



ACCC

AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

AER

AUSTRALIAN
ENERGY
REGULATOR

Annual Report

2021-22

October 2022





AUSTRALIAN COMPETITION
& CONSUMER COMMISSION



AUSTRALIAN
ENERGY
REGULATOR

Annual Report 2021-22

October 2022

About this report

This report describes the performance of the agency, including operational and financial management, for the year ending 30 June 2022. It addresses our annual reporting obligations under:

- the *Public Governance, Performance and Accountability Act 2013*
- the Public Governance, Performance and Accountability Rule 2014
- the performance measures set out in the outcome and programs framework in our Portfolio Budget Statement 2021–22 and Corporate Plan 2021–22
- other relevant legislation, including the *Competition and Consumer Act 2010*.

Contact us

If you have any questions or ideas regarding this report, please contact:

Director, Content and Digital Services
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601
Australia

Internet: www.accc.gov.au

Email: publishing.unit@acc.gov.au

Phone: (02) 6243 1111

+61 2 6243 1111 (international)

Web address of this report: www.accc.gov.au/annualreports

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

© Commonwealth of Australia 2022

This work is copyright. In addition to any use permitted under the *Copyright Act 1968*, all material contained within this work is provided under a Creative Commons Attribution 3.0 Australia licence, with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration, diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright, but which may be part of or contained within this publication.

The details of the relevant licence conditions are available on the Creative Commons website, as is the full legal code for the CC BY 3.0 AU licence.

Requests and inquiries concerning reproduction and rights should be addressed to the Director, Content and Digital Services, ACCC, GPO Box 3131, Canberra ACT 2601.

Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

The ACCC has made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

Parties who wish to re-publish or otherwise use the information in this publication must check this information for currency and accuracy prior to publication. This should be done prior to each publication edition, as ACCC guidance and relevant transitional legislation frequently change. Any queries parties have should be addressed to the Director, Content and Digital Services, ACCC, GPO Box 3131, Canberra ACT 2601.

ACCC 10/22_22-10

www.accc.gov.au



20 September 2022

The Hon Dr Jim Chalmers MP
Treasurer
Parliament House
CANBERRA ACT 2600

The Hon Chris Bowen MP
Minister for Climate Change and Energy
Parliament House
CANBERRA ACT 2600

Dear Treasurer and Minister Bowen

ACCC and AER Annual Report 2021-22

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 2022. 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 have a fraud control plan for the agency. 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 any fraud relating to the ACCC and AER.

Yours sincerely

Handwritten signature of Gina Cass-Gottlieb in black ink.

Gina Cass-Gottlieb
Chair, ACCC

Handwritten signature of Clare Savage in black ink.

Clare Savage
Chair, AER

Contents

| | |
|---|------------|
| Year in review | 1 |
| Our year at a glance 2021-22 | 2 |
| 2021-22 review: ACCC Chair, Gina Cass-Gottlieb | 5 |
| 2021-22 review: AER Chair, Clare Savage | 12 |
| Corporate snapshot | 16 |
| Agency overview | 19 |
| About the ACCC and AER | 21 |
| Annual performance statement | 31 |
| Statement of preparation | 32 |
| Performance measurement and reporting framework | 33 |
| Program 1.1 – Australian Competition and Consumer Commission | 39 |
| Strategic objective 1: Address anti-competitive conduct and promote competition | 40 |
| Strategic objective 2: Prevent anti-competitive mergers | 57 |
| Strategic objective 3: Improve competition and choice by facilitating safe and secure data sharing by consumers through the Consumer Data Right | 61 |
| Strategic objective 4: Protect consumers from misleading and deceptive conduct and promote fair trading | 74 |
| Strategic objective 5: Protect consumers from unsafe products | 99 |
| Strategic objective 6: Regulate monopoly infrastructure and monitor concentrated markets in the long-term interests of consumers | 109 |
| Program 1.2 – Australian Energy Regulator | 122 |
| Strategic objective 1: Protect vulnerable consumers, while enabling consumers to participate in energy markets | 124 |
| Strategic objective 2: Effectively regulate competitive markets primarily through monitoring and reporting, and enforcement and compliance | 133 |
| Strategic objective 3: Deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services | 139 |
| Strategic objective 4: Use our expertise to inform debate about Australia’s energy future and support the energy transition | 149 |
| Regulatory practice | 155 |
| Management and accountability | 159 |
| Senior leadership | 161 |
| Managing the ACCC and AER | 168 |
| External scrutiny | 177 |
| Procurement and Asset Management | 180 |
| Strategic objective 7: Improve our own systems, capabilities and ways of working | 183 |
| Financial statements | 197 |

| | |
|--|------------|
| Appendixes | 227 |
| Appendix 1: Entity resource statement and expenses by outcome | 229 |
| Appendix 2: Staffing | 231 |
| Appendix 3: Mandatory executive remuneration reporting | 241 |
| Appendix 4: Work health and safety | 245 |
| Appendix 5: Advertising and market research | 246 |
| Appendix 6: Ecologically sustainable development | 248 |
| Appendix 7: Legislative framework | 250 |
| Appendix 8: Information required under the Competition and Consumer Act 2010 | 252 |
| Appendix 9: Correction of material errors in previous annual reports | 259 |
| Glossary and abbreviations | 260 |
| Compliance index | 264 |
| Index | 273 |



01

Year in review



Our year at a glance 2021-22

ACCC purpose

Making markets work for consumers, now and in the future.



ENFORCEMENT

\$231.6m total penalties awarded by the court

\$219.4m from consumer and fair trading matters

\$12m from competition matters

19 consumer and fair trading infringement notices totalling \$0.2m paid

14 court cases commenced

12 court cases concluded

21 court cases continuing



CONSUMER DATA RIGHT

76 active data holders (entities) in the banking sector representing an estimated combined market share of 99.18% of Australian household deposits

32 accredited data recipients (20 of which were active)

27 data recipient representative arrangements notified to the ACCC



CONSUMER PRODUCT SAFETY

2,793 mandatory injury reports assessed

365 voluntary recall notifications published

4,076,949 Product Safety Australia website page views

3 consultations on standards

6 consumer awareness campaigns

9 media releases and safety alerts



INFOCENTRE

379,902 Infocentre contacts served



MERGERS AND EXEMPTIONS

463 mergers assessed

- 437 merger matters finalised by preassessment
- 26 subject to public review

14 investigations of completed acquisitions commenced

58 non-merger authorisation applications assessed



INFRASTRUCTURE

9 major regulatory decisions on the petrol price cycles webpage

28 monitoring reports across 8 infrastructure sectors

8 investigations into potential breaches of rules

666,720 views on the petrol price cycles webpage

28,598 page views of Measuring Broadband Australia consumer dashboard



SCAMS

7.3 million Scamwatch website visits

272,000 scam reports received by Scamwatch

150+ disseminations by Scamwatch of scam reports on high risk or current scam trends to law enforcement and government

Scamwatch was awarded the international Scam Fighter Award 2022

AER purpose

Energy consumers are better off, now and in the future.

PROTECTING CONSUMERS AND ENABLING PARTICIPATION

\$29.4m total penalties from 2 litigated matters and 7 infringement notices

970,000 Energy Made Easy (EME) website energy plan searches

61,000 people switched retailers after completing a search on EME website

26,000 fewer disconnections from April 2021 to March 2022 under the Statement of Expectations of energy businesses

5 retailer compliance audits

907,000 AER website views

15 industry education activities conducted

REGULATING COMPETITIVE MARKETS

\$6.2m total penalties from 4 litigated matters and 12 infringement notices

17 retail authorisations assessed, giving consumers more choice about their energy supplier

11 individual selling exemptions assessed, protecting customers in embedded networks

6 retailer hardship policies and proposed amendments assessed, ensuring protections for vulnerable consumers

1 retail authorisation surrender approved, ensuring an orderly exit for the retailer, with minimal market impact or customer detriment

3 Retailer of Last Resort events managed, ensuring continuity of energy supply for consumers

INFRASTRUCTURE REGULATION

\$6.9b worth of revenue determinations for the 3 completed revenue decisions, ensuring consumers pay no more than necessary for poles, wires and pipelines

13 decisions on cost pass through applications, ensuring energy businesses can repair damage to infrastructure relating to natural disasters and other issues

16.6% of customers with a retailer exposed to cost reflective tariffs, indicating more customers face accurate network prices

INFORMING THE ENERGY DEBATE

33 submissions in relation to rule changes, national policy and legislative processes

519 executive level stakeholder engagement meetings, fostering trust, confidence and buy-in for our work



2021-22 review: ACCC Chair, Gina Cass-Gottlieb

On behalf of my fellow Commissioners, I am pleased to present this annual report for 2021-22. Having been appointed as Chair on 21 March 2022, I am proud to have been given the opportunity to lead the ACCC at this important time for the organisation.

Response to the challenges of the COVID pandemic

The ACCC commenced 2021-22 managing the constraints, uncertainties and severe economic and social impacts of the COVID-19 pandemic, as it continued into its second year.

The impact was felt on both our own workforce and in our work.

We received almost 3,900 complaints about the pricing and availability of Rapid Antigen Tests (RAT) between 25 December 2021 and 26 January 2022, the peak holiday travel period, averaging about 121 reports per day.

We sought information on costs, pricing and stock availability from more than 70 test suppliers, major retailers and pharmacy chains; and warned many businesses that they must be able to substantiate any claims made to consumers about the reasons for higher prices.

This work allowed us to publish detailed information and provide media commentary about RAT pricing, and to identify instances requiring referral to the Australian Federal Police and the Therapeutic Goods Administration.

During 2020 the ACCC had granted an unprecedented number of urgent applications for authorisations by competing businesses seeking exemptions to cooperate to meet the challenges arising from the pandemic. Some of these exemptions began to expire in 2021. However, the ongoing economic and supply chain disruptions caused by the pandemic meant we continued to receive urgent exemption applications during 2021-22, including in the education, medical and financial services sectors.

Supply chain issues

Our economy and community faced the continued impact of global and domestic supply chain disruption from the COVID-19 pandemic, severe climatic events and geopolitical events. These factors drove up the cost of staples like energy bills, fuel prices and food.

Our Container Stevedoring Monitoring report detailed how the COVID-19 pandemic had destabilised the global container freight supply chain, leading to delayed shipments and rapidly rising freight rates.

In February we granted urgent interim authorisation permitting the cooperation and sharing of information by companies in the supply chain to ensure critical retail goods, including food supplies, were able to reach consumers and businesses in WA and the NT, following storms and flooding that interrupted rail and road networks.

The impact of global supply chain disruption was also felt by consumers at the petrol bowser. The ACCC monitors fuel prices, costs and profits, and provides a report on these each quarter.

In late March 2022, the government announced a 6-month cut in fuel excise and associated goods and services tax (GST). The ACCC contacted petrol retailers to set out expectations that the savings would be passed onto consumers and to remind them that we would be monitoring their margins. The ACCC can compel refiners, importers, terminal operators, wholesalers and retailers to provide information relating to fuel prices where necessary. The ACCC will continue to inform consumers about the petrol market, petrol price cycles in the large capital cities, and the benefit of shopping around using fuel price apps and websites.

Energy market challenges

The ACCC has specific monitoring and regular reporting roles in relation to the National Electricity Market (NEM) and the East Coast Gas Market. In common with other directions from government to conduct market studies, this supports the ACCC providing robust, up to date information to government, industry and the public, which informs government policy decisions and facilitates the ACCC's consideration of conduct as part of its core statutory functions.

The challenging state of energy markets led to a direction from the Treasurer in June 2022 to use the ACCC's full information gathering powers to provide greater transparency around the factors influencing electricity and gas prices.

In June 2022 we published the seventh report in our ongoing inquiry into prices, profits and margins in the NEM.

We are working closely with the Australian Energy Regulator to monitor market participants' behaviours and to investigate and respond to conduct harming competition or consumers.

After receiving an application from the Australian Energy Market Operator, the ACCC also granted interim and then final authorisation for a range of measures allowing participants in the gas and electricity markets to work together to support Australia's security of energy supply and systems.

Strong compliance and enforcement outcomes

During 2021-22 we continued our strong focus on our compliance and enforcement priorities, securing significant outcomes that sent a strong deterrence message.

In December 2021, the Federal Court imposed record penalties totalling \$153 million for consumer law breaches in proceedings against vocational education provider Australian Institute of Professional Education Pty Ltd (in liquidation) for engaging in a system of unconscionable conduct, and misleading or deceptive conduct, when enrolling consumers into online diploma courses under the former VET FEE-HELP loan program.

The ACCC instituted several new cases against companies operating in the digital economy, including proceedings against Facebook owner Meta Platforms, Inc. and Meta Platforms Ireland Limited for alleged false, misleading and deceptive conduct by publishing scam cryptocurrency advertisements featuring prominent individuals on its platform.

The ACCC also took action against online retailer Booktopia for making false or misleading representations to consumers about their rights to refunds and other remedies for faulty or damaged goods.

Legal proceedings were commenced against accommodation booking sites Airbnb, Inc. and Airbnb Ireland UC alleging they misled consumers about the currency in which prices were quoted on the Airbnb site shown to Australian consumers. Separately, booking site Trivago was ordered to pay penalties of \$44.7 million for misleading representations about room rates on its website and in television advertising.

The ACCC was also active in a range of cases involving alleged anti-competitive conduct, and cartel conduct.

In March 2022, the Federal Court ordered that Australasian Food Group, trading as Peters Ice Cream, pay a \$12 million penalty for anti-competitive conduct in relation to the distribution of ice creams sold in petrol stations and convenience stores.

The ACCC also instituted proceedings against Mastercard Asia/Pacific Pte Ltd and Mastercard Asia/Pacific (Australia) Pty Ltd, for allegedly engaging in conduct with the purpose of substantially lessening competition in the supply of debit card acceptance services.

In our cartel work, the ACCC continued to be involved in civil and criminal cartel actions.

Pharmaceutical ingredient company, Alkaloids of Australia Pty Ltd, and its former export manager Christopher Kenneth Joyce, have pleaded guilty to 3 criminal cartel charges and admitted 7 additional offences involving price fixing, bid rigging and market allocation cartel arrangements with other overseas pharmaceutical ingredient suppliers. Alkaloids Australia and Mr Joyce are yet to be sentenced.

During the financial year, the Commonwealth Director of Public Prosecutions (CDPP) withdrew criminal cartel charges against 3 major banks and 6 senior individuals in relation to alleged cartel conduct arising from an ANZ institutional share placement.

In a separate case, the CDPP withdrew criminal cartel charges against the Construction, Forestry, Maritime, Mining and Energy Union and a divisional branch secretary, which related to alleged price fixing for scaffolding services.

The ACCC will continue its efforts to deter, detect and dismantle cartels, and will refer serious cartel conduct to the CDPP for consideration of prosecution of those involved in the conduct.

Small business remained an important focus for the ACCC. This includes the work we do to tackle unfair contract terms in standard form small business contracts, by seeking to have them removed voluntarily or, if that is not achieved, taking court action. For example, in November 2021, UK based Please Hold (PHMG), which provides audio branding services including on-hold music and on-hold marketing services to small business customers, committed to amend its contract terms

after an ACCC investigation into allegations that PHMG's standard form contract contained unfair contract terms, and limited consumer guarantee rights.

Amendments to the Franchising Code of Conduct introduced on 1 June 2021 included additional disclosure obligations for franchisors and made it illegal for a franchisor to change terms in a franchise agreement that apply retrospectively without a franchisee's consent. We will continue to work to inform franchisees (most of which are small businesses) and franchisors about these changes.

In our agriculture-related work, we continued our range of education, compliance and enforcement activities relating to the Dairy Code of Conduct and the Horticulture Code of Conduct.

The ACCC conducted audits after hearing through our Perishable Agricultural Goods Inquiry that some fruit and vegetable wholesalers were trading without Horticulture Produce Agreements, which is a breach of the horticulture code. This led the ACCC to update our horticulture code guidance to help growers and traders understand their rights and fulfill their responsibilities under the code. Following this, the ACCC intends to conduct more audits and will strongly consider enforcement action if it identifies further non-compliance.

In our product safety work, world-first mandatory button battery safety and information standards came into effect in June 2022. These standards are a critical step in helping prevent potentially life-threatening injuries to children. The ACCC has been working with state and territory regulators to monitor compliance and take enforcement action when necessary.

We also worked with responsible state and territory electricity regulators to raise awareness about the LG solar energy battery recall and consulted on ways to reduce the dangers posed by toppling furniture.

Our work in scams remains focused on making Australia a harder target for scammers. We were central in one of the most successful cross-agency operations to disrupt scams with the international takedown of the infamous Flubot scam.

Following a collaboration with the Australian Communications and Media Authority (ACMA), the telecommunications industry and other agencies, the Reducing Scam Calls Code has led to a reduction in phone scam reports to the ACCC of more than 50% in 2022. Across Australia, we are aware of 357 million scam calls being blocked in the first year of the code's introduction.

Scams Awareness Week took place in November last year, with the campaign theme *Stop scams. Speak up.* In a major achievement, the ACCC's Scamwatch was recognised with the "Scam Fighter of the Year" award for 2022 for best scam-fighting organisation by the Global Anti-Scam Alliance.

Merger activity and digital markets

There has been a significant upsurge in mergers and acquisitions activity in Australia and globally during the past 2 years, which has resulted in a significant rise in merger notifications to the ACCC.

We have also noted increasing numbers of complex, often global, transactions coming to us for review.

During 2021-22 the ACCC published the final report of its inquiry into advertising technology (ad tech), as well as the third and fourth interim reports of the ACCC's 5-year Digital Platform Services Inquiry (DPSI).

The Ad Tech Inquiry final report found that Google had used its dominant position in key parts of the ad tech supply chain to preference its own services and shield them from competition. It made 6 recommendations including the development of sector specific rules to address conflicts of interest and competition issues, and powers to develop and enforce rules to improve transparency of the price and performance of ad tech services.

The third interim DPSI report examined the provision of web browsers and general search services to Australian consumers and the effectiveness of choice screens in facilitating competition and improving consumer choice.

The fourth interim report focused on examining general online retail marketplaces, such as Amazon Australia, Catch, eBay Australia and Kogan. It highlighted a range of consumer concerns about how they operate as well as the significant benefits they provide to consumers and sellers.

In February 2022 we published a discussion paper to inform our fifth interim DPSI report, which will consider options for addressing harms to competition, consumers, and business users in areas dominated by large digital platforms, including social media, search, app marketplaces, general online retail marketplaces and ad tech. The fifth report is due to be provided to the Treasurer in the second half of 2022.

Infrastructure regulation and market inquiry work in concentrated sectors

Our infrastructure regulatory priorities include delivering effective network regulation across a number of key sectors and monitoring markets where there is limited competition.

The National Broadband Network (NBN) is a critical piece of national infrastructure and in the second half of 2021 we chaired a series of industry working groups to discuss its future regulation. NBN Co is seeking to incorporate fibre-to-the-node and other copper-based technologies under a single regulatory framework that covers all network technologies.

NBN Co lodged a proposed variation to its Special Access Undertaking in March 2022. The ACCC then ran a public consultation on the proposal which identified a range of issues. NBN Co subsequently withdrew the proposed variation and will submit a new variation proposal after consulting with industry, and so this important work continues in 2022–23.

We were also directed by the government to conduct a new inquiry into regional mobile infrastructure, and we continued our regular reporting on performance and competition in broadband markets.

Similarly, we provided up-to-date information about the state of domestic aviation through our monitoring role, providing quarterly reports on prices, costs and profits of Australia's domestic airline industry. We also examined the financial performance of the airports through the pandemic in our airports monitoring report.

Consumer Data Right

The ACCC's role in Consumer Data Right (CDR) includes accrediting data recipients; maintaining the register of accredited persons; promoting compliance and taking enforcement action where appropriate; planning, designing, building and running the technology solutions that enable CDR; and supporting participants with testing and onboarding.

Participation in the Consumer Data Right continues to grow. As at 30 June 2022, there were 114 banks and associated brands active in CDR, collectively holding more than 99% of Australian household deposits. On the data recipient side, there were 20 active accredited data recipients, including fintechs, banks and other businesses, with the ACCC supporting more than 10 additional accredited data recipients with onboarding so that they can become active.

We are preparing for the addition of energy sector data sharing going live in November 2022, the further expansion of CDR into the telecommunications sector, and potential expansion to open finance.

International engagement

The ACCC regards collaboration with our international counterparts as a key component of our effectiveness as a regulator.

Many corporations and transactions considered by the ACCC in a range of its competition, consumer and regulatory work are based overseas, or are subsidiaries of overseas corporations, whose operations span multiple jurisdictions. International collaboration assists the ACCC to identify emerging competitive and consumer threats, as well as new and innovative strategies to address them.

Our global engagement includes participation in the Competition Law Implementation Program, which supports Association of Southeast Asian Nations (ASEAN) member states to effectively implement national competition laws and policies.

In 2022-23, Australia will take up the presidency of the International Consumer Protection and Enforcement Network which plays an important role in sharing information and combatting consumer issues that arise in international conduct, such as e-commerce fraud and international scams.

Corporate operations, Commissioners and our employees

We are 12 months into our restructure and already can see value in our focus on improving our own systems, capabilities, and ways of working. Taking effect from July 2021, it better aligned our resources with our strategic objectives and has been a catalyst for reflection on, and refinement of, our purpose, functions, key activities and priorities. Importantly it has assisted our enforcement and compliance operations to work in a more integrated way to address consumer harm.

In close consultation with our employees, we implemented a hybrid working framework. I want to thank the ACCC's employees for their resilience and professionalism in a challenging period. They have worked diligently to ensure that we deliver for the Australian community.

A new capability framework was launched to clarify the attributes and skills critical to our agency now and in the future and we enhanced our wellbeing services to ensure our employees remained safe and supported while delivering our work.

For the second year running our *Speak up, Listen up* reverse mentoring program shared employee experiences with senior leaders to improve their understanding of the barriers to diversity and inclusion and to shape organisational leadership of diversity and inclusion. The program expanded to over 50 participants, including 30 mentors and 20 SES mentees (including 3 Commissioners) involving participants from our Indigenous Employee, Disability and Carers, Pride and Culturally and Linguistically Diverse (CALD) employee networks.

We continued to transform our information communication technologies, data technologies and business systems through our 4-year Working Smarter Program. A refreshed ACCC Data Strategy 2021-25 was launched and new data literacy and digital proficiency learning pathways were rolled out for all employees. This business transformation program embraces automation to increase business efficiency and data capture, builds on our data skills and technology, as well as increasing our resilience through improving our security posture.

Acknowledgements

I would also like to acknowledge the leadership and enormous contribution of my predecessor Rod Sims. After 11 years as ACCC Chair, Mr Sims has left in place a high performing, capable and diverse team that is committed to the safety, interests and welfare of consumers and the maintenance of effective competition across the Australian economy.

In March 2022 Liza Carver commenced as an ACCC Commissioner. Ms Carver has a long-standing familiarity with our work, having served as Associate Commissioner with the Trade Practises Commission and the ACCC between 1993 and 1999. She has been consistently ranked as one of Australia's leading competition lawyers, and her expertise in matters involving the *Competition and Consumer Act 2010* is of great benefit to the agency.

In February 2022 Scott Gregson was assigned the role of Chief Executive Office to better reflect the responsibilities he performs internally and externally.

The ACCC also appointed its first Chief Risk Officer, Richard Home.

Looking ahead

We have a major work program for the year ahead, including a new focus on environmental and sustainability claims to maintain community trust in green claims and to protect businesses who genuinely make investment in sustainable production.

We welcome the government's election commitments to a national anti-scam centre and for the ACCC to develop a mechanism to regulate the cost of childcare, with the aim of making it more affordable.

We will continue our strong enforcement focus on anti-competitive mergers and conduct, consumer protection and in protecting small businesses from unfair trade practices.

We will continue our market inquiry work in essential services sectors including energy and telecommunications.

We will also continue our advocacy to support strengthening of laws regarding unfair contract terms, consumer guarantees, unfair trade practices and further consideration of the merger review framework to make it fit for purpose.

As the national regulator responsible for competition law, consumer protection, fair trading and economic regulation, the ACCC will continue to focus our capabilities and resources on action that best promotes the proper functioning of Australian markets, addresses conduct that is anti-competitive or harmful to consumers or small business and thereby enhances the welfare of Australians now and into the future.



2021-22 review: AER Chair, Clare Savage

The Australian energy sector experienced significant volatility during 2021-22, as it continues to undergo major transition.

The suspension of the National Electricity Market (NEM) in June 2022 was the first of its kind by the Australian Energy Market Operator (AEMO), and the continued volatility in the wholesale market added to the increased pressures on the energy market and raised concerns within the community about reliability and affordability of power.

As the economic regulator of energy networks in all states and territories except Western Australia, we play an important role in the energy transition. We regulate 30 gas and electricity network businesses with a combined asset base of over \$100 billion. Our primary role is in setting the maximum revenue that network businesses can recover from users of their networks. Importantly, we aim to ensure consumers pay no more than necessary for safe and reliable energy.

During the year we continued to deliver effective network regulation, completing 3 transmission determinations and one gas transmission access arrangement. A total of 13 decisions on cost pass-through applications were finalised. Alongside this we looked at improving our processes and reducing costs to network businesses through standardising models for pricing.

While maintaining our network regulation business-as-usual tasks, we focused our attention on how to enable the future grid to deal with opportunities and challenges presented by increasing distributed energy resources (or consumer energy resources as they are becoming known), two-way flows of electricity, network resilience in the face of extreme weather events and decarbonisation policies.

Our work included examining how distributed energy resources (DER) can be integrated into the system to maximise the benefit to consumers and networks. We released an export tariff guideline that looked at how two-way prices should be set, as well as a guidance note on network resilience and how expenditure related to the potential impact of extreme climate events on the network should be accounted for. We also released an information paper assessing how we regulate gas pipelines in the presence of uncertainty.

We also actively engaged in various Distributed Energy Integration Program working groups, Australian Energy Market Commission (AEMC) rule change processes, Energy Security Board (ESB) workshops and consultations around Energy Ministers' post-2025 market design work and continued to advocate for network tariff reform.

During 2021-22 we released our *Better Resets Handbook- towards consumer-centric network proposals*, which incentivises networks to develop high-quality proposals that are driven by genuine engagement with consumers.

This work will enable a greater emphasis on high-quality consumer engagement and more efficient regulation. Our hope is that it will lead to regulatory outcomes that better reflect the long-term interests of consumers and offer more clarity to businesses on what we consider would be in a well-justified proposal.

Protecting consumers and enabling their participation in the future of energy markets continued to remain another of our focus areas.

The market volatility seen in the later part of 2021-22 highlighted the need for consumer protections, with an increase in energy retailers closing their doors. The Retailer of Last Resort (RoLR) scheme ensures that, in the event of retailer failure, arrangements are in place for customers to continue to receive electricity or gas supply.

During the year we oversaw the exit of 3 retailers from the market and the subsequent transfer of impacted customers to new retailers to ensure continuity of energy supply. We also approved 17 retailer authorisations, an increase from 15 the previous year.

Another safeguard in place to protect consumers is the price cap on standard default contracts, known as the default market offer (DMO). It protects consumers from unjustifiably high prices, while allowing retailers to recover costs.

The final determination for the 2022-23 DMO, announced in May 2022, will see prices increase for all customer types, mainly due to a combination of higher expected wholesale costs, unplanned generator outages, higher coal and gas costs, and increasingly 'peaky' demand driving up the cost of energy contracts for retailers. However, the DMO price cap remains a crucial consumer protection from unjustifiably high prices.

Our dedicated, independent price comparison website, [Energy Made Easy](#) (EME) is designed to make it easier for consumers to take control of their energy bills and compare energy plans. This year over 61,000 people switched providers after completing an EME search. We are continuing work on enhancing the functionality of EME to make it even simpler and more effective.

Circumstances in life can change quickly and without notice when people are impacted by life events or the wider economy. The COVID-19 pandemic highlighted to us all that vulnerable circumstances can touch us at any time, whether they be financial, mental or physical.

To provide extra protection and support to consumers and the market through the pandemic, we developed a standby *Statement of Expectations of energy businesses*. This stemmed from the original Statement of Expectations developed in March 2020, designed to help protect thousands of households and small businesses from disconnection, referral to debt collectors and credit default listing during the pandemic.

Another aspect of our work to support consumers has been through the *Better bills guideline*. In April we introduced this mandatory guideline, requiring energy retailers to tell their customers, just by a quick glance at their power bill, whether they could be on a better offer and how to switch.

We tested the requirements with more than 14,000 customers during our research and had input from retailers, consumer groups and energy Ombudsman schemes. The rules require retailers to complete their implementation of the *Better bills guideline* by 31 March 2023.

Alongside the *Better bills guideline*, we released the draft *Consumer vulnerability strategy*, which focused on reducing barriers to participation and improving affordability, while also reducing the

risks and costs of energy businesses in supporting consumers experiencing vulnerability. The final strategy will be released in the second half of 2022 and will be the culmination of input from across the energy sector, government and consumer groups.

The AER's role in monitoring the wholesale and retail energy markets, and ensuring all participants are complying with the law and the rules, has never been more important.

During the year we produced 19 reports on high wholesale electricity market prices, weekly market performance reports, quarterly wholesale and retail reports and annual network benchmarking reports. We also released the 13th edition of *State of the energy market*, which covers Australia's wholesale electricity and gas markets, the transmission and distribution networks, and energy retail markets.

In June 2022 new laws passed providing us with greater powers to monitor wholesale gas markets, specifically ensuring shorter-term gas markets are operating competitively. These laws include how gas is exported overseas and how it is traded here in Australia. In particular, we will be able to monitor the export, reserve, storage and domestic sale and swaps of gas.

We also continued to use our expertise to inform debate about Australia's energy future and support the energy transition.

During the year we made a total of 33 submissions to the AEMC and other national policy and legislation making processes. These were across a number of areas, including on the transmission planning and investment review, governance of technical standards for DER, essential system security services, the integration of energy storage systems, critical infrastructure protection and cybersecurity, consumer protection arrangements and family violence, network resilience, smart meters and many more.

Our submissions, and wider engagement on these issues, have been successful in influencing outcomes. An example of this is our advocacy and submission on the AEMC's transmission planning and investment review, which contributed to the AEMC initiating a workstream on competition in transmission as part of its review.

Innovation was a key theme throughout our work. We launched the Energy Innovation Toolkit, an initiative between AEMO, the AEMC, the Essential Services Commission of Victoria and the Australian Renewable Energy Agency (ARENA), to help innovators understand and navigate the complex energy sector frameworks.

The Toolkit's online service offering will be broadened when new energy laws that grant temporary waivers and trials to innovators are introduced.

We have also invested in initiatives aimed at building employee culture with the development of the first *AER Culture plan*, a staff-led project that has been embedded into our day-to-day processes, plans and recognition and reward programs.

Accompanying this was our first *AER Data strategy*. It will ensure we are an insights-driven regulator with information technology systems that support our people to deliver our regulatory role, within the changing energy landscape.

Our functions and responsibilities also grew this year, with the NSW Government appointing the AER as a regulator under its *Electricity Infrastructure Roadmap* in November 2021.

2021-22 was a year of ground-breaking outcomes on the compliance and enforcement front.

The new penalty regime introduced to energy laws in January 2021 recognises the significance of the obligations contained in energy laws to energy security, functioning markets and consumer protection, and provides a significant scaling up of the penalties available to the courts and the AER.

In June 2022 a \$17 million penalty, the largest ever imposed on a retailer, was handed down in response to action brought by the AER for breaches of the energy laws for failing to comply with obligations to protect customers experiencing hardship and payment difficulties.

This hardship case outcome eclipsed our previously held record of \$12 million from May 2022 for a retailer failing to comply with life support obligations for its customers who rely on life-saving health equipment.

Our market-related compliance and enforcement activities and outcomes included the Federal Court ordering a total of \$6.05 million in penalties in proceedings brought by the AER relating to conduct during the 2016 black system event in South Australia, and breaches of the National Electricity Rules by Hornsdale Power Reserve.

A further \$240,000 in infringement notice penalties were paid for alleged breaches relating to record keeping and reporting requirements under the National Gas Rules.

These legal outcomes are examples of the AER's ongoing willingness to take compliance and enforcement action where there have been serious issues impacting vulnerable consumers or the energy system more broadly.

Finally, I would like to acknowledge the dedication of all our people, and thank my AER Board colleagues, Jim, Eric, Catriona and Justin, who have worked tirelessly to ensure we make the best decisions on behalf of Australian energy consumers. In March we welcomed the reappointment of Jim Cox, AER Deputy Chair, to the AER Board for a further 2 years (until June 2024).

Despite global and national challenges, the AER has achieved record enforcement results and increased consumer protections. I'm proud of our achievements and look forward to another year of innovation and effective regulation, for the long-term benefit of Australian energy consumers.

Corporate snapshot

Financial performance summary



\$323.077 million

Total budget



\$60.966 million

Additional funding
secured for our
functions

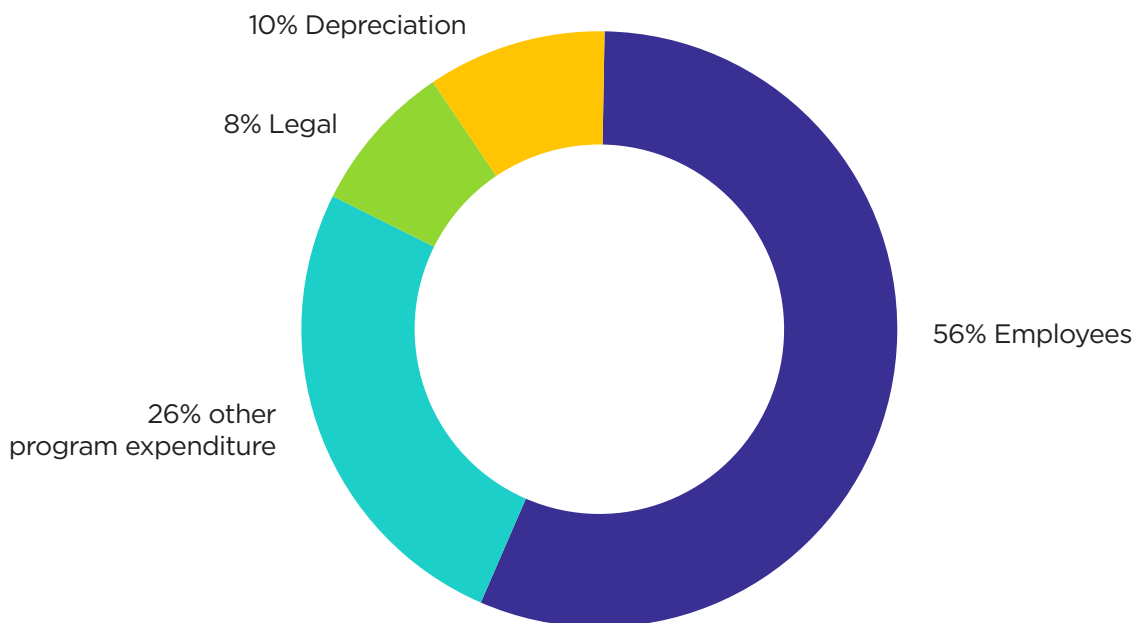
The ACCC received an unqualified audit report on the 2021–22 financial statements from the Australian National Audit Office. Key financial results for the ACCC for the current and comparative financial years are reported in the financial statements in Part 5.

The ACCC incurred an operating deficit of \$13.9 million in 2021–22 including unfunded depreciation and amortisation expenses. After adjusting for the above and taking into account leasing adjustments, the ACCC achieved a surplus of \$1.8 million.

In 2021–22 ACCC received approximately \$288.9 million in revenue from government, representing a \$21.8 million or 8.2% increase compared with 2020–21. The additional revenue was appropriated by government to fund new measures and initiatives. The increase in total expenses is consistent with the increase in revenue from government.

ACCC's 2021–22 administered revenue was \$260.5 million and includes court-imposed fines, penalties and costs.¹

Figure 1.1: ACCC and AER expenditure 2021–22



¹ Administered revenue is collected by the ACCC and is transferred to the Official Public Account maintained by the Department of Finance for use by the Government, rather than the ACCC.

Employee summary

Our people



1,418

ACCC and AER Employees

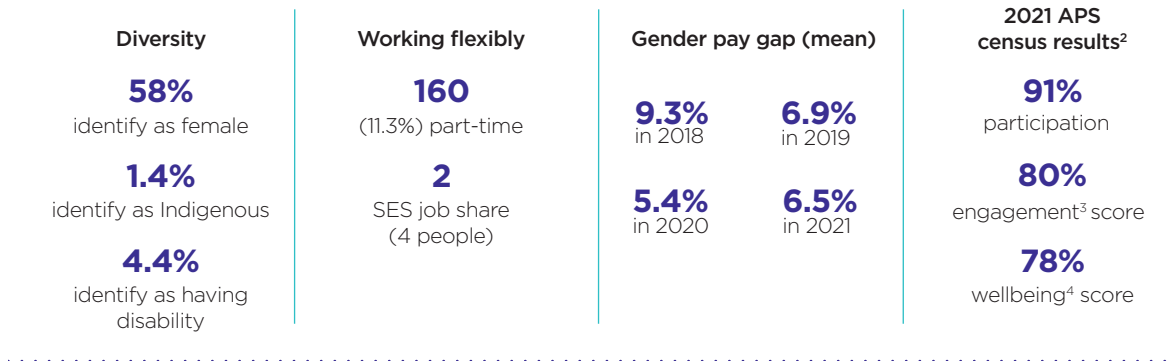


Table 1.1: Average staffing level 2019–20 to 2021–22

| | Budgeted | Actual |
|---------|----------|--------|
| 2019–20 | 1,113 | 1,113 |
| 2020–21 | 1,184 | 1,172 |
| 2021–22 | 1,246 | 1,201 |

The average staffing level shown in Table 1.1 represents the number of full-time equivalent Australian Public Service (APS) employees. The main reasons for the difference between an average staffing level of 1,201 and 1,418 employees noted above are that just over 11% of our employees work part-time, and the increase in recent years of our people who have been engaged on a contract rather than as an APS employee.

2 The Australian Public Service (APS) Employee Census is an annual survey that collects confidential attitude and opinion information from APS employees on workplace issues.

3 The engagement index addresses 3 attributes ('say', 'stay' and 'strive') associated with employee engagement. It measures the emotional connection and commitment employees have to working for their organisation.

4 The wellbeing index included in the APS Employee Census measures both the practical and cultural elements that allow for a sustainable and healthy working environment.



02

Agency overview



About the ACCC and AER

Who we are

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (Cth) (CCA), regulate national infrastructure and undertake market studies.

The AER is an independent decision making body responsible for regulating wholesale and retail energy markets, and energy networks, under national energy legislation and rules. The AER focuses on ensuring a secure, reliable and affordable energy future for Australia.

The ACCC and the AER are a single listed entity for the purpose of the finance law.⁵

Organisational structure

The Commission is the primary decision-making body of the ACCC. Members are appointed by the Governor-General for terms of up to 5 years. Appointments are made after the majority of state and territory jurisdictions support the selection. Further information on the Commission is in Part 4.

The AER has its own independent Board comprising 2 Commonwealth members and 3 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 work exclusively on energy matters. It has access to the ACCC's legal and economic specialists.

ACCC Commissioners and AER Board members are statutory officers. The people undertaking work for the ACCC and AER are Australian Public Service employees.

Rod Sims was the ACCC Chair and Agency Head and therefore the Accountable Authority for the whole agency (both the ACCC and the AER) for the period 1 July 2021 to 20 March 2022.

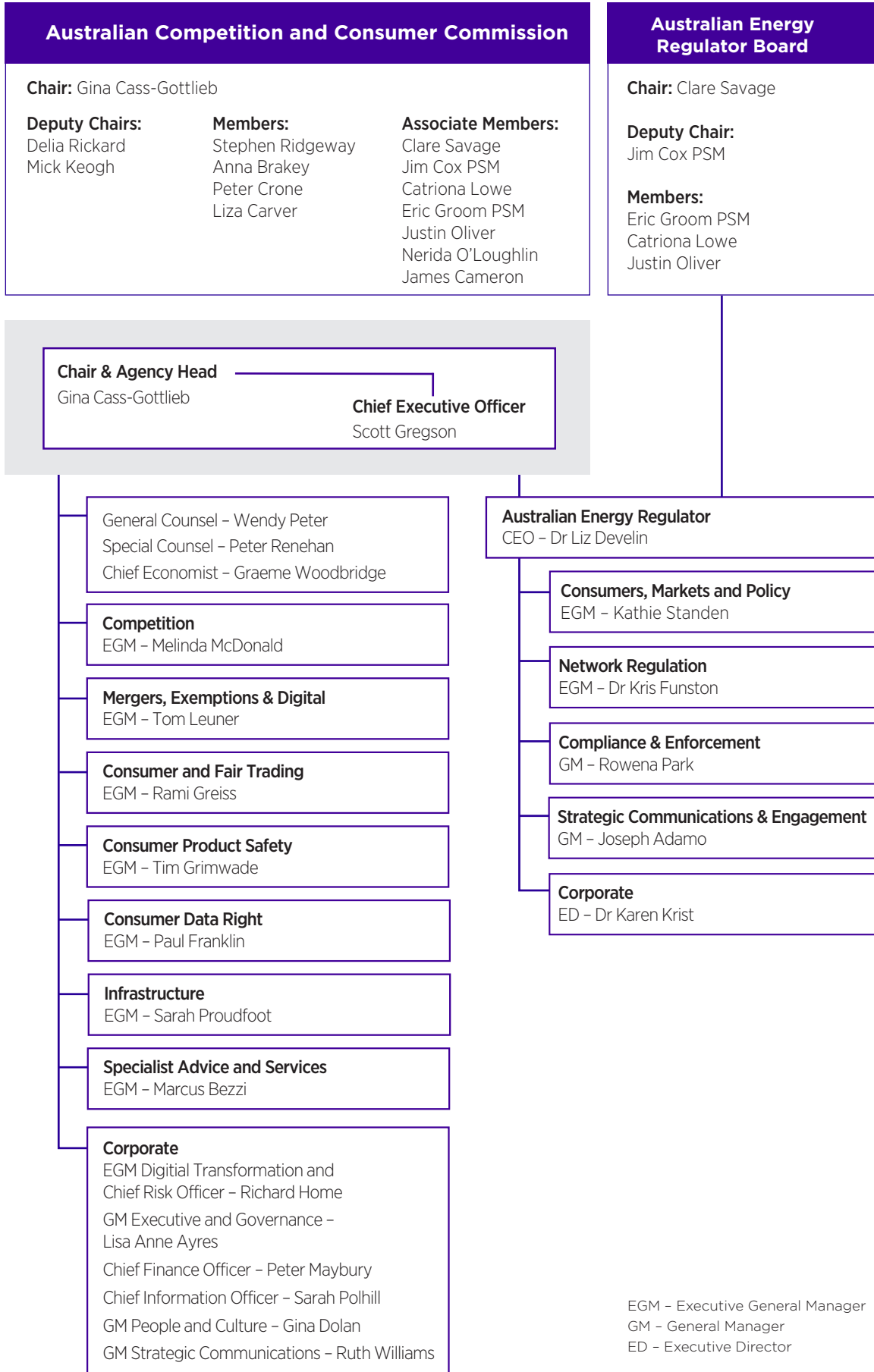
Gina Cass-Gottlieb was the ACCC Chair and Agency Head and therefore the Accountable Authority for the whole agency (both the ACCC and the AER) for the period 21 March 2022 to 30 June 2022.

Figure 2.1 provides an overview of the structure of the ACCC and AER as at 30 June 2022.

From 1 July 2021 the ACCC implemented a new structure. The major change was the establishment of dedicated divisions for consumer and fair trading, competition, and consumer product safety. This structure has equipped the ACCC to deliver on the ACCC's strategic objectives as set out in the Corporate Plan 2021-22. The structure is available on the [ACCC website](#).

⁵ Pursuant to s 44AAL of the CCA.

Figure 2.1: Organisational structure of the ACCC and AER



The ACCC's purpose, vision and role

The ACCC's purpose is to make markets work for consumers, now and in the future.

Our vision is a bold and innovative ACCC driving a competitive, fair, safe and productive economy for Australian consumers.

To achieve our purpose we focus our resources on key activities to achieve 7 strategic objectives:

- Address anti-competitive conduct and promote competition.
- Prevent anti-competitive mergers.
- Improve competition and choice by facilitating safe and secure data sharing by consumers through Consumer Data Right (CDR).
- Protect consumers from misleading and deceptive conduct and promote fair trading.
- Protect consumers from unsafe products.
- Regulate monopoly infrastructure and monitor concentrated markets in the long-term interests of consumers.
- Improve our own systems, capabilities and ways of working.

The ACCC is vested with functions and powers under the CCA and a range of other legislation. Details of this legislation are in Appendix 7.

More details about the ACCC's functions, powers and key activities can be found in Parts 3 and 4 under each strategic objective.

The ACCC appreciates and upholds the Australian Public Service Values of Impartial, Committed to Service, Accountable, Respectful and Ethical (ICARE). We also hold the following additional complementary values in undertaking our work:

- Independent: We inspire confidence in our work by being impartial and objective.
- Strategic: Our focus is on the bigger picture, ensuring consumers are at the heart of what we do.
- Trustworthy: We act with integrity, honesty and ethically.
- Informed: Our decisions and actions are based on data, evidence and intelligence, as well as expert knowledge.
- Inclusive: We commit to an inclusive and respectful culture and a diverse workforce reflecting the communities that we serve.

ACCC priorities

Each year the ACCC identifies priorities related to our key activities to help guide how we use our limited resources, as well as to let market participants know the sectors of the economy and types of conduct that will be of particular focus.

The ACCC cannot pursue all possible breaches of the CCA and other relevant legislation that come to our attention. We target our compliance and enforcement actions to address conduct that will, or has the potential to, harm the competitive process or result in widespread consumer or small business detriment.

Our compliance and enforcement priorities and product safety priorities signal our key areas of concern to encourage widespread compliance with the CCA and to promote behavioural change within the relevant markets. Further detail about our priorities is in Part 3 under each strategic objective.

ACCC stakeholders

To enhance our effectiveness, we work with other government departments and agencies, as well as consumer groups, industry associations and international partners.

Australian consumers

The interests of consumers are at the heart of all of our work. We engage directly with consumers through numerous media channels, our Infocentre, formal public consultations and education campaigns; and by working with consumer advocacy groups. One of our key mechanisms for partnering with consumer representatives is the Consumer Consultative Committee.

Australian businesses

The ACCC works with businesses and industry bodies and associations to help businesses understand their obligations to comply with the law. The ACCC's 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. The ACCC engages with many businesses and industry bodies and associations through the consultative committees noted below.

Australian Government

The ACCC is an independent statutory agency which operates as part of the Australian Government and is accountable to the Australian Parliament, and ultimately to the public, through Treasury portfolio ministers and the parliamentary committee processes. The ACCC's competition and consumer functions fall principally within the responsibility of the Department of the Treasury and the Treasurer.

The ACCC provides timely and accurate information on its activities and matters of significance to the government, including to the Treasurer, and other ministers as required.

The ACCC has accountabilities under CDR alongside Treasury, the Data Standards Body (DSB) and the Office of the Australian Information Commissioner (OAIC). The ACCC collaborates closely with these CDR entities and has regular engagement with other government stakeholders, including sector-specific regulators such as the Australian Prudential Regulation Authority, the AER and the Australian Communications and Media Authority (ACMA).

We also advise the relevant Minister on the use of a range of powers for market intervention to protect consumers from unsafe products.

The ACCC continues to work cooperatively with other Australian Government agencies such as the Australian Securities and Investments Commission, the National Disability Insurance Agency, Food Standards Australia New Zealand, the OAIC, the ACMA, the Therapeutic Goods Administration, the Australian Commission for Law Enforcement Integrity and many more.

State and territory governments

The ACCC works with state and territory government agencies to coordinate and collaborate in our compliance and enforcement work, influence change, build capacity, share best practice approaches and support broader market and industry behavioural change.

Under Australia's single consumer law multi-regulator model, the ACCC works with other Australian Consumer Law (ACL) regulators in each state and territory to:

- employ the most effective means of addressing consumer harm through cooperative and complementary enforcement action
- avoid unnecessary duplication of effort in the effective administration of the ACL
- ensure, wherever appropriate, a consistent approach to dispute resolution and enforcement action.

Our key mechanism for coordinating with other ACL regulators has been through the Council of Australian Governments (COAG) Forum on Consumer Affairs (CAF) and CAF's subcommittees. With the cessation of COAG on 1 February 2021, CAF and the supporting Consumer Affairs Australia and New Zealand forum were discontinued. However, the ACCC and its fellow regulators are working closely to ensure that the replacement approach of ad hoc liaison and engagement still facilitates effective coordination between ACL regulators. Further detail about how the ACCC works with the other ACL regulators, including under these new arrangements, can be found in the discussion on page 74 in Part 3.

International counterparts

We engage with international counterparts across all our functions, including with the New Zealand Commerce Commission and regulators in the Asia-Pacific region as well as the United Kingdom, the United States and the European Union.

The ACCC also engages with international counterparts through our membership of or participation in international regulatory organisations and multilateral forums such as the:

- International Competition Network (ICN), including membership of the ICN Steering Group.
- International Consumer Protection and Enforcement Network.
- Asia-Pacific Economic Cooperation, including the Competition Policy and Law Group.
- Organisation for Economic Cooperation and Development competition, economic and consumer committees and working groups.
- United Nations Conference on Trade and Development.

The ACCC also manages 2 capacity building programs, the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) Consumer Affairs Program (CAP) and the Competition Law Implementation Program (CLIP). These programs enable the ACCC to increase engagement with and provide technical and capability assistance to competition and consumer law agencies within the Association of Southeast Asian Nations (ASEAN) for our mutual benefit.

Details of international forums and groups we participate in on the subjects of competition, consumer protection, product safety and regulation are available on our [website](#).

Consultative committees

The ACCC hosts the following consultative committees and forums:

- Agriculture Consultative Committee
- Consumer Consultative Committee
- Dairy Consultative Committee
- Fuel Consultative Committee
- Infrastructure Consultative Committee
- Product Safety Consultative Committee
- Small Business and Franchising Consultative Committee
- Utility Regulators Forum.⁶

We also participate in the Wholesale Telecommunications Consultative Forum.

Further information on our consultative committees is available on our [website](#).

Government expectations

Our agency comes under the portfolio responsibilities of the Department of the Treasury.

The responsible Minister for the ACCC is the Treasurer, the Hon Dr Jim Chalmers.

The AER's purpose and vision

The AER exists so that energy consumers are better off, now and in the future.

We focus on ensuring a secure, reliable and affordable energy future for Australia.

The AER is a high-performing regulator that is independent; open and accountable; builds trust in Australia's energy system; takes considered risks; ensures the regulatory regime is fit for purpose; and engages actively with stakeholders.

The AER's functions

The AER regulates wholesale and retail energy markets, and energy networks, under national energy legislation and rules. Our functions mostly relate to energy markets in eastern and southern Australia. We place consumers at the heart of our work and are focused on ensuring a secure, reliable and affordable energy future for Australia.

Consumer protection

The AER has a key role in enabling consumers to make informed choices about their energy supplier. Our role includes: setting the Default Market Offer (DMO) to protect consumers from high prices and encourage participation in the market; approving policies energy retailers must implement to assist consumers facing financial hardship and looking for help to manage their energy bills; administering a retailer of last resort scheme, which protects consumers and the market if an energy retailer fails; and soon to be conferred functions on implementing regulatory sandboxes to encourage innovation in energy technologies and new business models that benefit consumers.

⁶ The ACCC co-hosts with the other members of this forum.

The AER is developing a consumer vulnerability strategy. Our vision is to see consumers experiencing vulnerability offered timely and effective supports, improving affordability, helping consumers stay connected and reducing energy businesses costs to serve.

We also monitor and enforce compliance with obligations in the Retail Law, Rules and Regulations. We report on performance of the market and energy businesses, including energy affordability and disconnection of customers for non-payment of energy bills.

Retail energy market regulation

The AER regulates retail electricity and gas markets in jurisdictions that have commenced the National Energy Retail Law. The Retail Law commenced in Tasmania (for electricity consumers only) and the Australian Capital Territory on 1 July 2012, South Australia on 1 February 2013, New South Wales on 1 July 2013 and Queensland on 1 July 2015. We also provide a price comparison website - Energy Made Easy - to help consumers find the best energy offers for their needs.

As part of our retail regulation role, we also assess authorisation applications from businesses that want to become energy retailers and provide exemptions for other businesses from authorisation requirements (for example, nursing homes and caravan parks that on-sell energy to tenants).

Wholesale energy market regulation

In wholesale electricity and gas markets, we monitor, investigate and enforce compliance with national energy legislation and rules. We monitor participant bidding and rebidding, market dispatch and prices, network constraints and outages, demand forecasts and forecasts of production and capacity.

We also report on market activity, including: weekly reports on wholesale market outcomes; reports on prices outside normal thresholds; quarterly reports on the performance of the wholesale electricity and gas markets; and a biennial assessment of the effectiveness of wholesale electricity market competition.

Energy networks regulation

We regulate electricity networks and natural gas pipelines by setting the maximum amount of revenue they can earn, and the price they can charge, for regulated services. Network businesses submit revenue proposals. We review these proposals and make decisions after considering factors including: quality of engagement with customers; projected demand for electricity and natural gas; age of infrastructure; operating and financial costs; and network reliability and safety standards. Decisions generally apply for 5 years, and network businesses adjust their prices annually (which we approve each year during the 5-year period).

Additionally, in November 2021, the NSW Government appointed the AER as regulator under its Electricity Infrastructure Roadmap. Our role includes assessing capital costs and making revenue determinations for network operators competitively selected to undertake Renewable Energy Zone projects.

Policy and advocacy

The AER draws on its expertise in energy markets and its analysis to inform and influence debate about energy policy. By leveraging our expertise, we advocate for policy changes and improvements to energy laws and rules that protect and promote the interests of energy consumers. Effective policy advocacy on behalf of consumers is particularly important given the nature and size of the energy transition that is underway. We engage in policy development through participation in, and submissions to, the Australian Energy Market Commission's (AEMC) policy reviews and rule changes and through our Chair's membership of the Energy Security Board (ESB).

AER strategic objectives and priorities

In December 2020 the AER finalised and launched its [Strategic Plan 2020-2025](#). The outcomes sought are grounded in the former COAG Strategic Energy Plan. To support these outcomes AER has articulated 4 strategic objectives:

- Protect vulnerable consumers while enabling consumers to participate in energy markets.
- Effectively regulate competitive markets primarily through monitoring and reporting, and enforcement and compliance.
- Deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services.
- Use our expertise to inform debate about Australia's energy future and support the energy transition.

Our strategic priorities under each of these objectives are organised against an Execute/Tilt/Advocate Framework. 'Execute' signals to staff and stakeholders the 'must do's' under the regulatory framework. 'Tilt' describes actions to push the AER in a new direction or shift emphasis in response to a rapidly changing external environment but stay within our existing remit. 'Advocate' describes pursuing changes to the regulatory frameworks that are beyond our immediate control and that require collaboration across government and the market bodies.

Further information about our objectives and priorities can be found in our [Strategic Plan](#).

Each year we articulate the 'key activities' that we will undertake to ensure that we achieve our 4 strategic objectives and strategic priorities. Our Corporate Plan specifies these deliverables, that link directly to one of the priorities in our Strategic Plan. Our key activities are specific and timebound where possible. Our Corporate Plan also articulates any new priorities arising since our Strategic Plan was published (for example our conferral as the regulator for NSW Renewable Energy Zones in 2021 and New Policy Proposal funding provided in the 2021-22 Budget). This enables us to respond flexibly to the rapidly evolving energy industry and associated regulatory landscape.

AER stakeholders

For our many and varied stakeholders we are committed to:

- proactively engaging and listening to understand their diverse perspectives
- working in partnership with other energy market bodies and the government on matters of common interest
- clearly communicating our decisions and making it easy to engage with us
- embracing creative ways of engaging that work for stakeholders, not just us.

To achieve these commitments, the AER has regular dialogue with a range of stakeholders, including other market bodies, consumer groups, industry participants/industry bodies and governments.

As an industry regulator, we rely on and appreciate the numerous interactions we have with the businesses we regulate. We take our consultation obligations very seriously and aim to be transparent, give sound reasons for our decisions and signal well in advance any changes to our approach while maintaining independence.

We work particularly closely with the other market bodies, the AEMC and the Australian Energy Market Operator (AEMO), Energy Consumers Australia (ECA), and the Australian and New Zealand Energy and Water Ombudsman Network. The AER Chair is also a member of the ESB.

We also have close relationships with relevant regulators in Australia and overseas.

AER consumer forums

Consumer engagement is a key part of the AER's stakeholder engagement work. We have 3 key forums:

- **Consumer Consultative Group** – the group has 13 members, each of whom have significant consumer expertise and knowledge and extensive experience in representing the views and perspectives of their constituents. The group's role is to provide advice to the AER on the issues facing residential and small business energy customers, particularly those related to our functions under the National Energy Retail Law and National Energy Retail Rules.
- **Consumer Challenge Panel** – the panel helps the AER to incorporate a consumer perspective into network determinations. Members are individuals with significant local and international expertise, spanning fields including economic regulation, energy networks, behavioural economics, and consumer engagement.
- **Consumer Reference Group** – the group is a project-specific consultation body established by the AER to provide consumer input into our Inflation Review 2020 and Rate of Return Instrument 2022. Members are individuals with significant relevant experience who are appointed by the AER.

Government expectations

The AER is accountable to the Australian Government and State and Territory Energy Ministers. The AER reports twice a year to the Energy Ministers with regard to its priorities, budget, achievements, governance and emerging risks.

Energy Ministers are currently drafting a Statements of Expectations for the AER. At this time, the government's vision is for the AER to be a high-performing and consultative agency that administers a principles-based regulatory framework in a way that promotes the long-term interests of consumers and minimises compliance costs.



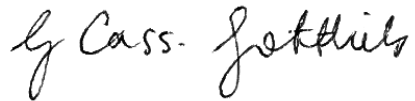
03

Annual performance
statement



Statement of preparation

As the accountable authority of the ACCC and AER, I present the 2021-22 financial year annual performance statement of the ACCC and AER, prepared for paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (Cth) (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.



Gina Cass-Gottlieb
Chair, ACCC

Performance measurement and reporting framework

The agency reports under the Commonwealth Performance Framework. This framework is enabled through the PGPA Act and the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule). We also report under our enabling legislation, the *Competition and Consumer Act 2010* (Cth) (CCA).

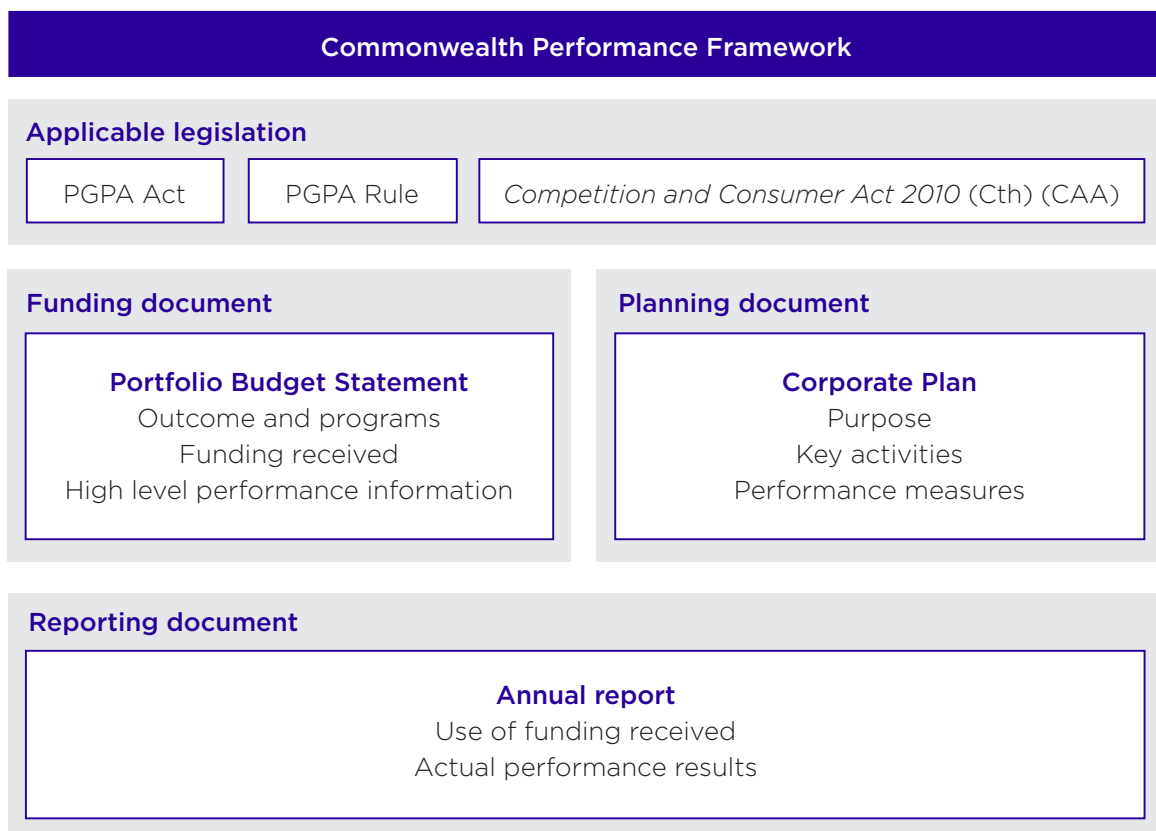
As shown in Figure 3.1, the elements of the Commonwealth Performance Framework are:

- Portfolio Budget Statement (PBS)
- Corporate Plan
- annual performance statement in the Annual Report.

These documents establish a clear ‘line of sight’ between:

- our funding and the high-level Outcome that the ACCC and AER are to achieve (as set out in the Treasury PBS)
- for each of the ACCC and AER, our purpose, strategic objectives, key activities, priorities and performance measures as set out in the [ACCC and AER Corporate Plan 2021-22](#)
- the results for the performance measures, supplemented with additional information to provide context, as set out in this Annual Report to demonstrate how we have achieved each of our purposes.

Figure 3.1: Performance reporting framework



Portfolio Budget Statement: Outcome and program structure

The agency has one Outcome statement (what the Australian Government expects to achieve through our agency). The ACCC and the AER jointly report against the agency's outcome, with the ACCC reporting against program 1.1 and the AER against program 1.2.

Outcome: Enhanced welfare of Australians through enforcing laws that promote competition and protect consumers, as well as taking other regulatory and related actions including monitoring and market analysis, public education, determining the terms of access to infrastructure services, and discharging regulatory responsibilities governing energy markets and networks.

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 and the 5 core outcomes for the energy system established by the Council of Australian Governments (COAG) Energy Council's Strategic Plan. 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.

Accordingly, this Annual Performance Statement separately covers Program 1.1 the ACCC and Program 1.2 the AER.

Corporate Plan: Our purposes and performance measures

The ACCC and the AER work in close coordination to achieve our purposes:

- ACCC: Making markets work for consumers, now and in the future.
- AER: Energy consumers are better off, now and in the future.

Our Corporate Plan sets out the strategic objectives, key activities, priorities and performance measures for each of the ACCC and AER.

The Corporate Plan also provides more detail about our performance measurement and reporting framework. In summary, we use a suite of quantitative and qualitative performance measures⁸ (with specific targets where it is reasonably practical to set targets) that draw on data and other information from various sources, including surveys of key stakeholders.

Results are reported in this Annual Performance Statement with comparative results for the previous 3 years (where available) to provide a picture of performance over time.

We also provide an assessment of whether we achieved each target as shown in Table 3.1.

⁸ A subset of these measures are included in our PBS.

Table 3.1: Assessment of results for performance measures

| Rating | Symbol | Assessment |
|-----------------|--------|---|
| Met or exceeded | ✓ | Result is 100% of, or higher than, the target |
| Partially met | ○ | Result is between 75% and 99% of the target |
| Not met | ✗ | Result is less than 75% of the target |
| | ● | Not applicable because no target set |

While the results for our performance measures provide readers with a quantitative indication of the significant outputs, activities, outcomes and our effectiveness, the results should be read in conjunction with the additional information provided, which provides context and detail about our actions and outcomes achieved.

Program 1.1 ACCC: Strategic objectives and key activities to achieve our purpose

As set out in our 2021-22 Corporate Plan, the ACCC has 7 strategic objectives that guide the key activities we undertake to achieve our purpose and deliver the Outcome set by the Australian Government.

The ACCC progresses each strategic objective through key activities. Our performance measures align to each key activity under the first 6 strategic objectives.

As set out in our Corporate Plan, and discussed further in Part 4 Management and Accountability in this Annual Report, the ACCC also has a strategic objective to 'Improve our own systems, capabilities and ways of working', with a suite of internal performance indicators that we use to measure and improve capability.

Table 3.2: ACCC purpose, strategic objectives and key activities

Purpose: Making markets work for consumers, now and in the future

Strategic objective 1: Address anti-competitive conduct and promote competition

- Key activity 1.1 – initiate enforcement and compliance actions to address harm to consumers and businesses resulting from anti-competitive conduct
- Key activity 1.2 – make decisions on authorisation, notification and certification trade mark applications in the public interest
- Key activity 1.3 – undertake market studies and inquiries to contribute to improved market outcomes

Strategic objective 2: Prevent anti-competitive mergers

- Key activity 2.1 – assess mergers to prevent changes in market structures that substantially lessen competition

Strategic objective 3: Improve competition and choice by facilitating safe and secure data sharing by consumers through the Consumer Data Right⁹

- Key activity 3.1 – facilitate the enabling technology solutions for Consumer Data Right
- Key activity 3.2 – support Consumer Data Right participants, including through assistance with testing and on-boarding
- Key activity 3.3 – accredit Consumer Data Right data recipients
- Key activity 3.4 – promote compliance with and enforce the Consumer Data Right rules and standards

⁹ The wording of this strategic objective has been revised since the 2021-22 PBS and the 2021-22 Corporate Plan to assist with clarity.

