



Annual Report

2017-18

Australian Competition and Consumer Commission and the Australian Energy Regulator

October 2018

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7 September 2018

The Hon Josh Frydenberg MP Treasurer Parliament House CANBERRA ACT 2600

Dear Treasurer

ACCC and AER Annual Report 2017-18

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 2018. This report has been prepared in accordance with section 46 of the *Public Governance, Performance and Accountability Act 2013* and section 171 of the *Competition and Consumer Act 2010*.

We certify that the ACCC and AER have prepared fraud risk assessments and fraud control plans. We have in place appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet our specific needs. We certify that all reasonable measures have been taken to appropriately deal with fraud relating to the ACCC and AER.

Yours sincerely

Rod Sims Chair. ACCC Paula Conboy Chair, AER

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01

Year in review



2017-18 review: ACCC Chair, Rod Sims

The 2017-18 financial year was another important year for the Australian Competition and Consumer Commission (ACCC) as Australia's economy-wide competition and consumer regulator and also infrastructure regulator in many areas.

In the past year the ACCC has delivered significant competition, consumer protection, product safety and infrastructure outcomes to address critical issues facing the community and economy.

Beside our other achievements, we have seen the highest ever penalty awarded by the Full Federal Court in the Yazaki cartel case that we brought before the Court. We have achieved substantial consumer protection penalties in relation to Telstra, Ford and Apple; commenced 18 court cases; and been given new responsibility as the lead regulator for the Consumer Data Right. We are also coordinating the Takata airbag recall—Australia's largest ever consumer recall.

We have conducted a number of market studies and inquiries, including the Residential Mortgage Products Price Inquiry, the Retail Energy Pricing Inquiry, the Gas Inquiry and the Northern Australia Insurance Inquiry. We have also commenced the Digital Platforms Inquiry and completed our Dairy Inquiry.

We have successfully navigated the first year since the implementation of the competition reforms stemming from the Competition Policy Review (Harper review). We have taken action on misleading representation of broadband speeds and commenced our broadband speed monitoring program, which has altered industry behaviour to the benefit of consumers.

Budget and staffing

Our overall budget for 2017-18 was \$202 million (excluding depreciation and amortisation), and our average staffing level grew from 772 to 874 (716 ACCC, 158 AER). New positions were created for our newly expanded remit stemming from our government-directed inquiries and expansion of the AER. We expect to grow further in the next financial year due to new responsibilities in relation to the electricity market and our Consumer Data Right function.

After 10 years as a Deputy Chair of the ACCC, Dr Michael Schaper left the ACCC in May 2018. I would like to thank Michael for his outstanding contribution to the work of the ACCC, particularly his dedication to promoting the ACCC's work that benefits small business. Michael is succeeded by Mick Keogh, who was appointed the Deputy Chair with responsibility for small business in June 2018. The composition of the Commission otherwise remained unchanged following the reappointments of Deputy Chair Delia Rickard and Commissioners Sarah Court and Cristina Cifuentes.

Enforcement

The ACCC continued to advocate higher penalties for breaches of competition and consumer laws. We need to ensure that penalties are high enough for financial markets and boards to take notice of them and that they act as a genuine incentive to comply with the *Competition and Consumer Act 2010* (CCA).

The ACCC commenced litigation for 14 consumer protection related matters. There were also 16 outcomes for consumer protection related matters which resulted in significant penalties. In the courts, we are successfully arguing for and receiving, or reaching agreement on, meaningful sanctions. In the past six months we have seen three consumer protection penalty outcomes in the \$10 million range: \$10 million for Telstra; \$10 million for Ford; and \$9 million for Apple.

The Full Federal Court upheld the ACCC's appeal on penalty in the Yazaki case and increased the penalties imposed at first instance from \$9.5 million to \$46 million. We consider this must shift the dial when considering the appropriate penalty for a large company engaging in a serious international cartel that affects a significant amount of commerce in Australia. We recognise that Yazaki has sought special leave to appeal to the High Court, and we await the outcome.

In another long-running competition case, the Full Court of the Federal Court upheld an ACCC appeal against the \$17.1 million in penalties that the trial judge imposed on Cement Australia and its related companies for making and giving effect to anti-competitive agreements. The Full Court ordered these companies to pay increased penalties totalling \$20.6 million for breaching the anti-competitive provisions of the CCA.

In April 2018 the Full Federal Court ordered Flight Centre to pay penalties totalling \$12.5 million for attempting to induce three international airlines to enter into price fixing arrangements between 2005 and 2009. The \$12.5 million in penalties was an increase from the original \$11 million that the trial judge imposed in March 2014. The ACCC had appealed the initial penalty orders because we considered that the penalty was inadequate to achieve a strong deterrence message for Flight Centre and other businesses.

We continue to build our capacity to undertake criminal cartel work, with our team dedicated to investigating serious cartel cases for referral to the Commonwealth Director of Public Prosecutions. We now have three criminal cartel cases before the court.

In addition, we have established a specialised unit, known as the Substantial Lessening of Competition Unit (SLC Unit), to focus on investigations that could give rise to cases that use the new laws stemming from the Harper review. The SLC Unit also has a broader mandate to enhance our investigation of competition cases and look to simplify them.

Merger and authorisation reviews

The number of mergers we assess each year has tended to be relatively stable. However, the complexity and contentiousness of the relatively small number of transactions that now go to public review continues to trend upwards.

In 2017-18 the ACCC considered 281 matters under s. 50 of the CCA. Of these:

- 252 were assessed as not requiring a public or confidential review (pre-assessed)
- 28 mergers were subject to a public review
- one matter was subject to a confidential review.

Of the 28 public and one confidential reviews conducted in 2017-18, the ACCC:

- opposed one publicly reviewed merger and expressed confidential opposition to or concerns about one merger
- one merger was subject to court enforceable undertakings
- discontinued seven reviews either because the transactions did not proceed or because the parties withdrew their request for clearance
- did not oppose, unconditionally, 17 mergers that underwent a public informal review
- reviewed a request to vary an existing undertaking and a request to waive certain conditions
 of an existing undertaking previously accepted in relation to two acquisitions to remedy
 competition concerns.

We also continued important authorisation work, including consideration of the class exemptions flowing from the Harper review reforms.

Product safety

The ACCC's 2018 compliance and enforcement priorities included a focus on issues arising from the Takata airbag recall. The Takata airbag recall is the world's largest automotive recall, affecting up to 100 million vehicles. The ACCC formed the Takata Taskforce and began overseeing the Takata recall in Australia in July 2017. After 12 months we reported that 1.1 million faulty Takata airbags in 930 000 vehicles had been replaced.

Broadband and communications

This year the ACCC also continued to focus on consumer issues in the provision of broadband services, including by addressing misleading speed claims and statements made during the transition to the National Broadband Network (NBN). The issues in the communications sector have become one of the ACCC's most prominent areas of focus in the past two years and highlight the importance of the ACCC's consumer and competition focus.

In 2018 the ACCC released two reports for its Measuring Broadband Australia program, which monitors residential NBN fixed-line broadband speeds and reports on its results periodically throughout the four-year program.

The ACCC remains committed to truth in advertising about broadband speeds and is making it easier for Australians to choose a service provider. In 2017-18 the ACCC took investigation and enforcement action on speed advertising and reached court enforceable undertakings regarding speed advertising with eight internet service providers.

The ACCC also initiated a review of NBN service standards.

In communications generally, as the economic regulator in this area the ACCC has advocated and advised on spectrum auction issues and begun inquiries into, among other things, fixed-line services.

Rail and ports

In June 2018 the ACCC issued a draft decision proposing to accept Australian Rail Track Corporation's variation to the 2011 Hunter Valley Access Undertaking, subject to amendments for clarity and certainty.

The ACCC also continued its work to arbitrate on a third-party access dispute between Glencore Coal Assets Australia Pty Ltd and Port of Newcastle Operations Pty Ltd (PNO) concerning the shipping channel service at the Port of Newcastle. This follows the November 2017 Federal Court decision to dismiss PNO's application for judicial review of the ACCC's decision that an access dispute had been valid.

Market studies and inquiries

The ACCC continued its work in relation to a number of market studies and inquiries:

- The communications sector market study final report was released in April 2018. The report included 28 recommendations and actions on competition and consumer issues. It highlighted encouraging progress on issues such as NBN speeds, competition and work towards improved service standards.
- A new car retailing industry market study was released. The study focused on present and emerging competition and consumer issues in the industry. In December 2017 the ACCC released our final report, in which we recommended that the Government act to ensure technical service and repair information was made available to independent repairers.
- In March 2018 we issued our interim report for the Residential Mortgage Products Price Inquiry, which is monitoring the prices charged by the five banks affected by the Government's Major Bank Levy. The interim report revealed signs of less than vigorous price competition, especially between the big four banks.
- In April 2018 we issued the final report for our Dairy Inquiry. The inquiry examined the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry. The report made eight recommendations for improved transparency and the allocation of risk in the commercial relationships between Australian dairy processors and farmers.
- In October 2017 the ACCC released our preliminary report for the Retail Electricity Pricing Inquiry. The final report was provided to the Government in late June 2018 and released in the 2018–19 financial year reporting period.
- During 2017-18 the ACCC released three interim reports to the Treasurer as part of our new gas market inquiry role.
- In June 2018 the ACCC provided an update report to the Treasurer on our inquiry into the supply of residential building (home), contents and strata insurance products to consumers in northern Australia. The report contains preliminary observations about the northern Australia insurance market drawn from public consultation and information gathered from insurers.

During the year we commenced an inquiry into digital platforms that is looking at four key questions to work out how best to respond to the huge disruption posed by the emergence of powerful platforms such as Google and Facebook. It is clear that we need to look at the digital platforms through both a competition and a consumer lens. Consumers are facing powerful companies whose business model is based on immense data-gathering powers which many of us fail to fully understand. Our work here will focus on improving transparency, assessing potential breaches of the CCA and, crucially, making recommendations to government.

The Consumer Data Right

In November 2017 the Government announced the introduction of the Consumer Data Right. The Consumer Data Right will give consumers the right to safely access data about them that is held by businesses, and direct that this information be transferred to trusted third parties of their choice.

The Consumer Data Right will be implemented via a multi-layered regulatory model. As the lead regulator, we will have multiple roles, including rule-making, accreditation of third-party data receivers, enforcement, and consumer education.

The ACCC has created a dedicated Consumer Data Right branch. We expect to publish a framework paper on the rules for public consultation in the first quarter of 2018-19.

Looking ahead

The challenging work of the ACCC continues in the new financial year.

The environment in which regulators operate has changed on a number of fronts. For example, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry hearings have highlighted the importance of a strong regulatory framework and regulator action to provide confidence to the public and to correct emerging conduct.

We have a number of significant cases underway. You can expect the ACCC to take more enforcement action and continue to take a resolute stance in advocating higher and more substantial penalties for businesses which engage in anti-competitive or other conduct that carries significant consumer harm.

Given the many inquiries we have underway, and our crucial infrastructure work, we intend to continue to make many markets work for the benefit of all Australians.

2017-18 review: AER Chair, Paula Conboy

The past year has seen continued significant reshaping of the energy industry, increasing the focus on affordability, reliability and emissions reduction. As the market continues to evolve it is increasingly important that the Australian Energy Regulator (AER) is recognised as a strong and trustworthy regulator. Consumers, government, investors and other stakeholders need to have confidence in the regulatory regime and our ability to make decisions that are in the long-term interests of consumers.

Our year began with an increase in funding from the Australian Government in line with the recommendations of the Finkel review, highlighting the importance of a well-resourced regulator to instil public confidence and trust in the rapidly transforming National Energy Market.

These funds have been used to expand the staffing and capabilities of the AER, with a focus given to the Strategic Transformation Project that is reshaping the organisation to ensure we deliver the best possible value to all of our stakeholders.

The AER understands that the changes taking place in the energy sector will have an inevitable impact on the lives of all Australians. With this boost in resources over the last 12 months, the agency has worked hard, and will continue to do so, in order to make all Australian energy consumers better off, now and in the future.

Retail

Energy retailers buy electricity and gas in wholesale markets, package them with transportation services and sell them to customers. This is typically the main interface between the electricity and gas industries and customers such as households and small businesses.

In the winter of 2017 the Prime Minister called major retailers to Canberra for a summit on ways in which consumers could access cheaper energy tariffs and save money by switching to more suitable contracts. As a result, the AER undertook a range of work, including the development of simpler and more accessible price fact sheets, to implement the agreements made between the companies and government.

The sharp focus on consumers continued, with AER's Annual report on compliance and performance of the retailer energy market 2016–17 demonstrating that rising electricity prices were leading to increased numbers of consumers falling behind on power bill payments and struggling to complete financial hardship programs. These results, alongside the outcomes of a review of the effectiveness of retailers' hardship policies, saw the AER submit to the Australian Energy Market Commission a rule change proposal that seeks to improve the clarity and enforceability of policies for better customer outcomes.

The AER's popular retail price comparison site Energy Made Easy was revamped (launching in August 2018) during the 2017-18 financial year as the first step in a broader redevelopment project after receiving a major financial boost from government.

Following changes to the National Energy Retail Rules, the AER began the process of reviewing its Compliance procedures and guidelines to improve the effectiveness and efficiency of the reporting regime. The AER's Retail exempt selling guidelines were also revised to require exempt sellers to be members of ombudsman schemes, meaning their customers have access to free and impartial dispute resolution processes.

The Retail Law includes roles for the AER in monitoring, investigating, enforcing and reporting on compliance by regulated entities. Over 2017-18 the AER issued infringement notices to a number of companies (AusGrid, ActewAGL, Energex, Evoenergy, TasNetworks) for alleged failure to provide customers on life support with appropriate notice of disconnection of supply.

Origin was issued with an infringement notice over alleged failure to provide access to a hardship program and the wrongful disconnection of a customer; and AGL paid infringement notices over the alleged failure to inform customers that fixed-term retail contracts had expired. Taplin paid infringements over the alleged unauthorised sale of energy.

Networks

The AER regulates electricity networks in the National Electricity Market—covering eastern and southern Australia—and gas pipelines in jurisdictions other than Western Australia and Tasmania, aiming to ensure service providers operate these assets reliably and cost effectively.

Network revenue determinations and gas pipeline access arrangements are a key feature of the AER's calendar, and in the last year the AER issued draft and final determinations for TransGrid, Murraylink and ElectraNet for the 2018-23 regulatory control periods.

The Roma to Brisbane gas access arrangement for 2017-22 was finalised, as were access arrangements for Victorian gas transmission businesses in 2018-22.

Network tariffs for Victoria, New South Wales (NSW), South Australia and Queensland for 2018 and the 2018–19 financial year were settled.

Prior to the removal of the Limited Merits Review process by the Commonwealth, some AER determinations had been challenged by networks at the Australian Competition Tribunal (the Tribunal) and Full Federal Court.

In late October 2017, the Tribunal confirmed the AER's May 2016 revenue decisions for the five Victorian electricity distribution networks and Australian Capital Territory (ACT) gas distribution pipelines, rejecting all grounds of review sought by the businesses.

The Tribunal's decisions meant that AER determinations that reduced the revenue that AusNet Services, CitiPower, Jemena, Powercor and United Energy in Victoria and ActewAGL gas in the ACT could recover from consumers stood.

The Full Federal Court confirmed in early January 2018 that the AER's revenue decision for SA Power Networks (SAPN) over the 2015–20 regulatory period would stand. The Court affirmed the AER decision on all grounds. This was SAPN's second appeal, after the Tribunal upheld the AER's original determination.

The AER also began working with NSW and ACT electricity distributors to remake its revenue determinations for the 2014-19 regulatory period. This followed the Full Federal Court's decision in May 2017 to set aside AER's original determination.

The remade decision for Essential Energy was finalised in May 2018, with the draft decision having gone out for public consultation earlier in the year.

Much of the debate in Australia is focused on the cost, reliability and safety of electricity supply, but the demand side of the equation is where many efficiencies and savings will be found in the future. In order to facilitate this transformation, in 2017 the AER introduced the Demand Management Incentive Scheme to help bring forward effective demand management to defer or limit the need for electricity businesses to invest in expensive assets.

Future network revenue determinations will be influenced by two key pieces of work undertaken this year: the AER's annual benchmarking reports for electricity distribution and transmission networks. The reports showed that the productivity of distribution networks improved in 2016, while transmission network productivity continued its long-term decline.

In addition, following advice from the Australian Taxation Office, the AER began a review of its approach to estimating tax for regulated energy networks. The initial report from the review was published in June 2018, with the final report due later in the year.

Working more closely with all stakeholders affected by its decisions is an ongoing priority for the AER. In April 2018 the NewReg process was launched to further this aim. The NewReg approach aims to improve the efficiency and effectiveness of network regulation, increase consumer trust and confidence in the process, and deliver the outcomes that consumers most value when determining how much they pay for network services.

The AER also undertook work aimed at improving the administrative side of network regulation. Gas shippers seeking access to unregulated pipelines benefited from the AER's publication of the *Financial reporting guideline for non-scheme pipelines*, which allowed them to make informed choices on the reasonableness of an offer made by the pipeline owner.

Similarly, the AER decided to replace the current framework and approach applying to Victorian network businesses for the 2021-26 regulatory control period and began an extensive consultation process.

Wholesale

Electricity generated in the NEM is sold in a wholesale spot market covering Queensland, NSW, Victoria, South Australia, Tasmania and the ACT. There is also a wholesale spot market for gas in Victoria; a short-term trading market for gas in Sydney, Adelaide and Brisbane; and voluntary gas supply hubs at Wallumbilla and Moomba.

These wholesale electricity markets are a driver of the costs that households and businesses pay through their retailers. The AER has been given expanded powers to monitor these markets to determine whether competition is effective and to identify any instances of abuse of market power.

The first report to the Council of Australian Governments (COAG) Energy Council using the powers was a report on high prices in the NSW wholesale electricity market. The report found that short-term fuel issues and longer-term market challenges combined to cause sustained high prices for wholesale electricity in NSW.

The AER also used its powers when compiling the report on the effect of the closure of the Hazelwood power station on wholesale electricity markets, which was delivered to the COAG Energy Council in March 2018. The AER will be issuing its first biennial wholesale market performance report in December 2018.

Finance and staffing snapshot

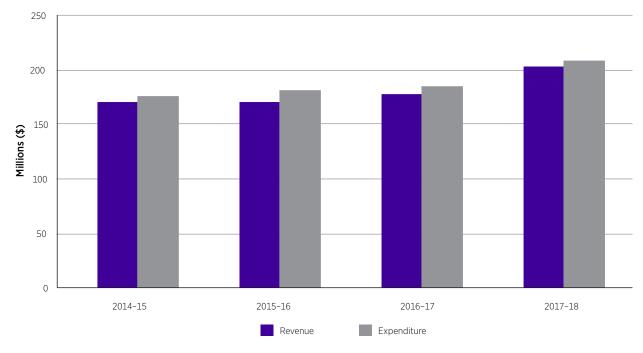
The ACCC received an unqualified audit report on the 2017-18 financial statements from the Australian National Audit Office. These statements can be found in part 5.

The ACCC achieved a break-even position, reporting a marginal deficit of \$0.1 million excluding depreciation and amortisation in 2017-18, compared with a \$1.7 million deficit in 2016-17. This outcome is consistent with the ACCC's budgeted operating result for 2017-18.

The ACCC's net cost of services for 2017-18 was \$203.3 million (2016-17: \$180.6 million), with revenue from government of \$197.9 million (2016-17: \$173.3 million).

In 2017-18 revenue from government increased by \$24.6 million and expenditure on ACCC activities increased by \$23.1 million. The additional revenue was appropriated by government to fund a number of new measures. The increase in expenditure relates to an increase in employee expenses of \$16 million and supplier expenses of \$15 million, offset by an \$8.2 million reduction in legal settlements. A comparison of revenue and expenditure trends over the last four years is illustrated in figure 1.1.

Figure 1.1: ACCC revenue and expenditure, 2014-15 to 2017-18



Key financial results for ACCC for the financial years 2015-16 to 2017-18 are shown in table 1.1.

Table 1.1: ACCC comparative financial results, 2015–16, 2016–17 and 2017–18

	2017-18	2016-17	2015-16
	\$'000	\$'000	\$'000
Expenses			
Employee benefits	119 105	102 979	103 731
Legal fees	26 593	20 782	26 769
Other expenses	62 296	61 044	51 448
Total expenses	207 994	184 805	181 948
Own-source revenue			
Other revenue	4 621	4 178	5 544
Total own-source revenue	4 621	4 178	5 544
Net cost of services	203 373	180 627	176 404
Revenue from government	197 951	173 359	165 346
Net operating surplus/(deficit)	(5 422)	(7 268)	(11 058)
Changes in asset revaluation reserve	112	167	(48)
Total comprehensive income	(5 310)	(7 101)	(11 106)
Operating cash balance	1 692	1 616	1 289
Receivables	34 715	30 929	33 781
Total assets	64 312	50 927	54 503
Total liabilities	65 044	59 417	59 234
Total equity	(732)	(8 490)	(4 731)
Administered fees and fines revenue	131 164	42 279	83 861

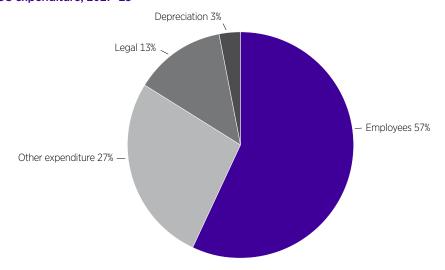
Expenditure

The ACCC is a knowledge-based organisation and, as such, it spends approximately 57 per cent of total expenditure on employee costs (2016-17: 56 per cent).

Legal expenditure is subject to volatility depending on the timing and outcome of litigation proceedings. Legal expenditure increased by \$5.8 million, or 28 per cent, in 2017-18 compared with 2016-17.

Other expenses (excluding depreciation and amortisation) increased by \$1.3 million, or 3 per cent, in 2017-18. Depreciation and amortisation has remained relatively consistent over the same period.

Figure 1.2: ACCC expenditure, 2017-18



Operating statement

During 2017-18, the ACCC recorded a comprehensive operating loss of \$5.3 million compared with an operating loss of \$7.1 million in 2016-17. The current year loss is largely attributable to the unfunded depreciation expense of \$5.2 million. The overall result is a minor deficit of \$0.1 million, essentially a break-even result consistent with the 2017-18 budget.

Balance sheet

The ACCC's net assets as at 30 June 2018 totalled (\$0.7) million compared with (\$8.4) million in 2016-17.

Assets

Total assets as at 30 June 2018 were valued at \$64.3 million compared with \$50.9 million on 30 June 2017, representing a 26 per cent increase. This variance is largely due to an increase of \$9.5 million in non-financial assets and a \$3.8 million increase in appropriation receivables.

