy and Research Advisory Committee
PRT	Pandemic Response Team
PSM	Public Service Medal
PSOG	Product Safety Operations Group
PSS	Public Sector Superannuation Scheme
PSSap	PSS accumulation plan
Pty Ltd	Proprietary Limited
Qld	Queensland
RAAP	CDR Register and Accreditation Application Platform
RAB	regulated asset base

RAP	Reconciliation Action Plan
Retail Law	National Energy Retail Law
RIS	Regulation Impact Statement
RIT-T	regulatory investment test for transmission
RMS	Rehabilitation Management System
RoLR	retailer of last resort
RRO	Retailer Reliability Obligation
SA	South Australia
SAN	Scams Awareness Network
SES	Senior Executive Service
SLC Unit	Substantial Lessening of Competition Unit
SME	Small and Medium Enterprise
t/a	trading as
Tas	Tasmania
TGA	Therapeutic Goods Administration
TTR	tilt table ratio
TV	television
UCT	unfair contract terms
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Council on Trade And Development
US(A)	United States of America
VCR	Value of Customer Reliability
VET	vocational education and training
Vic	Victoria
WA	Western Australia
WHS Act	<i>Work Health and Safety Act 2011</i>

Compliance index

List of requirements

This schedule provides, for the purposes of paragraph 17AJ(d) of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule), the list of requirements to be included in a non-corporate Commonwealth entity's annual report for a reporting period. The schedule is prepared for subsection 46(3) of the *Public Governance, Performance and Accountability Act 2013* (Cth).

PGPA Rule Reference	Part of Report	Description	Requirement	Page number
17AD(g)	Letter of transmittal			
17AI		A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with section 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	iv
17AD(h)	Aids to access			
17AJ(a)		Table of contents.	Mandatory	vi–vii
17AJ(b)		Alphabetical index.	Mandatory	311–321
17AJ(c)		Glossary of abbreviations and acronyms.	Mandatory	296–300
17AJ(d)		List of requirements.	Mandatory	301
17AJ(e)		Details of contact officer.	Mandatory	iii
17AJ(f)		Entity's website address.	Mandatory	iii
17AJ(g)		Electronic address of report.	Mandatory	iii
17AD(a)	Review by accountable authority			
17AD(a)		A review by the accountable authority of the entity.	Mandatory	3–17
17AD(b)	Overview of the entity			
17AE(1)(a)(i)		A description of the role and functions of the entity.	Mandatory	26
17AE(1)(a)(ii)		A description of the organisational structure of the entity.	Mandatory	29–30
17AE(1)(a)(iii)		A description of the outcomes and programmes administered by the entity.	Mandatory	28
17AE(1)(a)(iv)		A description of the purposes of the entity as included in corporate plan.	Mandatory	25 and 32–34
17AE(1)(aa)(i)		Name of the accountable authority or each member of the accountable authority.	Mandatory	36

17AE(1)(aa)(ii)	Position title of the accountable authority or each member of the accountable authority.	Mandatory	29 and 188
17AE(1)(aa)(iii)	Period as the accountable authority or member of the accountable authority within the reporting period.	Mandatory	188
17AE(1)(b)	An outline of the structure of the portfolio of the entity.	Portfolio departments—mandatory	N/A
17AE(2)	Where the outcomes and programs administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, include details of variation and reasons for change.	If applicable, Mandatory	N/A
17AD(c)	Report on the Performance of the entity		
	Annual performance Statements		
17AD(c)(i); 16F	Annual performance statement in accordance with paragraph 39(1)(b) of the Act and section 16F of the Rule.	Mandatory	31–185
17AD(c)(ii)	Report on Financial Performance		
17AF(1)(a)	A discussion and analysis of the entity's financial performance.	Mandatory	19–21
17AF(1)(b)	A table summarising the total resources and total payments of the entity.	Mandatory	248
17AF(2)	If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results.	N/A	N/A 21
17AD(d)	Management and Accountability		
	Corporate Governance		
17AG(2)(a)	Information on compliance with section 10 (fraud systems).	Mandatory	203
17AG(2)(b)(i)	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	iv