Purpose: Making markets work for consumers, now and in the future

Strategic objective 4: Protect consumers from misleading and deceptive conduct and promote fair trading

- Key activity 4.1 – initiate compliance and enforcement actions to address harm to consumers and small businesses resulting from non-compliance with the Australian Consumer Law and industry codes
- Key activity 4.2 – empower small businesses by increasing awareness of their rights under the Australian Consumer Law and industry codes
- Key activity 4.3 – empower consumers by increasing awareness of their rights under the Australian Consumer Law and alerting them to the risk of scams

Strategic objective 5: Protect consumers from unsafe products

- Key activity 5.1 – identify safety hazards in consumer products and prioritise the risks that may result in serious injury and death
- Key activity 5.2 – address the highest priority risks of serious injury and death arising from safety hazards in consumer products through regulation, education, compliance and enforcement actions

Strategic objective 6: Regulate monopoly infrastructure and monitor concentrated markets in the long term interests of consumers

- Key activity 6.1 – formulate regulatory decisions that promote the long-term interests of end users and consumers
- Key activity 6.2 – provide industry monitoring reports to government in relation to highly concentrated or emerging markets
- Key activity 6.3 – improve the efficient operation of markets by enforcing industry-specific competition and market rules

Strategic Objective 7: Improve our own systems, capabilities and ways of working

- Key activity 7.1 – support our people to develop and meet their full potential; and facilitate a diverse, respectful and inclusive culture
- Key activity 7.2 – modernise our ICT, improve the reliability, flexibility and security of our business and data systems, and enhance our data capabilities
- Key activity 7.3 – adapt our ways of working to allow resources to be used flexibly to meet changing priorities and to adopt innovative practices commensurate with the level of risk
- Key activity 7.4 – further develop our standing as a world-class independent regulator through external engagement and internal collaboration to support robust and transparent decision making that is responsive to complex challenges and demands

ACCC stakeholder surveys

ACCC Effectiveness Survey

In 2018–19 the ACCC engaged ORIMA Research to undertake a survey and interviews with key stakeholders to qualitatively measure the ACCC's effectiveness in achieving our purpose. The stakeholders were classified into 6 groups: industry associations; government departments; consumer groups; legal and economic experts; regulators and ombudsmen; and journalists and academics.

The key findings from this research were incorporated into our annual performance statement for 2018–19, which substantially enhanced our performance measurement and reporting.

In our 2021–22 corporate plan, and as set out in the following sections covering our strategic objectives, the ACCC established a suite of performance measures based on this survey methodology, noting that the Effectiveness Survey will be conducted every 2 years. At the time of finalising the corporate plan in August 2021, it was intended that the survey would be conducted in the first half of 2022 so that results could be included in this 2021–22 Annual Performance Statement (with no new results in the 2022–23 statement). However, primarily due to disruptions to the ACCC's operations over the year (particularly the impact of the pandemic), this biennial survey will now be conducted in 2022–23.

ACCC Business Stakeholder Survey

The ACCC Business Stakeholder Survey, previously conducted through 2016 to 2019, primarily focussed on how the ACCC engages with regulated entities. The survey was designed to ensure the ACCC could report against the Regulator Performance Framework (RPF). The RPF ceased to apply in mid-2021, when the then Australian Government announced 3 principles of regulatory best practice:

- **Continuous improvement and building trust:** Regulators adopt a whole-of-system perspective, continuously improving their performance, capability and culture to build trust and confidence in Australia's regulatory settings.
- **Risk based and data driven:** Regulators manage risks proportionately and maintain essential safeguards while minimising regulatory burden, and leveraging data and digital technology to support those they regulate to comply and grow.
- **Collaboration and engagement:** Regulators are transparent and responsive communicators, implementing regulations in a modern and collaborative way.

The ACCC applies these principles in how we undertake all key activities, and a revised ACCC Business Stakeholder Survey will be undertaken in 2022-23 to seek the views of this key group of stakeholders.

ACCC Community Perceptions Survey

In 2022 we commissioned 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 2020. The research involved a survey of approximately 2,000 consumers, 4 online consumer focus groups and approximately 500 small business operators. The findings are used to understand the usefulness of content that the ACCC provides and the effectiveness of current communication channels.

The results from the 2022 research continued to show that:

- awareness of the ACCC remains high
- the ACCC is seen as the main organisation enforcing and protecting consumer rights
- in general, there is a positive perception of the ACCC.

For example, the ACCC's work to educate and alert people about scams is contributing to this positive perception. The results from the 2022 research indicate that just over half (52%) of Australian consumers feel informed about how to spot and avoid a scam.

Program 1.2 AER: Strategic objectives and key activities to achieve our purpose

As set out in our Corporate Plan, the AER has 4 strategic objectives that guide the key activities we undertake to achieve our purpose and deliver the Outcome set by the Australian Government. Our performance measures align to each strategic objective.

Table 3.3: AER purpose and strategic objectives

Purpose: Energy consumers are better off, now and in the future

Strategic Objective 1: Protect vulnerable consumers while enabling consumers to participate in energy markets

Strategic Objective 2: Effectively regulate competitive markets primarily through monitoring and reporting, enforcement and compliance

Strategic Objective 3: Deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services

Strategic Objective 4: Use our expertise to inform debate about Australia's energy future and support the energy transition

AER stakeholder performance surveys

The AER commissions research to measure its reputation, stakeholder needs and expectations and how it is meeting certain key performance measures. The AER invites a broad range of organisations to participate, including network businesses, retailers, generators, Ombudsman schemes, state regulators, industry, consumer representatives, government departments, and energy ministers and staff. The research is conducted by independent market research agencies and includes a quantitative survey and in-depth interviews.

Newgate Research was appointed to deliver the 2021 survey as well as an abridged, 'pulse' version in 2022. Further information about the AER stakeholder performance surveys can be found in Part 3.

Program 1.1 – Australian Competition and Consumer Commission

Analysis of performance

Although our year continued to be influenced by the COVID-19 pandemic, the ACCC achieved a substantial suite of outcomes that enhanced the welfare of Australians by making markets work for consumers, now and in the future.

The ACCC continued to adjust priorities to focus our efforts to address various emerging competition, consumer protection, fair trading and regulatory issues throughout 2021–22 to support recovery from the pandemic, while also continuing our important ‘business-as-usual’ work. Key changes in our operating environment contributing to these emerging issues are outlined in the ACCC’s Chair’s opening message in Part 1.

We performed strongly against our performance measures as set out in our 2021–22 Corporate Plan. Of the 37 performance measures with a specified target¹⁰ for 2021–22, we achieved or exceeded the target for 25 measures and partially met the target for another 10 measures. We did not meet the target for 2 measures. Analysis of the performance measure results, and in particular where targets were not achieved, is located after each of the performance measure tables for each key activity in the following sections that cover each strategic objective.

As noted above, the next biennial ACCC Effectiveness Survey will be conducted in 2022–23, and therefore results for the performance measures that rely on this source are not available (N/A) this year. The results from this survey will form a key component of our analysis of performance in our 2022–23 Annual Performance Statement.

In line with the then Government’s Statements of Expectations and our Statements of Intent that applied during 2021–22, we reported to ministers in a regular and timely manner, including providing notice of announcements to relevant ministers’ offices and holding weekly liaison meetings at staff level.

As detailed in Part 4, throughout the year our focus also remained firmly on fostering employee wellbeing during the pandemic and developing our people, who are integral to the ACCC being able to achieve outcomes. We provided extensive communication and support to assist our employees in navigating the challenging environment.

We also invested resources into a number of agency change initiatives to improve our own systems, capabilities and ways of working while embedding the new ACCC structure from 1 July 2021 to align with our strategic objectives. These initiatives include: our Working Smarter Program to transform our information and communications technology (ICT), data technologies and business systems; enhanced Learning and Development opportunities and requirements through the Essentials Program; and developing our employee value proposition and trialling various hybrid ways of working.

Overall, in 2021–22 the ACCC was successful in achieving outcomes that enhanced the welfare of Australians by making markets work for consumers, now and in the future.

¹⁰ The ACCC did not have a target for 3 performance measures because either these key activities are relatively new and a baseline is being established and/or the result is partially externally driven; however, these quantitative measures provide a useful measure of work undertaken and outcomes achieved.

Strategic objective 1: Address anti-competitive conduct and promote competition

About this strategic objective

Competitive markets lead to lower prices, better quality products and services, 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 addressing anti-competitive conduct and promoting competition.

To achieve this strategic objective we undertake the following key activities:

- Initiate enforcement and compliance actions to address harm to consumers and businesses resulting from anti-competitive conduct.
- Make decisions on authorisation, notification and certification trademark applications in the public interest.
- Undertake market studies and inquiries to contribute to improved market outcomes.

The ACCC does so by enforcing laws in Part IV of the CCA that prohibit:

- cartel conduct
- anti-competitive agreements and practices, including concerted practices
- misuse of market power.

The CCA allows the ACCC to consider applications for authorisation and notifications. Authorisations and notifications provide businesses an exemption for arrangements that may otherwise breach the competition law but are not harmful to competition or are likely to result in overall public benefit.

Relevant ministers may direct the ACCC to undertake certain activities, including market studies, inquiries and monitoring. The ACCC can also undertake self-initiated market studies. Market studies and inquiries enable the ACCC to:

- develop a sophisticated understanding of how well competition and markets are working in particular sectors
- bring transparency and awareness to issues that allow changed behaviour from businesses and consumers
- make recommendations to government about ways to improve the functioning of markets.

Key activity 1.1: Initiate enforcement and compliance actions to address harm to consumers and businesses resulting from anti-competitive conduct

About this key activity

As the national regulator responsible for competition law, the ACCC is focused on preventing anti-competitive conduct in Australian markets. The competition provisions of Part IV of the CCA provide a range of compliance and enforcement tools that the ACCC uses to investigate suspected breaches and act on noncompliance. We have the power to take civil court action, refer alleged serious cartel conduct to the Commonwealth Director of Public Prosecutions (CDPP), accept court enforceable undertakings and resolve matters administratively.

Our overall goal is to benefit Australian consumers by promoting competitive markets and addressing risks to effective competition.

Our priorities

We prioritise our actions to address conduct that does the greatest harm to consumers and competitive processes. Our [Compliance and Enforcement Policy and Priorities](#), which we publish annually, set out:

- our priorities and the factors we take into account when deciding whether to pursue matters
- the principles we adopt
- the functions, strategies and tools we use to achieve compliance with competition and consumer laws.

The ACCC has 2 enduring competition compliance and enforcement priorities:



cartel conduct



anti-competitive conduct.

Our competition compliance and enforcement priorities in 2021–22 included addressing competition issues relating to:



the COVID-19 pandemic, including in the domestic air travel market



essential services



digital platforms



financial services



commercial construction.

Early in 2022 the ACCC aligned its compliance and enforcement priorities with the financial year and announced 2 new competition priorities:



competition issues in global and domestic supply chains, particularly where they are disrupted by the COVID-19 pandemic



exclusive arrangements by firms with market power that impact competition.

To achieve our compliance objectives, we use 4 flexible and integrated strategies:

- Encourage compliance with the law, particularly by educating and informing consumers and traders about their rights and responsibilities under the CCA.
- Enforce the law, including by resolving possible contraventions both administratively and by litigation, and achieve other formal enforcement outcomes.
- Undertake market studies or report on emerging competition or consumer issues to identify any market failures and identify strategies for addressing them, including supporting and informing our compliance and enforcement measures and identifying possible areas for policy consideration.
- Work with other agencies to implement these strategies, including through coordinated approaches.

Highlights



The Federal Court ordered a \$12 million penalty for exclusive dealing and anti-competitive arrangements in relation to the distribution of ice creams to petrol stations and convenience stores (see below case study).



The ACCC's focus on the commercial construction sector continued, with findings of secondary boycott conduct by the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) and construction company J Hutchinson Pty Ltd (Hutchinson) at a Brisbane construction site. We also commenced proceedings against 2 Sydney roof tiling business for alleged bid-rigging conduct.



The ACCC's cartel enforcement program achieved further outcomes, with guilty pleas by individuals and businesses in 2 cases involving money remittance and the pharmaceutical sector.



The ACCC continued its focus on competition issues in the financial services sector and commenced proceedings against Mastercard for alleged misuse of market power in relation to card payments.

Performance measures

Table 3.4: Performance measures for key activity 1.1

| Performance measure | 2018–19 | 2019–20 | 2020–21 | 2021–22 | | Met? |
|--|---------|---------|---------|---------|--------|------|
| | Result | Result | Result | Target | Result | |
| Number of in-depth competition investigations completed | 23 | 28 | 18 | 30 | 20 | ✗ |
| Percentage of initial competition investigations completed within 3 months | 45% | 33% | 42% | 60% | 56% | ○ |
| Percentage of in-depth competition investigations completed within 12 months | 78% | 71% | 44% | 70% | 45% | ✗ |
| Number of competition enforcement interventions (court proceedings commenced, section 87B undertakings accepted, administrative resolutions) [#] | 5 | 6 | 7 | 6+ | 5 | ○ |
| Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC's compliance and enforcement actions are effective in addressing harm to consumers and businesses resulting from anti-competitive conduct | - | - | - | 70+ | N/A | |

[#] 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 in an ACCC media release.

Analysis of results

While we partially met 2 of our targets and did not meet the target for the other 2 measures in 2021–22, our results improved compared with the previous year for 3 of the 4 measures. The COVID-19 pandemic affected our ability to progress investigations because it disrupted the businesses we regulate as well as our own operations. Given the lead times for competition investigations, the effects of the most acute period of disruption during 2020–21 are reflected in the results for 2021–22.

Despite these effects, we achieved important outcomes as described in detail below. We have also taken steps to refine our processes to focus resources on competition issues that are likely to lead to public outcomes that will promote compliance with competition law. We expect these refinements will lead to more investigations achieving the timeliness targets specified above, and we have already seen improvement in the proportion of initial investigations completed within 3 months.

Outcomes achieved

In 2021–22 our focus on **preventing anti-competitive and cartel conduct** led to the following proceedings and enforcement outcomes (see also the case studies below):

- The Federal Court found that [Hutchinson and the CFMMEU](#) had entered and given effect to an agreement to boycott a subcontractor at a building site in Brisbane. The CFMMEU was found to have been knowingly concerned in, or party to, the contraventions and that it induced Hutchinson's contraventions by threatening or implying that there would be conflict with, or industrial action by, the CFMMEU if Hutchinson did not stop using the subcontractor.

- The ACCC commenced proceedings against [2 Sydney roof tiling businesses](#) and their directors for allegedly colluding to rig bids for tenders for construction projects in exchange for cash payments.
- The ACCC instituted Federal Court proceedings against [Techtronic Industries Australia Pty Limited \(Techtronic\)](#), alleging it engaged in resale price maintenance in relation to the wholesale supply of Milwaukee brand power tools, hand tools and accessories.
- Money transfer business [Vina Money Transfer Pty Ltd](#) (Vina Money) and 5 individuals were committed to the Federal Court for trial on criminal cartel charges. The cartel conduct involved alleged fixing of the Australian dollar/Vietnamese dong exchange rate and fees charged to their customers.

In early 2022, 5 of the 6 accused (4 individuals and 1 company) entered pleas of guilty for their involvement in the alleged conduct. The court sentenced each of the 4 individuals to differing terms of imprisonment. All were released forthwith on a recognizance release order to be of good behaviour. A fine of \$1,000,000 was imposed on the company, Vina Money.

This case was the first time that the Federal Court considered the sentencing of individuals for cartel-based offences (followed by the Alkaloids case – see below case study).

- The ACCC accepted a court enforceable undertaking from [Nero Bathrooms International Pty Ltd](#) after it admitted it was likely to have engaged in resale price maintenance by withholding supply from a small independent building supplies retailer.
- The ACCC accepted a court enforceable undertaking from NASR Incorporated, trading as [Speedway Australia](#), in relation to concerns about an agreement between Speedway Australia and the Sprintcar Control Council of Australia (SCCA). The ACCC was concerned that the agreement restricted the Victorian Speedway Council Sprintcars' class of sprint car racing from competing at speedway racing tracks affiliated with Speedway Australia, limiting the number of tracks where that class of vehicles could race. Speedway cooperated with the ACCC's investigation and acknowledged our concerns.
- The ACCC instituted Federal Court proceedings against [Mastercard](#), alleging that it misused its market power by engaging in anti-competitive conduct with the substantial purpose of substantially lessening competition in relation to the supply of debit card acceptance services.

▶ CASE STUDY

Exclusive arrangement in supply of ice cream and frozen confectionary products found to be anti-competitive

In March 2022, following proceedings brought by the ACCC, the Federal Court ordered Australasian Food Group, trading as [Peters Ice Cream](#) (Peters), to pay a \$12 million penalty for anti-competitive conduct in relation to the distribution of ice creams sold in petrol stations and convenience stores.

Peters is one of 2 major manufacturers of single-serve ice cream products sold in Australian petrol stations and convenience stores.

Peters admitted that it had an exclusivity arrangement with PFD Food Services (PFD), Australia's largest distributor of single-serve ice creams. The arrangement restricted PFD from distributing other manufacturers' ice cream products and was likely to substantially lessen competition in the market for the supply by manufacturers of single-serve ice cream and frozen confectionary products.

Peters also admitted that, had it not been for the arrangement, it was likely that one or more potential competitors would have entered or expanded in the market.

▶ CASE STUDY

Guilty pleas to criminal cartel charges by pharmaceutical ingredient company and its former export manager

On 16 November 2021 and 26 October 2021 [Alkaloids of Australia Pty Ltd](#) and its former export manager, Christopher Joyce, pleaded guilty in the New South Wales Local Court to 3 charges and admitted their guilt in respect of a further 7 criminal offences related to cartel conduct.

Alkaloids of Australia produces and supplies SNBB (scopolamine N-butylbromide), which is an active pharmaceutical ingredient in antispasmodic medications.

The conduct involved price fixing, output restriction, bid rigging and market allocation cartel arrangements between Alkaloids of Australia and other international SNBB suppliers. The charges related to cartel conduct engaged in over a period of about 8 years from July 2009, when criminal cartel laws came into force in Australia.

The matters are currently before the Federal Court for sentencing, scheduled for 5 September 2022 and 16 September 2022. This will be the second cartel case where an individual is sentenced for criminal cartel offences, following sentencing in the Vina Money case.

Litigation

In 2021–22 we continued to progress several **longstanding and ongoing competition cases** that have required considerable ACCC resources. Aside from those cases mentioned above, the key developments were as follows:

- The Full Court of the Federal Court of Australia heard the ACCC's appeal against the dismissal of its proceedings against [NSW Ports Operations Hold Co Pty Ltd](#) and its subsidiaries (NSW Ports). The ACCC alleges that NSW Ports made agreements with the State of New South Wales that had an anti-competitive purpose and effect. The ACCC argued that these arrangements were intended, and were likely, to hinder or prevent the development of a container terminal at the Port of Newcastle that would have competed with NSW Ports' terminal at Port Botany. We took this action to remove a barrier to competition in an important market – the supply of port services, which has a significant impact on the cost of goods paid by Australian consumers. Such barriers damage Australia's productivity performance. Judgment has been reserved.
- The CDPP withdrew criminal cartel charges against the [CFMMEU and its ACT Divisional Branch Secretary, Mr Jason O'Mara](#), in relation to alleged attempts 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.
- Civil proceedings continued against overhead crane company [NQCranes Pty Ltd](#). We allege that NQCranes engaged in cartel conduct by agreeing with a competitor in the overhead crane market to share the market by not targeting each other's customers for overhead crane parts and servicing in Brisbane and Newcastle. The case is listed before Abraham J in the Federal Court. The matter is scheduled for mediation before the Federal Court Registry on 8 August 2022. The matter will be listed for hearing for 4 days in 2023 should it not settle.
- The Federal Court tried the ACCC's civil proceedings 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 proceedings concerned 9 separate attempts by BlueScope and Mr Ellis to induce 8 local suppliers of flat steel products in Australia and one overseas supplier to agree to increase the price at which they sold those products. The conduct occurred between around September 2013 and June 2014. A 6-week liability trial took place from 30 August 2021, with final oral closing submissions heard on 26 October, 29 October and 1 November 2021. Judgment is reserved.

- On 11 February 2022 the CDPP discontinued its prosecution of [Citigroup Global Markets Australia Pty Limited \(CGMA\)](#), Deutsche Bank AG and a number of senior banking executives. This followed earlier decisions to discontinue the prosecution of CGMA senior executive Stephen Roberts on 9 August 2021 and the prosecution of Australia and New Zealand Banking Group Limited and its senior executive Rick Moscati on 29 October 2021.

Cartel immunity applications

The ACCC endeavours to detect, stop and deter domestic and international cartels operating in Australia or affecting Australians. International experience and the experience of the ACCC has demonstrated that effective immunity and cooperation policies encourage businesses and individuals to disclose cartel behaviour. This in turn assists the ACCC to stop the harm arising from this illegal conduct and to take action against participants.

Table 3.5: Cartel immunity applications 2021-22

| | Number |
|--|----------------|
| Approaches | 6 |
| Immunity application proffers | 0 |
| Proffers not resulting in conditional immunity | 2 [#] |
| Civil conditional immunity granted | 3 [#] |
| Criminal conditional immunity granted by CDPP upon ACCC recommendation | 0 |

The 5 immunity decisions made in 2021-22 relate to proffers made in 2020-21.

International engagement

The ACCC continued to advocate for improved international cooperation on competition compliance and enforcement. For example, we:

- hosted a workshop with representatives of the New Zealand Competition and Consumer Commission regarding a range of issues, including cartel enforcement management and competition priorities
- contributed to a joint Organisation for Economic Cooperation and Development (OECD) and International Competition Network (ICN) project that explored key aspects of the current state of international enforcement cooperation between competition authorities and resulted in the release of the [Report on international co-operation in competition enforcement](#) in 2021. With the report as a reference point, the OECD and the ICN are developing a plan to deepen and broaden cooperation, including by removing unnecessary legal obstacles
- formed a new international working group to focus on illegal conduct, including collusion, in global supply chains, given that pandemic-induced disruptions have led to much higher freight rates and more expensive goods for consumers. The working group shares intelligence to detect any attempts by businesses to use pandemic-induced disruption as a cover to work together and fix prices. Our working group partners are the United States (US) Department of Justice and Federal Bureau of Investigation, the Canadian Competition Bureau (CCB), the New Zealand Commerce Commission and the United Kingdom (UK) Competition and Markets Authority
- contributed to the G7 Compendium of approaches to improving competition in digital markets. The compendium provides an overview of how different authorities are working to promote competition in digital markets
- took part in the [G7 Digital Competition Enforcers Summit](#), hosted by the UK Competition and Markets Authority, as one of 4 guest competition authorities. The summit provided an opportunity for international agencies to discuss common areas of interest and opportunities for potential collaboration on issues such as adtech (the services used in the buying and selling of digital display advertising), app stores and mobile ecosystems, cloud computing,

and algorithms; and for attendees to reflect on how best to use their skills, knowledge and resources to deal with challenges in digital markets

- attended the UK Competition and Markets Authority inaugural Data, Technology & Analytics Conference in London in June 2022. ACCC Chair, Gina Cass-Gottlieb, participated virtually in a Heads of Agency panel discussing the development of data intelligence capabilities within competition and consumer agencies. The conference provided an opportunity for the ACCC to continue to collaborate with our Multilateral Mutual Assistance and Cooperation (MMAC) counterparts and other European agencies in relation to data analytics
- contributed to a number of negotiations regarding other Free Trade Agreement chapters on competition, including the Australia – European Union Free Trade Agreement, and led negotiations for the finalised Competition and Consumer chapters of the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) Upgrade
- continued to develop and deliver training to counterpart agencies in South-East Asia through the Competition Law Implementation Program (CLIP) (see the case study below).

▶ CASE STUDY

ACCC's Competition Law Implementation Program: building capacity and cooperation in South-East Asia

Through the Competition Law Implementation Program (CLIP), the ACCC is delivering technical assistance to competition regulators in South-East Asia to build economic partnerships and support open and competitive markets.

Since 2014, and through 4 successive program phases, CLIP has delivered over 120 activities to more than 1,500 officials in South-East Asia. CLIP support has included regional training, developed and delivered by regulators to regulators; secondments to ACCC offices; study programs with Australian universities; and focused consultations, including for commissioners and heads of the region's competition agencies.

Between September 2020 and April 2022 the ACCC pivoted to online delivery of CLIP Phase IV activities, including virtual panel discussions, webcast recordings and remote expert assistance. Focus turned to expanding CLIP's catalogue of e-learning modules and developing and publishing new digital resources, as well as examining the challenges for regional competition agencies posed by the COVID-19 pandemic.

In December 2021 the ACCC launched a 12-month program of bilateral assistance to the Trade Competition Commission of Thailand (TCCT). This program has supported open discussions between the TCCT Chairman, Vice Chairman and senior ACCC staff while also offering virtual training to build technical competency and operational know-how among TCCT managers and staff. These activities both complement and extend the regional cooperation the ACCC has and continues to deliver through CLIP.

As the region's competition agencies take shape and new and revised competition laws are tested, CLIP remains a relevant and important program to support integration, growth and consumer welfare in South-East Asia.

- > The ACCC joined with its counterpart competition authorities in [Canada, New Zealand, the UK and the US](#) to form a working group to detect collusion and anti-competitive conduct in global supply chains (see above).
- > In October 2021 we hosted a [Competition Law and Economics workshop](#), ‘The Future of Competition Regulation’.
- > The [2022 Bannerman Competition Lecture](#) was delivered by Ms Lina Khan, Chair of the US Federal Trade Commission.
- > ACCC Chair, Gina Cass-Gottlieb, delivered a [keynote address highlighting the importance of global collaboration among competition regulators](#) at the International Chamber of Commerce/International Bar Association Pre-ICN Forum in Berlin in May 2022.

Key activity 1.2: Make decisions on authorisation, notification and certification trade mark applications in the public interest




About this key activity

Under the CCA the ACCC considers applications for authorisation and notifications, which provide businesses an exemption for arrangements that may otherwise breach the competition law but are not harmful to competition or are likely to result in overall public benefit.

These functions help competition law to work more effectively in the interests of the community and provide a degree of flexibility.

We also assess certification trade mark (CTM) applications to determine whether they may be to the detriment of consumers and competition.

Highlights

-  We continued our work in assessing COVID-19 pandemic-related authorisation applications.
-  In June 2021 the ACCC made a class exemption allowing eligible small businesses to collectively bargain without first having to apply for authorisation or lodge a notification. In 2021-22 we received 35 notices from groups seeking to engage in collective bargaining.
-  We decided not to authorise Qantas and Japan Airlines Co Ltd to jointly coordinate their operations between Australia / New Zealand and Japan because the agreement would likely lead to reduced competition as international travel resumes.

Performance measures

Table 3.6: Performance measures for key activity 1.2

| Performance measure | 2018-19 | 2019-20 | 2020-21 | 2021-22 | | Met? |
|--|---------|---------|---------|---------|--------|------|
| | Result | Result | Result | Target | Result | |
| Percentage of authorisation matters where a draft determination is released within 4 months [#] | - | - | 72% | 80% | 95% | ✓ |
| Percentage of authorisation applications assessed within statutory timeframe(s) (excluding time periods where information is outstanding)* | 100% | 100% | 100% | 100% | 100% | ✓ |
| Percentage of CTM final assessments completed within 12 months [#] | - | - | 60% | 80% | 64% | ○ |
| Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC is effective in making decisions on authorisation, notification and certification trademark applications in the public interest | - | - | - | 70+ | N/A | |

Not reported prior to 2020-21.

* The ACCC is required to assess the validity of an authorisation application within 5 business days of lodgement and to issue a final determination about a new authorisation application within 6 months (unless extended).

Analysis of results

The ACCC exceeded the target of releasing 80% of draft determinations within 4 months of lodgement, with a result of 93%. However, we only partially met the target of completing 80% of CTM applications within 12 months. This was primarily due to resources being directed to the sustained high levels of authorisation applications during this period. We assessed all authorisation applications within the statutory timeframe.

Outcomes achieved

In general, Australia's competition laws prevent collaborations between competitors. However, the ACCC has broad powers to provide exemptions to businesses, allowing them to collaborate in situations where the likely benefits to the public outweigh the likely detriments.

Significant **authorisation decisions** included:

- reauthorisation for manufacturers and importers of infant formula to make and give effect to a voluntary self-regulatory code of conduct which governs the marketing of infant formula for infants up to 12 months (MAIF Agreement). The MAIF Agreement was authorised until July 2024, after the ACCC accepted that it would continue to ensure important restrictions on the promotion of breastmilk substitutes
- a decision not to authorise Qantas and Japan Airlines Co Ltd to jointly coordinate their operations between Australia / New Zealand and Japan. The ACCC found that the agreement would likely lead to reduced competition as international travel resumes, to the detriment of passengers travelling between Australia and Japan
- authorisation with a condition for Honeysuckle Health and nib Health Funds to form and operate a health services buying group. The authorisation has been granted with a condition that major insurers Medibank, Bupa, HCF and HBF in Western Australia not be allowed to join the buying group. The ACCC has also only granted authorisation for 5 years, rather than the 10 years sought by Honeysuckle Health and nib, to facilitate a review of the effects of the authorisation at an earlier time, if reauthorisation is sought. As at 30 June 2021 this matter is before the Australian Competition Tribunal and the ACCC determination has not come into effect

- authorisation to Country Press Australia (CPA) to collectively negotiate on behalf of its members with each of Google and Facebook (now Meta) to negotiate about payments for where Google and Facebook use CPA members' news content on the platforms (see the case study below)
- 17 authorisations relating to the COVID-19 pandemic, including applications to manage hospital capacity; and adjustments to supply chains and market operations.

Due to disruptions and risks that resulted from the COVID-19 pandemic, there has been a significant surge in the number of applications for authorisation of competitor collaborations. Many businesses and government agencies acted with a united purpose in responding to the challenges of the COVID-19 pandemic. Some of this involved collaboration between competitors. Our role in authorising what would normally be anti-competitive conduct was important in helping particular industries meet the needs of the Australian public during the pandemic.

While the ACCC was willing to be flexible, we ensured that authorisations and exemptions were strictly limited in duration. The exemptions began to expire in 2021. Some parties decided not to seek reauthorisation as the economy started to transition out of various lockdowns. Although the pandemic continues to impact our economy and society, we expect reduced need for cooperation among competitors in response to COVID-related issues. However, the ACCC will continue to be ready to consider urgent exemption applications.

All notifications and applications for authorisation are published on the ACCC's authorisations and notifications registers. More information about the collective bargaining class exemption is available on the ACCC's [website](#).

Authorisation decisions which were before the Australian Competition Tribunal during the year are discussed in Part 4 on page 177.

▶ CASE STUDY

Authorisation of collective bargaining by Country Press Australia with Google and Meta

Country Press Australia (CPA) represents 81 news publishers who provide local and independent news to regional communities through at least 160 regional titles across Australia.

On 5 August 2021 the ACCC granted authorisation to CPA for 10 years to collectively negotiate on behalf of its members with each of Google and Facebook (now Meta) about payments for where Google and Facebook use CPA members' news content on the platforms. The authorisation also allows CPA and its members to discuss and exchange information with each other about those negotiations.

Since authorisation was granted, CPA has secured agreements with both Google and Meta on behalf of most of its members.

The ACCC considered that there would be likely benefits to the public in allowing CPA members to negotiate as a group rather than individually with each of Google and Meta – for example:

- reduced transaction costs
- CPA members, who are often small businesses, having better input into negotiations
- contribution to the sustainability of Australian regional news businesses.

The collective bargaining does not involve any collective boycott conduct and participation is voluntary for CPA members as well as Google and Meta.

CPA's authorisation is consistent with the News Media and Digital Platforms Mandatory Bargaining Code, which commenced on 2 March 2021. Under the code, registered news media businesses may bargain individually or collectively with designated digital platforms about payment for the inclusion of news on their services. Designated platforms can make deals outside of the code and can also make 'standard offers' available to news media businesses.

As at 30 June 2022, no digital platforms had been designated under the code. This means the collective bargaining exemption in the code has not yet come into effect. Therefore, without authorisation, CPA members would risk breaching competition laws if they were to engage in collective bargaining.

The voluntary agreements Google and Meta have entered into with Australian publishers, including with CPA members under this authorisation, demonstrate that the code and the potential for designation are encouraging good faith commercial negotiation.

-
- > During the year we assessed 58 authorisation applications, 7 notifications and 22 CTM applications.
-

Key activity 1.3: Undertake market studies and inquiries to contribute to improved market outcomes

About this key activity

Relevant ministers may direct the ACCC to undertake certain activities, including market studies, inquiries and monitoring. The ACCC can also undertake self-initiated market studies and research reports. These all enable the ACCC to:

- develop a sophisticated understanding of how well competition and markets are working in particular sectors
- bring transparency and awareness to issues that allow changed behaviour from businesses and consumers
- make recommendations to government about ways to improve the functioning of markets.

Priorities for 2021-22 included finalising the Digital Advertising Services Inquiry, progressing the 5-year Digital Platform Services Inquiry with 2 further biannual reports, and monitoring how the ACCC's recommendations from some previous markets studies and inquiries are being implemented.

The Electricity Market Monitoring Inquiry and the Gas Inquiry, which both run through to 2025, are covered in Part 3, strategic objective 6.

Highlights



The ACCC's final report for the Digital Advertising Services Inquiry found that a lack of competition and transparency in the digital advertising technology supply chain is impacting publishers, advertisers and consumers and needs to be addressed. The report provided multiple recommendations to assist with addressing these issues.



We released 2 reports for our Digital Platform Services Inquiry:

- Our September 2021 report examined the provision of web browsers and general search services to Australian consumers. We outlined issues stemming from the default arrangements of search services and pre-installation of web browsers; and set out potential measures to address these issues.
- Our March 2022 report focused on general competition and consumer issues in online retail marketplaces in Australia, and highlighted a range of concerns with how these marketplaces operate as well as setting out the benefits they provide to consumers and sellers.

Performance measures

Table 3.7: Performance measure for key activity 1.3

| Performance measure | 2021-22 | | Met? |
|--|---------|--------|------|
| | Target | Result | |
| Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC's market studies and inquiries are effective in contributing to improved market outcomes. | 70+ | N/A | |

Outcomes achieved

The ACCC undertakes market studies and inquiries covering a broad range of sectors as determined by ministerial direction or guided by our Compliance and Enforcement Policy priorities. Inquiry reports are available in full on our [website](#).

Digital platforms

Digital Advertising Services Inquiry

The ACCC published its [final report](#) in September 2021 for the Digital Advertising Services Inquiry. We found that a lack of competition and transparency in the digital advertising technology supply chain is impacting publishers, advertisers and consumers and needs to be addressed.

The report considered measures to address the issues identified throughout the inquiry. We recommended that:

- Google amend its public material to clearly describe how it uses ‘first-party’ data to provide advertising technology services
- the ACCC be granted powers to develop sector-specific rules to address conflicts of interest and competition issues in the advertising technology supply chain, including those caused by an advertising technology provider’s data advantage
- industry establish standards to require advertising technology providers to publish average fees and ‘take rates’ and establish full independent verification of demand-side platform services
- Google provide publishers with additional information about the operation and outcomes of its publisher ad server auctions
- the ACCC be granted powers to develop and enforce rules to improve transparency of the price and performance of advertising technology services, such as introducing common transaction IDs.

Digital Platform Services Inquiry

The Digital Platform Services Inquiry is a wide-ranging inquiry into markets for the supply of digital platform services, including search engine services, social media services, online private messaging services, digital content aggregation platform services, media referral services and electronic marketplace services. The inquiry is required to report to the Treasurer every 6 months until March 2025.

Our [September 2021 report](#) examined the provision of web browsers and general search services to Australian consumers. The report outlined issues stemming from the default arrangements of search services and pre-installation of web browsers; and set out potential measures to address these issues, including mandatory choice screens to present consumers with a selection of search engines.

Our [March 2022 report](#) focused on general competition and consumer issues in online retail marketplaces in Australia. The report highlighted a range of concerns with how these marketplaces operate as well as setting out the benefits they provide to consumers and sellers.

The inquiry will continue to consider issues arising in digital platform services. Our report in September 2022 will focus on whether a new regulatory framework is required to deal with these issues.

Digital Platforms Inquiry

Our market studies and inquiries findings and recommendations often lead to outcomes supporting our purpose of making markets work for consumers. For example, in 2021–22 a number of recommendations of our Digital Platforms Inquiry (completed in 2019) were further progressed to improve digital platform markets and benefit consumers:

- The ACCC's specialist Digital Platforms Branch completed its Digital Advertising Services Inquiry and continued its ongoing Digital Platform Services Inquiry.
- Following the introduction of the News Media and Digital Platforms Mandatory Bargaining Code in March 2021, Meta and Google struck deals with a significant number of small, medium and large businesses to pay for news content.
- The Australian Government has announced its intention to provide the Australian Communications and Media Authority (ACMA) with new regulatory powers to address harmful disinformation. This follows the release of the ACMA's report on the adequacy of digital platforms' disinformation and news quality measures. Digital platforms are working with the ACMA to develop the voluntary industry code of practice on disinformation and misinformation.
- The government continued its review of the *Privacy Act 1988* (Cth) to find out whether changes could be made to ensure privacy laws in Australia are fit for purpose. The Attorney-General's Department released a draft Privacy Legislation Amendment proposing that certain platforms be covered by a binding Online Privacy Code, that penalties for breaches of the Privacy Act be increased, and that the Office of the Australian Information Commissioner be provided with greater enforcement powers.
- The government introduced a Bill¹¹ to strengthen the existing protections against unfair contract terms in the Australian Consumer Law. This is discussed in more detail in key activity 4.1.

Financial services

We continued to take an advocacy role in relation to significant financial services issues, including in relation to cryptocurrency and debanking issues. Along with members of the Council of Financial Regulators and other relevant agencies, the ACCC was a member of a working group into the Regulation of the Crypto Ecosystem that provided input to government on cryptocurrency and digital currency issues, and a member of the working group that examined debanking issues in the fintech, crypto-asset and remittance sectors, and the government's request for advice on the underlying causes and policy responses.

We also continued work following from our 2019 Foreign Currency Conversion Services Inquiry. The ACCC monitored the take-up of the best practice guidance for money remitters from that 2019 final report and conducted work to assess the effect of that guidance.

Wine grapes market study

In December 2021 the ACCC released the [Wine grapes market study: follow-up report](#), which gives an update on the wine grapes sector's progress in implementing the ACCC's recommendations from our September 2019 [Wine grape market study: final report](#).

The 2019 report identified various issues in the wine grape supply chain, including a lack of competition, potential unfair contract terms, a lack of price transparency, and imbalanced risk allocation in favour of winemakers at the expense of grape growers.

Our 2021 update report found that the sector has achieved some important progress. However, the ACCC will consider recommending or taking further regulatory action if there are no discernible improvements in price transparency and length of payment terms. The ACCC found that, despite the ACCC's original recommendation for a best-practice standard of payment within 30 to 60 days of grape delivery, many winemakers have not significantly reduced the length of

¹¹ Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022.

their payment terms. Further, the ACCC found that growers still have challenges getting access to timely and accurate price information.

However, there had been a large increase in the number of signatories to the voluntary Code of Conduct for Australian Winegrape Purchases. Signatories are also committing to adopt a standard grape quality assessment process, which, when adopted, will represent a significant improvement in industry practices.

Murray-Darling Basin Water Markets Inquiry

As noted in the *ACCC and AER annual report 2020–21*, the ACCC’s Murray-Darling Basin Water Markets Inquiry [final report](#) was published in March 2021. It made recommendations on enhancing markets for tradeable water rights, including their operation, transparency, regulation, competitiveness and efficiency. The government then announced it would establish an expert panel to support the development of a water market implementation roadmap. The government appointed an independent principal advisor, supported by a group of 8 technical experts, water market users and stakeholder representatives, to lead this work. The reform work continues within the new Department of Climate Change, Energy, the Environment and Water, and a reform roadmap is being developed by Principal Advisor Daryl Quinlivan.

Other work relating to water in the Murray-Darling Basin

The ACCC has continued to deliver its monitoring responsibilities under the *Water Act 2007*. In December 2021 we published the 11th annual [Water monitoring report 2019–2020](#). It noted that irrigators in the Murray-Darling Basin faced a challenging year in 2019–20 due to water scarcity and low allocations following persistent drought up until late 2019. The report also noted:

- even with the tight supply conditions, total allocation trade volumes increased by 16%, from 4.4GL to 5.1GL – the largest volume over the past 7 years
- applications by irrigators to transform their irrigation rights into a water access entitlement had increased since the previous financial year, which provides greater opportunities for irrigators to participate in both entitlement and allocation markets outside their irrigation network
- modest increases in most typical bills for both on-river networks and irrigation infrastructure operators, in line with expected movements
- a decrease in complaints and enquiries regarding the Water Market Rules 2009 and Water Charge Rules 2010. This may partly be because some stakeholder concerns are being considered by the ACCC’s Murray Darling Board water markets inquiry.

Other studies and research

We also undertake other studies and research on matters that affect the interests of consumers. The [Private health insurance report 2020–21](#) was released on 9 December 2021. This short update report on key developments found that over the period:

- there was an increase in private health insurance participation rates for the first time since 2015
- insurers increased their net profit by 93.7% compared with the previous financial year (from ~\$720 million to ~\$1.48 billion).

We will continue to monitor the actions of insurers to return all profits made due to government-imposed COVID-19 restrictions on elective surgeries to policyholders as they promised, and this will be a focus for the next private health insurance report.

Market studies and inquiries practice management

Market studies and Part VIIA price inquiries advance the ACCC’s purpose of ‘making markets work for consumers, now and in the future’, by exploring issues and proposing actions to address immediate harm as well as improving outcomes into the future. These activities provide a holistic and nuanced assessment of market factors and sector conditions, enhancing outcomes across the breadth of the ACCC’s roles and functions.

In 2021 the ACCC established a market studies and inquiries practice management function to:

- provide a source of expertise regarding establishment, operation and best practice in market studies and price inquiries
- drive best-practice approaches to market studies and price inquiries across the ACCC
- identify and determine priority areas for inquiry and engagement with government and stakeholders in relation to this work
- engage with international work relating to market studies, including through the ICN and OECD
- coordinate reporting on the agency's market studies and inquiries.

-
- > Our [September 2021 interim report](#) on choice screens for web browsers and search services found that Google continues to be the dominant search engine in Australia, with a market share of 94%.
 - > Our [March 2022 report](#) on online retail marketplaces found that the steady growth of the 4 major online retail marketplaces has been accelerated by the COVID-19 pandemic. Of a total of \$50.5 billion spent by Australians online in 2020 (a 57% increase year on year), eBay Australia reported \$6.5 billion of gross sales, Amazon \$2.6 billion, Kogan \$1.1 billion and Catch \$610 million.
-

Strategic objective 2: Prevent anti-competitive mergers

About this strategic objective

The ACCC enforces laws in Part IV of the CCA that prohibit mergers and acquisitions that are likely to substantially lessen competition. The key activity we undertake to achieve this strategic objective is:

- to assess mergers to prevent changes in market structures that substantially lessen competition.

Our priorities

To prevent permanent structural changes that are likely to substantially lessen competition, the ACCC has continued to assess and review mergers through both the informal clearance process and merger authorisation process. Acquisition activity in 2021–22 started to increase as economies rebounded, so the number of mergers that the ACCC considered was higher than the average number in recent years and will probably remain high as we move into 2022–23. The ACCC carefully scrutinises contentious acquisitions of assets or businesses to ensure they will not result in a likely substantial lessening of competition. At the same time, we make decisions on non-contentious proposals expeditiously so legitimate business activity is not unduly delayed.

Key activity 2.1: Assess mergers to prevent structural changes that substantially lessen competition

About this key activity





This key activity is about preventing mergers and acquisitions which would breach section 50 of the CCA. Section 50 prohibits mergers and acquisitions that substantially lessen competition in any market in Australia or are likely to do so.

Mergers are usually brought to our attention by merger parties that request informal clearance. Alternatively, we may become aware of a merger proposal through the media, from complaints or by referral from other regulatory bodies. The CCA does not set out a process for the informal clearance regime; it has developed over time so that merger parties can seek the ACCC's view before they complete a merger.

As part of our role in reviewing mergers and acquisitions, we have the power to bring court proceedings where we consider that an acquisition would breach section 50. We are also able to accept court enforceable undertakings offered by merger parties to address or 'remedy' competition concerns.

Separate to the informal clearance regime, merger parties may apply for authorisation of a proposed merger for statutory protection from legal action under section 50. The ACCC may grant merger authorisation if it is satisfied that the proposed merger would not be likely to substantially lessen competition or, alternatively, that the likely public benefit from the proposed merger outweighs the likely public detriment.

Highlights

-  We considered 463 mergers. Of these, 26 mergers were subject to a public review and 437 were assessed as not requiring a public review.
-  We opposed one merger outright ([Virtus Health Limited – Adora Fertility and 3 day-hospitals from Healius Limited](#) – see the case study below).
-  We accepted court enforceable undertakings in relation to 2 mergers to address competition concerns, resulting in these mergers being cleared.
-  Two (2) reviews were discontinued because the parties did not continue with the transaction after we released a statement of issues identifying competition issues ([Aon’s proposed merger with Willis Towers Watson](#); and [Cargotec Corporation’s proposed acquisition of Konecranes Plc](#)).

Performance measures

Table 3.8: Performance measures for key activity 2.1

| Performance measure | 2018-19 | 2019-20 | 2020-21 | 2021-22 | | Met? |
|--|---------|---------|---------|---------|--------|------|
| | Result | Result | Result | Target | Result | |
| Percentage of merger matters considered (under the informal merger review process) that were finalised by pre-assessment | 92% | 89% | 95% | 80% | 94% | ✓ |
| Percentage of merger matters subject to Phase 1 only of public review that were finalised within 12 weeks (excluding time periods where information is outstanding) [#] | 41% | 67% | 67% | 80% | 84% | ✓ |
| Percentage of merger matters subject to Phase 2 [*] of public review that were finalised within 24 weeks (excluding time periods where information is outstanding) [^] | 88% | 40% | 50% | 80% | 75% | ○ |
| Effectiveness survey ‘index score’ (out of 100) that key stakeholders agree the ACCC’s assessment of mergers is effective in preventing changes in market structures that substantially lessen competition | - | - | - | 70+ | N/A | |

Prior to 2020-21 the criterion for this measure was 8 weeks.

* Phase 2 involves release of a statement of issues and/or acceptance of a court enforceable undertaking to remedy competition concerns.

^ Prior to 2020-21 the criterion for this measure was 20 weeks.

Analysis of results

We aim to consider non-contentious mergers expeditiously, with a target to preassess at least 80% of transactions. We determined that 94% of transactions did not require a detailed public review because of the low risk that competition concerns would be raised. The vast majority of these assessments were completed within 4 weeks, excluding time taken for merger parties to respond to information requests.

The remaining 6% of mergers that underwent a public review were the more complex and potentially contentious matters. The ACCC completed 84% of Phase 1 reviews within 12 weeks, exceeding our target of 80%. However, we completed 75% of Phase 2 public merger investigations within 24 weeks, slightly less than our target of 80%.

While the ACCC aims to complete merger reviews as quickly as possible, the focus is on achieving the right decision. The public expects the ACCC to scrutinise closely mergers involving concentrated markets and complex transactions. The ACCC has signalled that it will use its compulsory information gathering powers increasingly in merger investigations where concerns warrant increased evidence gathering. We exercised these powers in 13 merger assessments this year.

Outcomes achieved

The informal clearance process allows merger parties to seek the ACCC's views on a merger before they proceed with it. By ascertaining our views beforehand, they can manage the risk of regulatory intervention at a later time. In 2021-22 we assessed 463 mergers that were notified to the ACCC under the informal clearance regime or that were referred to the ACCC by other regulatory agencies or identified through monitoring and intelligence gathering.

Significant public merger reviews in 2021-22 included:

- Virtus Health Limited's proposed acquisition of Adora Fertility and 3 day-hospitals from Healius Limited (see the case study below).
- [JBS Australia Pty Limited's proposed acquisition of Rivalea Holdings Pty Ltd and Oxdale Dairy Enterprise Pty Ltd](#), which we did not oppose after we released a Statement of Issues. The ACCC found that the proposed acquisition would be unlikely to substantially lessen competition in pork production and processing markets.
- [Veolia Environment SA's proposed acquisition of Suez SA](#), which we cleared subject to a condition to divest specified assets. With these divestitures, and [the sale of certain assets to Cleanaway](#), the ACCC considered that the proposed acquisition was not likely to substantially lessen competition.
- Culligan Group's proposed acquisition of Waterlogic, subject to the ACCC accepting a court enforceable undertaking from Osmosis¹² to divest certain assets. The ACCC considered that a divestiture as set out in the undertaking would address competition concerns with the proposed acquisition, as it will ensure that there will be at least 2 key competitors for the supply of multi-functional taps.

All publicly reviewed merger decisions for 2021-22 are published on the ACCC's [mergers public registers](#).

The ACCC also investigates certain mergers and acquisitions that have been completed without informal clearance. In 2021-22 we commenced the investigation of 14 completed acquisitions to assess whether these transactions may have breached the CCA.

12 Culligan is controlled by Osmosis Buyer Limited.

▶ CASE STUDY

Virtus Health Limited – proposed acquisition of Adora Fertility and 3 day-hospitals from Healius Limited

On 25 October 2021 the Federal Court of Australia granted the ACCC an interlocutory injunction to restrain Virtus Health (Virtus) from completing its acquisition of Adora Fertility (Adora) from Healius Limited until proceedings brought by the ACCC were finalised or the court made other orders.

Virtus originally informed the ACCC of its intention to acquire Adora on 30 August 2021 and provided very limited information. On 21 September, after we notified Virtus that we had concluded that it was not possible to grant early merger clearance, the ACCC commenced a public review of the transaction. On 8 October the merger parties advised the ACCC they proposed to complete the transaction by 15 October 2021, even though the ACCC's review would not have completed.

Virtus and Adora are leading providers of IVF services. Both companies operate fertility clinics in Brisbane, Sydney and Melbourne. The ACCC was concerned the acquisition would increase Virtus' already significant market share in Brisbane and Melbourne. In addition to the apparent increase in market concentration, there were strong indications that Adora had been a vigorous competitor, driving down prices for IVF services through a low-cost model.

In granting the interlocutory injunction, the Federal Court found the ACCC had shown a prima facie case that the acquisition of Adora would be likely to have the effect of substantially lessening competition in contravention of section 50 of the CCA. The interlocutory injunction restrained the parties from completing the acquisition until the proceedings were finalised or the court made other orders (such as to discontinue the proceedings, as ultimately occurred).

On 17 December 2021 Virtus announced it had decided not to proceed with the acquisition.

This outcome sends an important message to potential merger parties in Australia that the ACCC will take appropriate action to prevent completion of a transaction if it is concerned that the transaction is likely to substantially lessen competition.

-
- > We cleared 437 mergers via the preassessment process, taking an average of 13 business days.
 - > We released 8 statements of issues.
 - > We accepted 2 court enforceable undertakings to address competition concerns.
-

Strategic objective 3: Improve competition and choice by facilitating safe and secure data sharing by consumers through the Consumer Data Right

About this strategic objective

The Consumer Data Right (CDR) provisions of Part IVD of the CCA, together with the CDR Rules and Consumer Data Standards (CDR Standards), aim 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 key activities we undertake to achieve this strategic objective are:

- facilitate the enabling technology solutions for CDR
- support CDR participants, including through assistance with testing and on-boarding
- accredit CDR data recipients
- promote compliance with and enforce CDR, rules and standards.

Our priorities

In line with the priorities in our 2021–22 Corporate Plan, the ACCC continued to support the operation of CDR in the banking sector for an increased number of participants and prepared for expansion of CDR to other sectors of the Australian economy, including energy and telecommunications. We also continued to promote compliance with the CDR legislation, rules and standards to ensure that the benefits of CDR flow to consumers.

During 2021–22, we planned, designed, built, tested and deployed further changes to our Register and Accreditation Application Platform (RAAP). These changes will support the implementation of new CDR Rules, including the commencement of CDR in energy. We continued to manage and support our technology solutions, including ensuring that the Register of Accredited Persons (the Register) was maintained and accessible and incidents were responded to and resolved within agreed timeframes.

We continued to work closely with Treasury and the Data Standards Body on future legislative, policy and CDR Standards requirements.

We made enhancements to further streamline the process for on-boarding on to the Register, which prepares new participants to start sharing data. We also released new and enhanced tools to support participants to test their own technology solutions.

Protecting the integrity of the CDR technology solutions from cybersecurity threats is an important priority, and we continued to strengthen our cybersecurity controls.

Continuing to support designated data holders with guidance about their obligations was also a priority for 2021–22.

Consumers access CDR through solutions offered to them by accredited data recipients. We have encouraged greater participation in the CDR program by prospective data recipients by providing information to them about the accreditation process and the newly introduced CDR access models. We also continued to undertake robust assessment of prospective accredited persons to ensure they are capable of meeting requirements for protecting consumer data.

Actively monitoring compliance by participants and undertaking enforcement activities where appropriate was also a priority.

Key activity 3.1: Facilitate the enabling technology solutions for Consumer Data Right

About this key activity

The ACCC has responsibility to plan, design, build, test, run and ensure the security of the Register and Accreditation Application Platform (RAAP). The RAAP functions as the Register of Accredited Persons (the Register), providing a record of accredited persons as required by the CCA, and includes an associated database of data holders. The RAAP technical infrastructure helps facilitate the processing of consumer data requests made by accredited persons to data holders. The RAAP also provides the gateway for applying for accreditation.

We also provide a Conformance Test Suite that allows data holders and accredited data recipients to test the technical conformance of specific areas of participants' production-ready software with regulatory requirements. This kind of testing helps protect the Register and the integrity of the CDR ecosystem. As CDR grows and evolves, the ACCC will continue to support and maintain the RAAP and introduce enhancements to facilitate the implementation of new CDR sectors and rules.

Highlights



All CDR enabling technology solutions were available when required.



We improved the RAAP user experience for data holders and accredited data recipients.



We made the Conformance Test Suite more flexible to allow for a variety of data recipient use cases.



Our in-house technical capability was transitioned from 'fully outsourced' to 'in-house'.

Performance measures

Table 3.9: Performance measures for key activity 3.1

| Performance measure | 2021-22 | | Met? |
|--|--|--|------|
| | Target | Result | |
| Fit-for-purpose technology solutions are available when required by the legislation and CDR Rules and Standards | The requirement for new technology solutions and the dates by which those are required will be driven by the CDR Rules made by the Minister and by the Data Standards made by the Chair of the DSB | Achieved for all (see Analysis of results below) | ✓ |
| Percentage availability of the Register of Accredited Persons (live or cached version) | 99.9% | 99.99% | ✓ |
| Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC effectively facilitates the enabling technology solutions for the Consumer Data Right | 70+ | N/A | |

Analysis of results

The ACCC facilitates the enabling technology solutions for CDR, including the RAAP and a range of testing tools. New technology solutions and the dates by which these are implemented are driven by the CCA, CDR Rules made by the Minister, and CDR Standards made by the Chair of the Data Standards Body.

As set out in our 2021-22 Corporate Plan, as of 1 July 2021 the CDR Rules and CDR Standards required technology solutions to be available for:

- Phase 1 consumer data sharing by non-major banks¹³ – 1 July 2021
- Phase 3 product reference data sharing by non-major banks – 1 July 2021
- Phase 2 consumer data sharing by non-major banks – 1 November 2021
- consumer data sharing for non-individuals, partnerships, nominated representatives and secondary users by major banks in relation to their primary brands – 1 November 2021
- Phase 3 consumer data sharing by non-major banks – 1 February 2022.

On 1 October 2021 new rules were made providing new pathways for participation in CDR. These rule changes took effect on or before 1 February 2022 and also involved updates to our enabling technology solutions.

We implemented all of the solutions on or ahead of the required times. We also ensured that a live or cached version of the Register was available 99.99% of the time to assist participants to authenticate each other and determine entitlement to share data in real time, thus helping to facilitate the secure sharing of data.

Outcomes achieved

In 2021-22 we made changes to the RAAP to support new rules that introduced alternative pathways to participate in CDR. These included:

- a CDR representative accreditation model that commenced in October 2021
- a sponsored accreditation model that came into effect on 1 February 2022.

¹³ CDR legislation and Rules refer to Authorised Deposit-Taking Institutions but for ease of reference here they will be referred to as banks. Major banks are: Australia and New Zealand Banking Group Limited; Commonwealth Bank of Australia; National Australia Bank Limited; and Westpac Banking Corporation. Non-major banks are all other banks apart from: foreign banks; foreign bank branches of a domestic bank; or restricted banks.

Enhancements to the RAAP were made to facilitate alternative paths to participation in CDR and to improve the user experience for data holders and accredited data recipients – for example, we increased levels of participant self-service and provided more flexible options for participants to meet their regulatory reporting obligations. We also made preparations to enhance the RAAP to support the introduction of CDR for energy.

The Conformance Test Suite was enhanced to be more flexible to support the diversity of data recipients' use cases, which may include different combinations of CDR functionality, and we launched a range of other testing tools for participants.

Technology delivery is an important part of the ACCC's role in CDR. In March 2022 we completed the transition from outsourced to fully 'in-house' technology delivery for CDR. This improved our in-house capability to meet the ACCC's CDR accountabilities.

Between 1 July 2021 and 30 June 2022 we:

- monitored 591 CDR external incidents within the CDR ecosystem¹⁴
- resolved 143 CDR internal RAAP incidents logged by participants about issues with the RAAP or Register
- resolved 185 Conformance Test Suite incidents raised by participants about issues in the conformance test environment
- implemented 661 separate changes to the CDR ICT environment
- completed 1001 service requests from users for information, advice, standard changes or access to a service¹⁵
- managed 21 problems where there were multiple incidents that related to the same issue.

-
- > As at 30 June 2022, consumer data sharing is available for the full range of consumer banking products, including savings accounts, credit card accounts and home loans. Joint accounts and non-individual (business) account sharing are also available for customers of the major banks, with non-majors soon to follow.
 - > CDR is expected to be expanded in future to include action and payment initiation. This is a significant reform that will enable consumers to allow accredited third parties to apply for and manage products on their behalf. It will include the making of payments.
-

Key activity 3.2: Support CDR participants, including through assistance with testing and on-boarding

About this key activity

The ACCC provides a variety of support for accredited persons and data holders (participants). For example, we assist participants to apply for accreditation as data recipients and to register for inclusion on the data holder database.

If accredited or after registering as a data holder, participants complete an on-boarding process to enable their activation on the Register.

We provide significant support to participants for testing and on-boarding and have launched new software tools to help participants. These include a 'mock' register, and data holder and data recipient tools to allow participants to test their CDR solutions in non-production environments.

¹⁴ External incidents are technical incidents which impact the exchange of data between participants. These incidents relate to systems that are managed by participants and are raised by participants where the resolving party is another data holder or data recipient. The ACCC monitors external incidents to gain insight into ecosystem activity.



¹⁵ This includes access requests and general inquiries and requests for information received through the CDR Service Management Portal.

We have also developed an open-source CDR testing sandbox, which was released in July 2022. This new tool allows data holders and accredited data recipients to test their solutions in complex scenarios and with third parties, accelerating participant readiness and enabling better quality CDR solutions.

We also manage the CDR website in close consultation with Treasury.¹⁶ This website provides a range of useful information for consumers and participants.

We provide additional support to participants through a variety of other channels, such as the Treasury CDR newsletter, the CDR Support Portal and a CDR Service Management Portal for active participants.

Highlights

-  The number of active data holders in the banking sector increased from 16 to 76 (with 114 brands representing an estimated combined market share of 99.18% of Australian household deposits).¹⁷
-  The number of active accredited data recipients increased from 6 to 20.
-  New mock tools were created to help participants develop and test their CDR solutions.
-  Targeted support was provided for prospective participants for energy, the next CDR sector.

Performance measures

Table 3.10: Performance measures for key activity 3.2

| Performance measure | 2021-22 | | Met? |
|--|--|---|------|
| | Target | Result | |
| Number of designated data holders and accredited data recipients onboarded to the Register of Accredited Persons during the year | No target for 2021-22 (The number is primarily driven by demand) | 63 designated data holders 14 accredited data recipients | ● |
| Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC effectively accredits CDR data recipients | 70+ | N/A | |

Analysis of results

We offer participants guidance about their CDR obligations and support for testing and on-boarding. The number of active data holders and active accredited data recipients is therefore a proxy measure for how effective the ACCC is in supporting participants.

No target was set for this measure because the result is primarily externally driven. Data holders are designated by sector by the Australian Government and their obligations commence in line with CDR Rules requirements. Data recipients participate voluntarily in CDR and must only comply with obligations once they become accredited.

¹⁶ Treasury owns the website and has overall responsibility for education and engagement with consumers.

¹⁷ We estimate market share based on share of Australian household Deposit-Taking, as published by the Australian Prudential Regulation Authority (APRA) for each Authorised Deposit Taking Institution (ADI).

The rollout of CDR to the banking sector was phased in over 18 months and concluded in February 2022, when Phase 3 consumer data sharing obligations commenced for non-major banks. As a result access to sharing consumer data dramatically increased through the year, with obligations for all non-major banks starting on 1 July 2021.¹⁸

During the year the number of active data holders in the banking sector increased from 16 to 76¹⁹ with 114 brands²⁰ (76 designated data holders and an additional 38 brands), representing an estimated combined market share of 99.18% of Australian household deposits. The number of active accredited data recipients increased from 6 to 20.

These numbers will continue to grow each year. As CDR is implemented in other sectors, more data holders will join the ecosystem, more data recipients will be accredited and become active, and consumers will have even more opportunities to safely and securely share their data to access new and innovative products and services.

Outcomes achieved

In 2021–22 the ACCC offered a range of new and updated tools and guidance to assist participants, including:

- new free and open-source Mock Data Holder and Mock Data Recipient tools. Along with the Mock Register launched the previous year, these new tools give prospective participants working examples to help them explore and understand the CDR regime and test their CDR solutions
- guidance for accredited data recipients on the CDR representative model, one of the new pathways to participation introduced in October 2021
- guidance for data holders on joint account obligations which came into effect for major banks on 1 July 2022 and will come into effect for non-major banks on 1 October 2022
- guidance for data holders on the treatment of non-individuals and partnerships, and secondary users, in the banking sector. These obligations have applied since 1 November 2021 for major banks and will commence from 1 November 2022 for non-major banks
- updated compliance guide for data holders in the banking sector to reflect amendments to the CDR Rules and CDR Standards.

Ahead of the commencement of consumer data sharing for energy in November 2022,²¹ we also provided targeted support to prospective energy participants by:

- publishing regulatory guidance to explain the amended rules – for example, a compliance guide for energy data holders
- providing tools for participants, including updating our ‘mock’ solutions for the energy sector
- providing support for data recipient accreditation, data holder registration and assistance to complete the participant on-boarding process
- offering access to the CDR Service Management Portal for technical queries and issue resolution
- publishing guidance for participants.

18 Live sharing of consumer data held by the 4 major banks for deposit and transaction accounts and credit and debit cards began on 1 July 2020.

19 Two (2) designated data holders, 86400 Ltd and South West Credit Union Co-operative Limited were onboarded during 2021–22 and then became brands of other designated data holders before the end of that year due to mergers with other authorised deposit-taking institutions. Another designated data holder, Citigroup Pty Ltd, requested APRA to revoke its authority to carry on a banking business under the *Banking Act 1959* which request was granted effective 30 June 2022.

20 One data holder brand, Jetstar was decommissioned by the designated data holder (Macquarie Bank Limited) during 2021–22.

21 Product reference data sharing obligations commence on 1 October 2022 and initial consumer data sharing obligations for the 3 largest energy retailers (AGL, Origin and Energy Australia) start on 15 November 2022. Consumer data sharing obligations for all other energy retailers subject to CDR will commence on 1 November 2023.

- > The ACCC’s free and open-source mock tools have been downloaded thousands of times since they were launched:

| Tool | Downloads as at 30 June 2022 |
|----------------------------|------------------------------|
| Mock Register | 5,392 |
| Mock Data Holder (Banking) | 123,834 |
| Mock Data Holder (Energy) | 264 |
| Mock Data Recipient | 20,573 |

- > In response to participant feedback, we developed CDR user journeys to support data holders and data recipients to become part of CDR. These self-service resources step participants through the journey from applying for accreditation or registering as a data holder, to becoming activated in the CDR ecosystem. They are available on the [CDR website](#).

Key activity 3.3: Accredited Consumer Data Right data recipients

About this key activity

The ACCC is the designated CDR Data Recipient Accreditor under the CCA. To ensure that data sharing is safe and secure, any person in Australia or overseas who wishes to receive CDR data directly from data holders must be accredited (either unrestricted or sponsored). An unrestricted accredited person may also pass certain information to a CDR representative as part of a CDR representative arrangement. Accredited data recipients are subject to continuing obligations.




Consumers and participants need to have confidence in the integrity of CDR. Therefore, it is vital to ensure that the accreditation regime is rigorous to ensure that applicants meet the CDR Rules requirements.