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

Liabilities

Total liabilities increased to \$65 million in 2017-18 from \$59.4 million in 2016-17. This increase mainly relates to a \$9.6 million increase in lease incentives and a \$2.7 million increase in employee provisions, offset by a \$6 million decrease in other provisions and a \$0.8 million reduction in supplier payables.

Administered revenue

In 2017-18 the ACCC received \$131 million in administered revenue, representing an increase of \$88.9 million from 2016-17. This amount includes court-imposed fines and costs.

Staffing summary

Table 1.2: Average staffing level, 2013-14 to 2017-18

	Budgeted	Actual
2013-14	802	788
2014-15	735	715
2015-16	739	752
2016-17	739	772
2017-18	868	874

02

Overview of the ACCC and AER

About the ACCC and the AER

The Australian Competition and Consumer Commission (ACCC) is an independent Commonwealth statutory authority whose role is to enforce the *Competition and Consumer Act 2010* (Cth) (CCA) and a range of additional legislation, promoting competition and fair trading, and regulating national infrastructure for the benefit of all Australians. The Commission is the primary decision-making body of the ACCC and comprises six full-time members, including the Chair, two Deputy Chairs and three members. Members are appointed by the Governor-General for terms of up to five years and appointments are made after the majority of state and territory jurisdictions support the selection.

The Australian Energy Regulator (AER) is Australia's national energy market regulator. The AER's functions are set out in national energy market legislation and rules, and mostly relate to electricity and gas markets in eastern and southern Australia. The AER has its own independent Board, with one Commonwealth member and two state/territory members, any one of whom may be appointed as the Chair. It is supported by staff who are engaged exclusively on energy matters, and has access to the ACCC's specialist legal and economic staff.

While specific functions vary according to the legislated responsibilities that underpin the ACCC and AER, the two bodies share many common objectives, both working to protect, strengthen and supplement competitive market processes.

ACCC Commissioners and AER Board members are statutory officers. The staff forms part of the Australian Public Service (APS). Both agencies are within the Treasury portfolio.

As at 30 June 2018 the responsible Minister for the ACCC was the then Treasurer, the Hon. Scott Morrison MP; and the then Assistant Minister to the Treasurer, the Hon. Michael Sukkar MP, had responsibility for Australian Consumer Law policy.

Role and functions

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

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

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

- setting the amount of revenue that network businesses can recover from customers for using networks (electricity poles and wires and gas pipelines) that transport energy
- monitoring networks and wholesale and retail energy markets to ensure businesses comply with the legislation and rules; and taking enforcement action where necessary.

Government expectations

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

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

The ACCC provides a Statement of Intent responding to the Government's Statement of Expectations for the ACCC.

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

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

- using inquiry powers to increase transparency in the gas market, including by identifying the use of
 market power and other obstructions to the efficient supply of gas to households and businesses as
 part of a wide-ranging inquiry into the supply of and demand for wholesale gas in Australia
- the ACCC's inquiry into the retail supply of electricity and the competitiveness of retail electricity markets, which looked at the drivers of retail electricity prices over time and what can be done to improve customers' experience in acquiring electricity services
- undertaking regular inquiries into specific competition issues across the financial sector to assess whether competition is sufficient to drive the best outcomes for consumers. This includes an inquiry into residential mortgage products
- undertaking an inquiry into the supply of residential building, contents and strata insurance products to consumers in northern Australia. We will monitor prices, costs and profits to address concerns about the high price of insurance in the region
- undertaking an inquiry into the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry
- undertaking an inquiry into digital platforms to assess the effect that digital search engines, social media platforms and other digital content aggregation platforms have on competition in media and advertising services markets. In particular, the inquiry will look at the impact of digital platforms on the supply of news and journalistic content and the implications of this for media content creators, advertisers and consumers
- producing industry reports on aspects of consumer interest in the fuel market, including an indepth petrol report detailing annual average retail petrol prices throughout 2017 and identifying the highest and lowest priced major retailers in Sydney, Melbourne, Brisbane, Adelaide and Perth
- developing rules and an accreditation scheme to govern the implementation of the consumer data right, approving technical standards, and taking enforcement action to ensure compliance by participants. Open Banking is the application of the consumer data right to the banking sector the first sector to be designated by the Government. The ACCC will be supported by the Office of the Australian Information Commissioner and the Data Standards Body as it develops the regulatory framework.

The AER reports to the Australian Government and the Council of Australian Government Energy Council (COAG). COAG is responsible for pursuing priority issues of national significance and key reforms in the energy and resources sectors. COAG expects the AER to perform its functions as defined in the CCA and in accordance with all relevant legislative requirements and agreements.

To strengthen accountability and performance frameworks, the COAG Energy Council in 2014 and the Australian Government developed Statement of Expectations for the AER. These can be found on the AER's website.

The AER's Statement of Intent 2017-2018 sets out the AER's work program in regulating energy networks and markets, and benchmarks that will measure its performance. The statement also sets out how it aims to achieve principles of accountability and transparency, efficient regulation and effective engagement with stakeholders and other energy market bodies.

Legislative framework

In addition to administering the CCA, the ACCC has responsibilities under many other acts and rules, as does the AER. These are outlined in appendix 6 on page 282.

Purpose

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

The ACCC is an independent Commonwealth statutory authority whose role is to enforce the CCA and a range of additional legislation, promoting competition and fair trading, and regulating national infrastructure for the benefit of all Australians.

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

The roles of the ACCC and AER should be seen in the context of the thinking that underpins National Competition Policy—that competition provides the best incentive for businesses to become more efficient, innovative and flexible and to operate in the long-term interests of consumers. Together the ACCC and AER champion strong, efficient and effective markets.

Values

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

Independent: We pursue the interests of the Australian community, objectively and transparently.

Expert: We make timely decisions based on evidence and rigorous analysis.

Strategic: We make best use of our resources by taking considered and targeted action.

Trustworthy: We communicate honestly and directly and act respectfully.

Decision-making process

ACCC decisions are made through formal meetings of the Commission. Only the Commission can decide to start court action, oppose a major merger proposal or authorise anti-competitive behaviour where there is sufficient public benefit.

AER decisions are made through formal meetings of the AER Board.

Both the Commission and the AER Board may delegate certain other decisions and powers to Commissioners, members or senior staff.

Outcome and program structure

Under the outcome and program framework as presented in the Government's budget, we have one outcome and two programs:

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

Program 1.1: Australian Competition and Consumer Commission.

Program 1.2: Australian Energy Regulator.

The details of the ACCC and AER strategies, deliverables and performance indicators are listed in our annual performance statement (pages 23-194).

Organisational structure 2017-18

Commissioners

Chair	Rod Sims	
Deputy Chairs	Delia Rickard	
	Mick Keogh (from 30 May 2018)	
	Michael Schaper (until 29 May 2018)	
Members	Cristina Cifuentes	
	Sarah Court	
	Roger Featherston	
Part-time associate member ¹	Mick Keogh (until 29 May 2018)	
Associate members	Paula Conboy	
	Jim Cox	
	Mark Berry	
	Susan Begg	

Note

Australian Energy Regulator

Chair	Paula Conboy
Members	Cristina Cifuentes
	Jim Cox

^{1.} Mick Keogh served as a part-time associate member of the Commission working three days a week until his appointment as full-time Deputy Chair.

Figure 2.1: Organisational structure of the ACCC and AER (at 30 June 2018)

Australian Energy Regulator Board	Chair: Paula Conboy Members: Cristina Cifuentes Jim Cox	Promote efficient investments in, and efficient operation and use of, energy services for the long term interest of energy users.		CEO Michelle Groves Australian Energy Regulator	Insel Finance Wholesale Wholesale Markets Information GM Markets Information GM Markets Services GM Network Pricing, Policy & Services Communications GM Network Finance GM Network Finance GM Network Finance GM Network Expenditure GM Network Expenditure GM Network Expenditure GM Strategic Communication and External Affairs Law Finance GM Network Expenditure GM Strategic Communication and External Affairs
Corporate Governance Board	ACCC Commissioners	as an organisation our people, planning, ngagement.	tive Office	l People & Corporate Services	Finance CIO Information Management & Technology Services GM Strategic Communications GM People & Culture
Corporate Gov	Chair: Rod Sims Delia Rickard Mick Keogh AER Board members	Increase our effectiveness as an organisation through a commitment to our people, planning, systems and stakeholder engagement.	——————————————————————————————————————	FGM Richard Home Legal & Economic	General Counsel Special Counsel Chief Economic Adviser GM Economic Group Counsel Counsel Counsel Mergers & Authorisation Law Deputy General Counsel Mergers & Authorisation Law Counsel Connettion & Connettion & Consumer Law Deputy General Counsel Counsel
	ars: Susan Begg Mark Berry Paula Conboy Jim Cox	Promote the economically efficient operation of, use of and investment in monopoly infrastructure.	Rayne de Gruchy Chief Operating Officer	EGM Michael Cosgrave Infrastructure Regulation	GM Structure & Compliance GM Insurance, Water & Wireline Markets GM Mobiles, Transmission & Consumer GM Infrastructure & Transport— Access & Pricing GM GM Coss Inquiry
ner Commission	Associate Members:	afety of consumers and rets affecting consumers	Rod Sims Chair & Agency Head	EGM Tin Grimwade Consumer, Small Business & Product Safety	Consumer Consumer Broduct Safety GM Consumer & Small Business Strategies Director Infocentre
Australian Competition and Consum	ars: Cristina Cfluentes Sarah Court Roger Featherston	Protect the interests and safety of consumers and support fair trading in markets affecting consumers and small business.		EGM Scott Gregson Enforcement	Enforcement Vic/Tas GM Enforcement NSW & ACT GM Enforcement CIN COMM Enforcement COMM Enforcement MA/SA Consumer Data Right
Australian Con	ns Members: ickard sogh	mpetition and remedy		EGM Marcus Bezzi Specialised Enforcement & Advocacy	GM Cartels Gm Competition, Intelligence & Commercial Construction GM Advocacy, International & Agriculture GM Financial Services
	Chair. Rod Sims Deputy Chairs: Delia Rickard Mick Keogh	Maintain and promote competition and remedy market failure.		EGM Rami Greiss Merger & Authorisation Review	GM Coordination & Strategy GM Merger Investigations GM Adjudication GM Digital Platforms Inquiry

Offices and contact details

ACCC national office

Address	23 Marcus Clarke Street Canberra ACT 2601 GPO Box 3131 Canberra ACT 2601 Telephone: 02 6243 1111
ACCC Infocentre	Business and consumer enquiries 1300 302 502
ACCC website	www.accc.gov.au

AER national office

Address	Level 17, 2 Lonsdale Street Melbourne Vic 3000 Telephone: 03 9290 1444	
AER email	AERinquiry@aer.gov.au	
AER website	www.aer.gov.au	

Callers who are deaf or have a hearing or speech impairment can contact the ACCC and the AER through the National Relay Service: telephone 133 677 or visit the website www.nationalrelayservice.com.au.

Regional offices

Adelaide	Level 2, 19 Grenfell Street
	Adelaide SA 5000
	Telephone: (08) 8213 3444
Brisbane	Level 24, 400 George Street
	Brisbane Qld 4000
	Telephone: (07) 3835 4666
Darwin	Level 8, National Mutual Centre, 9-11 Cavenagh St
	Darwin NT 0800
	Telephone: (08) 8946 9666
Hobart	Level 2, 70 Collins Street (Cnr Collins and Argyle Streets)
	Hobart Tas 7000
	Telephone: (03) 6215 9333
Melbourne	Level 17, 2 Lonsdale Street
	Melbourne Vic 3000
	Telephone: (03) 9290 1800
Perth	Level 5, 1 William Street
	Perth WA 6000
	Telephone: (08) 9325 0600
Sydney	Level 20, 175 Pitt Street
	Sydney NSW 2000
	Telephone: (02) 9230 9133
Townsville	Suncorp Plaza, Suite 2, Level 9, 61-73 Sturt Street
	Townsville Qld 4810
	Telephone: (07) 4729 2666

03

Report on performance

Performance reporting framework

This chapter reports on our performance in achieving our outcome and purpose for 2017-18 using the framework and performance indicators reflected in both the 2017-18 ACCC Portfolio Budget Statement (PBS) (contained in the Treasury portfolio PBS) and the ACCC and AER Corporate Plan 2017-18. The ACCC and the AER jointly report against one outcome, with the ACCC reporting against Program 1.1 and the AER against Program 1.2, as shown in table 3.1.

Table 3.1: Performance reporting framework

Drivers	Public Governance, Performance and Accountability Act 2013 (Cth) (PGPA Act)	
	Competition and Consumer Act 2010 (Cth) (CCA)	
	ACCC Portfolio Budget Statement	
	ACCC and AER Corporate Plan 2017–18	
Outcome 1	Lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation, including enforcement, education, price monitoring and determining the terms of access to infrastructure services.	
Purpose	The ACCC and the AER work in close coordination to achieve our common purpose: ¹ making markets worl for consumers, now and in the future.	
Program 1.1	Australian Competition and Consumer Commission	
Program 1.2	Australian Energy Regulator	

Strategies to achieve our purpose

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

- 1. maintaining and promoting competition (strategy 1)
- 2. protecting the interests and safety of consumers, and supporting fair trading in markets affecting consumers and small business (strategy 2)
- 3. promoting the economically efficient operation of, use of, and investment in infrastructure; and identifying market failure (strategy 3)
- 4. promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers with respect to price, quality, safety, reliability and security (strategy 4).

Below are deliverables we use to progress each strategy as we work towards achieving our outcome and purpose. Performance indicators underpin each of these deliverables.

Program 1.1 ACCC

Strategy 1: Maintaining and promoting competition

To maintain and promote competition, we:

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

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

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

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

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

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

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

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

Program 1.2 AER

Strategy 4: Promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers with respect to price, quality, safety, reliability and security

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

Deliverable 4.1	Deliver network regulation to promote efficient investment in energy network services that customers value
Deliverable 4.2	Build consumer confidence in retail energy markets
Deliverable 4.3	Promote efficient wholesale energy markets

Structure of annual performance statement

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

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

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

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

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

For **strategy 4** our reporting aligns directly with the three deliverables under this strategy.

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

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

We have also provided details of 'Actions undertaken to achieve our purpose' for each strategy where we discuss our work in more detail, including examples that demonstrate how we carry out the strategies to achieve our purpose.

Regulator Performance Framework

In November 2017 the ACCC published its second annual self-assessment (for 2016–17) under the Australian Government's Regulator Performance Framework. The <u>ACCC self-assessment: Regulator Performance Framework</u> is available on our website.

The framework requires regulators to assess their performance against six key performance indicators (KPIs):

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

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

A key element of the ACCC's self-assessment was an online survey to obtain the views of business stakeholders. The survey was conducted independently by market research firm ORC International in May 2017.

Over 400 businesses, or their legal representatives, provided feedback on what the ACCC is doing well and what we can improve. We published the results of the survey in conjunction with the ACCC's self-assessment. We also relied on other evidence, such as quantitative performance data and descriptive information that provides stakeholders with a greater appreciation of the systems and processes the ACCC has in place to support our engagement with businesses.

The ACCC Performance Consultative Committee performed a review and external validation of the draft self-assessment report. The Performance Consultative Committee comprises 16 business, legal and consumer representatives who collectively cover the broad range of stakeholders that the ACCC engages with in undertaking its various functions.

The 2016-17 self-assessment found that the ACCC is generally achieving the six KPIs to a satisfactory or good standard across the entire organisation, with some areas achieving a rating of very good.

Statement of preparation

As the accountable authority of the ACCC, I present the 2017–18 financial year annual performance statements of the ACCC, prepared for paragraph 39(1)(a) of the PGPA Act. In my opinion, these annual performance statements accurately present the entity's performance in the reporting period, and comply with s. 39(2) of the PGPA Act.

Sim

Rod Sims Chair, ACCC

Program 1.1— Australian Competition and Consumer Commission

Strategy 1: Maintain and promote competition

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

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

We do this by enforcing Part IV of the CCA, which prohibits:

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

Our reporting on this strategy is in three sections:

- our competition enforcement and advocacy function (see pages 31-40)
- our merger and authorisation review function (see pages 41-57)
- the other work we do to promote competition (see pages 58-64).

Strategy 1: Maintain and promote competition

Performance results and analysis: Enforcement actions to promote competitive markets

Role and functions

Competitive markets lead to lower prices, better quality products and services, greater efficiency and more choice, all of which benefit consumers. As Australia's only national competition regulator, the ACCC works to enhance the welfare of Australians by maintaining and promoting competition.

Both the Enforcement Division and the Specialised Enforcement and Advocacy Division of the ACCC investigate and take compliance and enforcement action in relation to potential breaches of the competition provisions in Part IV of the CCA.

In addition to addressing the priority areas set out under the Compliance and Enforcement Policy, the ACCC undertakes a range of advocacy work, including encouraging compliance with the law by educating and informing consumers and businesses about their rights and responsibilities under the CCA. The ACCC also undertakes market studies and reporting on emerging competition issues with a view to identifying any market failures and how to address them, and to support and inform compliance and enforcement measures and identify possible areas for policy consideration. We work with other agencies to implement these strategies, including through coordinated approaches.

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

Deliverable 1.1

Deliver outcomes to address harm to consumers and businesses resulting from anti-competitive conduct.

Priorities

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

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

We revised and released our Compliance and Enforcement Policy in February 2017 and again in February 2018. Our 2017 and 2018 policies prioritise:

- competition issues in the financial services sector
- competition and consumer issues in the provision of energy as an essential service
- competition and consumer issues concerning the use of digital platforms, algorithms and consumer data
- misuse of market power
- competition and consumer issues in the agricultural sector
- competition issues in the commercial construction sector
- cartel conduct
- anti-competitive agreements and practices.

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

Powers

We have the power to take court action, refer alleged serious cartel conduct to the Commonwealth Director of Public Prosecutions (CDPP), accept court enforceable undertakings, resolve matters administratively and prevent breaches though education and advice. A description of these powers and our approach to using them is in appendix 6.

Performance indicators

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

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

Table 3.2: Performance indicators for deliverable 1.1

Performance indicator	2016-17	201	7-18
	Result	Target	Result
Number of in-depth competition investigations completed	43	40	28
Percentage of initial competition investigations completed within three months	75%	60%	60.6%
Percentage of in-depth competition investigations completed within 12 months	65.1%	60%	73%
Number of competition enforcement interventions or market studies (court proceedings commenced, s. 87B undertakings accepted, publication of studies relating to competition in markets)	12	8	8
Percentage of competition enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy	100%	80%	100%
Percentage of competition enforcement interventions in the priority areas, or demonstrate the priority factors, outlined in the Compliance and Enforcement Policy	100%	100%	100%

Analysis of performance

The ACCC met most of the annual targets set for competition enforcement investigations in 2017-18.

The ACCC achieved eight new competition enforcement interventions in 2017-18 (against a target of eight), which include:

- the first criminal cartel prosecution of an Australian corporation and two individuals under the criminal cartel provisions, with the CDPP commencing proceedings against Country Care Pty Ltd
- criminal cartel charges against Citigroup Global Markets Australia Pty Ltd (Citigroup), Deutsche Bank Aktiengesellschaft (Deutsche Bank) and Australia and New Zealand Banking Group Ltd (ANZ) as well as against six senior executives and former executives of those companies
- court enforceable undertakings against BHP Billiton Petroleum (Bass Strait) Pty Ltd and Esso Australia Resources Pty Ltd requiring them to separately market their share of gas produced under the Gippsland Basin Joint Venture from 1 January 2019.

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

We achieved significant outcomes in competition matters in 2017-18, including the following penalties or fines:

- Yazaki Corporation Pty Ltd—penalty of \$46 million (on appeal)
- Nippon Yusen Kabushiki Kaisha Pty Ltd—fine of \$25 million
- Cement Australia Pty Ltd—penalty of \$20.6 million
- Air New Zealand—penalty of \$15 million
- Flight Centre Ltd—penalty of \$12.5 million.

The ACCC completed 28 in-depth investigations in the period, less than the annual target of 40. This primarily reflected disruption, resourcing and operational challenges related to a restructure and the establishment of new units and functions during the period—for example, the establishment of the Substantial Lessening of Competition Unit following the 2015 Competition Policy Review (Harper review) law reform to misuse of market power and concerted practices provisions effective from 6 November 2017. The Financial Services Unit was also established following the 2017–18 budget to consider specific financial sector competition issues including the Residential Mortgage Product Price Inquiry. Fewer in-depth investigations in the period also reflected the continuing significant competition litigation and investigations workload.

At the same time, the ACCC has continued to prioritise cartel conduct causing detriment in Australia, an enduring priority under the Compliance and Enforcement Policy. Resources have been dedicated to increasing capability and working with the CDPP to prosecute criminal cartel conduct.

There were a number of longstanding and ongoing cases dealt with during the period that continued to require resourcing, including a number of important appeals to the Full Federal Court and High Court. These included Prysmian, Yazaki, PZ Cussons, Cement Australia, PT Garuda Indonesia Ltd, Air New Zealand Ltd and the Flight Centre appeal. In some of these cases, the litigation has been ongoing and involved the continued expenditure of significant resources for many years. In the case of the air cargo proceedings involving Air New Zealand, Garuda and other airlines, it has now involved expenditure for over a decade.

Finally, in addition to investigations, other project and policy work was undertaken to promote competition as outlined on pages 58-64 in this section.

Challenges ahead for the ACCC's competition work include continued efforts to achieve higher penalties for breaches of competition law, which are more likely to provide both specific and general deterrence, particularly in relation to larger companies. We are continuing our criminal cartel work and continuing to balance the policy and law reform work with investigations and market enquiries. The ACCC will also be looking for appropriate opportunities to test new legislative provisions in the CCA including the new misuse of market power with a substantial lessening of competition test and concerted practices provisions.

Stopping anti-competitive conduct: Actions undertaken to achieve our purpose

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

Competition enforcement interventions

Court proceedings

In 2017-18 the ACCC was involved in 19 court proceedings relating to competition enforcement.

These proceedings relate to competition matters in a range of industries, including construction, shipping, travel, pharmaceuticals and financial services. A complete list of completed and commenced proceedings is included in appendix 9.

Of the 19 competition enforcement proceedings:

- 15 cases were carried over from 2016-17
- four new cases were commenced during 2017-18
- seven cases were finalised
- 12 cases remained ongoing at the end of June 2018.

Cartels

Cartel behaviour involves businesses agreeing with their competitors to fix prices, rig bids, share markets or restrict supply of products and services. By conspiring to control markets in these ways, a cartel protects and rewards its inefficient members while penalising honest, innovative and well-run companies.

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

Companies and individuals, including cartel participants, help us to detect cartels. Under the ACCC Immunity and Cooperation Policy for Cartel Conduct, participants can apply for immunity from civil and criminal prosecution by reporting their own involvement in a cartel.