17AG(2)(b)(ii)	A certification by accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the entity are in place.	Mandatory	iv
17AG(2)(b)(iii)	A certification by accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity.	Mandatory	iv
17AG(2)(c)	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	188-204 and 213-214
17AG(2)(d) 0 (e)	A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to non-compliance with Finance law and action taken to remedy non-compliance.	N/A	N/A
Audit Committee			
17AG(2A)(a)	A direct electronic address of the charter determining the functions of the entity's audit committee.	Mandatory	200
17AG(2A)(b)	The name of each member of the entity's audit committee.	Mandatory	199-200
17AG(2A)(c)	The qualifications, knowledge, skills or experience of each member of the entity's audit committee.	Mandatory	199-200
17AG(2A)(d)	Information about the attendance of each member of the entity's audit committee at committee meetings.	Mandatory	199-200
17AG(2A)(e)	The remuneration of each member of the entity's audit committee.	Mandatory	199-200
External Scrutiny			
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	205-207
17AG(3)(a)	Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity.	If applicable, Mandatory	205-207
17AG(3)(b)	Information on any reports on operations of the entity by the Auditor-General (other than report under section 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, Mandatory	207

17AG(3)(c)	Information on any capability reviews on the entity that were released during the period.	If applicable, Mandatory	N/A
Management of Human Resources			
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	208-212
17AG(4)(aa)	Statistics on the entity's employees on an ongoing and non-ongoing basis, including the following: (a) statistics on full-time employees; (b) statistics on part-time employees; (c) statistics on gender (d) statistics on staff location	Mandatory	250-255
17AG(4)(b)	Statistics on the entity's APS employees on an ongoing and non-ongoing basis; including the following: <ul style="list-style-type: none"> ■ Statistics on staffing classification level; ■ Statistics on full-time employees; ■ Statistics on part-time employees; ■ Statistics on gender; ■ Statistics on staff location; ■ Statistics on employees who identify as Indigenous. 	Mandatory	250-257
17AG(4)(c)	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subsection 24(1) of the <i>Public Service Act 1999</i> .	Mandatory	213-214
17AG(4)(c)(i)	Information on the number of SES and non-SES employees covered by agreements etc identified in paragraph 17AG(4)(c).	Mandatory	213-214 and 256
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level.	Mandatory	256
17AG(4)(c)(iii)	A description of non-salary benefits provided to employees.	Mandatory	213
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay.	If applicable, Mandatory	214 and 257
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level.	If applicable, Mandatory	214 and 257

17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, Mandatory	214 and 257
17AG(4)(d)(iv)	Information on aggregate amount of performance payments.	If applicable, Mandatory	257
Assets Management			
17AG(5)	An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities	If applicable, mandatory	N/A
Purchasing			
17AG(6)	An assessment of entity performance against the Commonwealth Procurement Rules.	Mandatory	215
Consultants			
17AG(7)(a)	A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST).	Mandatory	216
17AG(7)(b)	A statement that "During [reporting period], [specified number] new consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]".	Mandatory	216
17AG(7)(c)	A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged.	Mandatory	216
17AG(7)(d)	A statement that "Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website."	Mandatory	216

Australian National Audit Office Access Clauses			
17AG(8)	If an entity entered into a contract with a value of more than \$100 000 (inclusive of GST) and the contract did not provide the Auditor-General with access to the contractor's premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	If applicable, Mandatory	N/A 215
Exempt contracts			
17AG(9)	If an entity entered into a contract or there is a standing offer with a value greater than \$10 000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.	If applicable, Mandatory	N/A 215
Small business			
17AG(10)(a)	A statement that "[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance's website."	Mandatory	215
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	215
17AG(10)(c)	If the entity is considered by the Department administered by the Finance Minister as material in nature—a statement that "[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury's website."	If applicable, Mandatory	N/A
Financial Statements			
17AD(e)	Inclusion of the annual financial statements in accordance with subsection 43(4) of the Act.	Mandatory	218-219

Executive Remuneration			
17AD(da)	Information about executive remuneration in accordance with Subdivision C of Division 3A of Part 203 of the Rule.	Mandatory	258-261 and 213
17AD(f) Other Mandatory Information			
17AH(1)(a)(i)	If the entity conducted advertising campaigns, a statement that "During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity's website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance's website."	If applicable, Mandatory	263
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, Mandatory	263
17AH(1)(b)	A statement that "Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity's website]."	If applicable, Mandatory	216
17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	211
17AH(1)(d)	Website reference to where the entity's Information Publication Scheme statement pursuant to Part II of FOI Act can be found.	Mandatory	207
17AH(1)(e)	Correction of material errors in previous annual report	If applicable, mandatory	295
17AH(2)	Information required by other legislation	Mandatory	308-310

Information required by other legislation

Subsection 17AH(2) of the PGPA Rule provides for the inclusion of other mandatory information in annual reports as required by an act or instrument. The ACCC is required to include information in its annual report by the *Competition and Consumer Act 2010* (Cth) (CCA), the *Work Health and Safety Act 2011* (Cth), the *Commonwealth Electoral Act 1918* (Cth) and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Competition and Consumer Act 2010 requirements

Under our enabling legislation, the CCA, the ACCC is required to include the following matters in its annual report.