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 consumer data; to be a fit and proper person to manage CDR data; to have internal and external 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: Information required under the CCA.

Highlights

-  The number of accredited data recipients increased from 12 to 32.
-  A new level of sponsored accreditation was implemented.
-  A new representative model was also implemented to enable persons to participate in CDR without accreditation, subject to certain requirements being satisfied, with 27 representatives notified to the ACCC by 30 June 2022.

Performance measures

Table 3.11: Performance measures for key activity 3.3

| Performance measure | 2021-22 | | Met? |
|--|---|--------|--------------------------------------|
| | Target | Result | |
| Number of data recipients accredited (as at end of financial year) | No target for 2021-22 (The number of accreditation applications is driven by demand) | 32 | ● |
| Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC effectively accredits CDR data recipients | 70+ | N/A | |

Analysis of results

The ACCC offers extensive support and guidance to assist data recipients to participate in CDR. It also conducts detailed assessments of businesses applying to become accredited data recipients. The number of accredited data recipients is therefore a measure of the ACCC's progress in implementing CDR.

No target was set for this measure because the result is to some extent externally driven. Data recipients participate voluntarily in CDR and must only comply with obligations once they become accredited.

Take-up by accredited data recipients is escalating. During the year:

- the number of accredited data recipients more than doubled, increasing from 12 to 32
- the number of active accredited recipients more than tripled, increasing from 6 to 20
- representative arrangements were introduced, with 27 representatives notified to the ACCC by 30 June 2022.

Preparations are underway for the implementation of CDR in the energy and telecommunications sectors. As CDR is implemented across new sectors, more data recipients will become accredited, and consumers will increasingly benefit from the diverse range of products and services available.

Outcomes achieved

In October 2021 the CDR Rules were changed to allow new pathways to participate in CDR.²² These changes included a new sponsored level of accreditation and a CDR representative model. Following amendments to the CCA, the CDR Rules were also updated to permit an accredited data recipient to enter an arrangement with an outsourced service provider to collect CDR data on its behalf, without requiring that provider to be accredited in its own right.

The ACCC's *Accreditation guidelines* for applicants wishing to become CDR data recipients were updated to reflect these new rules. The new guidelines set out the information to be provided as part of an accreditation application and when sponsorship and representative arrangements are made.

In 2021–22 the ACCC accredited 20 persons, all at the unrestricted level. The ACCC was notified of 27 CDR representative arrangements.

► CASE STUDY

Way Forward streamlines its assistance by becoming a CDR representative

Way Forward is an Australian not-for-profit organisation helping people to manage their debt. It has recently begun to participate in CDR by becoming a CDR representative of an accredited data recipient, enabling it to more efficiently assist its clients to become debt free.

Way Forward offers long-term advice and management services to help people get out of problem debt. It is supported by a range of banks, community organisations and financial counsellors.

As part of its free service, Way Forward evaluates clients' circumstance and financial situation, negotiates with creditors on their behalf and then puts together manageable repayment plans and budgets.

With a consumer's consent, Way Forward can now use CDR to collect data about that consumer's financial situation more quickly than by traditional means. This will assist Way Forward to provide faster relief for vulnerable consumers who are experiencing significant financial distress.

-
- > The accreditation criteria for the 2 levels of accreditation (unrestricted and sponsored) are the same. However, an applicant for the sponsored level of accreditation, who must be sponsored by an unrestricted accredited person, will be able to self-assess and attest to the information security requirements, rather than provide an independent third-party assurance report. There is no fee to apply for accreditation.
 - > Current use cases of accredited data recipients include loan affordability assessment, personal finance management, document management, insurance assessments and intermediary services.
 - > The CDR representative model provides a further pathway for entities to participate in the CDR ecosystem, and offer innovative services to consumers using CDR data, without requiring their own accreditation. The CDR representative operates as an 'agent' of an unrestricted accredited person. The model is proving popular and is introducing innovative new use cases to the ecosystem.
-

²² Competition and Consumer (Consumer Data Right) Amendment Rules (No. 1) 2021.

Key activity 3.4: Promote compliance with and enforce the Consumer Data Right rules and standards

About this key activity

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 CDR Standards. This includes responsibility for taking strategic enforcement action to address conduct causing systemic detriment to the CDR program; and enforcing accredited data recipients' compliance with their continuing obligations. The OAIC has responsibility for privacy aspects of CDR.

The ACCC has a range of enforcement options available. For example, we can reach administrative resolutions, issue infringement notices, accept court enforceable undertakings, suspend or revoke accreditations and initiate court proceedings.

Section 56GD of the CCA also gives the ACCC a broad discretionary power to exempt a person from provisions of the CDR regime. The ACCC can use this power to ensure that the CDR system does not operate in unintended or perverse ways and that it works in the best way possible for consumers and designated sectors.

Highlights



There was a significant improvement in compliance with CDR obligations over the last year. As at 30 June 2022, the number of data holders not sharing consumer data without an exemption had decreased from 51 to 2, and active data holders represented an estimated combined market share of 99.18% of Australian households.



There has been a significant increase in active data holder reporting of performance information from only 35% in November 2021 to 100% by 30 June 2022.



Extensive engagement with participants has encouraged compliance, resulting in the implementation of 214 administrative resolutions to address noncompliant conduct.



One infringement notice was issued for noncompliance with the CDR Rules.²³

²³ Infringement notice was issued in June 2022 and paid in July 2022.

Performance measures

Table 3.12: Performance measures for key activity 3.4

| Performance measure | 2021-22 | | Met? |
|---|------------------------------------|---|------|
| | Target | Result | |
| Number of CDR rules and standards investigations completed | No target for 2021-22 [#] | 5 initial investigations | ● |
| Number of CDR compliance and enforcement interventions (non-enforcement compliance initiatives, court proceedings commenced, section 87B undertakings accepted, administrative resolutions) | No target for 2021-22 [*] | 214 administrative resolutions 1 infringement notice | ● |
| Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC effectively promotes compliance with and enforces the Consumer Data Right rules and standards | 70+ | N/A | |

[#] The number of investigations is driven by the degree of compliance by designated data holders and accredited data recipients.

^{*} The number of interventions is driven by the degree of compliance by designated data holders and accredited data recipients.

Analysis of results

Enforcement of CDR regulatory obligations is jointly conducted by the ACCC and the OAIC. The ACCC is responsible for enforcing compliance with Part IVD of the CCA and the CDR Rules and CDR Standards. The objective of our compliance and enforcement approach is to ensure that consumers can trust the security and integrity of the CDR regime.

No targets were set for these indicators because the number of investigations and interventions is primarily driven by the degree of compliance by participants.

Banking was the first sector subject to CDR, with obligations for major banks commencing on 1 July 2020 and for non-major banks on 1 July 2021.

We conducted 5 initial investigations in 2021-22. Two (2) of these concerned the failure to provide a consumer data sharing service, and they progressed to in-depth investigations. We issued one infringement notice related to one of these investigations. The other 3 investigations concluded with administrative resolutions implemented to address the identified conduct.

We also entered into 214 administrative resolutions with data holders to address identified noncompliance with the CDR Rules, including the provision of inadequate product reference data; failure to provide an accredited person request service; failure to make all eligible products available for data requests; and failure to implement all elements of the accredited person request service.

Outcomes achieved

When CDR launched on 1 July 2020, we recognised that it was a new framework that would likely require a period of transition while data holders introduced a range of complex technical processes and systems, especially in light of challenges during the COVID-19 pandemic. With CDR now in an operational phase, the ACCC has placed a greater emphasis on compliance and enforcement activities.

Regular compliance and enforcement activities help improve and maintain data holder compliance, clarify regulatory obligations and boundaries for accredited data recipients and promote trust in the CDR regime. We continue to ensure that our regulatory actions remain proportionate to the seriousness of breaches and the level of potential harm.

In the first part of 2021–22 we focused on reviewing data holders' compliance with their consumer and product data sharing obligations. We found a high level of compliance by data holders, with some minor remedial issues that noncompliant data holders have agreed to address.

Compliance with consumer data sharing obligations

In 2021–22 to significantly improve compliance, we worked with data holders who were not meeting their consumer data sharing obligations.

We actively pursued data holder rectification of all these issues. To provide ongoing transparency for accredited data recipients and consumers, we published the names of the data holders in rectification schedules on the ACCC and CDR websites. We have taken further steps where issues have had a larger impact, including requiring more detailed remediation plans, and prompting data holders to publish further information about their noncompliance on their websites.

As at 30 June 2022:

- 2 data holders were not yet active on the Register (and did not have exemptions in place). We are actively monitoring these data holders and reviewing monthly progress updates
- 32 data holders were active but had self-reported potential implementation gaps in their consumer data sharing systems – down from 58 active data holders with self-reported potential implementation gaps when the schedule was first published in December 2021. These gaps are generally considered low impact, and no gaps pose a risk to the security of customer data. Further action is being considered where data quality issues may impact data recipients' or consumers' CDR experience.

For data holders that were already sharing data, our compliance and enforcement activities included monitoring and investigating compliance with the CCA, CDR Rules and CDR Standards; and providing guidance on compliance.

As at 30 June 2022 we are conducting 2 in-depth investigations related to more serious or systemic issues. One of these investigations has resulted in the issuing of the infringement notice referred to above.

Compliance with product reference data sharing obligations

In 2021–22 we undertook risk-based assessments of product reference data compliance and quality and raised issues with data holders for resolution. Using both automated compliance tools and manual analysis, we reviewed whether data holders' product reference data conformed to the CDR Standards and whether it matched the data available on their websites and in relevant product disclosure statements, as required by the CDR Rules. This has resulted in improved quality of publicly available CDR data.

Compliance with performance data obligations

In 2021–22 we began publishing a dashboard of data holders' performance on the CDR website, using information that data holders are required to provide to the ACCC. The dashboard has resulted in significant improvements in data holder performance. For more information on the dashboard, see the case study below.

Exemptions

In 2021–22 the ACCC granted 23 individual exemptions – of those, 17 of those, as at 30 June 2022, 17 were still in force and 6 had expired, lapsed or been revoked. Reasons for granting exemptions included the mergers between banks, off-sale products and need to avoid the unnecessary duplication of work.

Details of all exemptions granted can be found in the CDR exemptions register on the ACCC website.

▶ CASE STUDY

CDR performance dashboard

The CDR performance dashboard uses information that data holders must provide under the CDR Rules to present a view of active data holders' system performance and availability. It was published on the CDR website in December 2021. Since then, we have made several enhancements – for example, we have added additional datasets, made updates to enable search functionality and provided automated daily refreshes.

The dashboard shows the percentage of time data holders' systems are available to share CDR data and their average response times to requests for sharing CDR data. These can be found on the 'Performance' tab on the [CDR website](#).

Since the publication of the dashboard, data holders' compliance with providing performance metrics has materially improved, increasing from 35% in November 2021 to 100% by 30 June 2022, when there were 114 total active data holder brands.

We continue to enhance the dashboard and work with participants to improve the availability and reliability of information about the performance of the CDR ecosystem.

-
- > In addition to our own proactive investigations, we can become aware of noncompliance in a variety of ways, including:
 - Complaints: Any member of the public may submit a report, complaint or enquiry via the CDR website.
 - Self-reporting: The ACCC encourages data holders and accredited persons to proactively self-report noncompliance issues. We take self-reporting into account when considering enforcement action.
 - > The ACCC collaborates with other regulators, including the OAIC and Data Standards Body, to understand and improve the compliance of CDR participants.
-

Strategic objective 4: Protect consumers from misleading and deceptive conduct and promote fair trading

About this strategic objective

The key activities²⁴ we undertake to achieve this strategic objective are:

- initiate compliance and enforcement actions to address harm to consumers and small businesses resulting from noncompliance with the Australian Consumer Law (ACL) and industry codes
- empower small businesses by increasing awareness of their rights under the ACL and industry codes
- empower consumers by increasing awareness of their rights under the ACL and alerting them to the risk of scams.

Under a 'one law, multi regulator' model, the ACL is enforced by the ACCC and each state and territory consumer regulator. The ACCC works with state and territory ACL regulators to engage, share information, work collectively on broader issues and achieve timely and effective compliance and enforcement action.

The ACCC also works with businesses, industry associations and consumer groups to inform consumers of their rights, and businesses of their rights and obligations, under the CCA. The ACCC's educational campaigns support consumers to navigate complex or difficult consumer choices and helps them to make more informed decisions. As part of this, we alert consumers and businesses to the risk of scams. We also use a range of measures to disrupt scam activity that targets Australian consumers and small business.

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

Our priorities

Each year we review the economic and business environment, feedback from stakeholders and our intelligence sources to determine where to focus our compliance and enforcement efforts. From this review, we develop our compliance and enforcement priorities. These priorities form part of our [Compliance and Enforcement Policy and Priorities](#), which sets out the principles adopted by the ACCC to achieve compliance with the law and outlines the ACCC's enforcement powers, functions, priorities and strategies.

Some priority areas change from year to year as we complete this annual review, and each year we continue important residual work in areas previously identified as priority areas. As such, some of the outcomes reported below may relate to priority areas from previous years.

²⁴ The references to the ACL in the key activities and performance measures under this strategic objective exclude the product safety provisions of the ACL, which are dealt with under our strategic objective to protect consumers from unsafe products.

During 2021-22 our priorities were:



COVID-19

Consumer issues related to the promotion and sale of products in the context of the **COVID-19 pandemic**, including **travel and event cancellations**.



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**.



Ensuring that **small businesses** receive the protections of the competition and fair trading laws, including **franchising**.



Ensuring compliance with mandatory industry codes of conduct in the agriculture sector, namely the **Dairy Code of Conduct** and the **Horticulture Code of Conduct**.



Empowering consumers and improving industry compliance with consumer guarantees, with a focus on high value goods including **motor vehicles** and **caravans**.

There are some forms of conduct that are so detrimental to consumer welfare that we will always regard them as a priority. These enduring priorities are:



Consumers experiencing vulnerability or disadvantage

The ACCC recognises that consumers experiencing vulnerability and disadvantage can be disproportionately impacted by conduct in breach of the CCA. The ACCC therefore prioritises conduct that impacts these consumers.



Conduct impacting Indigenous Australians

The ACCC acknowledges that certain conduct in breach of the CCA has the potential to specifically impact on the welfare of Indigenous Australians. The ACCC also recognises that Indigenous consumers living in remote areas face particular challenges in relation to asserting their consumer rights. The ACCC will always prioritise its work in these areas while these challenges remain.

Key activity 4.1: Initiate compliance and enforcement actions to address harm to consumers and small businesses resulting from noncompliance with the Australian Consumer Law and industry codes

About this key activity

This key activity is about enforcement and compliance action we undertake to protect consumers and small businesses from harmful conduct. We may also undertake research or advocacy projects to help improve compliance with the ACL and industry codes. As a strategic regulator, we look to intervention that can influence behaviour across industries and the economy. Information on other initiatives undertaken to support business compliance is under key activity 4.2.

The ACCC uses a range of tools to encourage compliance with the CCA. In deciding which compliance or enforcement tool (or combination of such tools) to use, we focus on achieving the best possible outcome for the community, maximising the impact of our action and managing risk proportionately. We may use education activities or compliance interventions to address broader ACL or industry codes issues or, alternatively, we could use enforcement tools to address potential contraventions of the ACL or industry codes by specific businesses.

Highlights



We instituted 11 Federal Court proceedings.



In December 2021 the Federal Court ordered a [record \\$153 million](#) in penalties against Australian Institute of Professional Education Pty Ltd (AIPE).



We delivered 40 enforcement outcomes while also working on 9 ACL and industry compliance initiatives, such as our focus on the debt collection industry.

Performance measures

Table 3.13: Performance measures for key activity 4.1

| Performance measure [#] | 2018–19 | 2019–20 | 2020–21 | 2021–22 | | Met? |
|--|---------|---------|---------|---------|--------|------|
| | | | | Target | Result | |
| Number of in-depth ACL and industry codes investigations completed | 73 | 66 | 50 | 75 | 56 | ○ |
| Percentage of in-depth ACL and industry codes investigations that are in the priority areas outlined in the Compliance and Enforcement Policy | 63% | 64% | 82% | 60% | 79% | ✓ |
| Percentage of initial ACL and industry codes investigations completed within 3 months | 67% | 59% | 57% | 80% | 70% | ○ |
| Percentage of in-depth ACL and industry codes investigations completed within 12 months | 86% | 76% | 70% | 80% | 64% | ○ |
| Number of ACL and industry codes enforcement interventions (court proceedings commenced, section 87B undertakings accepted, infringement notices issued, administrative resolutions)* | 49 | 50 | 37 | 40+ | 40 | ✓ |
| Percentage of ACL and industry codes compliance and enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy | 87% | 66% | 84% | 60% | 70% | ✓ |
| Number of ACL and industry codes compliance initiatives | - | - | - | 7+ | 9 | ✓ |
| Number of surveys and audits for industry codes compliance | - | - | - | 10 | 12 | ✓ |
| Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC's compliance and enforcement actions are effective in addressing harm to consumers and small businesses resulting from non-compliance with the Australian Consumer Law and industry codes | - | - | - | 70+ | N/A | |

Performance measures were updated in the 2021–22 Corporate Plan to explicitly include actions to address potential breaches of industry codes as well as the ACL. As such, results for years prior to 2021–22 may under-report actual result.

* Depending on the circumstances, administrative resolutions can range from a commitment by the trader in correspondence with the ACCC 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.

Analysis of results

Of the 8 performance measures related to this key activity, we met or exceeded the target for 5 measures and partially met the target for 3 measures. In 2021-22 we introduced a new performance measure to capture the number of ACL and industry codes compliance initiatives and exceeded the target for this measure. This reflects our move towards a more holistic compliance and enforcement approach, with integrated strategies to achieve behavioural change by some traders to reduce harm to consumers and small businesses. This change to implementing more long-term initiatives and focusing relatively less on undertaking in-depth investigations was one of the reasons why we only partially met the target for that measure this year. This was also one of the reasons why we partially met the 2 targets for the performance measures about timeliness of investigations, though interruptions throughout the year to our operating capability due the pandemic also contributed to this result. However, we continued to meet or exceed all targets for measures covering various compliance and enforcement actions, which reflects the success of our use of a range of tools to achieve results for consumers and small businesses.

Outcomes achieved

COVID-19 consumer and fair trading issues

The ACCC's COVID-19 Enforcement Taskforce (see our 2020-21 annual report) was dissolved as COVID-19-related issues began to ease. However, in 2021-22 we continued to deal with residual, as well as newly emerging, COVID-19-related consumer and fair trading issues:

- In 2021 the Federal Court imposed a penalty of \$5 million on [Lorna Jane](#) for false and misleading representations that its 'LJ Shield Activewear' 'eliminated', 'stopped the spread' of and 'protected wearers' against 'viruses including COVID-19'. Lorna Jane cooperated with the ACCC, making admissions and agreeing to make joint submissions on the imposition of the penalty amount. The court also ordered by consent that, for a period of 3 years, Lorna Jane is restrained from making any 'anti-virus' claims regarding its activewear clothing unless it has a reasonable basis for doing so. It must also publish corrective notices across the mediums utilised in the marketing campaign and establish a consumer law compliance program.
- The ACCC commenced investigations in relation to consumer concerns about:
 - their ability to use credits provided by Qantas as a remedy for COVID-19 cancellations (including a public survey to obtain more information from consumers)
 - rapid antigen test supply chain issues in late 2021 and early 2022 (see the case study below).

▶ CASE STUDY

Rapid antigen test supply issues

Between late December 2021 and late January 2022, Australia experienced severe shortages of rapid antigen tests for COVID-19.

There was a sudden increase in demand during that time period because of increased rapid antigen testing requirements for attending work and travelling. This sudden demand increase was also exacerbated on the supply side by the global logistics and supply chain issues arising from COVID-19 (as noted in the ACCC's Container stevedoring monitoring report 2020–21 – see case study on page 116).

Consumers reported issues such as:

- alleged excessive pricing
- delayed supply
- false and misleading claims
- failure to provide receipts
- package splitting.

In investigating the issues, the ACCC sought information from more than 70 businesses spanning test suppliers (including product sponsors and some wholesalers), major retailers and pharmacy chains.

The ACCC ultimately found that in some cases there was no breach of the ACL and in other cases there was insufficient evidence of breaches of the ACL. However, through our engagement with significant retailers of rapid antigen tests, we reminded them of their ACL obligations and are well placed to respond should any further concerns arise.

During our investigations we publicly called out particularly high prices at a number of individual retailers. After those media statements we received significantly fewer complaints about those retailers. However, the ACCC has no general role in setting or regulating prices and no direct power under the law to stop price increases. Businesses are generally able to set their own prices, but they must not make false or misleading statements about prices, including the reasons for any price increases.

The ACCC also referred relevant matters to the Australian Federal Police (AFP) and the Therapeutic Goods Administration (TGA):

- The AFP enforced the Biosecurity Act Determination, which prohibited resale of rapid antigen tests bought at retail level for mark-ups above 20%.
- The TGA enforced a prohibition against rapid antigen test package splitting and sale of tests not approved for home use in Australia.

The availability of rapid antigen tests improved substantially in early March 2022. This put downward pressure on prices, and they returned closer to the levels they were at before the December 2021 / January 2022 peak in demand.

Addressing conduct impacting consumers experiencing vulnerability and disadvantage, including unconscionable conduct

The ACCC prioritises conduct that impacts consumers who are experiencing vulnerability and/or disadvantage, as they can be disproportionately impacted by conduct in breach of the CCA. Consumers may experience disadvantage or vulnerability due to a variety of personal, social and situational factors. While some consumers may experience vulnerability or disadvantage in most situations, other consumers may move in and out of vulnerability or disadvantage throughout their lives.

The ACCC continues to work to benefit consumers experiencing vulnerability or disadvantage and promote better business compliance in dealing with such consumers. Our activities have included enforcement actions and the publication of [updated guidance](#) for businesses on this issue (for more information, see key activity 4.2).

In 2021-22 we obtained the following enforcement outcomes:

- In July 2021 the Federal Court found that [Productivity Partners Pty Ltd](#), trading as Captain Cook College, engaged in a system of unconscionable conduct and made false or misleading representations to prospective students in relation to online diploma courses under the former VET FEE-HELP loan program, following contested proceedings. On 2 September 2021 notices of appeal were filed by Captain Cook College, Site Group and Mr Wills. The appeals seek to have all of the liability findings overturned, and the case is ongoing.
- In August 2021 the Federal Court found that former training college [Phoenix Institute of Australia Pty Ltd](#) (Phoenix) and its marketing arm, Community Training Initiatives Pty Ltd (CTI), made false or misleading representations and engaged in a system of unconscionable conduct in relation to online diploma courses. Phoenix and CTI were found to have misled consumers and acted unconscionably when marketing to students and enrolling them into online diploma courses under the VET FEE-HELP loan program. The court found that Phoenix and CTI had misled consumers into thinking the courses were free and offered them 'free' laptops for enrolling.
- In December 2021 the Federal Court ordered the Australian Institute of Professional Education Pty Ltd (in liquidation) (AIPE) to pay a penalty of \$153 million for engaging in system of unconscionable conduct, as well misleading or deceptive conduct, when enrolling consumers into online diploma courses under the former VET FEE-HELP loan program. This is the [highest ever total penalty amount](#) imposed under the ACL. In imposing these penalties, Bromwich J said, 'Substantial penalties are called for when a commercial enterprise systematically predares on both a government education support scheme designed to help disadvantaged members of the Australian community, and consequently, upon those consumers'.

▶ CASE STUDY

Funeral industry

In 2020 the ACCC announced that competition and consumer issues in the funeral services sector was a compliance and enforcement priority. This priority area continued into 2021. Many consumers engage with the funeral sector at a time when they are grieving and vulnerable and thereby at a disadvantage. It is critically important that funeral sector businesses treat consumers fairly during these times.

We took an integrated approach to our work under this priority area, involving a range of compliance and enforcement tools. We used enforcement action to address specific breaches by funeral service providers. We encouraged compliance by engaging with industry associations to clarify requirements and expectations; and working with consumer advocacy groups to improve consumer understanding of potential issues when seeking to acquire funeral services.

Our enforcement actions included:

- issuing infringement notices to [Alex Gow Funerals](#), [Bare Funeral Group](#), [Gerren Pty Ltd](#) (trading as Parkside Funerals) and [Bowra & O’Dea Pty Ltd](#)
- accepting court enforceable undertakings from [Parkside Funerals](#) and [Bowra & O’Dea](#).

Our compliance approach involved the publication of resources to inform the sector:

- In December 2021 we published our report [Funeral services sector: competition and consumer issues](#). The report highlights key issues of concern in the funeral services sector and calls on businesses to review their contracts and pricing practices to ensure they comply with consumer and competition laws.
- We also developed [guidance material for consumers and the funeral industry](#). This information assists businesses in the industry to comply and gives businesses practical steps they can take to address the key concerns identified in our report. It also provides tips for consumers so they know what to check for when acquiring funeral services.

Addressing consumer guarantees issues

The ACCC continues to prioritise actions to improve business compliance with the ACL consumer guarantees. In 2021–22 we took the following enforcement actions:

- In November 2021 the [court found](#) that Mazda engaged in misleading and deceptive conduct and made false or misleading representations to 9 consumers about their consumer guarantee rights but dismissed the ACCC’s allegations that Mazda also engaged in unconscionable conduct in its dealings with the consumers. In April 2022 the ACCC [filed an appeal](#) against the Federal Court’s decision to dismiss the ACCC’s allegations that Mazda Australia Pty Ltd engaged in unconscionable conduct. Mazda also cross-appealed against the findings of false or misleading representations. The appeal is still to be heard.
- In December 2021 the ACCC instituted Federal Court proceedings against online retailer [Booktopia Pty Ltd](#) for making false or misleading representations to consumers about their rights to refunds and other remedies for faulty or damaged goods.
- In May 2022 online clothing label and retailer A&S Labels Pty Ltd (trading as [Tiger Mist](#)) paid penalties of \$26,640 after the ACCC issued it with 2 infringement notices for allegedly misleading consumers about their right to return faulty items. Tiger Mist also amended its website and removed the statements of concern.

One of our 2021 priority areas was consumer guarantees, focusing on motor vehicles and caravans. This priority area will continue into 2022–23. To tackle this important area, we released [surveys](#) to gather information in relation to consumer issues in the caravan industry, principally consumer guarantees and related issues. The information gathered from these surveys, as well

as complaint data and engagement with consumer groups and industry stakeholders, will help to inform the ACCC's future work in this area, including possible enforcement action.

As part of this project, the ACCC has presented at various caravan industry forums about the ACL concerns in the caravan sector.

Advocating for reforms to consumer guarantee provisions

On 14 December 2021 the government released the consultation regulation impact statement (CRIS) [Improving consumer guarantees and supplier indemnification provisions under the Australian Consumer Law](#), which outlines options to help better ensure businesses comply with the consumer guarantees provisions in the ACL. This includes consideration of potential reforms to the ACL consumer guarantee provisions.

The CRIS notes that contacts from consumers about consumer guarantee issues have been constant and increasing for the ACCC and state and territory ACL regulators, despite the considerable compliance activity by all ACL regulators.²⁵ Contacts to the ACCC and state and territory ACL regulators fluctuate over time. However, as an example, in 2021-22 the ACCC received over 2,600 contacts each month on average from consumers on issues to do with enforcement of their consumer guarantees rights. In the ACCC's view, this demonstrates there is a need to create stronger incentives for suppliers to comply with their consumer law obligations.

The ACCC's submission in response to the CRIS advocated to strengthen the ACL to better protect consumers and adequately incentivise suppliers and manufacturers to comply with their existing consumer guarantee and supplier indemnification obligations. We supported the option for the ACL to be amended to include prohibitions against:

- suppliers not providing a remedy for consumer guarantee failures when they are legally required to do so
- manufacturers not indemnifying suppliers where manufacturers are legally required to do so.

Addressing consumer harm from other misleading conduct, unfair contract terms, and other prohibited practices

The ACCC took a number of actions to address consumer harm from misleading conduct. We instituted proceedings in the Federal Court against:

- Facebook owner [Meta Platforms, Inc](#) and Meta Platforms Ireland Limited (together, Meta). We allege that they engaged in false, misleading or deceptive conduct by publishing scam advertisements featuring prominent Australian public figures; and that Meta aided and abetted or was knowingly concerned in false or misleading conduct and representations by the advertisers. The ACCC alleges that the ads, which promoted investment in cryptocurrency or money-making schemes, were likely to mislead Facebook users into believing the advertised schemes were associated with well-known people featured in the ads. The schemes were in fact scams, and the people featured in the ads had never approved or endorsed them.
- Each of [Telstra Corporation Ltd \(Telstra\)](#), [Optus Internet Pty Limited \(Optus\)](#), and [TPG Internet Pty Ltd](#) (TPG) in the Federal Court for making alleged false or misleading representations in their promotions of some 50Mbps and 100Mbps NBN plans. The companies claimed they would test the maximum speed of customers' connections and offer customers remedies if the maximum speed was below their plan's stated speed. However, they did not do so for many customers. It is also alleged Telstra, Optus and TPG wrongly accepted payments from certain customers for NBN plans when they were not provided with the promised speeds.
- [Uber BV](#), which admitted it engaged in misleading or deceptive conduct and made false or misleading representations in the Uber ridesharing app relating to the applicability of a cancellation fee within Uber's free cancellation period. Uber agreed to make joint submissions with the ACCC to the court for imposition of penalties totalling \$26 million.

²⁵ See pages 22-23 of the [consultation regulation impact statement](#).

- SmileDirectClub Aus Pty Ltd and its US parent company, SmileDirectClub LLC (together [SmileDirectClub](#)), over alleged false and misleading statements about private health insurance reimbursement for its clear teeth aligners and associated treatment.
- [Airbnb](#) for allegedly misleading consumers into believing prices for Australian accommodation on its platform were in Australian dollars, when in fact for many consumers prices were in US dollars. Despite thousands of consumers complaining to Airbnb about the way prices were displayed, Airbnb did not amend its booking platform until after the ACCC raised the issue.

We also issued 4 infringement notices to [Ford Motor Company of Australia Pty Ltd](#) (Ford) for allegedly misleading consumers about the performance features of the 2021 Ford Mustang Mach 1, in 4 different versions of brochures promoting these vehicles. Ford paid infringement notice penalties totalling \$53,280. In addition to paying the infringement notice penalties, Ford agreed to provide an improved compensation offer to consumers who bought a Mustang Mach 1.

In relation to actions involving unfair contract terms in consumer contracts, we accepted court enforceable undertakings from education software supplier [Compass Matin Pty Ltd](#) and its contract manager, EduCollect Pty Ltd, and from the companies' common director, Mr Stephen Palframan. Compass Matin and EduCollect admitted to using unfair contract terms in the supply of their CAMI and iTutor home tutoring programs. Compass Matin also admitted that it made false or misleading representations to consumers about free tutoring lessons. Compass Matin undertook to provide full refunds to some consumers who were misled and partial refunds to others. The companies also undertook to implement a compliance program.

We obtained a public administrative resolution with [Shaw Academy](#), an international online education organisation providing students with online courses. Shaw Academy agreed to refund hundreds of former students and improve its systems following ACCC concerns that Shaw Academy offered consumers a free trial to its online education courses but then charged some of them a subscription fee even when they had cancelled or tried to cancel before the end of the trial.

We also achieved some notable outcomes from earlier ACCC enforcement actions:

- The Federal Court imposed penalties of \$44.7 million against [Trivago](#) for making misleading representations about hotel room rates on its website and in television advertising.
- The Full Federal Court dismissed an appeal by [Viagogo AG](#) against earlier decisions that Viagogo had made misleading claims when reselling tickets to live music or sporting events. In dismissing the appeal, the Full Court upheld the earlier court findings and the \$7 million penalty imposed for the breaches of the ACL in proceedings brought by the ACCC. The court also upheld previous orders made against Viagogo in relation to a compliance program, publication orders and an injunction.
- The Federal Court imposed penalties of \$14 million against [Samsung Australia](#) after it admitted misleading consumers about the water resistance of various Samsung Galaxy phones.

Reforms to the unfair contract terms provisions

The ACCC has long advocated for changes to the unfair contract terms laws for both consumer and small business standard form contracts so that there is a strong incentive for compliance.

In February 2022 the government introduced a Bill into parliament to enhance the protections against unfair contract terms in the ACL and the *Australian Securities and Investments Commission Act 2001* (Cth).²⁶ The Bill set out amendments that would (among other things) make including or relying on an unfair contract term in a consumer or small business standard form contract a contravention and subject to penalties. The Bill lapsed following the dissolution of parliament for the recent federal election. However, the incoming government has announced that it will progress these reforms.²⁷

²⁶ [Treasury Laws Amendment \(Enhancing Tax Integrity and Supporting Business Investment\) Bill 2022](#).

²⁷ <https://ministers.treasury.gov.au/ministers/andrew-leigh-2022/media-releases/labor-delivering-promise-ban-unfair-contract-terms>.

Consumer issues in the debt collection industry

In 2021–22 the ACCC commenced a holistic compliance initiative to explore and address consumer issues that arise in debt collection. As part of the initiative, we:

- gathered information from our complaints data and the data of other regulators; and intelligence from consumer advocacy groups, ombuds schemes and industry associations. This allowed us to identify the key issues of concern
- engaged with industry – for example, businesses in the debt collection industry and also businesses that commonly refer or sell debts to debt collectors – to inform and educate on the key issues of concern and compliance obligations, as well as collect further information
- implemented [updates to guidance](#) on our website to help ensure debt collection organisations understand their legal obligations
- disseminated compliance and guidance messaging to small businesses in February 2022 via the ACCC’s Small Business Information Network and Franchising Information Network
- disseminated more detailed compliance and guidance messaging directly to debt collectors and creditors.

Fair trading

The ACCC continues to prioritise actions to ensure small businesses receive the protections of the competition and consumer laws and industry codes of conduct, including in agriculture and franchising. Key compliance initiatives and enforcement outcomes in this area are noted below. For more information about our actions to support small business and fair trading, see key activity 4.2.

Small business harm from franchising and other fair trading misconduct

In 2021–22 we continued our enforcement work to address small business harm from franchising and other fair trading misconduct:

- The Federal Court ordered [AA Machinery Pty Ltd](#) (trading as Agrison) to pay a penalty of \$220,000 after it admitted making false or misleading representations to customers about its warranties and after-sales services. Agrison and its sole director, Mr Volkan ‘Nick’ Yokus, also provided the ACCC with a court enforceable undertaking preventing Mr Yokus from being involved in any other business that sells tractors for 5 years, without the ACCC’s consent. Under the undertaking, Agrison is required to improve its complaints-handling system. The Federal Court also ordered Agrison to pay redress to 4 customers that bought tractors or wheel loaders.
- We continued proceedings against Retail Food Group Limited and 5 of its related entities ([Retail Food Group](#)), alleging the food and beverage franchise company engaged in unconscionable conduct and made false or misleading representations in its dealings with franchisees.
- We continued proceedings against [Fuji Xerox Australia Pty Ltd](#) and a related company (together, Fuji), alleging that 9 types of Fuji’s standard form small business contracts contain several unfair contract terms.
- We [lodged an appeal](#) against the [\\$1 million penalty](#) that the Federal Court ordered against EmploySURE for making misleading representations in Google ads that EmploySURE was, or was affiliated with, a government agency. The ACCC had sought a \$5 million penalty. Many small businesses were misled by EmploySURE’s ads when searching for workplace relations advice from the relevant government agency, the Fair Work Ombudsman. The ACCC is appealing from the penalty judgment on the basis that the \$1 million penalty ordered is manifestly inadequate. The ACCC instituted proceedings against EmploySURE in [December 2018](#). In [October 2020](#), the Federal Court dismissed the ACCC’s case. The Full Federal Court [upheld the ACCC’s appeal unanimously](#) in August 2021.
- In November 2021 UK-based audio branding company [Please Hold \(UK\) Limited](#) (PHMG) committed to amend its contract terms after an ACCC investigation of allegations that PHMG’s

standard form contract contained unfair contract terms and put limits on consumer guarantee rights. In addition, PHMG has clarified its customers' ACL consumer guarantee rights in its contracts.

- We instituted contempt of court proceedings against [Ultra Tune](#) for allegedly failing to comply with the requirements of a court-ordered compliance program and for allegedly breaching [orders made by the Federal Court in 2019](#), which restrained Ultra Tune from contravening parts of the Franchising Code of Conduct.

Dairy Code of Conduct

The ACCC continues to monitor compliance with the Dairy Code of Conduct (dairy code). In November 2021 we published [Dairy Code compliance: observations from 2021-22 season opening](#), which reports on compliance with the dairy code since 1 June 2021. In May 2022 we released updated [dairy code guidance](#), providing more detail on:

- interpretation of the code's 'single document' requirement
- arrangements for cooperatives and collective bargaining groups
- what constitutes a 'material breach'
- loyalty payments and other bonuses
- the requirement to publish dispute reports.

The update also provides a processor checklist summarising key obligations under the code.

The ACCC considers the dairy code has clearly fostered positive changes in the industry by improving the transparency and certainty of agreements between farmers and processors. However, there are a number of areas where some processors need to improve their compliance. The report identified the main areas of noncompliance in the 2021-22 season, finding that some processors were:

- failing to publish disputes reports
- using rolling agreements instead of defining contract end dates
- prematurely removing milk supply agreements before the end of the financial year.

The report explains that processors have now had time to learn and understand what their obligations are under the dairy code. Therefore, the ACCC is shifting its focus from dairy code education and engagement work to enforcement. We achieved several enforcement outcomes during 2021-22:

- [Brownes Dairy](#) paid penalties of \$22,200 after the ACCC issued it with 2 infringement notices for allegedly failing to comply with the dairy code.
- The Dairy Farmers Milk Co-operative Limited (DFMC) paid a penalty of \$11,100 after the ACCC issued it with one infringement notice for allegedly failing to comply with its publishing obligations under the dairy code.
- In July 2021 the ACCC instituted Federal Court proceedings against [Lactalis Australia Pty Ltd](#) (Lactalis) for alleged breaches of the dairy code. This is the first time the ACCC has commenced proceedings for alleged breaches of the code. Lactalis is one of Australia's largest dairy processors – it purchases milk from over 400 dairy farmers across all Australian states. The ACCC alleges that Lactalis breached a number of provisions of the code and, in doing so, weakened the bargaining power of farmers who supply milk to them. The ACCC also alleges that Lactalis failed to publish genuine non-exclusive milk supply agreements – a key requirement under the code, as this gives farmers more flexibility in choosing who to supply to. Instead, Lactalis required farmers to supply a minimum of 90% of their monthly production volume, which the ACCC alleges would prohibit most farmers from supplying milk to another processor.

Horticulture Code of Conduct

On 31 March 2022 the ACCC [announced](#) results of recent audits under the Horticulture Code of Conduct. The ACCC found that most wholesalers are complying with the requirement to trade under a Horticulture Produce Agreement, but some are incorrectly reporting prices in their statements to growers and failing to make their terms of trade publicly available. These code requirements are important because they promote price transparency and enhance competition.

The ACCC intends to release updated industry guidance on the code in light of the audit results.

Matters raising both consumer and fair trading issues

Many matters the ACCC works on involve conduct under the ACL that causes harm to or affects both consumers and small businesses in some way or raises business-to-business fair trading issues alongside consumer issues.

In April 2022 the ACCC instituted proceedings in Federal Court against [Honda Australia Pty Ltd](#) for allegedly representing to customers of 2 former authorised Honda dealerships that the dealerships would close or had closed and would no longer service Honda vehicles. In fact, the franchise agreements with these dealerships had been terminated after Honda's restructure, but both of these businesses were continuing to trade independently and were continuing to service vehicles, including Hondas.

The ACCC is investigating the florist industry and looking closely at the operations of online order gatherers. It is also examining reports that some large national suppliers are making misleading representations online that they are local florists or that their business has a local presence, when that is not the case. In February 2022 the ACCC [alerted consumers](#) to check where their flowers are coming from and make sure they are not being misled into thinking large 'order gatherers' are locally based florists. We also distributed a [survey](#) amongst florists to assist the ACCC to better understand the interplay between order gatherers and traditional florist businesses and how traditional florist businesses may be impacted. We will use the information from the survey and consumer reports to inform our investigation.

ACCC advocacy for law reform to better address small business harm

The ACCC has been advocating for amendments to the consumer guarantees regime to adequately incentivise suppliers and manufacturers to comply with their existing consumer guarantee and supplier indemnification obligations. A prohibition on suppliers not providing a remedy for consumer guarantee failures when they are legally required to do so will also assist small businesses because some small business transactions are treated the same as consumer transactions under the ACL consumer guarantees.

Further, the ACCC considers an important aspect of strengthening the consumer guarantees regime is in strengthening the supplier indemnification provisions by introducing a prohibition on manufacturers not indemnifying suppliers where they are legally required to do so; and a prohibition against manufacturers retaliating against suppliers who request indemnification. We have been advocating for these reforms because, in our view, the current framework lacks sufficient incentives for manufacturers to comply with the law. This means suppliers, many of which are small businesses, are inappropriately wearing the cost of providing consumer guarantee remedies to consumers. Suppliers are therefore disincentivised from providing remedies to consumers, and this contributes to the broader noncompliance with the consumer guarantees.

The incoming government has committed to introducing reforms to the protections against unfair contract terms in the ACL, in line with proposed amendments in a Bill that was introduced into parliament prior to its dissolution when the recent federal election was called. The Bill had also proposed changes to the thresholds for determining whether a particular business is covered by the protections:

- The contract value threshold will be repealed.

- The small business threshold will change to a test satisfied where the business employs fewer than 100 people or their turnover for the previous income year is less than \$10 million.

The ACCC has been advocating for these reforms for some time. If these reforms are made by parliament, more small businesses that deserve these protections will be covered. Like consumers, small businesses generally lack the resources and bargaining power to effectively review and negotiate terms in standard form contracts.

International collaboration

The ACCC continued to actively advocate for improved international cooperation on compliance and enforcement of consumer protection issues.

We provided input to the Organisation for Economic Cooperation and Development (OECD) through a variety of forums – for example, we attended the Committee on Consumer Policy meetings which discussed issues such as sustainable consumption and misleading and manipulative practices online, both of which relate to current ACCC compliance and enforcement priorities.

We also continued to be an active contributor to the International Consumer Protection and Enforcement Network (ICPEN):

- The ACCC participated in the second phase of the ICPEN COVID-19 working party. This phase of work aims to give ICPEN members guidance and tools to identify and effectively respond to issues related to the post-pandemic recovery phase.
- We attended and contributed to a number of 'best practice' workshops and commenced preparations for Australia to assume the role of ICPEN President in 2022-23, the 30th anniversary year of the network. Our key theme for this presidency is putting consumers first, and we aim to focus on not only strengthening the network but also increasing collaboration and coordination in key areas of concern.

-
- > A series of amendments to the [Franchising Code of Conduct](#) took effect in 2021-22, including increased disclosure obligations, increases to penalties for breaches, and the introduction of a [franchise disclosure register](#).
-

Key activity 4.2: Empower small businesses by increasing awareness of their rights under the Australian Consumer Law and industry codes

About this key activity

This key activity relates to the work we do to assist the small business sector to understand and comply with their obligations and exercise their rights under the CCA as the customers of large suppliers.

Our aim is to promote a competitive and fair operating environment for small business and ensure they understand how the legislation can help them.

In addition to our compliance and enforcement activity, the ACCC aims to support small businesses by educating them about their obligations under the ACL, raising awareness about their rights under the ACL and industry codes, disseminating related resources, and engaging with industry groups and business associations. We may also undertake relevant research or guidance projects to help improve compliance with the ACL and industry codes. As a strategic regulator, we look to interventions that can influence behaviour across industries and the economy.

Highlights



We launched a new webpage, [‘Your rights & responsibilities as a business online’](#), aimed at supporting small businesses operating online. The webpage includes short videos about aspects of online operations.



We provided updated guidance to support compliance with industry codes, including for grocery retailers and the dairy industry.

Performance measures

Table 3.14: Performance measures for key activity 4.2

| Performance measure | 2018-19 | 2019-20 | 2020-21 | 2021-22 | | Met? |
|---|--------------|-------------|--------------|--------------|--------------|------|
| | Result | Result | Result | Target | Result | |
| Number of small business Infocentre contacts served (Small business contacts are contacts through separate small business phone line and web forms) | 12,937 | 12,143 | 10,615 | 8,000 | 8,843 | ✓ |
| Number of new or revised business compliance and education resources (published guidance) | 16 | 7 | 9 | 10 | 12 | ✓ |
| Number of times online business compliance and education resources have been accessed | 1.52 million | 1.5 million | 1.63 million | 1.25 million | 1.32 million | ✓ |
| Effectiveness survey ‘index score’ (out of 100) that key stakeholders agree the ACCC effectively empowers small businesses by increasing awareness of their rights under the Australian Consumer Law and industry codes | - | - | - | 70+ | N/A | |

Analysis of results

In 2021-22 we achieved our performance measure targets, with more than 8,800 small business Infocentre contacts served. We also published 12 new and updated business compliance and education resources, and our suite of online resources was accessed more than 1.3 million times. These resources were accessed by not only existing small businesses, but also individuals considering becoming franchisees.

Outcomes achieved

Franchising

As noted in key activity 4.1, some reforms to the Franchising Code of Conduct were introduced and implemented during 2021-22. As a result, we created and updated relevant guidance material:

- We issued the [Quick guide to a franchise disclosure document](#) and updated [The franchisee manual: a guide for small business](#) to assist franchisees in understanding disclosure documents after the changes to the law.
- In November 2021 we released a new, free [online education course](#) to help people understand the risks and challenges of franchising before they sign a franchising agreement. This course

was promoted through our existing networks and a search engine promotional campaign during January and February 2022.

Motor vehicle information scheme

In March 2021 the government introduced the [Motor Vehicle Service and Repair Information Sharing Scheme](#). The mandatory scheme will require motor vehicle manufacturers to share service and repair information with independent repairers – the information they need to do their job. During 2021–22 we prepared for implementation of the scheme, including by developing [guidance](#) before the scheme came into effect on 1 July 2022.

Industry codes of conduct

The ACCC continues to encourage compliance with industry codes, including through targeted audits. Detail of the results and actions taken can be found in key activity 4.1.

Where audits and compliance monitoring point to potential problems with businesses understanding the requirements, we aim to update existing guidance and issue new material. In 2021–22 we published guidance:

- for grocery retailers on how to comply with the Unit Pricing Code. We published [Unit pricing: a guide for grocery retailers](#) to assist grocery businesses to comply with the updated Unit Pricing Code, amended in August 2021. The publication was released with a [pamphlet](#) that is translated into a number of key languages relevant to smaller grocery retailers
- for farmers and processors covered by the Dairy Code of Conduct. This [revision](#) provided more detail on the ACCC's interpretation of the code's 'single document' requirement, arrangements for cooperatives and collective bargaining groups, what constitutes a 'material breach', loyalty payments and other bonuses, and the requirement to publish dispute reports.

Actions/initiatives following our market studies relating to agriculture

Following on from the 2020–21 *Agricultural machinery market study* – [final report](#), we published the [Agriculture machinery – purchaser guidance brochure](#) in December 2021. The brochure is accompanied by a dedicated [webpage](#) that provides further guidance on warranty obligations for manufacturers and dealers. Particularly given that in many cases the ACL consumer guarantees will not apply to the purchase of agriculture machinery, the ACCC's market study identified a need for specific guidance material to assist purchasers of agricultural machinery to understand their rights.

Information about our [Wine grapes market study: follow-up report](#), released in December 2021, can be found in Part 3, strategic objective 1, key activity 1.3.

Other education initiatives

The ACCC continued to raise awareness among small businesses about their rights and obligations under the CCA. For example:

- We published a new [webpage](#) that provides guidance for small businesses that operate businesses online. The webpage, 'Your rights & responsibilities online', includes a range of resources, including videos. We promoted the new webpage using paid display and search media that directed businesses to the page.
- We released an updated publication, [Consumer vulnerability: a business guide to the Australian Consumer Law](#), designed to help businesses understand their key responsibilities under the ACL and how to engage with consumers experiencing vulnerability. This publication gives businesses a contemporary perspective on consumer vulnerability and a self-assessment tool for businesses to identify areas for improvement.
- We updated the publication [Small business and the Competition and Consumer Act](#), which helps small businesses to understand their key rights and responsibilities under the CCA and the ACL.

- We hosted forums for small business and franchising sector representatives to discuss key issues, including those related to the COVID-19 pandemic.
- We sent timely updates to subscribers in our email information networks.

▶ CASE STUDY

ACCC investigates potentially unfair contract terms in chicken meat industry

In May 2022 the [ACCC concluded its investigation of potentially unfair terms in contracts](#) between some of Australia's largest chicken meat processors and chicken growers. To address the ACCC's concerns, the processors agreed to change certain contract terms to give growers some additional certainty and transparency.

The ACCC's investigation identified a number of potentially unfair contract terms. For example, the contracts contained terms that allowed processors to vary growers' supply arrangements or impose additional costs on growers. Some of the terms also required growers to make significant capital investments or contained imbalanced termination clauses.

Despite the successful outcome of this investigation, other agricultural businesses may still face issues with unfair contract terms. Under the current unfair contract terms framework, some contracts and some small businesses in agricultural industries are excluded from the contract value and small business definition thresholds, even when those businesses face the same problems as businesses that the framework was designed to protect. Also, there are no penalties in the current laws, which means there is limited incentive for businesses to avoid using unfair contract terms in their standard form contracts.

To remedy this situation, proposed changes to the law that will better protect Australian small businesses against unfair contract terms were tabled during the February 2022 parliamentary sitting (see key activity 4.1).

-
- > The most visited business resource page on the ACCC website was the '[Consumers' rights & obligations](#)' webpage in our 'Treating customers fairly' section, with more than double the visits of any other single webpage.
-

Key activity 4.3: Empower consumers by increasing awareness of their rights under the Australian Consumer Law and alerting them to the risk of scams

About this key activity

This key activity relates to the work we do to assist consumers to understand and assert their rights. Education is an important aspect of our consumer protection work. By equipping consumers to make informed purchasing decisions and empowering them to assert their rights when things go wrong, they can participate in the economy with greater confidence.

The ACCC continues to prioritise work to educate and inform consumers about their rights under the ACL, particularly in the priority areas identified in our Compliance and Enforcement Policy and Priorities (further detail in the introduction to strategic objective 4), or where changes to the law occur. We also continue to prioritise educating and informing consumers about the risks associated with scams. We achieve this by engaging with the media and connecting directly with consumers through social media and promotional campaigns, events and publications.

We work with other Australian and international government agencies (including 40 government organisations on the Scams Awareness Network) and law enforcement to share intelligence about scam issues and methods of alerting consumers. The ACCC also works with these agencies and the private sector on scam prevention and disruption methods.

Highlights



Scamwatch won the international Scam Fighter of the Year Award for best scam-fighting organisation in 2022 from the Global Anti-Scam Alliance.



The annual ACCC-led National Scams Awareness Week was titled 'Stop scams. Speak up.' and reached a potential audience of 15.2 million through its 353 participating partner organisations.



We collaborated with the Australian Cyber Security Centre (ACSC), the AFP, the major banks and telecommunications companies to minimise and disrupt the effects of the Flubot scam.

Performance measures

Table 3.15: Performance measures for key activity 4.3

| Performance measure | 2018–19 | 2019–20 | 2020–21 | 2021–22 | | Met? |
|---|--------------|--------------|--------------|-------------|--------------|------|
| | Result | Result | Result | Target | Result | |
| Number of new or revised consumer education resources (published guidance) [#] | 21 | 21 | 29 | 12 | 13 | ✓ |
| Number of times online consumer education resources have been accessed | 4.25 million | 4.58 million | 4.46 million | 3 million | 4.53 million | ✓ |
| Number of Infocentre contacts served (includes Infocentre contacts served, and web forms received) | 314,175 | 312,773 | 396,190 | 200,000 | 379,902 | ✓ |
| Number of visits to the Scamwatch website | 3.32 million | 3.84 million | 3.99 million | 2.5 million | 7.31 million | ✓ |
| Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC effectively empowers consumers by increasing awareness of their rights under the Australian Consumer Law | - | - | - | 70+ | N/A | |

The total number of new or revised consumer education resources (published guidance) counts a new or revised publication and its multiple translations as a single resource.

Analysis of results

We achieved all of our performance measure targets for this key activity.

Our education resources and Infocentre provide consumers with information that assists them to understand their rights, including how to assert these rights when required. The high number of times online resources were accessed and the number of Infocentre contacts served reflects the value of this information to the public. Also, in September 2021 our Infocentre trialled a new web chat channel for quick enquiries, which was well received by the public.

Our Scamwatch website provides information on common and emerging scams. In 2021–22 it continued to be a sought-after resource, with the public accessing it 7.3 million times. This is partially attributable to our Scamwatch radar alerts on emerging scams; in 2021–22 we issued 5 radar alerts on current scams.

Outcomes achieved

Addressing scams

The ACCC protects the Australian community from scams through education, awareness raising and disruption initiatives. Our key activities related to addressing the risk of scams included:

- **National Scams Awareness Week:** In 2021–22 the Scams Awareness Network’s [2021 Scams Awareness Week](#) campaign (8–12 November 2021) was titled ‘Stop scams. Speak up.’ The ACCC-led campaign focused on the need to start conversations about scams and reduce the stigma associated with being scammed. The flow-on effect will be that people will recognise a scam sooner or scams will be prevented from happening in the first place. We produced 4 short videos which ran on social media throughout the week, ran dedicated campaign activities and provided resources on the Scamwatch website to start discussions about scams. The 2021 campaign was supported by 353 partners from across government, the private sector and community organisations, which included 257 new partners. It was particularly successful in reaching a wider audience than previous years. The campaign achieved 1,429 media items and a potential audience reach of 15.2 million through organic media outlets. Paid advertising on social media, which included both video and image advertising, had a total reach of 2.39 million.
- **Scamwatch and other education resources:** The ACCC continued to raise community awareness about scams via the [Scamwatch website](#), subscription Scamwatch radar alert service and Twitter account. In 2021–21 Scamwatch received 7.3 million visits and @Scamwatch_gov_au issued 267 tweets and gained 6,080 new Twitter followers. The [Little black book of scams](#) (updated in December 2021) also continued to be a highly popular educational resource.
- **Targeting scams report** – the [Targeting scams: report of the ACCC on scams activity 2021](#) was released on 4 July 2022. The report compiles data from Scamwatch, ReportCyber, major banks and money remitters, and other government agencies, and is based on analysis of more than 560,000 reports about scams. Scamwatch sent more than 150 disseminations of scam reports on high risk or current scam trends to law enforcement and government.

▶ CASE STUDY

Scamwatch (ACCC) wins international 2022 Scam Fighter Award

In January 2022 the [Scam Fighter Awards](#) announced that [Scamwatch](#) had received the Scam Fighter of the Year Award 2022 for the organisations category.

Scamwatch, managed by the ACCC, provides information to consumers and small businesses about how to recognise, avoid and report scams. In 2021 Scamwatch received 272,000 scam reports and reported total losses of A\$280 million.

The Scam Fighter Awards are organised annually by the Global Anti-Scam Alliance (GASA) together with ScamAdviser. The aim is to bring more attention to the importance of fighting online fraud worldwide. According to GASA, last year consumers lost nearly USD 50 billion worldwide in online scams. The number of reported scams worldwide increased from 139 million to 266 million.

The independent awards jury consisted of Peter Depuydt (former Europol), Mitchel Chang (Trend Micro) and Cindy Liebes (Cybercrime Support Network). Jury member Cindy Liebes commented, 'After consideration of many excellent organizations, we selected Scamwatch for its role in providing excellent and comprehensive information about how to recognize, avoid and report scams'. Mitchel Chang added, 'ScamWatch also has taken on a central role in coordinating scam fighting, not only in Australia but also internationally. As a result, Australia is taking a leading role in the combat against online fraud globally'.

Disruption

The ACCC has worked collaboratively with other government agencies, authorities, regulators and organisations to disrupt scam activity:

- **Flubot:** We combatted the Flubot SMS scam by collaborating with the ACSC, AFP and the major banks and telecommunications providers. An international effort, including with the AFP, led to a Europol operation disrupting the Flubot infrastructure, rendering the strain of malware inactive in June 2022.
- **Driver's licences:** Through 2021-22 we continued to engage with the Department of Home Affairs and relevant state and territory government departments on ways to make it more difficult for criminals to use lost or stolen driver licences and less challenging for victims to recover from identity crime.
- **Blocking scam phone calls:** We supported the Australian Communications and Media Authority (ACMA) in its introduction of the [Reducing Scam Calls Industry Code](#) and the use of call blocking to disrupt phone scammers. Over 357 million scam calls were blocked from this initiative in its first year. The ACCC shared thousands of phone numbers with the telecommunications providers and the ACMA that consumers had provided in scam reports to us. This assisted the ACMA and telecommunication providers to identify scam call traffic and disrupt them through the code.
- **Mobile porting scam prevention:** We supported the ACMA in making its Telecommunications Service Provider (Customer Identity Verification) Determination 2021 through advocating for the reforms the ACMA proposed, including by making a submission to its consultation process. The determination complements the earlier Telecommunications (Mobile Number Pre-Porting Additional Identity Verification) Industry Standard 2020 and requires telecommunications providers to use multi-factor authentication to verify a consumer's identity when they undertake transactions that are high-risk for scam activity, such as SIM-swap requests, changes to accounts or disclosure of personal information. These reforms have led to a significant reduction in mobile porting related scams.
- **Assisting banks in preventing and refunding scam transactions:** We expanded information sharing through the Australian Financial Crimes Exchange, which supports the banks to identify scams and scammer accounts and block transactions.

- **Assisting law enforcement:** We disseminated more than 150 collections of scam reports on high-risk or current scam trends to law enforcement and government. Internationally, we provided information on scammers to the US Federal Trade Commission's Consumer Sentinel Network for sharing with an additional 32 countries.
- **Preventing remote access scams:** We collaborated with NBN Co to work with TeamViewer in reducing the number of remote access scams using TeamViewer software. Complaints about TeamViewer decreased by 69% and losses decreased by 71% as a result of the initiative.

Supporting Indigenous Australians

The ACCC continues to support the National Indigenous Consumer Strategy (NICS) by chairing the group and providing its [website](#), developing guidance and information, supporting members, and engaging key speakers for regular and annual meetings. In December 2021 the annual NICS meeting featured Dr Heron Loban, speaking on Indigenous legal and justice issues.

In 2021-22 we returned to physical Indigenous outreach visits where appropriate, in line with COVID-19 precautions. We leveraged off the previous virtual program to allow us to continue engaging with communities when they are not physically accessible due to weather or the impact of COVID-19. We take opportunities to engage in person with communities so that we can better assist with a range of issues and gather intelligence that shapes future ACCC work. Our teams returned to some remote and regional communities in 2021-22, including to Daly River in the Northern Territory.

Guidance for consumers

Consumer guarantees: a guide for consumers

In July 2021 the ACCC updated its range of consumer and small business web content, and its [booklet](#) about consumer guarantees:

- in light of changes to the consumer guarantees to increase the monetary threshold for consumer goods covered by the guarantee
- to clarify that multiple minor problems with a product can equate to a major failure in some circumstances.

The guide aims to explain the law in simple language and provide answers to some of the questions most commonly asked by consumers, such as what rights consumers have when something they buy fails to perform as expected; and when they may be entitled to a refund or exchange.

Funeral industry

Following the identification of potential issues for consumers in our [Funeral services sector report](#), we developed guidance material with [tips for consumers](#) on what to check for when acquiring funeral services. The new material suggests practical steps consumers can take and what to check for when acquiring funeral services. More detail can be found in Part 3, strategic objective 4, key activity 4.1.

Engagement

Ruby Hutchison Memorial Lecture

The 2022 Ruby Hutchison Memorial Lecture was held virtually on 15 March 2022 to coincide with World Consumer Rights Day. The [speaker was Rod Sims](#), then outgoing Chair of the ACCC. He discussed the ACL's importance, the need for it to be considered at least equally with competition law, and some key ACL changes that he believes are still needed.

National Consumer Congress

The National Consumer Congress was held on 16 June 2022 as a hybrid conference, with physical participants in Sydney and streamed to participants online. It had the theme 'Protecting Tomorrow's Consumers Today' and the program featured keynote speeches on issues of

consumer protection from Assistant Treasurer, the Hon Stephen Jones MP; Director of the Indigenous Consumer Assistance Network, Daphne Naden; and Telecommunications Industry Ombudsman, Cynthia Gebert. The congress also considered consumer issues around sustainable and environmentally friendly products and claims, with keynote speeches from Director of the Consumer Markets Authority (UK), Cecilia Parker Aranha; and James Cook University Senior Lecturer Dr Breda McCarthy.

ACCC Consumer Consultative Committee

The Consumer Consultative Committee provides a quarterly forum for the ACCC and the consumer representative members to discuss and address consumer protection issues:

- the September 2021 meeting focused on debt collection and ‘right to repair’ issues
- the November 2021 meeting included presentations and discussions on the National Disability Insurance Scheme
- the March 2022 meeting covered the critical issues of consumer losses to scams, potential disruption and regulatory action that can be taken, and consideration of changes that might be needed to improve outcomes. The March 2022 meeting also included joint sessions with the Australian Securities and Investments Commission (ASIC) Consumer Consultative Panel and was able to delve deeper into the opportunities for regulators to work cooperatively and seek to influence business and banking responses to scam activity
- the June 2022 meeting followed the National Consumer Congress in Sydney, with attendees primarily discussing strategies for delivering key activities arising from sessions at the congress.

International collaboration, capacity building and advocacy

The ACCC continues to play an active role in the international consumer regulatory community through engagement with networks and regulators and delivery of programs of education through regional partnerships.

In 2022-23 the ACCC will take on the presidency of the [ICPEN](#). This is a continuation of the active contribution of the ACCC to the network of consumer protection authorities from more than 70 countries, including through leadership of and participation in working, advisory and steering groups.

The ACCC is actively engaged in OECD consumer forums, including advisory and working groups. More details of our participation in the OECD Committee on Consumer Policy working group can be found in strategic objective 5.

ASEAN-Australia and New Zealand Free Trade Area Consumer Affairs Program

The ASEAN-Australia and New Zealand Free Trade Area Consumer Affairs Program (AANZFTA CAP) regional cooperation program was launched in 2020 to complement cooperation on competition law that has been delivered under Competition Law Implementation Program (CLIP) since 2014. Through AANZFTA CAP, the ACCC is working with Association of Southeast Asian Nations (ASEAN) Member States and New Zealand to strengthen implementation of national consumer laws and grow regional cooperation on issues including scams and consumer protection in e-commerce. Work in this period has included activities such as the provision of assistance to the Vietnam Competition and Consumer Protection Authority’s consideration of potential law reforms; and jointly presenting CAP Conversations with the New Zealand Commerce Commission.

▶ CASE STUDY

Cambodia-Australia Consumer Protection Partnership

The ACCC commenced delivery of the Cambodia-Australia Consumer Protection Partnership (CACPP) in 2021. The CACPP is a bilateral technical cooperation program funded under the Mekong-Australia Partnership (MAP), a program of the Department of Foreign Affairs and Trade (DFAT). Funding under MAP will enable the CACPP to be sustained from May 2021 to June 2024.

Cambodia enacted its first general consumer law in November 2019. In August 2020 the Ministry of Commerce Consumer Protection, Competition and Fraud Directorate General (CCF) was appointed by the Ministry of Justice as the enforcement agency. Following this, in October 2020 a National Consumer Protection Commission, consisting of 12 members, was appointed.

The CACPP is designed to support the effective implementation of Cambodia's new Consumer Protection Law, promoting economic resilience through enhanced consumer trust, confidence and capacity to participate in domestic and cross-border commerce. Technical assistance provided by the ACCC under the CACPP is intended to support faster, more effective implementation of consumer law in Cambodia to the benefit of Cambodia's people and market economy.

Technical cooperation under the CACPP includes regular leadership dialogues, online workshops, online expert assistance and remote mentoring. Owing to the COVID-19 pandemic all CACPP activities have been online so far. In-person activities, including study visits and staff exchanges, are anticipated in the future.

Activities to date have addressed topics such as investigating pyramid schemes and multi-level marketing under consumer law; and how to raise awareness and bolster compliance with new consumer priorities.

CCF participation in CACPP activities has been strong. Over 200 participants from Phnom Penh and regional offices have attended and actively participated in live online training sessions with the support of Khmer-language training materials and live interpreting.

Contacts to the ACCC – the ACCC Infocentre

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, letter, web chat and online forms. We triage contacts in line with the priorities and factors outlined in our Compliance and Enforcement Policy and Priorities. In addition to identifying new issues, contact data is also a valuable source of intelligence to help us identify trends and patterns, inform our priorities and assist with current enforcement and compliance activities.

The reports we receive are escalated through a series of increasingly detailed assessment stages for enforcement purposes. We analyse the data to establish trends, identify issues for further inquiry and develop compliance responses.

Table 3.16: Contacts recorded in 2021-22

| Category | 2017-18 | 2018-19 | 2019-20 | 2020-21 | 2021-22 |
|--|---------|---------|---------|---------|---------|
| Contacts served by telephone and received in writing | 290,143 | 315,491 | 312,773 | 396,190 | 379,902 |
| Contacts recorded in the database | 252,091 | 287,313 | 282,213 | 377,862 | 376,194 |
| Scams contacts recorded in the database | 156,993 | 189,006 | 160,538 | 259,655 | 267,440 |
| Non-scam contacts recorded in the database | 95,098 | 98,307 | 121,675 | 118,207 | 108,754 |

Detailed information about the ACCC's scam complaints and enquiries can be found in [Targeting scams: report of the ACCC on scam activity 2021](#).