Table 3.3: Cartel immunity applications 2017–18

Financial year 2017–18	Number
Approaches	13
First-in approaches	12
Immunity application proffers	9
Proffers not resulting in conditional immunity	11
Civil conditional immunity granted	01
Criminal conditional immunity granted by CDPP upon ACCC recommendation	32

Notes: 1. Investigations continue regarding eight proffers; decisions pending.

2. Grants relate to three immunity recommendations made to the CDPP in 2016–17.

Case study: Enforcement action to remedy damage from a cartel—Yazaki Corporation and Australian Arrow Pty Ltd

In December 2012 the ACCC instituted proceedings against Yazaki Corporation, a Japanese company, and its Australian subsidiary, Australian Arrow Pty Ltd. This matter relates to cartel conduct in connection with the supply of wire harnesses to Toyota and its related entities in Australia between 2003 and at least late 2009.

Wire harnesses are electrical systems that facilitate the distribution of power and the sending of electrical signals to various components of a motor vehicle

The ACCC's action follows similar enforcement action against Yazaki and other cartel participants by competition regulators in the US, Canada, and Japan. It arose from an immunity application which reported the conduct.

In November 2015 the Federal Court found that Yazaki Corporation engaged in collusive conduct with its competitor. The Court held that this conduct was in breach of the CCA and the Competition Code of Victoria (the Code). The Court found that Yazaki's conduct was subject to the CCA and the Code, even though much of the conduct occurred in Japan. The Court imposed penalties of \$9.5 million against Yazaki.

The ACCC noted it will seek to enforce Australian cartel laws to protect Australian consumers and industry, even when the collusive arrangements are made outside of Australia.

The ACCC appealed the decision because it believed that the penalties imposed were insufficient to adequately deter Yazaki or other businesses from engaging in cartel conduct in the future. It submitted to the Court that Yazaki should be ordered to pay a penalty of between \$42 million and \$55 million to reflect both the size of Yazaki's operations and the very serious nature of its collusive conduct.

In May 2018 the Full Federal Court ordered Yazaki to pay increased penalties of \$46 million. This is the highest penalty ever imposed under the CCA.

Yazaki has sought special leave to appeal to the High Court.

Court cases

The ACCC brought Federal Court proceedings against businesses and related individuals for alleged cartel conduct in the supply of goods or services in Australia's construction, shipping and transportation, and financial services sectors.

The following cases were commenced in 2017-18.

Table 3.4: Cartel conduct proceedings commenced

Australia and New Zealand Banking Group Ltd (ANZ) and others		Conduct		
commenced jurisdiction	5 June 2018 Downing Centre Local Court Sydney	It is alleged that ANZ and one of its employees were knowingly concerned in cartel arrangements involving trading in ANZ shares following an ANZ institutional share placement in August 2015.		
Citigroup Global Markets Australia Pty Ltd and others		Conduct		
commenced jurisdiction	5 June 2018 Downing Centre Local Court Sydney	It is alleged that Citigroup and certain current and former employees engaged in cartel conduct involving trading in ANZ shares following an ANZ institutional share placemer August 2015.		
Country Care Pty	Ltd and others	Conduct		
commenced jurisdiction	14 February 2018 Magistrate's Court of Victoria	It is alleged that Country Care and employees were engagin cartel conduct involving assistive technology products used in rehabilitation and aged care, including beds and mattresses, wheelchairs and walking frames.		

Deutsche Bank Aktiengesellschaft (Deutsche Bank) and others		Conduct
commenced jurisdiction	5 June 2018 Downing Centre Local Court Sydney	It is alleged that Deutsche Bank and certain current and former employees were involved in cartel conduct involving trading in ANZ shares following an ANZ institutional share placement in August 2015.

The following cases were ongoing in 2017-18.

Table 3.5: Cartel conduct proceedings ongoing

Cascade Coal Pt	y Ltd and others ¹	Conduct
commenced jurisdiction	25 May 2015 Federal Court Sydney	The ACCC alleges that Cascade and individuals engaged in bid rigging conduct involving mining exploration licences in the Bylong Valley, New South Wales (NSW).
Kawasaki Kisen I	Kaisha Ltd	Conduct
commenced jurisdiction	2 November 2016 Federal Court Sydney	The ACCC alleges that Kawasaki engaged in cartel conduct concerning the international shipping of cars, trucks and buses to Australia between 2009 and 2012.
Oakmoore Pty L	td	Conduct
commenced jurisdiction	23 June 2016 Federal Court Brisbane	The ACCC alleges that Oakmoore engaged in cartel conduct in the supply of polycarbonate roof sheeting to retailers in Australia.
Prysmian Cavi e	Sistemi Energia SRL (High Court appeal) ²	Conduct
commenced jurisdiction	10 April 2018 High Court of Australia	The ACCC alleges that Prysmian engaged in cartel conduct in the supply of high-voltage land cables to a Snowy Mountains Hydro Electric Scheme project.
PT Garuda Indon	nesia Ltd (High Court appeal)	Conduct
commenced jurisdiction status	18 April 2016 Federal Court Sydney On 14 June 2017 the High Court dismissed the appeal by PT Garuda and other airlines and the matter was remitted to the Federal Court for consideration of penalty and other orders. On 22 & 25 June 2018 the penalty hearing took place. The matter is now awaiting judgment.	The ACCC alleges that Garuda Indonesia engaged in cartel conduct involving price fixing of surcharges on air cargo services.
PZ Cussons Aust	ralia Pty Ltd (appeal)	Conduct
commenced jurisdiction	20 February 2018 Full Federal Court Sydney	The ACCC alleges that Cussons was engaged in cartel and anti-competitive behaviour in supplying laundry detergent.
Yazaki Corporati	on and Australian Arrow Pty Ltd (High Court appeal)	Conduct
commenced jurisdiction status	13 June 2018 High Court of Australia Following the Full Federal Court decision on 16 May 2018 and the \$46 million penalty ordered against Yazaki, Yazaki and APL have filed an Application for Special Leave to appeal to the High Court.	The ACCC alleges that Yazaki engaged in price fixing and market sharing in relation to the supply of wire harnesses to Toyota. For details see the case study on page 35.

Notes: 1. On 6 July 2018 (after the reporting period) the Federal Court dismissed the ACCC's case with costs in a suppressed ruling.

On 7 August 2018, the ACCC appealed this decision to the Full Federal Court.

2. On 8 August 2018 (after the reporting period) the High Court dismissed Prysmian's appeal with costs.

The following cases were finalised in 2017-18. Refer to appendix 9 for details.

Table 3.6: Cartel conduct proceedings finalised

	Conduct	
18 April 2016	The cartel conduct concerned price fixing of	
27 June 2018	surcharges on air cargo services.	
Federal Court Sydney		
Penalties of \$15 million.		
oration Ltd (AECL) and others	Conduct	
26 May 2014	There was an alleged attempt by the company and	
25 September 2017	individuals to induce members of the corporation into an arrangement for the purpose of reducing the available egg supply.	
Federal Court Adelaide		
The ACCC appeal was dismissed against AECL.	available egg supply.	
Penalty of \$120 000, a compliance program, orders and a contribution to costs against Mr Lendich.		
shiki Kaisha Pty Ltd	Conduct	
14 July 2016	The cartel conduct concerned the international	
3 August 2017	shipping of cars, trucks and buses into Australia	
Federal Court NSW Criminal Division	between 2009 and 2012.	
Fine of \$25 million.		
	27 June 2018 Federal Court Sydney Penalties of \$15 million. oration Ltd (AECL) and others 26 May 2014 25 September 2017 Federal Court Adelaide The ACCC appeal was dismissed against AECL. Penalty of \$120 000, a compliance program, orders and a contribution to costs against Mr Lendich. shiki Kaisha Pty Ltd 14 July 2016 3 August 2017 Federal Court NSW Criminal Division	

Anti-competitive agreements and practices

The CCA prohibits contracts, arrangements and understandings between two or more parties that aim to, or are likely to, substantially lessen competition, even where they do not amount to cartel conduct.

Case study: Action against anti-competitive conduct—Flight Centre Ltd

In April 2018 the Full Federal Court of Australia ordered Flight Centre to pay penalties totalling \$12.5 million for attempting to induce three international airlines to enter into price-fixing arrangements between 2005 and 2009.

Under the arrangement, each airline would agree not to offer airfares on its own website that were lower than those offered by Flight Centre.

In March 2014 the trial judge imposed a penalty of \$11 million against Flight Centre.

Flight Centre appealed the liability finding and the ACCC appealed the \$11 million penalty orders because it considered that the penalty would not send a strong deterrence message to Flight Centre and other businesses. In May 2014 the Full Federal Court found that Flight Centre's conduct did not breach the CCA.

The ACCC sought special leave to appeal and in December 2016 the High Court allowed the ACCC's appeal. The matter was remitted to the Full Federal Court. In April 2018 the Full Federal Court ordered an increase in penalties to \$12.5 million.

Flight Centre is Australia's largest travel agency, with \$2.6 billion in annual revenue. The ACCC will continue to argue for stronger penalties which it considers better reflect the size of the company, as well as the economic impact and seriousness of the conduct. Significant penalties act also as a general deterrent to other businesses that may be considering such conduct.

Case study: Action against anti-competitive conduct—Cement Australia Pty Ltd

The ACCC first brought the proceedings in 2008 against five related companies:

- Cement Australia Pty Ltd (currently 50 per cent owned by Holcim and 50 per cent owned by the Heidelberg Cement subsidiary Hanson)
- Cement Australia Holdings Pty Ltd
- Cement Australia Queensland Pty Ltd (formerly Queensland Cement Ltd (QCL))
- Pozzolanic Enterprises Pty Ltd
- Pozzolanic Industries Pty Ltd.

The proceedings related to contracts that were entered into between 2002 and 2006 with the operators of the Millmerran, Tarong, Tarong North and Swanbank power stations in South East Queensland to acquire flyash (it is noted that allegations were not made against the power stations). Flyash is a by-product of burning black coal at power stations, and can be used as a cheap partial substitute for cement in ready-mix concrete.

The Federal Court ordered penalties of \$17.1 million against Cement Australia and its related companies. Justice Greenwood found that the conduct had the purpose and effect of preventing a competitor from entering the market by preventing them from obtaining direct access to a source of flyash in south-east Queensland. Justice Greenwood found that, because of this, the contracts had both the purpose and effect of substantially lessening competition.

However, in June 2016 the ACCC appealed the decision, submitting that penalties of over \$90 million were appropriate as a specific and general deterrence, taking into account the serious nature and extent of the conduct, the apparent benefit that Cement Australia derived from the contraventions, and the market harm caused.

In October 2017 the Full Federal Court upheld the ACCC appeal and dismissed a cross-appeal by Cement Australia against the penalties imposed on Cement Australia Pty Ltd and its related companies. The Full Court ordered these companies to pay increased penalties totalling \$20.6 million.

The penalties imposed on each of the Cement Australia companies were:

- \$2.93 million against Pozzolanic Enterprises Pty Ltd
- \$10.28 million against Cement Australia (Queensland Pty Ltd) (formerly QCL)
- \$7.29 million against Cement Australia Pty Ltd
- \$100 000 against Pozzolanic Industries.

The Full Court upheld the ACCC's ground of appeal, which related to the imposition of a single penalty, jointly and severally, on two respondent companies involved in one contravention. In upholding this ground, the Full Court confirmed that 'deterrence is the primary objective for the imposition of civil penalties' and considered 'that the imposition of a joint and several penalty would risk undermining this objective'.

Court cases

The following cases were finalised in 2017-18.

Table 3.7: Anti-competitive agreements and practices proceedings finalised

Cement Australia	Pty Ltd and others (appeal)	Conduct	
commenced concluded jurisdiction outcome	6 June 2016 5 October 2017 Full Federal Court Penalties of \$20.6 million.	The conduct concerned anti-competitive arrangements relating to flyash contracts between Cement Australia and power stations in south-east Queensland. For details see the case study on page 38.	
Flight Centre Ltd		Conduct	
commenced concluded jurisdiction outcome	11 March 2016 4 April 2018 Full Federal Court Penalties of \$12.5 million.	The conduct concerned anti-competitive arrangements with three international airlines to eliminate differences in international airfares offered to customers. For details see the case study on page 37.	
Construction For	estry Mining and Energy Union (CFMEU)	Conduct	
commenced concluded jurisdiction outcome	20 November 2014 14 February 2018 Federal Court Melbourne Penalty of \$1 million.	This matter concerned secondary boycott conduct w hindered or prevented the acquisition of concrete from and its subsidiary Alsafe.	

Undertakings

The following s. 87B undertaking was accepted in 2017–18. Details of competition enforcement s. 87B undertakings are available in full on the undertakings public register on the ACCC website.

Table 3.8: Undertaking accepted in respect of anti-competitive agreements

BHP Billiton Petroleum (Bass Strait) Pty Ltd and	The ACCC accepted a court enforceable undertaking from BHP Billiton Petroleum
Esso Australia Pty Ltd	(Bass Strait) Pty Ltd and Esso Australia Pty Ltd to separately market their share of
s. 87B undertaking dated 18 December 2017	gas produced under the Gippsland Basin Joint Venture from 1 January 2019.

Misuse of market power

Until 5 November 2017 a misuse of market power was defined to occur where a business with substantial market power in a market used this power to:

- eliminate or substantially damage a competitor
- prevent another business from entering a market
- deter or stop another business from acting competitively in any market.

Since 6 November 2017 a misuse of market power occurs where a business with substantial power in a market engages in conduct that has the purpose, effect or likely effect of substantially lessening competition.

This behaviour is prohibited under the CCA.

Case study: Action for misuse of market power—Pfizer Australia Pty Ltd

In May 2018 the Full Federal Court of Australia dismissed an appeal by the ACCC against an earlier judgment in relation to Pfizer Australia Pty Ltd (Pfizer).

In February 2014 the ACCC instituted proceedings in the Federal Court, alleging that Pfizer breached the CCA by misusing its market power to prevent or deter competition from other suppliers selling generic atorvastatin products to pharmacies and engaged in exclusive dealing conduct for the purpose of substantially lessening competition when offering to supply atorvastatin to community pharmacies.

In 2015 the Court dismissed the ACCC's application, finding that, while Pfizer had taken advantage of its market power by engaging in the alleged conduct, Pfizer's market power was no longer 'substantial' at the time the offers were made.

The ACCC appealed the decision. The Full Federal Court dismissed the appeal. The ACCC has sought special leave to appeal to the High Court.

Court cases

The following cases were ongoing in 2017-18.

Table 3.9: Misuse of market power cases ongoing

Pfizer Australia F	Pty Ltd (High Court appeal)	Conduct		
commenced jurisdiction	22 June 2018 High Court of Australia	The ACCC alleges that Pfizer was involved in misuse of market power for the purpose of substantially lessening competition in relation to particular cholesterol-lowering products by offering to supply its originator brand of atorvastatin, Lipitor, and its own generic atorvastatin product to community pharmacies in early 2012.		
		For details see the case study on page 40.		
Ramsay Health C	Care Australia Pty Ltd			
commenced jurisdiction	1 May 2017 Federal Court Sydney	The ACCC alleges that Ramsay Health Care was involved in anti-competitive conduct involving misuse of market power and exclusive dealing in the day surgery market in the Coffs Harbour region.		

Strategy 1: Maintain and promote competition

Performance results and analysis: Merger and authorisation review

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

Our reporting on this strategy is in three sections:

- our competition enforcement and advocacy function (enforcement actions to promote competitive markets) (see pages 31-40)
- our merger and authorisation review function (see below)
- the other work we do to promote competition (see pages 58-64).

Role and functions

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

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

Merger parties can seek 'informal' clearance from the ACCC, and we will provide our view on whether an acquisition is likely to substantially lessen competition. The ACCC deals with matters considered under the informal clearance system expeditiously when it determines that they do not require a detailed review because of the low risk that competition concerns will be raised.

On 18 October 2017 amendments were made to the CCA that changed the first-instance decision-maker and the test for authorising proposed acquisitions (referred to as 'merger authorisation'). On 6 November 2017 the amendments came into effect.

The merger authorisation process provides an alternative clearance option to the informal merger review process. Under the amendments, applications for merger authorisation must be made to the ACCC rather than to the Australian Competition Tribunal (the Tribunal). The amended merger authorisation test enables authorisation to be granted where the acquisition will not be likely to substantially lessen competition or, alternatively, results in public benefits that outweigh any detriments. The ACCC has received no applications for merger authorisation since the revisions to the CCA came into effect.

Before the amendments to the CCA, merger parties could seek legal protection from court action under s. 50 of the CCA by applying to the Tribunal for authorisation of the merger proposal. The test that the Tribunal applied was a public benefits test. This differed from reviews under s. 50, where a substantial lessening of competition test is applied. The test that the Tribunal applied also differed from the current merger authorisation test.

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

The ACCC's decisions on merger authorisation and non-merger authorisation applications can be appealed to the Tribunal. We have a role in assisting the Tribunal in reviewing these decisions.

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

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

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

Priorities

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

Mergers are usually brought to our attention by merger parties that request informal clearance. Alternatively, we may become aware of a merger proposal through the media, from complaints or by referral from other regulatory bodies.

Our consideration of authorisations, notifications and certification trade marks are triggered by a formal application. Our priority is to assess and make decisions about applications for authorisation and notifications involving potentially anti-competitive conduct. We do this primarily by evaluating whether it is likely that the arrangements or conduct will result in a net public benefit and warrant exemption from the CCA.

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

Powers

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

There is no legislation underpinning the informal clearance process: this process has developed over time so that merger parties can seek the ACCC's view before they complete a merger. Appendix 6 has more details on informal clearance and pre-assessments.

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

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

Part VII also gives the ACCC the power to make a class exemption, grant authorisation or allow notifications involving non-merger conduct that may otherwise risk breaching the competition provisions of the CCA but are not harmful to competition and/or are likely to be in the overall public interest. An outline of our authorisation function is in appendix 6.

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

Performance indicators

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

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

These performance indicators are from page 15 of the ACCC and AER Corporate Plan 2017-18. Additional performance indicators (those without a target) provide additional transparency on the volume of our work and on our timeliness.

Table 3.10: Performance indicators for deliverable 1.2

Performance indicator	2016-17	2017-18	
	Result	Target	Result
Number of merger matters considered (externally driven)	288	N/A	281
Percentage of merger matters considered (under the informal merger review process) that were finalised by pre-assessment	88%	80%	90%
Percentage of merger matters subject to Phase 1 only of public review that were finalised within 8 weeks (excluding time periods where information is outstanding)	80%	50%	45%
Percentage of merger matters subject to Phase 2 of public review that were finalised within 20 weeks (excluding time periods where information is outstanding) ¹	94%	90%	71%

Note: 1. Phase 2 involves release of a statement of issues and/or acceptance of a court enforceable undertaking to remedy competition concerns

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

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

These performance indicators are from page 15 of the ACCC and AER Corporate Plan 2017–18. Additional performance indicators (those without a target) provide additional transparency on the volume of our work and on our timeliness.

Table 3.11: Performance indicators for deliverable 1.3

Performance indicator	2016-17		2017-18
	Result	Target	Result
Number of authorisation applications assessed (externally driven)	29	N/A	27
Number of exclusive dealing notifications assessed (externally driven)	407	N/A	268
Number of collective bargaining notifications assessed (externally driven)	1	N/A	3
Number of resale price maintenance notifications assessed (externally driven)	N/A	N/A	0
Number of certification trade marks assessed (externally driven)	37	N/A	32
Number of class exemptions made by legislative instrument	N/A	N/A	this is a new power
Percentage of authorisation applications assessed within statutory timeframe(s) (excluding time periods where information is outstanding) ¹	100%	100%	100%
Percentage of notifications assessed within statutory timeframe ²	100%	100%	100%

Notes: 1. The ACCC is required to assess the validity of an authorisation application within five business days of lodgment and to issue a final determination about a new authorisation application within six months (unless extended).

Analysis of performance

The informal clearance process provides merger parties with an avenue to seek the ACCC's views on a merger prior to proceeding and thereby manage the risk of regulatory intervention at a later time. We assessed 281 mergers in 2017-18, which were submitted to the ACCC under the informal clearance regime or identified through monitoring and intelligence gathering.

We aim to deal with non-contentious mergers expeditiously. Consistent with this, we determined that 90 per cent of transactions did not require a detailed review because of the low risk that competition concerns will be raised, exceeding our target of 80 per cent. The vast majority of these were completed within four weeks, excluding time taken for merger parties to respond to information requests.

The remaining 10 per cent of mergers that undergo a public review are the more contentious and potentially more complex matters. A number of these will involve mergers in concentrated markets where the competition concerns are likely to be higher and the general public expect the ACCC to scrutinise these transactions closely. Significant decisions made by the ACCC on transactions following a public review included:

- the decision to oppose the proposed acquisition by BP Australia Ltd (BP) of Woolworths Ltd (Woolworths) retail service station sites
- accepting a negotiated court enforceable undertaking to remedy competition concerns in Saputo Dairy Australia's proposed acquisition of Murray Goulburn's operating assets.

In some transactions the parties will decide not to proceed with the transaction following the release by the ACCC of a statement of issues outlining competition concerns. There were two transactions where the merger parties withdrew their request for clearance at this point.

While the ACCC will endeavour to complete these reviews as quickly as possible, the focus is on getting the right decision. In the past year, the ACCC has signalled that it would use its compulsory information gathering powers more in merger investigations where our concerns warrant increased evidence gathering to reach a decision and, for some matters, prepare for possible litigation. We did so in 10 reviews this year.

^{2.} The ACCC is required to assess the validity of a notification within five business days of lodgment.

The greater use of these powers and related complexity of publicly reviewed matters led to an increase in average review length. We did not reach our targets of completing 50 per cent of Phase 1 reviews in eight weeks or less or 90 per cent of Phase 2 reviews in 20 weeks or less, achieving 45 per cent and 71 per cent respectively.

We published a suite of guidelines that reflect the changes to the authorisation and notification processes which came into effect in November 2017 and stem from the recommendations from the 2015 Harper review.

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

- conditional authorisation was granted to BP, Woolworths and BP Resellers to implement the participation of BP and BP Resellers in the Woolworths Rewards Loyalty Program and Shopper Docket Discount Scheme
- conditional authorisation was granted for an agreement between the Port of Brisbane and cruise operator Carnival to develop a new \$158 million cruise terminal in Brisbane
- authorisation was granted to allow a group of Victorian agribusinesses to purchase energy jointly.

There were no external factors that had a significant impact on our performance.

Assessing mergers: Actions undertaken to achieve our purpose

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

Merger reviews

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

The ACCC also seeks to inform the public, businesses and their advisers about the merger review process. We publish indicative timelines for assessments of proposed mergers under public consideration on our online mergers register, unless the merger is cleared after an initial assessment (that is, 'pre-assessed') or subject to a confidential review. Our approach to informal merger reviews is outlined in appendix 6.