Section	Requirement	Page
56CH(4)	Information about the performance of the Data Recipient Accreditor's functions, and the exercise of the Data Recipient Accreditor's powers.	267-268 and 282
56CL(4)	Information about the performance of the Accreditation Registrar's functions, and the exercise of the Accreditation Registrar's powers.	268 and 282
171(2)	Cumulative list of all Commonwealth, state and territory laws that the Commission knows about that authorise things for the purposes of s. 51(1) of this Act or s. 51(1) of the Competition Code (as defined in s. 150A).	276-279
171(3)(aa)(i)	The time taken to make final determinations under s. 44V in relation to access disputes.	280
171(3)(aa)(ii)	The time taken to make decisions on access undertaking applications or access code applications (within the meaning of s. 44B).	280
171(3)(aa)(iii)	The time taken to make decisions on applications under s. 44PA(1).	280
171(3)(a)(i)	The number of notices given by the Commission under s. 155.	280
171(3)(a)(iii)	The number of notices given by the Commission under s. 155A.	280
171(3)(b)	A general description of the nature of the matters in respect of which the notices were given.	280
171(3)(c)	The number of proceedings brought to challenge the validity of the notices.	281
171(3)(ca)	The number of search warrants issued by a judge under s. 135Z or signed by a judge under s. 136.	281
171(3)(d)	The number of search warrants issued by a magistrate under s. 154X or signed by a magistrate under s. 154Y.	281
171(3)(da)	A general description of the nature of the matters in respect of which the search warrants referred to in paragraph (ca) or (d) were issued or signed.	281
171(3)(db)	The number of proceedings brought to challenge the validity of the search warrants referred to in paragraph (ca) or (d).	281
171(3)(dc)	The number of entries onto premises under s. 133B or 133C, Division 6 of Part XI or Part XIX.	281

171(3)(e)	The number of complaints received by the Commission.	125-128 and 281
171(3)(f)	A general summary of the kinds of complaints received by the Commission and how it dealt with them.	125-128 and 281
171(3)(g)	A general description of the major matters investigated by the Commission.	31-185 and 281
171(3)(h)	The number of times the Commission has intervened in proceedings and a general description of the reasons for doing so.	282

Commonwealth Electoral Act 1918 requirements

Under s. 311A of the *Commonwealth Electoral Act 1918*, the ACCC is required to report on the following matters in its annual report.

Requirement	Page
A statement setting out particulars of all amounts more than \$13 500 paid by, or on behalf of, the Commonwealth Department during the financial year to: advertising agencies; market research organisations; polling organisations; direct mail organisations; and media advertising organisations; and the persons or organisations to whom those amounts were paid.	263

Work Health and Safety Act 2011 requirements

In accordance with Schedule 2, Part 4 of the *Work Health and Safety Act 2011*, the matters the ACCC must include in its annual report are as follows.

Requirement	Page
Initiatives taken during the year to ensure the health, safety and welfare of workers who carry out work for the entity.	208-209 and 210-211
Health and safety outcomes (including the impact on injury rates of workers) achieved as a result of initiatives mentioned under paragraph (a) or previous initiatives.	262
Statistics of any notifiable incidents of which the entity becomes aware during the year that arose out of the conduct of businesses or undertakings by the entity.	262
Any investigations conducted during the year that relate to businesses or undertakings conducted by the entity, including details of all notices given to the entity during the year under Part 10 of the <i>Work Health and Safety Act 2011</i> .	262
Such other matters as are required by guidelines approved on behalf of the parliament by the Joint Committee of Public Accounts and Audit.	N/A

Environment Protection and Biodiversity Conservation Act 1999 requirements

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires Commonwealth entities and Commonwealth companies to report on the following matters.

Requirement	Page
How the activities of, and the administration (if any) of legislation by, the entity during the period accorded with the principles of ecologically sustainable development (ESD).	204 and 264-265
How the outcomes (if any) specified for the entity in an Appropriations Act relating to the period contribute to ESD.	264-265
The effect of the entity's activities on the environment.	264-265
Any measures the reporter is taking to minimise the impact of activities by the entity on the environment.	264-265
The mechanisms, if any, for reviewing and increasing the effectiveness of those measures.	264-265

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