Top 10 industries, for complaints and enquiries (excluding scams)

The following analysis of contacts is based on a higher-level grouping using existing Australian and New Zealand Standard Industrial Classification (ANZSIC) categories.

The top 10 industries made up 52% of all non-scam contacts to the ACCC in the past year.

Table 3.17: Top 10 industries for complaints and enquiries 2021-22

| Industry | 2021-22 |
|-------------------------------------|---------|
| Electronics & consumer whitegoods | 12,047 |
| Automotive Industry | 9,394 |
| Tourism & accommodation | 5,995 |
| Energy & water | 5,677 |
| Clothing & personal goods | 5,154 |
| Homewares, furniture & manchester | 5,047 |
| Ticketing & administrative services | 4,430 |
| Pharmaceutical & cosmetics | 4,268 |
| Construction services | 4,095 |
| Other store-based retailing | 3,961 |

Breakdown of contacts to the ACCC by conduct category (excluding scams)

The largest conduct category that Infocentre contacts relate to is 'Misleading and deceptive conduct and false representations', followed by 'Guarantees and warranties'.

Further analysis of the largest category 'Misleading and deceptive conduct and false representations' reflects the ACCC's continued engagement with the automotive, electronics and consumer whitegoods industries.

Table 3.18: Misleading and deceptive conduct and false representations 2021-22

| Industry | 2021-22 | Percentage of total |
|-----------------------------------|---------|---------------------|
| Electronics & consumer whitegoods | 3,926 | 11% |
| Automotive Industry | 2,812 | 8% |
| Tourism & accommodation | 2,336 | 7% |

A breakdown of contacts relating to guarantees and warranties shows that a large proportion relate to electronics and consumer whitegoods (26%) and the automotive industry (23%).

Table 3.19: Guarantees and warranties 2021-22

| Industry | 2021-22 | Percentage of total |
|-----------------------------------|---------|---------------------|
| Electronics & consumer whitegoods | 7,804 | 26% |
| Automotive Industry | 6,932 | 23% |
| Homewares, furniture & manchester | 2,639 | 9% |

- > We sent 87% of Infocentre written responses to queries from the public within 15 working days.
- > We issued 5 Scamwatch radar alerts and 267 tweets were posted to raise community awareness on emerging and/or or prolific scams.
- > A total of 267,459 incidents of scams were reported to Scamwatch, with almost \$481 million in reported losses.

Strategic objective 5: Protect consumers from unsafe products

About this strategic objective

The 2 key activities that we undertake to protect consumers from unsafe products are:

- identify safety hazards in consumer products and prioritise the risks that may result in serious injury and death
- address the highest priority risks of serious injury and death arising from safety hazards in consumer products through regulation, education, compliance and enforcement.

The ACCC uses an intelligence-led approach to assess current and emerging consumer product safety risks. We review a range of data sources to identify issues that may present a safety concern. Data sources include:

- supplier mandatory and voluntary reports and consumer complaints
- media reports and other publications
- regular meetings with stakeholders
- injury surveillance units
- recalls published internationally on the OECD Global Recalls Portal
- overseas regulators, such as EU SafetyGate, Health Canada and the US Consumer Product Safety Commission NEISS Database.

We triage and assess information received and, where warranted, take action such as:

- negotiating the recall of goods
- educating industry and consumers, including issuing safety warnings
- negotiating voluntary changes to package labelling or product design
- introducing and/or working to implement changes to existing product safety mandatory standards and bans
- making recommendations for regulatory action by the Minister, including in relation to making standards, bans and issuing compulsory recalls
- taking enforcement action.

We work cooperatively with state and territory ACL regulators to deliver the objectives of our shared legislative scheme. Our ACL consumer product safety responsibilities form part of Australia's overall product safety framework, which is complemented by the role of specialist safety regulators who are responsible for the safety of specific classes of goods.

Our priorities

Each year we apply our Product Safety Priorities Policy to prioritise and address consumer product safety risks. Our priorities are informed by analysis of our internal data, media reports, public and staff surveys and consultation with targeted stakeholders. We also invite state and territory ACL regulators to endorse these as national priorities.

Our consumer product safety priorities for 2021-22 included:



Conducting education and surveillance activities and enforcing compliance in relation to the new quad bike safety standard.



Implementing the new safety standards for button batteries, with a focus on promoting compliance through education.



Implementing strategies to prevent injuries and deaths to infants caused by sleeping products identified as unsafe.



Strengthening product safety online through education, engagement and monitoring of compliance commitments by online marketplaces.



Scoping more effective risk controls for potential intervention to prevent injuries and deaths caused by toppling furniture.

Our [2022-23 product safety priorities](#) were announced by the ACCC Chair at National Consumer Congress in June 2022.

Key activity 5.1: Identify safety hazards in consumer products and prioritise the risks that may result in serious injury and death

About this key activity

This key activity relates to the methods we use to identify product safety issues and the types of action we take to address risks posed by unsafe consumer goods.

We use an intelligence-led and strategic approach to assess current and emerging consumer product safety risks and, where warranted, we take action.

We receive product safety reports in the form of complaints from consumers and mandatory and voluntary reports from suppliers. Mandatory reports include suppliers notifying recalls and submitting injury reports. Recall notifications are all reviewed and published. Injury reports are assessed against our product safety priority areas and priority factors. We conduct further research and intelligence gathering to determine the scope and severity of issues raised and whether further action is necessary.

Highlights



We published new and updated guidance for suppliers on mandatory reporting of death, serious injury or illness, including the [Product safety mandatory reporting guideline](#).



We completed a range of actions to improve the way we identify and manage risk, including improving our processes and working with other regulators to clarify roles and improve our engagement with key stakeholders.



We completed 13 research and intelligence reports on emerging product safety issues.

Performance measures

Table 3.20: Performance measures for key activity 5.1

| Performance measure | 2021-22 | | Met? |
|---|---------|--------|------|
| | Target | Result | |
| Percentage of reports about unsafe products that fall within our product safety priorities (including enduring factors) that are assessed ('reports' are mandatory reports and complaints to the ACCC of a product safety hazard; 'assessed' means assessed for consideration as intelligence or for consideration of escalation and possible intervention) | 100% | 100% | ✓ |
| Effectiveness survey 'index score' (out of 100) that key business stakeholders agree the ACCC is effective in identifying and prioritising safety hazards in consumer products | 70+ | N/A | |

Analysis of results

In 2021-22 we achieved our target of assessing 100% of the reports received that related to our product safety priorities. This can be attributed to improvements we made in our risk assessment triage tools and processes, improved guidance for businesses on mandatory reporting, work we carried out to improve our intelligence base, and tools we developed to improve risk identification.

Outcomes achieved

In 2021-22 the ACCC completed a range of actions to improve the way we identify and manage risk including improving our processes. We published guidance to improve reporting, worked with other regulators to clarify roles and improved our engagement with key stakeholders.

Research and intelligence project

In 2021 we commenced a project to help us:

- identify and better use internal and external data sources to strengthen our research and intelligence capability
- synthesise a range of data sources and intelligence tools to help identify and address emerging and high-risk product safety hazards.

In 2021-22 we also undertook extensive consultation and research; and identified and engaged with key stakeholders to discuss opportunities to share data and intelligence relevant to the safety of consumer products. We also identified a range of possible information sources and tools which are now being trialled or explored in further detail – for example, we are looking at using

web-scraping and text and sentiment analysis tools to identify issues that we would not otherwise be aware of.

We are developing an intelligence tool to demonstrate data trends. We are exploring opportunities to publish data trends.

Harmonised risk prioritisation approach

In 2021 we continued to update our processes for assessing and prioritising product safety complaints and reports – for example, we reviewed the risk nomograph, which is one of the tools we use to assist us in this process. These initiatives will establish a more efficient and standardised triaging process.

Mandatory reporting guidance for suppliers

In December 2021 we published new and updated guidance for suppliers on mandatory reporting of death, serious injury or illness. One of the key publications we updated was the [Product safety mandatory reporting guideline](#).

The guidance contains detailed information, examples, best practice and tools to help suppliers comply with their mandatory reporting requirements. It also recommends voluntary reporting of incidents such as ‘near misses’ that do not meet the mandatory reporting requirements. This is expected to assist us to identify emerging issues and trends.

Voluntary recall guidelines for suppliers

In 2022 we have been drafting new recall guidelines for suppliers, *Conducting a consumer product safety recall*, which we expect to publish later in the year. The new guidelines will inform suppliers of our expectations on conducting a voluntary recall. This guidance benefits from extensive work on recall effectiveness as part of the Takata compulsory recall and work done through the OECD. The guidelines cover all aspects of how to recall a product, including notifying, reporting progress, risk assessment, and communicating a recall to consumers.

The guidance will ensure suppliers are aware that we monitor recalls and take action if we assess that a supplier is not doing enough to remove the hazard from consumers.

Engagement with specialist regulators

In July 2021 the ACCC entered into a new [memorandum of understanding](#) with the Department of Infrastructure, Transport, Regional Development and Communications to clarify the department’s role as the lead agency for road vehicle recalls.

We are exploring similar opportunities with the Australian Government agencies for food, therapeutic goods, and agricultural and veterinary products. The engagement will clarify our roles and participation in policy processes in other key sectors to address regulatory overlap or gaps.

Product Safety Consultative Committee

In 2021 the ACCC established the Product Safety Consultative Committee (PSCC) as a key forum for engagement with key stakeholders on product safety. Members come from many stakeholder groups, including business, consumer and health advocates, industry associations, product safety advisors, legal experts and academics. The PSCC meets twice yearly to discuss emerging product safety issues and provide an opportunity for greater collaboration and engagement.

-
- > We received 5,197 reports and enquiries from the public about potentially unsafe products.
 - > We received 2,793 mandatory reports, which suppliers are required to submit when they become aware of serious injury, illness or death associated with a consumer product.
-

Key activity 5.2: Address the highest priority risks of serious injury and death arising from safety hazards in consumer products through regulation, education, compliance and enforcement actions

About this key activity

This key activity relates to the types of action we take to address risks posed by unsafe consumer goods.

Highlights



We ran 6 consumer awareness campaigns to help keep consumers safe - they focused on quad bikes, button batteries, shopping safely online, mandatory reporting, LG Energy storage batteries recall and staying safe in summer.



We commenced enforcement action against Mercedes-Benz Australia/Pacific Pty Ltd, alleging that it contravened the Takata airbag recall notice.



In partnership with the state and territory ACL regulators, we continued our work to achieve compliance with the quad bike safety standard, including an administrative resolution with Suzuki Australia Pty Ltd and accepting a section 87B undertaking from Crossfire Motorcycles Pty Limited for supplying noncompliant quad bikes.

Performance measures

Table 3.21: Performance measures for key activity 5.2

| Performance measure | 2018-19 | 2019-20 | 2020-21 | 2021-22 | | Met? |
|---|---------|---------|---------|---------|--------|------|
| | Result | Result | Result | Target | Result | |
| Number of reviews of mandatory product safety and information standards involving industry or consumer engagement completed | 4 | 3 | 2 | 4 | 6 | ✓ |
| Number of published new or substantially updated business compliance and/or consumer education resources relating to the safety of consumer products [#] | 9 | 7 | 12 | 6 | 33 | ✓ |
| Number of interventions* to address product safety risks | - | - | - | 16 | 42 | ✓ |
| Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC is effective in communicating risks of serious injury and death arising from safety hazards in consumer products | - | - | - | 70+ | N/A | |
| Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC is effective in addressing the highest priority risks of serious injury and death arising from safety hazards in consumer products | - | - | - | 70+ | N/A | |

Prior to 2021-22, this performance measure did not include consumer education resources.

* Interventions captured under this measure cover targeted actions by the ACCC to change consumer or supplier behaviour in relation to specific identified high-priority risks. They exclude the following areas of activity captured under other measures: reviews of standards, scheduled consumer or small business resources/campaign activity, and independent actions taken by industry to address product safety risks (which includes most voluntary recalls). Compliance interventions are trader guidance, consumer education initiatives, administrative resolutions such as a voluntary recall, and ACCC media releases. Regulatory interventions are decisions made by the Minister based on an ACCC recommendation for a safety warning notice, product ban, compulsory recall or mandatory standard. Enforcement interventions are court proceedings commenced, infringement notices issued, section 87B undertakings accepted, or administrative resolutions.

Analysis of results

In 2021-22 we exceeded our target of 16 interventions (which was a new performance measure for 2021-22). More than half of the 42 interventions were within our stated product safety priority areas, including button batteries, quad bikes and infant inclined products. Additional interventions were required for products such as babies' cots, small high-powered magnet products, ventilator devices, babies' rattles and konjac jelly cups. The overall high number of interventions can be attributed to:

- improvements in intelligence gathering and processes used to triage and assess risk
- a focus on compliance initiatives such as education and communication
- investigations relating to quad bikes, which included administrative resolutions and the acceptance of a section 87B undertaking
- addressing concerns about button batteries by negotiating voluntary recalls, in line with the new safety standards for these products.

As with previous years, we exceeded our target for new or updated compliance resources, reflecting the importance we place on providing businesses with the information they need to ensure product safety laws are complied with. We produced several resources to support compliance with the new button batteries and quad bikes safety standards and released new mandatory reporting guidance.

We exceeded our target of 4 reviews of mandatory product safety standards, completing 6 reviews during the period.

Outcomes achieved

In 2021–22 the ACCC undertook a range of regulatory and enforcement activities to protect the Australian community from unsafe consumer products.

Mercedes Benz

In August 2021 the ACCC instituted Federal Court proceedings against [Mercedes-Benz Australia/Pacific Pty Ltd](#), alleging it contravened section 127(1) of the ACL by failing to comply with its obligations under the [Consumer Goods \(Motor Vehicles with Affected Takata Airbag Inflators and Specified Spare Parts\) Recall Notice 2018](#).

The ACCC has alleged that, between July 2018 and March 2020, Mercedes-Benz, in its communications with consumers, contravened the recall notice by making representations to consumers that included statements that were inconsistent with the recall notice, including using language that downplayed the risks associated with the recalled airbags.

The ACCC is seeking declarations, pecuniary penalties, an order requiring a product recall compliance program and costs. This matter is listed for trial on 1-2 September 2022.

Button/coin battery mandatory standards

On 22 June 2022 the 4 [mandatory safety and information standards](#) for button batteries and consumer goods containing them became mandatory following an 18-month transition period. During this period we focused on education and compliance activities directed at manufacturers, importers, distributors and retailers.

In 2021–22 we worked with suppliers to take immediate steps to ensure their products are compliant and improve the safety of products already available for sale. From 1 July 2021 to 30 June 2022, with the ACCC's encouragement, 11 suppliers voluntarily recalled 27 products containing button batteries, including Bluetooth trackers, LED lights, toys and watches for children, kitchen accessories and novelty items.

▶ CASE STUDY

Improving button battery safety

Improving button battery safety has been a product safety priority since 2018. On 22 June 2022 new button batteries standards became mandatory, and they now apply to around 30 million products supplied each year. These world-first standards will improve safety in the design of products containing button batteries, the packaging of button batteries, and the requirements for warning consumers of the risks.

We have also been involved in a number of other activities to reduce the risks that button batteries pose to children:

Assessments and voluntary recalls: Before the mandatory standards were enforceable, we assessed a number of product types by conducting online sweeps and purchasing products for testing. We assessed their compliance with a voluntary code that was introduced in 2016 and negotiated voluntary recalls where a safety risk was found. Since the introduction of the voluntary code, over 80 children's toys, electronic and technology products and novelty items and accessories have been voluntarily recalled because of button battery safety concerns.

Promotional products: There have been 2 major voluntary recalls of unsafe promotional products containing button batteries supplied at major sporting events over the last 2 years, affecting nearly 13,000 products. The ACCC and suppliers acted swiftly to notify consumers of the potential hazards, and suppliers conducted voluntary recalls. The ACCC liaised directly with local and overseas suppliers and the industry representative body notifying them of the risks of button batteries and their obligations under the ACL and the mandatory standards.

Consumer awareness: We have run a number of campaigns to raise consumer awareness of the health risks to young children associated with button batteries – for example:

- the '[Tiny batteries, big danger](#)' campaign, which was run in 2020 and 2021
- a seasonal themed social media campaign in December 2021 to raise awareness of the button battery dangers of 'stocking stuffers'. The campaign reached over 2.5 million people
- a social media campaign in 2022 utilising various platforms and including messages translated into Arabic, Cantonese, Mandarin and Vietnamese.

The ACCC has been involved in the Battery Stewardship Council (BSC)'s Button Battery Advisory Group and contributed to the development of a button battery safety strategy, including campaigns to encourage the safe recycling of button batteries. The program, [B-cycle](#), was launched in February 2022 and we have updated our website to align with BSC's messaging.

Supplier education and engagement: Since the introduction of the new mandatory standards, we have been focused on education and compliance activities for manufacturers, importers, distributors and retailers in partnership with industry associations, relevant government agencies and other stakeholders. In June 2021 we published a [fact sheet](#) and [guide for business](#) to help suppliers and manufacturers understand the requirements of the new standards.

Now that the standards are mandatory, our focus will shift from education and awareness-raising activities to ensuring compliance with the mandatory standards, including through enforcement action. Our compliance and enforcement strategy will consider a range of factors, including the risk presented by noncompliance and various types of intelligence we received.

Quad bikes mandatory safety standard

Quad bike accidents are one of the leading causes of death and injury on farms and rural properties. There were 11 quad bike fatalities in 2021 and 6 recorded as at 30 June 2022.

In October 2019, in response to continuing deaths and injuries associated with their use, the ACCC introduced a new quad bike safety standard. The standard was introduced in 2 stages over 2 years to give manufacturers time to make necessary adjustments to quad bikes and include labelling and design requirements. The standard in whole became mandatory in October 2020.

In 2021, in partnership with the state and territory ACL regulators, the ACCC coordinated [national surveillance with the stage 1 labelling requirements of the standard](#). This led to follow-up engagement with suppliers about noncompliance, including an [administrative resolution](#) with Suzuki Australia Pty Ltd in which [Suzuki](#) recalled 490 noncompliant quad bikes. In December 2021 we also accepted a [section 87B undertaking from Crossfire Motorcycles Pty Limited](#) for supplying approximately 900 noncompliant quad bikes.

In partnership with state and territory ACL regulators, our [surveillance activities are ongoing](#). We are now focusing on compliance with and enforcement of the whole standard.

Infant inclined sleeping surfaces

Products that position an infant at an inclined angle create a risk of suffocation, asphyxiation or carbon dioxide rebreathing when an infant is asleep. Infant inclined products include products such as bouncers, rockers and swings.

Implementing strategies to prevent injuries and deaths to infants caused by sleeping products identified as unsafe was a 2021 product safety priority.

In July 2021 we published an [issues paper](#) seeking feedback on the types and availability of infant inclined products in the Australian market and the potential effectiveness of proposed options to address the risks associated with these products.

Based on responses to the issues paper and expert advice, the ACCC understands there are risks associated with other design features, such as curvature, rigidity and material used, which are interlinked with the incline risk and warrant consideration. As a result, the ACCC has decided to consult on a broader range of products, being all infant sleep products.

We are preparing a consultation paper to be published in the second half of 2022. The consultation paper will seek stakeholder views on the costs and benefits of a range of regulatory and non-regulatory options to improve the safety of infant sleep.

Strengthening product safety online

Strengthening of product safety online through education, engagement and monitoring of compliance commitments by online marketplaces was a 2021 product safety priority.

In November 2021 we published our first [Product safety pledge annual report](#), which highlighted some of the ways online businesses have addressed product safety risks through technological enhancements.

There are currently 5 signatories, and we continue to engage with other online marketplaces seeking to strengthen product safety through their participation in the pledge.

Toppling furniture

The ACCC is scoping more effective risk controls to reduce deaths and injuries caused by toppling furniture.

Between 2000 and June 2022 there were 28 deaths in Australia involving toppling furniture. Children under the age of 5 are most at risk due to their physical vulnerability and tendency to climb furniture.

In August 2021 we published an [issues paper](#) and met with key stakeholders to improve our understanding of the key issues behind this hazard. A further [consultation paper](#) was released in May 2022 seeking views on proposed regulatory options and their associated costs and benefits. Feedback received in response will inform our final recommendation to the Minister.

OECD online product safety sweep

The ACCC and the Korean Consumer Agency (KCA) are currently co-leading the OECD Online Product Safety Sweep – a 2-year international campaign on online product safety. As part of the sweep, participants from 21 countries examined over 4,000 online products for compliance and then submitted their data to the ACCC in October 2021.

Participants from 21 countries searched for 3 types of noncompliant products:

- those that were banned or recalled
- those that had inadequate labelling or safety warnings
- those that did not meet mandatory or voluntary safety requirements.

In many cases not enough information was provided online for a consumer to make an informed decision as to whether a product meets relevant safety standards or bans.

A detailed report is being prepared and will be released in late 2022. This will coincide with a global awareness campaign highlighting key insights from the sweep.

Coronial inquest

On 19 November 2021, the Coroners Court of New South Wales handed down its findings and recommendations in the inquest into a death from a Takata airbag. The ACCC provided a response to the recommendations on 18 February 2022. We expect it will be published by the [New South Wales Department of Communities and Justice](#).

International engagement

The ACCC continued to actively advocate for improved cooperation on compliance and enforcement to achieve better product safety outcomes for consumers. For example:

- The ACCC chaired the OECD's Working Party on Consumer Product Safety, which brings together regulators from around the world to improve product safety regulation.
- Through the AANZFTA CAP, the ACCC is working with ASEAN Member States and New Zealand to strengthen implementation of national consumer laws and grow regional cooperation on issues including product recall and consumer product safety in e-commerce.
- Through the Department of Foreign Affairs and Trade, the ACCC provided feedback regarding Australian product safety laws, cooperation and information-sharing arrangements relevant to the negotiation of the Australia and UK Free Trade Agreement Technical Barriers to Trade chapter.

-
- > We issued 9 media releases and safety alerts to inform the public on issues relating to button batteries, improving consumer safety online, quad bikes, babies' cots, product recalls and toppling furniture.
 - > We published 365 recall notifications on the Product Safety Australia website to alert the public about unsafe products.
 - > We held 5 public consultations to seek stakeholder feedback on guidance materials and proposed regulatory actions.
 - > There were 4,076,949 Product Safety Australia website page views.
-

Strategic objective 6: Regulate monopoly infrastructure and monitor concentrated markets in the long-term interests of consumers

About this strategic objective

The key activities we undertake to achieve this strategic objective are to:

- formulate regulatory decisions that promote the long-term interests of end users and consumers
- provide industry monitoring reports to government in relation to highly concentrated or emerging markets
- improve the efficient operation of markets by enforcing industry-specific competition and market rules.

The ACCC is the national economic regulator of declared infrastructure services in communication, postal services and rail. We have specific regulatory roles in relation to bulk wheat port facilities. Fostering efficient infrastructure provision through industry-specific regulation and access conditions, under the umbrella of the long-term interest of end users, is a major focus of our economic regulatory role. Access conditions that promote competition in upstream and downstream markets increase the efficiency and productivity of the overall economy.

To identify market failure and promote competition, the ACCC monitors and reports on the price and quality of goods and services available in some concentrated, deregulated or emerging markets or markets of significant concern to consumers. These include the petrol, airports, airlines, gas, electricity, communications and stevedoring sectors.

We also have a role in enforcing industry-specific competition and market rules in some infrastructure-based markets.

The ACCC's regulatory role 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.

Our priorities

The ACCC's infrastructure regulation and industry monitoring priorities for 2021-22 were:



Promote effective competition in communications markets where this is feasible and otherwise regulate declared services and ensure compliance with industry-specific regulation to promote the long-term interests of end users.



Develop long-term regulatory arrangements to apply to all of the national broadband network.



Advise on specific spectrum allocations to promote efficient competition and consumer outcomes in communication markets.



Conduct inquiries into emerging threats to competition due to the economic impacts of the COVID-19 pandemic, especially in the aviation sector.



Develop a future regulatory framework for the interstate rail network.



Establish regulated access terms for bulk wheat facilities.



Promote competition and consumer outcomes in the National Electricity Market through compliance and enforcement measures, regular reporting and appropriate advocacy.



Monitor and report on the supply outlook and prices in gas markets, and promote consumer interests and efficiencies in these markets.



Increase the scope and/or frequency of monitoring and reporting in critical sectors, and those of significant concern to consumers, such as our work in the fuel sector, to provide greater transparency for customers and the market.








Promote affordability and financial hardship measures to protect consumer interests, such as our focus on ensuring that fuel excise cuts are passed on to consumers.



Work with our stakeholders on efficient and effective engagement strategies to ensure all views are considered as we meet our legislative obligations.

Highlights

-  We responded to the developing energy crisis, including examining electricity spot and contract markets and explaining the drivers of the unprecedented changes and the ACCC's role, in an addendum to our [Inquiry into the National Electricity Market – May 2022 report](#).
-  We conducted extensive industry consultation to inform the development of a long-term future regulatory framework for the National Broadband Network (NBN). NBN's Special Access Undertaking (SAU) should promote competition and efficiency in Australia's broadband market, to the benefit of households and businesses. It sets the maximum prices and terms and conditions for broadband providers to access the NBN.
-  We identified issues and trends driving unprecedented disruptions to the container stevedoring supply chain and proposed solutions to address the issues.
-  We examined the domestic airline industry, including monitoring for any behaviour that may be damaging to competition as we emerge from the COVID-19 pandemic.
-  We published a report on Australia's mobile network infrastructure and coverage containing information that was previously unavailable to consumers and industry.

Key activity 6.1: Formulate regulatory decisions that promote the long-term interests of end users and consumers

About this key activity

We use our regulatory decision-making powers to facilitate access to infrastructure that has market power and establish efficient pricing for that access. Efficient access creates conditions for competition to emerge in upstream and downstream markets, with flow-on impacts for consumers in the form of lower prices, higher quality products, and innovation.

Performance measures

Table 3.22: Performance measures for key activity 6.1

| Performance measure | 2018-19 | 2019-20 | 2020-21 | 2021-22 | | Met? |
|--|---------|---------|---------|---------|--------|------|
| | Result | Result | Result | Target | Result | |
| Percentage of regulatory decisions completed within statutory timeframes (including 'stop the clock' and timeframe extension provisions in the CCA) | 100% | 100% | 100% | 100% | 100% | ✓ |
| Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC's regulatory decisions effectively promote the long-term interests of end-users and consumers | - | - | - | 70+ | N/A | |

Analysis of results

During the year we made 9 regulatory decisions encompassing the communications, rail and wheat sectors. Of those that had a statutory timeframe, we again completed all of these decisions within their statutory timeframe.

Our decisions helped parties access key infrastructure and promoted efficient investment and upstream and downstream competition in these sectors. In making these decisions, we provided longer term incentives to address or alleviate market failures.

We review access terms periodically to ensure they remain efficient and provide the correct incentives, particularly in dynamic sectors such as communications. Decisions included:

- final determinations under the Port Terminal Access (Bulk Wheat) Code of Conduct regarding the level of regulation to apply to certain port terminal service providers
- extending the wholesale asymmetric digital subscriber line (WADSL) service declaration expiry date to promote the long-term interests of end users of carriage services.

Outcomes achieved

Developing regulatory settings for a sustainable, efficient and competitive NBN

NBN infrastructure will support much of the economic and social activity of Australians in the decades to come. With the NBN declared fully built and operational in late 2020, we commenced an extensive collaborative process with stakeholders to develop a long-term future regulatory framework for the network. This process commenced after NBN Co indicated its intention to revise its SAU, which specifies the default rules by which NBN Co provides access to the NBN. We must make a decision that is in the long-term interest of end users, which would establish a framework that encourages retail competition and efficient investment in, and use of, infrastructure, leading to more efficient wholesale pricing. Having strong regulatory settings in place will ensure the economic benefits of the significant public investment are realised through a more sustainable and competitive NBN market.

We conducted extensive industry consultation on the form of access regulation to apply to the NBN. This gave representatives of NBN Co, access seekers, industry and consumer bodies and government a forum in which to provide their views on a new regulatory model for consideration at an early stage of its development.

Following consultation, we published [NBN Co Special Access Undertaking summary of industry working group outcomes](#) – a detailed paper including 5 key outcomes from stakeholder working groups that would help guide the development of the framework.

In March 2022 NBN Co submitted its proposed variation to the SAU.²⁸ The variation seeks to incorporate fibre-to-the-node and other copper-based technologies in the SAU to create a single regulatory framework for all technologies. It also includes significant changes to other key elements of the SAU, including product and pricing commitments, the framework for NBN Co's cost recovery, and rules for how the ACCC assesses network expenditure.

The regulatory arrangements that are established through this process will significantly influence the price, quality and range of broadband offers in the market until 2040.

We published the variation in May with an accompanying consultation paper and have invited submissions from interested parties to inform our consideration of whether to accept or reject the SAU variation.

²⁸ On 27 July 2022, NBN Co withdrew its initial proposed SAU variation. We expect NBN Co to submit a revised proposed SAU variation in September 2022.

Regulatory settings for non-NBN fixed-line broadband networks

In July 2021 we commenced a public inquiry to make a final access determination for the superfast broadband access service following our decision to declare the service. The inquiry is considering the price and non-price terms and conditions of access by retail service providers (RSPs) to the non-NBN superfast broadband networks. We are also considering whether the price for access to these networks should continue to be benchmarked against the NBN; and whether exemptions should apply to non-NBN superfast broadband networks where they compete directly with other like networks such as the NBN.

In December 2021 we extended the declaration of Telstra’s wholesale asymmetric digital subscriber line service until 2024. The declaration enables RSPs to purchase a wholesale service from Telstra to compete in providing high-speed fixed-line broadband services to end users. We considered that extending the declaration would continue to promote competition and provide certainty to RSPs about regulated access and pricing arrangements. We also considered that, for the period of the declaration at least, the asymmetric digital subscriber line (ADSL) service is likely to continue to be useful to many end users before they migrate to the NBN fixed network and in NBN fixed wireless and satellite areas where ADSL services remain available.

Promoting infrastructure-based competition for superfast broadband

We are making it easier for non-NBN network operators to compete in the superfast broadband market. Pursuant to Part 8 of the *Telecommunications Act 1997* (Cth), we have made a class exemption determination for smaller providers with residential customers. It exempts those providers who elect to be bound by it from the requirements to operate on a wholesale-only basis.

Larger non-NBN network providers may also operate both retail and wholesale businesses, subject to the ACCC’s acceptance of a functional separation undertaking or by electing to be bound by the ACCC’s deemed functional separation undertaking. This provides greater commercial flexibility for superfast network operators and promotes infrastructure-based competition. On 7 April 2022 we accepted TPG’s joint functional separation undertaking, which will come into force on 7 October 2022. TPG’s undertaking will apply to all local access lines that it controls, supplying superfast carriage services primarily to residential customers. It will give TPG greater flexibility to expand its existing fixed-line network footprint and compete in wholesale and retail markets for the supply of superfast broadband services to residential customers.

Communications industry guidance

In 2022 we publicly consulted on revising the broadband speed claims industry guidance to improve retailers’ information about upload speeds and fixed wireless services on non-NBN networks. Given the significance of upload speed information to consumer plan selection decisions (especially as they undertake activities at home that were previously done in office spaces and education settings), revised guidance may help consumers select plans that are right for them.

In September 2021 we released guidance to industry about the non-discrimination obligations (NDOs) in Part XIC of the CCA and Part 8 of the Telecommunications Act. The guidance is intended to assist industry to understand how we will consider whether NBN Co and certain other network owners have complied with the NDOs.

In April 2022 we released draft guidance on the carrier separation rules in Part 8 of the Telecommunications Act for consultation with industry. The guidance is intended to assist industry to understand the superfast network separation obligations and how we will consider whether network operators have complied with them. This guidance will help to ensure that all non-NBN superfast network operators comply with the regulatory requirements when offering retail services over networks that they control.

- > ‘Regulatory evolution: are new tools needed?’ was the theme of the July 2021 ACCC/AER Regulatory Conference, which featured sessions on digital platforms, broadband, monopoly access regulation, vulnerable consumers and electricity market design.
- > We convened 17 multilateral meetings and presentations between July and December 2021 to consult on a new regulatory model to apply to the NBN.
- > About 400,000 Australians connect to the internet through non-NBN superfast networks, according to our [media release](#) that accompanied our [Measuring Broadband Australia report 17, June 2022](#).
- > We received 10 submissions in response to our [issues paper](#) on the regulatory framework for the Australian Rail Track Corporation’s Interstate network.
- > In January 2022 the ACCC made [a submission](#) to Treasury’s Exposure Draft legislation for improving the timeliness of the National Access Regime.

Key activity 6.2: Provide industry monitoring reports to government in relation to highly concentrated or emerging markets

About this key activity

Under this key activity we closely monitor the price and quality of goods and services available in markets at risk of being inefficient because they are emerging, highly concentrated or otherwise an area of high consumer concern. This transparency can help make markets more competitive. It also puts suppliers in those markets on notice that we are scrutinising their conduct to inform any regulatory or policy responses if issues persist.

Performance measures

Table 3.23: Performance measures for key activity 6.2

| Performance measure | 2021-22 | | Met? |
|---|---------|---------|------|
| | Target | Result | |
| Number of monitoring reports (covering electricity, gas, communications, rail, petrol, aviation, ports and stevedoring sectors) | 22 | 28 | ✓ |
| Number of visits to the ACCC’s industry guidance webpages | 6,500 | 5,567 | ○ |
| Number of visits to the ACCC Measuring Broadband Australia consumer dashboard | 30,000 | 28,598 | ○ |
| Number of visits to the ACCC petrol price cycle website | 450,000 | 666,720 | ✓ |
| Effectiveness survey ‘index score’ (out of 100) that key stakeholders agree the ACCC’s Industry monitoring reports are effective in informing government and the public about highly concentrated or emerging markets | 70+ | N/A | |

Analysis of results

Through our monitoring and reporting functions, the ACCC plays a vital role in arming consumers with valuable information and advocating to policymakers around longer term policy responses. We exceeded our target for the number of monitoring reports, releasing 28 reports across 8 sectors.

We expanded the scope of some of our monitoring reports. For instance, our annual [Container stevedoring monitoring report 2020-21](#) broadened in scope to analyse the global container freight supply chain, which was adversely affected by multiple factors, including the COVID-19 pandemic. We also expanded our Measuring Broadband Australia (MBA) program to cover additional RSPs and other superfast networks.

Our MBA dashboard continues to support consumers to compare and make informed decisions about which broadband services meet their needs. Importantly, data derived from the MBA program allows consumers to see whether RSPs are delivering the performance that they represent to the market. This has helped promote performance-based competition and driven broad improvements in fixed-line broadband performance. The federal government has extended funding for the MBA program for another 4 years.

Although the number of visits to 2 of our websites was below the target level, visits to our petrol price cycle webpage exceeded our annual target by almost 50%. This likely reflects increased interest from consumers in understanding petrol price cycles during a period of relatively high prices, petrol sales volumes recovering from lower levels seen in 2020 and 2021, and the Australian Government's announcement of a 6-month cut to the fuel excise in March 2022.

In 2021-22 Australian households experienced significant cost of living pressures. During the first 2 weeks of June 2022, wholesale electricity spot prices rose significantly. Volume weighted average spot prices ranged from \$341/MWh to \$590/MWh depending on region, roughly 5 times higher than in quarter 1, 2022. There was an increase in visits to our Guide to Electricity Retail Code online resources (which is one of the ACCC's industry guidance webpages), showing that there is increased awareness of the code and electricity retailers' obligations under the code.

Outcomes achieved

Our monitoring and reporting activities have highlighted opportunities and challenges facing some of Australia's key essential infrastructure sectors.

Energy

Electricity and gas prices increased in 2021-22, with a particular surge in prices in late May and June 2022. A number of compounding factors contributed to these extreme prices. The war in Ukraine led to significant and unprecedented increases in the global demand for non-Russian coal and gas. There were significant outages (both planned and unplanned) at east coast power stations, limiting the supply of electricity. These factors were amplified by below-average temperatures at the start of winter, which increased domestic demand for energy.

The ACCC is acutely aware of the pressures that rapidly rising energy prices place on Australian households and businesses. Our role in monitoring and reporting on Australia's energy markets is to ensure that the conditions for competition are preserved, where possible, and market participants, including consumers, are treated fairly.

Under direction from the federal government, we will use our full information gathering powers to provide greater transparency around the factors influencing electricity and gas prices, including profits and margins from a wide range of electricity companies. We will also assess and bring to the government's attention any need for regulatory change to ensure electricity and gas markets function properly for the benefit of all Australian consumers.

We will continue to report to government on issues in the National Electricity Market (NEM) and east coast gas markets as part of our ongoing inquiries.

In June 2022 we released our [Inquiry into the National Electricity Market – May 2022 report](#). This is the seventh report of the inquiry into the prices, profits and margins in the supply of electricity in the NEM. It provided insight into the electricity bills faced by Australian households and businesses in the preceding year. However, given the substantial shift in Australian energy markets in June, we included an addendum to explain the drivers of the unprecedented changes, the price impacts we were seeing, and the ACCC's role.

We also published guidance for consumers on our website regarding [minimising energy bills](#). This included questions that consumers should ask their retailer about their current plan and what to do if they need help paying their energy bill.

In 2021-22, as part of the ongoing Gas Inquiry, we continued to publish key information on the east coast gas market in our biannual reports. We also regularly updated our forward export parity price series, based on spot liquified natural gas (LNG) prices in Asia.

We committed to publishing additional relevant information about pricing in the east coast gas market to help improve the negotiating power of commercial and industrial (C&I) gas users seeking longer term supply. We will do this by publishing longer term forward export parity prices out to 5 years, based on oil-linked pricing.

Despite global gas and oil prices increasing sharply in 2022, domestic contract offers to C&I gas users for the majority of 2021 were below export parity prices. This was likely to be due to a range of factors, including expectations of relatively stable oil-linked LNG netback prices at the time, short-term domestic market dynamics and the potential for regulatory intervention when the prices are high. However, many users looking to secure supply have reported being faced with the choice of accepting offers in line with export parity prices or procuring gas in a volatile domestic spot market.

In 2021-22, to address future shortfalls of gas forecast for the east coast gas market, we recommended that the Australian Government extend its current agreement with LNG producers to offer gas to the domestic market at competitive market prices, well in advance of the current agreement expiring.

Stevedoring

The state of the global container freight supply chain deteriorated rapidly in the face of the COVID-19 pandemic. This caused significant challenges for many Australian businesses, consumers and the Australian economy as a whole. We analysed the supply chain and its pressure points and identified the drivers behind these disruptions. Our analysis also identified longer term issues, predating the pandemic, that adversely impacted the supply chain's operation.

▶ CASE STUDY

Issues run deep with container freight trade

The importance of effective and competitive supply chains was more evident than ever during the COVID-19 pandemic. Our annual [Container stevedoring monitoring report 2020-21](#) highlighted the destabilising role COVID-19 played in staff shortages, port congestion, changed consumption patterns and transport interruptions, all of which led to delayed shipments and rapidly rising freight rates. This year we broadened the scope of the report to analyse the global supply chain, reflecting the interconnected nature of the container freight trade.

The report also identified longer term trends that could adversely affect the supply chain and highlighted the need for:

- action on industrial relations
- better regulation of privatised ports so they do not levy excessive rents and charges
- law reform, including the repeal of Part X of the CCA
- infrastructure investment to fix inefficiencies.

We established an international partnership with competition regulators in Canada, New Zealand, the United Kingdom and the United States to detect any attempts by businesses to use the pandemic conditions as a veil for illegal conduct. This partnership will help us to deal with increasing concerns of potential collusion in setting ‘COVID levies’ at various points of the supply chain. Where we have evidence of businesses taking advantage of the situation to fix prices or share markets, we will not hesitate to act.

In February 2022 the ACCC made [a submission](#) to the Productivity Commission’s inquiry into the Long-term Productivity of Australia’s Maritime Logistics System, covering the findings of the ACCC’s *Container stevedoring monitoring report 2020-21*, the operation of Part X of the CCA, and the ACCC’s broader competition and consumer protection work in ports and shipping.

Communications

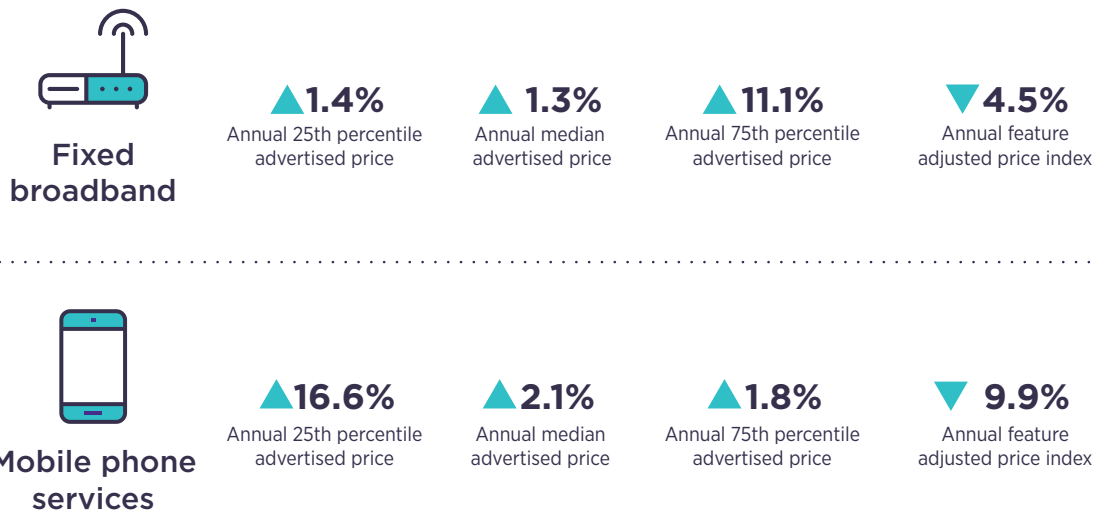
During the second year of the COVID-19 pandemic, Australians continued to rely heavily on their broadband services for work, education and entertainment. This resulted in sustained pressure on Australia’s communications infrastructure, which has generally met the demands of Australian households and businesses.

Our **communications reports** give consumers important insights to help them make more informed purchasing decisions for communication services. These reports also deliver greater market transparency and encourage performance-based competition among Retail Service Providers (RSPs).

The [Communications market report 2020-21](#), published in December 2021, provided greater transparency to consumers and industry on the significant trends and developments in the broadband and mobile phone services markets and the state of competition in the communications sector. Several key report findings will help better inform consumers’ purchasing decisions.

The report found that consumers are now on average paying more for fixed broadband but getting additional features. Figure 3.2 below shows that, while advertised prices increased for both fixed broadband and mobile phone services across the board, feature adjusted prices decreased for both.

Figure 3.2. Price changes in telecommunications services in Australia



Advertised prices reflect the nominal prices offered to consumers but do not consider changes in product features such as higher data allowance or faster download speed. Feature-adjusted prices measure price changes that take into account changes in product features.

In the mobiles sector in particular, consumers are paying significantly more for a range of phone plans from the flagship brands of Optus, Telstra and TPG.

To improve transparency in **mobile infrastructure assets and coverage**, we released for the first time data provided by the mobile network operators (MNOs) on their mobile infrastructure from 2018–2021 and the [Mobile infrastructure report 2021](#). The report contains analysis of the change in MNOs' mobile infrastructure and coverage from 2018 to 2021. This is intended to:

- provide transparency on how the MNOs' networks are changing over time
- allow for more scrutiny of these changes in specific geographic areas
- provide accountability over investment claims made by the MNOs, particularly in specific geographic areas.

In recent years, MNOs have continued to invest in network deployment, though focus has shifted to the rollout of 5G networks.

Aviation

The aviation sector has been particularly hard hit by the COVID-19 pandemic. Our monitoring of both airports and the domestic airline market reflect the difficulties the sector continues to face.

Our main focus with airport monitoring was to provide transparency about airport services for which there is little or no competition. Our [Airport monitoring report 2020–21](#), released in June 2022, examined the process of negotiation between airports and airlines, both prior to and during the COVID-19 pandemic. The Aeronautical Pricing Principles (APPs) set out the Australian Government's expectations on the way that airports and airlines should conduct their commercial negotiations. One of the key objectives of the APPs is to assist airlines to negotiate with airports that have market power. In our report, we stated that the APPs are not enforceable and are currently not consistently used in negotiations.

We also continued to monitor the state of the domestic airline activity, including to identify any behaviour within the industry that may be damaging to competition. Our 2021–22 quarterly monitoring reports show that the domestic airline industry has faced significant setbacks in its recovery from the impact of COVID-19 because of the emergence of the delta and omicron variants. However, passenger numbers started picking up as the financial year progressed, with

the number of passengers flying in April 2022 representing 89% of pre-pandemic levels. Discount economy airfares briefly hit an 11-year low for flights in late April following higher prices over the Easter period. Shortly after, jet fuel costs reached record highs and airlines started increasing their airfares in response.

Fuel

Transparency in fuel prices is important to assist consumers navigate this rapidly changing market. In 2021–22 we saw a confluence of events that drove fuel prices to their highest levels in 14 years in real terms. Retail petrol prices are influenced by a range of fluctuating factors, including the international oil price and the USD/AUD exchange rate. International crude oil prices in the past year were heavily influenced by production cuts by the Organisation of the Petroleum Exporting Countries (OPEC) cartel, increased demand for crude oil as some countries relaxed COVID-19 restrictions, and the conflict in Ukraine.

The ACCC's quarterly petrol monitoring reports helped to inform consumers and industry stakeholders about the main influences on Australian fuel price movements in 2021–22. The reports also maintained a focus on developments in, and increasing consumer take-up of, real-time fuel price websites and apps. Real-time price information can help consumers find the lowest prices, encourages them to buy where fuel is cheapest, and rewards price-competitive retailers. In our March 2022 quarterly report, we noted that the fuel excise cut of 22 cents per litre (cpl) on 30 March was passed on in the vast majority of locations. In the 6 weeks after the excise cut, daily average petrol prices fell by at least 39 cpl in Sydney, Melbourne, Brisbane, Perth and Adelaide. In Canberra, Hobart and Darwin over the same period, prices fell by between 25 and 48 cpl.

-
- > During the first 2 weeks of June 2022, wholesale electricity spot prices rose significantly. Volume weighted average spot prices ranged from \$341/MWh to \$590/MWh depending on region, roughly 5 times higher than in quarter 1, 2022.
 - > We analysed 13 million retail electricity bills from 10 retailers that together supply the majority of residential and small business customers across New South Wales, South Australia, south-east Queensland and Victoria to prepare our [Inquiry into the National Electricity Market – May 2022 report](#).
 - > Our [Container stevedoring monitoring report 2020–21](#) was visited on our website 5,069 times to 30 June 2022.
 - > Our [Bulk grain ports monitoring report – data update](#), published in December 2021, found that Australia achieved its largest bulk grain export shipping year on record in 2020–21, driven by near-record production, with exporters accessing an increasing number of port operations across Australia.
 - > Our submission to the 2021 Regional Telecommunications Review recommended measures to increase the accuracy and transparency of information on mobile network quality and coverage in regional, rural and remote Australia.
-

Key activity 6.3: Improve the efficient operation of markets by enforcing industry-specific competition and market rules

About this key activity

We use our powers to enforce industry-specific rules that promote competitive, efficient markets. We seek to mitigate harm to competition or consumers by stopping harmful 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.

Performance measures

Table 3.24: Performance measures for key activity 6.3

| Performance measure | 2018-19 | 2019-20 | 2020-21 | 2021-22 | | Met? |
|--|---------|---------|---------|---------|--------|------|
| | Result | Result | Result | Target | Result | |
| Number of completed investigations into potential breaches of rules | 16 | 12 | 14 | 11 | 8 | ○ |
| Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC's enforcement of industry-specific competition and market rules improves the efficient operation of markets | - | - | - | 70+ | N/A | |

Analysis of results

With the unprecedented rise in energy costs impacting Australian households and businesses, the ACCC's role is to guard against anti-competitive behaviour and ensure fair marketing of electricity prices to consumers. All 8 of our completed investigations this year focused on energy retailers and their compliance with electricity pricing obligations under the CCA and the national Electricity Retail Code. We observed a good level of overall compliance with retailers' obligations. However, where we did observe potential issues, they were often complex.

We worked closely with our colleagues at the AER to monitor and preserve the competitiveness of our energy markets and to act against conduct harming competition or consumers.

Outcomes achieved

Energy

Our focus for the [Inquiry into the National Electricity Market](#) (NEM) this year has been to advocate for consumers and ensure savings are being passed on to them. The ACCC enforces laws that require electricity retailers to pass on savings to consumers when there has been a sustained and substantial reduction the cost of supplying electricity. In 2021-22 we approached a number of electricity retailers to assess whether they had adequately passed on cost savings to their customers.

Following the significant and unprecedented energy price increases in June, we refocused our efforts to reflect this change in market conditions. In particular, we enforce laws governing generators' bidding behaviour in the spot market and the provision of hedging contracts for electricity. We are closely monitoring market behaviour to ensure generators do not break the rules that prevent anti-competitive conduct in the electricity market.

We will take action to preserve conditions for competition, where they can be preserved, and to ensure market participants, including consumers, are treated fairly. To achieve this goal, we are working collaboratively with the AER.

We continue to scrutinise advertising claims of electricity retailers as part of our monitoring and compliance role in the electricity market. This is particularly important in an environment of rising retail prices. The Electricity Retail Code, among other things, sets requirements on the pricing information retailers must communicate to consumers and how the information must be communicated. In 2021-22 energy retailer CovaU Pty Ltd paid \$33,300 in penalties after the ACCC issued it with 3 infringement notices for alleged contraventions of the code.

The Department of Industry, Science, Energy and Resources is currently reviewing the code. We made 2 submissions on the efficacy of the code that included recommendations for improvement.

Communications

In 2021-22 we took **enforcement action to protect the interests of consumers**, instituting proceedings against each of Telstra, Optus and TPG for making alleged false or misleading representations about NBN maximum speeds (more discussion on this work can be found under key activity 4.1).

-
- > There were 541 visits to the [Information for electricity retailers](#) page.
 - > There were 3,069 visits to the [electricity consumer advice](#) page.
 - > The ACCC's role in energy markets is in the context of the CCA, which includes specific provisions designed to prevent energy market misconduct (Part XICA) and ensuring compliance with the price cap on standing offers and fair marketing of electricity prices to consumers through the Electricity Retail Code.
 - > In April 2022 the ACCC made [a submission](#) to the Productivity Commission's inquiry into Australia's Productivity Performance, which discussed, among other things, regulation of essential monopoly infrastructure, privatisation of government assets, road reform and NBN regulation and merger reform.
-

Program 1.2 - Australian Energy Regulator

Analysis of performance

The AER exists so that energy consumers are better off, now and in the future. We achieve this through the 4 objectives articulated in our [2020-2025 Strategic Plan](#):

- Protect vulnerable consumers, while enabling consumers to participate in energy markets.
- Effectively regulate competitive markets primarily through monitoring and reporting, and enforcement and compliance.
- Deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services.
- Use our expertise to inform debate about Australia's energy future and support the energy transition.

Our performance against each of these objectives, including an analysis of **performance measure** results, our outcome highlights and outcomes achieved, is detailed below. Overall, the AER performed strongly against most of the performance indicators and other measures of performance identified in our 2021-22 Corporate Plan.

We have also assessed our approach to providing regulatory services with reference to the Australian Government's (new) principles of regulatory best practice.

Overall, in 2021-22 the AER was successful in achieving outcomes that will make energy consumers better off, now and in the future.

Stakeholder survey

In May 2021 we surveyed our stakeholder base (including businesses in the energy sector, consumer groups and government agencies with which the AER works). This survey established a baseline for many of our new performance indicators, reported here for the first time. These new indicators resulted from a comprehensive review of the AER's performance framework in 2020-21, which sought to align our performance framework with our 2020-2025 Strategic Plan.

In April-May 2022 we resurveyed our stakeholders using an abridged, quantitative online survey instrument (a "pulse" survey) to provide up-to-date measures of our performance for the 2021-22 reporting period. Unlike the full survey conducted in 2021, stakeholder perceptions were collected via a survey instrument only; in 2021 our research provider also conducted in-depth interviews with executive stakeholders. It is unknown whether this simplified methodology, as well as the increased frequency (past stakeholder surveys have been conducted biannually), has impacted the research findings. We will monitor over time the variability of full versus pulse versions of the survey.

The results indicate that the AER continues to meet the expectations of the majority of its stakeholders, and perceptions of our overall reputation remain strong. While our trust score declined compared with 2021, it remains high:

- **Overall reputation:** 73% of stakeholders rated the AER 7 or higher out of 10.
- **Meeting expectations:** 77% of stakeholders said the AER was either meeting or exceeding their expectations.
- **Trust (to do the right thing by consumers):** 68% of all stakeholders rated the AER 7 or higher out of 10.

Across core reputation metrics, our government and consumer stakeholders scored the AER higher than our industry stakeholders such as network businesses and retailers. In 2022 there was a significant uplift, compared with 2021, in the ratings by government stakeholders for overall reputation (76%, up from 69%) and meeting expectations (82%, up from 76%).

Stakeholders were most positive about the AER being good to deal with and an authoritative source of energy market information, our leadership and management, and our support for vulnerable consumers. The results also indicate that there may be an opportunity for the AER to pursue a broader view of consumer issues and to show greater leadership on critical energy sector issues.

Strategic objective 1: Protect vulnerable consumers, while enabling consumers to participate in energy markets

About this strategic objective

Energy is an essential service, and consumers have diverse interests and varying levels of capacity to engage in the energy market. We need a sound understanding of these issues to play our part in delivering a secure, reliable and affordable energy future for Australia. This cuts across a number of our core functions as a regulator: making revenue determinations, taking enforcement action, undertaking compliance activities, sharing insights to shape future policy, working with our stakeholders, and engaging with consumers.

We want to remove barriers that prevent efficient and effective participation in the energy system. Consumers experiencing vulnerability and people seeking to overcome market-based problems (such as unclear or confusing retail information, the inability to easily compare offers or barriers to switching) should be able to access new opportunities and participate.

We also recognise that vulnerability is multifaceted. All consumers can move into and out of vulnerability at different points in life or as a result of various factors. In 2021–22 our annual compliance and enforcement priorities focused on protecting life support customers and ensuring those in financial difficulties are offered sustainable and affordable payment plans. When we see customers not receiving the required protections, we act decisively using all of our compliance and enforcement tools.

Our priorities

The AER's 2021–22 'execute' priorities under strategic objective 1 were:

- Set the Default Market Offer (DMO) 2022–23 to protect consumers from high prices and encourage participation in the market.
- Process applications for retailer authorisation and manage retailer exits.
- Process applications for exemptions by businesses to on-sell energy.
- Review the AER Guidelines for retail and network exemptions.
- Deliver 2021–22 consumer-related compliance and enforcement priorities that focus on consumers in financial difficulty and embedded networks.
- Manage litigations on foot.
- Promote Energy Made Easy (AER's energy price comparison website) through social media campaigns, media engagement, correspondence, and stakeholder forums.

We also had 10 'tilt' and 1 'advocate' priorities under this strategic objective:

- Publish a consumer vulnerability strategy to inform work across the AER.
- Implement iterations of the Statement of Expectations.
- Boost the use of consumer and behavioural insights across the AER's work program.²⁹
- Publish the AER Guideline to the Better Billing rule.

²⁹ For example: Consumer vulnerability strategy, Better Bills guideline development, Energy Made Easy redevelopment.

- Deliver user experience improvements to Energy Made Easy, to improve consumer experience and collect better data to provide more personalised plan estimates.
- Develop a consumer engagement plan that includes improved consumer engagement tools and capabilities for greater consistency across the AER.
- Publish an AER Guideline for Regulatory Sandboxing Trial Projects.
- Launch the Regulatory Sandboxing service web platform.
- Deliver education activities, including industry workshops, in support of 2021-22 consumer-related compliance and enforcement priorities.
- Enhance sources and uses of market intelligence in compliance and enforcement by continuing our collaboration with energy Ombudsman schemes and consumer intermediaries.
- Expand Consumer Data Right applications as required through the energy supply chain to increase consumers' choice.

Highlights



The Federal Court has ordered retailers to pay a total of \$29 million in penalties in this reporting period for breaches of retailers' obligations to provide support to customers experiencing payment difficulties and to protect life support customers.



Endeavour Energy paid 7 infringement notices totalling \$474,600 in relation to alleged failures to comply with life support obligations.



Alinta Energy waived more than \$1 million in customer energy debt and substantially improved its systems. This followed an AER investigation into concerns that Alinta Energy may have required consumers in vulnerable circumstances to make up-front payments or seek financial counselling, in circumstances where it should have offered consumers access to payment plans or hardship arrangements.



The AER consulted on a draft consumer vulnerability strategy between December 2021 and February 2022. The final strategy will be released in 2022-23. It will inform work across the AER and how we consider vulnerability in our decision making.



In March 2022 the AER published its draft *Retail exempt selling guideline: Version 6*. The amendments to the draft guideline were designed to increase protections for consumers living in embedded networks – particularly those experiencing hardship – as well as making exempt sellers' obligations clearer.

Performance measures

Table 3.25: Performance measures for strategic objective 1

| Performance measure | 2020-21 | | 2021-22 | | Met? |
|--|--|--|--|--------|--------|
| | Result | Target | Result | Result | |
| AER stakeholders' agreement with the following statements: | | | | | |
| <ul style="list-style-type: none"> ■ The AER supports and protects energy consumers, particularly those in vulnerable circumstances ■ The AER demonstrates a sound knowledge and understanding of energy consumers | 77% | Maintained or improved compared to previous year | 78% | | ✓ ○ |
| Customers experiencing payment difficulty are identified early and provided with appropriate supports | 40.4% | No target [#] | 39.5% | | ● |
| Consumer (household and small business) confidence that the energy market is working in their long-term interests | 46% (households) 52% (small businesses) | Maintained or improved compared to previous year | 44% (households) 56% (small business) | | ○ |
| a) Number of plan searches conducted on the Energy Made Easy website | 729,000+ | Improved compared to previous year | 970,000+ | | ✓ |
| b) Number of people who switched providers after completing a search on Energy Made Easy | 25,000+ | | 61,000+ | | ✓ |
| New and amended retailer hardship policies assessed within 12 weeks of AER receiving all relevant information | 100% | 100% | 100% | | ✓ |
| Retail authorisation and exemptions applications to sell energy assessed within 16 weeks of receiving all relevant information | 100% (authorisations) 78% (exemptions) | 100% | 71% (authorisations) 80% (exemptions) | | ○ |
| Work delivered against AER consumer-related compliance and enforcement priorities | 92% (all priorities) 41% (consumer-related) | No target* | 67% (all priorities) 40% (consumer-related) | | ● |
| Stakeholder awareness of the AER's current compliance and enforcement priorities | 81% | Maintained or improved compared to previous year | 90% | | ✓ |

[#] The Retail Law requires retailers to offer residential customers experiencing payment difficulties a payment plan. The identification of payment difficulties can occur by a customer informing a retailer, or the retailer forming a view based on repeated difficulties in bill repayments. While this is an enforceable requirement, the AER does not fully control the outcome. Further, the measure is a partial/incomplete measure of the outcome sought because payment plans are not always the appropriate support, plus there are a variety of reasons for non-completion of payment plans that are not related to the adequacy of the support that customers have been provided. Monitoring trends enables the AER to understand whether additional action or reform is required. Setting targets is not appropriate and could drive perverse outcomes (e.g. energy retailers persisting with payment plans that are not meeting customer's needs).

^{*} While we monitor our focus on stated priorities, the AER must enforce all regulatory requirements. It would be inappropriate for the AER to maintain singular focus on our priority work areas. In addition to our stated priorities, we continue to act where there are serious issues impacting vulnerable consumers, or to help shape new or emerging markets. We also progress important ongoing work in areas that were identified as priority areas in the previous year(s). Annual targets are not appropriate and have the potential to drive perverse outcomes.

Analysis of results

The AER's stakeholder survey presents very positive findings on our work protecting vulnerable consumers while enabling them to participate in the market. Beyond the performance measure results presented, the survey also shows that, of all our stakeholders, consumer advocates rate the AER the most positively.

Stakeholder ratings of how well the AER understands energy consumers fell 8 percentage points in the past year; this change was not statistically significant. Further, the methodological impacts of our 2022 'pulse' versus 2021 'full' stakeholder survey are unknown. It is noted that 2022 verbatim stakeholder comments from all segments (government, industry and consumers) acknowledge the strong consumer focus that underpins the AER's approach and decisions; this was seen as a hallmark of the AER's strategic approach. While some feel that this emphasis on consumer protection can be to the detriment of industry operators, overall, it is considered a positive trait. There were a range of suggestions for the AER to better meet the needs of consumers, which the AER will consider in the course of our work throughout 2022–23. These included a desire for the AER to get closer to consumers by engaging with them directly (as opposed to going through consumer advocacy groups). Government stakeholders expressed a desire to see the AER embrace a more nuanced view of consumer interests beyond price.

In 2021–22, approximately 40% of residential customers on payment plans, successfully completed them. At face value this low success rate could be interpreted as a cause for concern. It is, however, consistent with the past several years' performance and is, in part, due to retailers' administrative processes for example, the cancellation of payment plans when customers transfer out to a new retailer. The AER closely monitors the data it collects regarding customers that are experiencing payment difficulty, considering the importance of retailer obligations in relation to this, economic conditions, and the potential for increases in energy prices in the future. This year, the AER has undertaken significant compliance and enforcement work in relation to retailer obligations to customers experiencing payment difficulty which is set out later in this report.

Our Energy Made Easy website is a key tool that assists consumers to participate in energy markets. As a price comparator website, Energy Made Easy provides reliable and trusted information to support households and small businesses to make informed choices about their energy (electricity and gas) retailer. It also provides household electricity usage benchmarks, energy efficiency tips and information about consumer rights.

During the year, we actively promoted Energy Made Easy and focused on improving consumer education around energy usage, bills and consumer protection. We launched our Energy Made Easy Facebook and Instagram pages (@energymadeeasy) to better connect and reach household and small business consumers as effective channels to share our content. We also launched a digital marketing campaign to help improve brand awareness and direct consumers to the Energy Made Easy website.

In 2021–22 the Energy Made Easy website was visited more than 4.9 million times by more than 1.9 million users – reflecting a decrease of 1.2% and 27.5% respectively on previous years. The number of people completing an energy plan search was over 970,000 – a 33% increase from the previous year.

An independent consumer sentiment survey conducted by Energy Consumers Australia (ECA) conducted in April 2022 and released in June 2022 shows a slight decrease in levels of confidence among consumers that the energy market is working in their long-term interests. By April, consumers were expressing concern around affordability; wholesale prices had been increasing for some time, putting pressure on retail prices. It is noted, however, that the field work for this survey concluded before recent developments, including high wholesale prices, warnings of blackouts and the temporary suspension of the NEM. As these events were expected to impact consumer sentiment, the ECA undertook an additional pulse survey work to track monthly consumer sentiment from June to August 2022. In August, just 37% of households felt that the energy market is working in the long-term interests of consumers. This is the first major fall in consumer sentiment since lows of 21% in December 2017.

The AER has a responsibility to protect customers under the National Energy Retail Law and requires any entity selling energy to customers to hold a retailer authorisation or have an exemption. Meeting our targets for timely retailer authorisations and exemptions also supports competition in, and new entrants to, energy retail markets as well as minimising disruptions for consumers. This year saw one of the highest levels of change to players in the energy retail space. While the AER approved 17 retailer authorisations, an increase from 15 the previous year, we also approved an application for surrender of electricity retailer authorisation and oversaw the exit of 3 retailers from the market in accordance with the Retailer of Last Resort (RoLR) function. While timely processing of authorisations and exemptions are important, so too is quality. In 2021–22 we experienced an uptick in the complexity of applications. In these cases it is not always possible to meet our self-imposed timeliness service standards while ensuring that due diligence obligations are fulfilled to deliver a better outcome for consumers.

We again saw market entry from a variety of businesses related to energy supply, such as those operating in the renewables space, but also with transport fuels (Ampol) and communications (Telstra) backgrounds. Out of 17 retailer authorisation applications approved by the AER, the 16-week performance standard was not met for 5 applications, which represented 3 entrants in 2021–22. This was due to the complex nature of the assessment of these applications, where further due diligence was required.

We prioritise our compliance and enforcement work to ensure that our effort and resources are focused on areas of greatest importance and impact. Since 2019–20 we have published annual compliance and enforcement priorities. In 2021–22, 40% of our compliance and enforcement outcomes related to our consumer protection (life support and hardship) priorities, comprising:

- 33% of litigated outcomes (\$29 million in penalties)
- 33% of infringement notices (\$474,600)
- 25% of enforceable undertakings
- 100% of administrative outcomes
- 100% of compliance audits completed
- 20% of publications, workshops and presentations.

Taken alongside our result for market-related compliance and enforcement priorities (reported under strategic objective 2), we succeeded in maintaining our focus, with 67% of all compliance and enforcement work delivered against our stated priorities. We note that enforcement action, particularly litigation, can take a number of years to be finalised. This means that at times an enforcement outcome may relate to an area arising from previous priorities. We also take enforcement action and compliance activities in non-priority areas where there are serious issues impacting vulnerable consumers or to help shape new or emerging markets.

Outcomes achieved

Using consumer insights to inform better bills and our energy provider comparison website

The AER has continued to use behavioural insights to inform our policy responses, primarily through a continuation of our research partnership with the Behavioural Economics Team of the Australian Government (BETA) at the Department of the Prime Minister and Cabinet. Work so far has focused on insights to inform 2 key projects – the development of a mandatory billing guideline for retailers (the *Better bills guideline*) and improvements to the Energy Made Easy website.