We considered 281 matters under s. 50 of the CCA in 2017-18—a decrease of 2 per cent on the 288 matters in 2016-17. Of the 281 mergers considered:

- 252 were assessed as not requiring a public or confidential review (preassessed)—compared to 253 pre-assessments in 2016-17
- 28 mergers were subject to a public review—a decrease of 15 per cent on the 33 public reviews in 2016-17
- one merger was subject to a confidential review.

Of the 28 public reviews and one confidential review that were conducted in 2017-18:

- we opposed outright one merger that underwent a public informal review
- we expressed confidential opposition to or concerns about one confidential merger that did not ultimately proceed
- we accepted court enforceable undertakings in relation to one merger to address competition concerns, resulting in this merger being cleared subject to an undertaking
- seven reviews were discontinued because either the transactions did not proceed or the parties
 withdrew their request for clearance. In two of these matters the decision by the parties to withdraw
 came after we released a statement of issues identifying issues of concern or issues that may raise
 concerns
- we did not oppose 17 other mergers that underwent a public informal review
- we reviewed a request to vary an existing undertaking and a request to waive certain conditions
 of an existing undertaking previously accepted in relation to two acquisitions to remedy
 competition concerns.

We unconditionally cleared 59 per cent of mergers that underwent a public or confidential review. This figure increases to 96 per cent when all mergers (including pre-assessments) are included. In 10 matters we used our formal information-gathering powers under s. 155.

Case study: Significant merger review resulting in a decision to oppose—BP's proposed acquisition of Woolworths' network of service stations

On 14 December 2017 the ACCC announced its decision to oppose BP's proposed acquisition of Woolworths' network of retail service station sites.

The ACCC considered that BP acquiring the Woolworths service stations would be likely to substantially lessen competition in the retail supply of fuel.

Woolworths operates 531 service station sites across Australia, and has 12 sites in development. BP supplies fuel to approximately 1400 branded service stations throughout Australia, setting fuel prices at around 350 of these.

The ACCC considered that Woolworths is a vigorous and effective competitor which has an important influence on fuel prices and price cycles in many markets throughout the country. The ACCC considered that the removal of Woolworths' vigorous pricing strategy from the market and its replacement with BP's premium pricing strategy was likely to have a substantial impact on the competitive process, reducing the competitive constraint on remaining market participants.

The ACCC also considered that the proposed acquisition would be likely to affect metropolitan price cycles by making the price jumps faster, larger and more coordinated. Reduced competition would also mean that prices will not fall as far, or as quickly, in the discounting phase of the cycle.

In forming its view, the ACCC conducted an extensive investigation of information and documents from both the companies concerned and from third parties. In particular, the ACCC conducted very extensive data analysis of all major retailers' fuel prices to determine the effect that BP and Woolworths have in both local and metropolitan areas. The ACCC determined that the underlying concerns arising from the proposed acquisition would not be addressed by the divestments that BP proposed.

In its review of the proposed acquisition, the ACCC took into account a large number of submissions, information and documents from a broad range of market participants, including motoring groups, competitors, and corporate and individual consumers.

Case study: Significant merger review resulting in a decision not to oppose—Moly-Cop's proposed acquisition of Donhad

On 29 March 2018 the ACCC announced that it would not oppose Moly-Cop's proposed acquisition of Donhad.

In Australia, Moly-Cop and Donhad are the only two manufacturers of forged steel grinding media, which are primarily used by the mining industry to crush or grind mineral ore to extract copper, gold and iron.

The ACCC's review focused on the supply of steel grinding media in Australia. The term 'steel grinding media' includes forged steel grinding media and cast steel (high chrome) grinding media.

The ACCC concluded that the proposed acquisition was likely to lessen competition in the supply of steel grinding media in Australia. However, it was not satisfied that the reduction in competition was likely to be substantial.

Based on all the information resulting from the merger review, including feedback from customers, internal company documents and data on import quality and transport costs, the ACCC concluded that the threat of customers switching to imported grinding media would prevent Moly-Cop from increasing prices or decreasing service levels in a sustainable and meaningful way.

In reaching its conclusion, the ACCC took into account the following factors in particular:

- Australia represents a small proportion of total global demand for grinding media. Spare international capacity is many multiples the size of Australian grinding media requirements. The ACCC considered that a number of overseas manufacturers have spare capacity and would be able to increase their supply of grinding media into Australia if the merged entity sought to raise prices or decrease service levels.
- Imports of grinding media had been growing and represented approximately 40 per cent of the supply of steel grinding media in Australia in 2016–17.
- Overseas manufacturers were winning a range of different size and types of contracts from Moly-Cop and Donhad, suggesting that customers considered importers as a viable option.

Case study: Significant merger review resolved in light of global divestments—Bayer AG's proposed acquisition of Monsanto Corporation

On 22 March 2018 the ACCC announced that it would not oppose Bayer AG's proposed acquisition of Monsanto Corporation in light of global divestments.

Bayer is a global science and technology company based in Germany. It manufactures products in the healthcare and crop sciences sectors. Its crop sciences business covers agri-chemicals, traits and seeds, among other things.

Monsanto is a global crop sciences business, formerly based in St Louis in the US. It produces the herbicide Roundup. It focuses on trait technology and the emerging area of digital agriculture.

Although the ACCC did not reach a concluded view on market definition, the key products considered were:

- weed management systems (comprising non-selective herbicides and genetic traits conferring tolerance to that herbicide) for use in the production of canola
- vegetable seeds
- digital agriculture software solutions
- research and development in relation to traits and herbicides
- the supply of cotton seed treatments.

On 21 March 2018 the European Commission gave conditional approval to Bayer's proposed acquisition, subject to divestiture of major parts of Bayer's herbicide, traits and seeds business along with a number of research and development functions and projects.

The ACCC concluded that, once the divestments set out in commitments to the European Commission had taken place, the proposed acquisition would not substantially lessen competition in any relevant market in Australia.

The commitments remove the overlap between Bayer and Monsanto in the supply of weed management systems for canola and the supply of vegetable seeds, including in Australia. The divestiture of certain areas of research and the licensing of Bayer's digital agriculture products preserves future competition in these areas.

We also considered certain issues which were unique to Australia. The first was the potential foreclosure of rival Australian providers of cotton seed treatments, as Bayer already supplies seed treatments and would acquire Monsanto's cotton traits business. We considered that there would be sufficient constraints to limit the ability of Bayer to foreclose competing suppliers after the acquisition.

The ACCC's review also considered Bayer's decision to cancel a program to develop cotton seed for sale in Australia. Shortly before the proposed acquisition was announced, Bayer announced that it was closing its Australian cotton seed breeding program. A number of people raised concerns about the coincidence of these announcements. Based on its investigation of this issue, the ACCC considered that the closure of the breeding program was not connected to the proposed acquisition.

The ACCC worked closely with the European Commission, the US Department of Justice and the Canadian Competition Bureau in assessing the transaction.

Statements of issues

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

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

In 2017-18 we released statements of issues in relation to eight mergers. These were all published on our online mergers register.

The ACCC released statements of issues in the following matters.

Table 3.12: Statements of issues released

Statements of issues released 2017-18

BP—proposed acquisition of Woolworths' retail service station sites

Camp Australia Pty Ltd and Junior Adventures Group Pty Ltd

Moly-Cop—proposed acquisition of Donhad

MYOB Group Ltd—proposed acquisition of Reckon Ltd's Practice Management Group

Pacific National Pty Ltd / Linfox—proposed acquisitions of Intermodal assets from Aurizon

Platinum Equity—proposed acquisition of OfficeMax Australia

Saputo Dairy Australia Pty Ltd-proposed acquisition of Murray Goulburn's operating assets

Sydney Transport Partners Consortium (including Transurban)—proposed acquisition of WestConnex interest

Significant merger proposals withdrawn before reviews completed

In some cases, merger parties withdrew significant merger transactions from consideration after a statement of issues had been released and before we completed our review. In 2017-18 these were:

- Camp Australia Pty Ltd and Junior Adventures Group Pty Ltd
- MYOB Group Ltd—proposed acquisition of Reckon Ltd's Accountants Group.

Case study: Significant merger review where the merger parties decided to terminate the transaction following preliminary competition concerns being raised—Camp Australia and Junior Adventures Group

On 27 September 2017 the ACCC announced that Camp Australia Pty Ltd (Camp Australia) and Junior Adventures Group (JAG) had withdrawn their request for merger clearance by the ACCC.

Camp Australia and JAG are the two largest commercial providers of before and after school care in Australia. When the proposed merger was announced, Camp Australia operated at about 780 sites in Australia. JAG operated in about 380 schools in Australia under its two brands, OSHClub and Helping Hands.

The ACCC commenced an informal merger review on 1 June 2017 and during consultation received extensive feedback from interested parties, including schools and parents. The ACCC released a statement of issues on 10 August 2017, in which it expressed preliminary concerns with the proposed acquisition.

The ACCC's preliminary view was that the proposed merger would have substantially lessened competition in markets for the supply of before and after school care in Victoria, Western Australia, New South Wales and Queensland. The ACCC was also further considering impacts in the Australian Capital Territory and South Australia.

The ACCC's main concerns were:

- The proposed merger involved the consolidation of the two largest providers of before and after school care, eliminating the competitive tension between them.
- A merged Camp Australia JAG may not have been effectively constrained by other existing competitors, by the threat of entry or by the threat of schools supplying before and after school care themselves.
- The loss of competition between Camp Australia and JAG could have resulted in higher prices for parents and lower quality care for students in some states.

The ACCC discontinued its review of the proposed merger on 27 September 2017 after being notified by the parties that the transaction had been abandoned.

Public competition assessments

A public competition assessment is a document that gives a detailed summary of the issues that we considered when deciding whether a merger would substantially lessen competition or would be likely to do so.

We use public competition assessments to help the public to understand our analysis of the competition issues involved in certain merger reviews.

In 2017-18 we issued a public competition assessment for one merger review. We generally publish a public competition assessment on our online mergers register when:

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

Table 3.13: Public competition assessments issued

Public competition assessments issued 2017-18

Saputo Dairy Australia Pty Ltd—proposed acquisition of Murray Goulburn's operating assets

Merger remedies

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

In 2017-18 we accepted a s. 87B undertaking to address competition concerns in relation to one merger and enabled the acquisition to be cleared subject to the undertakings.

Section 87B undertakings are available on the ACCC's website.

Case study: Undertaking accepted to address competition concerns—Saputo Dairy Australia's proposed acquisition of Murray Goulburn's operating assets

On 4 April 2018 the ACCC announced that it would not oppose Saputo Dairy Australia Pty Ltd's proposed acquisition of Murray Goulburn's operating assets after accepting an undertaking from Saputo.

The undertaking requires Saputo to divest the Koroit dairy processing plant to a purchaser to be approved by the ACCC. The Koroit plant is close to Saputo's plant at Allansford.

Murray Goulburn and Saputo both acquire milk from farmers in south-west Victoria and south-east South Australia ('western Victoria'), including in areas around Warrnambool and Mt Gambier. Saputo is based at Allansford and Murray Goulburn's principal plant in western Victoria is at Koroit. They own the two largest processing plants in western Victoria. The Koroit plant is close to the Allansford plant.

The ACCC was concerned that, if Saputo owned both its Allansford plant and Murray Goulburn's Koroit plant, it would own most of the processing capacity in western Victoria. Although there were other processors able to collect raw milk in the area, their plants either had limited capacity or were some distance away, making them less of a competitive constraint on Allansford than Koroit.

The ACCC was therefore concerned that, if the proposed acquisition went ahead, farmers in western Victoria would be paid lower farmgate milk prices than would be the case if Koroit's ownership remained separate from Allansford.

In response to the ACCC's concerns, Saputo offered an undertaking that it would divest the Koroit dairy processing plant within a specified period to a purchaser to be approved by the ACCC.

The ACCC considered that divestiture of the Koroit plant would address its concerns that the acquisition would have been likely to result in a substantial lessening of competition in the acquisition of raw milk in Western Victoria.

Authorisations and notifications: Actions undertaken to achieve our purpose

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

Authorisation applications

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

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

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

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

During 2017-18 we issued 27 final authorisation decisions, excluding minor variations, for arrangements involving a wide range of industries. Among them were aviation, financial services, agriculture, energy, waste services, transport and retailing.

Applicants sought authorisation for conduct such as collective bargaining, coordination agreements, joint tender or buying processes, industry codes and other price or fee agreements.

Case study: Conditional authorisation to preserve potential competition—Proposed retail convenience, shopper docket discount and customer loyalty partnership between BP, Woolworths and BP Resellers

On 28 April 2017 BP, Woolworths and BP Resellers sought authorisation to implement certain provisions of agreements related to BP's proposed acquisition of Woolworths' network of service stations. They wished to do this so that BP could offer fuel discounts and benefits to consumers under Woolworths' shopper docket fuel discount scheme and rewards loyalty program at BP service stations.

The ACCC's assessment of the proposed rollout of Woolworths' shopper docket discount scheme and rewards loyalty program to BP service stations (including those proposed to be acquired from Woolworths) was conducted separately from the assessment of a proposed acquisition of Woolworths' petrol stations by BP (see the case study on page 47). These two assessments were undertaken in parallel because Woolworths and BP applied for authorisation of some aspects of the proposed transaction under one legal process and sought clearance for BP to acquire Woolworths' petrol stations under another.

Discounts to consumers are generally beneficial. However, the ACCC has longstanding concerns that fuel discounts offered through shopper docket or similar schemes can have anti-competitive effects if they are at a level that otherwise efficient fuel retailers are unable to match, particularly where the discounts are being funded from other parts of a supermarket business not related to fuel retailing. We also consider that supermarket funding of fuel discounts has the potential to distort competition in fuel retailing.

On 14 December 2017 the ACCC decided to grant these applications for authorisation, subject to conditions designed to address the ACCC's concerns. The conditions specify that BP and Woolworths must limit shopper docket and loyalty scheme discounts to no more than 4 cents per litre (in total per fuel purchase), and Woolworths is not permitted to fund more than 2 cents of the 4 cent discount.

While the ACCC has granted authorisation, the conduct will only occur if the broader transaction proceeds. However, on 14 December 2017 the ACCC announced its decision to oppose BP's proposed acquisition of Woolworths' network of retail service station sites.

Case study: Conditional authorisation to preserve potential competition—Port of Brisbane and Carnival

Port of Brisbane Pty Ltd (PBPL) and cruise operator Carnival sought authorisation for arrangements to support the construction of a new cruise ship terminal in Brisbane.

PBPL is proposing to build a new terminal that is purpose-built for cruise ships and is able to berth mega cruise ships of more than 270 metres in length. These cruises are becoming increasingly popular. However, currently only a limited number of mega ships are able to berth in Brisbane at PBPL's multi-user terminal (which is a cargo terminal and is not designed for use by cruise ships).

To support the development of the new terminal, Carnival agreed to be bound by take-or-pay obligations (meaning Carnival has agreed to pay PBPL a significant amount each year, regardless of whether it uses the new terminal). In exchange, Carnival will receive certain preferential berthing rights from PBPL.

Passengers and operators place a high value on cruises that arrive or depart on a weekend day (Friday, Saturday or Sunday). They are the most popular and profitable days for cruise ship operators. Therefore, the ACCC considered that a potential competing cruise operator must be able to obtain at least some weekend berthing days. Otherwise, competitors could be deterred from entering or expanding to a degree that could constrain Carnival.

On 10 May 2018 the ACCC decided to grant authorisation subject to two conditions designed to reduce the agreement's anti-competitive effect and to promote competition and choice for cruise customers.

Under the first condition, Carnival will still get its choice of four days each week, but it cannot initially book more than two of the three weekend days in any given week.

The second condition is that, if the terminal is expanded in the future to provide a second berth, Carnival cannot be given first right of refusal for an agreement which would give it first choice of days at that berth too.

These conditions are designed to ensure that competing cruise operators are able to gain sufficient access to the new facility so that consumers can benefit from competition.

Case study: Innovative approach to less complex applications—Taylors Wines Pty Ltd

On 7 December 2017 the ACCC issued a determination granting authorisation to Taylors Wines Pty Ltd to invite third-party wine suppliers to take part in joint marketing and promotional arrangements with Deliveroo Australia.

Taylors applied to the ACCC for authorisation to invite other wine producers to supply wine products to Deliveroo Australia's customers by way of Deliveroo's website and/or social media platforms.

The ACCC aims to assess applications for authorisation on a timely basis. Where conduct is straightforward and the issues raised are not complex, the ACCC may be able to issue a final determination well within the statutory six-month period.

The CCA requires consultation only after a draft determination. However, our usual practice is also to consult publicly when we receive a new application. Given the commercial case for an expedited process in this matter, we decided to commence consultation only after the release of a draft determination. This enabled us to make a final determination eight weeks after Taylors Wines lodged its application for authorisation.

We will consider using this approach again in the future where it appears that the proposed conduct which is the subject of an application for authorisation is unlikely to raise concerns.

Notifications

Notification is an alternative to authorisation for certain arrangements such as exclusive dealing. Like authorisation, the notification process provides protection from legal action under the CCA if the conduct is in the public interest.

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

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

We assessed 268 exclusive dealing notification matters in 2017-18, 34 per cent fewer than in the previous year.

Resale price maintenance notifications

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

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

Changes to the CCA from 6 November 2017 mean that it is now possible to obtain protection from legal action for resale price maintenance conduct by lodging a notification. Before this date, ACCC authorisation was the only way to obtain legal protection for resale price maintenance conduct. Authorisation will continue to be available, so businesses proposing to engage in resale price maintenance now have a choice of lodging a notification or seeking authorisation.

There has been one notification of resale price maintenance conduct since the revisions to the CCA came into effect, lodged by Tooltechnic Systems (Aust) Pty Ltd.

Collective bargaining arrangements

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

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

Collective bargaining notifications have been available since 2007. Revisions to the CCA which came into effect on 6 November 2017 mean that notifications can:

- be lodged to cover future members of the collective bargaining group, not just current members
- cover multiple targets, so that a single notification can give protection for collective bargaining with more than one target business.

Other revisions to the CCA which relate to notifications involving a collective boycott mean that:

- the ACCC can impose conditions on a collective boycott notification, if required. If the conditions are not complied with, the ACCC can issue an objection notice to revoke the notification
- for collective boycott notifications, legal protection will commence 60 days after the notification is validly lodged, unless the ACCC objects within this period
- the ACCC can issue an urgent 'stop notice' to require notified collective boycott conduct to immediately cease for a period of time. It can do this where there has been a material change of circumstances since the ACCC last considered the notification and the ACCC reasonably believes that the collective boycott has resulted in serious detriment to the public or that serious detriment to the public is imminent.

In 2017-18 we issued 12 determinations authorising collective bargaining arrangements and allowed notifications involving three collective bargaining arrangements. The collective bargaining arrangements we considered during the year include arrangements in the aviation, energy and waste services industries.

Australian Competition Tribunal

Before the revisions to the CCA which came into effect on 6 November 2017, merger parties could seek legal protection from court action under s. 50 of the CCA by applying directly to the Australian Competition Tribunal for authorisation of a merger proposal. The test that the Tribunal applied was a public benefits test. This differed from reviews under s. 50, where a substantial lessening of competition test is applied.

The role of the ACCC in the Tribunal process involved assisting the Tribunal's decision-making by making inquiries, calling and examining witnesses and preparing a report.

The following merger authorisation application predates the amendments to the merger authorisation provisions that came into effect on 6 November 2017.

Case study: Merger authorisation—Tabcorp Holdings Ltd

In June 2017 the Australian Competition Tribunal made a determination to grant Tabcorp a merger authorisation to acquire Tatts Group and published its reasons. The test the Tribunal applied (in s. 95AZH of the CCA, which has since been amended) stated that the Tribunal must not grant an authorisation for a proposed acquisition of shares or assets unless it is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to occur.

The Tribunal found that there were substantial public benefits and no material detriments.

The ACCC sought judicial review of the Tribunal's determination on multiple grounds, including that the Tribunal erred by undertaking its analysis on the basis it could only find that the proposed acquisition was likely to result in a competitive detriment if it concluded that there would be a substantial lessening of competition.

On 20 September 2017 the Full Federal Court upheld the ACCC's application on this ground and handed down its judgment regarding the ACCC's application for judicial review. It set aside the Tribunal's determination and remitted the matter back to the Tribunal for rehearing.

The Full Federal Court found that the Tribunal erred in failing to have regard to the detriment submitted by the ACCC, because the Tribunal only had regard to whether the proposed acquisition was likely to 'substantially lessen competition' in the wagering market. The Full Federal Court clarified that the Tribunal must have regard to all competitive detriments, not only those that are likely to result in a substantial lessening of competition. The Court dismissed the other grounds of review in the ACCC's application.

The Full Federal Court's decision clearly distinguishes between a 'substantial lessening of competition' and competitive detriments that may fall below this threshold but are nevertheless relevant to a merger authorisation application. In October 2017 the Tribunal reheard the matter and published a new determination on 22 November 2017 granting merger authorisation for Tabcorp to acquire Tatts, subject to conditions.

Other work assessing the public interest

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

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

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

During 2017-18 the ACCC finalised 32 assessments of certification trade mark applications—14 per cent fewer than in the previous year.

Case study: Improving the way we handle certification trade mark applications

In the first half of 2018 we introduced improvements to the way the ACCC deals with certification trade marks. These improvements are aimed at reducing the time certification trade mark applications are with the ACCC for assessment.

A key focus of our new approach is to adhere more strictly to timeframes (no longer granting lengthy extensions), particularly where applicants provide certification trade mark rules that do not meet the requirements of the *Trade Marks Act 1995*. We will continue to provide applicants with an opportunity to rectify incomplete applications. However, our general approach will be to return applications to IP Australia if a complete set of rules is not provided in a timely manner.

We are also introducing improvements to the way we engage with interested parties on certification trade marks that are likely to be contentious or of broad public interest. For such matters, we will continue to consult with interested parties and publish reasons for our decisions.

Strategy 1: Maintain and promote competition

Other work promoting competition

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

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

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

Agriculture sector engagement and enforcement

Addressing competition and consumer issues in the agriculture sector was one of our 2017-18 priorities.

The ACCC's Agriculture Unit undertook a range of activities to increase our engagement and enforcement in the agriculture sector. This included:

- continuing to work with fruit and vegetable industry organisations to educate growers and traders of horticulture produce on their rights and obligations under the revised Horticulture Code of Conduct.
 The code came into full effect from 1 April 2018 and the ACCC's focus shifted to enforcement of the code
- conducting meetings of the ACCC Agriculture Consultative Committee and appointing a new committee made up of 25 representatives of farmers and agricultural businesses for the 2018-19 term
- increasing the number of subscribers to the Agriculture Unit's Agriculture Information Network to 1372 individuals and organisations
- working closely with the ACCC enforcement and merger teams on agriculture matters, including assisting with the assessment of Saputo Dairy Australia Pty Ltd's proposal to acquire Murray Goulburn's operating assets, including Saputo's draft divestiture proposal. For details, refer to the case study on page 51. The unit also assisted in matters relating to possible contraventions of the CCA in agriculture markets, including the horticulture, eggs, grains, poultry, dairy, cotton and agricultural chemicals industries
- continuing to assess and investigate standard form contracts given to small businesses in the agriculture sector across a number of industries for potentially unfair contract terms.