Research for the *Better bills guideline* provided insight into how to simplify energy bills to improve consumer comprehension (see also the case study on page 132 for additional information). Online quantitative research with approximately 14,000 participants was used to determine the billing needs and preferences of consumers. This was supplemented by focus groups with specific consumer segments who may have been under-represented in the online research, including:

- culturally and linguistically diverse consumers who speak a language other than English at home (conducted in-language)
- consumers aged 65 years and over who do not engage with their energy provider online
- small business owners and operators.

The results created a picture of the billing needs of a cross-section of consumers. This understanding informed development of the guideline by determining priority content for bills, verifying key design principles, and testing specific items such as plan summaries and detailed charges information. Additional targeted research provided insight into how best to present customers with information about cheaper energy plans available to them in ‘better offer’ messages; and tested example bills to support retailers in implementing the guideline.

The AER has developed a prototype for a new Energy Made Easy website, informed by BETA’s research and other insights derived by the AER over time. We have used this prototype to undertake several rounds of targeted user testing with individual consumers (including small business owners). The research and testing processes have focused on how to improve the overall Energy Made Easy consumer experience and user journeys, including exploring options to introduce a facility for consumers to switch energy providers. The prototype continues to be refined. The new design and consumer experience will be further informed by BETA’s remaining planned research activities. The AER anticipates releasing a beta version of the new website by the end of the calendar year for public testing and feedback.

BETA has also provided assistance in other smaller projects, including advice to improve messaging, audience engagement and comprehension of the AER’s *Better resets handbook – towards consumer-centric network proposals*; and has begun work on how to encourage embedded network customers to use Ombudsman scheme dispute resolution processes.

Supporting innovation through regulatory sandboxing

The AER is establishing a regulatory sandboxing function that aims to help energy innovators and start-ups navigate complex regulatory frameworks and enable trials of new products and services that will deliver greater choice for energy consumers. The establishment of the regulatory sandboxing function has been consulted on by Energy Ministers and is to be supported by amendments to the national energy laws that have been introduced into the South Australian Parliament. The AER will deliver the sandbox alongside the Australian Energy Market Commission (AEMC), Australian Energy Market Operator (AEMO), Australian Renewable Energy Agency (ARENA) and the Victorian Essential Services Commission.

In establishing the regulatory sandboxing framework, the AER has developed an Energy Innovation Toolkit that will help innovators understand how their new energy technologies or business models fit within current energy regulations and make it easier for innovators to trial their proposed services in the real world. Through this innovative concept, we expect consumers to benefit from increased choice and value for energy services.

The AER has been engaging with innovators in developing our Energy Innovation Toolkit to ensure it is accessible and practical and meets the needs of innovators seeking to bring new technologies and business models into the energy market. In December 2021 we consulted with over 160 stakeholders to discuss views on our proposed approach to delivering the service.

To provide a single reference point for innovators seeking to better understand the regulatory environment that may apply to their innovations, the AER has developed a new website that provides guidance on the current regulatory framework, as well as access to the new Energy Innovation Toolkit. For innovators requiring specific guidance, the AER, in partnership with our project partners, launched the Innovation Enquiry Service, which helps energy innovators and new entrants to understand and apply the current regulatory framework to help facilitate their entry into the energy market.

Improving consumer consultation and engagement

The AER has 3 key consumer advisory groups – the Customer Consultative Group (CCG), the Consumer Challenge Panel and the Consumer Reference Group (CRG). These groups ensure that consumers' voices are heard and considered across the full spectrum of our work and decisions.

CCG members represent a diverse consumer constituency and are a key source of insights and intelligence on the issues facing residential and small business energy customers. This year, we recruited 13 new members for the CCG (CCG 2021-2024), as well as a new external chair to work as a conduit between the AER and CCG members.

We also recruited 9 new members for the third iteration of the AER's Consumer Challenge Panel (CCPIII), which advises the AER on network service providers' consumer engagement activities.

The AER's CRG (2020-2023) continues to play a critical role in representing consumers for the 2022 Rate of Return Instrument.

Our consumer groups make valuable and significant input to the AER's work. In particular, this year they helped to inform revenue determinations and contributed to the development of key consumer projects, including the *Better resets handbook – towards consumer-centric network proposals*, the *Better bills guideline* and draft consumer vulnerability strategy.

Better intelligence via Ombudsman schemes

We continued to work closely with energy Ombudsman schemes and consumer representatives throughout the year to better understand direct complaints consumers are making. We developed and delivered a reporting framework in consultation with energy Ombudsman schemes to identify systemic and emerging issues. These issues are then considered in context with other sources of information to inform our compliance and enforcement strategic objectives and help in the delivery of our outcomes as a risk-based regulator. We are also:

- assisting in the implementation of new reporting systems for Ombudsman contacts so that general issues can be differentiated from issues that indicate there has likely been a breach of the energy laws
- contributing to a harmonised reporting system across the energy Ombudsman schemes. This will allow for greater consistency in assessing the nature and type of issues reported.

We have implemented a general compliance reporting framework with CCG members, and the development of a reporting framework with consumer intermediary groups is progressing.

Protecting customers experiencing payment difficulties

Our 2021–22 compliance and enforcement priorities included a focus on energy retailers' effective identification of residential consumers in financial difficulty and offer of payment plans that have regard to the consumer's capacity to pay. Outcomes included:

- Origin Energy and Origin related entities being ordered to pay \$17 million after the Federal Court declared that they had failed to implement their hardship policies and assess customers' capacity to pay in relation to the automated processes they used to administer their hardship program, in respect of over 90,000 customers. This is the highest civil penalty ordered under national energy laws to date
- Alinta Energy waiving more than \$1 million in energy debt of its customers between July and December 2021 and substantially improving its systems. The AER was concerned that during the period September 2019 to March 2020 Alinta Energy may have required vulnerable customers to make up-front payments or seek financial counselling when it should have offered customers access to payment plans or assistance to join Alinta's hardship program
- the AER requiring retailers, including Alinta Energy, Simply Energy, ReAmped Energy and Powershop Australia, to conduct a compliance audit. The audits assessed the adequacy and effectiveness of their compliance policies, systems and procedures on disconnection and hardship obligations under the National Energy Retail Law and National Energy Retail Rules,

as well as the obligation to submit compliance information and data to the AER under the AER *Compliance procedures and guidelines*. The audits identified a number of areas in which the audited retailers could strengthen and improve their processes to best support customers in financial difficulty. These included:

- ensuring hardship policies are regularly reviewed and increasing their visibility to customers
- ensuring segregation of duties for key controls
- ensuring staff training is effective, up to date and documented
- improving and documenting compliance reporting, quality assurance and governance processes
- automating, where possible, hardship and payment plan follow-up processes to avoid human error.

All audited retailers provided plans and timelines for implementing auditor recommendations and system and process improvements. The AER has monitored the implementation of these plans, and all have now either been completed or are close to completion.

- the AER requesting information from 19 retailers on their practices for identifying and dealing with consumers experiencing financial hardship or payment difficulty and the steps retailers will take to support these consumers. Responses from retailers identified some positive practices in the way retailers are assisting consumers in financial difficulty to manage their debt. The responses also identified a number of practices that we consider may be less effective in ensuring consumers in financial difficulty are given the full suite of protections under the Retail Law and Retail Rules.

The learnings from both the audits and the information requests were shared by the AER during a panel discussion with energy retailers in June 2022 and together with our wider intelligence were used internally to inform our compliance and enforcement strategic objectives.

Protecting customers using life support equipment

Protecting vulnerable consumers who rely on life support equipment is an enduring compliance and enforcement priority for the AER. Our 2021-22 enforcement outcomes were:

- EnergyAustralia was [ordered by the Federal Court](#) to pay penalties totalling \$12 million for failing to comply with life support obligations for its customers who rely on life-saving health equipment. EnergyAustralia admitted it failed to register thousands of life support customers and failed to notify energy distributors as soon as possible when advised that the customer used life support equipment, as well as other breaches of the life support obligations. The conduct occurred over a number of years from 2018.
- Endeavour Energy paid penalties totalling \$474,000 following the issuing of 7 infringement notices by the AER for putting vulnerable life support customers in New South Wales at risk between March 2021 and February 2022. Endeavour Energy admitted it breached life support obligations under the National Energy Retail Rules in relation to 69 customers across its distribution network. The breaches included failing to record that there were life support needs at the customer's premise, not sending information packs, not notifying the retailer of the customer's life support requirements and not giving the required 4-day notice of planned electricity interruptions. The AER also accepted a court enforceable undertaking from Endeavour Energy, committing to implement new IT systems and to engage an independent expert to conduct an end-to-end review of its life support processes, controls and systems.

In September 2021 we released an updated [Life support registration guide](#) to reflect new obligations relating to life support that commenced on 1 August 2021. This followed a rule change, published by the AEMC in February 2021, which aims to reduce barriers for life support consumers who switch retailers or move premises by enabling consumers to re-use a previously submitted medical confirmation form. These new rules are designed to allocate clear responsibilities between retailers and distributors to ensure life support registers are accurate and up to date. Our guide is designed to assist retailers and distributors to understand their responsibilities under the new rules.

▶ CASE STUDY

The new [Better bills guideline](#) strengthens consumer protections

On 31 March 2022 the AER was proud to deliver its first *Better bills guideline*, which will strengthen consumer protections by ensuring bills are easily understood and encourage consumer engagement in the energy market. Energy retailers in Queensland, New South Wales, the Australian Capital Territory, South Australia and Tasmania must comply with the requirements of the guideline by 31 March 2023, but changes to bills may appear as early as 4 August 2022.

The *Better bills guideline* aligns with the AER's 2020-2025 strategic priority to improve consumer outcomes while reducing cost to serve by boosting consumer and behavioural insights and applying them across AER initiatives.

The AER worked collaboratively with many stakeholders in the lead-up to the guideline's publication. In September 2021 we conducted a preliminary consultation process to scope initial views. We also established and regularly met with our Better Bills Guideline Working Group (made up of retailers, consumer groups and Ombudsman schemes), obtained feedback through stakeholder meetings and 2 stakeholder forums, and consulted on the draft guideline through December 2021 – January 2022.

The AER also undertook extensive consumer and behavioural research in line with our strategic priorities for 2020–2025, in collaboration with BETA, Hall & Partners, BIT (Australia) and our Customer Consultative Group member the Ethnic Communities Council of NSW. The *Better bills guideline*:

- prioritises simplification of energy bills to make them easier for consumers to understand
- strengthens the ability of consumers to make informed decisions in their best interests
- enables innovation and promotes effective competition
- simplifies the regulatory framework to reduce the cost to serve for retailers.

Importantly, the guideline also requires retailers to include a 'better offer' message on the front of a bill, allowing small customers to easily identify the best deal offered by their retailer or compare their current plan to others in the market.

Strategic objective 2: Effectively regulate competitive markets primarily through monitoring and reporting, and enforcement and compliance

About this strategic objective

The rules underpinning Australia's energy markets rely on market participants having the discretion to decide how to meet their customer's needs, undertake day-to-day operations and make investment decisions based on the risks and opportunities they face. This is premised on the principle that competitive market-based arrangements can be adaptive and provide an opportunity to achieve market efficiency, compared with alternatives, and therefore best serve the long-term interests of consumers.

Within this competitive framework, if businesses do not comply with the rules, harms can occur not only to consumers but also to effective competition. The AER continues to strengthen its compliance and enforcement program, supported by well-targeted intelligence systems to address conduct that undermines market operations and erodes consumer confidence in energy markets.

Our annual compliance and enforcement priorities for 2021–22 continued to focus on ensuring that customers benefit from competitive metering and ensuring that the AER and the AEMO receive accurate and timely information. We also prioritised market transparency through strengthened gas market reporting requirements and ensuring access to pipeline capacity.

We play a pivotal role by independently reporting on the outcomes across the supply chain, and our surveillance activities examine transactions and behaviour to identify design anomalies and ensure all market participants meet their obligations. Our market surveillance expertise makes us well placed to assist policymakers with ongoing reforms in both the electricity and gas sectors.

Our priorities

The AER's 2021–22 'execute' priorities under strategic objective 2 were:

- Oversee the Retailer Reliability Obligation (including monitoring and enforcing the Market Liquidity Obligation).
- Produce insightful market reports on:
 - Wholesale Markets
 - Retail & Wholesale Market Performance
 - Annual Retail Performance
 - State of the Energy Market
 - High Price Events.
- Manage disputes through the Wholesale Energy Market Dispute Resolution Advisor (WEMDRA).
- Deliver 2021–22 competitive market-related compliance and enforcement priorities that focus on compliance with AEMO's dispatch instructions and generator offers, disclosure obligations in the gas rules, and gas auction reporting.
- Undertake retail compliance audits in support of annual compliance and enforcement priorities and complete 2 generator performance compliance audits.
- Manage litigations on foot.

- Better coordinate reporting with other government bodies.³⁰

We also had 7 ‘tilt’ and 2 ‘advocate’ priorities under this strategic objective:

- Finalise the AER Data Strategy, which will assist in improving our market surveillance capability.
- Expand our understanding of wholesale markets by undertaking training in financial market operations and contracts for relevant staff.
- Deliver reforms to the gas market by developing and using new surveillance tools to meet National Gas Rules obligations.
- Develop and implement an information management framework for compliance intelligence.
- Support the enhancement of the retail performance framework through an update to the AER Retail Performance Reporting Procedures and Guidelines.
- Publish the revised AER Compliance and Enforcement Policy to reflect the new risk-based model for prioritisation and assessment of noncompliance.
- Publish the 2020–21 Annual Compliance and Enforcement Report.
- Review the purpose and focus of high price event reporting and submit a rule change proposal if required.
- Increase the scope of AER powers so we can monitor, understand and report on contract markets.

Highlights



In 2021–22 the Federal Court ordered a total of \$6.05 million in penalties in proceedings brought by the AER relating to conduct during the 2016 black system event in South Australia and breaches of the National Electricity Rules by Hornsdale Power Reserve. A further \$240,000 in infringement notice penalties were paid for alleged breaches relating to record-keeping and reporting requirements under the National Gas Rules.



The 13th edition of the AER’s annual report on the energy industry, *State of the energy market* – which covers Australia’s wholesale electricity and gas markets, the transmission and distribution networks, and energy retail markets – was published in July 2021.



The *Annual retail markets report 2020–21* was released in November 2021.

³⁰ For example regular engagement with the Department of Industry, Science, Energy and Resources on Gas and Electricity information; work with the AEMC and AEMO on the proposed ESB Data Strategy.

Performance measures

Table 3.26: Performance measures for strategic objective 2

| Performance measure | 2020–21 | | 2021–22 | | Met? |
|---|--|--|---|--------|------|
| | Result | Target | Result | Result | |
| Extent to which performance of retail and wholesale energy markets is identified as an issue | Slight decline in structural ownership concentration | No target [#] | Considerable affordability issues have emerged, leading to increased scrutiny of market performance | | ● |
| Proportion of all market reports published within agreed/statutory timeframes | 89% | 100% | 76% | | ○ |
| Work delivered against AER effective regulation of market related compliance and enforcement priorities | 92% (all priorities) 59% (market-related) | No target* | 67% (all priorities) 27% (market-related) | | ● |
| The AER's market performance reports are useful to stakeholders | 77% | Maintained or improved compared to previous year | 71% | | ○ |

[#] Due to the qualitative nature of this measure, an annual target cannot be set.

^{*} While we monitor our focus on stated priorities, the AER must enforce all regulatory requirements. It would be inappropriate for the AER to maintain singular focus on our priority work areas. In addition to our stated priorities, we continue to act where there are serious issues impacting vulnerable consumers, or to help shape new or emerging markets. We also progress important ongoing work in areas that were identified as priority areas in the previous year(s). Annual targets are not appropriate and have the potential to drive perverse outcomes.

Analysis of results

We have a range of obligations to monitor and report regularly on the performance of the national wholesale electricity and gas markets, assessing both short-term and long-term outcomes, as well as the retail markets. During 2021–22 we met the majority (92%) of the set timeframes for our statutory reporting obligations and the agreed timeframes for most other reports. These reports include:

- our Annual retail markets report
- 4 quarterly wholesale and 4 quarterly retail reports
- weekly market performance reports in electricity and gas
- 19 reports on high wholesale electricity market prices
- our annual network benchmarking reports.

The delayed publication of electricity and gas weekly reports, for which there is no statutory requirement, contributed significantly to the result for this performance measure. In many instances, resources were diverted to reports with a statutory requirement. The electricity weekly reports are also currently being reviewed so they better account for market conditions.

There was a slight reduction in stakeholder ratings of the usefulness and useability of our reports compared with last year. While the change is not statistically significant (and the impact of the methodological differences between the 2021 and 2022 surveys is unknown) the AER will continue to seek to improve the usefulness and accessibility of our reports. For example in 2022–23 we will, for the first time, publish our *State of the energy market* report as a companion piece to the Energy Security Board's (ESB) *Health of the NEM*. We have worked with the ESB to refine both documents, so they are more useful to the reader.

As discussed in relation to strategic objective 1, we prioritise our compliance and enforcement work to ensure that our effort and resources are focused on areas of greatest importance and impact. In 2021–22, 27% of our compliance and enforcement work was related to our current market regulation related priorities, comprising:

- 17% of litigated outcomes (\$900,000 in civil penalties)
- 67% of infringement notices (\$240,000)
- 0% of enforceable undertakings
- 0% of compliance audits completed
- 33% of publications, workshops and presentations.

Details of the AER’s market-related compliance and enforcement activities and outcomes are provided below.

Outcomes achieved

Rule change to improve high price events reporting

On 21 December 2021 the AER lodged a rule change request proposing amendments to the AER’s reporting obligations on significant price variations and high price events in the NEM. This followed an extensive internal review of the rules and informal consultation with a range of stakeholders, including governments, energy users and market participants.

The proposal was to replace the current reporting framework in the rules with a new, less prescriptive framework for reporting on significant price outcomes. Increasing flexibility in this way enables the AER to provide more insightful reporting into market outcomes and behaviour in a rapidly changing market environment.

The AEMC finalised its consideration of the rule change on 19 May 2022, with the new reporting framework to take effect from 29 September 2022.

Focusing on registered generators’ compliance with AEMO dispatch instructions and their ability to comply with their latest offers at all times

The requirement for generators to ensure that they can comply with their offers at all times, and to follow dispatch instructions from AEMO, is critical to power system security and efficient outcomes in wholesale energy markets.

In September 2021 the AER instituted proceedings against Hornsdale Power Reserve (HPR) for alleged breaches of the National Electricity Rules. Between July and November 2019 HPR made offers to the AEMO and was paid to provide market ancillary services that allegedly it could not provide, including when required to provide those services after a frequency disturbance. On 28 June 2022 HPR was ordered by the Federal Court to pay \$900,000 in penalties after admitting to breaches of the National Electricity Rules, specifically admitting that it would have been unable to comply with its offers and provide the above services despite being paid to do so.

This year we released the *Contingency frequency control ancillary services (FCAS) compliance bulletin*, which provides guidance for electricity market participants on their obligations when offering and delivering contingency frequency control ancillary services (FCAS), including the importance of observing the requirements of AEMO’s Market Ancillary Service Specification (which contains the requirements for ancillary services). Our compliance messaging was informed by participant engagement on their systems and processes for achieving compliance with FCAS obligations.

Ensuring timely and accurate gas auction reporting by registered participants

The ability for registered participants to access pipeline capacity helps drive competition in downstream gas markets – something that is ever more important in light of current gas market conditions. The Day Ahead Auction (DAA) is a mandatory auction of any contracted but unominated capacity in the gas pipeline. Any shipper (the energy companies that use the pipeline to transport gas) may bid at the auction, which is finalised a day in advance of the relevant gas day.

In 2021–22 a total of \$240,000 in infringement notice penalties were paid for alleged breaches of record keeping and reporting requirements under the National Gas Rules:

- In July 2021 Pelican Point Power and Simply Energy, both subsidiaries of energy company ENGIE, paid infringement notice penalties totalling \$200,000 in relation to alleged breaches of the National Gas Rules for failing to make required records in connection with gas DAAs. ENGIE self-reported 1,484 potential failures to make records as required by the rules between March 2019 and April 2020 and were issued with 10 infringement notices by the AER.
- In November 2021 a subsidiary of gas infrastructure company [APA Group paid \\$40,000 in infringement notice penalties](#) for allegedly failing to provide accurate information while participating in the east coast gas DAA during 2019 and 2020. The penalties related to pipeline operator APA South West Queensland Pipeline (SWQP) allegedly failing to prepare and submit auction quantity limits (AQLs) to AEMO and to perform AQL calculations in accordance with the National Gas Rules.

Supporting industry compliance

We also developed and published a voluntary wholesale self-reporting framework to codify the process for self-reporting breaches related to the wholesale energy market. Previously, market participants provided information to various AER staff members in an ad-hoc manner. This created the risk of:

- inconsistency and bias in assessments
- analysis being completed based on incomplete sets of information
- incomplete records of reported breaches, which undermines our understanding of compliance risks related to obligations.

The voluntary wholesale self-reporting framework has created a standardised process. This has improved the consistency of information we are receiving and ensured that the information is more targeted to the compliance and enforcement factors we consider in deciding whether to escalate matters. The consistent information and format has also made it simpler for us to complete comparative assessments against previous reports and identify potential outliers and trends. It has also reduced regulatory burden by limiting our need to seek further information from regulated entities through information requests and meetings.

Since implementing the reporting framework, numerous regulated entities have expressed their willingness to participate and provided all reports in the manner requested.

▶ CASE STUDY

Black System Event enforcement outcomes

In 2021–22 proceedings by the AER in relation to conduct during South Australia’s statewide blackout were completed. The Black System Event resulted in loss of power to 850,000 customer connections across South Australia on 28 September 2016.

On 1 July 2021, in separate proceedings, the Federal Court found that Pacific Hydro Clements Gap Pty Ltd (Pacific Hydro) and HWF1 Pty Ltd (Hornsdale) had breached the National Electricity Rules by failing to obtain written approval for critical system settings for their wind farms from the Australian Energy Market Operator (AEMO) and network service provider ElectraNet.

Generators are required to operate their plants in line with Generator Performance Standards in agreement with AEMO. The standards describe how their systems will perform if adverse events occur, and the data is critical to AEMO in operating the power network safely and reliably.

Pacific Hydro admitted that, between 6 August 2013 and 3 October 2016, it operated the generating units of the Clements Gap wind farm and allowed those generating units to supply electricity to the power system when the settings for the repeat low voltage ride through (LVRT) protection system had not been approved in writing by AEMO and ElectraNet. Similarly, Hornsdale admitted that, between 2 June 2016 and 10 October 2016, it operated the generating units at the Hornsdale wind farm and allowed those generating units to supply electricity to the power system when the settings for the repeat LVRT protection system had not been approved in writing by AEMO and ElectraNet.

The court ordered by consent that Pacific Hydro pay a civil penalty of \$1.1 million and Hornsdale pay a civil penalty of \$550,000; and that both implement compliance programs and contribute to the AER’s legal costs.

Further, on 28 June 2022 the Federal Court found that various AGL subsidiaries had breached the National Electricity Rules by failing to obtain written approval for critical system settings at their Hallett 1, 2, 4 and 5 wind farms in South Australia’s mid-north. The court ordered by consent that AGL pay a total of \$3.5 million in penalties and, similarly to the other proceedings, to implement compliance programs and contribute to the AER’s costs.

These penalties are in addition to the penalty of \$1 million that the court ordered Snowtown 2 Windfarm Pty Ltd to pay in December 2020 for similar conduct.

Strategic objective 3: Deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services

About this strategic objective

Australia's energy system is rapidly changing and affecting how energy networks are used. Technological developments and consumer preferences are leading us away from a supply-side oriented system to one that needs to support 2-way flows of electricity; and away from centralised generation to distributed generation. If not managed carefully, these changes may add significantly to network costs and therefore consumer bills.

As the economic regulator of energy networks in all states and territories except Western Australia, we play an important role in the energy transition. We regulate 30 gas and electricity network businesses with a combined asset base of over \$100 billion. Our primary role is in setting the maximum revenue that network businesses can recover from users of their networks. Importantly, we aim to ensure consumers pay no more than necessary for safe and reliable energy.

The AER also develops key aspects of the regulatory framework (including schemes, guidelines and models) and reviews them regularly to keep them relevant. We ensure revenue determinations reflect consumer preferences while at the same time preparing the regulatory framework for new types of expenditures to manage the impact of the energy transition on networks.

Our priorities

The AER's 2021-22 'execute' priorities under strategic objective 3 were:




- Undertake revenue and price control processes that promote the National Electricity Objective / National Gas Objective:
 - complete the AusNet Services electricity transmission reset
 - complete the Powerlink Queensland electricity transmission reset
 - complete the Roma Brisbane Pipeline gas transmission reset
 - commence the Transgrid, Electranet and Murraylink electricity transmission resets
 - process cost pass-through applications
 - process applications to the Demand Management Incentive Scheme and Demand Management Innovation Allowance Mechanism
 - approve pricing proposals / tariff variations for all electricity distributors and Victorian gas distribution and transmission businesses
 - complete the AEMO electricity transmission reset.
- Publish the draft Rate of Return Instrument for public consultation.
- Prepare and consult on transmission and distribution network benchmarking reports.
- Undertake large Integrated System Plan project assessments to support efficient and timely investment.
- Produce network performance reports and actively monitor regulatory asset base growth:
 - electricity network performance report
 - gas distribution network performance report.

- Revise and enhance financial reporting guidelines for gas pipelines.
- Deliver 2021–22 monopoly infrastructure compliance and enforcement.

We also had 5 ‘tilt’ and 1 ‘advocate’ priorities under this strategic objective

- Prepare AER’s Statement of Expectations for Networks.
- Be more efficient in our regulation by:
 - commencing a review of our annual data requirements for regulated electricity transmission and distribution businesses, including establishing stakeholder consultation processes
 - commencing a review of the incentive mechanisms
 - finalising a standardised model for annual pricing and capital expenditure for use by electricity distribution businesses
 - commissioning an independent review of AER’s approach to benchmarking.
- Ensure the regulatory regime and our network performance reporting evolves to support the energy transition by:
 - publishing a draft of the AER Distributed Energy Resources Integration Expenditure Guideline
 - developing a framework for adapting to potential changes in utilisation of gas networks
 - publishing the updated AER Ring-fencing Guideline, Electricity Distribution
 - publishing the updated AER Ring-fencing Guideline, Electricity Transmission.
- Complete the transparency review of the (Australian Energy Market Operator’s) Integrated System Plan 2022.
- Support the delivery of the NSW Government’s Electricity Infrastructure Roadmap.
- Advocate for network charging reform to deliver greater cost reflectivity in consumption and export tariffs for more efficient network investment and optimal distributed energy resources deployment.

Highlights

-  The AER published 3 **revenue determinations**: Powerlink Queensland, AusNet Services and Roma to Brisbane Pipeline. The determinations enable energy businesses to maintain and build the infrastructure needed for a safe and reliable energy supply while ensuring that consumers pay no more than necessary. Table 3.27 below provides details of the outcome of each of these determinations.
-  Our *Regulating gas pipelines under uncertainty* paper published in November 2021 explains how the energy transition may influence long-term gas demand and explores the benefits and costs of different possible regulatory options that the AER may take to manage potential changes in utilisation of gas networks in the future.
-  To streamline the resources and consultation needed to manage annual pricing and distribution determinations and increase consistency across proposals we developed standardised models for:
 - electricity distribution businesses to submit their annual pricing proposals
 - distribution determination proposals for metering, ancillary network services and capital expenditure.


The models were informed by consultation and may provide stakeholders greater scope to engage in our processes.
-  The AER effectively resolved a dispute on Reinforcing the NSW Southern Shared Network (Humelink) Regulatory Investment Test for Transmission (RIT-T). AER's Humelink RIT-T dispute determination, published on 24 November 2021, required Transgrid to amend its Project Assessment Conclusions Report for Humelink RIT-T and address matters set out in our determination, strengthening the RIT-T process for this project.

Table 3.27: AER energy network decisions completed in 2021-22

| Network | Region | Period covered | Revenue proposed by business (\$ nominal, million) | Revenue allowed by AER (\$ nominal, million) | Difference between allowed and proposed revenues (%) | Allowed revenue in previous determination (\$ nominal, million) | Difference between allowed revenue in current and previous determination (\$ nominal, million) |
|---------------------------|--------|------------------------------|--|--|--|---|--|
| Powerlink Queensland | Qld | 1 July 2022 – 30 June 2027 | \$3,565.1 | \$3,804.2 | 6.7 | \$3,940.2 | -136.0 |
| AusNet Services | Vic | 1 April 2022 – 31 March 2027 | \$2,882.6 | \$2,876.6 | -0.2 | \$2,741.7 | 134.9 |
| Roma to Brisbane Pipeline | Qld | 1 July 2022 – 30 June 2027 | \$239.6 | \$240.7 | 0.5 | \$235.6 | 5.1 |

Performance measures

Table 3.28: Performance measures for strategic objective 3

| Performance measure | 2020-21 | 2021-22 | | Met? |
|---|--------------------|--|--------|------|
| | Result | Target | Result | |
| The AER promotes efficient investment in, operation and use of energy services for the long-term interests of consumers | 70% | Maintained or improved compared to previous year | 66% | ○ |
| Revenue reset determinations for electricity networks and gas pipelines completed within statutory timeframes | 100% | 100% | 100% | ✓ |
| Residential customers with a retailer exposed to cost-reflective network tariff | 11.1% [^] | No target [#] | 16.6%* | ● |
| The AER undertakes efficient regulation of network businesses by focusing on high impact actions that matter to consumers | 75% | Maintained or improved compared to previous year | 60% | ○ |
| The AER encourages the evolution of the regulatory framework to provide network customers with the services that they value at efficient prices | 60% | Maintained or improved compared to previous year | 55% | ○ |

[#] The National Electricity Rules require distributors to gradually make their tariffs more accurately reflect the cost to serve their customers – so that customers pay no more than necessary for safe and reliable electricity services. The pace of progress toward implementing cost-reflective tariffs is impacted by a variety of factors that are outside the AER’s control including: what customers want, what impacts they will face, and the roll out of smart meters which make it possible to record when energy is used at different times of day. Tariff reform strategies will evolve as stakeholder understanding develops and new technologies and service models emerge. Monitoring trends helps the AER to understand whether additional action or reform is required; setting annual targets is not meaningful.

* The result reported relates to the 2020-21 year. There is a 1 year lag in the result for this performance measure; the relevant data is submitted to the AER by network businesses each November. The AER publishes actual financial year tariff assignment results on its website after audit-assured data is received.

[^] Estimated. At the time of publication of the 2020-21 Annual Report, the AER did not have final, audit-assured data.

Analysis of results

The AER continued to deliver effective network regulation, completing 3 transmission determinations and one gas transmission access arrangement. All revenue reset determinations were made within statutory timeframes.

The AER stakeholder survey indicates that we have lost some ground in our stakeholders’ perceptions of our network regulation. Performance measures associated with our focus on high-impact actions that matter to consumers and encouraging the evolution of the regulatory framework were both lower than in 2021; these changes were statistically significant. Verbatim comments from our Stakeholder Survey indicated a desire for the AER take a longer term view of benefits to consumers in terms of eventual cost savings, following greater investment in network expansion now, to facilitate the introduction of more renewable capacity into the grid. Industry and market participants expressed a desire for the AER to implement a more collaborative approach that takes the business perspective into account, seeks their input, and works with the industry to better meet the needs of consumers. The AER will consider this feedback in the context of its 2022-23 network regulatory work, including in relation to our approach to consultation.

We continued to make progress on increasing the number of customers with a retailer exposed to cost reflective network tariffs. Our primary tools for progressing this objective are the tariff structure statements we approve for electricity distributors and annual regulatory information notice (RIN) data. We require each network to develop a statement that outlines how it will reform its tariffs to bring them more in line with the cost of providing services and to provide incentive for customers to use power in off-peak times. Over 2021-22 we have been actively engaged in pre-proposal discussions with network businesses that are due to submit revenue

proposals in January 2023 (that is, New South Wales, Australian Capital Territory, Northern Territory and Tasmanian network businesses). Through this pre-proposal engagement, we have been advocating for further progress on innovative and cost reflective tariffs, including to accommodate the new and accelerating distributed energy technologies such as batteries, electric vehicles and solar. We have also engaged directly with retailers, such as through a retailer roundtable on tariff reform held in June 2022.

The AER has been actively engaged in advocating for network tariff reform. Highlights include various Distributed Energy Integration Program working groups (with the ARENA, AEMC, AEMO, ECA, Energy Networks Australia and other partner organisations); AEMC rule change processes; and ESB workshops and consultations around Energy Ministers' post-2025 electricity market design program of work.

Outcomes achieved

Improving revenue proposals by network businesses

On 9 December the AER published its [Better resets handbook – towards consumer-centric network proposals](#). The handbook aims to incentivise networks to develop high-quality proposals which are driven by genuine engagement with consumers. This will lead to regulatory outcomes that better reflect the long-term interests of consumers.

The handbook outlines what the AER expects would be in a high-quality, consumer-centric regulatory proposal. Regulatory proposals which are developed through genuine engagement with consumers and meet our expectations for forecast expenditure, depreciation and tariff structure statements are more likely to be largely or wholly accepted at the draft decision stage, creating a more efficient regulatory process for all stakeholders.

The handbook also introduces an innovative early signal pathway process that will result in a more efficient regulatory assessment process. The early signal pathway will allow network businesses to receive earlier guidance from the AER on their revenue proposal at the issues paper stage. This will enable them to focus on improvements that would make their proposal more likely to be accepted at the AER's draft decision stage. New South Wales based Endeavour Energy and Essential Energy will be the first network businesses to follow the AER's early signal pathway for revenue determinations when they begin their proposals for the 2024-2029 regulatory period. This follows both businesses submitting expressions of interest to innovate with the AER on its new approach to network revenue determinations.

Ensuring fundamental building blocks (rate of return) promote the national electricity and gas objectives

On 16 June 2022 the AER published its draft 2022 Rate of Return Instrument for consultation. The final instrument will be published in December 2022. The instrument determines the rate of return that will be used in our forthcoming regulatory decisions over the next 4 years. It specifies the mathematical formulae we will use to calculate the rate of return; and how we will obtain inputs for those formulae. It defines some inputs (fixed for the duration of the instrument) and, for others, states the process by which we will measure market data and use it as an input at the time of a decision.

In making the draft instrument the AER developed a series of working papers that aimed to explore the key issues relating to the rate of return and identify new theoretical and empirical evidence since the previous instrument. They were also a focal point for stakeholder consultation. In total, we published 8 separate working papers on diverse topics traversing the key issues that underpin the rate of return. The working paper series included extensive engagement with stakeholders through draft papers and public forums which assisted stakeholders and the AER to narrow the key issues. All of this work was brought together in an information paper, published in December 2021, which set out the proposed positions developed through the working paper series.

Our rate of return review process established our CRG, which assists us to implement an effective consumer consultation process during the development of the instrument. Further, we set up Concurrent Evidence Sessions allowing the AER Board to hear from experts as they laid out key evidence and debated key differences of opinion.

All of the material provided through the above processes has informed our draft instrument. We are satisfied that the draft instrument contributes to the achievement of the National Gas Objective (NGO) and National Electricity Objective (NEO) – that is, the rate of return is sufficient to attract an efficient level of investment in energy networks, which is neither too high nor too low. The draft instrument will be reviewed by an independent panel, and stakeholders will have a further opportunity to make submissions before the instrument is finalised and published in December 2022.

Ensuring incentive schemes are appropriate

Incentive schemes form an important part of our regulatory toolkit. They provide financial rewards and penalties to network service providers, encouraging them to improve the efficiency of running their business over time and provide levels of service performance that are valued by customers.

We began a review of our incentive schemes to ensure they remain relevant and fit for purpose, in line with our strategic objective to be more efficient and focus on outcomes that matter most to consumers. We prioritised incentive schemes in response to stakeholder feedback in recent regulatory processes about their costs and benefits.

In December 2021 we published a discussion paper that provided an overview of incentive schemes and sought views from all stakeholders on whether the incentive schemes are delivering the intended outcomes to customers and are fit for purpose. We received submissions from network service providers, retailers and consumer groups in March 2022.

We aim to complete our review by the third quarter of 2022. We will publish a draft decision that sets out our findings and proposed next steps. This will reflect stakeholder views provided in response to the discussion paper.

Improving the transparency of AEMO's 2022 Integrated System Plan

The AER published 2 transparency review reports on AEMO's Integrated Service Plan (ISP) for 2022. The purpose of our transparency reviews is to report on whether AEMO has adequately explained and addressed stakeholder feedback on key inputs and assumptions and the draft ISP results. This is to ensure that AEMO's decisions are transparent, informed by stakeholder consultation and subject to consistent and robust economic analysis.

Our first transparency review report of AEMO's 2021 *Inputs, assumptions and scenarios report* was published on 31 August 2021. It assessed the adequacy of AEMO's explanations of key inputs and assumptions. Our review identified some issues that required AEMO to provide further explanation in an addendum to their report. AEMO published its addendum on 10 December 2021.

We published our second transparency review report on 7 January 2022. Our review concluded that AEMO had adequately explained the majority of its inputs and assumptions and how they contributed to the draft ISP outcomes. However, the review identified some issues where AEMO was required to provide further explanation. These issues included:

- the approach to modelling coal power station viability
- the decision rules for the VNI West and Humelink projects
- certain findings in relation to Marinus Link.

On 11 March 2022 AEMO published and consulted on an addendum to its draft 2022 ISP addressing the matters set out in our second review report.

Our report supported stakeholder engagement with the ISP, including that of the ISP Consumer Panel, which drew on our report in making its own recommendations to AEMO.

Relevantly, we have also established and are regularly maintaining a [compliance issues register](#) on the AER website for stakeholders to report on compliance issues related to AEMO's ISP consultation process. Any compliance issues that stakeholders raise will also be reported in our transparency review reports.

Regulating New South Wales' Renewable Energy Zones

The New South Wales Government has developed a plan to transform its electricity system. The plan, known as the Electricity Infrastructure Roadmap, is enabled by the *Electricity Infrastructure Investment Act 2020* (NSW) (EII Act). The EII Act creates several Renewable Energy Zones (REZ) in New South Wales to coordinate new renewable generation and achieve efficiencies of scale by locating that generation together with required network capacity in zoned areas alongside the shared transmission network. The New South Wales Government appointed the AER as a regulator under the roadmap in November 2021. The key functions the AER has been appointed to perform under the EII Act are set out in an agreement with the New South Wales Government.

Over the past year, we have been preparing guidelines on how we will assess the capital costs and make revenue determinations for network operators competitively selected to undertake REZ network projects. We published a draft guideline on our role in relation to making revenue determinations for contestable REZ network projects on 6 May 2022 and intend to finalise it in the second half of the year. The guideline will be used to assess competitive tenders the Energy Corporation of NSW has commenced for the Waratah Super Battery and transmission network for the Central-West Orana REZ.

We have been conferred with the function to make and publish a contribution determination guideline. Under the EII Act the AER is required to make an annual contribution determination setting out the annual costs of the roadmap, to be collected by New South Wales electricity distributors from New South Wales consumers via their retail bills. We published a draft guideline on 31 May 2022 and have undertaken a simulated determination process to test the arrangements set out in the draft guideline. We will finalise the guideline by 30 September 2022 ahead of the first contribution determination, which is to be made in February 2023.

The AER must approve a risk management framework developed by the Consumer Trustee under the EII Act. On 27 June 2022 we received the risk management framework from the Consumer Trustee. The AER Board will consider the risk management framework in July 2022 and, if approved, will publish it on our website. Under the EII Act the Consumer Trustee is also required to consult with the AER on its proposed tender rules for the competitive tender process for long-term energy service agreements. We provided feedback on an early version of tender rules in March 2022 and were consulted on an updated version of the tender rules on 24 June 2022, when further feedback was provided. Once the Consumer Trustee gazettes its tender rules, we will publish our feedback on our website.

Reporting on the performance of gas and electricity networks

In December 2021 the AER published its first annual network performance report for gas, after having published its second report for electricity in September 2021. The reports analyse key performance outcomes of monopoly infrastructure in providing regulated energy services, including profitability. While the first gas network performance report focuses on distribution, all future reports will cover both distribution and transmission network performance.

The inaugural gas network performance report found that growth in the number of residential customers is leading to cheaper pipeline services on average, even though gas networks are earning more and investing substantially in new connections and mains replacement programs. The electricity network performance report found that the total cost of network services is decreasing, driven in large part by the lower cost of capital, but also that network expenditure is down from its peak in 2012. Regulated gas and electricity networks have been consistently generating strong returns, with both actual and forecast returns reducing with the lower cost of capital.

Assessing cost pass-through applications

Energy networks can apply to the AER to pass through to customers, in the form of higher or lower network charges, certain material changes in costs caused by pre-defined events outside their control. These are known as cost pass-throughs.

In the past year we have made 13 decisions on cost pass-through applications. Five (5) applications related to costs associated with electricity transmission networks providing system strength or inertia network services to support the security and reliability of the power system. Three (3) applications were for natural disaster events, with 2 relating to storm events which caused widespread outages to AusNet Services' Victorian distribution network in June and October 2021. In assessing these applications, we have used the principle that consumers should pay no more than necessary for safe and reliable energy.

► CASE STUDY

Integrating distributed energy resources

On 12 August 2021, the Australian Energy Market Commission made a final determination on updates to the National Electricity Rules and National Energy Retail Rules to integrate distributed energy resources (DER) more efficiently into the electricity grid.³¹ The access, pricing and incentive arrangements for DER determination clarifies that export services are part of the core services to be provided by distribution businesses and allows them to develop export pricing options. The rule change required the AER to consult on and develop guidance for distribution businesses and customers about how, and if or when, they should consider charging network export tariffs.³² The AER also had to set out the customer export curtailment value (CECV) methodology for valuing the benefits to all customers from additional exports enabled by network investments.³³ Both projects were to be completed by 1 July 2022. Additionally, the rule change also required the AER to review many of its existing guidance materials to ensure the recognition of export services as a distribution service and to give effect to the rule change.

The AER's *Export tariff guidelines*, released on 19 May 2022, provide guidance on developing export tariffs and proposals for 2-way pricing, stakeholder engagement, our approach to applying the network pricing principles (including customer impact analysis) and the basic export level. An export tariff is a charge that a distributor can choose to introduce where customers are exporting electricity into the grid. If a distributor chooses to introduce an export tariff, it can decide what that charge looks like – whether, for example, it is a charge in the form of a new tariff or is introduced as a new component of an existing tariff. Export tariffs can incorporate both rewards and penalties for customers to export power at different times of the day, according to network needs.

Based on the recommendations of a study on the value of DER,³⁴ AER released the *DER integration expenditure guidance note* on 30 June 2022. The guidance note outlines the AER's expectations of the process for distribution networks developing DER integration plans and businesses cases. It provides principle-based guidance to quantifying DER value streams and what evidence should be included in distributors' proposals for integrating higher levels of customer DER exports.

The CECV methodology and its accompanying explanatory statement were released by the AER on 30 June 2022 along with the guidance note. The methodology involves electricity market modelling that produces a schedule of marginal export values (CECVs) for each National Electricity Market region for every half-hour over the next 20 years. The outputs of the methodology can then be applied by distributors in developing DER investment proposals. The methodology includes a distribution network service provider model that networks can use to estimate CECV for a proposed network investment case. The CECV methodology will help guide efficient levels of network expenditure for the provision of export services as well as serve as an input into network planning.

31 AEMC, [Access, pricing and incentive arrangements for distributed energy resources, Rule determination](#), 12 August 2021.

32 National Electricity Rules, rule 11.141.5.

33 National Electricity Rules, rule 11.141.7(a).

34 CSIRO and CutlerMerz, *Value of distributed energy resources: Methodology study: Final report*, October 2020.

▶ CASE STUDY

Ring-fencing guideline (distribution) review

In November 2021 the AER finalised a review of the *Ring-fencing guideline (distribution)*.

Ring-fencing is designed to separate monopoly services from competitive services. It aims to provide a level playing field by preventing discrimination and cross-subsidisation by regulated network monopoly businesses that may damage competitive markets. Effective ring-fencing arrangements are an important mechanism for promoting increased choice for consumers and more competitive outcomes in markets for energy services.

Our review focused on addressing the changing nature of services offered by distribution businesses in new and emerging markets. This included generation services related to regulated standalone power systems and contestable services from batteries. In some cases, these emerging technologies operate at the boundary between regulated monopolies and contestable markets.

Batteries and other energy storage devices will play a key role in the energy system. There is likely to be value in using a single battery to provide regulated network services (or inputs to regulated network services) and contestable services. While there are no ring-fencing issues with distribution businesses using batteries for network support purposes, issues arise when a distribution business uses a battery to provide services in competitive markets.

In considering the role of ring-fencing, it is important to prevent the incumbent monopoly distribution businesses from damaging competition in the developing market for competitive battery services. But it is also important to recognise the role that distribution businesses have in relation to batteries, including deployment of community batteries. Given the uncertainty that exists around the nature and pace of the market development, the AER maintained the requirement for a distribution business to apply for a waiver from the ring-fencing guideline if they wish to operate in competitive battery services markets. The AER has developed a streamlined assessment process for ring-fencing waivers for new energy storage devices (batteries) that meet certain criteria. This streamlined process provides flexibility and increases the AER's ability to respond to market developments in a targeted and proportionate way.

Similar issues were considered for distribution businesses that provide generation services for regulated standalone power systems. Recent amendments to the National Electricity Law and the National Electricity Rules allow distribution businesses to switch grid-connected consumers to regulated standalone power systems where it is more efficient to do so, particularly in regional areas. The framework envisaged third parties would provide the generation services for these systems. However, through our consultation we heard there may be instances where third parties may not be able to provide these services. The new guideline therefore allows distribution businesses to provide this generation up to a capped amount. Our approach is designed to promote efficient deployment of regulated standalone power systems in the early stages of market development, to meet the long-term interest of consumers. As deployment of these systems progresses, we will review this approach.

Strategic objective 4: Use our expertise to inform debate about Australia's energy future and support the energy transition

About this strategic objective

The NEM is transitioning toward a future with significant and rapid uptake of both grid-based and distributed renewable energy resources, the closure of ageing fossil fuel-dependent generation plant, and technological change that will affect how consumers engage with their energy providers. During this transition the need to protect the long-term interests of consumers has never been greater. The AER, as the independent market monitor and enforcement agency, provides strong, evidence-based analysis to inform policy proposals and help ensure those proposals are effective, holistic and fit for purpose while protecting the long-term interests of consumers.

The AER's extensive expertise on energy markets and regulation can inform and influence debate about Australia's energy future. We advocate for policy changes to improve the regulatory framework and enhance the interests of consumers. We do this through our relationships with all levels of government and the AER Chair's membership of the ESB. We also engage in AEMC policy reviews and rule change processes.

A key focus for the AER is to evaluate the impact of different reform design solutions on consumers, competition and our role (specifically network regulation along with monitoring and enforcing compliance with the National Electricity Law and National Electricity Rules).

Our priorities

The AER's 2021-22 'execute' priorities under strategic objective 4 were:

- Contribute to policy processes and reviews that impact on competition, consumers, and the role of the AER including Australian Energy Market Commission rule changes.
- Provide timely and insightful contributions to the Energy Security Board and Energy Ministers.
- Engage actively in external forums including:
 - Regulatory conference
 - Utility Regulators Forum.

We also had 3 'tilt' and 3 'advocate' priorities under this strategic objective:

- Contribute to the implementation of the National Electricity Market 2025 project following ministerial consideration of Energy Security Board Recommendations.
- Use consumer insights to inform input to external processes (e.g., in comments on draft rules).
- Enhance our outward-looking focus by increasing engagement with external professional forums.
- Continue to analyse the competitive positions and margins of different classes of generators.
- Input to the Australian Energy Market Commission's review of timely and efficient transmission investment.
- Advocate to ensure arrangements governing distributed energy resources standards are proportionate, align with the interests of consumers and do not lead to inefficient network investment.

Highlights



In July 2021 the ESB provided its final advice to Energy Ministers on the NEM 2025 project. This project has involved the development of policy and market design advice for a fit-for-purpose NEM to support an affordable and reliable energy transition. AER staff were closely involved in the development of the recommendations.



Following the endorsement of the recommendations in the final advice by National Cabinet in late October 2021, the AER has been involved in implementing the 4 reform pathways. AER staff are seconded to the ESB to support the design of both the capacity mechanism and new arrangements for managing congestion in the NEM.

Performance measures

Table 3.29: Performance measures for strategic objective 4

| Performance measure | 2020-21 | 2021-22 | | Met? |
|--|---------|--|--------|------|
| | Result | Target | Result | |
| The AER's reports inform debate about Australia's energy future and regulatory landscape | 67% | Maintained or improved compared to previous year | 55% | ○ |
| AER stakeholders' agreement with the following statements: | | | | |
| <ul style="list-style-type: none"> The AER engages effectively with its stakeholders | 71% | Maintained or improved compared to previous year | 68% | ○ |
| <ul style="list-style-type: none"> The AER shows leadership in pursuing or promoting priority issues in the energy sector | 77% | Maintained or improved compared to previous year | 65% | ○ |
| Reach of AER communication activities | 44,900 | Maintained or improved compared to previous year | 49,650 | ✓ |
| Number of rule change proposals that have successfully influenced or prompted change | N/A | No target [#] | 6 | ● |

[#] The AER has expertise in energy markets and regulation, which it can use to inform and influence policy. We seek to advocate for policy changes that protect and promote the interests of consumers via several avenues – including by making submissions to AEMC policy reviews and rule change processes. While a higher result/upward trend indicates better performance, it is not meaningful to set annual targets.

Analysis of results

The AER's 2022 stakeholder survey shows a decline in stakeholders' perceptions of our engagement as well as in informing debate and showing leadership on priority issues for the sector. Each of these performance measures was rated less favourably compared to 2021. There was significant variation in responses among stakeholder segments; ratings by consumer advocates for showing leadership (80%) and contributing to the debate (63%) were significantly higher than the overall results. Regulated businesses gave the lowest scores. In the verbatim comments from our Stakeholder Survey, a couple of stakeholders offered examples of the AER demonstrating leadership such as our work on consumer vulnerability and the Better resets handbook. Others felt the AER needed to do more to play a leadership role. They suggested that for the AER to improve in this regard, it needed to seek a better understanding of the

machinations and needs of industry, and for its decisions to reflect a long-term view of the energy market. The AER continues to build its capability and perspectives in this regard. In 2021-22 we put out a paper on *Regulating gas pipelines under uncertainty*, an important act of leadership in exploring the impact of the energy transition on industry, consumers and regulatory models.

During 2021-22 the AER made a range of submissions on rule changes and reviews to the AEMC. These were across a number of areas, including on the AEMC's Transmission Planning and Investment Review, governance of technical standards for DER, essential system security services, integrating energy storage systems, critical infrastructure protection and cybersecurity, consumer protection arrangements and family violence, energy rules consultation procedures, network resilience, smart meters, AEMO market participant fees and the proposed extension of gas regulation frameworks to hydrogen blends and renewable gases. Our submissions, and wider engagement on these issues, have been successful in influencing the final outcome.

There are 3 examples where our impact on policy and rule-making processes was clear. The first of these related to the Department of Home Affairs consultation on amendments to the *Security of Critical Infrastructure Act 2018* (Cth) (SOCI Act). The AER's submissions to this process highlight interactions of the proposed amendments to the SOCI Act with the frameworks established by the National Electricity Rules and National Gas Rules. This contributed to changes in the amended Act (the *Security Legislation Amendment (Critical Infrastructure Protection) Act 2022*) that better align with the economic efficiency-based framework operating in the electricity and gas sectors

The second example was in the AEMC's consultation on the 'Improving consultation in the Rules' rule change. The AER made a number of submissions to the AEMC's consideration of a rule change on the Electricity and Gas Rules Consultation Procedures. These submissions were successful in helping to ensure the procedures were efficient and minimised stakeholder burden.

The third example is the AEMC's Transmission Planning and Investment Review, where the AER's advocacy and submission focused upon the benefits of introducing competition in transmission. The electricity transition will see significant requirements for transmission investment, and competition in transmission investment has the potential to deliver both efficiency benefits and innovation. The AER's advocacy contributed to the AEMC initiating a workstream on competition in transmission as part of its Transmission Planning and Investment Review.

The AER uses a range of channels to reach our audiences, including traditional media, social media and our website. This year we refined our channel mix by ceasing our e-newsletter *Energy Dispatch* at the end of February 2022 and launching new consumer-facing social media channels. Overall, there was an increase in our reach across our platforms and activities:

- There was a 23.5% increase in followers of the AER LinkedIn, from 13,674 to 16,901. We had a 42% increase in followers of the AER Twitter account, from 817 to 1,159, and a 27% increase in followers of the Energy Made Easy Twitter account, from 190 to 242. The Energy Made Easy Facebook and Instagram accounts were launched on 9 June 2022 with a 3-week paid digital campaign. This resulted in 105 followers to Facebook and 30 followers to Instagram, around 40,000 click-throughs to the Energy Made Easy website and 1,979,266 impressions from sponsored social media posts and Google search terms.
- We achieved a significant reach in the media. Known media mentions of the AER reached people nationally approximately 426 million times – an 82% increase from the previous year – through 21,990 media mentions.
- We had approximately 550,000 users to our corporate website and 907,000 website sessions – an increase of 14% and 71% respectively. We saw our website subscriptions, which allow users to sign up to receive updates on specific subject matters, increase by an average of 7%.

Outcomes achieved

Supporting National Energy Market reforms

The AER has been contributing to the development, design and implementation of market reforms through the NEM 2025 project. The AER provided input into the ESB final advice to Energy Ministers in July 2021 and following the endorsement of the recommendations in the final advice by National Cabinet in late October 2021, has been involved in implementing the 4 reform pathways identified by the ESB.

The AER's input occurs through the AER Chair's membership of the board of the ESB as well as through engagement in the ESB's NEM 2025 working groups and policy development processes. AER staff have also been seconded to the ESB to work on the design of the capacity mechanism and development of transmission access reform. AER engagement has focused on key areas of interest and relevance to the AER's role by evaluating the impacts of new market designs on competition, consumer protections, monitoring, compliance and enforcement. In particular, we have been engaging closely on:

- the introduction of a capacity market mechanism to provide clear, long-term investment signals. This will ensure that there is a reliable supply of electricity and that there are adequate power supplies in the NEM as the energy generation mix transitions towards greater levels of renewables
- the introduction of a new congestion management model for electricity network congestion. This will ensure efficient use and expansion of the transmission network, especially as the pace of renewable connections grows
- the delivery of the ESB's DER implementation plan, which will provide greater benefits to customers and the system through efficient integration of DERs (like rooftop solar, battery storage and smart appliances). In particular, we are undertaking:
 - a review of the retailer authorisation and exemption review to identify whether the National Energy Customer Framework will remain fit for purpose as new energy products and services emerge. We published an issues paper in April 2022 for stakeholder consultation
 - work on the development of a policy and regulatory framework for dynamic operating envelopes on electricity distribution networks. Dynamic operating envelopes are a mechanism through which distribution networks can maximise the level of export capacity on their network at any point in time. This in turn helps customers obtain rewards for exports of their solar PV to the grid. We intend to publish an issues paper later in 2022 to initiate this work
- rule changes being considered by the AEMC that will ensure essential services are provided to support an electricity system with greater levels of renewable generation (frequency control, operating reserves, inertia and system strength).

Contributions to policy processes and reviews

The AEMC is the rule maker for Australian electricity and gas markets. It makes the National Electricity Rules, National Gas Rules and National Energy Retail Rules. The AER enforces these rules and therefore actively engages in their development. In 2021–22 we made 17 submissions to the AEMC. We also made 16 submissions to other national and state policy and legislation making processes:

- [AEMC consultation paper - Recovering the cost of AEMO's participant fees - 3 June 2022](#)
- [AEMC consultation paper - establishing revenue determinations for intending TNSPs - 2 June 2022](#)
- [AEMC draft determination - Improving consultation procedures in the Rules - 26 May 2022](#)
- [Department of Industry, Science, Energy and Resources - Extending the national gas regulatory framework to hydrogen blends and renewable gases - 19 May 2022](#)
- [AEMC consultation paper - AER reporting on market outcomes - 21 April 2022](#)
- [Department of Environment, Land, Water and Planning - Network resilience consultation - 8 April 2022](#)
- [South Australian Department of Energy and Mining consultation - Accelerating the roll out of smart meters in South Australia - 18 March 2022](#)
- [NSW Department of Planning, Industry and Environment consultation paper - Promoting innovation for NSW energy customers - 10 March 2022](#)
- [Joint panel network panel - 2022 collaboration on Network Resilience - 8 March 2022](#)
- [AEMC Reliability Panel Issues paper - 2022 Reliability Standard and Settings Review - 3 March 2022](#)
- [AEMC consultation paper - Protecting customers affected by family violence - 3 March 2022](#)
- [AEMC consultation paper - Improving consultation procedures in the Rules - 3 February 2022](#)
- [Department of Industry, Science Energy and Resources directions paper - Review of the Default Market Offer - 2 February 2022](#)
- [Australian Government - Security Legislation Amendment \(Critical Infrastructure Protection\) Bill 2022 - 1 February 2022](#)
- [AEMC draft determination - Enhancing operational resilience in relation to indistinct events - 7 January 2022](#)
 - [Senior Energy Officials Consultation Paper - Options to advance the east coast gas market - 23 December 2021](#)
 - [AEMO draft report - Network support and control ancillary services description and quantity procedure consultation - 2 December 2021](#)
- [AEMC consultation paper - Review into extending the regulatory frameworks to hydrogen and renewable gases - 2 December 2021](#)
 - [AEMC consultation paper - Removal of unaccounted for energy from liable load in the Retailer Reliability Obligation - 25 November 2021](#)
- [AEMC consultation paper - Extension of time and reduction in scope of the 2022 reliability standard and settings review - 25 November 2021](#)
- [NSW Department of Planning, Industry & Environment consultation - Network infrastructure projects policy paper - 15 November 2021](#)
- [AEMC directions paper - Capacity commitment mechanism and synchronous services markets - 22 October 2021](#)
- [AEMC consultation paper - Updating Short Term Projected Assessment of System Adequacy - 15 October 2021](#)

- [Department of Industry, Science, Energy and Resources draft legal package – gas pipeline regulatory amendments - 14 October 2021](#)
- [Department of Industry, Science, Energy and Resources - Default Market Offer and Reference Price review - 11 October 2021](#)
- [AEMC consultation paper - Governance of distributed energy resources technical standards - 8 October 2021](#)
- [AEMC market review - Transmission planning and investment review - Consultation paper - 30 September 2021](#)
 - [AEMC draft determination - Integrating energy storage systems into the National Electricity Market - 16 September 2021](#)
 - [NSW Government - Long-term energy service agreement design - Consultation paper - 15 September 2021](#)
 - [Department of Home Affairs discussion paper - Strengthening Australia's cyber security regulations and incentives - 27 August 2021](#)
 - [AEMO consultation - Amendment of the market ancillary service specification \(MASS\) - DER and general consultation - 11 August 2021](#)
 - [Victoria's Gas substitution roadmap - Consultation paper - 2 August 2021](#)
- [AEMC draft determination - Efficient management of system strength on the power system - 17 June 2021.](#)

Participation in professional forums

The AER actively participates in domestic and international professional forums. Domestically, this year the AER continued to attend and present at the biannual Utility Regulators Forum (URF) on topics including consumer vulnerability and the promotion of long-term interests for consumers through the regulatory process. The URF was established to encourage information exchange and cooperation between New Zealand, Commonwealth, state and territory based utility regulators.

This year the AER became a member of the Prime Minister and Cabinet led Regulatory Leadership Cohort, which will drive recommended actions to implement best practices and improved regulator performance across Commonwealth regulators. The AER also presented at a Regulatory Policy Institute of Australia and New Zealand event to discuss consumer engagement in regulation.

The AER continued to engage with other international regulators at meetings of the International Regulatory Futures Forum. The AER is also a member of the Asia Pacific Energy Regulatory Forum. This year we presented the work the AER is doing to enhance system integration of renewables and low-carbon technologies. We also joined the newly established International Regulatory Accelerator Forum and presented at the launch of the forum at the COP 26 summit. This new group aims to enhance the knowledge and capabilities of energy regulators to accelerate the decarbonisation of their energy systems through bilateral and wider knowledge-sharing activities.

Regulatory practice

About this section

The AER is committed to providing outcomes-focused regulatory services that emphasise a proportional approach to risk, genuine engagement with regulated entities and the broader community, and the importance of maintaining trust and confidence in regulatory settings. On 30 June 2021 the Australian Government identified 3 principles of regulatory best practice. The AER applies these principles in how we undertake our work.

Principle 1: Continuous improvement and building trust

Principle 1 asks regulators to adopt a whole-of-system perspective, continuously improving their performance, capability and culture, to build trust and confidence in Australia's regulatory settings.

Trust is an emotive outcome of reputation which we measure as trust in the AER to do the right thing by consumers via our survey of key stakeholders. Stakeholders have high levels of trust in the AER, with two-thirds giving a high rating of 7 or more out of 10, resulting in a trust score of 68%. Government stakeholders rated us highest, with a trust score of 73%. Governments' high levels of confidence in the AER were demonstrated throughout the year, including by supporting several new policy proposals that uplifted our resourcing by 20% as well as through the conferral of new powers relating to the regulation of gas pipelines and New South Wales' REZ.

Key actions

In 2021-22 we demonstrated our commitment to collaboration and engagement by:

- evolving our approach to network revenue determinations through the publication of the *Better resets handbook – towards consumer-centric network proposals*. Referred to as 'resets', network revenue determinations are one of the key regulatory processes the AER undertakes to ensure consumers pay no more than necessary for safe and reliable energy. The handbook puts consumer engagement at the centre of a well-justified proposal and outlines a process that will result in a more efficient reset process
- clearly articulating our desired culture. Following a staff-led process we finalised and launched our Culture Plan in March 2022. We identified 2 cultural archetypes that we will focus on and grow – Accountable and Innovative. We will also maintain and grow our already good One Team and Stakeholder Centric elements and maintain our already strong People First and Greater Good archetypes. The plan details the actions we will take, linked to expected behaviours, systems and symbols
- actively building staff capability, including through a 5-part workshop series by Professor Malcolm Sparrow -a leading international expert in regulatory and enforcement strategy
- implementing actions arising from the findings of the Australian National Audit Office's 2020 report on its audit to assess the effectiveness of the AER's regulation of energy markets
- conducting strategy workshops among the AER Board and the AER leadership team that considered progress against the AER Strategic Plan; and emerging issues for energy regulation
- enhancing our relationships with state and territory based Ombudsman schemes and jurisdictional regulators to enhance our sources and use of market intelligence in compliance and enforcement activities
- actively sharing learning and insights by participating in the biannual (Australian) URF as well as the global regulatory energy transition 'Accelerator' (an initiative to share capabilities and knowledge in regulation as governments around the world strive to decarbonise energy markets).

Principle 2: Risk based and data driven

Principle 2 requires regulators to maintain essential safeguards, using data and digital technology to manage risks proportionately to minimise regulatory burden and to support those they regulate to comply and grow.

This year we posed 2 new questions in our stakeholder survey that were designed to measure AER's performance as a risk-based and data-driven regulator. Overall, there are high levels of agreement among our stakeholders that the AER is data driven; two-thirds gave a rating of 7 or more out of 10, resulting in a score for evidence-based working and decision making of 67%. Consumer advocates expressed the most positive view (80%); the score from network businesses was weakest (48%). Half of our key stakeholders agree that the AER manages risk proportionately by maintaining essential safeguards while minimising regulatory burden. Consumer advocates held the most positive view, with a score for risk-based working of 56%.

Key actions

Compliance and enforcement outcomes are key to achieving the AER's objective of ensuring that energy consumers are better off, now and in the future. The AER's approach to compliance and enforcement is outlined in our Compliance and Enforcement Policy. Throughout 2021-22, in response to harms identified through our data-driven approach, the AER delivered appropriate and proportionate compliance and enforcement outcomes in line with our Compliance and Enforcement Policy. These included education initiatives, administrative outcomes, court enforceable undertakings, infringement notices and civil proceedings resulting in substantial civil penalties.

Each year the AER articulates annual compliance and enforcement priorities that guide our enforcement work and proactive compliance efforts. The identification of these priorities is strongly informed by risk of harms. In 2021-22 we were successful in maintaining our focus on these risk-based priorities, with 67% of all compliance and enforcement work delivered against our stated priorities.

In 2021-22, the AER established a Compliance and Assessment Reporting Team to lead work towards becoming a data-driven conduct regulator. This has involved setting up an information management system that brings together the many disparate sources of data coming into the AER signalling prevalence of harms. That data is monitored and analysed in order to identify emerging issues, producing proactive intelligence products that can be used for evidence-based decision making. We also established a new AER-wide forum to triage compliance matters and centralise decision making about resourcing and which regulatory tool(s) will be used.

We also continued to improve our reliance on data and digital technology with the development of a centralised case management system to support compliance and enforcement capability. This will allow simplified investigation and case management, reduce duplication and automate some processes. The use of portals in connection with the case management system will also reduce regulatory burden.

Our 2021 information paper *Regulating gas pipelines under uncertainty* is an example of our evidence-based approach. The paper supports stakeholders' understanding of how the current energy transition (from fossil fuels to decentralised renewables) affects regulated gas networks and its implications for the economic regulation of gas pipelines and networks and, in turn, for consumers. We outline a range of possible options to manage the pricing and stranded asset risks that gas networks face, arising from a potential material decline in gas demand in the long term. We are now, in the course of our transmission and distribution gas access determinations, inviting stakeholder feedback on how we can best respond.

In 2021-22 we also finalised our inaugural AER Data Strategy, which sets out the priorities and initiatives we are following to embed a culture of data-driven decision making and to break down data silos within the AER.

Principle 3: Collaboration and engagement

Principle 3 provides that regulators should be transparent and responsive, implementing regulation in a modern and collaborative way. This means that regulators will engage genuinely with stakeholders and listen to feedback; provide guidance and information to help regulated entities understand their obligations; and be transparent in their decision making.

Overall, stakeholders continue to rate the AER highly for the effectiveness of our stakeholder engagement, with two-thirds giving a high rating of 7 or more out of 10, resulting in a score of 68%. Our stakeholder engagement score was stable (71% in 2021).

Key actions

In 2021-22 we demonstrated our commitment to collaboration and engagement by:

- Expanding our stakeholder management framework to include all AER Board members, with each key stakeholder assigned to a Board member as the key point of contact. This has led to increased levels of engagement. In 2021-22 we participated in 519 executive-level stakeholder engagement meetings compared with 319 in 2020-21.
- Strengthening our formal consumer engagement arrangements. We recruited a new CCG and, for the first time, appointed an independent chair. We also recruited 9 new members for the third iteration of the AER's Consumer Challenge Panel.
- Seeking out stakeholder feedback by publishing issues papers, draft guidelines and draft regulatory decisions. In all cases we invite, accept and consider feedback we receive in written submissions. In many instances we also run workshops to provide the opportunity for discussion and feedback. Examples where stakeholder feedback significantly shaped the final product in 2021-22 include:
 - the CECV methodology supporting DER integration. CECVs capture the detriment to customers and the market when distributed energy resource exports are curtailed and help guide efficient levels of investment for export services. As part of the consultation process, the AER released an issues paper, as well as draft and final decisions; and ran an online forum with wide-ranging stakeholder participation and a stakeholder workshop. We responded to the issues raised by stakeholders, including avenues for future review of the methodology and the appropriateness of including certain value streams. The associated explanatory statement clearly outlines how the final CECV methodology is reflective of the stakeholder feedback we received
 - establishing the Export tariff guidelines. This requires electricity distributors to justify any two-way pricing proposals and to consult with consumers in their development. We engaged intensively with social and environmental advocates such as the Australian Council of Social Services, the St Vincent de Paul Society, the Total Environment Centre, Energy Consumers Australia and Solar Citizens, and the Energy Networks Association and the network businesses. We hosted an online workshop open to the public, published an issues paper for community comment and then draft guidelines accompanied by an explanatory statement. Our final guidelines attracted broad sectoral and stakeholder support and are now actively shaping the sector's transformation to a cleaner, cheaper future grid.
 - a review of our DMO methodology. The DMO is a maximum price that retailers can charge small business and residential customers on standing offer contracts, in South Australia, New South Wales and south-east Queensland.

For the 2021-22 review we sought and included feedback from consumer representatives, governments, retailers and distributors. To do this we published an issues paper, draft determination, and final determination, each including relevant stakeholder feedback. Beginning with the publication of the issues paper (which included issues raised by stakeholders in previous DMOs) we conducted a consultation process which gathered feedback from bilateral meetings, public online stakeholder forums and formal written submissions. We included and discussed all feedback given to the issues paper in our draft determination and following its publication ran the same process to gather further feedback

to strengthen the final determination. Each methodological section in a DMO determination discusses stakeholder feedback received; we present our views and analysis of the feedback determining how it impacts the DMO.

- publishing a range of guidelines and compliance bulletins designed to help energy businesses understand their obligations and responsibilities. In 2021–22 this included compliance bulletins on FCAS, Summer Readiness and the application of regulatory investment test for distribution requirements. We also published the:
 - *Better bills guideline* – providing guidance to energy retailers on preparing and issuing bills that make it easy for residential and small customers to understand billing information
 - *Ring-fencing guideline (electricity distribution), Version 3* – governing the extent to which electricity distribution network service providers can provide contestable services (for example, the installation of smart meters)
 - *Wholesale demand response participation guideline* – establishing record and information keeping requirements of demand response service providers
 - *AER note on network resilience* – to assist network service providers, consumer groups and advocates understand how network resilience funding to address weather-related risks is accommodated by the National Electricity Rules
 - *Export tariff guidelines* – informing energy distributors, customers, retailers and intermediaries about the process for development and approval of export tariffs
- making it easier for our stakeholders to engage in our distribution determinations by developing standardised models for metering services and ancillary network services. The models streamline the development of regulatory proposals by distributors as well as giving retailers and end customers greater scope to participate in the associated consultation processes
- streamlining and improving our annual pricing approvals process for stakeholders. In 2021–22 we developed a pre-lodgement engagement process to facilitate more timely and accurate annual pricing approvals as well as standardised models to streamline analysis and improve the presentation of pricing outcomes
- developing a regulatory sandboxing framework, which will help energy businesses to understand how their new energy technologies or business models fit within current energy regulations and make it easier for innovators to trial their proposed services.



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.

The AER's senior leadership comprises the AER Board (appointed by the Governor-General) and SES employees who are engaged exclusively on work carried out by the AER.

Details of the leadership structure are in Figure 2.1 on page 22.

Australian Competition and Consumer Commission

During 2021-22 the ACCC had 2 Chairs, 2 Deputy Chairs, 4 Commissioners and 7 Associate Members. Their names and appointment terms are shown in Table 4.1.

Table 4.1: ACCC members during 2021-22

| Position | Name | Appointed until |
|-------------------|--------------------|------------------------------|
| Chair | Gina Cass-Gottlieb | 20 March 2027 |
| | Rod Sims | 20 March 2022 |
| Deputy Chairs | Delia Rickard | 26 October 2022 [#] |
| | Mick Keogh | 29 May 2023 |
| Commissioners | Liza Carver | 28 February 2027 |
| | Stephen Ridgeway | 26 June 2024 |
| | Anna Brakey | 9 December 2025 |
| | Peter Crone | 9 December 2025 |
| Associate Members | Clare Savage | 13 October 2024 |
| | Jim Cox PSM | 25 June 2024 |
| | Catriona Lowe | 2 February 2025 |
| | Eric Groom PSM | 2 February 2025 |
| | Justin Oliver | 2 February 2025 |
| | James Cameron | 4 August 2021 |
| | Nerida O'Loughlin | 13 October 2022 |

[#] The Government has announced its intention to extend Delia Rickard's appointment until the commencement of Catriona Lowe as Deputy Chair from 27 January 2023, who the Government has nominated for the position.

Biographies – ACCC

Chair



Gina Cass-Gottlieb

Gina Cass-Gottlieb commenced her 5-year appointment as Chair of the ACCC on 21 March 2022.

Before she joined the ACCC Gina was a senior and founding partner of Gilbert and Tobin's competition and regulation team. Gina has over 25 years' experience advising on a large number of merger, competition and regulatory matters in Australia and New Zealand. She is widely recognised as one of Australia's leading competition and regulatory experts.

Gina was appointed by the Commonwealth Treasurer to the Reserve Bank of Australia's Payments System Board in 2013 and re-appointed in 2018. The Payments System Board is the regulator of access to payment systems. Gina was appointed to the Financial Regulator Assessment Authority in September 2021.

Gina has received numerous accolades from Chambers Asia Pacific, Legal 500 Asia Pacific, Who's Who Legal, Lawyers Weekly Awards, Beaton Client Choice Awards and Best Lawyers Australia, for her competition and legal expertise.

Gina was a Fulbright Scholar at UC Berkeley from 1986 to 1987, majoring in US competition law, financial institutions regulation and securities regulation.

Gina is the first female Chair of the ACCC, which was established as an independent statutory authority in 1995.



Rod Sims

Rod Sims was appointed Chair of the ACCC in August 2011 for an initial 5-year term, reappointed for a further 3 years in August 2016, and reappointed again for a further 3 years until July 2022. Rod's appointment as ACCC Chair finished on 20 March 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 with the National Competition Council, Chair of InfraCo Asia based in Singapore, Director of Ingeus Limited based in London, 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 Chief Executive Officers (CEOs) and boards of some of Australia's top 50 companies on commercial corporate strategy over many years. Rod relinquished 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 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 Principal Economic Advisor to Australia's Prime Minister.

Rod was awarded the Officer of the Order of Australia (AO) in 2022 for his service to public administration in economic policy and regulatory roles. 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



Delia Rickard

Delia Rickard was appointed to the position of Deputy Chair of the ACCC in June 2012 for a period of 5 years and reappointed for a further 5 years in July 2017. Delia's appointment was extended until October 2022, and the government has announced its intention to extend her appointment until the commencement of Catriona Lowe from 27 January 2023, who the government has nominated for the position. Delia is also an Associate Member of the Australian Communications and Media Authority (ACMA).

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.

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; 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 chairs the ACCC's Compliance and Product Safety Committee and sits on the Competition Exemptions, Communications, Consumer Data Right, and Enforcement Committees, as well as the Digital Platforms, Electricity Markets and Financial Services Competition Boards. She is also a member of the board for a number of ACCC market studies.

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.



Mick Keogh

Mick Keogh was appointed to the ACCC in February 2016, and then as Deputy Chair of the ACCC in 2018, with responsibility for Small Business and Agriculture.

Mick has a long and diverse history of involvement with the small business and agriculture sector, including periods of employment as a business consultant, and in advocacy and advisory roles to policymakers and governments. He has also chaired a number of Commonwealth Government inquiries and Ministerial advisory boards. He is currently a member of the Commonwealth Government's Emission Reduction Assurance Council, and a Board member of the Food Agility Co-operative Research Centre.

From 2003 to 2018, he was Executive Director of the Australian Farm Institute, an independent policy research institute that conducted research into strategic policy issues of importance to Australian agriculture and regional Australia. Mick continued in that role until his appointment as Deputy Chair of the ACCC in June 2018.

Mick chairs the Agriculture Board, and is a member of the Competition Exemptions, Enforcement, Compliance and Product Safety, and Mergers Review Committees, the Electricity Markets Inquiry Board, as well as oversight of the small business, franchising units of the ACCC.

Mick was awarded the Order of Australia Medal in 2015. He holds bachelor's and master's degrees in science, both obtained at the University of New South Wales, and a Doctor of Applied Science (honoris causa) from Charles Sturt University.

Commissioners



Anna Brakey

Anna Brakey was appointed a Commissioner of the ACCC in December 2020. She is also an Associate Member of the ACMA. On 1 March 2022 Anna commenced as an Associate Member of the New Zealand Commerce Commission.

Anna Brakey has extensive experience in regulatory economics and public policy with over 25 years of experience working with regulators, government and within the private sector. She has had broad exposure to a wide range of infrastructure industries, including energy, water and transport. Additionally, she has worked on economic reform to social policy.

Prior to starting at the ACCC, Anna worked as an economist at Frontier Economics and held a number of roles at the IPART, including being a deputy Tribunal Member, the Executive Director of Strategy and Economic Analysis and the Chief Operating Officer. Anna's expertise includes the Parliamentary Committee process, the New South Wales Department of Transport, the Australian Productivity Commission, the Bureau of Industry Economics and the Australian Bureau of Statistics. Additionally, Anna has worked for the Australian Energy Market Commission (AEMC) on reforms to economic regulation and with the New South Wales Treasury on the sale of assets.

Anna chairs the ACCC's Infrastructure Committee, Communications Committee, Electricity Markets Inquiry Board and East Coast Gas Market Board, and is a member of the ACCC's Competition Exemptions Committee and Agriculture Board.

Anna holds a Bachelor of Economics from the Australian National University and a Graduate Diploma of Applied Finance and Investment from the Securities Institute of Australia. She is also a Graduate of the Australian Institute of Company Directors.



Liza Carver

Liza Carver commenced her role as Commissioner on 1 March 2022. Liza brings a wealth of experience from her career as a lawyer, including from her former role as Partner of Herbert Smith Freehills. Liza is widely recognised as one of Australia's leading competition law and regulatory specialists.

Liza was also a non-executive Director of the NSW Rail Access Corporation, RailCorp and AirServices Australia.

In addition to her experience in private practice, Liza was an Associate Commissioner with the Trade Practices Commission and the ACCC between 1993 and 1999. Liza was also a Commissioner with the AEMC between 2005 and 2008.

Liza's combined experience from her time in private practice and working at the ACCC and the AEMC, has provided her with a strong insight into competition law.

Liza chairs the ACCC's Enforcement Committee, and is a member of the Communications, Mergers Review, Infrastructure, and Compliance and Product Safety committees. She is also on the Digital Platforms Inquiry Board.

Liza holds degrees in Economics, Law and a Master of Laws from the University of Sydney.



Peter Crone

Peter Crone was appointed a Commissioner of the ACCC in December 2020.

Peter has more than 30 years of experience in economic policy and commercial strategy at the highest levels of government and business in Australia. He has served as an adviser to state and federal governments, including as Senior Economic Advisor to Australia's Prime Minister from 1997 to 2006, and filled chief economist roles at the Business Council of Australia, Ernst and Young, and Coles Group.

Peter has also been a commercial adviser to a number of superannuation funds on infrastructure investments, and commenced his career at the Commonwealth Treasury as a policy adviser and research economist.

Peter brings deep experience in assessing and explaining economic and regulatory trends at play across markets and industries. His broad experience reflects the economy-wide remit of the ACCC.

Peter chairs the ACCC's Consumer Data Right Committee and is a member of the Communications, and Mergers Review committees, as well as the Digital Platforms Inquiry, Financial Services Competition, and East Coast Gas Market Boards.

Peter holds a Master's Degree in Economics from the Australian National University and a Bachelor of Economics (Honours) from the University of Western Australia. He is also a Graduate of the Australian Institute of Company Directors.



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. After joining private practice in 1998, Stephen had extensive involvement in merger clearance applications in a wide variety of industries. He also had extensive experience in regulatory enforcement actions, including a number of landmark ACCC enforcement matters.

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 Mergers Review and Competition Exemptions Committees, and is a member of the ACCC's Enforcement Committee, Consumer Data Right Committee and Agriculture Board. On 1 March 2022 Stephen also commenced an appointment as an Associate Member of the New Zealand Commerce Commission.

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 5 members, including the Chair, Clare Savage, and the Deputy Chair, Jim Cox.

Table 4.2: AER Board members during 2021-22

| Position | Name | Appointed until |
|--------------|----------------|-----------------|
| Chair | Clare Savage | 13 October 2024 |
| Deputy Chair | Jim Cox PSM | 25 June 2024 |
| Members | Catriona Lowe | 2 February 2025 |
| | Eric Groom PSM | 2 February 2025 |
| | Justin Oliver | 2 February 2025 |

Biographies – AER

Chair



Clare Savage

Clare Savage was appointed Chair of the AER in September 2019.

Over the last 20 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; senior executive positions within EnergyAustralia 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 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



Jim Cox PSM

Jim Cox was reappointed as the Deputy Chair of the AER Board on 5 April 2022 for a further 2-year term commencing 22 April 2022.

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 was awarded the Public Service Medal in the Australia Day honours list in 2011 for outstanding public service to IPART.

Members



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.

Catriona 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 Eric 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.



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 2 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.

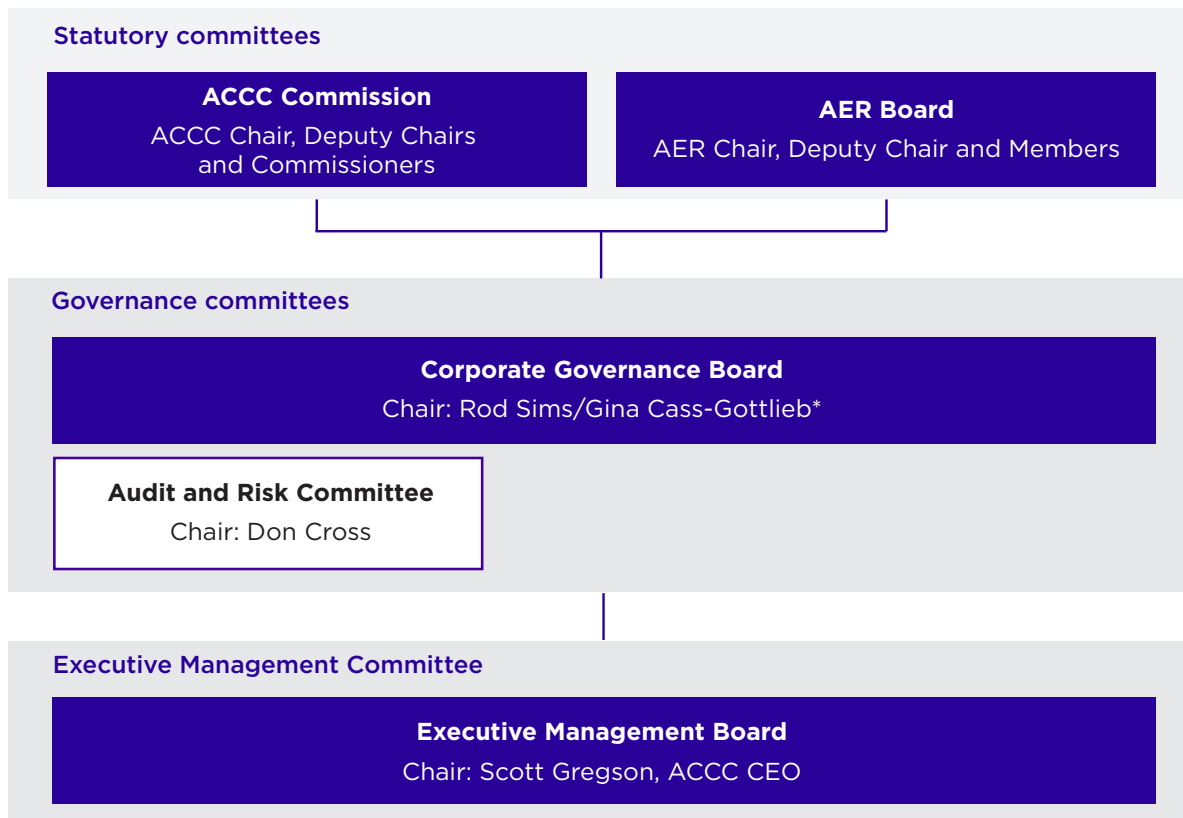
The ACCC makes statutory decisions through the Commission, aided by specialist subject-matter committees, called Commission subcommittees, comprising subgroups of Commissioners (see figure 4.2) and inquiry project boards.

The AER makes its decisions through its Board. The AER has 4 subject matter committees: Markets Committee, Networks Committee, Policy Committee and Enforcement and Compliance Committee. The committees do not make statutory decisions. They are designed to be less formal than the Board and provide the opportunity for early and open discussion of issues.

Both the Commission and the AER Board may delegate certain other decisions and powers to Commissioners, board members or senior employees.

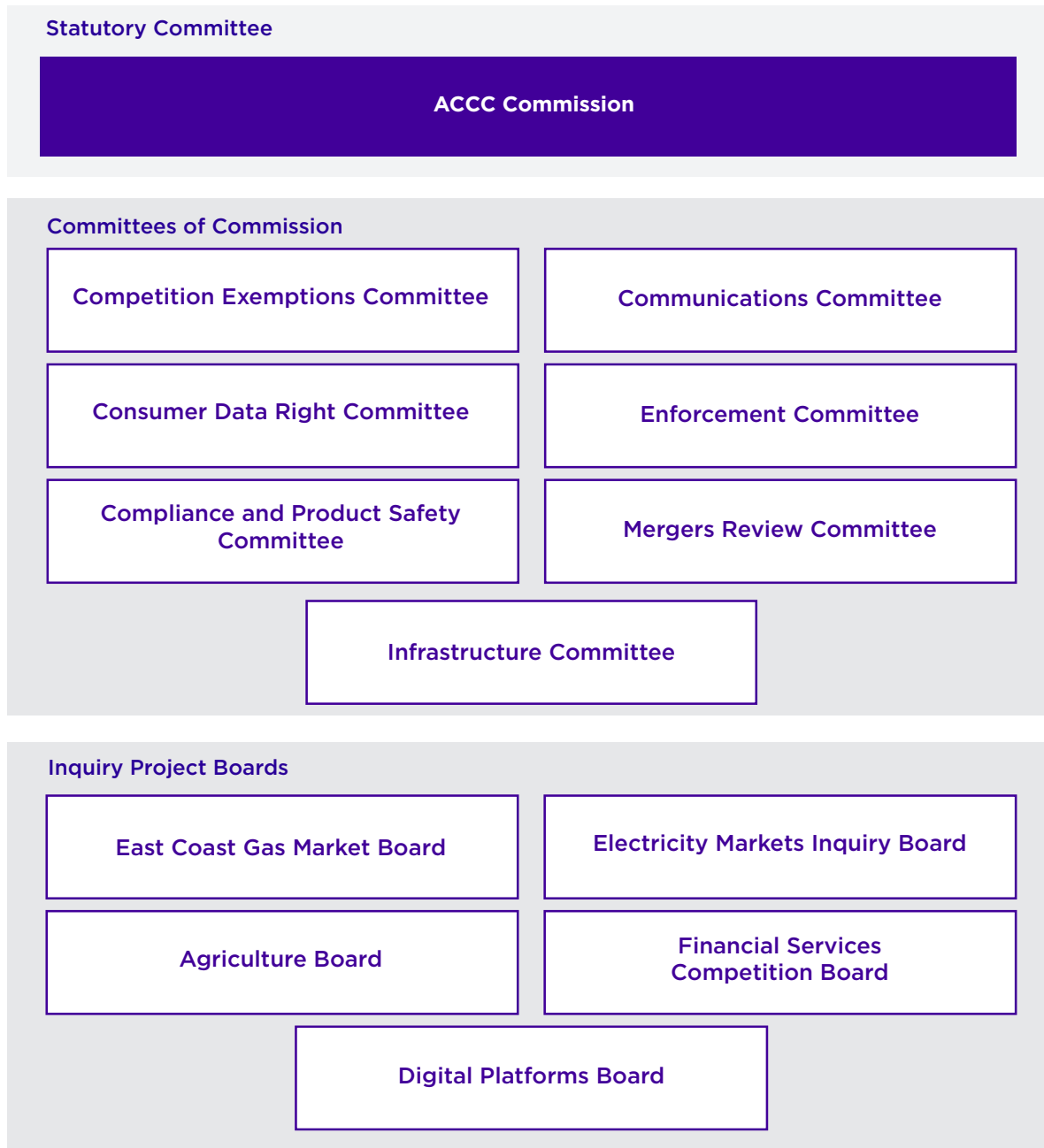
The agency is also governed and its administration is overseen by governance committees.

Figure 4.1: ACCC and AER governance structure



* Gina Cass-Gottlieb commenced as Chair of the ACCC and Chair of the Corporate Governance Board on 21 March 2022.

Figure 4.2: ACCC operational committees during 2021-22



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; whether to accept enforceable undertakings; 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 under About the ACCC and AER in Part 2.

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 and/or long-term monitoring activities into particular sectors. Inquiry project boards have been established to provide strategic guidance in relation to these inquiries.

Table 4.3: Commission subcommittees – as at 30 June 2022

| Committee | Members | Purpose |
|---|---|---|
| Competition Exemptions Committee | Stephen Ridgeway (Chair), Mick Keogh, Delia Rickard, Anna Brakey. | The committee considers authorisation applications, significant notifications of exclusive dealing and collective bargaining conduct, and significant certification trade mark applications. It subsequently refers all applications for authorisation to the Commission for decision. It sits as a division of the Commission under s 19 of the CCA. |
| Communications Committee | Anna Brakey (Chair), Gina Cass-Gottlieb, Delia Rickard, Peter Crone, Liza Carver, Eric Groom. Associate members: Nerida O'Loughlin, James Cameron. | The committee considers regulatory and competition issues arising in the communications sector and refers major statutory matters to the Commission for decision. It sits as a division of the Commission under s 19 of the CCA. |
| Consumer Data Right Committee | Peter Crone (Chair), Delia Rickard, Stephen Ridgeway, Gina Cass-Gottlieb. | The committee oversees the ACCC's role in the implementation and enforcement of the government's Consumer Data Right, including the accreditation of participants and the granting of exemptions. It sits as a division of the Commission under s 19 of the CCA. |
| Enforcement Committee | Liza Carver (Chair), Gina Cass-Gottlieb, Stephen Ridgeway, Mick Keogh, Delia Rickard. | 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. |
| Compliance and Product Safety Committee | Delia Rickard (Chair), Mick Keogh, Gina Cass-Gottlieb, Liza Carver. | 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. |
| Infrastructure Committee | Anna Brakey (Chair), Gina Cass-Gottlieb, Liza Carver. | The committee oversees access, price monitoring, transport and water regulatory issues. |
| Mergers Review Committee | Stephen Ridgeway (Chair), Mick Keogh, Peter Crone, Gina Cass-Gottlieb, Liza Carver. | 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. |

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 comprises 2 Commonwealth members and 3 state/territory members. One member is appointed as the Chair and another member is appointed as the Deputy Chair.

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.

The Board is supported by 4 subject-specific committees (Policy, Networks, Compliance and Enforcement, and Markets) to provide the opportunity for timely strategic direction and informal discussion between Board members and staff.

The Board is also supported by staff who are engaged exclusively on energy matters. It also has access to the ACCC's specialist legal and economic staff.

The Board is further discussed under About the ACCC and AER in Part 2.

AER subject-matter committees

The AER has 4 subject-matter committees and a governance forum. Each is chaired by a member of the Board and meets fortnightly; the governance forum meets monthly.

The committees are less formal than the AER Board and designed as forums for staff to seek early feedback and direction on work in progress prior to papers being submitted to the Board for formal decision.

Table 4.4: Subject-matter committees of the AER – as at 30 June 2022

| Committee | Members | Purpose |
|--------------------------------------|--|---|
| Markets Committee | Justin Oliver (Chair), Eric Groom, Clare Savage. | The committee is focused on market entry, exit and structure; wholesale and retail markets; and market performance, including reporting frameworks, publications and intelligence/surveillance. |
| Networks Committee | Eric Groom (Chair), Jim Cox, Catriona Lowe. | The committee is focused on the efficient regulation of monopoly infrastructure and incentivising networks to become platforms for energy services. |
| Policy Committee | Jim Cox (Chair), Eric Groom, Catriona Lowe, Justin Oliver, Clare Savage. | The committee provides strategic oversight and coordination of AER external policy positions and advocacy. |
| Enforcement and Compliance Committee | Catriona Lowe (Chair), Clare Savage, Jim Cox, Justin Oliver. | The committee is focused on compliance with and enforcement of the Energy Laws and Rules. |
| AER Governance Forum | Jim Cox (Chair), Clare Savage, Eric Groom, Catriona Lowe, Justin Oliver. | The forum is focused on AER's operational performance, risk management, strategic setting and corporate planning. |

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 2 types of committees:

- governance committees
- executive management committees.

Governance committees

Corporate Governance Board

The Corporate Governance Board is at the apex of the agency's corporate governance structure. During 2021-22 the Board met 11 times. The Corporate Governance Board, aided by the Audit and Risk Committee and by executive management committees, is well equipped to oversee our strong corporate and financial performance.

The responsibilities of the Corporate Governance Board include:

- strategy setting and corporate planning
- internal budgets and resource management
- performance monitoring and reporting
- risk oversight and management
- agency accountability.

Members: Gina Cass-Gottlieb (Chair), AER Chair or nominated representative, ACCC Deputy Chairs, AER Deputy Chair, and all other ACCC Commissioners.

Audit and Risk Committee

The ACCC and AER Audit and Risk Committee provides independent advice to the Accountable Authority (the ACCC Chair) through the Corporate Governance Board. Its functions are to review, report on and provide advice on the agency'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 4 areas.

The committee meets 4 times per year, as well as holding an additional meeting in August each year focusing on the agency's financial statements and performance reporting. The committee also attends a meeting of the Corporate Governance Board at least once per year.

The Audit and Risk Committee's terms of reference are published on the ACCC website at www.accc.gov.au/about-us/australian-competition-consumer-commission/accountability#audit-committee.

Table 4.5: Audit and Risk Committee – 2021-22

| Member | Qualifications, knowledge, skills or experience | Number of meetings attended / total number of meetings | Total annual remuneration (GST inc.) |
|---|--|--|--------------------------------------|
| <p>Don Cross (Chair)</p> <p>Appointed as a member for 2 years commencing 1 June 2020, and as Chair commencing 1 July 2021</p> | <p>Qualifications in accounting, business administration and fraud control, with strong risk management, audit and financial management expertise. Member of the Australian Institute of Company Directors and the Australian Society of Certified Practising Accountants and fellow of the Institute of Chartered Accountants Australia and New Zealand.</p> <p>Partner with KPMG for 21 years. Extensive experience delivering internal audit and assurance services to the public sector. Currently a member or chair of a number of Federal Government Department and Agency Audit Committees.</p> | 5/5 | \$22,234 |
| <p>Kathy Grigg</p> <p>Appointed as a member commencing 1 August 2018, renewed for a further 2 years commencing August 2020. Resigned in 2022 with final meeting March 2022.</p> | <p>Qualifications in economics and accounting. Fellow of the Australian Institute of Company Directors and the Australian Society of Certified Practising Accountants.</p> <p>Senior executive positions in various entities including as Chief Financial Officer. Experienced non-executive director across commercial and government entities. Significant experience as a board chair and chair of audit, risk and compliance committees.</p> | 4/4 [#] | \$12,320 |
| <p>Paula Goodwin</p> <p>Appointed as a member for 2 years, commencing 1 June 2021</p> | <p>Masters level qualifications in National Security Policy Studies, Human Resources and Business Administration.</p> <p>Senior executive public sector experience includes First Assistant Secretary, People, at the Department of Immigration and Border Protection; Chief Operating Officer at the Department of Energy and Environment; and First Assistant Secretary at the Department of Agriculture, Water and Environment.</p> <p>Current role is Group Executive, Enterprise Services, at the Bureau of Meteorology.</p> | 5/5 | \$0* |
| <p>Fiona Bennett</p> <p>Appointed as a member for 2 years, commencing 1 July 2022. First meeting July 2022.</p> | <p>Qualified Chartered Accountant. Fellow of the Australian Institute of Company Directors and Fellow of the Institute of Chartered Accountants Australia and New Zealand.</p> <p>Senior executive positions in various entities, including as Chief Financial Officer. Extensive senior experience in risk management, internal audit, external audit and financial and business management. Experienced non-executive director across ASX-listed companies and government entities. Significant experience as a board chair and chair of audit, risk and compliance committees.</p> | N/A | N/A |

Kathy Grigg was a member of the Audit and Risk Committee for 4 of the 5 meetings held in the financial year.

* As an employee of the Australian Public Service, Paula Goodwin does not receive additional remuneration for her role as a member of the ACCC and AER Audit and Risk Committee.

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 ACCC Chair) and the Corporate Governance Board.

Members: ACCC Chief Executive Officer (Chair), ACCC 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.

Corporate and business plans

The ACCC and AER Corporate Plan 2021-22 meets the requirements of the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act) and the Public Governance, Performance and Accountability Rule 2014.

Each ACCC division prepares an annual business plan that aligns our operations and risk management with the strategic objectives and priorities set out in the [Corporate Plan](#) available on the ACCC website.

Internal audit and risk

Internal audit

The agency's internal audit program provides assurance that we are meeting our obligations and that our internal control environment adds value to the management and governance of our operations.

The ACCC and AER Internal Audit Strategy and Plan sets out a 4-year internal audit work program which is reviewed annually, oversighted by the Audit and Risk Committee and approved by the Corporate Governance Board. Audit topics consider areas of significant risk and seek to ensure that all major functions, systems and business areas of the agency are audited regularly.

The following internal audits were conducted during 2021-22:

- Employee use of delegations and authorisations
- Awareness of information security and use of the agency's electronic document and records management system, iManage
- COVID-19 normal workplace capability and culture.

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 residual 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.

In 2021–22 the agency commenced a forward work program to continue improving and enhancing the agency's approach to risk management.

Business continuity

Business continuity management strengthens business resilience, lessening the likelihood of incidents that 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 plan is regularly reviewed, tested and updated to ensure it continues to meet the needs of the agency.

Our Business Continuity Plan was activated in March 2020 in response to the COVID-19 pandemic and a dedicated Pandemic Response Team was established at that time to oversee and coordinate the necessary changes to our business operations. That team was disbanded in February 2022 in light of the changing circumstances, with responsibility for managing COVID-related issues devolved back to relevant line areas.

An internal audit undertaken during 2021–22 provided further opportunities to inform our ways of working into the future, having regard to the impacts of COVID.

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 Framework.

Ethical standards

Conflicts of interest

The ACCC and AER take our ethical standards seriously in seeking to maintain the public's confidence in the integrity of the agency and our employees.

To maintain confidence in our integrity, the ACCC and AER have strict procedures to identify and manage any interests that may cause an actual or perceived conflict of interest. As part of assessing the effectiveness of our internal controls, during 2021–22 the ACCC progressed a project reviewing our conflict of interest framework to identify and implement enhancements to our business processes and procedures for overseeing and managing conflicts of interest.

As statutory office holders, ACCC Commissioners and AER 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](#) is available on the ACCC website.

ACCC Commissioners 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 immediate family, may have an actual or perceived conflict of interest. ACCC Commissioners and AER Board members are also required to disclose interests not previously declared.

The ACCC and AER employee conflict of interest policy provides for all perceived and actual conflicts of interest, and agreed actions to manage any conflicts, to be recorded in an online form for each employee. The policy also provides for reporting on completion of these conflict of interest forms to senior management.

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 AER Board members.

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 (for example, small gifts offered as thanks for delivering a speech at a conference). To ensure transparency, gifts valued at over \$50 must be formally declared and approval must be obtained before the gift can be retained.

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 or regulatory oversight, including the Commonwealth Ombudsman and the Australian Commission for Law Enforcement Integrity.

Collectively, these bodies have the power to scrutinise and review our decisions and work, conduct inquiries, and either overturn or uphold decisions of the ACCC and AER or make orders or recommendations for change. Each year the ACCC/AER reports on its interaction with these bodies to ensure transparency on external scrutiny.

Judicial decisions

There were no judicial review decisions in respect of decisions made by the ACCC or AER in 2021-22.

Administrative Appeals Tribunal

There were no decisions by the Administrative Appeals Tribunal in respect of decisions made by the ACCC or AER in 2021-22.

Australian Competition Tribunal

Three (3) applications for review of ACCC authorisation decisions were before the Australian Competition Tribunal during the year:

- Application by Port of Newcastle Operations for Tribunal review of the ACCC's determination which authorised collective bargaining by the NSW Minerals Council and mining companies: On 18 February 2022, the Tribunal denied authorisation for the NSW Minerals Council and 10 mining companies to collectively negotiate the terms and conditions, including price, of access to the Port of Newcastle to export coal and other minerals. The Tribunal's determination set aside the ACCC's decision from August 2020 which granted authorisation for collective bargaining over the terms and conditions of access to the port. More information is available from the [ACCC's public register](#).
- Applications by the Rehabilitation Medicine Society of Australia and New Zealand and the National Association of Practising Psychiatrists for Tribunal review of the ACCC's determination which authorised Honeysuckle Health/nib, with a condition, to form and operate a buying group. Under the condition, the Major private health insurers (PHIs) could not join the buying group. The buying group was authorised to collectively negotiate and manage contracts with hospitals and medical specialists on behalf of PHIs, medical insurance providers and other payers of healthcare services for 5 years. As at 30 June 2022 this matter is before the Tribunal and the ACCC determination has not come into effect. More information is available from the [ACCC's public register](#).
- Application by the Australian Dairy Products Federation for Tribunal review of the ACCC's determination which authorised Queensland Dairyfarmers' Organisation to implement and give effect to the 'Fair Go Dairy' licencing scheme for 5 years. On 9 September 2021 the Tribunal issued orders with the consent of the parties setting aside the authorisation granted by the ACCC. More information is available from the [ACCC's public register](#).

There were no AER matters before the Australian Competition Tribunal during 2021-22.

Parliamentary scrutiny

The ACCC and AER are required to regularly attend hearings of the standing committees on economics of both the House of Representatives and the Senate as part of the annual governance, performance and accountability cycle. This provides the opportunity for parliament to examine the operations of the agency and plays a key role in parliamentary scrutiny of the executive.

There were no significant findings regarding the operations of the ACCC and AER in the committees' reports in 2021-22.

Agency capability reviews

There were no ACCC/AER agency capability reviews in 2021-22.

Australian National Audit Office

During the period, the AER continued to progress recommendations made by Auditor-General Report No. 5 of 2020-21, *Regulation of the National Energy Market*, and has finalised 5 of 6 recommendations.

In March 2022 the Australian National Audit Office (ANAO) commenced a performance audit of financial regulators, including the agency, to assess the effectiveness of probity management arrangements. The final audit report is due to be tabled in Parliament in 2022-23.

Office of the Merit Protection Commissioner

Two (2) applications for review of an ACCC or AER decision were made to the Office of the Merit Protection Commissioner in 2021-22. Both decisions were upheld.

Office of the Australian Information Commissioner

The Office of the Australian Information Commissioner includes the Australian Information Commissioner and the Privacy Commissioner.

Privacy

In 2021-22 the Privacy Commissioner considered 2 ongoing privacy complaints in relation to the ACCC/AER.

Freedom of information

In 2021-22 the Australian Information Commissioner did not publish any decisions under the *Freedom of Information Act 1982* (Cth) (FOI Act) in relation to the ACCC or the AER.

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](#).

Commonwealth Ombudsman

The Commonwealth Ombudsman can investigate complaints made about our activities, including those made under the Service Charter of the [ACCC](#) or [AER](#). The Ombudsman's jurisdiction arises under the *Ombudsman Act 1976* (Cth). It can resolve disputes through consultation or negotiation or by making recommendations.

The Commonwealth Ombudsman did not issue any reports in relation to the operations of the ACCC/AER during the relevant period.

Under the *Telecommunications (Interception and Access) Act 1979* (Cth) the Ombudsman has an overarching role in assessing agencies' compliance with preserving and accessing stored communications and accessing telecommunications data. In 2021 the Ombudsman conducted an inspection of the ACCC's records relating to stored communications warrants and telecommunications data requests to assess compliance with that legislation. The Ombudsman did not identify any significant issues of noncompliance, and the ACCC has addressed all recommendations made by the agency.

Australian Commission for Law Enforcement Integrity

Since 1 January 2021 the [Australian Commission for Law Enforcement Integrity](#) (ACLEI) has been able to consider, and potentially investigate, alleged corruption issues that relate to the performance of a law enforcement function of the ACCC or AER. ACLEI's jurisdiction arises under the *Law Enforcement Integrity Commission Act 2006* (Cth) (LEIC Act) and the *Law Enforcement Integrity Commission Regulations 2017* (Cth).

In 2021-22 the agency had no cause to notify ACLEI of any allegation, or information, raising a corruption issue in relation to the agency under subs 19(1) of the LEIC Act. The agency is an active and engaged participant in ACLEI's Corruption Prevention Community of Practice as well as other cross-agency best practice integrity initiatives. The agency will continue to review its integrity framework with a view to identifying opportunities to improve its systems and further embed an organisational culture that promotes integrity such that integrity-related matters are identified, reported and dealt with appropriately.

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.

Significant issues reported to the Minister

There were no significant issues reported to the Minister in 2021-22.

Procurement and Asset Management

Procurement

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 2021-22 that did not provide for the Auditor-General to have access to the contractor's premises.

The ACCC supports small business participation in the Australian 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 and non-consultancy contract expenditure reporting

Consultancy contracts

During 2021-22, 80 new reportable consultancy contracts were entered into involving total actual expenditure of \$4.7 million. In addition, 45 ongoing reportable consultancy contracts were active during the period, involving total actual expenditure of \$3.0 million.

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](#).

Decisions to engage consultants during 2021-22 were made in accordance with the PGPA Act and related regulations including the Commonwealth Procurement Rules and relevant internal policies. The agency selects consultants through the use of panel arrangements or by making an open approach to market.

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.

Table 4.6: Expenditure on reportable consultancy contracts 2021-22

| | Number | Expenditure \$ (GST inc.) |
|---|------------|------------------------------|
| New contracts entered into during the reporting period | 80 | 4,747,145 |
| Ongoing contracts entered into during a previous reporting period | 45 | 3,018,241 |
| Total | 125 | 7,765,386 |

Table 4.7: Organisations receiving a share of reportable consultancy contract expenditure 2021-22

| Name of Organisation | Expenditure \$ (GST inc.) |
|--|------------------------------|
| Ernst & Young (ABN 75 288 172 749) | 894,407 |
| Energy Market Consulting Associates Pty Ltd (ABN 75 102 418 020) | 777,479 |
| Deloitte Touche Tohmatsu (ABN 74 490 121 060) | 501,660 |
| Axiom Economics Pty Ltd (ABN 15 612 654 252) | 300,833 |
| Synergy Group Australia Limited (ABN 65 119 369 827) | 284,957 |

Non-consultancy contracts

During 2021-22, 951 new reportable non-consultancy contracts were entered into involving total actual expenditure of \$87.6 million. In addition, 320 ongoing reportable non-consultancy contracts were active during the period, involving total actual expenditure of \$47.7 million.

Annual reports contain information about actual expenditure on reportable non-consultancy contracts. Information on the value of reportable non-consultancy contracts is available on the AusTender [website](#).

Table 4.8: Expenditure on reportable non-consultancy contracts 2021-22

| | Number | Expenditure \$ (GST inc.) |
|---|--------------|------------------------------|
| New contracts entered into during the reporting period | 951 | 87,634,958 |
| Ongoing contracts entered into during a previous reporting period | 320 | 47,737,573 |
| Total | 1,271 | 135,372,531 |

Table 4.9: Organisations receiving a share of reportable non-consultancy contract expenditure 2021-22

| Name of Organisation | Expenditure \$ (GST inc) |
|--|--------------------------|
| Ventia Property Pty Ltd (ABN 16 618 028 676) | 18,862,533 |
| NTT Australia Digital Pty Ltd (ABN 31 100 103 268) | 13,777,753 |
| Datacom Systems (AU) Pty Ltd (ABN 39 135 427 075) | 10,996,871 |
| Australian Government Solicitor (ABN 69 405 937 639) | 6,221,777 |
| Johnson Winter & Slattery (70 843 523 318) | 5,579,736 |

Grant programs

Neither the ACCC nor the AER administer any grant programs.

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 2021-22 we undertook an independent fair value assessment of our buildings, infrastructure, plant and equipment to confirm the validity and value of our asset portfolio.

Environmental sustainability

The ACCC and the AER remain committed to the development of best practice in environmental sustainability and performance. We 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 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 agency is required to report annually on its 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.

Strategic objective 7: Improve our own systems, capabilities and ways of working

About this strategic objective

The key activities we undertake to achieve this strategic objective are:

- Support our people to develop and meet their full potential; and facilitate a diverse, respectful and inclusive culture.
- Modernise our information and communications technology (ICT) and improve the reliability, flexibility and security of our business and data systems.
- Adapt our ways of working to allow resources to be used flexibly to meet changing priorities and to adopt innovative practices commensurate with the level of risk.
- Further develop our standing as a world-class independent regulator through external engagement and internal collaboration to support robust and transparent decision making that is responsive to complex challenges and demands.

Key activity 7.1: Support our people to develop and meet their full potential; and facilitate a diverse, respectful and inclusive culture

About this key activity

The agency's success is driven by our people, and our people are deeply connected to the agency's purpose. We have a values-driven culture that supports strong and productive working relationships and the opportunity to meaningfully apply professional skills. We support this by:

- evolving the frameworks for how we attract, recruit, induct and provide careers for talented people
- facilitating a safe, flexible workforce and workplace and adapting how we support people during a pandemic given the evolving everchanging requirements
- investing in leadership capability, supporting professional development and individual performance with ongoing feedback conversations
- partnering with managers to build their leadership capabilities and embed practical plans for their work areas
- delivering wellbeing and inclusion programs to support people to be their best
- developing and administering employment frameworks and terms and conditions of employment that drive organisational performance
- overseeing that employee related expenses such as payroll are disbursed accurately and on time (\$172m in 2021-22).

In late 2021 the agency commenced Project Biara. Biara is the Noongar word for Banksia. Banksias are a vital part of the Australian ecology and are known for their ability to regenerate after fires. Project Biara involves leveraging lessons learnt from the COVID-19 pandemic, developing new ways of working with a supporting framework and experimenting with how the agency's future hybrid workplace could operate.

Performance indicators

Table 4.10: Performance indicators for key activity 7.1

| Performance indicator | 2020-21 | | 2021-22 | |
|---|--|--|--|--|
| | Result | Target | Result | |
| The percentage of positive responses to APS census survey questions about whether staff have the appropriate skills, capabilities and knowledge to perform well | ACCC: 89% (2021) Unchanged from 2020 | Higher than result from previous survey | ACCC: 86% (2022) Down 3% from 2021 | |
| | AER: 83% (2021) Up 4% from 2020 | | AER: 81% (2022) Down 2% from 2021 | |
| Agency APS census 'wellbeing' score | ACCC: 78% (2021) Down 3% from 2020 | Higher than result from previous survey | ACCC: 78% (2022) Unchanged from 2021 | |
| | AER: 75% (2021) Up 1% from 2020 | | AER: 74% (2022) Down 1% from 2021 | |
| Percentage of employee formal quarterly performance conversations with managers completed and recorded in people management system | N/A | 95% by 2 weeks after end of each quarter | Q1# ACCC 68% AER 64% | |
| | | | Q2# ACCC 85% AER 80% | |
| | | | Q3# ACCC 90% AER 88% | |
| | | | Q4# ACCC 85% AER 85% | |
| Percentage of employees that spent at least 2 days in formal/approved training/ development programs during the (financial) year* | N/A | 90% | ACCC: 51%^ | |
| Percentage of employees who have taken at least 10 days of annual leave during the (financial) year | N/A | 95%+ | ACCC 84% AER 83% | |
| Continue to reduce the agency's gender pay gap | 5.4% (2020) | Gender pay gap (mean) is less than 5% for at least 2 years by 2025, and less than 3% for 2 years by 2030 | 6.5% (2021) | |
| Percentage of employees who identify as Indigenous | 1.6% (Internal HR records management system) | 3% | 1.4% (Internal HR records management system) | |
| | 2.2% (APS census) | | 1.2% (APS census) | |
| Percentage of employees who identify as a person with disability | 4.2% (Internal HR records management system) | 7% by 2025 | 4.4% (Internal HR records management system) | |
| | 8.8% (APS census) | | 7.4% (APS census) | |

Q1 as at 29 October 2021, Q2 as at 24 January 2022, Q3 as at 21 April 2022, Q4 as at 18 July 2022.

* Data not available for AER.

^ The result of 51% likely under-reports the actual result for 2 main reasons. First, data is based on a new time management recording system introduced across the ACCC from 1 July 2021. Interrogation of the data in preparing end of year results indicates that not all employees had captured all time appropriate for this performance indicator from the start of the financial year. Second, the data has not been adjusted to account for all employee movements and extended leave throughout the year.

SES performance and behaviour expectations

Prior to 1 July 2021, performance pay was a component of agency senior executives' remuneration. From 1 July 2021, performance pay was rolled-in to senior executives' base salary as per a directive from the Australian Public Service Commission (APSC). The roll-in was cost-neutral and completed so that agency senior executive remuneration was more consistent with how senior executives are remunerated throughout the Australian Public Service (APS).

Rolling-in performance pay to base salary provided the opportunity to review agency senior executives' longstanding performance criteria. New key performance indicators were identified from recurrent trends in our [APS census results](#) and agency priorities to drive innovation, collaboration, engaging with risk, diversity, inclusion, wellbeing, and professional development. Some of the performance indicators were included in the [ACCC and AER 2021-22 Corporate Plan](#) and the general 24.1 determination that details the terms and conditions of employment for all SES. The key performance indicators included specific targets that were regularly monitored and reported to SES.

During 2021-22, changes were observed in how our people engaged with these priorities. For example, completion rates of key aspects of our performance management framework have traditionally been poor, such as employee formal quarterly performance conversations with managers being completed on time. However, this year completion rates improved from 52% for June 2021 to 85% for the June 2022 quarter (see Table 4.10). During the same period, our peoples' perceptions about the quality of feedback they received increased from 78% positive in the 2021 APS census to 81% positive in the 2022 census.

Wellbeing

We continued to invest in supporting employees' biopsychosocial health and wellbeing in 2021-22. Central to this has been the continued alignment of our organisational wellbeing approach to the 3-tiered model of workplace mental health detailed in the National Mental Health Commission's Blueprint for Mentally Healthy Workplaces. These tiers are:

1. Protecting against harm.
2. Preventing injury or illness exacerbation.
3. Promoting health and wellbeing.

This best practice model has informed our approach to addressing all domains of wellbeing, further enhancing and integrating our ACCC/AER Wellbeing Overview, and ACCC/AER Approach to managing mental health in the workplace.

We delivered a range of wellbeing webinars and virtual training in 2021-22 from expert providers, including sessions focusing on psychological health presented by organisational psychologists. These sessions addressed topics including living with uncertainty, early intervention, psychological safety, managing emotionally charged interactions, and maintaining balance and resilience. The mental health and wellbeing app Headspace continued to be popular, with approximately 650 employees using it, an increase of 150 employees over the past 12 months. Approximately 60 employees also undertook Mental Health First Aid training, the majority of whom were Executive Level 2 (EL2) people leaders.

Throughout 2021-22, the Work Health and Safety (WHS) and Wellbeing team has engaged across the agency to build skill in preventing and mitigating risks to psychological health and safety. This has included:

- conducting tailored educational sessions on topics such as burnout
- consulting with business areas at high risk from hazards, such as vicarious trauma, to develop comprehensive prevention strategies and interventions to minimise risk of injury
- co-creating individual and organisational-level initiatives to promote wellbeing and reduce the impact of work-related stressors

- providing guidance to managers to inform the successful implementation of learning into practice following education and training.

In addition to managing psychological matters, the team worked with employees experiencing physical discomfort or injury and exploring early medical, counselling or remedial support. Appendix 4 provides details of injuries, incidents and investigations.

Ergonomic awareness and education continued to be a focus in 2021-22. We provided additional educational material to assist employees to set themselves up to work safely at home. An external ergonomics provider was engaged to review employee's remote workstations. Comprehensive workstation assessments have also been conducted with employees who have special needs or have experienced pain and discomfort. Employees are also provided with regular communication regarding their personal responsibility to manage with health and wellbeing.

Employees experiencing injury or illness who required assistance to remain engaged in their work or to return to work were supported through comprehensive in-house case management, with this facilitated by a qualified Rehabilitation Counsellor where appropriate. This included employees who were experiencing ongoing medical illness, recovery from acute medical conditions, and musculoskeletal injury. Where deemed necessary, these employees also received assistance from an external occupational rehabilitation consultant to promote optimal vocational rehabilitation outcomes.

Through the COVID-19 pandemic, the different avenues of support for wellbeing have been heavily promoted to employees, including regular 'Wellbeing Tip' health communications. The agency continued to promote our Employee Assistance Program, tailored psychological support for acute cases, and access to the Peer Support Adviser Network. All peer support advisers are trained in mental health first aid.

Supporting our people through the pandemic

Throughout the pandemic and during our return to working in the various agency offices, the wellbeing of our people has been at the forefront of our decision making. To assist employees in this challenging environment, we provided:

- financial support to employees to assist them to attain a suitable and safe remote workstation
- regular communications regarding the pandemic and assessments to manage the risk of infection
- an agency response to localised outbreaks, government lockdowns and other restrictions
- reassurance from leaders that employee welfare was paramount
- wellbeing articles, tools and webinars run by psychologists and other providers
- a series of sessions for managers and employees on developing strategies to deal with uncertainty, supporting people to maintain their and others' resilience, and mental health first aid training for a number of people across the agency
- access to additional online learning and employee assistance programs
- pulse surveys to check on employee welfare and workloads and on the level of communication and support
- comprehensive consultation with an in-house Rehabilitation Counsellor for work areas to develop interventions, initiatives and strategies to mitigate psychological health and safety risks and promote enhanced employee wellbeing.

We also engaged in regular consultation with other government agencies such as the Australian Public Service Commission, the Community and Public Sector Union and our Disability and Carers Employee Network, Employee Council and Health and Safety Committee as well as other relevant stakeholders.

Diversity and inclusion

Diversity and Inclusion Strategy

The ACCC/AER Diversity and Inclusion Strategy 2021–25 was launched during 2021–22. The strategy will foster a more inclusive workplace through increased cultural competence, improved data collection and greater leadership accountability. It is expected that our senior leaders exhibit inclusive leadership behaviours in their everyday work, including reflecting on their own conduct and setting goals in their own performance plans to build diverse capability in their teams. Progress against the diversity and inclusion plans will be reported to the agency's Inclusive Workplace Committee (IWC).

The strategy continues to be supported by the [Reconciliation Action Plan](#), the Aboriginal and Torres Strait Islander Recruitment, Retention and Professional Development Strategy, [Disability Action Plan](#), [Gender Equality Action Plan](#), [Pride Plan](#) and [CALD Plan](#) and [Narrowing the Pay Gap Strategy](#).

As shown in Table 4.10, based on data in the agency's internal Human Resources (HR) records management system, during the year there was a small decrease in the percentage of employees who identify as Indigenous from 1.6% to 1.4%. Results from the APS census indicate a more substantial decrease. Accordingly, the agency is renewing our focus and continuing with significant investment in recruitment, development and retention of Indigenous employees.

Pay gap – measuring inclusion

We continued to measure our gender pay gap during the period. As shown in Table 4.10, our gender pay gap (mean) increased from 5.4% in 2020 to 6.5% in 2021. This was the first year that our gender pay gap has increased since we started measuring it in 2018 when the gap was 9.3%. The increase was due primarily to an increase in turnover, with the departure of some women at the top of the salary cap for their classification, and women commencing roles at the agency at the lower end of the salary band.

We continued to implement our [Narrowing the Pay Gap Strategy](#). A highlight was our advocacy for industrial instruments that facilitate contemporary employment conditions. This included the ACCC making a submission to the [Workplace Gender Equality Act 2012](#) (Cth) review and a submission to the [Maternity Leave \(Commonwealth Employees\) Act 1973](#) (Cth) (Maternity Leave Act) review.

Expert research has identified that up to 39% of Australia's national gender pay-gap is attributed to caring responsibilities being disproportionately undertaken by women.³⁵ Our submission to the Maternity Leave Act review recommended parental leave be increased from 12 weeks to 26 weeks, be made gender neutral, and be able to be taken more flexibly. We funded an ACCC employee's 3-month secondment to the APSC to support the Maternity Leave Act review and another ACCC employee's 6-month secondment to progress work with the Sex Discrimination Commissioner.

Although the ACCC regularly makes submissions to external consultations, these submissions were among the first on issues that were outside the ACCC's statutory remit. We made these submissions to support our commitment to diversity, inclusion and equality. The submissions also allowed us to advocate for terms and conditions of employment that attract and retain the talent necessary to fulfill our statutory responsibilities.

Gender equality and counsel fees

The ACCC and AER make a conscious effort to monitor and increase the number and value of briefs to female barristers, both senior and junior. As a result, since the Legal Services Directions (LSD) targets were introduced in 2018, we have consistently exceeded these targets for both

³⁵ She's Price(d)less. The economics of the gender pay gap – summary report 2019, KPMG, viewed 26 April 2022. https://www.wgea.gov.au/sites/default/files/documents/She%27s-Price%28d%29less-2019-Summary-report_0.pdf.

senior and junior female counsel. The agency is committed to meeting equitable briefing targets, which also support the objectives of the Law Council of Australia's Equitable Briefing Policy.

Annual reports published by the Attorney-General's Department (AGD) show that female barristers are starting to receive more briefs from the Commonwealth and Commonwealth agencies.³⁶ This has been assisted by the LSD requirement introduced in 2018 that Commonwealth agencies use all reasonable endeavours to select female counsel with relevant seniority, expertise and experience in the relevant practice area, with a view to:

- senior female barristers accounting for at least 25% of all briefs, or 25% of the value of all brief fees paid to senior barristers
- junior female barristers accounting for at least 30% of all briefs, or 30% of the value of all brief fees paid to junior barristers.

The following results demonstrate the significant improvement that has occurred over the last decade. In 2010–11 the ACCC/AER briefed female counsel only 13% of the time, with a value that was only 9% of the overall value of briefs. By 2020–21, this had increased to 48% of briefs going to female counsel, representing 41% of value.

This progress has been achieved because the agency has adopted an equitable briefing practice where ACCC/AER employees and panel firms are encouraged to select female barristers with relevant seniority, expertise and experience in the relevant practice areas where possible.

The agency is also reviewing the rates paid to female counsel, and seeking to increase those rates where they do not match the rates paid to male counsel of similar seniority and experience.

Disability reporting

Australia's Disability Strategy 2021–2031 (the strategy) is the overarching framework for inclusive policies, programs and infrastructure that will support people with disability to participate in all areas of Australian life. The strategy sets out where practical changes will be made to improve the lives of people with disability in Australia. It acts to ensure the principles underpinning the United Nations Convention on the Rights of Persons with Disabilities are incorporated into Australia's policies and programs that affect people with disability, their families and carers. All levels of government have committed to deliver more comprehensive and visible reporting under the strategy. A range of reports on progress of the strategy's actions and outcome areas will be published and available at <https://www.disabilitygateway.gov.au/ads>.

Disability reporting is included the APSC State of the Service reports and the APS Statistical Bulletin. These reports are available at <http://www.apsc.gov.au>.

As shown in Table 4.10, over the year the percentage of employees who identify as a person with disability increased slightly based on data in the agency's internal HR records management system. However, based on APS census data the percentage decreased; and there is substantial difference in results from these 2 data sources.

The ACCC and AER are committed to providing a safe and inclusive culture and work environment where all employees feel they can self-identify and report a disability. We have commenced work to improve our reporting capability so we can gain a better understanding of our people's needs that goes beyond State of the Service requirements.

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 APS Values and Code of Conduct.

Employees learn about the APS Values and Code of Conduct in corporate induction sessions. Additional awareness training is offered through online courses, cultural awareness workshops and presentations, and at leadership conferences.

³⁶ [Legal services expenditure report 2019-2020, Attorney General's Department, 22 June 2021](#).

We also updated our Appropriate Workplace Behaviour Policy and Guidelines and rolled out training to ensure that all employees are aware of their obligations.

Alleged misconduct by employees may be dealt with under the APS Code of Conduct. In 2021-22 the agency commenced investigating one potential breach of the code. This is yet to be finalised.

Our employee profile

More information on our employees and employee profile is in Part 1 and Appendix 2.

Figure 4.3: Age profile of agency employees, as at 30 June 2022

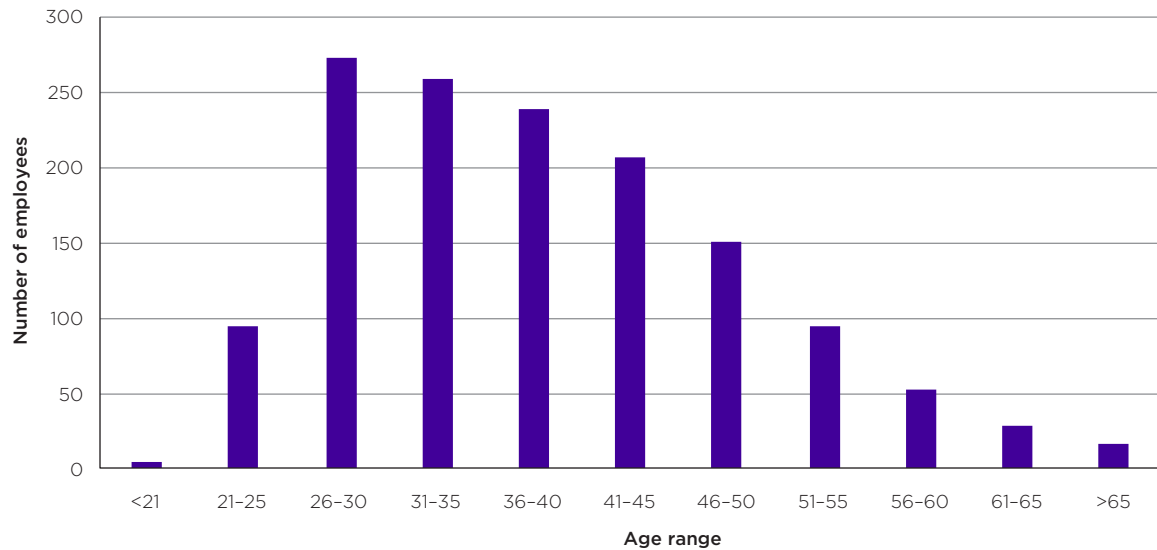
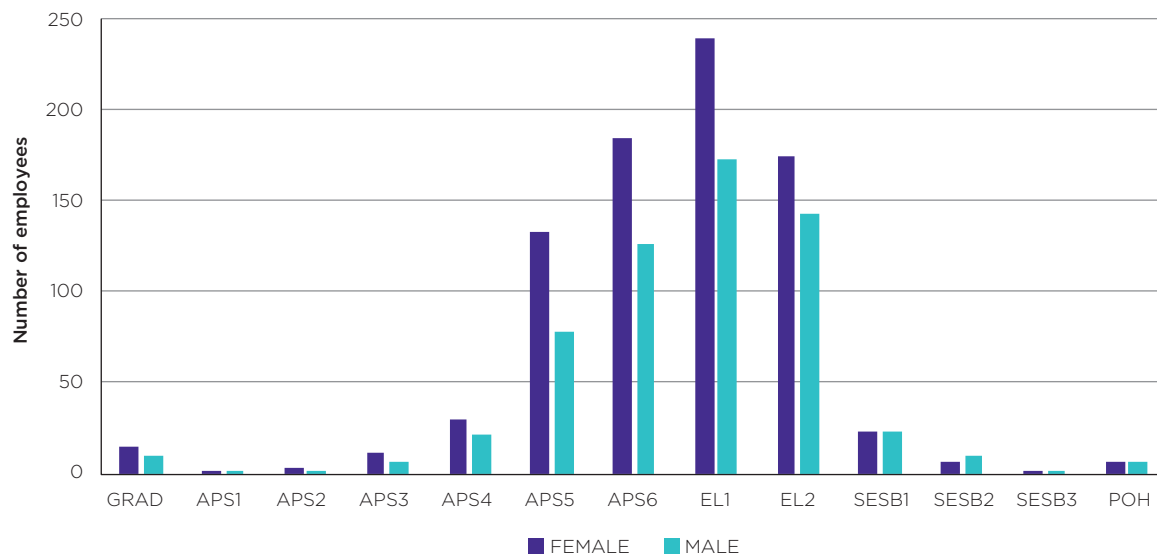


Figure 4.4: Gender profile of agency employees at 30 June 2022



Note: POH = public office holder.

Table 4.11: Agency turnover according to separation type 2021-22

| Separation | Classification | Number of employees |
|--------------------------------|----------------|---------------------|
| External transfer or promotion | Non-SES | 48 |
| Retirement | Non-SES | 6 |
| Contract expired | Non-SES | 5 |
| Resignation | Non-SES | 110 |
| | SES | 2 |
| Redundancy | Non-SES | 0 |
| Other | Non-SES | 3 |
| Total | | 174 |

Employment agreements and remuneration

Enterprise agreement

The ACCC Enterprise Agreement 2016-2019 (EA), which came into effect in December 2016, continues to operate in conjunction with a *Public Service Act 1999* (Cth) s 24.1 determination from August 2019 that supplements the agreement's existing salary and allowance entitlements.

The EA has a nominal expiry date (NED) of 21 December 2022. The agency is engaging with employees about the options of renewal being either a further s 24.1 determination or enterprise bargaining.

Following an APS direction in February 2022, the HR Delegations and Authorisations, and respective policies were updated to ensure that they are consistent with the new requirements.

As part of the policy review program, we updated a number of human resources policies and guidelines to reflect changes in legislation and government policy and to ensure they remain fit for purpose. The following policies were created or updated in accordance with the ACCC EA:

- Appropriate Behaviour Policy and Guideline
- Fitness for Duty Policy
- Flexible Work Guidelines
- Leave Without Pay Guidelines
- Over and Underpayments Guidelines
- Remote Work Guidelines
- Unsatisfactory Performance Policy
- Workplace Adjustments Policy.

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 2021](#).

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* (Cth) 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.

Table 4.12: Performance pay 2021-22

| | SES B1 | SES B2 | SES B3 | Agency |
|---------------------------|-----------------|------------------|------------------|------------------|
| Number who received bonus | 35 | 12 | 2 | 49 |
| Total bonus | \$255,883 | \$136,765 | \$22,415 | \$415,063 |
| Average bonus | \$7,311 | \$11,397 | \$11,208 | \$9,972 |
| Range | \$2,610-\$8,976 | \$8,407-\$17,000 | \$7,331-\$15,084 | \$2,610-\$17,000 |

Common law contracts and Australian Workplace Agreements

No employees were covered by common law contracts or Australian Workplace Agreements in 2021-22.

Non-salary benefits

Non-salary benefits provided to employees under the EA include:

- options for flexible work, including home based
- ability to work part-time
- flexible working arrangements
- access to different leave types
- influenza vaccinations
- access to a broad range of professional development than enables mobility across the agency and the broader APS
- access to the Employee Assistance Program.