Dairy inquiry

On 30 April 2018 the ACCC released the final report of its inquiry into the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry.

This inquiry, which began on 1 November 2016, examined the dynamics of the Australian industry, including competition and transparency issues, and impediments to efficiency at various stages of the supply chain.

The inquiry was initiated by the then Treasurer, the Hon. Scott Morrison MP, in response to large and retrospective reductions in milk prices imposed by two major dairy processors in April 2016. The inquiry involved extensive investigations, consultation and data analysis over a period of 18 months.

The report detailed issues that need to be addressed to improve transparency and the level of competition in the industry, including:

- a significant imbalance of bargaining power between dairy processors and farmers, which results in an unfair share of risk being transferred from processors to farmers through contracts for milk supply
- very complex pricing systems that made it difficult to compare offers between processors or to know how much a farmer actually receives for their milk
- contractual arrangements that could be unilaterally altered at any time by processors
- extended notice period requirements for farmers seeking to switch processors and delayed announcements by processors of new season milk prices, significantly reducing opportunities for farmers to switch processors
- delayed loyalty payment arrangements that required a farmer to continue supplying well into a subsequent season before obtaining complete payment for the previous season.

The ACCC recommended that a mandatory dairy code be implemented to ensure that imbalanced and anti-competitive contracting practices are no longer imposed on dairy farmers by processors, and that appropriate mechanisms are available to administer the code and to resolve disputes.

We also made a number of recommendations about simplifying price offers and making it easier for dairy farmers to compare processor price offers and to switch processors.

Cattle and beef market study

The ACCC continues to advocate for the implementation of the 15 recommendations made in the cattle and beef industry market study report.

The study recommended reforms such as:

- expanded reporting of prices for non-auction sales
- greater transparency of processors' price offers
- introduction of an independent dispute resolution system for the industry
- measures to increase transparency in saleyard auctions.

The study's recommendations were made to improve transparency and efficiency in the industry. However, a report by the ACCC in May 2018 found that the cattle and beef industry has not acted on most of those recommendations.

The ACCC will engage with Commonwealth and state governments through the Agriculture Ministers' Forum to encourage implementation of the recommendations.

Commercial construction

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

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

To support its outreach work, the CCU has launched a dedicated web page on the ACCC website, which now includes a link to an anonymous reporting tool which allows members of the public to report and communicate with a CCU investigator about conduct of concern in the construction industry. This tool has generated around 10 contacts in its first four months. CCU has also developed a pamphlet on the ACCC and the construction industry to provide to stakeholders, which includes a link to its web page.

Financial services

The Financial Services Unit (FSU) was established following the 2017-18 Budget. The FSU will undertake regular inquiries into specific financial sector competition issues.

The FSU has engaged closely with the Council of Financial Regulators and the Productivity Commission, including as a participant in the public hearings for the Productivity Commission's Inquiry into Competition in the Australian Financial System. It continues to examine specific competition issues in the financial services sector.

Residential mortgage products price inquiry

The residential mortgage products price inquiry is monitoring the prices charged by the five banks affected by the Major Bank Levy (the Inquiry Banks) in relation to residential mortgage products, including whether these banks transparently account for their pricing decisions.

The ACCC released the inquiry's interim report on 15 March 2018. A key finding of the interim report is that price competition between the Inquiry Banks, particularly the big four banks, has been less than vigorous—pricing behaviour appears more accommodating and consistent with maintaining current positions.

Another key finding is that the residential mortgage prices of the Inquiry Banks lack transparency. This makes it difficult for consumers to obtain and compare residential mortgage prices. For example, discounts are a major factor in the interest rates customers are paying, but discretionary discounts are not always transparent to customers. The criteria that different banks use to determine the total discount offered to borrowers includes many factors, such as the individual borrower's characteristics, their value or potential value to the bank and their ability to negotiate.

The report also found that the average interest rates paid for basic or 'no frills' loans are often higher than for standard loans at the same bank. Existing residential mortgage borrowers also paid significantly higher interest rates than new borrowers at the same bank. These findings suggest that many bank customers would probably benefit from either switching mortgage providers or approaching their bank for a better rate and indicating they are prepared to switch to get one.

A final report will be provided to the Treasurer on 19 November 2018.

Competition in clearing and settlement of cash equities

The ACCC continued its work with the Council of Financial Regulators (CFR) on competition in the clearing and settlement of Australian cash equities.

In September 2017 the CFR and ACCC published a response to consultation conducted in March 2017 on whether the prospect of competition in the settlement of Australian cash equities increased, and summarised feedback on the development of policy guidance for such competition. The CFR and ACCC released a policy statement to provide for a set of controls for competition in settlement of Australian cash equities.

In addition, the CFR and ACCC made minor consequential changes to the October 2016 policy statements on competition in clearing of Australian cash equities and regulatory expectations for conduct in operating Australian cash equity clearing and settlement services, to ensure consistency in the language used.

The ACCC is working with the CFR and the Government on the development of legislative changes to grant a rule-making power for the relevant regulators and an arbitration power for the ACCC.

Harper review

The ACCC welcomes a new era in competition law following the passing of the *Competition and Consumer Amendment (Competition Policy Review) Act 2017* and the *Competition and Consumer Amendment (Misuse of Market Power) Act 2017.* These two important legislative amendments to Australian competition law follow recommendations from the 2015 Competition Policy Review (Harper review).

The Competition and Consumer Amendment (Misuse of Market Power) Act 2017 was passed by Parliament on 23 August 2017 and came into effect on 6 November 2017. This Act amended the CCA to prohibit corporations with substantial power from engaging in conduct with the purpose, effect or likely effect of substantially lessening competition in markets in which they directly or indirectly participate. This provision has been given effect by the new s. 46 misuse of market power provision.

The Competition and Consumer Amendment (Competition Policy Review) Act 2017 was passed by parliament on 18 October 2017 and came into effect on 6 November 2017. This Act amended the CCA in several ways. It introduced a new prohibition on anti-competitive 'concerted practices'. Legislative amendments were also made to compulsory information-gathering powers under s. 155. The reforms also change the options available to merger parties to have their transactions cleared on either competition or net public benefit grounds. The merger authorisation and formal clearance processes will now be combined and streamlined, with the ACCC as the first-instance decision-maker.

The reforms to the misuse of market power prohibition and new prohibitions on anticompetitive concerted practices will improve the ACCC's ability to target conduct that harms the Australian economy.

The ACCC issued guidelines for consultation on the new misuse of market power, concerted practices and authorisation provisions. The guidelines set out how the ACCC proposes to act against concerted practices that substantially lessen competition and how it will take action when a business with a substantial degree of market power has engaged in anti-competitive conduct. The guidelines should help business comply with their obligations under the CCA. The ACCC also updated its public guidance on the use of s. 155 powers to incorporate the legislative changes.

Substantial Lessening of Competition Unit

The ACCC's Substantial Lessening of Competition Unit (SLC Unit) was established in October 2017. The SLC Unit focuses on investigations that could give rise to cases using the new s. 46 misuse of market power provision and 'concerted practices' provisions that came into force in November 2017.

In addition to carrying out investigations, the SLC Unit has a broader mandate to enhance the ACCC's investigation of competition cases and consider the way it handles such investigations.

Pecuniary penalties for competition law infringements in Australia

In March 2018 the ACCC attended the release of the Organisation for Economic Cooperation and Development (OECD) *Pecuniary penalties for competition law infringements in Australia 2018* report at a workshop in Sydney. The report compares the penalties for companies which breach competition laws in Australia with comparable OECD jurisdictions including the EU, the UK, Germany, Japan, Korea and the US.

The report found that, in Australia, both the maximum and average Australian penalties that the courts impose for competition law breaches are significantly lower than those imposed in the OECD jurisdictions, especially for large firms or for longstanding anti-competitive behaviour. The OECD calculated an average Australian penalty based on a sample of cartel cases and estimated penalties would have to be increased by 12.6 times to be comparable with the level of the average penalty in these OECD countries.

The report also found that the comparative disparity in penalties has the potential to limit the effective deterrence of fines imposed in Australia. In response to the report the ACCC will rethink its approach to assessing the penalties that it puts to the court for breaches of competition law.

New car retailing industry market study

In June 2016 in response to concerns about how new car retail markets were operating, the ACCC commenced a market study on the new car retailing industry. The study focused on competition and consumer protection issues arising in the sale of new cars and the regular maintenance and repair of new cars.

In December 2017 the ACCC released its final report for the new car retailing industry market study. The final report identifies a number of problems that are harming consumers and hindering effective competition in the new car retailing industry.

Access to technical information to repair and service new cars

The ACCC recommends regulatory intervention to mandate the sharing of technical information with independent repairers on 'commercially fair and reasonable terms', subject to appropriate safeguards to enable the sharing of environmental, safety and security related technical information.

The Government is considering the design and operation of a mandatory Access to Technical Information scheme. The ACCC will continue to provide further advice, as necessary, to assist in the development of a mandatory scheme as the Government's consideration of this reform continues.

For further details, refer to page 82.

Electricity supply and prices inquiry

In October 2017 the ACCC published the preliminary report for its inquiry into retail electricity supply and prices in Queensland, New South Wales, Victoria, South Australia, Tasmania and the Australian Capital Territory (ACT). The report set out the key issues the ACCC found in the initial phase of its inquiry. We received over 40 submissions to the preliminary report and over 150 submissions to the issues paper. Before the preliminary report was released, we held six public forums in various locations that were attended by approximately 250 customers and representative groups. We also engaged with industry directly and used compulsory information-gathering powers as required to access information that is not publicly available.

The ACCC's final report was delivered to the Government on 30 June 2018. The report outlines a number of recommendations to improve competition, lower costs and reduce prices across the supply chain, including:

- Government assistance to help certain new generation project proposals secure debt finance to encourage new entry, promote competition and to enable commercial and industrial customers to access low-cost new generation
- a prohibition on acquisitions in the generation market for existing generation portfolios with market shares in excess of 20 per cent
- restructuring of Queensland Government generation assets into three portfolios with separate ownership and operation
- providing the AER with powers to address market manipulation in the wholesale market as well increasing remedies in line with the Australian Consumer Law
- voluntary writedowns of regulatory asset bases in Queensland and Tasmania and rebates to customers in NSW to deal with overinvestment in network assets in those regions
- state governments bearing any remaining costs of premium solar feed-in schemes.

The ACCC also made a number of recommendations to enable consumers to better navigate the retail electricity market and choose electricity services that suit their needs, including:

- abolishing the standing offer and replacing it with a lower priced 'default offer' which can be priced no higher than a level determined by the AER
- requiring any advertised discounts to be unconditional and made with reference to the default offer
- restricting conditional discounts to reasonable savings to a retailer associated with the conditions being achieved

- a prescribed mandatory code of conduct for third-party intermediaries which includes the obligation that any recommended offer is in the best interests of the consumer
- improving and harmonising concession schemes including by applying a means test and instituting
 a hybrid approach including a fixed dollar amount to offset daily supply charges and a percentage
 discount to offset variable usage charges
- additional government funding (to a value of \$5 per household in each National Electricity Market (NEM) region, or \$43 million NEM-wide, per annum) for a grant scheme for consumer and community organisations to provide targeted support to assist vulnerable consumers to improve energy market literacy.

The final report, preliminary report, issues paper and terms of reference are available on the <u>Electricity</u> supply & prices inquiry page on our website.

Communications sector market study

In 2018 we concluded our communications sector market study, which observed that, despite significant structural and technological change that has occurred in the Australian communications sector, current regulatory frameworks remain fit for purpose.

The market study deepened our understanding of market trends and developments and ensured that we are well placed to continue to address instances of market failure and promote competition to benefit consumers into the future. To this end, we identified 28 recommendations and actions for the ACCC, government and other parties that will further support competition and benefit consumers (discussed in strategy 3).

East coast gas transparency and supply inquiry

In 2017 the ACCC commenced an inquiry into gas supply arrangements in Australia. The inquiry was established following a direction from the Treasurer in response to concerns about transparency and supply in the east coast gas market.

During 2017-18 the ACCC provided three interim reports to the Treasurer as part of its gas market inquiry role. The first report, released in September 2017, predicted a likely supply shortfall in 2018, with key users of gas facing limited offers and high prices. The ACCC has released two further interim reports, which observed improving supply conditions removing the risk of a supply shortfall in 2018. These reports are further discussed in strategy 3.

Northern Australia insurance inquiry

This year the ACCC commenced an inquiry into the supply of residential building, contents and strata insurance products to consumers in northern Australia. The Australian Government directed the inquiry to explore consumer, regulatory and competition issues relevant to these markets. The inquiry is examining cost drivers of insurance premiums, insurer profitability, impediments to competition and consumer choice, and information issues experienced by consumers.

This inquiry is further discussed in strategy 3.

Digital platforms inquiry

On 4 December 2017 the Australian Government directed the ACCC to conduct an inquiry into the impact of digital search engines, social media platforms and other digital content aggregation platforms on the state of competition in media and advertising services markets. In particular, the inquiry requires the ACCC to examine the impact of digital platforms on the supply of news and journalistic content and the implications of this for media content creators, advertisers and consumers.

On 26 February 2018 the ACCC released an issues paper seeking submissions to inform the inquiry. The ACCC received over 60 submissions from interested parties. The submissions canvassed a wide range of issues, including the degree of market power held by the digital platforms, the digital advertising supply chain and the use of news content by digital platforms. They also detailed the impact of digital platforms on the quality and choice of news in Australia and the extent to which consumers

are aware of how their data is collected and used. Submissions to the inquiry, including responses to an online consumer questionnaire, were published on the ACCC website in May 2018 (subject to confidentiality claims).

The ACCC is continuing to have significant engagement with various platforms, newspaper publishers and broadcasters, advertisers, journalists, consumers, small businesses and academics to inform the inquiry. As part of this engagement, in the first half of 2018 the ACCC held a public forum for consumers and a public forum for businesses that advertise using digital platforms. A public forum for journalists will be held in August 2018. Summaries of the public forums are published on the ACCC's website.

The ACCC must provide its preliminary report to the Treasurer by 3 December 2018 and a final report to the Treasurer by 3 June 2019.

International collaboration on competition

The ACCC engages closely with competition and consumer protection counterparts around the world. International cooperation with our partner agencies has become increasingly important as new business models emerge that can affect consumers across multiple jurisdictions.

The ACCC collaborates with international counterparts through forums such as the International Competition Network (refer to pages 105-106) and the Competition Law Implementation Program in South-East Asia (refer to pages 104-105).

Bannerman Competition Lecture

On 22 February 2018 the ACCC and the Business Law section of the Law Council of Australia hosted the annual Bannerman Competition Lecture in Melbourne.

The lecture, entitled 'The Common Law and Competition Law', was delivered by the Hon. Jayne Jagot, Justice of the Federal Court, Australia.

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

Strategy 2: Consumer protection and fair trading

Performance results and analysis

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

Role and functions

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

The ACCC supports consumers and small business by:

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

We also work to ensure unsafe products do not harm Australian consumers, taking a range of actions to prevent unsafe products from being sold, removing them from the market if they are, and taking action against traders and suppliers where warranted.

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

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

Our deliverables in this area are:

Deliverable 2.1 Deliver outcomes to address harm to consumers and small businesses resulting from no the Australian Consumer Law	
Deliverable 2.2	Enhance the effectiveness of the ACCC's compliance and enforcement initiatives through partnerships
Deliverable 2.3 Identify and address the risk of serious injury and death from safety hazards in consumer produc	
Deliverable 2.4 Support a vibrant small business sector	
Deliverable 2.5 Empower consumers by increasing their awareness of their rights under the Australian Consumer	

Priorities

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

The ACCC's Compliance and Enforcement Policy sets out our priorities for the year and the factors we take into account when deciding whether to pursue matters. Our <u>Compliance and Enforcement Policy</u> can be found on our website.

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

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

In addition to our enduring priorities, the ACCC's Compliance and Enforcement Policy prioritised the following areas in 2017 and 2018:

- consumer issues in new car retailing, including responses by retailers and manufacturers to consumer guarantee claims and other matters identified in the ACCC's 2017 final report on our new car retailing industry market study
- consumer issues in the provision of broadband services, including addressing misleading speed claims and statements made during the transition to the National Broadband Network (NBN)
- systemic issues involving large or national traders avoiding or misrepresenting consumer guarantee rights
- competition and consumer issues in the provision of energy as an essential service, including matters identified in the ACCC's retail electricity pricing inquiry report and the ACCC's wholesale gas inquiry
- competition and consumer issues concerning the use of digital platforms, algorithms and consumer data, with a focus on emerging markets and matters identified by the ACCC's digital platforms inquiry
- ensuring small business receives the protections of industry codes and the unfair contract terms law, with a focus on Franchising Code of Conduct issues involving large or national franchisors
- ensuring compliance with new excessive payment surcharge laws
- ensuring better product safety outcomes for consumers in the online marketplace
- issues arising from the compulsory Takata airbag recall
- competition and consumer issues in the agriculture sector, with a focus on the dairy inquiry,
 Horticulture Code of Conduct enforcement and analysis of the viticulture industry
- consumer issues in the health and medical sectors, including in private health insurance.

In 2018 we released our first standalone product safety policy setting out the principles we adopt to prioritise and address product safety risks. The policy sets out our consumer product safety priorities for 2018, including:

- the compulsory recall of defective Takata airbags
- improving the safety of quad bikes
- ensuring better product safety outcomes for consumers in the online marketplace
- progressing reforms to the product safety provisions of the ACL.

Powers

Under the consumer protection provisions of the CCA, we have powers to take court action, seek court enforceable undertakings, seek corrective advertising or consumer refunds and other forms of redress, issue infringement notices and public warning notices or resolve matters administratively. A description of these powers and our approach to using them is in our Compliance and Enforcement Policy on our website and in appendix 6.

We also have certain powers under industry codes and schemes.

Performance indicators

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

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

These performance indicators are from the ACCC and AER Corporate Plan 2017-18, pages 15-16.

Table 3.14: Performance indicators for deliverable 2.1

Performance indicator	2016-17	20	17-18
	Result	Target	Result
Number of in-depth ACL investigations completed	98	80	80
Percentage of in-depth ACL investigations that are in the priority areas outlined in the Compliance and Enforcement Policy	70.1%	60%	61.25%
Percentage of initial ACL investigations completed within 3 months	88.1%	80%	61.4%
Percentage of in-depth ACL investigations completed within 12 months	80.6%	80%	80.3%
Number of ACL enforcement interventions or market studies (court proceeding commenced, s. 87B undertakings accepted, infringement notices issued, publication of studies relating to consumer or small business issues in markets)	48	40	56
Percentage of ACL enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy	64.6%	60%	76.8%
Percentage of ACL enforcement interventions in the priority areas, or demonstrate the priority factors, outlined in the Compliance and Enforcement Policy	100%	100%	100%
Number of emerging CCA market issues affecting consumers and small business that are identified, considered and advice developed	2	2	2
Number of new or revised business compliance resources (published guidance)	26	10	16
Number of times online business education resources have been accessed	1388770	1 000 000	1 499 696
Number of surveys and audits for CCA compliance, including in relation to product safety regulations	54	20	57
Percentage of business compliance projects that are in priority areas identified in the Compliance and Enforcement Policy	100%	60%	100%

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

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

These performance indicators are from the ACCC and AER Corporate Plan 2017-18, page 16.

Table 3.15: Performance indicators for deliverable 2.2

Performance indicator	2016-17	201	7-18
	Result	Target	Result
Percentage of business compliance resources developed or updated in consultation with business, stakeholder groups and peak bodies	81%	80%	100%
Number of business compliance projects that are delivered jointly with ACL regulators	10	5	10
(Business compliance projects may include one or more of the following to address an identified sector-based compliance risk: monitoring, surveillance, audits, research, stakeholder engagement, business compliance resources, consumer education resources)			
Number of business compliance and consumer education projects that involve partnership or joint delivery with businesses, peak bodies, industry or consumer groups	6	5	13

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

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

These performance indicators are from the ACCC and AER Corporate Plan 2017-18, page 17.

Table 3.16: Performance indicators for deliverable 2.3

Performance indicator ¹	2016-17	201	7-18
	Result	Target	Result
Percentage of product safety mandatory reports made by businesses of serious injury or death preliminary assessed by the ACCC within seven days	86.6%	100%	98.6%
Number of initial investigations of emerging product safety hazards ²	N/A	20	22
Number of reviews of mandatory product safety standards completed	6	6	12
Number of new or updated published business compliance resources relating to the safety of consumer products	3	2	3

Notes: 1. In the 2017-18 Corporate Plan we identified a performance indicator of 'Percentage of voluntary recall notifications by businesses to the ACCC that, after assessment and engagement, can be published within seven calendar days' with a target of 80 per cent. However, due to limitations with our records management system we are not able to accurately report against this indicator and will not use it in future.

^{2.} In the 2018 ACCC Portfolio Budget Statement, this performance indicator was expressed as 'Number of detailed assessments of emerging product safety hazards'. The terms 'detailed assessments' and 'initial investigations' refer to the same activity.

Deliverable 2.4: Support a vibrant small business sector

Actions to achieve this deliverable include what we do to help to ensure that small businesses understand and comply with their obligations and encourage them to exercise their rights as the customers of larger suppliers.

These performance indicators are from the ACCC and AER Corporate Plan 2017-18, page 17.

Table 3.17: Performance indicators for deliverable 2.4

Performance indicator	2016-17	201	7–18
	Result	Target	Result
Number of small business Infocentre contacts served (Small business contacts are contacts through separate small business phone line and webforms)	13 372	12 000	14 315
Number of new or revised business compliance resources (published guidance) to empower small business	26	5	8
Number of CCA and ACL enforcement interventions with substantial benefits to small business sector	12	10	11

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

Actions to achieve this deliverable include how we educate consumers about their consumer rights and empower them to take action when those rights are not respected.

These performance indicators are from the ACCC and AER Corporate Plan 2017-18, page 18.

Table 3.18: Performance indicators for deliverable 2.5

Performance indicator	2016-17	2017-18	
	Result	Target	Result
Number of new or revised consumer education resources (published guidance)	45	10	19
Number of times online consumer education resources have been accessed	3.5 million	2 million	4 075 888
Number of Infocentre contacts served (includes webforms received)	264 462	150 000	290 143
Number of visits to the Scamwatch website	2 310 735	1.5 million	2 427 886

Analysis of performance

The ACCC exceeded most of the annual targets set for ACL enforcement investigations in 2017-18.

The ACCC achieved 56 new ACL enforcement interventions in 2017-18, exceeding the target of 40. We achieved significant outcomes in the following litigated consumer protection matters:

- Ford Motor Company—penalty of \$10 million
- Telstra Corporation—penalty of \$10 million
- Apple Inc—penalty of \$9 million
- Get Qualified—penalty of \$8 million and \$500 000 against the company's sole director
- Thermomix—penalty of \$4 608 500
- Optus Internet—penalty of \$1.5 million

- Snowdale Holdings—penalty of \$750 000
- MSY Technology—penalty of \$750 000
- Pental Products—penalty of \$700 000.

The majority of ACL enforcement interventions (76.8 per cent) were within priority areas as outlined in the Compliance and Enforcement Policy.

The annual target of 80 per cent of in-depth investigations completed within the timeframe of 12 months was met. However, the annual target of 80 per cent of initial investigations completed within the timeframe of three months was not met, with only 61.4 per cent of initial investigations completed within this timeframe.

Following review of our processes, we have invested in further oversight of these initial timeframes particularly during periods of high workload from other priority investigations and litigation. This oversight will include improved transparency measures and adoption of data visualisation software to enhance our data analysis capability and inform decision-making.

In 2017-18 the ACCC continued to prioritise work to assist Indigenous Australians, an enduring priority under the Compliance and Enforcement Policy through our involvement with the National Indigenous Consumer Strategy which aims to stop certain business practices impacting on Indigenous Australians. We also instituted proceedings in relation to misleading Indigenous art claims. This work is outlined on pages 76-77.

At the same time the ACCC had a number of ongoing litigation matters during the period, particularly in relation to commencing appeals in the Medibank and LG litigation and defending appeals in the Valve, Unique Colleges and Heinz litigation. These are outlined in this section.

In addition, key projects, market studies and policy work was undertaken throughout the period to promote consumer protection as outlined in this section. This includes contributing to the new car retailing industry market study and work in relation to commission-based fundraising in the charity sector. We also took action in response to many of the recommendations made in the *Australian Consumer Law Review Final Report* and to advocate for an increase in penalties for breaches of the ACL, as outlined at pages 108–109.

Work continues to be undertaken to leverage off ACL enforcement interventions to promote industry-wide change and compliance. This includes in the automotive industry and retail clothing industry.

Challenges ahead for the ACCC's consumer protection work include continuing to balance project, policy and market study work with investigative work. The ACCC will also be progressing its cases involving excessive payment surcharges bans and unfair contract terms and identifying new opportunities to test new laws. In the event legislation to increase ACL penalties passes both Houses of Parliament, the ACCC will also be vigorous in its pursuit of higher penalties to achieve deterrence for breaches of the ACL.

To support our work to deliver outcomes to address harm to consumers and small businesses, we:

- published our final report on the new car retailing industry market study, which identified a number of problems that are harming consumers and hindering effective competition in the industry. This is a priority area for the ACCC in 2018
- released our annual report to the Australian Senate on the private health insurance industry in June 2018. The report analysed key competition and consumer developments and trends in the private health insurance industry between 1 July 2016 and 30 June 2017, including enforcement and other actions relating to the health sector.

In 2017-18 to support a vibrant small business sector we:

 published eight pieces of new or revised business compliance resources to empower small businesses, including the 2017 Small Business Snapshot and factsheets to support the transition to the Country of Origin Food Labelling Information Standard 2016, and continued to educate growers and traders about the new requirements for the Horticulture Code published 16 new or revised business compliance resources, and delivered 10 business compliance projects jointly with ACL regulators—including an education campaign emphasising the need for providers under the National Disability Insurance Scheme (NDIS) to treat consumers fairly and understand their competition obligations, two toppling furniture campaigns, and button battery and ethanol devices surveillance.

We work to identify and address the risk of serious injury and death from safety hazards in consumer products. In 2018 we released our first standalone product safety policy setting out the principles we adopt to prioritise and address product safety risks. One of our priorities is the compulsory recall of defective Takata airbags. It is the largest recall in Australian history, affecting over four million airbags in over three million vehicles. The ACCC developed the recall and is now responsible for monitoring industry compliance with the compulsory recall.

In October 2017 the ACCC commenced an investigation into the safety of quad bikes to determine whether a mandatory safety standard should be made under the ACL. Quad bikes (also known as all-terrain vehicles or ATVs) are heavily utilised in Australian forestry and agricultural industries. We expect to provide the Assistant Minister to the Treasurer with a final recommendation towards the end of 2018.

We assessed 98.6 per cent of product safety mandatory reports by businesses of serious injury or death with preliminary assessment within seven days. This was an increase from 86.6 per cent in the previous year. This year we have updated our reporting processes. In future, when we refer mandatory injury reports to other line areas for consideration, these statistics will be recorded to reflect assessment within seven days.

We continued our tranche of work to review mandatory product safety standards, exceeding our goal of six, by reaching a total of 12. As a result of these reviews, we made recommendations to the Minister, which resulted in the regulatory change of nine standards. The full list is available at appendix 6.

We undertook a number of initiatives to empower consumers:

- For National Scams Awareness Week 2018 the focus was on threat-based impersonation scams. We promoted this message to an Australian audience of millions.
- The ACCC strongly advocated throughout the year for the development and introduction of a General Safety Provision (GSP) under the ACL, including via the ACCC Chair's address at the National Consumer Congress 2018. A GSP would strengthen the product safety regime in Australia and allow the ACCC to respond to product safety hazards faster and support existing consumer remedies in the ACL.
- In 2018 an ACCC priority is to ensure better product safety outcomes for consumers in the online marketplace. We have been working with platforms to help prevent unsafe and non-compliant products being listed and developing other mechanisms so they can be more readily identified and removed from sale.

The Infocentre plays a key role in increasing consumer and small business awareness about their rights and obligations under the ACL. Consumers and small business are also encouraged to 'report' information that may represent a breach of the CCA. This year we have seen a larger proportion of contacts where information is reported without requiring a response. These reports are still assessed and important data is captured from them.

This has been the final year that the Infocentre will be providing a telephone service for Scamwatch. The ACCC will continue to provide the Scamwatch web service for capturing reports of scams and providing useful information on spotting the signs and getting help.

Deliver priority consumer law outcomes: Actions undertaken to achieve our purpose

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

The ACL gives the ACCC a range of remedies and powers to effectively respond to possible breaches of fair trading and consumer protection laws. To enforce these consumer protection laws, we:

- institute court proceedings. This year, we commenced 14 new consumer protection and business protection related court proceedings
- accept court enforceable s. 87B undertakings where a breach, or a potential breach, might otherwise justify litigation. This year, we accepted 25 consumer protection related s. 87B undertakings
- issue infringement notices. The payment of an infringement notice is not taken as an admission. This year, we received payment for 16 infringement notices from seven traders, with penalties totalling \$183 600
- accept an administrative resolution. These generally involve a business agreeing to stop a particular type of conduct, compensate consumers and take other measures to ensure that the conduct does not recur. This year, we resolved a number of matters administratively, with seven matters resolved through a formal administrative resolution.

The ACCC action relates to consumer issues in a range of businesses and priority areas, including health and medical, vulnerable and disadvantaged consumers, Indigenous Australians and product safety.

A complete list of commenced and concluded proceedings is included in appendix 9.

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

- vulnerable and disadvantaged consumers
- Indigenous Australians
- consumer guarantees
- new car retailing
- telecommunications, including broadband services
- health and medical, including private health insurance
- small business, including breaches of the Franchising Code of Conduct, new unfair contract terms laws and compliance with excessive payment surcharge laws
- scam disruption
- other consumer protection outcomes, including truth in advertising, commission-based sales, online consumer issues and non-compliance with court orders.

Vulnerable and disadvantaged consumers

We actively address business practices that affect the interests of vulnerable and disadvantaged consumers, particularly where awareness of consumer rights is low. Where awareness of consumer rights is low, there is more scope for opportunistic business practices. We address this through education about consumer rights and issues as well as enforcement action.

Consumer rights may be less known by people:

- who are elderly
- who are newly arrived in Australia or from a non-English-speaking background
- with a disability or illness
- with low reading, writing and numerical skills
- who are from a low socio-economic background

- who are homeless
- who are living in remote areas.

Conduct that affects Indigenous Australians, particularly in remote areas, is an enduring priority area for the ACCC. It overlaps with the outcomes achieved for vulnerable and disadvantaged consumers. This is discussed further on page 76.

Vulnerable and disadvantaged consumers are often subject to unfair or high-pressure sales tactics and misleading and deceptive conduct as well as unconscionable conduct. Unconscionable conduct is defined as conduct that is so harsh it goes against good conscience as judged against the norms of society.

In recent years, enforcement action has focused on false or misleading representations made by colleges and brokers engaged in door-to-door or face-to-face marketing of VET FEE-HELP courses across various parts of Australia. In 2017–18 proceedings continued on several of these matters, including Unique International College Pty Ltd, Phoenix Institute of Australia Pty Ltd, Cornerstone Investment Australia Pty Ltd trading as Empower Institute, and Australian Institute of Professional Education Pty Ltd (AIPE).

In addition to these ongoing proceedings, the ACCC was involved in a number of other matters with the aim of protecting vulnerable and disadvantaged consumers. See tables 3.19, 3.20 and 3.21 for more details of these matters.

Case study: Protection of vulnerable and disadvantaged consumers—Get Qualified Australia Pty Ltd

In August 2017 the Federal Court ordered Get Qualified Australia Pty Ltd (Get Qualified) to pay an \$8 million penalty and its sole director, Mr Adam Wadi, to pay a penalty of \$500 000. This is one of the highest penalties ever awarded for breaches of the ACL.

The Federal Court found that Get Qualified made false or misleading representations and engaged in unconscionable conduct in its supply of services to consumers seeking recognition of their prior learning to gain qualifications.

Justice Beach stated that the 'education sector has been infected by the parasitic practices of operators preying upon the vulnerable and the unwary' and that Get Qualified's conduct was 'serious, extensive and deliberate'.

The Court also made declarations that Get Qualified:

- made false or misleading representations and engaged in unconscionable conduct in its supply of services to consumers seeking recognition of their prior learning to gain qualifications
- imposed an unfair contract term and entered into unsolicited consumer agreements by making uninvited sales phone calls to people, failing to disclose the full terms of the agreement and requiring payment within 10 business days.

Mr Wadi was found to be knowingly concerned in this conduct. In addition to ordering Mr Wadi to pay a penalty of \$500 000, the Court made an order disqualifying Mr Wadi from managing a corporation for seven years.

Get Qualified was placed into liquidation in March 2017 and did not defend the case at trial.

Court cases

The following case commenced in 2017-18.

Table 3.19: Vulnerable and disadvantaged consumers proceedings commenced

Equifax Pty Ltd		Conduct
commenced	16 March 2018	The ACCC instituted proceedings against credit reporting body
jurisdiction	Federal Court Sydney	Equifax Pty Ltd (formerly Veda Advantage Pty Ltd) alleging that, between June 2013 and March 2017, Equifax made a range of false or misleading representations to consumers in breach of the ACL.
		The ACCC also alleges that Equifax acted unconscionably in its dealings with vulnerable consumers by making false or misleading representations and using unfair tactics and undue pressure when dealing with people in financial hardship.

The following cases were ongoing at the end of 2017-18.

Table 3.20: Vulnerable and disadvantaged consumers proceedings ongoing

ACM Group Ltd		Conduct	
commenced jurisdiction	2 June 2016 Federal Court Sydney	The ACCC alleges that, between 2011 and 2015, ACM engaged in misleading or deceptive conduct, harassment and coercion, and unconscionable conduct in debt collection dealings with two consumers. In each case, the debt being pursued had been sold to ACM by Telstra.	
Australian Institu	ite of Professional Education Pty Ltd	Conduct	
commenced jurisdiction	31 March 2016 Federal Court Sydney	The ACCC and the Commonwealth allege that AIPE made false or misleading representations and engaged in unconscionable conduct when marketing and selling VET FEE-HELP funded courses between 1 May 2013 and 1 December 2015 in New South Wales (NSW), Queensland and Western Australia (WA).	
Cornerstone Inve	estment Australia Pty Ltd t/a Empower Institute	Conduct	
commenced jurisdiction	9 December 2015 Federal Court Sydney	The ACCC alleges that, from March 2014, Empower made false or misleading representations and engaged in misleading or deceptive and unconscionable conduct when marketing and selling VET FEE-HELP funded courses to consumers in remote communities and low socio-economic areas in NSW, WA, Victoria, Queensland and South Australia (SA).	
Phoenix Institute	of Australia Pty Ltd and another	Conduct	
commenced jurisdiction	24 November 2015 Federal Court Sydney	The ACCC alleges that Phoenix made false or misleading representations and engaged in unconscionable conduct when marketing and selling VET FEE-HELP funded courses between January 2015 and October 2015 in NSW, Victoria, Queensland, Northern Territory (NT) and WA.	

Unique International College Pty Ltd (appeal)		Conduct	
commenced	27 October 2015	ACCC alleged that Unique made false or misleading representations and engaged in misleading or deceptive and	
jurisdiction	Federal Court Sydney	unconscionable conduct when selling VET FEE-HELP funded	
status	On 30 June 2017 the Federal Court found that Unique made false or misleading representations and engaged in a pattern of behaviour that amounted to unconscionable conduct in breach of the ACL.	courses between July 2014 and September 2015 in NSW.	
	Unique appealed against the Court's decision The ACCC and the Commonwealth (on behal of the Department of Education and Training have since filed a cross-appeal. Both the appeal and cross-appeal will be heard on a date to be fixed by the Full Federal Court.	lf	

The following cases were finalised at the end of 2017-18.

Table 3.21: Vulnerable and disadvantaged consumers proceedings finalised

Get Qualified Australia Pty Ltd		Conduct	
commenced	30 March 2017	The ACCC alleged that Get Qualified Australia made false or	
concluded	30 August 2017	misleading representations and engaged in misleading and	
jurisdiction	Federal Court Melbourne	unconscionable conduct in connection with its supply of services to consumers seeking recognition of their prior learning to gain	
outcome	The Federal Court ordered penalties of	qualifications.	
	\$8 million against Get Qualified.	For details see the case study on page 73.	
	It also ordered penalties of \$500 000 against Get Qualified's sole director, Mr Adam Wadi, and an order disqualifying Mr Wadi from managing a corporation for seven years.		
Swishette Pty Ltd	and Letore Pty Ltd	Conduct	
commenced	30 March 2017	The ACCC alleges that Swishette and Letore were directly	
concluded	12 February 2018	or indirectly knowingly concerned in false, misleading and	
jurisdiction	Federal Court Melbourne	unconscionable conduct engaged in by Clinica Internationale Pty Ltd in relation to a program offering permanent residency to	
outcome	The Federal Court ordered Letore to compensate victims of a permanent residency program for amounts they paid to Clinica.	migrants between August 2012 and June 2013.	

Consumers with disability

In 2017-18 the ACCC continued to educate consumers with disability as well as businesses and not-for-profit organisations in the NDIS about their rights and obligations under the ACL. To coincide with the International Day of People with Disability on 3 December 2017, the ACCC and other ACL regulators delivered a second education campaign emphasising the need for providers under the NDIS to treat consumers fairly and to understand their competition obligations.

The ACCC promoted a series of resources that are designed to cater to different levels of comprehension and literacy. The resources, which were first released in 2016, include an industry guide, a consumer guide, a factsheet, an Easy English guide (translated into eight languages), stakeholder training PowerPoint presentations and two educational videos. The videos are available in a variety of accessibility formats, including closed captions, AUSLAN with audio descriptions and DVD.

Indigenous Australians

In 2017-18 conduct affecting Indigenous Australians remained an enduring priority. This recognises that certain conduct in breach of the CCA has the potential to specifically affect the welfare of Indigenous Australians. We also recognise that Indigenous Australians, particularly those living in remote areas, continue to face challenges in asserting their consumer rights. This means that we will always prioritise our work in this area while challenges remain.

Our work this year has also aimed to assist Indigenous Australians by:

- raising awareness of their rights
- improving access to services
- increasing our capacity to detect unscrupulous traders operating in remote communities
- vigorously enforcing the law.

In September 2017 ministers endorsed the National Indigenous Consumer Strategy (NICS) 2017–2019 Action Plan. NICS members are the ACCC, ASIC, state consumer affairs agencies and the Indigenous Consumer Action Network. NICS members work together to ensure that issues that affect Indigenous Australians are given priority within each of the agencies and organisations.

The NICS 2017-2019 Action Plan acknowledges that certain business practices continue to have a disproportionate effect on Indigenous Australians, particularly those who live in remote and regional areas. The NICS 2017-2019 Action Plan includes priority areas such as:

- trading practices with a focus on door-to-door and telemarketing
- scam practices with a focus on improving consumer awareness of scams
- consumer-directed care focusing on the NDIS and increasing consumers' awareness of their rights
- motor vehicle sales focusing on consumer and dealer rights and obligations.

In September 2017 Hope Vale became the third Indigenous community to become 'Do Not Knock informed' (DNKi). The DNKi project represents a partnership between Indigenous communities, the ACCC and the relevant state/territory fair trading agency. In this case, the ACCC has partnered with the Hope Vale Aboriginal Shire Council, Cape York Partnership and Queensland Office of Fair Trading.

DNKi is about working with Indigenous communities to bring about consumer empowerment and choice.

The project does not seek to ban door-to-door trade within Indigenous communities. Rather, it empowers Indigenous Australians with the consumer rights knowledge that is required to deal with this type of trade. Hope Vale consumers can choose to either negotiate with door-to-door traders or stop them from coming to their home by displaying a Do Not Knock sticker on their front door. DNKi also puts visiting traders on notice that they are expected to abide by the ACL and that consumers will enforce their consumer rights by reporting unlawful conduct.

On 3 November 2017 the ACCC made a submission to the House of Representatives Standing Committee on Indigenous Affairs. In the submission, the ACCC submitted that the ACL is an effective tool to promote authentic products and restricts the sale of inauthentic art, but only to the extent that it prohibits sellers representing (expressly or by implication) that art is authentic when it is not.

The ACCC continues to actively participate a government committee considering what other regulatory responses to the production and sale of inauthentic Indigenous art may be appropriate.

In addition to the litigated matters involving the VET FEE-HELP education and training courses and the protection of vulnerable and disadvantaged consumers (including some Indigenous Australians), the following case study highlights enforcement action in relation to this enduring priority.

Case study: Conduct affecting Indigenous Australians

In March 2018 the ACCC instituted proceedings against Aboriginal art products and Australiana souvenirs wholesaler Birubi Art Pty Ltd (Birubi), alleging it made misleading Indigenous art claims.

The ACCC alleges that, between July 2014 and November 2017, Birubi contravened the ACL by making false or misleading representations that some of its products were made in Australia and/or that Aboriginal people had made or hand painted them, when in fact they were made in Indonesia.

The products include Aboriginal cultural objects such as boomerangs, bullroarers and didgeridoos. The products displayed a combination of words and artwork including 'hand painted', 'handcrafted', 'Aboriginal Art' and 'Australia'.

The ACCC is seeking declarations, pecuniary penalties, injunctions, corrective notices, compliance program orders and costs.

Court cases

The following case commenced in 2017-18.

Table 3.22: Conduct affecting Indigenous Australians proceedings commenced

Birubi Art Pty Ltd		Conduct
commenced jurisdiction	21 March 2018 Federal Court Sydney	The ACCC instituted proceedings against Aboriginal art products and Australiana souvenirs wholesaler Birubi, alleging it made misleading Indigenous art claims. For details see the case study above.

Consumer guarantees

Under the ACL, all products and services that consumers buy come with automatic guarantees that they will work and do what the consumer expects them to do. If the consumer buys a product that does not perform as expected, they have consumer rights.

Consumer guarantees ensure that consumers are not disadvantaged if they unknowingly buy defective products. It is important that consumers are aware of their rights when purchasing goods and that businesses act in accordance with the ACL and do not try to mislead consumers about the extent of these rights.

If a business fails to deliver any of these guarantees, there are consumer rights for repair, replacement or refund; cancelling a service; or compensation for damages and loss. The ACCC has powers to enforce compliance with the ACL where businesses mislead consumers about their rights under consumer guarantees.

Questions and complaints about guarantees and warranties are one of the most common reasons why consumers contact us and other ACL regulators.

In 2017 under our Compliance and Enforcement Policy, the ACCC continued to focus on representations that large retailers make about express and extended warranties as well as consumer guarantee claims in relation to the airline industry. In 2018 the ACCC will continue to focus on systemic issues involving large or national traders that avoid or misrepresent consumer guarantee rights. In addition, in 2017–18 there has also been a particular focus on the protection of consumer guarantee rights within the new car retailing industry. See page 82 for further details on our work on new car retailing consumer guarantees.

Case study: Consumer guarantee issues in the electronics industry—MSY Technology

In October 2017 the Federal Court ordered penalties totalling \$750 000 against MSY Technology Pty Ltd, MSY Group Pty Ltd and MSY Technology (NSW) Pty Ltd (MSY Technology) for misrepresenting consumers' rights to remedies for faulty products.

MSY Technology operates 28 retail stores across Australia and online, selling computers, computer parts, accessories and software. MSY Technology admitted that it made false or misleading representations on the MSY website, and in oral and email communications to consumers about their rights.

This is the second time the ACCC has taken action against MSY entities. In 2011 the Court imposed penalties for misleading consumer warranty representations.

The Federal Court also made other orders, including injunctions, a comprehensive ACL compliance training program, publication orders and payment of \$50 000 towards the ACCC's costs.

After the proceedings commenced, MSY Technology made admissions and agreed to joint submissions on liability and relief (including penalty), which were filed with the Court.

In December 2017 the ACCC also released a report highlighting common consumer issues in the airline industry. The report highlights the ACCC's concerns in this area and informs consumers of their consumer guarantee rights when dealing with airlines.

Case study: Consumer issues in the airline industry

In 2017 the ACCC examined issues that have arisen in the Australian airline industry relating to consumer guarantee rights and contract terms which may be unfair.

Consumer guarantees relating to services provided in industries such as the airline industry are a current priority for the ACCC. Airlines must ensure they comply with the ACL, avoid unfair contract terms and make sure their terms and conditions are consistent with consumer guarantees.

Between 1 January 2016 and 14 December 2017, the ACCC received over 1400 consumer complaints about airlines. These included hundreds of complaints relating to consumer guarantees and excessive fees.

The ACCC has reviewed complaint data from its own records, state fair trading agencies and consumer group CHOICE about the largest Australian-based airlines (the Airlines) and has identified the following issues:

- 'no refund' statements on the Airlines' websites
- excessive fees for flight cancellations and changes
- the application of consumer guarantees, including statements made about a customer's consumer guarantee rights under the ACL, in circumstances where flights have been cancelled or delayed.