Key activity 7.2: Modernise our ICT, improve the reliability, flexibility and security of our business and data systems, and enhance our data capabilities

About this key activity

The agency is transforming its information and communications technology (ICT), data technologies and business systems in order to deliver on our purposes. Commencing in October 2020, the agency is undergoing a 4-year business transformation program – the Working Smarter Program (WSP). The WSP is aligned to the agency’s ICT Strategy 2021–24 and Data Strategy 2021–25, which underpin the objectives and key activities of the ACCC and AER.

The WSP embraces digital and emerging trends such as automation, builds on our data skills and technology – including data capture – and increases our resilience through improving our security posture.

In mid-2021 the agency created a Data and Intelligence branch, which incorporates our Strategic Data Analysis Unit (SDAU), Intelligence and Legal Technology Services teams and our Infocentre, bringing together a range of in-house expertise to support the ACCC and AER to make data driven decisions based on insight, effective information handling and intelligence methodology.

The Data and Intelligence branch has a range of collaborative functions that assist the agency to meet its objectives, including by using data and intelligence to inform strategic decision making, providing specialist advice, advancing evidence handling procedures, data management and governance, developing tools and sources, as well as collecting, triaging and optimising the discovery, access and use of data and information.

Among other things, the branch has worked closely with our Chief Information Officer (CIO), Executive General Manager of Digital Transformation and Information Management and Technology Services (IMTS) branch to develop the Data Strategy 2021-25 in order to continue maturing the agency's data and information culture, capabilities and technology. Aligning with, and complementing the WSP, the data strategy focuses on strengthening our data infrastructure and solutions, maturing our data culture and literacy, and further investing in data governance and cutting-edge advanced analytics and visualisation tools.

Performance indicators

Table 4.13: Performance indicators for key activity 7.2

| Performance indicator | 2021-22 | |
|--|--|--------|
| | Target | Result |
| Percentage of positive responses about employee satisfaction with the agency's ICT (Source: annual IMTS survey of employees) | 70+% of employees are satisfied with Information and Communications Technology | 86% |
| Number of security awareness activities delivered to drive a security aware culture | 12 | 18 |
| Overall ICT system availability | 99.9% | 99.48% |

The agency is significantly improving its ICT, and this has enabled us to exceed our employee satisfaction performance indicator. Through the WSP, we have implemented a range of new and updated technologies to provide a stable ICT experience, reduce risk, enhance our data analysis capabilities and lay the foundation for future efficiencies. Modernised ICT is also creating a better employee experience by enabling greater flexibility and stronger collaboration within teams as we move toward a more 'hybrid' way of working.

We have increased our security awareness activities and completed a wide range of activities to drive a security aware culture, including mandatory security awareness training for all staff. As part of the WSP, we are undertaking a range of activities to ensure the agency is at an appropriate level of security maturity to protect the agency, and at the same time, meet the requirements of the Australian Government's Protective Security Policy Framework (PSPF).

We have consistently achieved our overall ICT system availability target. As part of the WSP, we are undertaking a package of infrastructure uplift initiatives to stabilise our ICT infrastructure, supporting the installation of fit-for-purpose business and corporate enabling applications and systems.

Throughout the year, we progressed and achieved various outcomes:

- Supported 'hybrid' working for staff by introducing a desk booking system, allowing for greater flexibility and efficiency as people return to the office. New technology, including new laptops for all staff, is helping promote a culture of collaboration and connection.

- Expanded web capturing capability that has provided greater automation and efficiency in the agency's website data collection practices. This is benefiting the agency with regards to a range of its functions, in particular monitoring online trader representations, price monitoring and regulatory functions.
- Improved data analytics capability through a new analyst desktop, providing a more reliable, faster, and secure system for analysing data. The analyst desktop improves the agency's ability to manage large data sets, automate manual tasks, and leverage programs for more efficient and effective data analysis.
- Upgraded the ACCC's Product Safety and Scamwatch websites to supported versions of the content management system and underlying infrastructure. We are currently working on refreshing the ACCC's main website, which will deliver functional and content enhancements to make the site more useful for visitors.
- Introduced a new search tool 'Trader360' that brings together data from a wide range of internal and external sources to provide more comprehensive trader profiles. This is a particularly useful tool for our investigator staff and those working on compliance matters. We are currently considering further enhancements, including new data sources, additional functions and complementary tools.
- Continued to improve mechanisms, including through automation, for external parties to lodge submissions with the ACCC. This includes an online submissions portal and work underway to improve s 87B undertaking submission processes that will facilitate significant efficiencies in the ACCC's internal submission handling.
- Completed an advanced analytics and machine learning proof of concept to inform the business case for future funding of the WSP. Through 3 ACCC business unit case studies, the proof of concept demonstrated the applicability of these technologies to the ACCC context, and how they could assist the agency become more effective and efficient.
- Data Strategy 2021–25 finalised and endorsed by internal governance committees, and work commenced on implementation of a number of initiatives set out in the strategy, including the launch of a data literacy learning pathway.
- Upgraded to Microsoft 365.
- Undertook a business process review which will provide insights into opportunities for business process efficiency, including through automation.
- Increased security awareness activities, including mandatory training for all staff, phishing campaigns, and staff briefings.

We also launched a digital literacy learning pathway, starting with a pilot program from the APSC called SkillUp. The SkillUp platform unlocks over 3000 online courses to assist employees in upskilling their digital literacy. As the agency adopts new digital tools and systems under the WSP, we are focused on ensuring our people are equipped with the necessary capabilities.

Key activity 7.3: Adapt our ways of working to allow resources to be used flexibly to meet changing priorities and to adopt innovative practices commensurate with the level of risk

About this key activity

In an environment of constrained resources and rapidly changing challenges, it is increasingly crucial for the ACCC to work in a way that allows resources to be prioritised and allocated flexibly. We do this by ensuring that:

- we allocate resources to priority areas by:
 - using data-driven intelligence to ensure that decisions are linked to impact and resources are

- linked to decisions
- increasing sharing of resources across the agency
- flexible budget allocation
- our organisational structure is adaptive and supports new ways of working and faster decision making by:
 - using agile purpose-based teams where appropriate
 - ensuring decision making structures and frameworks remain fit for purpose
 - devolved decision making where possible
- innovation and acceptable risk taking is part of our culture by:
 - dedicating resources to innovation and continuous improvement
 - trialling new ways of working through experimentation and iteration
 - developing and maintaining informal processes where appropriate.

Performance indicators

Table 4.14: Performance indicators for key activity 7.3

| Performance indicator | 2020-21 | | 2021-22 | |
|--|------------------------|---|------------------------|-------------------|
| | Result | Target | Result | |
| The percentage of positive responses to APS census survey questions about whether staff consider that the agency provides opportunities for temporary moves within the agency | ACCC: 71% (2021) | Higher than result from previous survey | ACCC: 83% (2022) | up 12% from 2021 |
| | AER: 61% (2021) | | AER: 67% (2022) | up 6% from 2021 |
| The percentage of positive responses to APS census survey questions about whether staff consider that their workgroup can readily adapt to new priorities and tasks | ACCC: 91% (2021) | Higher than result from previous survey | ACCC: 88% (2022) | down 3% from 2021 |
| | AER: 86% (2021) | | AER: 87% (2022) | up 1% from 2021 |
| The percentage of positive responses to APS census survey questions about whether staff consider that people are encouraged to come up with new and innovative ways of working | Innovation index score | Higher than result from previous survey | Innovation index score | |
| | ACCC: 71% (2021) | | ACCC: 69% (2022) | down 2% from 2021 |
| | AER: 66% (2021) | | AER: 69% (2022) | up 3% from 2021 |

Performance indicators based on the annual APS census are important for the agency to track performance over time (ie trend), as well as in comparison to the whole of the APS. For example, there may be some small percentage change in the result year on year for various reasons; and that change may not be statistically significant.

There was a substantial increase for both the ACCC and AER in positive APS census responses to the survey question about temporary moves. The introduction of the new ACCC/AER mobility register, which facilitates moves at level to support employees' professional development and more agile resourcing, is likely to have been a major factor in this increase; as was the formal rotation program for employees across the Competition, Consumer Product Safety and Consumer and Fair Trading divisions.

There was a marginal increase for the AER in positive responses to the survey question about whether workgroups can readily adapt to new priorities and tasks; and a small decrease for the ACCC. However, the result (88%) remained higher than the result for the whole of the APS (85%).

The agency has a focus on capability building and work is progressing to develop more structured training to support the specific needs and priorities of work areas. Work has already been completed on the Essentials program of training, which is a curated program of training for all

ACCC and AER employees to support core capability development, the agency's values and objectives, and to help the agency meet its expectations and obligations as an APS agency.

The agency is continuing to look for new ways of working to allow resources to be prioritised and allocated flexibly, including through better use of data. For example, the agency is developing automated resourcing and workforce reporting for senior leaders. This reporting is designed to provide on-demand insights to inform and enhance decision making about how our people can be optimally deployed across projects and divisions in a way that aligns with the agency's highest priorities.

Over the last 2 years, the agency's culture of innovation has continued to grow, with innovation taking place in teams, branches and divisions across the agency. The ACCC is committed to innovation and continuous improvement, and this year established a small Strategic Capability team with dedicated resources to deliver a program of business improvement and capability building projects. The team partners with stakeholders across the agency to deliver sustainable improvements to the agency's ways of working and to support a culture of innovation and continuous business improvement. Example projects include the mobility register, capability development through enhanced learning and development and using data to inform resourcing decisions.

As noted under key activity 4.1, the agency also implemented Project Biara to develop how the agency's future hybrid workplace could operate.

Key activity 7.4: Further develop our standing as a world-class independent regulator through external engagement and internal collaboration to support robust and transparent decision making that is responsive to complex challenges and demands

About this key activity

The ACCC has been a successful regulator, but this is no guarantee of future effectiveness.

As an independent regulator it is important that our robust and transparent decision making, guided by our values, is responsive to complex challenges and demands. We do this by ensuring that:

- our role is clear in the face of expanding responsibilities
- our connections with external stakeholders provide opportunities for better outcomes for consumers
- our internal collaboration assists us to achieve better outcomes for consumers
- we remain objective by making decisions based on data and evidence
- change is managed successfully in the organisation.

As discussed on page 172, the agency's corporate governance framework equips us to achieve our strategic objectives while complying with legislation and policies, maintaining performance standards and making the most cost-effective use of resources.

The ACCC makes statutory decisions through formal meetings of its Commission, assisted by subject-matter committees and various specific project boards. ACCC Commissioners are full time statutory office holders, and collectively have a clear view of the connection between their statutory decision making on particular matters and the overall staffing resources and legal expenditure implications of those decisions.

The Corporate Governance Board sits at the apex of the agency's governance structure. ACCC Commissioners and the AER Chair and Deputy Chair form the Corporate Governance Board, which is assisted by our Audit and Risk Committee.

Performance indicators

Table 4.15: Performance indicators for key activity 7.4

| Performance indicator | 2020-21 | 2021-22 | |
|---|------------------|---|-------------------------------------|
| | Result | Target | Result |
| The percentage of positive responses to APS census survey questions about whether staff consider that the agency actively creates links across the organisation to make sure knowledge and expertise is easily accessible | ACCC: 55% (2021) | Higher than result from previous survey | ACCC: 62% (2022) up 7% from 2021 |
| | AER: 44% (2021) | | AER: 52% (2022) up 8% from 2021 |
| ACCC Effectiveness Survey 'index score' that the ACCC's engagement with key stakeholders is effective | - | 80+ | N/A |
| ACCC Effectiveness survey 'index score' that the ACCC is responsive to changes in its operating environment to meet complex challenges and demands | - | 70+ | N/A |

There was a substantial increase for both the ACCC and AER in the percentage of positive responses to APS census survey questions about whether staff consider that the agency actively creates links across the organisation to make sure knowledge and expertise is easily accessible.

One of the goals of the new ACCC structure, which was implemented from 1 July 2021, was to not only better align our structure with objectives, but to implement arrangements to support partnerships and collaboration across divisions. For example, the restructure placed various whole of agency functions centrally so they could deliver across the agency.

As noted above, the agency has also increased its focus on mobility to provide more opportunities for employees to work across the agency, reduce silos and improve collaboration, communication and knowledge sharing.

The ACCC is also continuing to look for new ways of working to allow resources to be prioritised and allocated flexibly, including through making better use of data. For example, as noted above from 1 July 2021 most ACCC employees are required to record time spent on cases and projects, and we are developing better reporting for senior leaders regarding use of agency resources. This will assist the agency to ensure our people can be optimally deployed across projects and divisions in a way that aligns with the agency's highest priorities.

As noted in Part 2, the ACCC hosts a wide range of consultative committees with external stakeholders that provide opportunities for sharing of information and ideas that contribute to achieving better outcomes for consumers, as does our international engagement detailed in Part 2 and throughout Part 3 of this annual report.



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 2022:

- (a) comply with Australian Accounting Standards – Simplified Disclosures 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 2022 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 2022 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 – Simplified Disclosures 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.

GPO Box 707, Canberra ACT 2601
38 Sydney Avenue, Forrest ACT 2603
Phone (02) 6203 7300

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 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



Sally Bond

Executive Director

Delegate of the Auditor-General

Canberra

26 August 2022

CONTENTS

Certification

Primary financial statements

- 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

Overview

Notes to the financial statements

1. Departmental Financial Performance

- 1.1 Expenses
- 1.2 Own-Source Revenue

2. Departmental Financial Position

- 2.1 Financial Assets
- 2.2 Non-Financial Assets
- 2.3 Payables
- 2.4 Leases
- 2.5 Other Provisions

3. Assets and Liabilities Administered on Behalf of Government

- 3.1 Administered - Financial Assets

4. Funding

- 4.1 Appropriations

5. People and Relationships

- 5.1 Employee Provisions
- 5.2 Key Management Personnel Remuneration

6. Managing Uncertainties

- 6.1 Contingent Assets and Liabilities

7. Other Information

- 7.1 Budgetary Reporting
- 7.2 Current / Non-current Classification of Assets and Liabilities
- 7.3 Net Cash Appropriation Arrangements

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 2022 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.



Gina Cass-Gottlieb
Chair and Accountable Authority

25 August 2022



Peter Maybury
Chief Financial Officer

25 August 2022

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Statement of Comprehensive Income

for the year ended 30 June 2022

| | Notes | 2022 \$'000 | 2021 \$'000 | Original Budget \$'000 |
|---|-------|------------------|------------------|------------------------------|
| NET COST OF SERVICES | | | | |
| Expenses | | | | |
| Employee benefits | 1.1A | 172,185 | 166,749 | 165,219 |
| Suppliers | 1.1B | 99,679 | 77,002 | 108,816 |
| Depreciation and amortisation | 2.2A | 29,729 | 23,347 | 23,195 |
| Settlement of litigation | | 3,475 | 5,884 | - |
| Finance costs | | 1,022 | 789 | 811 |
| Impairment of non-financial assets | 2.2A | 97 | 520 | - |
| Impairment of financial assets | | - | 153 | - |
| Total expenses | | 306,187 | 274,444 | 298,041 |
| Own-source income | | | | |
| Own-source revenue | 1.2 | 4,236 | 2,884 | 1,450 |
| Total own-source income | | 4,236 | 2,884 | 1,450 |
| Net (cost of) services | | (301,951) | (271,560) | (296,591) |
| Departmental appropriations | 4.1A | 288,855 | 267,036 | 286,646 |
| Surplus/(Deficit) | | (13,096) | (4,524) | (9,945) |
| OTHER COMPREHENSIVE INCOME | | | | |
| Items not subject to subsequent reclassification to net cost of services | | | | |
| Changes in asset revaluation surplus | | (823) | 364 | - |
| Total comprehensive income/(loss) | | (13,919) | (4,160) | (9,945) |

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 2022

| | Notes | 2022 \$'000 | 2021 \$'000 | Original Budget \$'000 |
|---|-------|----------------|----------------|------------------------------|
| ASSETS | | | | |
| Financial assets | | | | |
| Cash and cash equivalents | | 2,113 | 2,078 | 1,164 |
| Trade and other receivables | 2.1 | 105,792 | 89,260 | 76,470 |
| Total financial assets | | 107,905 | 91,338 | 77,634 |
| Non-financial assets | | | | |
| Leasehold improvements | 2.2 | 82,926 | 100,181 | 69,872 |
| Plant and equipment | 2.2 | 2,899 | 4,275 | 5,440 |
| Computer software | 2.2 | 42,408 | 34,861 | 62,391 |
| Prepayments | | 2,452 | 2,285 | 1,627 |
| Total non-financial assets | | 130,685 | 141,602 | 139,330 |
| Total assets | | 238,590 | 232,940 | 216,964 |
| LIABILITIES | | | | |
| Payables | | | | |
| Suppliers | 2.3 | 18,153 | 19,919 | 16,989 |
| Employee related payables | | 4,942 | 3,912 | 4,848 |
| Total payables | | 23,095 | 23,831 | 21,837 |
| Interest bearing liabilities | | | | |
| Leases | 2.4 | 78,673 | 93,375 | 64,631 |
| Total interest bearing liabilities | | 78,673 | 93,375 | 64,631 |
| Provisions | | | | |
| Employee provisions | 5.1 | 51,266 | 51,929 | 47,188 |
| Other provisions | 2.5 | 2,902 | 504 | 4,031 |
| Total provisions | | 54,168 | 52,433 | 51,219 |
| Total liabilities | | 155,936 | 169,639 | 137,687 |
| Net assets | | 82,654 | 63,301 | 79,277 |
| EQUITY | | | | |
| Contributed equity | | 216,743 | 183,471 | 216,443 |
| Reserves | | 3,738 | 4,561 | 4,198 |
| Retained surplus/(Accumulated deficit) | | (137,827) | (124,731) | (141,364) |
| Total equity | | 82,654 | 63,301 | 79,277 |

The above statement should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Cash Flow Statement

for the year ended 30 June 2022

| | 2022 \$'000 | 2021 \$'000 | Original Budget \$'000 |
|---|-----------------|-----------------|------------------------------|
| OPERATING ACTIVITIES | | | |
| Cash received | | | |
| Appropriations | 294,651 | 287,066 | 300,808 |
| Sale of goods and rendering of services | 4,534 | 961 | 2,113 |
| Interest | 66 | 75 | - |
| Net GST received | 11,486 | 10,023 | 8,910 |
| Other | 2,008 | 2,199 | 185 |
| Total cash received | 312,745 | 300,324 | 312,016 |
| Cash used | | | |
| Employees | 171,820 | 162,443 | 165,518 |
| Suppliers | 108,705 | 89,514 | 120,034 |
| Interest payments on lease liabilities | 1,022 | 789 | - |
| Section 74 receipts transferred to OPA | 22,693 | 18,651 | 11,379 |
| Settlement of litigation | 3,475 | 30,934 | 1,557 |
| Total cash used | 307,715 | 302,331 | 298,488 |
| Net cash from/(used by) operating activities | 5,030 | (2,007) | 13,528 |
| INVESTING ACTIVITIES | | | |
| Cash received | | | |
| Other | - | 3,374 | - |
| Total cash received | - | 3,374 | - |
| Cash used | | | |
| Purchase of non-financial assets | 24,263 | 28,993 | 32,472 |
| Other | - | 314 | - |
| Total cash used | 24,263 | 29,307 | 32,472 |
| Net cash from/(used by) investing activities | (24,263) | (25,933) | (32,472) |
| FINANCING ACTIVITIES | | | |
| Cash received | | | |
| Principal receipts on sublease receivable | 698 | 723 | - |
| Contributed equity | 33,272 | 39,802 | 32,972 |
| Total cash received | 33,970 | 40,525 | 32,972 |
| Cash used | | | |
| Principal payments on lease liabilities | 14,702 | 11,671 | 14,028 |
| Total cash used | 14,702 | 11,671 | 14,028 |
| Net cash from/(used by) financing activities | 19,268 | 28,854 | 18,944 |
| Net increase/(decrease) in cash held | 35 | 914 | - |
| Cash and cash equivalents at the beginning of the reporting period | 2,078 | 1,164 | 1,164 |
| Cash and cash equivalents at the end of the reporting period | 2,113 | 2,078 | 1,164 |

The above statement should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Statement of Changes in Equity

for the year ended 30 June 2022

| | Retained Surplus | | | Contributed Equity | | | Asset Revaluation Reserve | | | Total Equity | | |
|---|------------------|------------------|------------------|--------------------|----------------|-----------------|---------------------------|--------------|-----------------|-----------------|----------------|-----------------|
| | 2022 | 2021 | Original Budget | 2022 | 2021 | Original Budget | 2022 | 2021 | Original Budget | 2022 | 2021 | Original Budget |
| | \$'000 | \$'000 | \$'000 | \$'000 | \$'000 | \$'000 | \$'000 | \$'000 | \$'000 | \$'000 | \$'000 | \$'000 |
| Opening balance at 1 July 2021 | (124,731) | (120,207) | (131,419) | 183,471 | 114,985 | 183,471 | 4,561 | 4,197 | 4,198 | 63,301 | (1,025) | 56,250 |
| Adjusted opening balance at 1 July | (124,731) | (120,207) | (131,419) | 183,471 | 114,985 | 183,471 | 4,561 | 4,197 | 4,198 | 63,301 | (1,025) | 56,250 |
| Comprehensive Income | | | | | | | | | | | | |
| Surplus/(Deficit) for the period | (13,096) | (4,524) | (9,945) | - | - | - | - | - | - | (13,096) | (4,524) | (9,945) |
| Other comprehensive income | - | - | - | - | - | - | (823) | 364 | - | (823) | 364 | - |
| Total comprehensive income | (13,096) | (4,524) | (9,945) | - | - | - | (823) | 364 | - | (13,919) | (4,160) | (9,945) |
| Transactions with owners | | | | | | | | | | | | |
| Contributions by owners | | | | | | | | | | | | |
| Equity injection | - | - | - | 1,100 | 36,200 | 1,100 | - | - | - | - | 36,200 | 1,100 |
| Departmental capital budget | - | - | - | 32,172 | 32,286 | 31,872 | - | - | - | 32,172 | 32,286 | 31,872 |
| Total transactions with owners | - | - | - | 33,272 | 68,486 | 32,972 | - | - | - | 33,272 | 68,486 | 32,972 |
| Closing balance as at 30 June | (137,827) | (124,731) | (141,364) | 216,743 | 183,471 | 216,443 | 3,738 | 4,561 | 4,198 | 82,654 | 63,301 | 79,277 |

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

Administered Schedule of Comprehensive Income

for the year ended 30 June 2022

| | 2022 \$'000 | 2021 \$'000 | Original Budget \$'000 |
|--|----------------|----------------|------------------------------|
| NET COST OF SERVICES | | | |
| Expenses | | | |
| Impairment and repayment of fees and fines | 159,243 | 38,163 | - |
| Total expenses | 159,243 | 38,163 | - |
| Income | | | |
| Non-taxation revenue | | | |
| Fines, penalties and costs | 259,331 | 115,097 | 104,028 |
| Other fees and charges | 1,218 | 2,423 | - |
| Total income | 260,549 | 117,520 | 104,028 |
| Surplus | 101,306 | 79,357 | 104,028 |
| Total comprehensive income | 101,306 | 79,357 | 104,028 |

Administered Schedule of Assets and Liabilities

as at 30 June 2022

| | Notes | 2022 \$'000 | 2021 \$'000 | Original Budget \$'000 |
|--|-------|----------------|----------------|------------------------------|
| ASSETS | | | | |
| Financial assets | | | | |
| Cash and cash equivalents | | - | - | 500 |
| Trade and other receivables | 3.1 | 55,992 | 46,014 | 37,553 |
| Total financial assets | | 55,992 | 46,014 | 38,053 |
| Total assets administered on behalf of Government | | 55,992 | 46,014 | 38,053 |
| Net assets/(liabilities) | | 55,992 | 46,014 | 38,053 |

The above schedules should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Administered Reconciliation Schedule

for the year ended 30 June 2022

| | 2022 \$'000 | 2021 \$'000 |
|---|----------------|----------------|
| Opening assets less liabilities as at 1 July | 46,014 | 38,053 |
| Net (cost of)/contribution by services | | |
| Income | 260,549 | 117,520 |
| Expenses | (159,243) | (38,163) |
| Transfers (to)/from the Australian Government | | |
| Appropriation transfers to Official Public Account | | |
| Transfers to Official Public Account | (91,328) | (71,396) |
| Closing assets less liabilities as at 30 June | 55,992 | 46,014 |

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 year ended 30 June 2022

| | 2022 \$'000 | 2021 \$'000 |
|---|-----------------|----------------|
| OPERATING ACTIVITIES | | |
| Cash received | | |
| Fines and costs | 90,120 | 68,474 |
| Other fees and charges | 1,218 | 2,427 |
| Total cash received | 91,338 | 70,901 |
| Cash used | | |
| Refund of fees and fines | 10 | 5 |
| Total cash used | 10 | 5 |
| Net cash from operating activities | 91,328 | 70,896 |
| Cash to Official Public Account | | |
| Appropriations | (91,328) | (71,396) |
| Total cash to Official Public Account | (91,328) | (71,396) |
| Cash and cash equivalents at the beginning of the reporting period | - | 500 |
| Cash and cash equivalents at the end of the reporting period | - | - |

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 domiciled in Australia, 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 ACCC has a number of offices across Australia, with its registered office located at Marcus Clarke Street, Canberra.

The Basis of Preparation

The financial statements 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 - including simplified disclosures for Tier 2 Entities under AASB 1060 issued by the Australian Accounting Standards Board (AASB).

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.
- 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 2021 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 1060 General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities

AASB 1060 first applies to annual reporting periods beginning on or after 1 July 2021 and replaces the Reduced Disclosure Requirements (RDR) framework. The application of AASB 1060 has resulted in minor changes to ACCC's disclosures to align with the new requirements. The application of AASB 1060 has not impacted the recognition or measurement of financial information and has not affected ACCC's financial position, performance or cashflows.

Prior to the signing of the statements by the Accountable Authority and Chief Financial Officer, no other new, revised or amending standards or interpretations were issued that would have a material effect on the Commission's financial statements in the current reporting period.

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 managed 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*.

The financial instrument reached its legislative sunset date during the 2021-22 financial year. The Commission has not extended this facility so had a Nil balance as 30 June 2022 (2021: \$54,377).

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 2021-22, subject to finalisation of the *Telecommunications (Carrier Licence Charges) Act 1997 Determination*, is estimated to be \$11.2m (2021: \$12.6m). This cost includes components for the Measuring Broadband Australia program of \$1.6m (2021: \$1.6m) and depreciation expense of \$0.3m (2021: \$0.3m), 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>

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.

1. Departmental Financial Performance

This section analyses the financial performance of the Commission for the year ended 30 June 2022

| 1.1 Expenses | 2022 \$'000 | 2021 \$'000 |
|--------------------------------|----------------|----------------|
| 1.1A: Employee benefits | | |
| Wages and salaries | 135,659 | 128,464 |
| Superannuation | | |
| Defined contribution plans | 16,808 | 15,085 |
| Defined benefit plans | 6,611 | 7,006 |
| Leave and other entitlements | 12,226 | 15,260 |
| Separation and redundancies | 333 | 265 |
| Other employee benefits | 548 | 669 |
| Total employee benefits | 172,185 | 166,749 |

Accounting Policy

Accounting policies for employee related expenses is included in the People and Relationships section.

| 1.1B: Suppliers | 2022 \$'000 | 2021 \$'000 |
|--|----------------|----------------|
| Goods and services supplied or rendered | | |
| Legal expenses | 25,116 | 26,551 |
| Consultants and contracted services | 38,975 | 24,297 |
| Information technology and communications | 19,651 | 12,420 |
| Property operating expenses | 4,715 | 4,534 |
| Travel expenses | 1,625 | 928 |
| Employee related expenses | 4,288 | 2,958 |
| Information management expenses | 2,373 | 2,186 |
| Other administration expenses | 2,428 | 2,101 |
| Total goods and services supplied or rendered | 99,171 | 75,975 |
| Other suppliers | | |
| Short-term leases | 7 | 720 |
| Workers compensation premiums | 501 | 307 |
| Total other suppliers | 508 | 1,027 |
| Total suppliers | 99,679 | 77,002 |

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

| | 2022 \$'000 | 2021 \$'000 |
|--|----------------|----------------|
| Revenue from contracts with customers | | |
| Secretariat Services - National Competition Council | 850 | 850 |
| Seminars | 47 | - |
| Total revenue from contracts with customers | 897 | 850 |
| Other revenue sources | | |
| International development funding | 1,634 | 1,090 |
| Reimbursement of legal costs | 119 | 59 |
| Finance income | 66 | 75 |
| Resources received free of charge (Remuneration of auditors) | 115 | 115 |
| Other revenue | 1,405 | 695 |
| Total other revenue sources | 3,339 | 2,034 |
| Total own-source revenue | 4,236 | 2,884 |

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
- c) 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. Departmental 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

| | 2022 \$'000 | 2021 \$'000 |
|--|----------------|----------------|
| Trade and other receivables | | |
| Goods and services | 1,433 | 1,706 |
| Appropriation receivable | 94,902 | 78,005 |
| GST receivable | 3,279 | 2,978 |
| Net investment in sublease | 5,837 | 6,535 |
| Accrued revenue | 341 | 36 |
| Total trade and other receivables (net) | 105,792 | 89,260 |

Sublease Arrangements

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.

| | 2022 \$'000 | 2021 \$'000 |
|---|----------------|----------------|
| Maturity analysis of finance lease receivables | | |
| Within 1 year | 1,085 | 846 |
| One to two years | 1,040 | 1,002 |
| Two to three years | 1,080 | 1,040 |
| Three to four years | 1,122 | 1,080 |
| Four to five years | 1,165 | 1,122 |
| More than 5 years | 503 | 1,668 |
| Total undiscounted lease payments receivable | 5,995 | 6,758 |
| Unearned finance income | (158) | (223) |
| Net investment in sublease | 5,837 | 6,535 |

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 (2021: 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

Reconciliation of the opening and closing balances of property, plant and equipment and intangibles

| | Leasehold improvements ¹ | Plant and equipment | Computer software | Total |
|--|-------------------------------------|---------------------|-------------------|----------------|
| | \$'000 | \$'000 | \$'000 | \$'000 |
| As at 1 July 2021 | | | | |
| Gross book value | 119,172 | 4,275 | 47,795 | 171,242 |
| Accumulated depreciation, amortisation and impairment | (18,991) | - | (12,934) | (31,925) |
| Total as at 1 July 2021 | 100,181 | 4,275 | 34,861 | 139,317 |
| Additions | | | | |
| Purchased or internally developed | 1,389 | 230 | 20,229 | 21,848 |
| Right-of-use assets | 466 | - | - | 466 |
| Reclassifications | - | - | - | - |
| Depreciation (right-of-use assets) | (12,542) | - | - | (12,542) |
| Depreciation and amortisation (other assets) | (2,995) | (1,510) | (12,682) | (17,187) |
| Other movements of right-of-use assets | 35 | - | - | 35 |
| Disposals / impairments | - | - | - | - |
| Disposals / impairments (right-of-use assets) | (2,546) | - | - | (2,546) |
| Revaluations recognised in net cost of services | (1,062) | - | - | (1,062) |
| Other disposals/write-downs (gross book value) | - | (196) | - | (196) |
| Other disposals/write-downs (accumulated depreciation) | - | 100 | - | 100 |
| Total as at 30 June 2022 | 82,926 | 2,899 | 42,408 | 128,233 |
| Total as at 30 June 2022 represented by | | | | |
| Gross book value | 116,224 | 4,309 | 68,025 | 188,558 |
| Accumulated depreciation, amortisation and impairment | (33,298) | (1,410) | (25,617) | (60,325) |
| Total as at 30 June 2022 | 82,926 | 2,899 | 42,408 | 128,233 |

1. Right-of-use assets are disclosed as part of leasehold improvements. Leasehold improvements, plant and equipment may be sold or disposed in 2022-23 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 assets are based on the following useful lives:

| Asset class | 2022 and 2021 |
|------------------------|----------------------|
| 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 2022. 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 \$0.097m (2021:\$0.52m) 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 a valuation of all tangible property, plant and equipment conducted at 30 June 2021.

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 (2021: 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 \$8m (2021: \$0.7m), commitments for intangible assets of \$21.52m (2021: \$2.3m) and commitments for property plant and equipment of \$0.031m (2021: nil).

2.3 Payables

| | 2022 \$'000 | 2021 \$'000 |
|------------------------------|----------------|----------------|
| Suppliers | | |
| Trade creditors and accruals | 14,427 | 18,558 |
| Unearned revenue | 3,726 | 1,361 |
| Total suppliers | 18,153 | 19,919 |

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. Settlements terms for suppliers are 20 days (2021: 20 days)

2.4 Leases

| | 2022 \$'000 | 2021 \$'000 |
|---|----------------|----------------|
| Interest Bearing Liabilities | | |
| Leases | 78,673 | 93,375 |
| Total interest bearing liabilities | 78,673 | 93,375 |

| | 2022 \$'000 | 2021 \$'000 |
|---|----------------|----------------|
| Maturity analysis of contractual undiscounted lease cash flows | | |
| Within 1 year | 10,026 | 13,845 |
| Between 1 to 5 years | 42,765 | 43,092 |
| More than 5 years | 29,739 | 41,366 |
| Total undiscounted lease cash flows | 82,530 | 98,303 |

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 settlements \$'000 | Provision for makegood \$'000 | Total \$'000 |
|---------------------------------|---|--|-----------------|
| As at 1 July 2021 | - | 504 | 504 |
| Additional provisions made | 2,636 | - | 2,636 |
| Amounts used | - | - | - |
| Amounts reversed | - | (238) | (238) |
| Total as at 30 June 2022 | 2,636 | 266 | 2,902 |

The Commission currently has 4 agreements (2021: 6) 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 | 2022 | 2021 |
|--|------------------|----------|
| | \$'000 | \$'000 |
| Trade and other receivables | | |
| Fines and costs | 262,566 | 95,445 |
| Total trade and other receivables (gross) | 262,566 | 95,445 |
| Less impairment allowance | (206,574) | (49,431) |
| Total trade and other receivables (net) | 55,992 | 46,014 |

Credit terms for fines and costs were within 30 days or as stipulated by court judgements (2021: 30 days).

4. Funding

This section identifies the Commission's funding structure.

4.1 Appropriations

| | 2022 \$'000 | 2021 \$'000 |
|--|----------------|----------------|
| 4.1A: Annual appropriations ('recoverable GST exclusive') | | |
| Ordinary annual services | 288,855 | 270,474 |
| Capital Budget ¹ | 32,172 | 32,286 |
| Equity Injections | 1,100 | 36,200 |
| Section 74 receipts | 10,942 | 8,655 |
| PGPA Act section 75 transfers ² | - | (3,438) |
| Total appropriation | 333,069 | 344,177 |
| Appropriation applied (current and prior years) ³ | 316,138 | 315,957 |
| Variance | 16,931 | 28,220 |

1. 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.

2. Relates to funding transferred to the Department of Treasury in relation to the Consumer Data Rights function.

3. Appropriation applied includes use of both current and prior year appropriation funding. The variance in 2021-22 corresponds with a small underspend of cash from ordinary annual services appropriations in the current year.

4.1B: Unspent annual appropriations ('recoverable GST exclusive')

| | 2022 \$'000 | 2021 \$'000 |
|-----------------------------------|----------------|----------------|
| Departmental | | |
| Supply Act (No. 2) 2020-21 | - | 642 |
| Appropriation Act (No. 1) 2020-21 | - | 53,117 |
| Appropriation Act (No. 2) 2020-21 | - | 23,486 |
| Appropriation Act (No. 3) 2020-21 | - | 760 |
| Appropriation Act (No. 1) 2021-22 | 89,481 | - |
| Appropriation Act (No. 2) 2021-22 | 1,100 | - |
| Appropriation Act (No. 3) 2021-22 | 4,321 | - |
| Total departmental | 94,902 | 78,005 |

In addition to the unspent appropriations disclosed above, at 30 June 2022 the Commission had cash and cash equivalents of \$2.113m (2021: \$2.078m).

4.1C: Special appropriations - Administered ('recoverable GST exclusive')

| | Appropriation applied | |
|--|-----------------------|----------------|
| | 2022 \$'000 | 2021 \$'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. | 10 | 5 |

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

| | 2022 \$'000 | 2021 \$'000 |
|----------------------------------|----------------|----------------|
| Employee provisions | | |
| Leave | 51,072 | 51,929 |
| Separations and redundancies | 194 | - |
| Total employee provisions | 51,266 | 51,929 |

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 2021. 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 Executive Officer and Chief Financial Officer.

| | 2022 \$'000 | 2021 \$'000 |
|---|----------------|----------------|
| Short-term employee benefits | 5,027 | 4,864 |
| Post-employment benefits | 690 | 655 |
| Other long-term employee benefits | 4 | 134 |
| Total key management personnel remuneration expenses | 5,721 | 5,653 |

The total number of key management personnel that are included in the above table is 12 (2021: 11).

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 2022, 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.

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 2022.

However, prior to these statements being authorised court judgements have demonstrated that the Commission has quantifiable administered contingent assets totalling \$74.5m (2021: \$8.9 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

Operating Result

The Commission uses a mix of employees and third party experts to deliver on strategic priorities set out in the Commission's Strategic Direction Statement (Portfolio Budget Statements) and Corporate Plan. During the financial year the Commission increased the use of employees and reduced some reliance on external suppliers to deliver against its strategic priorities. This shift is reflected in higher employee expenditure and lower supplier expenditure when compared to budgeted amounts.

Other contributing factors to lower than budgeted supplier expenditure include:

- The Commission incurred lower than budgeted legal expenditure during the financial year. Legal costs can fluctuate between years depending on the number, nature and status of cases being pursued by the Commission. This is the main contributor to the reduction in total supplier expenses.
- The above changes also correlate with the increase in cash used for employees and reduction in cash used for suppliers, compared to the original budget amounts.

As part of normal operations an amount of \$11.5m 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, Cash Used - Employees, Cash Used - Suppliers, Cash Used - Section 74 Receipts Transferred to the OPA.*

Capital Investments

In recent years the Commission has received a significant increase in capital and operating appropriation funding for investment in IT projects and the Consumer Data Right program. The original budget had factored this into the expected increase to the Computer Software balance and for the acquisition of Property, Plant and equipment. Due to ongoing resourcing challenges some of these IT projects have not been fully executed in the 2021-22 Financial year, resulting in variances to the final Computer Software asset and Cash Used - Purchase of Non-Financial Asset disclosures. The underspends in this area has also resulted in an increase on the original budget amount for Trade and other receivables as this relates predominantly to the increase in the unspent appropriation receivable amount. Transition to a cloud-based first approach for computer software, consistent with the whole of government policy, will continue to cause variability in budget to actual splits in line with the accounting recognition rules.

The increase in the Depreciation Expenses relative to the budget also related to the Computer Software asset class as a result of earlier capitalisations.

At the time of developing the original budget the Commission was in the process of negotiating the new Lease arrangement for Sydney. The uncertainties in scope and timing of these arrangements as well as the complexities in accounting for Leases is the large reason for the variance to the original budget. As negotiations progressed the PAES was updated which now closely aligns with the final result.

Affected line items: *Trade and other receivables, Computer Software, Leases, Depreciation and Amortisation, Cash Used - Purchase of Non-Financial Assets*

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 \$156.5m in 2021-22. However, the budget did not anticipate impairments for overdue debtor balances of \$159.2m resulting in a final administered outcome that is different to the budget by \$2.7m.

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 Current / Non-Current Classification of Assets and Liabilities

| Departmental | 2022 \$'000 | 2021 \$'000 |
|---|----------------|----------------|
| Assets expected to be recovered in: | | |
| No more than 12 months | | |
| Cash and cash equivalents | 2,113 | 2,078 |
| Trade and other receivables | 101,040 | 83,506 |
| Prepayments | 2,360 | 2,067 |
| Total no more than 12 months | 105,513 | 87,651 |
| More than 12 months | | |
| Trade and other receivables | 4,752 | 5,754 |
| Leasehold improvements | 82,926 | 100,181 |
| Plant and equipment | 2,899 | 4,275 |
| Computer software | 42,408 | 34,861 |
| Prepayments | 92 | 218 |
| Total more than 12 months | 133,077 | 145,289 |
| Total assets | 238,590 | 232,940 |
| Liabilities expected to be settled in: | | |
| No more than 12 months | | |
| Suppliers | 18,153 | 19,919 |
| Employee related payables | 4,942 | 3,912 |
| Leases | 9,135 | 12,814 |
| Employee provisions | 12,058 | 11,556 |
| Other provisions | 2,699 | 6 |
| Total no more than 12 months | 46,987 | 48,207 |
| More than 12 months | | |
| Leases | 69,538 | 80,561 |
| Employee provisions | 39,208 | 40,373 |
| Other provisions | 203 | 498 |
| Total more than 12 months | 108,949 | 121,432 |
| Total liabilities | 155,936 | 169,639 |

| Administered | 2022 \$'000 | 2021 \$'000 |
|--|----------------|----------------|
| Assets expected to be recovered in: | | |
| No more than 12 months | | |
| Cash and cash equivalents | - | - |
| Trade and other receivables | 22,237 | 21,440 |
| Total no more than 12 months | 22,237 | 21,440 |
| More than 12 months | | |
| Trade and other receivables | 33,755 | 24,574 |
| Total more than 12 months | 33,755 | 24,574 |
| Total assets | 55,992 | 46,014 |

7.3 Net Cash Appropriations Arrangements

| | 2022 \$'000 | 2021 \$'000 |
|---|-----------------|----------------|
| Total comprehensive income/(loss) - as per the Statement of Comprehensive Income | (13,919) | (4,160) |
| <i>Plus:</i> Depreciation/Amortisation of assets funded through appropriations (DCB) | 17,187 | 11,740 |
| <i>Plus:</i> Depreciation on right-of-use assets | 12,542 | 11,607 |
| <i>Plus:</i> Principal receipts on sublease receivables | 698 | 723 |
| <i>Less:</i> Principal payments on lease liabilities | (14,702) | (11,671) |
| Net Cash Operating Surplus/(Deficit) | 1,806 | 8,239 |

From 2010-11, the Government introduced net cash appropriation arrangements where revenue appropriations for depreciation/amortisation expenses of non-corporate Commonwealth entities and selected corporate Commonwealth entities were replaced with a separate capital budget provided through equity appropriations. Capital budgets are to be appropriated in the period when cash payment for capital expenditure is required.

The inclusion of depreciation/amortisation expenses related to ROU leased assets and the lease liability principal repayment amount reflects the impact of AASB 16 Leases, which does not directly reflect a change in appropriation arrangements.



06

Appendixes



Appendix 1: Entity resource statement and expenses by outcome

Table A1.1: Entity resource statement 2021–22

| | Actual available appropriation for 2021–22 \$'000 | Payments made 2021–22 \$'000 | Balance remaining 2021–22 \$'000 |
|---|---|------------------------------|----------------------------------|
| | (a) | (b) | (a) – (b) |
| Departmental | | | |
| Annual appropriations – ordinary annual services ^{1,2} | 387,924 | 292,010 | 95,914 |
| Annual appropriations – other services – non-operating ³ | 25,228 | 24,128 | 1,100 |
| Total departmental annual appropriations | 413,152 | 316,138 | 97,014 |
| Special accounts | 54 | 54 | - |
| Total special accounts | 54 | 54 | - |
| Total resourcing and payments for ACCC | 413,206 | 316,192 | 97,014 |

1 *Appropriation Act (No. 1) 2021–22 and Appropriation Act (No. 3) 2021–22*, prior year departmental appropriations and retained revenue receipts under section 74 of the *Public Governance, Performance and Accountability Act 2013*.

2 Includes an amount of \$32.1million in 2021–22 for departmental capital budget. For accounting purposes this amount has been designated as 'contributions by owners'.

3 *Appropriation Act (No. 2) 2021–22, Supply Act (No. 2) 2020–21, Appropriation Act (No. 2) 2020–21*.

Table A1.2: Expenses for Outcome 1, 2021-22

| 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 2021-22 \$'000 (a) | Actual expenses 2021-22 \$'000 (b) | Variation 2021-22 \$'000 (a)-(b) |
|---|---|--|--|
| Program 1.1: Australian Competition and Consumer Commission | | | |
| Departmental expenses | | | |
| Departmental appropriation ² | 214,019 | 213,625 | 394 |
| Expenses not requiring appropriation in the budget year | 17,036 | 17,302 | (266) |
| Total for program 1.1 | 231,055 | 230,927 | 128 |
| Program 1.2: Australian Energy Regulator (AER) | | | |
| Departmental expenses | | | |
| Departmental appropriation ² | 76,286 | 75,260 | 1,026 |
| Total for program 1.2 | 76,286 | 75,260 | 1,026 |
| Outcome 1 Total by appropriation type | | | |
| Departmental expenses | | | |
| Departmental appropriation ² | 290,305 | 288,885 | 1,420 |
| Expenses not requiring appropriation in the budget year | 17,036 | 17,302 | (266) |
| Total expenses for outcome 1 | 307,341 | 306,187 | 1,154 |
| | | 2020-21 | 2021-22 |
| Average staffing level (number) | | 1,172 | 1,201 |

- 1 Full-year budget, including any subsequent adjustment made to the 2021-22 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 *Public Governance, Performance and Accountability Act 2013*.

Appendix 2: Staffing

Tables A2.1 to A2.20 provide details of the ACCC and AER employees in 2021–22.

Ongoing and non-ongoing employees

Table A2.1: All ongoing employees, current report period (2021–22)

| | Male | | | Female | | | Indeterminate | | | Total |
|--------------|------------|-----------|------------|------------|------------|------------|---------------|-----------|----------|--------------|
| | Full-time | Part-time | Total | Full-time | Part-time | Total | Full-time | Part-time | Total | |
| NSW | 68 | 2 | 70 | 120 | 11 | 131 | 0 | 0 | 0 | 201 |
| Qld | 52 | 2 | 54 | 99 | 13 | 112 | 0 | 0 | 0 | 166 |
| SA | 43 | 3 | 46 | 44 | 10 | 54 | 0 | 0 | 0 | 100 |
| Tas | 6 | 1 | 7 | 12 | 2 | 14 | 0 | 0 | 0 | 21 |
| Vic | 219 | 9 | 228 | 214 | 28 | 242 | 0 | 0 | 0 | 470 |
| WA | 17 | 1 | 18 | 18 | 6 | 24 | 0 | 0 | 0 | 42 |
| ACT | 126 | 5 | 131 | 144 | 34 | 178 | 0 | 0 | 0 | 309 |
| NT | 3 | 0 | 3 | 6 | 1 | 7 | 0 | 0 | 0 | 10 |
| Overseas | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 534 | 23 | 557 | 657 | 105 | 762 | 0 | 0 | 0 | 1,319 |

Table A2.2: All non-ongoing employees, current report period (2021–22)

| | Male | | | Female | | | Indeterminate | | | Total |
|--------------|-----------|-----------|-----------|-----------|-----------|-----------|---------------|-----------|----------|-----------|
| | Full-time | Part-time | Total | Full-time | Part-time | Total | Full-time | Part-time | Total | |
| NSW | 5 | 1 | 6 | 4 | 5 | 9 | 0 | 0 | 0 | 15 |
| Qld | 4 | 0 | 4 | 8 | 4 | 12 | 0 | 0 | 0 | 16 |
| SA | 3 | 0 | 3 | 6 | 1 | 7 | 0 | 0 | 0 | 10 |
| Tas | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vic | 6 | 4 | 10 | 5 | 5 | 10 | 0 | 0 | 0 | 20 |
| WA | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| ACT | 5 | 4 | 9 | 8 | 8 | 16 | 0 | 0 | 0 | 25 |
| NT | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Overseas | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 24 | 9 | 33 | 31 | 23 | 54 | 0 | 0 | 0 | 87 |

Table A2.3: All ongoing employees, previous report period (2020-21)

| | Male | | | Female | | | Indeterminate | | | Total |
|--------------|------------|-----------|------------|------------|-----------|------------|---------------|-----------|----------|--------------|
| | Full-time | Part-time | Total | Full-time | Part-time | Total | Full-time | Part-time | Total | |
| NSW | 71 | 0 | 71 | 104 | 9 | 113 | 0 | 0 | 0 | 184 |
| Qld | 36 | 0 | 36 | 62 | 11 | 73 | 0 | 0 | 0 | 109 |
| SA | 36 | 1 | 37 | 41 | 7 | 48 | 0 | 0 | 0 | 85 |
| Tas | 3 | 1 | 4 | 10 | 1 | 11 | 0 | 0 | 0 | 15 |
| Vic | 212 | 12 | 224 | 192 | 26 | 218 | 0 | 0 | 0 | 442 |
| WA | 12 | 0 | 12 | 15 | 4 | 19 | 0 | 0 | 0 | 31 |
| ACT | 124 | 7 | 131 | 154 | 31 | 185 | 0 | 0 | 0 | 316 |
| NT | 2 | 0 | 2 | 5 | 1 | 6 | 0 | 0 | 0 | 8 |
| Overseas | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 496 | 21 | 517 | 583 | 90 | 673 | 0 | 0 | 0 | 1,190 |

Table A2.4: All non-ongoing employees, previous report period (2020-21)

| | Male | | | Female | | | Indeterminate | | | Total |
|--------------|-----------|-----------|-----------|-----------|-----------|-----------|---------------|-----------|----------|-----------|
| | Full-time | Part-time | Total | Full-time | Part-time | Total | Full-time | Part-time | Total | |
| NSW | 6 | 0 | 6 | 11 | 4 | 15 | 0 | 0 | 0 | 21 |
| Qld | 1 | 0 | 1 | 2 | 2 | 4 | 0 | 0 | 0 | 5 |
| SA | 1 | 0 | 1 | 3 | 0 | 3 | 0 | 0 | 0 | 4 |
| Tas | 0 | 1 | 1 | 1 | 1 | 2 | 0 | 0 | 0 | 3 |
| Vic | 6 | 1 | 7 | 6 | 1 | 7 | 0 | 0 | 0 | 14 |
| WA | 9 | 1 | 10 | 8 | 5 | 13 | 0 | 0 | 0 | 23 |
| ACT | 6 | 0 | 6 | 11 | 4 | 15 | 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 | 23 | 3 | 26 | 32 | 13 | 45 | 0 | 0 | 0 | 71 |

Employees by Australian Public Sector (APS) classification and gender

Table A2.5: Australian Public Service Act ongoing employees, current report period (2021-22)

| | Male | | | Female | | | Indeterminate | | | Total |
|--------------|------------|-----------|------------|------------|------------|------------|---------------|-----------|----------|--------------|
| | Full-time | Part-time | Total | Full-time | Part-time | Total | Full-time | Part-time | Total | |
| SES 3 | 1 | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 2 |
| SES 2 | 10 | 0 | 10 | 6 | 0 | 6 | 0 | 0 | 0 | 16 |
| SES 1 | 22 | 0 | 22 | 22 | 1 | 23 | 0 | 0 | 0 | 45 |
| EL 2 | 133 | 6 | 139 | 134 | 34 | 168 | 0 | 0 | 0 | 307 |
| EL 1 | 158 | 7 | 165 | 194 | 33 | 227 | 0 | 0 | 0 | 392 |
| APS 6 | 114 | 5 | 119 | 155 | 20 | 175 | 0 | 0 | 0 | 294 |
| APS 5 | 71 | 3 | 74 | 111 | 10 | 121 | 0 | 0 | 0 | 195 |
| APS 4 | 16 | 0 | 16 | 20 | 5 | 25 | 0 | 0 | 0 | 41 |
| APS 3 | 1 | 0 | 1 | 2 | 0 | 2 | 0 | 0 | 0 | 3 |
| 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 | 8 | 2 | 10 | 12 | 2 | 14 | 0 | 0 | 0 | 24 |
| Total | 534 | 23 | 557 | 657 | 105 | 762 | 0 | 0 | 0 | 1,319 |

Table A2.6: Australian Public Service Act non-ongoing employees, current report period (2021-22)

| | 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 | 2 | 1 | 3 | 4 | 1 | 5 | 0 | 0 | 0 | 8 |
| EL 1 | 6 | 1 | 7 | 7 | 5 | 12 | 0 | 0 | 0 | 19 |
| APS 6 | 6 | 0 | 6 | 6 | 1 | 7 | 0 | 0 | 0 | 13 |
| APS 5 | 2 | 1 | 3 | 7 | 4 | 11 | 0 | 0 | 0 | 14 |
| APS 4 | 4 | 1 | 5 | 3 | 2 | 5 | 0 | 0 | 0 | 10 |
| APS 3 | 2 | 3 | 5 | 2 | 7 | 9 | 0 | 0 | 0 | 14 |
| APS 2 | 0 | 2 | 2 | 1 | 2 | 3 | 0 | 0 | 0 | 5 |
| APS 1 | 2 | 0 | 2 | 1 | 1 | 2 | 0 | 0 | 0 | 4 |
| Graduate | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 24 | 9 | 33 | 31 | 23 | 54 | 0 | 0 | 0 | 87 |

Table A2.7: Australian Public Service Act ongoing employees, previous report period (2020–21)

| | Male | | | Female | | | Indeterminate | | | Total |
|--------------|------------|-----------|------------|------------|-----------|------------|---------------|-----------|----------|--------------|
| | Full-time | Part-time | Total | Full-time | Part-time | Total | Full-time | Part-time | Total | |
| SES 3 | 1 | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 2 |
| SES 2 | 11 | 0 | 11 | 5 | 0 | 5 | 0 | 0 | 0 | 16 |
| SES 1 | 15 | 2 | 17 | 22 | 2 | 24 | 0 | 0 | 0 | 41 |
| EL 2 | 122 | 3 | 125 | 119 | 28 | 147 | 0 | 0 | 0 | 272 |
| EL 1 | 127 | 8 | 135 | 158 | 31 | 189 | 0 | 0 | 0 | 324 |
| APS 6 | 107 | 5 | 112 | 130 | 16 | 146 | 0 | 0 | 0 | 258 |
| APS 5 | 85 | 2 | 87 | 122 | 12 | 134 | 0 | 0 | 0 | 221 |
| APS 4 | 15 | 1 | 16 | 13 | 1 | 14 | 0 | 0 | 0 | 30 |
| APS 3 | 1 | 0 | 1 | 3 | 0 | 3 | 0 | 0 | 0 | 4 |
| 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 | 12 | 0 | 12 | 10 | 0 | 10 | 0 | 0 | 0 | 22 |
| Total | 496 | 21 | 517 | 583 | 90 | 673 | 0 | 0 | 0 | 1,190 |

Table A2.8: Australian Public Service Act non-ongoing employees, previous report period (2020–21)

| | 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 | 5 | 1 | 6 | 4 | 2 | 6 | 0 | 0 | 0 | 12 |
| EL 1 | 11 | 0 | 11 | 6 | 0 | 6 | 0 | 0 | 0 | 17 |
| APS 6 | 2 | 0 | 2 | 5 | 2 | 7 | 0 | 0 | 0 | 9 |
| APS 5 | 3 | 1 | 4 | 9 | 2 | 11 | 0 | 0 | 0 | 15 |
| APS 4 | 2 | 0 | 2 | 4 | 2 | 6 | 0 | 0 | 0 | 8 |
| APS 3 | 0 | 0 | 0 | 3 | 0 | 3 | 0 | 0 | 0 | 3 |
| APS 2 | 0 | 0 | 0 | 1 | 2 | 3 | 0 | 0 | 0 | 3 |
| APS 1 | 0 | 1 | 1 | 0 | 3 | 3 | 0 | 0 | 0 | 4 |
| Graduate | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 23 | 3 | 26 | 32 | 13 | 45 | 0 | 0 | 0 | 71 |

Employment type by full-time and part-time status

Table A2.9: Australian Public Service Act employees by full-time and part-time status, current report period (2021–22)

| | Ongoing | | | Non-ongoing | | | Total |
|--------------|--------------|------------|--------------|-------------|-----------|-----------|--------------|
| | Full-time | Part-time | Total | Full-time | Part-time | Total | |
| SES 3 | 2 | 0 | 2 | 0 | 0 | 0 | 2 |
| SES 2 | 16 | 0 | 16 | 0 | 0 | 0 | 16 |
| SES 1 | 44 | 1 | 45 | 0 | 0 | 0 | 45 |
| EL 2 | 267 | 40 | 307 | 6 | 2 | 8 | 315 |
| EL 1 | 352 | 40 | 392 | 13 | 6 | 19 | 411 |
| APS 6 | 269 | 25 | 294 | 12 | 1 | 13 | 307 |
| APS 5 | 182 | 13 | 195 | 9 | 5 | 14 | 209 |
| APS 4 | 36 | 5 | 41 | 7 | 3 | 10 | 51 |
| APS 3 | 3 | 0 | 3 | 4 | 10 | 14 | 17 |
| APS 2 | 0 | 0 | 0 | 1 | 4 | 5 | 5 |
| APS 1 | 0 | 0 | 0 | 3 | 1 | 4 | 4 |
| Graduate | 20 | 4 | 24 | 0 | 0 | 0 | 24 |
| Total | 1,191 | 128 | 1,319 | 55 | 32 | 87 | 1,406 |

Table A2.10: Australian Public Service Act employees by full-time and part-time status, previous report period (2020–21)

| | Ongoing | | | Non-ongoing | | | Total |
|--------------|--------------|------------|--------------|-------------|-----------|-----------|--------------|
| | Full-time | Part-time | Total | Full-time | Part-time | Total | |
| SES 3 | 2 | 0 | 2 | 0 | 0 | 0 | 2 |
| SES 2 | 16 | 0 | 16 | 0 | 0 | 0 | 16 |
| SES 1 | 37 | 4 | 41 | 0 | 0 | 0 | 41 |
| EL 2 | 241 | 31 | 272 | 9 | 3 | 12 | 284 |
| EL 1 | 285 | 39 | 324 | 17 | 0 | 17 | 341 |
| APS 6 | 237 | 21 | 258 | 7 | 2 | 9 | 267 |
| APS 5 | 207 | 14 | 221 | 12 | 3 | 15 | 236 |
| APS 4 | 28 | 2 | 30 | 6 | 2 | 8 | 38 |
| APS 3 | 4 | 0 | 4 | 3 | 0 | 3 | 7 |
| APS 2 | 0 | 0 | 0 | 1 | 2 | 3 | 3 |
| APS 1 | 0 | 0 | 0 | 0 | 4 | 4 | 4 |
| Graduate | 22 | 0 | 22 | 0 | 0 | 0 | 22 |
| Total | 1,079 | 111 | 1,190 | 55 | 16 | 71 | 1,261 |

Employment type by location

Table A2.11: Australian Public Service Act employment type by location, current report period (2021–22)

| | Ongoing | Non-ongoing | Total |
|--------------|--------------|-------------|--------------|
| NSW | 201 | 15 | 216 |
| Qld | 166 | 16 | 182 |
| SA | 100 | 10 | 110 |
| Tas | 21 | 0 | 21 |
| Vic | 470 | 20 | 490 |
| WA | 42 | 0 | 42 |
| ACT | 309 | 25 | 334 |
| NT | 10 | 1 | 11 |
| Overseas | 0 | 0 | 0 |
| Total | 1,319 | 87 | 1,406 |

Table A2.12: Australian Public Service Act employment type by location, previous report period (2020–21)

| | Ongoing | Non-ongoing | Total |
|--------------|--------------|-------------|--------------|
| NSW | 184 | 21 | 205 |
| Qld | 109 | 5 | 114 |
| SA | 85 | 4 | 89 |
| Tas | 15 | 3 | 18 |
| Vic | 442 | 14 | 456 |
| WA | 31 | 0 | 31 |
| ACT | 316 | 23 | 339 |
| NT | 8 | 1 | 9 |
| Overseas | 0 | 0 | 0 |
| Total | 1,190 | 71 | 1,261 |

Indigenous employment

Table A2.13: Australian Public Service Act Indigenous employment, current report period (2021-22)

| | Total |
|--------------|-----------|
| Ongoing | 16 |
| Non-ongoing | 4 |
| Total | 20 |

Table A2.14: Australian Public Service Act Indigenous employment, previous report period (2020-21)

| | Total |
|--------------|-----------|
| Ongoing | 18 |
| Non-ongoing | 2 |
| Total | 20 |

Employment arrangements of SES and non-SES employees

Table A2.15: Australian Public Service Act employment arrangements, current report period (2021-22)

| | SES | Non-SES | Total |
|-------------------------------------|-----------|--------------|--------------|
| ACCC Enterprise Agreement 2016-2019 | 0 | 1,271 | 1,271 |
| Individual flexibility agreements | 0 | 81 | 81 |
| Section 24(1) determinations | 54 | 0 | 54 |
| Total | 54 | 1,352 | 1,406 |

Salary and performance pay

Table A2.16: Australian Public Service Act employment salary ranges by classification level (minimum/maximum), current report period (2021-22)

| | Minimum salary | Maximum salary |
|------------------------------|-----------------|------------------|
| SES 3 | \$354,278 | \$372,639 |
| SES 2 | \$261,368 | \$326,043 |
| SES 1 | \$199,066 | \$234,061 |
| EL 2 | \$128,977 | \$151,149 |
| EL 1 | \$111,251 | \$123,121 |
| APS 6 | \$89,541 | \$100,359 |
| APS 5 | \$80,893 | \$85,774 |
| APS 4 | \$72,527 | \$78,746 |
| APS 3 | \$65,066 | \$70,232 |
| APS 2 | \$57,128 | \$63,349 |
| APS 1 | \$50,481 | \$55,798 |
| Other | \$63,349 | \$72,527 |
| Minimum/Maximum range | \$50,481 | \$372,639 |

Table A2.17: Australian Public Service Act employment performance pay by classification level current report period (2021-22)

| | Number of employees receiving performance pay | Aggregated (sum total) of all payments made | Average of all payments made | Minimum payment made to employees | Maximum payment made to employees |
|--------------|---|---|------------------------------|-----------------------------------|-----------------------------------|
| SES 3 | 2 | \$22,415 | \$11,208 | \$7,331 | \$15,084 |
| SES 2 | 12 | \$136,765 | \$11,397 | \$8,407 | \$17,000 |
| SES 1 | 35 | \$255,883 | \$7,311 | \$2,610 | \$8,976 |
| 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 | 49 | \$415,063 | - | - | - |

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 2021](#).

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 2021-22.

Table A2.18: Number of employees covered by each industrial instrument at 30 June 2022

| | ACCC Enterprise Agreement 2016-2019 | IFAs | Section 24 determinations |
|----------|-------------------------------------|------|---------------------------|
| APS 1 | 4 | | 0 |
| APS 2 | 6 | | 0 |
| APS 3 | 22 | | 0 |
| APS 4 | 52 | | 0 |
| APS 5 | 234 | | 0 |
| APS 6 | 324 | 4 | 0 |
| EL 1 | 389 | 20 | 0 |
| EL 2 | 216 | 57 | 0 |
| SES 1 | 0 | 0 | 39 |
| SES 2 | 0 | 0 | 13 |
| SES 3 | 0 | 0 | 2 |
| Graduate | 24 | 0 | 0 |

Note: IFA = individual flexibility arrangement.

Table A2.19: Salary ranges for APS employees at 30 June 2022

| | ACCC Enterprise Agreement 2016-2019 | Section 24 determinations |
|----------|--|---------------------------|
| APS 1 | \$50,481-\$55,798 | - |
| APS 2 | \$57,128-\$63,349 | - |
| APS 3 | \$65,066-\$70,232 | - |
| APS 4 | \$72,527-\$78,746 | - |
| APS 5 | \$80,893-\$85,774 | - |
| APS 6 | \$89,541-\$100,359 | - |
| EL 1 | \$111,251-\$123,121 | - |
| EL 2 | \$128,977-\$151,149 | - |
| SES 1 | - | \$199,066-\$234,061 |
| SES 2 | - | \$261,368-\$326,043 |
| SES 3 | - | \$354,278-\$372,639 |
| L 1 | \$70,232-\$138,393 | - |
| L 2 | \$146,252-\$155,018 | - |
| Graduate | \$63,349-\$72,527 | - |

Table A2.20: Performance pay

| | SES B1 | SES B2 | SES B3 | ACCC |
|---------------------------|-----------------|------------------|------------------|------------------|
| Number who received bonus | 35 | 12 | 2 | 49 |
| Total bonus | \$255,883 | \$136,765 | \$22,415 | \$415,063 |
| Average bonus | \$7,311 | \$11,397 | \$11,208 | \$9,972 |
| Range | \$2,610-\$8,976 | \$8,407-\$17,000 | \$7,331-\$15,084 | \$2,610-\$17,000 |

Appendix 3: Mandatory executive remuneration reporting

Executive remuneration policies and practices and governance arrangements are disclosed in the annual report on page 190.

In 2022 key management personnel comprised members of the Corporate Governance Board, the Chief Executive Officer and the Chief Finance Officer as set out in the table below.

Table A3.1: Key management personnel

| Name | Position | Term |
|----------------------------|-------------------------|-------------------------------------|
| Rod Sims | Chair | Part year – ceased 20 March 2022 |
| Gina Cass Gottlieb | Chair | Part year – appointed 21 March 2022 |
| Delia Rickard | Deputy Chair | Full year |
| Mick Keogh | Deputy Chair | Full year |
| Stephen Ridgeway | Member | Full year |
| Anna Brakey | Member | Full year |
| Peter Crone | Member | Full year |
| Liza Carver | Member | Part year – appointed 1 March 2022 |
| Clare Savage | Associate Member | Full year |
| James (Jim) Cox PSM | Associate Member | Full year |
| Scott Gregson | Chief Executive Officer | Full year |
| Peter Maybury | Chief Finance Officer | Full year |

The ACCC disclosed key management personnel remuneration in note 5.2 to the financial statements for the period ending 30 June 2022.

Table A3.2: Information about remuneration for key management personnel

| Name | Position Title | Base Salary ¹ (\$) | Bonuses (\$) | Short-term benefits | | Post-employment benefits | Other long-term benefits | Termination Benefits | Total remuneration (\$) |
|---------------------|------------------|----------------------------------|-----------------|---|---|-----------------------------|-----------------------------|-------------------------|-------------------------------|
| | | | | Other benefits and allowances ² (\$) | Superannuation ³ contributions ³ (\$) | | | | |
| SIMS, Rodney | Chair | 495,180 | - | - | 70,126 | 13,140 | - | 578,445 | |
| CASS-GOTTLIEB, Gina | Chair | 216,315 | - | - | 20,739 | 1,934 | - | 238,988 | |
| RICKARD, Delia | Deputy Chair | 514,975 | - | 559 | 74,425 | -13,919 | - | 576,039 | |
| KEOGH, Michael | Deputy Chair | 500,690 | - | - | 77,983 | 3,521 | - | 582,194 | |
| RIDGEWAY, Stephen | Member | 534,584 | - | - | 73,263 | 5,439 | - | 613,286 | |
| BRAKEY, Anna | Member | 523,564 | - | - | 73,217 | 6,064 | - | 602,845 | |
| CRONE, Peter E | Member | 534,563 | - | - | 73,217 | 6,064 | - | 613,844 | |
| CARVER, Liza | Member | 183,027 | - | - | 18,603 | 1,837 | - | 203,467 | |
| SAVAGE, Clare | Associate Member | 483,781 | - | - | 73,217 | 5,672 | - | 562,670 | |
| COX, James | Associate Member | 398,070 | - | - | 23,698 | -1,994 | - | 419,775 | |
| GREGSON, Scott | COO | 402,628 | - | 2,328 | 71,498 | -19,054 | - | 457,400 | |
| MAYBURY, Peter | CFO | 234,761 | - | 2,328 | 40,125 | -4,226 | - | 272,988 | |
| Total | | 5,022,138 | - | 5,215 | 690,111 | 4,476 | - | 5,721,941 | |

Notes

- 1 Base salary includes gross salary earned while working plus annual leave accrued.
- 2 Other benefits and allowances includes car parking benefits that form part of an individual's remuneration package.
- 3 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.
- 4 Long service leave includes leave accrued, long service leave taken and the negative movement in the long service leave provision as a result in the change to the 10-year bond rate.

Table A3.3: Information about remuneration for senior executives

| Total remuneration bands | Short-term benefits | | | Post-employment benefits | | Other long-term benefits | | | Termination benefits | Total remuneration |
|----------------------------|-----------------------------|----------------------------------|-----------------|--|---|---|----------------------------------|------------------------------|----------------------------|--------------------|
| | Number of senior executives | Average base salary ¹ | Average bonuses | Average other benefits and allowances ² | Average superannuation contributions ³ | Average long service leave ⁴ | Average other long-term benefits | Average termination benefits | Average total remuneration | |
| \$0-\$220,000 | 15 | 112,751 | - | 345 | 19,673 | 1,677 | - | - | 134,445 | |
| \$220,001-\$245,000 | 4 | 201,144 | - | 438 | 31,705 | 980 | - | - | 234,267 | |
| \$245,001-\$270,000 | 8 | 223,250 | - | - | 33,454 | 1,803 | - | - | 258,507 | |
| \$270,001-\$295,000 | 17 | 245,316 | - | 463 | 36,754 | (821) | - | - | 281,711 | |
| \$295,001-\$320,000 | 2 | 260,585 | - | - | 40,971 | 2,347 | - | - | 303,903 | |
| \$320,001-\$345,000 | 6 | 288,176 | - | 661 | 46,806 | (2,645) | - | - | 332,998 | |
| \$345,001-\$370,000 | 1 | 313,947 | - | 1,752 | 49,497 | (13,351) | - | - | 351,845 | |
| \$370,001-\$395,000 | 2 | 333,926 | - | 1,073 | 56,101 | 3,076 | - | - | 394,177 | |
| \$420,001-\$445,000 | 3 | 389,866 | - | 715 | 39,703 | 2,734 | - | - | 433,018 | |
| \$445,001-\$470,000 | 1 | 405,968 | - | - | 34,614 | 5,279 | - | - | 445,861 | |

Notes

- 1 Base salary includes gross salary earned while working plus annual leave accrued.
- 2 Other benefits and allowances includes car parking benefits that form part of an individual's remuneration package.
- 3 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.
- 4 Long service leave includes leave accrued, long service leave taken and the negative movement in the long service leave provision as a result in the change to the 10-year bond rate.

Table A3.4: Information about remuneration for other highly paid staff

| Total remuneration bands | Short-term benefits | | | | Post-employment benefits | | | Other long-term benefits | | Termination benefits | Total remuneration |
|----------------------------|-----------------------------------|----------------------------------|-----------------|--|---|---|----------------------------------|------------------------------|----------------------------|----------------------|--------------------|
| | Number of other highly paid staff | Average base salary ¹ | Average bonuses | Average other benefits and allowances ² | Average superannuation contributions ³ | Average long service leave ⁴ | Average other long-term benefits | Average termination benefits | Average total remuneration | | |
| \$245,001-\$270,000 | 6 | 221,288 | - | 212 | 37,745 | (2,816) | - | - | 256,430 | | |
| \$270,001-\$295,000 | 1 | 228,075 | - | 1,752 | 44,028 | (1,823) | - | - | 272,032 | | |
| \$395,001-\$420,000 | 1 | 352,166 | - | - | 57,268 | 4,406 | - | - | 413,841 | | |
| \$420,001-\$445,000 | 1 | 390,505 | - | - | 30,058 | 4,618 | - | - | 425,181 | | |
| \$445,001-\$470,000 | 1 | 393,488 | - | - | 57,268 | 4,394 | - | - | 455,150 | | |

Notes

- 1 Base salary includes gross salary earned while working plus annual leave accrued.
- 2 Other benefits and allowances includes car parking benefits that form part of an individual's remuneration package.
- 3 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.
- 4 Long service leave includes leave accrued, long service leave taken and the negative movement in the long service leave provision as a result in the change to the 10-year bond rate.

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).

Health and safety outcomes

Comcare premiums

The ACCC's final Comcare premium for 2021–22 was 0.22% of payroll. This is a slight rise on the 2020–21 premium of 0.20%. It remains well below the average indicative rate for the scheme in 2021–22 which is 0.83%.

Compensation claims

There were 3 new compensation claims lodged with Comcare from the ACCC and AER during 2021–22. The ACCC and AER had 8 open compensation claims at the end of 2021–22.

Early intervention

The ACCC and AER support employees suffering from work related physical and psychological injuries or illnesses to maintain or resume attendance at work. During 2021–22 this assistance, including psychological support, was provided to 21 employees.

Incident statistics

There were 21 reports of incidents of an injury or a 'near-miss' involving employees in 2021–22. There was one notifiable incident during the year.

Investigations, directions and notices

The agency received no notices under the WHS Act and did not conduct any investigations during 2021–22.

Appendix 5: Advertising and market research

During 2021-22 the ACCC and AER conducted the following advertising campaigns:

- Small business online education
www.accc.gov.au/business/business-rights-protections/your-rights-responsibilities-as-a-business-online
- Franchising course promotion
www.accc.gov.au/about-us/tools-resources/cca-education-programs/franchising-education-program
- Button battery safety (Christmas)
www.productsafety.gov.au/buttonbatteries
- Scams Awareness Week 2021
www.scamwatch.gov.au/news-alerts/scams-awareness-week-2021
- Quad bike safety standard – Phase 2
www.productsafety.gov.au/products/transport/quad-bikes
- AER Energy Made Easy
www.energymadeeasy.gov.au

Further information on these campaigns is available at www.accc.gov.au and www.productsafety.gov.au. The agency 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 \$14,500 (GST inclusive) to advertising agencies, market research organisations, polling organisations, direct mail organisations and media advertising agencies.

Table A5.1 sets out expenditure incurred by the ACCC to external organisations for advertising and market research services in 2021-22.

Table A5.1: Advertising and market research payments of more than \$14,500 in 2021–22

| Advertising and market research organisation | Description of advertising and market research services | Amount \$ inc. GST |
|--|---|--------------------|
| Universal McCann | Small business online education | \$11,220.38 |
| Universal McCann | Button battery safety (Christmas) | \$22,000 |
| Universal McCann | Scams Awareness Week 2021 | \$16,499.99 |
| Universal McCann | Paid social content – range of consumer topics | \$46,871 |
| Universal McCann | LinkedIn Life Page Package | \$36,689.40 |
| Universal McCann | Bulk recruitment campaign | \$18,261.25 |
| Universal McCann | Product recall advertising – LG solar batteries | \$49,500 |
| Bastion Insights | Small business communications research | \$55,000 |
| Bastion Insights | Baby product safety communications research | \$35,200 |
| Bastion Insights | ACCC Community Perceptions Research | \$99,990 |
| Newgate Communications | AER Stakeholder Research 2022 | \$58,190.06 |
| Newgate Communications | Commercial and Industrial gas users research | \$103,400 |
| Universal McCann | AER Energy Made Easy campaign | \$55,000 |
| Icon Agency | AER Energy Made Easy campaign - creative | \$54,901 |
| Bastion Insights | Consumer vulnerability lived experience panel research | \$113,300 |
| BIT Australia | Testing the presentation of 'better offer' information on energy bills for Better Bills Guideline | \$134,365 |
| BIT Australia | Example bill testing for Better Bills Guideline | \$107,883 |
| Department of the Prime Minister and Cabinet | Behavioural Insights research – consumer bills; Energy Made Easy (delivered by Behavioural and Economics Team of the Australian Government) | \$37,500 |
| Hall and Partners | Research focus groups and interviews for older consumers, and small and medium businesses | \$66,495 |
| Core Unit Trust trading as TestMate | Market research for website redevelopment | \$14,652 |

Appendix 6: Ecologically sustainable development

How our activities and administration of legislation accord with principles of ecologically sustainable development

At all times the agency seeks to achieve outcomes and its objectives in a manner which minimises the impact on resources and the environment.

How our outcomes contribute to ecologically sustainable development

We make decisions that, in line with s 3A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), factor in short-term and long-term economic, environmental, social and equitable considerations.

Activities that affect the environment

To ensure we are able to effectively achieve our purpose, we have established offices at 9 locations around Australia. The ACCC/AER operates in line with the Energy Efficiency in Government Operations Policy and the APS 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

We are committed to reducing the environmental impact of our 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 2,000 m², maintaining 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 staff awareness through behaviour change programs.
- Continuing monitoring and reporting of the ACCC/AER'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 physical travel.
- Reducing vehicle fleet and servicing vehicles in accordance with manufacturers' specifications.
- Using E10 fuels for lease vehicles where possible.

Workplace efficiencies

- Emphasising electronic records and electronic working arrangements.
- Promoting access to ACCC publications electronically rather than in print.

Purchasing and procurement

- Purchasing 100% 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 sustainability practices. The ACCC/AER 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 agency 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 and AER.

Appendix 7: Legislative framework

This appendix outlines the legislation under which we operate.

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)

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 |
| IVE | Motor vehicle service and repair information sharing scheme |
| VI | Enforcement and remedies |
| VII | Authorisations and notifications |
| XIA | The Competition Code |

Fair trading and consumer protection

Table 7.2: Parts of the Competition and Consumer Act 2010 (including the Australian Consumer Law) dealing with fair trading and consumer protection

| <i>Competition and Consumer Act 2010</i> | |
|--|--|
| IVB | Industry codes of conduct: the franchising, horticulture, dairy, wheat, electricity retail, oil and unit pricing codes are mandatory codes prescribed under Part IVB |
| IVE | Motor vehicle service and repair information sharing scheme |
| VI | Enforcement and remedies |
| <i>Australian Consumer Law – Schedule 2 to the Competition and Consumer Act 2010</i> | |
| 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 |

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

| | |
|--------|---|
| III AA | Regulatory and enforcement responsibilities under Commonwealth laws, the National Energy Laws and Rules |
| III A | Access to the services of essential national infrastructure facilities such as rail tracks and port terminals |
| IV B | Industry codes of conduct |
| VII A | 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 |
| XI B | Anti-competitive conduct in telecommunications |
| XI C | Access to services for telecommunications |
| XI CA | Prohibited conduct in relation to the electricity industry |

Appendix 8: Information required under the Competition and Consumer Act 2010

This appendix contains certain disclosures required by the *Competition and Consumer Act 2010* (Cth) (CCA).

Section 171(2) reporting requirements

Section 51(1) of the 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 our annual report to include a list of all Commonwealth, state and territory laws that the ACCC is aware of that rely on s 51(1) of the CCA or s 51(1) of the Competition Code (as defined in s 150A).

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

Electricity Reform Act 2000

Environmental Protection (Beverage Containers and Plastic Bags) Act 2011

Liquor Act 2019

Water Supply and Sewerage Services Act 2000

Queensland

Brisbane Olympic and Paralympic Games Arrangements Act 2021

Competition Policy Reform (Queensland) Act 1996

Gladstone Power Station Agreement Act 1993

Liquor Act 1992

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

Energy Coordination and Planning 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

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 determinations were made under s 44V.

Decisions on access undertaking applications and access code applications

No decisions were made.

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 2021–22 the following notices were issued by the ACCC in the process of conducting market studies and inquiries and investigating potential breaches of the CCA:

- 16 (incl. 3 variations) 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)
- 190 (incl. 25 variations) notices under s 95ZK (requiring the provision of information and/or documents relating to the affairs of the addressee which 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)
- 245 (incl. 95 variations) notices under s 155(1)(a) and (b) (requiring the addressee to furnish information in writing and produce documents)

- 2 notices under s 155(1)(a) (requiring the addressee to furnish information)
- 168 (incl. 18 variations) notices under s 155(1)(b) (requiring the addressee to produce documents)
- 97 (incl. 30 variations) notices under s 155(1)(c) (requiring the addressee to appear in person and give evidence)
- 6 authorisation instruments were signed to facilitate the disclosure of protected information under s 155AAA(12) (Chair is satisfied that particular protected information will assist another public agency, body or person)
- 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 6 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

Six (6) search warrants were issued pursuant to s 154X during 2021–22 in relation to 3 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.

Challenges to the validity of search warrants

There were no challenges to the validity of the search warrants.

Entry to premises

There were no 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 s 133(1) 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 2021–22 surveillance staff appointed as inspectors undertook nil 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 2021–22 and a summary of the kinds of complaints received and how they were dealt with in Part 3 on page 97.

Matters investigated by the ACCC

Details of the major matters investigated by the ACCC in 2021–22 are in Part 3 on pages 31 to 158.

Substantiation notices issued

There were no substantiation notices issued pursuant to s 219(2)(a) and (c) of the CCA in 2021–22.

Intervention in proceedings

Neither the ACCC nor the AER intervened in any proceedings during 2021-22.

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.

Entities that wish to collect consumer data under 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 set out in Part IVD of the CCA and the *Competition and Consumer (Consumer Data Right) Rules 2020* (CDR Rules). The Data Recipient Accreditor's functions and powers include: to 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.

The ACCC is the designated Data Recipient Accreditor under the CCA.

During 2021-22 the Data Recipient Accreditor:

- approved a form for persons to use when applying to be accredited at the sponsored level. Following rule changes, the sponsored level of accreditation came into effect on 1 February 2022
- approved changes to the full accreditation form for persons to use when applying to be accredited at the unrestricted level, including updates to the evidence that will be accepted to demonstrate that certain criteria have been met
- consulted with the Australian Financial Complaints Authority in relation to an application to be an accredited person
- accredited 20 persons at the unrestricted level of accreditation
- received notification of 27 CDR representative arrangements.

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.

The Accreditation Registrar has a number of functions and powers under Part IVD of the CCA and the CDR Rules. The Registrar must establish and maintain the Register of Accredited Persons. 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 contains a list of data holders and associated technical information.

Other Registrar functions are 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 by 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.

The ACCC is the designated Registrar under the CCA.

During 2021-22 the Registrar:

- maintained the Register of Accredited Persons and associated database
- published information on the Register about 63 data holders, 20 accredited persons and 27 CDR representative arrangements³⁷
- removed 3 data holders from the associated database after they transferred their banking businesses to other data holders and amended the list of data holders to reflect changes in responsible data holders for brands affected by the transfer³⁸
- maintained the security, integrity and stability of the Register and associated database by implementing steps and issuing related guidance to manage onboarding of data holders and accredited persons to the Register.

37 Prior to 1 July 2021, there were 16 data holders and 12 accredited data recipients on the Register of Accredited Persons and associated database. During 2021-22 the Registrar published information about a further 63 data holders and 20 accredited data recipients.

38 Citigroup Pty Limited brands and the 86400 Ltd brand were changed to National Australia Bank Limited as the responsible data holder and the South West Credit Union Co-operative Limited brand to Beyond Bank Australia Limited as the responsible data holder.

Appendix 9: Correction of material errors in previous annual reports

Nil.

Glossary of abbreviations and acronyms

| | |
|---------|---|
| AANZFTA | ASEAN-Australia-New Zealand Free Trade Area |
| ABN | Australian Business Number |
| ACCC | Australian Competition and Consumer Commission |
| ACL | Australian Consumer Law |
| ACLEI | Australian Commission for Law Enforcement Integrity |
| 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 |
| AFP | Australian Federal Police |
| AGD | Attorney-General's Department |
| ANAO | Australian National Audit Office |
| ANZSIC | Australian and New Zealand Standard Industrial Classification |
| AO | Order of Australia |
| APP | Aeronautical Pricing Principles |
| APRA | Australian Prudential Regulation Authority |
| APS | Australian Public Service |
| AQL | auction quantity limit |
| ARENA | Australian Renewable Energy Agency |
| ASEAN | Association of Southeast Asian Nations |
| ASIC | Australian Securities and Investments Commission |
| ASX | Australian Stock Exchange |
| AUD | Australian Dollars |
| BETA | Behavioural Economics Team of the Australian Government |
| BSC | Battery Stewardship Council |
| C&I | commercial and industrial |
| CACPP | Cambodia-Australia Consumer Protection Partnership |
| CAF | Forum on Consumer Affairs |
| CALD | culturally and linguistically diverse |
| CAP | Consumer Affairs Program |
| CCA | <i>Competition and Consumer Act 2010</i> |
| CCB | Canadian Competition Bureau |
| CCF | Competition and Fraud Directorate General |
| CCG | Consumer Consultative Group |

| | |
|---------------|--|
| CCP | Consumer Challenge Panel |
| CDPP | Commonwealth Director of Public Prosecutions |
| CDR | Consumer Data Right |
| CDR Rules | Competition and Consumer (Consumer Data Right) Rules 2020 |
| CDR Standards | Consumer Data Standards |
| CECV | customer export curtailment value |
| CEO | Chief Executive Officer |
| CEPA | Cambridge Economic Policy Associates |
| CFFMEU | Construction, Forestry, Maritime, Mining and Energy Union |
| CFO | Chief Finance Officer |
| CLIP | Competition Law Implementation Program |
| Co | company |
| COAG | Council of Australian Governments |
| COO | Chief Operating Officer |
| cpl | cents per litre |
| CRG | Consumer Reference Group |
| CRIS | consultation regulation impact statement |
| Cth | Commonwealth |
| CTM | certification trade mark |
| DAA | Day Ahead Auction |
| Dairy Code | Dairy Code of Conduct |
| DER | distributed energy resources |
| DFAT | Department of Foreign Affairs and Trade |
| DMO | Default Market Offer |
| DPSI | Digital Platform Services Inquiry |
| DSB | Data Standards Body |
| EA | Enterprise Agreement |
| ECA | Energy Consumers Australia |
| EL | Executive Level |
| EME | Energy Made Easy |
| ESB | Energy Security Board |
| FCAS | frequency control ancillary services |
| FOI Act | <i>Freedom of Information Act 1982</i> |
| GASA | Global Anti-Scam Alliance |
| GST | goods and services tax |
| ICARE | Impartial, Committed to Service, Accountable, Respectful and Ethical |
| ICN | International Competition Network |
| ICPEN | International Consumer Protection and Enforcement Network |
| ICT | information and communications technology |
| IPART | Independent Pricing and Regulatory Tribunal of New South Wales |

| | |
|-----------|---|
| ISP | Integrated Service Plan |
| KCA | Korean Consumer Agency |
| LEIC Act | <i>Law Enforcement Integrity Commission Act 2006</i> |
| LGBTIQ+ | Lesbian, Gay, Bisexual, Trans, Intersex, Queer and other sexual and gender identities |
| LNG | liquified natural gas |
| Ltd | Limited |
| LVRT | low voltage ride through |
| MAIF | Agreement-marketing of infant formula agreement |
| MAP | Mekong-Australia Partnership |
| MBA | Measuring Broadband Australia |
| MMAC | Multilateral Mutual Assistance and Cooperation |
| MNO | mobile network operator |
| MP | Member of Parliament |
| N/A | not applicable |
| NABERS | National Australian Built Environment Rating System |
| NBN | National Broadband Network |
| NDOs | non-discrimination obligations |
| NED | nominal expiry date |
| NEM | National Electricity Market |
| NEO | National Electricity Objective |
| NGO | National Gas Objective |
| NICS | National Indigenous Consumer Strategy |
| NSW | New South Wales |
| NT | Northern Territory |
| OAIC | Office of the Australian Information Commissioner |
| OECD | Organisation for Economic Cooperation and Development |
| OPEC | Organisation of the Petroleum Exporting Countries |
| Ors | others |
| PBS | Portfolio Budget Statement |
| PGPA Act | <i>Public Governance, Performance and Accountability Act 2013</i> |
| PGPA Rule | <i>Public Governance, Performance and Accountability Rule 2014</i> |
| PHI | private health insurer |
| PSCC | Product Safety Consultative Committee |
| PSPF | Protective Security Policy Framework |
| PSS | Public Sector Superannuation Scheme |
| PSSap | PSS accumulation plan |
| Pty Ltd | Proprietary Limited |
| Qld | Queensland |
| RAAP | Register and Accreditation Application Platform |

| | |
|----------|---|
| RAT | rapid antigen tests |
| Register | Register of Accredited Persons |
| REZ | Renewable Energy Zones |
| RIN | regulatory information notice |
| RIT-T | Regulatory Investment Test for Transmission |
| RoLR | Retailer of Last Resort |
| RPF | Regulator Performance Framework |
| RSP | retail service provider |
| SA | South Australia |
| SAU | Special Access Undertaking |
| SDAU | Strategic Data Analysis Unit |
| SES | Senior Executive Service |
| SME | small and medium enterprise |
| SOCI Act | <i>Security of Critical Infrastructure Act 2018</i> |
| t/a | trading as |
| Tas | Tasmania |
| TCCT | Trade Competition Commission of Thailand |
| TGA | Therapeutic Goods Administration |
| UK | United Kingdom |
| URF | Utility Regulators Forum |
| US | United States of America |
| USD | US dollars |
| Vic | Victoria |
| WA | Western Australia |
| WADSL | wholesale asymmetric digital subscriber line |
| WEMDRA | Wholesale Energy Market Dispute Resolution Advisor |
| WHS | work health and safety |
| WHS Act | <i>Work Health and Safety Act 2011</i> |
| WSP | Work Smarter Program |

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 |
|---------------------|--|--|-------------|------|
| 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 |
| 17AJ(b) | | Alphabetical index. | Mandatory | 273 |
| 17AJ(c) | | Glossary of abbreviations and acronyms. | Mandatory | 260 |
| 17AJ(d) | | List of requirements. | Mandatory | 264 |
| 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 | 5 |
| 17AD(b) | Overview of the entity | | | |
| 17AE(1)(a)(i) | | A description of the role and functions of the entity. | Mandatory | 21 |
| 17AE(1)(a)(ii) | | A description of the organisational structure of the entity. | Mandatory | 21 |
| 17AE(1)(a)(iii) | | A description of the outcomes and programmes administered by the entity. | Mandatory | 34 |
| 17AE(1)(a)(iv) | | A description of the purposes of the entity as included in corporate plan. | Mandatory | 34 |
| 17AE(1)(aa)(i) | | Name of the accountable authority or each member of the accountable authority | Mandatory | 21 |
| 17AE(1)(aa)(ii) | | Position title of the accountable authority or each member of the accountable authority | Mandatory | 21 |

| PGPA Rule Reference | Part of Report | Description | Requirement | Page |
|---------------------|--|---|---------------------------------|------------|
| 17AE(1)(aa)(iii) | | Period as the accountable authority or member of the accountable authority within the reporting period | Mandatory | 161 |
| 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 | 31-158 |
| 17AD(c)(ii) | Report on Financial Performance | | | |
| 17AF(1)(a) | | A discussion and analysis of the entity's financial performance. | Mandatory | 16 |
| 17AF(1)(b) | | A table summarising the total resources and total payments of the entity. | Mandatory | 229 |
| 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 | 16 and 179 |
| 17AD(d) | Management and Accountability | | | |
| | Corporate Governance | | | |
| 17AG(2)(a) | | Information on compliance with section 10 (fraud systems) | Mandatory | 175 |
| 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 |

| PGPA Rule Reference | Part of Report | Description | Requirement | Page |
|-------------------------------|----------------|--|-----------------------------|--------------------------------------|
| 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 | 161-176 and 185 and 190-191 |
| 17AG(2)(d) - (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 | 179 |
| Audit Committee | | | | |
| 17AG(2A)(a) | | A direct electronic address of the charter determining the functions of the entity's audit committee. | Mandatory | 172 |
| 17AG(2A)(b) | | The name of each member of the entity's audit committee. | Mandatory | 173 |
| 17AG(2A)(c) | | The qualifications, knowledge, skills or experience of each member of the entity's audit committee. | Mandatory | 173 |
| 17AG(2A)(d) | | Information about the attendance of each member of the entity's audit committee at committee meetings. | Mandatory | 173 |
| 17AG(2A)(e) | | The remuneration of each member of the entity's audit committee. | Mandatory | 173 |
| External Scrutiny | | | | |
| 17AG(3) | | Information on the most significant developments in external scrutiny and the entity's response to the scrutiny. | Mandatory | 177 |
| 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 | 178 |
| 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 | 178 |
| 17AG(3)(c) | | Information on any capability reviews on the entity that were released during the period. | If applicable, Mandatory | 178 |
| Management of Human Resources | | | | |
| 17AG(4)(a) | | An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives. | Mandatory | 183 |

| PGPA Rule Reference | Part of Report | Description | Requirement | Page |
|---------------------|----------------|--|--------------------------|---------|
| 17AG(4)(aa) | | <p>Statistics on the entity's employees on an ongoing and non-ongoing basis, including the following:</p> <p>(a) statistics on full-time employees;</p> <p>(b) statistics on part-time employees;</p> <p>(c) statistics on gender</p> <p>(d) statistics on staff location</p> | Mandatory | 231-238 |
| 17AG(4)(b) | | <p>Statistics on the entity's APS employees on an ongoing and non-ongoing basis; including the following:</p> <p>Statistics on staffing classification level;</p> <p>Statistics on full-time employees;</p> <p>Statistics on part-time employees;</p> <p>Statistics on gender;</p> <p>Statistics on staff location;</p> <p>Statistics on employees who identify as Indigenous.</p> | Mandatory | 231-238 |
| 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 | 190-191 |
| 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 | 237 |
| 17AG(4)(c)(ii) | | The salary ranges available for APS employees by classification level. | Mandatory | 238 |
| 17AG(4)(c)(iii) | | A description of non-salary benefits provided to employees. | Mandatory | 191 |
| 17AG(4)(d)(i) | | Information on the number of employees at each classification level who received performance pay. | If applicable, Mandatory | 238 |
| 17AG(4)(d)(ii) | | Information on aggregate amounts of performance pay at each classification level. | If applicable, Mandatory | 238 |
| 17AG(4)(d)(iii) | | Information on the average amount of performance payment, and range of such payments, at each classification level. | If applicable, Mandatory | 238 |
| 17AG(4)(d)(iv) | | Information on aggregate amount of performance payments. | If applicable, Mandatory | 238 |
| 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 | 182 |

| PGPA Rule Reference | Part of Report | Description | Requirement | Page |
|---------------------|--------------------------------------|--|-------------|---------|
| | Purchasing | | | |
| 17AG(6) | | An assessment of entity performance against the <i>Commonwealth Procurement Rules</i> . | Mandatory | 179-181 |
| | Reportable consultancy contracts | | | |
| 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 | 180 |
| 17AG(7)(b) | | A statement that <i>“During [reporting period], [specified number] new reportable consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing reportable consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]”. | Mandatory | 180 |
| 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 | 180 |
| 17AG(7)(d) | | A statement that <i>“Annual reports contain information about actual expenditure on reportable consultancy contracts. Information on the value of reportable consultancy contracts is available on the AusTender website.” | Mandatory | 180 |
| | Reportable non-consultancy contracts | | | |
| 17AG(7A)(a) | | A summary statement detailing the number of new reportable non-consultancy contracts entered into during the period; the total actual expenditure on such contracts (inclusive of GST); the number of ongoing reportable non-consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting period on those ongoing contracts (inclusive of GST). | Mandatory | 181 |

| PGPA Rule Reference | Part of Report | Description | Requirement | Page |
|---------------------|----------------|--|--------------------------|---------|
| 17AG(7A)(b) | | A statement that <i>“Annual reports contain information about actual expenditure on reportable non-consultancy contracts. Information on the value of reportable non-consultancy contracts is available on the AusTender website.”</i> | Mandatory | 181 |
| 17AD(daa) | | Additional information about organisations receiving amounts under reportable consultancy contracts or reportable non-consultancy contracts | | |
| 17AGA | | Additional information, in accordance with section 17AGA, about organisations receiving amounts under reportable consultancy contracts or reportable non-consultancy contracts. | Mandatory | 181 |
| | | 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 | 179-180 |
| | | 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 | 180 |
| | | Small business | | |
| 17AG(10)(a) | | A statement that <i>“[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.”</i> | Mandatory | 180 |
| 17AG(10)(b) | | An outline of the ways in which the procurement practices of the entity support small and medium enterprises. | Mandatory | 180 |

| PGPA Rule Reference | Part of Report | Description | Requirement | Page |
|------------------------|------------------------------------|--|--------------------------|---------|
| 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 | 199–226 |
| Executive Remuneration | | | | |
| 17AD(da) | | Information about executive remuneration in accordance with Subdivision C of Division 3A of Part 2-3 of the Rule. | Mandatory | 241–244 |
| 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 | 246–247 |
| 17AH(1)(a)(ii) | | If the entity did not conduct advertising campaigns, a statement to that effect. | If applicable, Mandatory | 246–247 |
| 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 | 181 |
| 17AH(1)(c) | | Outline of mechanisms of disability reporting, including reference to website for further information. | Mandatory | 188 |
| 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 | 178 |
| 17AH(1)(e) | | Correction of material errors in previous annual report. | If applicable, mandatory | 259 |
| 17AH(2) | | Information required by other legislation. | Mandatory | 255–258 |

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 Accrerator's functions, and the exercise of the Data Recipient Accrerator's powers | 257-258 |
| 56CL(4) | Information about the performance of the Accreditation Registrar's functions, and the exercise of the Accreditation Registrar's powers | 257-258 |
| 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). | 252-255 |
| 171(3)(aa)(i) | The time taken to make final determinations under s. 44V in relation to access disputes. | 255 |
| 171(3)(aa)(ii) | The time taken to make decisions on access undertaking applications or access code applications (within the meaning of s. 44B). | 255 |
| 171(3)(aa)(iii) | The time taken to make decisions on applications under s. 44PA(1). | 255 |
| 171(3)(a)(i) | The number of notices given by the Commission under s. 155. | 255 |
| 171(3)(a)(iii) | The number of notices given by the Commission under s. 155A. | 255 |
| 171(3)(b) | A general description of the nature of the matters in respect of which the notices were given. | 255-256 |
| 171(3)(c) | The number of proceedings brought to challenge the validity of the notices. | 256 |
| 171(3)(ca) | The number of search warrants issued by a judge under s. 135Z or signed by a judge under s. 136. | 256 |
| 171(3)(d) | The number of search warrants issued by a magistrate under s. 154X or signed by a magistrate under s. 154Y. | 256 |
| 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. | 256 |
| 171(3)(db) | The number of proceedings brought to challenge the validity of the search warrants referred to in paragraph (ca) or (d). | 256 |
| 171(3)(dc) | The number of entries onto premises under s. 133B or 133C, Division 6 of Part XI or Part XIX. | 256 |
| 171(3)(e) | The number of complaints received by the Commission. | 97 |
| 171(3)(f) | A general summary of the kinds of complaints received by the Commission and how it dealt with them. | 97 |
| 171(3)(g) | A general description of the major matters investigated by the Commission. | 31-158 |
| 171(3)(h) | The number of times the Commission has intervened in proceedings and a general description of the reasons for doing so. | 257 |

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 \$14,500 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. | 246 |

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.

| Section | Requirement | Page |
|---------|--|---------|
| 4(2)(a) | Initiatives taken during the year to ensure the health, safety and welfare of workers who carry out work for the entity. | 185-186 |
| 4(2)(b) | 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. | 245 |
| 4(2)(c) | 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. | 245 |
| 4(2)(d) | 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> . | 245 |
| 4(2)(e) | 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.

| Section | Requirement | Page |
|------------|--|---------|
| 516A(6)(a) | 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). | 182 |
| 516A(6)(b) | How the outcomes (if any) specified for the entity in an Appropriations Act relating to the period contribute to ESD. | 248-249 |
| 516A(6)(c) | The effect of the entity's activities on the environment. | 248-249 |
| 516A(6)(d) | Any measures the reporter is taking to minimise the impact of activities by the entity on the environment. | 248-249 |
| 516A(6)(e) | The mechanisms, if any, for reviewing and increasing the effectiveness of those measures. | 248-249 |

Index

A

- abbreviations, 260–263
- access decisions, AER, 12, 142, 156
- ACCC/AER Regulatory Conference, 114
- Accountable Authority, 21
- accreditation, CDR, 9, 62, 63–64
 - highlights 2021–22, 68
 - key activity, 67–69
 - outcomes achieved, 69
 - performance measures, targets and results, 68
- accredited data recipients, CDR, 2, 62, 64–66, 67–69
 - number of, 68
- active data holders, CDR, 2, 64–66
 - performance reporting, 70
- administered revenue, 16
- Administrative Appeals Tribunal, 177
- administrative resolutions, 40, 43, 70, 71, 77, 83, 103, 104, 107
- AdTech Inquiry, 8
- advertising and market research, 246–247
- AER *note on network resilience*, 158
- agency capability reviews, 178
- Agricultural machinery market study, 89
- air travel see aviation sector
- Airport monitoring report, 9, 118
- airports and airlines see aviation sector
- annual performance statements, 33–158
- annual report contact officer, ii
- Annual retail markets report 2020–21*, 134, 135
- anti-competitive agreements and practices, 7, 40
- anti-competitive conduct, 35
 - court cases, 43–46
 - highlights 2021–22, 42
 - strategic objective relating to, 40–56
- APS census, 17, 184, 185, 194, 196
- APS Values and Code of Conduct, 188–189
- ASEAN-Australia-New Zealand Free Trade Area Consumer Affairs Program, 25, 47, 95
- Asia-Pacific Economic Cooperation, 25
- asset management, 182
- Attorney-General's Department, 54
- Audit and Risk Committee, 172–173
- audit, external, 16
- audit, internal, 174
- Auditor-General access clauses, 180
- Auditor-General reports, 178
- Australia — European Union Free Trade Agreement, 47
- Australia's Disability Strategy 2021–2031, 188
- Australian and New Zealand Energy and Water Ombudsman Network, 28
- Australian Commission for Law Enforcement Integrity, 24, 179
- Australian Communications and Media Authority, 24, 54
- Australian Competition and Consumer Commission (ACCC) (Program 1.1)
 - about, 21
 - agency change initiatives, 10, 39
 - Chair, 5–11, 21, 48, 162
 - committees, statutory and governance, 168–170, 172–174
 - decision-making, 195
 - functions and powers, 23

- government expectations, 26
 - members, 161-165
 - organisational structure, 21-22
 - performance overview, 39
 - performance measures and targets, 39
 - priorities, 23, 39
 - purpose, vision and role, 23
 - responsibilities, 21
 - restructure, 10
 - strategic objectives and key activities, 35-37, 39
 - Australian Competition Tribunal, 49, 50, 177-178
 - Australian Consumer Law, 25, 37, 74
 - key activity (consumers), 90-98
 - key activity (small business), 87-90
 - unfair contract terms, 54
 - Australian Consumer Law compliance and enforcement
 - highlights 2021-22, 76
 - key activity, 76-87
 - performance measures, targets and results, 77-78
 - Australian Cyber Security Centre, 91
 - Australian Energy Market Commission, 13, 28, 149
 - Australian Energy Market Operator, 28
 - Australian Energy Regulator (AER) (Program 1.2)
 - about, 21
 - advisory groups, 130
 - Board, 21, 166-167
 - Chair, 12-15, 166
 - committees, subject-matter, 171
 - functions, 26-27
 - government expectations, 29
 - organisational structure, 21-22
 - priorities, 28, 124-125, 128, 133-134, 135, 139-140, 149, 156
 - purpose and vision, 26
 - regulatory approach and principles, 155-158
 - strategic objectives and key activities, 28, 38
 - Australian Federal Police, 5, 91
 - Australian Financial Crimes Exchange, 93
 - Australian Government stakeholders, 24
 - Australian National Audit Office, 16, 178
 - Australian Prudential Regulation Authority, 24
 - Australian Public Service Values, 23
 - Australian Securities and Investments Commission, 24
 - Australian Workplace Agreements, 191, 239
 - authorisations and notifications, ACCC, 3, 6, 27, 35, 40
 - highlights 2021-22, 48
 - key activity, 48-51
 - number of, 51
 - outcomes achieved, 49-51
 - performance measures, targets and results, 49
 - register of, 50
 - timeliness, 49
 - average staffing level, 17
 - aviation sector, 9, 41, 109, 118-119
- ## B
- Bannerman Competition Lecture 2022, 48
 - benchmarking reports, electricity distribution and transmission network, AER, 14, 135, 139
 - Better bills guideline*, 13, 128, 132, 158
 - Better resets handbook*, AER, 13, 129, 130, 143, 150, 155
 - black system event 2016, 134, 138
 - Board, AER, 21
 - members, 166-167
 - broadband networks, non-NBN, 113, 114, 117-118

broadband speeds, 82, 113
business continuity, 175
business planning, 174
Business Stakeholder Survey, ACCC, 37
button batteries, 8, 100, 103, 104, 105, 106
Button Battery Advisory Group, 106

C

CALD Plan, 187
Cambodia—Australia Consumer Protection Partnership, 96
Canadian Competition Bureau, 46
capacity-building programs, 25, 47, 95–96
carrier separation rules, 113
cartel conduct, 7, 40, 41
 court cases, 42, 44, 45
cartel immunity applications, 46
Cass-Gottlieb, Gina (ACCC Chair), 5–11, 21, 48, 162
certification trade marks, 35, 40
 key activity, 48–51
Chair, ACCC, 21, 48, 162
 review 2021–22, 5–11
Chair, AER, 166
 review 2021–22, 12–15
Chalmers, the Hon Dr Jim (Treasurer), 26
Code of Conduct for Australian Winegrape Purchases, 55
codes of conduct see industry codes of conduct
collaboration see partnerships, collaboration and engagement
collective bargaining class exemption, 48, 50, 51, 85, 89
Comcare premiums, 245
commercial construction, 41
 court cases, 42, 43–44, 45
Committee on Consumer Policy, 87
Commonwealth Director of Public Prosecutions, 40
Commonwealth Ombudsman, 179
Commonwealth Performance Framework, 33
Communications market report 2020–21, 117
communications markets, 109, 110, 112–113, 117–118, 121
Community Perceptions Survey, ACCC, 37
compensation claims, 245
Competition and Consumer Act 2010, 21, 33, ii
 Part IV, 40, 57, 70, 71
 Part IVD, 61, 70, 71
 Part XIC, 113
 Part X, 117
 Part XICA, 121
 section 18, 169
 section 50, 57, 60
 section 56GD, 70
 section 171(2) reporting, 252–255
 section 171(3) reporting, 255–257
 section 50, 57–60
 section 56CH(4) reporting, 257
 section 56CL(4) reporting, 257–258
competition and market rules, industry-specific
 key activity, 120–121
 key performance measures, targets and results, 120
 outcomes achieved, 120–121
Competition Law and Economics workshop, 48
Competition Law Implementation Program, 25, 47
complaints and enquiries, 97
compliance and enforcement priorities, ACCC, 7, 23, 39
 Consumer Data Right, 61–62
 enforcement and compliance actions, 41–42
 mergers and acquisitions, 57

- misleading and deceptive conduct, 74–75
- product safety, 99–100
- compliance and enforcement, CDR
 - consumer data sharing obligations, 72
 - exemptions, 72
 - highlights 2021–22, 70
 - key activity, 70–73
 - outcomes achieved, 71–73
 - performance data obligations, 72
 - performance measures, targets and results, 71
 - product reference data sharing obligations, 72
- compliance audits, AER, 128, 133, 136
- Compliance procedures and guidelines*, AER, 131
- compulsory information gathering powers, 6, 59, 115
- concentrated markets, 9, 37, 109, 114–119
 - access conditions, 109
- concerted practices, 40, 46
- conferences and events, 48, 114
 - data, technology and analytics, 47
 - digital competition, 46–47
 - see also workshops
- conflicts of interest, 175–176
- Conformance Test Suite, CDR, 62, 64
- construction see commercial construction
- consultative committees, 26
- consumer advocacy groups, 24
- Consumer Affairs Australia and New Zealand, 25
- consumer engagement and awareness
 - highlights 2021–22, 91
 - key activity, 90–98
 - performance measures, targets and results, 91
 - product safety, 103, 106
 - see also education, information and awareness campaigns; published guidance and resources; scams
- Consumer Challenge Panel, 29, 130
- Consumer Consultative Committee, 24, 95
- Consumer Consultative Group, 29
- Consumer Consultative Panel, ASIC, 95
- Consumer Data Right (CDR), 2, 9, 24, 35
 - compliance investigations, 71
 - new pathways for participation, 63–64, 66, 68, 69
 - participation in, 9
 - performance dashboard, 73
 - published tools and guidance, 66
 - strategic objective, 61–73
 - see also accreditation, CDR; accredited data recipients, CDR; compliance and enforcement, CDR; enabling technology, CDR; Register and Accreditation Application Platform, CDR; Register of Accredited Persons, CDR
- consumer forums, AER, 29
- consumer guarantees, 75, 81–82, 86, 94
 - consultation regulation impact statement on, 82
- consumer product safety priorities, 99–100
- Consumer Reference Group, 29, 130
- consumer sentiment survey, Energy Consumers Australia, 127
- consumer vulnerability strategy, AER, 13–14, 124, 125
- contacts to ACCC, 97–98
- container freight, 116–117
- Container stevedoring monitoring report, 6, 115, 117, 119
- Contingency frequency control ancillary services compliance bulletin, 136
- contracts, consultancy and non-consultancy, 180–182
- corporate governance, 172–174
- Corporate Governance Board, 172, 195

Corporate Plan 2021–22, ii, 21, 33, 34–35, 39, 61, 63, 122, 174, 185

corporate snapshot, 16

correction of material errors in previous reports, 259

cost pass-through applications, 3, 12, 146

cost-reflective network tariff, 3, 142

court cases, 2, 7

- anti-competitive conduct, 40–48
- Australian Consumer Law, 76
- cartels, 7, 42, 44, 45
- commenced in 2021–22, 42
- competition, 7, 43–46
- consumer guarantees, 81–82
- Dairy Code of Conduct, 85
- fair trading, 84–85, 86
- mergers and acquisitions, 60
- misleading representations, 78, 82–83
- ongoing in 2021–22, 45–46
- recalls, 105
- vulnerable consumers, 80

court enforceable undertakings, 40, 44, 57, 58, 60, 83, 84, 131

COVID-19 Enforcement Taskforce, 78

COVID-19 pandemic, 5–6, 39, 41, 115, 116, 117, 118–119

- authorisations related to, 6, 48, 50
- economic impacts, 110
- impact on investigations, 43
- misleading and deceptive conduct, 75, 78
- see *also* supply chains, global and domestic

cryptocurrency and digital currency, 7, 54, 82

culturally and linguistically diverse communities, 129

Culture Plan, AER, 14, 155

Customer Consultative Group, 130

customer export curtailment value methodology, 147, 157

D

Dairy Code of Conduct, 75, 85, 89

data holders, CDR, 64, 65, 71–72

data recipient representative arrangements, CDR, 2

Data Standards Body, 24, 61

Data Strategy, AER, 14, 134, 156, 193

Data, Technology & Analytics Conference, 47

Day Ahead Auction, 137

debanking, 54

debt collection industry, 76, 84, 95

Default Market Offer, 13, 26, 124

Department of Home Affairs, 83, 151

Department of Infrastructure, Regional Development and Communications, 102

Department of Justice, US, 46

Department of the Prime Minister and Cabinet, 128

Department of the Treasury, 24, 61, 65

DER *integration expenditure guidance note*, AER, 147

Digital Advertising Services Inquiry, 52, 53, 54

digital literacy learning pathway, 193

digital markets, 8–9, 46

Digital Platform Services Inquiry, 9, 52, 53, 54

digital platforms, 41, 51, 53–54, 75

Digital Platforms Inquiry, 54

Disability Action Plan, 187

disability reporting, 188

disconnections and debt collection, energy, 3, 13, 27, 130

disinformation and news quality, 54

Distributed Energy Integration Program, 13

distributed energy resources, 12, 14, 147, 152

Distributed Energy Resources Integration Expenditure Guideline, 140

diversity and inclusion, 17, 36

E

- east coast gas market, 6, 115
- ecologically sustainable development, 248–249
- education, information and awareness campaigns, 24, 36, 42, 74, 88–90, 92, 94
 - debt collection industry, 84
 - energy businesses, 3
 - energy usage, bills and consumer protection, 127
 - product safety, 2, 99, 100, 103, 105
 - see also* published guidance and resources
- education, information and awareness campaigns, AER, 124, 125, 129
- Effectiveness Survey, ACCC, 36, 39
 - Australian Consumer Law and industry codes enforcement, 85
 - authorisations and notifications, 49
 - compliance and enforcement actions, 42
 - consumer awareness and scams, 91
 - Consumer Data Right accreditation, 68
 - Consumer Data Right compliance and enforcement, 71
 - Consumer Data Right enabling technology, 63
 - Consumer Data Right testing and onboarding, 65
 - industry monitoring reports, 114
 - infrastructure access, 111
 - mergers and acquisitions, 58
 - product safety, 104
 - small business, 88
- electricity high price events, 133, 136
- electricity and gas weekly reports, AER, 14, 135
- Electricity Infrastructure Roadmap, 14, 27, 145
- Electricity Market Monitoring Inquiry, 52
- electricity markets, wholesale and retail, 6, 14, 27, 109, 115–116, 119, 120–121, 134–136
- Electricity Retail Code, 121
- employees, 16, 17
 - capability, 10, 155
 - COVID-19 support, 186
 - culturally and linguistically diverse, 187
 - with disability, 184
 - diversity and inclusion, 187
 - health and wellbeing, 39, 185–186
 - hybrid working, 10, 39, 192
 - Indigenous, 184, 237
 - key activity, 183–191
 - learning and development, 39
 - non-salary benefits, 191
 - performance measures, targets and results, 184
 - profile, 189
 - remuneration, 238, 240
 - statistics, 231–238
 - training and development, 184, 193
 - turnover, 190
 - workplace agreements, 190–191, 237, 239
- enabling technology, CDR
 - cybersecurity threats, 61
 - highlights 2021–22, 62
 - incident monitoring and resolution, 64
 - key activity, 62–64
 - outcomes achieved, 63–64
 - performance measures, targets and results, 63
- energy affordability, 27
- energy bills, 13, 27, 116, 119, 128–129, 132
 - see also* Energy Made Easy website
- Energy Consumers Australia, 28
- Energy Innovation Toolkit, 14, 129
- Energy Made Easy website, 3, 13, 27, 124, 125, 126, 127
 - improvements to, 128, 129
- energy markets and retailers, 13, 27, 115–116, 120–121, 133

energy Ombudsman schemes, 130, 155

Energy Security Board, 13

energy technologies, 26

enforceable undertakings, 40, 44, 57, 58, 59, 60, 70, 81, 83, 84, 128, 136

enforcement and compliance action, ACCC, 2, 35, 36, 42

- anti-competitive conduct, 40–48
- highlights 2021–22, 42
- key activity, 40–48
- outcomes achieved, 43–48
- performance measures, targets and results, 43

enforcement and compliance action, AER, 38

- highlights 2021–22, 134
- performance measures, targets and results, 135–136
- strategic objective, 133–138

engagement, consumer (ACCC), 24, 94–95

engagement, consumer (AER), 125, 130

Enterprise Agreement 2016–2019, 190

entity resource statement, 229

environmental performance reporting, 182

environmental sustainability, 182

essential services, 41, 75

Essentials Program, ACCC, 39

ethical standards, 175–176

exclusive arrangements, 42

exclusive dealing, 42, 44

Executive Management Board, 174

exempt contracts, 180

exemptions, competition see authorisations and notifications, ACCC

expenditure, 16

expenses for outcomes, 230

Export tariff guidelines, AER, 147, 158

external scrutiny, 177–179

F

fair trading, 36, 84–87

Fair Work Ombudsman, 84

false and misleading representations, 78, 79, 83,

Federal Bureau of Investigation, US, 46

Federal Court matters, 7, 14–15, 42, 76, 78, 80

- 2016 black system event, 134, 138
- anti-competitive conduct, 43–46
- breaches of National Electricity Rules, 136
- cartels, 7, 42, 44, 45
- competition, 7
- Dairy Code of Conduct, 85
- energy customers on life support, 131
- fair trading, 84–85, 86
- financial hardship, 130
- mergers and acquisitions, 60
- misleading conduct, 7, 82–83
- recalls, 104
- vulnerable consumers, 125

female counsel, 187–188

financial hardship, energy customers in, 124, 125, 126, 127, 128, 130–131

financial performance, 16

financial services, 41, 54

- court cases, 42, 44, 46

financial statements, 199–226

flexible work arrangements, 17

Flubot scam, 8, 91, 93

Food Standards Australia New Zealand, 24

Foreign Currency Conversion Services Inquiry, 54

forums and groups, external, 25, 149, 154

franchising, 8, 75, 84–85, 86, 88–89

Franchising Information Network, 84

fraud control, 175

free trade agreements, 47

freedom of information, 178
fuel excise cut, 6, 110, 115, 119
fuel sector see petrol prices
funeral services, 75, 81, 94

G

G7 Compendium of approaches, 46
G7 Digital Competition Enforcers Summit, 46
gas and electricity networks performance reporting, 146
gas auction reporting, 137
Gas Inquiry, 52, 116
gas markets, 14, 27, 109, 110, 115–116, 133, 134–136
gas pipelines, financial reporting guidelines for, 140
Gender Equality Action Plan, 187
gender pay gap, 17, 184, 187
Global Anti-Scam Association, 91, 93
glossary and abbreviations, 260–263
governance structure, ACCC and AER, 168
grant programs, 182
Guide to Electricity Retail Code online resources, 115
Guideline for Regulatory Sandboxing Trial Projects, AER, 125
Guideline to Better Billing rule, AER, 124

H

hardship see retailer hardship policies
highly paid staff, 244
Horticulture Code of Conduct, 8, 75, 86

I

identity crime, 93
incentive schemes for network service providers, 144
Indigenous Australians, 75, 94
industry codes of conduct, 8, 36, 49, 55, 75, 89
 highlights 2021–22, 76

 key activity, 76–87
 performance measures, targets and results, 77–78

industry monitoring reports, 36, 109
 outcomes achieved, 115–119
 performance measures, targets and results, 114–115

industry self-regulation, AER support of, 137

infant formula, marketing of, 49
infant inclined sleeping products, 104, 107

Infocentre, ACCC, 2, 24, 91, 96–98

Infocentre, small business, 88

information and communications technology, 10, 36, 39

 key activity, 191–193
 performance indicators, targets and results, 192
 security awareness, 192, 193

Information Publication Scheme, 178

information required by other legislation, 271–272

infrastructure access, decision making on
 key activity, 111

 performance measures, targets and results, 111–112

infrastructure monitoring reports, 2

 investigations, 2

 key activity, 114–119

infrastructure regulation, 2

 decisions, 2

infrastructure regulation and industry monitoring priorities, 110

infringement notices, 2, 15, 81, 83, 85, 121, 125, 128, 131, 134, 136, 137

Innovation Enquiry Service, AER, 129

Inquiry into the National Electricity Market report, 115, 119, 120

Integrated System Plan, 139, 144–145

International Competition Network, 25, 56

International Consumer Protection and Enforcement Network, 25, 87, 95

international engagement, 10, 25, 46–48, 86, 95–96, 108, 117

investigations

- Australian Consumer Law and industry codes of conduct, 77
- competition, 43
- Consumer Data Right, 71
- unfair contract terms, 90

J

judicial and tribunal decisions, 177–178

K

key management personnel, 242

keynote addresses, 48

L

leadership development, 183

legislative framework, 250–251

LG solar energy battery recall, 8

Life support registration guide, 131

life support, energy customers on, 15, 124, 125, 128, 131

litigation, ACCC *see* court cases

litigation, AER, 3, 14–15, 124, 125, 128, 130, 133, 134, 136, 137

- vulnerable customers, 125

Little black book of scams, 92

Long-term Productivity of Australia’s Maritime Logistics System inquiry submission, 117

M

mandatory injury reports, product, 2

mandatory standards, product safety, 99, 100, 104, 105, 107

market reports, AER, 133, 135

market studies and inquiries practice management function, 56

market studies, ACCC, 6, 35, 40, 42, 89

- highlights 2021–22, 52
- key activity, 52–56
- outcomes achieved, 53–56
- performance measures, targets and results, 52

Measuring Broadband Australia consumer dashboard, 2, 114, 115

Measuring Broadband Australia program, 115

media engagement, AER, 151

mergers and acquisitions, 2, 8, 35

- authorisation applications, 2
- court cases, 60
- highlights 2021–22, 58
- informal clearance, 57, 59
- investigations, 2, 59
- key activity, 57–60
- number of, 60
- performance measures, targets and results, 58
- public register, 59
- public reviews, 58–59
- strategic objective, 57–60

misleading and deceptive conduct, 7, 36, 81–83, 86

- strategic objective, 74–98

misuse of market power, 40

Mobile infrastructure report 2021, 118

mobile phone services and networks, 9, 117–118, 119

mobile porting scams, 93

Mock Data Holder and Mock Register, CDR, 66–67

monitoring and reporting, AER, 38

- highlights 2021–22, 134
- performance measures, targets and results, 135–136
- strategic objective, 133–138

monopoly infrastructure regulation, ACCC, 36

- highlights 2021–22, 111

monopoly infrastructure regulation, AER, 38, 122

- energy network decisions, 2021–22, 141
- highlights 2021–22, 141
- outcomes achieved, 143–148
- performance measures, targets and results, 142–143
- strategic objective, 109–121, 139–148
- motor vehicle information scheme, 89
- motor vehicles and caravans, 75, 81–82
- Multilateral Mutual Assistance and Cooperation, 47
- Murray—Darling Basin Water Markets Inquiry, 55

N

- Narrowing the Pay Gap Strategy, 187
- National Broadband Network, 9, 110, 112, 114
- National Consumer Congress, 94–95
- National Disability Insurance Agency, 24
- National Disability Insurance Scheme, 95
- National Electricity Market, 6, 12, 110, 115
 - high price event reporting, 136
 - reforms, 152
- National Electricity Market 2025 project, 149, 150
- National Electricity Objective, 139, 144
- National Electricity Rules, 136, 147, 151
- National Energy Retail Law and Rules, 27, 128, 130, 147
- National Gas Objective, 139, 144
- National Gas Rules, 15, 134, 151
- network performance reports, 14, 139
- New Zealand Commerce Commission, 25, 46
- New Zealand Competition and Consumer Commission, 46
- News Media and Digital Platforms Mandatory Bargaining Code, 51, 54
- non-salary benefits, employee, 191
- notifiable incidents, 245
- NSW Southern Shared Network (Humelink) RIT-T, 141

O

- OECD Global Recalls Portal, 99
- office location, ii
- Office of the Australian Information Commissioner, 24, 54, 70, 71, 178
- Office of the Merit Protection Commissioner, 178
- oil price, 119
- on-boarding, CDR see testing and on-boarding, CDR
- one law, multi regulator model, 25, 74
- online retail marketplaces report, 56
- online shopping, 103, 107
- online submissions portal, 193
- online sweeps, product safety, 106, 108
- operating deficit, 16
- Organisation for Economic Co-operation and Development, 25, 46, 56, 87
- organisational structure, 21–22
- outcome, 34

P

- parliamentary scrutiny, 178
- partnerships, collaboration and engagement, ACCC, 8, 24, 36, 56, 102, 117
 - international, 10, 46–48, 87, 95–96
 - key activity, 195–196
 - performance indicators, targets and results, 196
 - product safety, 99, 103, 107, 108
- partnerships, collaboration and engagement, AER, 126, 135, 150, 157–158
- penalties, 2, 3, 14–15, 42, 76, 83, 84, 85, 121, 128, 131, 134, 136
- performance pay, 185, 191, 238, 240
- performance reporting framework, 33
- Perishable Agricultural Goods Inquiry, 8
- petrol monitoring reports, 119
- petrol prices, 2, 6, 109, 110, 114, 115, 119
- phone call scams, 93

- policy advocacy, AER, 27
 - Port Terminal Access (Bulk Wheat) Code of Conduct, 112
 - portfolio, 24, 26
 - Portfolio Budget Statement 2021–22, 33, 34, ii
 - postal services, 109
 - price fixing, 46
 - pricing and distribution determinations, 141
 - Pride Plan, 187
 - priorities see compliance and enforcement priorities, ACCC
 - privacy, 178
 - Privacy Act 1988* review, 54
 - Private health insurance report 2020–21, 55
 - procurement, 180–182
 - product safety, 2, 8, 24, 36
 - interventions, 104
 - mandatory reporting, 101, 102, 103
 - reports and inquiries, 102
 - research and intelligence, 101–102
 - risk prioritisation, 102
 - strategic objective, 99–108
 - see also serious product safety hazards
 - Product Safety Australia, 2
 - Product Safety Consultative Committee, 102
 - Product safety pledge annual report, 107
 - product safety priorities, 23
 - highlights 2021–22, 103
 - key activity, 103–108
 - outcomes achieved, 105
 - performance measures, targets and results, 104
 - product safety standards and information standards, 2, 104
 - programs, 34
 - Project Biara, 183
 - Public Governance, Performance and Accountability Act 2013*, ii, 33, 174
 - public reviews, merger, 2
 - published guidance and resources, 8, 66, 88, 89–90, 91, 94, 136, 157–158
 - communications industry, 113–114
 - Electricity Retail Code, 115
 - energy bills, 116
 - funeral industry, 81
 - information in languages other than English, 106
 - product safety, 101, 102, 104
 - vulnerable consumers, 80
- Q**
- quad bike safety standard, 100, 103, 104, 107
- R**
- rail networks, 6, 109, 110, 112
 - rapid antigen tests, 5, 78, 79
 - Rate of Return Instrument 2022, 130, 139, 143–144
 - recalls, 8, 99, 102, 104, 106
 - Reconciliation Action Plan, 187
 - Reducing Scam Calls Industry Code, 8, 93
 - refunds, rights to, 81
 - Regional Telecommunications Review, 119
 - Register and Accreditation Application Platform, CDR, 61, 62, 63
 - Register of Accredited Persons, CDR, 61, 62, 65
 - availability, 63
 - Regulating gas pipelines under uncertainty paper*, 141, 151, 156
 - regulatory sandboxing, 129, 158
 - remote access scams, 94
 - renewable energy transition, 12, 14, 128
 - contributions to policy and reviews, 153–154
 - highlights 2021–22, 150
 - outcomes achieved, 151–154
 - participation in professional forums, 154

- performance measures, targets and results, 150–151
 - strategic objective, 149–154
- Renewable Energy Zone projects, 27, 145
- Report on international cooperation in competition enforcement, 46
- resale price maintenance, 44
- resources prioritisation and allocation
 - key activity, 193–195
 - performance indicators, targets and results, 194
- responsible minister, 26
- Retail exempt selling guideline: Version 6*, 125
- retailer authorisations and exemptions, 3, 124, 126, 128
- retailer compliance audits, 3
- retailer hardship policies, 3, 26
- Retailer of Last Resort, 3, 13, 26, 128
- Retailer Reliability Obligation, 133
- revenue, 16
- revenue and price control processes, 139
- revenue determinations, AER, 3, 27, 141, 142
- right to repair issues, 95
- Ring-fencing guideline (distribution) review*, 148, 158
- Ring-fencing Guideline, Electricity Distribution, 140
- Ring-fencing Guideline, Electricity Transmission, 140
- risk management, 174–175
- Ruby Hutchison Memorial Lecture, 94
- rule change proposals and submissions, 3, 13, 150, 151
- S**
- Savage, Clare (AER Chair), 12–15, 166
- Scam Fighter Award 2022, 2, 8, 91, 93
- scam transactions, 93
- scams, 2, 8, 36
 - highlights 2021–22, 91
 - key activity, 90–98
 - number of incidents reported, 98
 - performance measures, targets and results, 91
 - see also consumer awareness
- Scams Awareness Week, 8, 91, 92
- Scamwatch, 2, 8, 91, 92, 93, 98, 193
- Scamwatch radar alerts, 92, 98
- section 87B undertakings, 43, 104
- senior executive remuneration, 185, 190–191, 239, 241–244
- senior leadership
 - ACCC, 161–165
 - AER, 166–167
- serious product safety hazards
 - highlights 2021–22, 101
 - key activity, 100–102
 - outcomes achieved, 101–102
 - performance measures, targets and results, 101
 - see also product safety
- significant issues and developments affecting operations, 179
- SkillUp platform, 193
- sleeping products, unsafe, 100, 104, 107
- small business, 24, 36, 74, 75, 84–85, 129, 130
 - advocacy, 86–87
 - collective bargaining, 48
 - highlights 2021–22, 88
 - key activity, 87–90
 - performance measures, targets and results, 88
- Small Business Information Network, 84
- small business procurement, 180
- social media, 92, 98, 106, 124, 127, 151
- spectrum allocations, 110
- stakeholder engagement, 3, 56, 101
- stakeholder performance surveys, AER, 38

stakeholder survey, AER, 122–123, 127, 150, 156

stakeholder surveys, ACCC, 36–37

stakeholders, ACCC, 24–26

stakeholders, AER, 28–29

State of the energy market report, 14, 134, 135

Statement of Expectations for Networks, 140

Statement of Expectations of energy businesses, 3, 13, 124

Statement of Expectations, government, 29, 39

Statement of Intent, ACCC, 39

stevedoring, 109, 115, 116

Strategic Plan 2020–2025, AER, 122

superfast broadband market, 113, 114

supply chains, global and domestic, 6, 42, 46, 78, 79, 115, 116, 117

systems, capabilities and ways of working
strategic objective, 183–196

T

Takata airbag recall, 102, 103
coronial inquest, 108

Targeting scams report, 92

telecommunications, 117–118

testing and on-boarding, CDR, 61
highlights 2021–22, 65
key activity, 64–67
outcomes achieved, 66–67
performance measures, targets and results, 65

Therapeutic Goods Administration, 5, 24

toppling furniture, 100, 107–108

Trader360 work tool, 193

transmission and distribution network
benchmarking reports, 14, 135, 139

transmission determinations, AER, 12, 142

transmission resets, electricity and gas, 139

transparency review reports, AER, 144

travel and event cancellations, 75

Treasurer, 26

U

UK Competition and Markets Authority, 46, 47

unfair contract terms, 54, 82–83, 84, 90
reforms, 86–87

Unit Pricing Code, 89

United Nations Conference on Trade and Development, 25

Utility Regulators Forum, 149

V

voluntary recalls, product safety, 2

vulnerable consumers, 3, 13, 27, 28, 38, 75, 80, 89, 150

vulnerable consumers (AER objective), 122, 124–132
highlights 2021–22, 125
outcomes achieved, 128–132
performance measures, targets and results, 126–127

W

water access entitlement applications, 55

Water Act 2007, 55

Water Market Rules and Water Charge Rules, 55

Water monitoring report 2019–2020, 55

water rights, 55

web browsers and search services interim report, 56

websites, 3, 21, 126, ii
ACCC, 192–193
AER, 151
CDR, 65, 73
electricity consumer advice page, 121
Energy Made Easy, 3, 13, 27, 124, 125, 126, 127
improvements, 192–193

Information for electricity retailers page, 121

information on, 84

petrol pricing, 115

product safety, 193

small business rights and responsibilities webpage, 88

see also Scamwatch

wheat port facilities, 109, 110, 112, 119

wholesale asymmetric digital subscriber line, 112

Wholesale demand response participation guideline, 158

Wholesale Energy Market Dispute Resolution Advisor, 133

Wine grapes market study, 54-55, 89

work health and safety, 245

working groups

 cryptocurrency, 54

 global supply chains, 46, 48

Working Smarter Program, ACCC, 39, 191-193

workshops and presentations, 13, 87, 155, 157

 cartel enforcement, 46

 compliance and enforcement priorities, 125, 128, 136

 competition law and economics, 48

Y

year at a glance, 2021-22, 2-3