In December 2017 the ACCC released its report, entitled <u>Airlines: Terms and conditions</u>. The report highlights common consumer issues in the industry and the ACCC's concerns. It also informs consumers of their ACL rights when dealing with airlines. Where consumer issues continue, the ACCC is taking action to address concerns. In 2018 the ACCC is engaging with the Airlines to discuss its expectations for change.

Court cases

The following cases commenced in 2017-18.

Table 3.23: Consumer guarantees proceedings commenced

Jayco Corporation Pty Ltd		Conduct
commenced	29 November 2017	The ACCC alleges that Jayco acted unconscionably and made
jurisdiction	Federal Court Melbourne	false or misleading representations to four customers by obstructing them from obtaining redress for their defective
		caravans.

The following cases were ongoing at the end of 2017-18.

Table 3.24: Consumer guarantees proceedings ongoing

LG Electronics Australia Pty Ltd (appeal)		Conduct	
Commenced jurisdiction	15 December 2015 Federal Court Melbourne	The ACCC alleges that LG made false or misleading representations to consumers about their rights in relation to	
status	On 1 September 2017 the Federal Court dismissed the ACCC's proceedings. The ACCC appealed this decision to the Full Federal Court.	ulty LG products.	
	On 27 June 2018 the Full Court upheld the ACCC's appeal in part. The Full Court found that LG made two representations to consumers that were false, overturning the initial court decision, but dismissed the ACCC's appeal in respect of other LG statements made to consumers.		
	The relief hearing will take place on a date to be fixed.		

The following cases were finalised in 2017-18.

Table 3.25: Consumer guarantees proceedings finalised

Apple Pty Ltd and Apple Inc.		Conduct	
commenced	6 April 2017	The ACCC alleged that Apple and Apple Inc. made false,	
concluded	Ed 10 Julie 2010	misleading or deceptive representations to consumers in-store	
jurisdiction	Federal Court Melbourne	online and during telephone calls about consumers' rights in respect of defective Apple devices if those devices had been	
The Federal Count and and Comillian in	epaired by a third party.		
	Apple Australia has also offered a court enforceable undertaking to improve staff training, audit information about warranties and the ACL on its website, and improve its systems and procedures to ensure future compliance with the ACL.		

MSY Technology Pty Ltd		Conduct
commenced	1 December 2016	The ACCC alleged that MSY, MSY Group Pty Ltd and MSY
concluded	25 October 2017	Technology (NSW) Pty Ltd misrepresented consumers' rights to
jurisdiction	Federal Court Sydney	remedies for faulty products in contravention of the ACL.
outcome	The Federal Court ordered penalties totaling \$750 000 against MSY Technology.	For details see the case study on page 78.
	The Court also made other orders including injunctions, a comprehensive ACL compliance training program, publication orders and payment of \$50 000 towards the ACCC's costs.	
Valve Corporation	on Pty Ltd (appeal)	Conduct
commenced	10 December 2015	The ACCC alleged that Valve made false or misleading
concluded	20 April 2018	representations to consumers about their rights in relation to
jurisdiction	Federal Court Sydney	refunds concerning computer games sold by Valve through the online platform known as Steam.
outcome	The Federal Court ordered a pecuniary penalty of \$3 million.	onine piationn known as steam.
	The Court also made other orders:	
	injunction for three years	
	 Valve must publish a consumer rights notice 	
	 Valve must establish a consumer law compliance program under the ACL for each Valve employee and maintain it for three years 	
	Valve must pay ACCC costs as ordered.	
	Valve filed an appeal against the findings of the Court, penalties and other orders. The ACCC filed a cross-appeal in relation to two findings.	
	In December 2017 the Full Federal Court dismissed Valve's appeal. Valve's appeal against the \$3 million penalty was also dismissed.	
	Valve then applied for special leave to the High Court to appeal the Full Federal Court's decision. In April 2018 the High Court dismissed Valve's special leave	

application.

Undertakings

The following s. 87B undertakings were finalised in 2017-18. Details of the s. 87B undertakings are available in full on the undertakings public register on the ACCC website.

Table 3.26: Consumer guarantees undertakings finalised

Fitbit Australia Ltd The ACCC accepted a court enforceable undertaking from Fitbit to amend information		
s. 87B undertaking dated	provide to customers about their consumer guarantee rights under the ACL.	
1 June 2018		
NETGEAR Australia Pty Ltd	The ACCC accepted a court enforceable undertaking from Netgear to provide remedies and refunds to customers who were misled by representations that they could not receive a remedy for a faulty product unless they were covered by the manufacturer's warranty or they purchased a technical support contract.	
s. 87B undertaking dated 26 February 2018		
Belkin Ltd	The ACCC accepted a court enforceable undertaking from consumer electronics manufacturer	
s. 87B undertaking dated 18 December 2017	Belkin to honour claims under its lifetime warranty policies for the lifetime of the original burchaser.	
BXT International Ltd	The ACCC accepted a court enforceable undertaking from BXT. BXT admitted to contravening	
s. 87B undertaking dated 12 December 2017	the ACL by advertising electronic goods such as mobile phones and tablets as 'new', when they were in fact refurbished. BXT also admitted to misleading consumers about their rights by falsely claiming they were not bound by the ACL, as they were incorporated overseas. As part of its undertaking, BXT has agreed to contact and offer redress to certain consumers who were either misled into purchasing refurbished products or were misled as to their rights under the ACL.	
TCF Global Ltd The ACCC accepted a court enforceable undertaking from TCF. TCF (which operates		
s. 87B undertaking dated 12 December 2017	and CatchDeal) admitted to contravening the ACL by advertising electronic goods such as mobile phones and tablets as 'new' when they were in fact refurbished. As part of its undertaking, TCF has agreed to contact and offer redress to certain consumers who were either misled into purchasing refurbished products or were misled as to their rights under the ACL.	

Infringement notices

The following infringement notices were paid in 2017-18.

Table 3.27: Consumer guarantees infringement notices paid

Lululemon Athletica Australia	Three notices totalling \$32 400
Pty Ltd	The ACCC issued three infringement notices because it had reasonable grounds to believe that
18 July 2017	Lululemon had made false or misleading representations about consumer guarantee rights.

Administrative resolutions

The following administrative resolutions were finalised in 2017-18.

Table 3.28: Administrative resolutions for consumer guarantee issues

Davantage Group Pty Ltd	Davantage Group trading as National Warranty Company agreed to make changes to its
28 September 2017	'Extension to Manufacturer's Warranty', which is primarily sold through used vehicle dealerships, following concerns raised by the ACCC.

New car retailing

Consumer issues in new car retailing is a priority area in both the 2017 and 2018 ACCC Compliance and Enforcement Policy. This also includes car retailers' and manufacturers' responses to consumer guarantee claims. More recently the ACCC's focus in new car retailing has been on misleading or deceptive conduct and false and misleading representations made by car manufacturers about vehicle emission claims.

On 14 December 2017 the ACCC released its final report on the new car retailing industry, <u>New car retailing industry: A market study by the ACCC</u>. The report detailed its findings of nearly 18 months of investigation, consultation and research. It identified a number of problems that are harming consumers and hindering effective competition in the industry. The report also raises important issues such as the handling of consumer guarantee complaints, independent repairer access to technical information, and fuel consumption and emissions information.

The ACCC is working with other ACL regulators and the industry to publish guidance for consumers on their rights if there is a problem with their new car. This will include guidance that dealers are to distribute to consumers at the point of sale.

Case study: New car retailing—Ford Motor Company of Australia Ltd

In April 2018 the Federal Court declared that Ford Motor Company of Australia Ltd (Ford) engaged in unconscionable conduct in the way it dealt with complaints about PowerShift transmission (PST) cars. The Court ordered Ford to pay \$10 million in penalties.

Consumers who purchased Ford vehicles with PST made complaints to Ford and its dealers about their car's excessive clutch shudder, excessive noisiness from the transmission, delayed acceleration and excessive shuddering and jerking when accelerating. Thirty-seven per cent of these vehicles had at least one clutch replacement.

In most cases, Ford only provided replacement vehicles in accordance with its 'PowerShift Ownership Loyalty Program', which required consumers to make a significant payment towards a replacement vehicle.

Ford communicated with its dealers about the quality issues on multiple occasions but did not give adequate information about the quality issues to the customers who complained to Ford about their vehicles.

The Federal Court held that Ford's conduct in responding to consumer complaints about Fiesta, Focus and EcoSport vehicles fitted with PST between 1 May 2015 and 29 February 2016 was unconscionable. The Court-imposed penalty of \$10 million is one of the largest handed down under the ACL and reflects the seriousness of Ford's conduct.

The ACCC has also accepted a court enforceable undertaking from Ford to establish a program to review customer requests for refunds or replacement vehicles made between 1 May 2015 and 1 November 2016. At least 2000 affected consumers can apply for an independent arbiter to assess their complaints.

Ford has also undertaken to provide customers with access to more information about their cars, including the history of manufacturing defect repairs performed on their vehicles.

Court cases

The following cases were ongoing in 2017-18.

Table 3.29: New car retailing proceedings ongoing

Audi Aktiengesellschaft, Audi Australia Pty Ltd and Volkswagen Aktiengesellschaft		Conduct
commenced	7 March 2017 Federal Court Sydney	The ACCC alleges that Audi Aktiengesellschaft (Audi AG) and its Australian subsidiary Audi Australia Pty Ltd (Audi Australia) engaged in misleading or deceptive conduct, made false or misleading representations and engaged in conduct liable to mislead the public in relation to certain diesel vehicle emission claims; and that their owner, German company Volkswagen Aktiengesellschaft, was knowingly concerned in this conduct.
Volkswagen A Australia Pty I	ktiengesellschaft and Volkswagen Group Ltd	Conduct
commenced jurisdiction	31 August 2016 Federal Court Sydney	The ACCC alleges that Volkswagen engaged in misleading or deceptive conduct, false or misleading representations and conduct liable to mislead the public in relation to diesel vehicle emission claims.

The following cases were finalised in 2017-18.

Table 3.30: New car retailing proceedings finalised

Ford Motor Company of Australia Ltd		Conduct	
commenced	26 July 2017	The ACCC alleged that Ford engaged in unconscionable and	
concluded	26 April 2018	misleading or deceptive conduct, and made false or misleading representations in response to customer complaints about Powersh transmission vehicles.	
jurisdiction	Federal Court Melbourne		
outcome	Penalties of \$10 million	For details see the case study on page 82.	
	Also see the court enforceable undertaking detailed below.	For actums see the case study offpage az.	

Undertakings

The following s. 87B undertakings were finalised in 2017–18. Details of the s. 87B undertakings are available in full on the undertakings public register on the ACCC website.

Table 3.31: Car retailing undertakings finalised

Ford Motor Company of Australia Ltd s. 87B undertaking dated 26 April 2018	As part of a litigated outcome, the ACCC accepted a court enforceable undertaking from Ford to establish a program to review customer requests for refunds or replacement vehicles made between 1 May 2015 and 1 November 2016. Ford also agreed to provide customers with more information about their cars, including the history of manufacturing defect repairs performed. For more details see the case study at page 82.
Hyundai Motor Company Australia Pty Ltd s. 87B undertaking dated 6 February 2018	The ACCC accepted a court enforceable undertaking from Hyundai to improve its compliance with consumer guarantee obligations under the ACL.
GM Holden Ltd s. 87B undertaking dated 2 August 2017	The ACCC accepted a court enforceable undertaking from Holden to comply with its consumer guarantee obligations under the ACL and adopt recommendations from the recent ACL review.

Excessive payment surcharges ban

In 2017-18 the ACCC continued priority work to enforce the ban on excessive payment surcharges on debit and credit cards. The ban applied to large businesses in Australian from 1 September 2016 and to all other Australian businesses from 1 September 2017. This legislative development is outlined further at page 107.

Case study: Action to enforce new excessive payment surcharge laws

In November 2017 Red Balloon Pty Ltd (Red Balloon) paid penalties totalling \$43 200 following the issue of four infringement notices by the ACCC for alleged breaches of the new excessive payment surcharges laws in the CCA.

Red Balloon is an online trader that sells 'experiences' in Australia, such as skydiving jumps, wine tours, and cooking classes.

The ACCC alleged that on 31 March and 30 June 2017 Red Balloon charged four consumers excessive payment surcharges on payments they made by Mastercard credit, Visa credit, Visa debit and MasterCard debit respectively.

Red Balloon is classified as a large business under the excessive payment surcharges provisions. The ban on excessive surcharges has applied to large businesses in Australia for more than a year, commencing on 1 September 2016. For all other Australian businesses, the new ban has applied since 1 September this year.

Red Balloon has since lowered its payment surcharges to the correct amounts, and cooperated with the ACCC's investigation.

Infringement notices

The following infringement notices were paid in 2017-18.

Table 3.32: Surcharging infringement notices paid

Red Balloon Pty Ltd	Four infringement notices totalling \$43 200
17 November 2017	The ACCC issued four infringement notices against Red Balloon for alleged breaches of the new excessive payment surcharge laws in the CCA. The ACCC alleged that on 31 March and 30 June 2017 Red Balloon charged four consumers excessive payment surcharges on payments they made by various credit and debit cards.
	For details see the case study above.

Telecommunications sector (including broadband) and energy sectors

In 2017-18 the ACCC continued to prioritise misleading and deceptive conduct and false or misleading representations in the telecommunications and energy sectors. In particular, the ACCC has recently taken enforcement action in relation to unconscionable conduct and false or misleading representations made to consumers in the provision of broadband services. As part of this, it has been addressing misleading speed claims and statements made during the transition to the NBN.

Case study: False or misleading representations in the telecommunications sector

In April 2018 following action by the ACCC, the Federal Court ordered Telstra to pay penalties of \$10 million for making false or misleading representations to customers in relation to its third-party billing service known as 'Premium Direct Billing' (PDB).

In 2015 and 2016 Telstra operated the PDB service on mobile phone accounts. It did not adequately inform customers that it had set the PDB service as a default on these accounts. Under the PDB service, if customers accessed content through this service—for example, games and ringtones—even unintentionally, they were billed directly by Telstra.

The Federal Court held that Telstra misled customers and breached the *Australian Securities and Investments Commission Act 2001* when it charged them for digital content under the PDB, which they unknowingly purchased. Telstra admitted that more than 100 000 customers may have been affected and has committed to offer refunds to these customers.

As part of this resolution, Telstra has ceased operating the PDB service entirely.

Telstra estimates it has provided refunds of at least \$5 million, and it will review any future complaints in light of this action and deal with those customers in good faith. The ACCC estimates further refunds may be in the order of several million dollars.

Case study: False or misleading representations made during the transition to the NBN

In May 2018 the Federal Court ordered Optus Internet Pty Ltd (Optus) to pay penalties of \$1.5 million for making misleading representations to customers about their transition from Optus' HFC network to the NBN.

From October 2015 to March 2017, Optus told around 14 000 of its customers that their services would be disconnected (in as little as 30 days in some cases) if they did not move to the NBN. Under the terms of its contract, Optus could not force disconnection within the timeframe it claimed.

Optus also made misleading representations to customers that they had to sign up to Optus' NBN services when they could have chosen any internet service provider.

Optus benefited by around \$750 000 as a result of the conduct.

Since the ACCC investigation commenced, Optus has paid \$833 000 in compensation to affected customers for the disconnection of their services.

Court cases

The following cases were finalised in 2017-18.

Table 3.33: False or misleading representations in telecommunications proceedings finalised

Telstra Corporation Ltd		Conduct
commenced concluded jurisdiction outcome	26 March 2018 26 April 2018 Federal Court Melbourne The Federal Court ordered penalties against Telstra of \$10 million for making false or misleading representations.	The ACCC commenced proceedings against Telstra, under a delegation of power from ASIC, alleging that it made false or misleading representations to consumers in relation to its third-party billing service known as 'Premium Direct Billing'. For details see the case study on page 85.
	Telstra admitted that more than 100 000 customers may have been affected and has committed to offer refunds to these customers. Telstra estimates it has already provided refunds of at least \$5 million.	
Optus Internet Pty Ltd		Conduct
commenced concluded	15 December 2017 23 May 2018	The ACCC alleges that between October 2015 and March 2017 Optus made false or misleading representations
jurisdiction outcome	Federal Court Melbourne The Federal Court ordered a penalty of	by writing to its customers to advise it would disconnect their HFC service within a specified time period, as the NBN was coming to their area. However, Optus was not contractually

gave to customers.

allowed to cancel the customers' services in the timeframes it

For details see the case study on page 85.

Undertakings

The following s. 87B undertakings were finalised in 2017-18. Details of the s. 87B undertakings are available in full on the undertakings public register on the ACCC website.

Table 3.34: Broadband services undertakings finalised

\$1.5 million.

Dodo Services Pty Ltd s. 87B undertaking dated 22 March 2018	The ACCC has accepted an undertaking from Dodo to offer remedies to more than 3000 customers who could not receive the internet speeds they bought because their NBN connection was incapable of delivering them.
M2 Commander Pty Ltd s. 87B undertaking dated 22 March 2018	The ACCC has accepted an undertaking from M2 Commander to offer remedies to more than 500 customers who could not receive the internet speeds they bought because their NBN connection was incapable of delivering them.
Primus Telecommunications Pty Ltd s. 87B undertaking dated 22 March 2018	The ACCC has accepted an undertaking from Primus to offer remedies to nearly 2000 customers who could not receive the internet speeds they bought because their NBN connection was incapable of delivering them.
iiNet Ltd s. 87B undertaking dated 19 March 2018	The ACCC has accepted an undertaking from iiNet to compensate more than 8000 customers who could not reach the internet speeds promised in their NBN contracts. Following the ACCC's investigation, iiNet admitted that, between 2015 and mid-2017, it was likely to have engaged in misleading or deceptive conduct or made false or misleading representations by promoting and offering NBN plans with maximum speeds it could not deliver.
Internode Pty Ltd s. 87B undertaking dated 19 March 2018	The ACCC has accepted an undertaking from Internode to compensate more than 3000 customers who could not reach the internet speeds promised in their NBN contracts. Following the ACCC's investigation, Internode admitted that, between 2015 and mid-2017, it was likely to have engaged in misleading or deceptive conduct or made false or misleading representations by promoting and offering NBN plans with maximum speeds that it could not deliver.

TPG Internet Pty Ltd	Following ACCC investigation, TPG undertook to compensate nearly 8000 of its customers who were misled about the maximum speeds they could achieve on certain TPG NBN plans.	
s. 87B undertaking dated 20 December 2017		
Optus Internet Pty Ltd	Following ACCC investigation, Optus undertook to offer remedies to more than 8700 of its	
s. 87B undertaking dated 11 November 2017	customers who were misled about maximum speeds they could achieve on certain Optus NBN plans.	
Telstra Corporation Ltd	Following ACCC investigation, Telstra undertook to offer remedies to around 42 000 customers	
s. 87B undertaking dated 7 November 2017	for promoting and offering some of its NBN speed plans as being capable of delivering specified maximum speeds, when those maximum speeds could not be achieved in real-world conditions.	

Infringement notices

The following infringement notice was paid in 2017-18.

Table 3.35: Telecommunications infringement notice paid

Australian Private Networks Pty	One notice totalling \$12 600
Ltd t/a Activ8me	The ACCC issued the infringement notice because it had reasonable grounds to believe that
1 March 2018	Activ8me had made false or misleading representations that its internet services were endorsed
	or approved by the ACCC as being superior to those offered by other providers, when this was
	not the case. Activ8me has since removed the representations from its websites.

Administrative resolutions

The following administrative resolutions were finalised in 2017-18.

Table 3.36: Administrative resolutions for misleading electricity price representations

Alinta Energy	Following an investigation by the ACCC, Alinta Energy has undertaken to compensate
20 June 2018	thousands of Victorians for making misleading electricity price comparisons which the ACCC
	considered were in breach of the ACL.

Health and medical, including private health insurance

Competition and consumer issues in the health and medical sector, including in relation to the private health industry, were an ACCC priority in 2017.

Our work in this area aims to increase awareness within the medical profession and the broader health industry about both rights and obligations under the law. We use market research and analysis to identify risks to consumers and the competitive process that may require intervention. These reviews also help us to identify industry good practice and encourage it more broadly within the sector. By publicising this work, we help to inform consumers, encourage public debate over competition and consumer matters and inform policy consideration.

In 2017-18 we began work on our 19th annual *Report to the Australian Senate on anti-competitive and other practices by health insurers and providers in relation to private health insurance* for the 2016-17 financial year. This year's report analyses key competition and consumer developments and trends in the private health insurance industry. It also notes the Government's major reforms to private health insurance announced in October 2017. The report was published in June 2018.

In 2018 work in this area continued, particularly in relation to representations made by health funds regarding their health insurance products.

Case study: Medical and health—Australian Unity Health Ltd

In November 2017 following an ACCC investigation, Australian Unity agreed to pay compensation to members who held couple and family policies in 2015 who were likely to have been misled about the dental benefits they could claim from their policy. It is expected that Australian Unity will pay at least \$620 000 in compensation to affected consumers.

At the start of 2015 Australian Unity's Comprehensive Extras policy for couples and families included one overall limit for dental benefits, which was between \$1600 and \$2400 per calendar year. The insurer's factsheets, website and terms and conditions in 2015 represented to members that these benefits were fixed and would not change for that year.

However, in September 2015 Australian Unity made a change to its benefits. Before September 2015 members had been able to choose how to split the annual limit among individual family members. For example, families could use all of the annual limit for braces for one child. In September 2015 Australian Unity changed the way the annual limit worked. The total limit for dental benefits was the same. However, Australian Unity limited claims for each individual family member to half of the total annual limit. For example, previously an individual family member could have made a claim for dental work up to the entire \$1600 annual limit. After September 2015 that family member now had an \$800 limit.

Australian Unity wrote to members notifying them of the change in August 2015.

Australian Unity has provided a court enforceable undertaking to the ACCC under which it has agreed, for a period of three years, that:

- during any 12-month period it will not make a detrimental change to any benefits that are represented as benefits provided for that 12-month period
- it will improve the information it provides to consumers about Australian Unity's ability to change benefits, including disclosing that Australian Unity is bound by the ACL when making changes
- it will provide compensation, expected to be at least \$620 000, to affected members, including reimbursement for out-of-pocket costs for dental services incurred in 2015 and payment of expenses on ongoing dental plans
- it will notify members about its conduct and Australian Unity's commitments contained in the undertaking.

Court cases

The following cases commenced in 2017-18.

Table 3.37: Health and medical proceedings commenced

GlaxoSmithKline Healthcare Australia Pty Ltd and Novartis Consumer Health Australasia Pty Ltd		
commenced	misleading representations in the Osteo Gel and Voltaren Emulgel p The ACCC alleges that GSK and N that Osteo Gel was specifically for osteoarthritis conditions and was	The ACCC alleges that GSK and Novartis made false or
jurisdiction		misleading representations in the marketing of Voltaren Osteo Gel and Voltaren Emulgel pain relief products.
		The ACCC alleges that GSK and Novartis represented that Osteo Gel was specifically formulated for treating osteoarthritis conditions and was more effective than Emulgel to treat those conditions, when the two products are identically formulated.
Ashley & Martin F	Pty Ltd	
commenced	29 November 2017	The ACCC alleges that, from November 2013 until at least
jurisdiction Federal Court Perth	July 2017, Ashley & Martin used three different standard form contracts, all containing clauses that were unfair. The contracts were used for customers signing up to Ashley & Martin's 'Personal RealGROWTH Program'.	

The following cases were ongoing at the end of 2017-18.

Table 3.38: Health and medical cases ongoing

Medibank Private Ltd (appeal)		
commenced jurisdiction	15 June 2016 Federal Court Melbourne On 30 August 2017 the Federal Court dismissed the ACCC's proceedings. On 21 September 2017 the ACCC appealed this decision to the Full Federal Court.	The ACCC alleges that Medibank engaged in misleading and unconscionable conduct when it failed to notify Medibank members and members of its subsidiary brand, ahm, of its decision to limit benefits paid to members for in-hospital pathology and radiology services.

Undertakings

The following s. 87B undertakings were finalised in 2017-18. Details of the s. 87B undertakings are available in full on the undertakings public register on the ACCC website.

Table 3.39: Health and medical undertakings finalised

Australian Unity Health Ltd s. 87B undertaking dated 2 November 2017	The ACCC has accepted an undertaking from Australian Unity to pay compensation to members who held couple and family policies in 2015 who were likely to have been misled about the dental benefits they could claim from their policy. It is expected that Australian Unity will pay at least \$620 000 in compensation to affected customers. For details see the case study on page 88.
Advanced Hair Studio Pty Ltd s. 87B undertaking dated 10 October 2017	The ACCC has accepted an undertaking from Advanced Hair Studio to partly refund some customers who purchased the Advanced Laser Therapy Program between April 2015 and June 2017, following ACCC concerns that Advanced Hair's contract contained terms that were unfair. Advanced Hair also undertook to establish an ACL Compliance Program.

Scams

ACCC's work on scams

A scam is a fraudulent business or scheme which takes money or other goods from an unsuspecting person. Scams can have a significant financial impact on individuals and businesses. They target people of all backgrounds, ages and income levels. Every year scams cost Australians millions of dollars and cause considerable non-financial harm.

The ACCC plays an important role in educating Australians about how to protect themselves from scams. This remained a priority issue for the ACCC in 2017-18. The ACCC works on several fronts to prevent and minimise the harm that scams cause, including through ongoing education, communication and media stories, and disruption work and enforcement action where possible.

Targeting scams report

In May 2018 we released the ninth annual *Targeting scams: Report of the ACCC on scam activity 2017.* The report examines key trends in scam activity and highlights the impact of scams on the community. It also emphasises the cooperative work of the ACCC, other regulators and law enforcement agencies to disrupt scams and educate consumers.

In 2017 we received 161 528 scam-related contacts from consumers and small businesses, with reported financial losses totalling \$90 928 622. We also reviewed data from other jurisdictions that receive reports or detect scams to gain a clearer picture of the significance of losses caused by scam activity in Australia, including the Australian Cybercrime Online Reporting Network (ACORN),² the Australian Taxation Office and state and territory offices of fair trading. Combined losses reported to the ACCC and these other agencies exceeded \$340 million.

² ACCC analysis of ACORN data specifically excludes reports that have been made to Scamwatch and those that do not identify whether they have reported elsewhere.

Scams Awareness Network

The ACCC is the chair of the Scams Awareness Network (formerly the Australasian Consumer Fraud Taskforce). The network is made up of about 40 government regulatory agencies and departments in Australia and New Zealand that work alongside private sector, community and non-government partners to prevent scams. By coordinating our response we can deliver an effective approach to minimising consumer harm.

The ACCC is active in recruiting new members into the Scams Awareness Network to improve our ability to reach more Australian consumers and businesses with scam education and awareness raising activities.

Scams Awareness Week

The Scams Awareness Network runs an annual campaign, National Scams Awareness Week, to raise awareness of scam activity within our community. In 2018 the focus of the campaign was on threat-based impersonation scams.

Using the theme 'Stop and check: is this for real?' the campaign encouraged those being threatened by someone claiming to represent a government agency or trusted business to consider the possibility that it may be a scam. In 2017 the ACCC received reports of \$4.7 million lost to threat-based impersonation scams. Additional reports to other agencies brought the combined total to \$7 million.

As in previous years, Scams Awareness Week was supported by the Scam Awareness Network partner agencies and a range of private organisations to extend the reach of the messaging. This year our campaign partners included major banks, telecommunications providers, IT industry giants, online payment platforms, industry associations and community organisations. These member agencies and campaign partners promoted the campaign by posting social media content, publicising online content, issuing media releases and issuing scam warnings on their mobile apps.

In addition to this, our Deputy Chair, Delia Rickard, engaged heavily with the media during Scams Awareness Week. We promoted the message via print, online, television and radio media to an Australian audience of millions. Additional media releases during the week also highlighted scams targeting businesses and Indigenous Australians.

Scamwatch

The ACCC uses a range of media and communications channels to raise community awareness about scams. In 2017 our <u>Scamwatch website</u>, which hosts a wealth of information on how to identify and avoid scams, received over 2.4 million page views.

To ensure Australia's linguistically diverse population has greater access to information on how to recognise, avoid and report scams, in 2017 the ACCC made scams information available on the Scamwatch website in 12 languages other than English.

The ACCC's most popular publication, the *Little black book of scams*, was downloaded 13 348 times in 2017, with 162 095 hard copies distributed across Australia to financial institutions, police stations and community organisations.

Also in 2017 we distributed 14 Scamwatch radar email alerts on emerging scams to our subscribers. The number of subscribers to the email alerts increased by 24 per cent to 59 957. A notable email alert and media release in January 2018 informed consumers about the availability of potential refunds for scam victims from Western Union as a result of action taken by the US Fair Trade Commission.

We use our Scamwatch Twitter profile (@Scamwatch_gov) to provide information to Australian consumers and businesses about scams that are targeting them. In 2017 we posted 306 tweets and retweets to our followers. In 2017 the number of followers increased by 20 per cent to over 17 400.

Scam Intermediaries Pilot Project

Since September 2016, as part of a pilot program, the ACCC has engaged with 10 companies (intermediaries) in an effort to improve their approach to scam prevention. The objectives of the pilot project were to influence and enable these companies to improve their scam prevention practices to both reduce the incidence of scams and reduce the harm experienced by people using or transacting through their business or platform.

During 2017-18 the ACCC in conjunction with industry created a *Good practices guide for financial intermediaries*. The guide is an industry-facing document that provides guidance to financial service providers on how to raise internal awareness of scams, raise customer awareness of scams, gather scams intelligence and intervene in scams. The pilot project also established the direct provision of Scamwatch reports to intermediaries where consumers provided consent for the ACCC to do so. The ACCC worked with intermediaries during the period to clarify the expectation that they act on this information, for example where they identify a scam and action can be taken or where intelligence can be used to optimise scam prevention efforts. The ACCC expects all intermediaries and platform operators will take steps to identify scams on their platforms and take action accordingly to protect consumers. The ACCC received positive feedback from the pilot, and the scam intermediaries work will continue in 2018-19.

Court cases

The following case commenced in 2017-18.

Table 3.40: Scam disruption proceedings commenced

Domain Name Corp Pty Ltd and Domain Name Agency Pty Ltd		Conduct
commenced	4 August 2017	The ACCC alleges that the Domain companies engaged
jurisdiction	Federal Court Western Australia	in misleading or deceptive conduct and made false or misleading representations to Australian businesses about the domain name services they offered.
		The ACCC also alleges that the sole director of both the Domain companies was involved in the conduct.

The following case was ongoing at the end of 2017-18.

Table 3.41: Scam disruption proceedings ongoing

We Buy Houses Pty Ltd		Conduct
commenced jurisdiction	2 March 2015 Federal Court Sydney	The ACCC alleges that We Buy Houses and its sole director, Rick Otton, made false or misleading representations in
status	On 11 August 2017 the Federal Court found that We Buy Houses and Rick Otton made false or misleading representations in promoting a number of wealth creation strategies involving real estate.	promoting a number of wealth creation strategies involving real estate.
	The relief hearing will take place on a date to be fixed.	

The following case was finalised at the end of 2017-18.

Table 3.42: Scam disruption proceedings finalised

ABG Pages Pty Lt	d	Conduct
commenced	15 December 2016	The ACCC alleged that ABG Pages engaged in misleading
concluded	20 March 2018	or deceptive conduct, false or misleading representations,
jurisdiction	Federal Court Brisbane	undue harassment and systemic unconscionable conduct in its dealings with small businesses that were actual or
	potential customers of its online business directory service.	
	engaging in systemic unconscionable conduct, undue harassment, and making false and misleading representations in	
	 that ABG's sole director, Michele McCullough, pay a \$40 000 penalty and be disqualified from managing corporations for five years for her role in the conduct. 	
	ABG and Ms McCullough admitted to breaching the ACL and were also ordered to jointly make a contribution of \$25 000 towards the ACCC's costs Ms McCullough is to attend an ACL compliance program.	
Domain Name Co	rp Pty Ltd and Domain Name Agency Pty Ltd	Conduct
commenced	4 August 2017	The ACCC alleged that the Domain companies engaged
concluded	14 June 2018	in misleading or deceptive conduct and made false or
jurisdiction	Federal Court Western Australia	misleading representations to Australian businesses about the domain name services they offered.
outcome The Federal Court ordered that the Domain The ACCC also alleged that the	The ACCC also alleged that the sole director of both the Domain companies was involved in the conduct.	
	injunctions for three years against each of the Domain companies and for five years against Steven Bell, the sole director of both Domain	
	The Court also made an order disqualifying Mr Bell from managing a corporation for five years and ordered him to pay \$8000 in costs to the ACCC.	

Product safety

Consumers should have a right to expect the products they buy work properly and do not present an unreasonable risk to safety. Under the ACL consumer goods are expected to meet the consumer guarantee of acceptable quality, including being safe. While not all product safety incidents are likely to be reported to regulators, this year the ACCC received 4123 product safety incident reports, which included 3255 mandatory injury reports.

When consumers find the goods they have purchased are not as safe as expected, consumers can pursue their consumer guarantee rights. Consumers can assert these guarantee rights regardless of any other action taken by businesses to remedy unsafe goods.

Under the ACL consumer protections also exist to safeguard against suppliers engaging in conduct that is likely to be misleading or deceptive, which include representations as to the safety of a product. The ACL also provides for injury reporting, recalls, bans, safety standards and product liability.

There are 20 bans and 42 mandatory standards made under the ACL that apply to specific consumer goods. Selling goods that do not comply with these safety requirements is a serious matter and

significant penalties may apply. However, there is currently no penalty for supplying unsafe goods not subject to a ban or standard, as there is no general prohibition against the supply of unsafe goods in Australia.

The ACCC has continued to work closely with Consumer Affairs Australia New Zealand (CAANZ) members to develop a public regulatory impact assessment on the benefits of introducing a GSP as recommended in the *Australian Consumer Law review final report*. A GSP would prohibit the supply of unsafe goods and introduce penalties against businesses that supply unsafe goods.

The ACCC strongly advocated throughout the year for the development and introduction of a GSP under the ACL, including via the ACCC Chair's address at the National Consumer Congress 2018. Under the current provisions of the ACL, it is not illegal to supply unsafe products in Australia, as it is in a range of places like the UK, the European Union, Canada, Malaysia and Brazil. Faulty products continue to cause serious injury and harm to thousands of Australians, with more than 4.5 million items recalled by suppliers in 2017–18. The ACCC supports the development and implementation of a GSP under the ACL. A GSP would strengthen the product safety regime in Australia and allow the ACCC to respond to product safety hazards faster and support existing consumer remedies in the ACL.

The ACCC's product safety enforcement work is discussed further on page 118.

Other consumer protection work

Truth in advertising

Truth in advertising was previously a priority area for the ACCC. Our focus was on ensuring that consumers were not misled and that honest traders were not put at a competitive disadvantage. The ACCC has ongoing cases in this priority area.

However, in both 2017 and 2018 we also prioritised matters where large companies engage in national conduct that could potentially result in greater consumer detriment from their actions and there is a likelihood that the conduct of larger businesses can influence the behaviour of other market participants.

Case study: Truth in advertising and misleading health food representations

In March 2018 the Federal Court found that food manufacturer HJ Heinz Company Australia Ltd (Heinz) made a misleading health claim that its Little Kids Shredz products were beneficial for young children.

In 2016 the ACCC instituted proceedings against Heinz, alleging that these images and statements on Shredz products represented to consumers that they were a healthy and nutritious food for young children when this was not the case.

In 2018 the Federal Court found that Heinz had made a misleading health claim—that its Little Kids Shredz products were beneficial to the health of children aged one to three years when this was not the case.

Further, the Court found that Heinz nutritionists ought to have known that, given the product was approximately two-thirds sugar, a representation that the product was beneficial to health of children was misleading.

The Court found that the combination of imagery and words on the packaging, including prominent pictures of wholesome fresh fruit and vegetables and statements such as '99% fruit and veg', conjured up the impressions of nutritiousness and health.

A hearing on penalties and other orders sought by the ACCC will be held on a date to be fixed by the Court.

Case study: Truth in advertising and misleading environmental representations

In 2017-18 the ACCC has instituted cases against:

- Pental and Kimberly-Clark Australia about claims its wipes are 'flushable'
- Woolworths about claims its disposable plates and cutlery are biodegradable and compostable.

In April 2018 the Federal Court ordered Pental Ltd and Pental Products Pty Ltd (together, Pental) to pay penalties totalling \$700 000 for making false and misleading representations about its White King 'flushable' toilet and bathroom cleaning wipes.

Between February 2011 and July 2016 the packaging and promotional materials for the wipes included statements such as 'flushable' and 'Simply wipe over the hard surface of the toilet ... and just flush away'. They also stated that 'White King Toilet Wipes are made from a specially designed material, which will disintegrate in the sewage system when flushed, just like toilet paper'.

Pental admitted that the representations it had made—that its White King 'flushable' wipes were made from a specially designed material which disintegrated in the sewerage system like toilet paper, had similar characteristics to toilet paper when flushed and were suitable to be flushed into the sewerage system—were false.

In April 2018 the Federal Court ordered Pental to pay penalties totalling \$700 000. In addition, the Court made declarations that these representations were false or misleading in contravention of the ACL and ordered Pental to implement a compliance program.

The ACCC has separate ongoing proceedings against Kimberly-Clark Australia Pty Ltd concerning alleged false or misleading representations in relation to four 'flushable' personal hygiene wipes products that were marketed and supplied in Australia between May 2013 and May 2016.

Similarly, in March 2018 the ACCC instituted proceedings in the Federal Court against Woolworths Ltd (Woolworths) alleging that the environmental representations made about its 'W Select eco' picnic products were false, misleading or deceptive in contravention of the ACL.

From November 2014 to November 2017 Woolworths labelled disposable bowls, plates and cutlery in its 'W Select eco' line as 'Biodegradable and Compostable'. The ACCC alleges Woolworths failed to make reasonable or adequate efforts to substantiate these biodegradability and compostability claims.

The ACCC is seeking pecuniary penalties, injunctions, declarations, publication orders and costs.

Court cases

The following case commenced in 2017-18.

Table 3.43: Truth in advertising claims proceedings commenced

Woolworths Ltd		Conduct
commenced jurisdiction	2 March 2018 Federal Court Melbourne	The ACCC instituted proceedings in the Federal Court against Woolworths, alleging that the environmental representations made about its 'W Select eco' picnic products were false, misleading or deceptive in contravention of the ACL. For details see the case study above.

The following cases were ongoing in 2017-18.

Table 3.44: Truth in advertising claims proceedings ongoing

Kimberly-Clark Australia Pty Ltd		Conduct
commenced	12 December 2016	The ACCC alleges that Kimberly-Clark made false or misleading representations in relation to 'flushable' wipes it marketed and supplied in Australia.
jurisdiction	Federal Court Sydney	
		For details see the case study on page 94.
HJ Heinz Compa	ny Australia Ltd	Conduct
commenced	21 June 2016	The ACCC alleges that Heinz used particular statements and
jurisdiction	Federal Court Adelaide	images on certain products that represented to consumers
status	On 19 March 2018, the Federal Court found that Heinz made a misleading health claim by	that those products are of equivalent nutritional value to fruit and vegetables and are a healthy and nutritious food for children aged one to three years, when this is not the case.
	representing that its Shredz products were beneficial to the health of children aged one to three years, when this was not the case.	For details see the case study on page 93.
	A hearing on penalties will be held on a date to b fixed by the Court.	pe

The following cases were finalised in 2017-18.

Table 3.45: Truth in advertising claims proceedings finalised

Pental Ltd and Pe	ental Products Pty Ltd	Conduct
commenced	12 December 2016	The ACCC alleged that Pental made false or misleading
concluded	12 April 2018	representations in relation to 'flushable' wipes it marketed
jurisdiction	Federal Court Sydney	and supplied in Australia.
outcome	The Federal Court ordered penalties of \$700 000.	For details see the case study on page 94.
Snowdale Holdin	gs Pty Ltd	Conduct
commenced	9 December 2013	The ACCC alleged that Snowdale in WA made false,
jurisdiction	Federal Court Perth	misleading or deceptive representations by the images and
concluded	25 July 2017	wording on their egg cartons and website in that the eggs supplied and labelled as 'free range' were produced by hens
outcome	The Federal Court ordered penalties of \$750 000.	
	It also ordered Snowdale to implement a consumer law compliance program and pay a contribution towards the ACCC's costs.	each day.

Undertakings

The following s. 87B court undertakings were finalised in 2017–18. Details of the s. 87B undertakings are available in full on the undertakings public register on the ACCC website.

Table 3.46: Truth in advertising claims undertakings finalised

HP PPS Australia	The ACCC accepted a court enforceable undertaking from HP in relation to the failure to disclose
s. 87B undertaking dated 3 April 2018	to consumers that certain HP inkjet printers had been installed with technology intended to prevent those printers from working with non-HP ink cartridges.

Infringement notices

The following infringement notice was paid in 2017-18.

Table 3.47: Truth in advertising claims infringement notices paid

Jenny Craig Weight Loss Centres	Three notices totalling \$37 800
Pty Ltd	The ACCC issued three infringement notices because it had reasonable grounds to believe that Jenny Craig had made false or misleading representations in breach of the ACL. From December 2017 to February 2018, Jenny Craig represented in advertisements that people could
	lose up to 10 kilograms of weight for a \$10 program fee, without adequately disclosing that customers also had to purchase food at an additional cost.

Administrative resolutions

The following administrative resolutions were finalised in 2017-18.

Table 3.48: Administrative resolutions for truth in advertising claims

CompassCorp Pty Ltd 1 December 2017 Following an investigation by the ACCC, CompassCorp trading as Compass Claims to amend its advertising and sales practices to inform consumers of hire charges a obligation to provide assistance.		
Telstra 19 October 2017	Telstra offered refunds to some AFL Live Pass app subscribers after the ACCC raised concerns about Telstra's disclosure of the size of its viewing screen available on mobiles and tablets.	
Aldi Foods Pty Ltd The ACCC completed its investigation into Aldi's 'flushable' wipes and will take after Aldi stopped selling its personal hygiene wipes and removed potentially in from its bathroom cleaning wipes packaging.		

Commission-based sales

We continue to analyse selected industries to improve our understanding of industry practices and dynamics. For example, in 2017 the ACCC focused on misleading behaviour that may be driven by sales commissions, particularly in industries that enjoy a high level of trust and where commissions may not be expected—for example, the charity sector.

Case study: Commission-based fundraising in the charity sector

In November 2017 as part of its 2017 compliance and enforcement focus on consumer issues arising from commission-based sales, the ACCC released an independent research report on commission-based fundraising in the charity sector. The report, by Frost & Sullivan, is based on interviews with three fundraising agencies, one industry association, 14 charities and 13 individuals who currently or have recently worked in commission-based fundraising.

The report found that some charities operated on a model in which third-party marketing firms earn fees for each donor that signs up from face-to-face or telemarketing approaches. The fee is commonly calculated by a multiple of the monthly donation to which the donor commits. This multiple is typically eight to 17 times the donor fee.

The report, <u>Research into the commission-based charity fundraising industry in Australia</u>, is available on our website.

Online consumer issues

Emerging systemic consumer issues in the online marketplace was an ACCC priority in 2017.

In 2018 the ACCC continued to prioritise online consumer protection with a focus on the use of digital platforms, algorithms and consumer data and the emerging markets and matters identified by the ACCC's digital platforms inquiry. The ACCC also continued to prioritise better product safety outcomes for consumers in the online marketplace.

Under the ACL, Australian consumers are entitled to the same safety protections and outcomes when shopping online as they have when shopping with traditional 'bricks and mortar' retailers.

We have been actively monitoring and engaging with businesses about online supply to make sure that they continue to comply with the consumer protections in the ACL, regardless of their geographic location or business model.

We have focused on:

- the safety of products purchased from online businesses
- digital platforms
- misleading and deceptive conduct relating to online reviews
- false or misleading online representations.

Supply of unsafe products by online retailers

In 2018 an ACCC priority is to ensure better product safety outcomes for consumers in the online marketplace. For over two years the ACCC has been working with online platform providers to address compliance concerns with suppliers on their platforms.

We have established mechanisms so that unsafe and non-compliant products are removed from sale in the Australian marketplace. The online platforms we engaged with are also providing ACCC-developed resources to offshore suppliers and promoting the Product Safety website as a reliable source of information and guidance on Australia's product safety laws.

The ACCC continues to work collaboratively with its international counterparts both bilaterally and through global and regional forums. Where relevant, the ACCC aligns its surveillance programs with global activities. The ACCC looks for opportunities to enter into memoranda of understanding and other reciprocal arrangements with its Organisation for Economic Co-operation and Development (OECD) partners to improve communication, information sharing and cooperation.

In 2017-18 the ACCC began preparation for a global campaign we are co-leading with the European Commission to raise awareness on the safety of products sold online. The campaign will run in November 2018 and will target consumers, platforms and businesses.

Digital platforms

On 4 December 2017 the then Treasurer, the Hon. Scott Morrison MP, directed the ACCC to conduct an inquiry into digital platforms. The inquiry is looking at the effect that digital search engines, social media platforms and other digital content aggregation platforms have on competition in media and advertising services markets. In particular, the inquiry is looking at the impact of digital platforms on the supply of news and journalistic content and the implications of this for media content creators, advertisers and consumers.

An issues paper for the inquiry was released on 26 February 2018. Submissions were due on 3 April 2018. Public versions of submissions received by the ACCC can be accessed online.

The preliminary report is to be submitted to the Treasurer by 3 December 2018, with a final report due by 3 June 2019. For further details, refer to pages 63-64.

Misleading or deceptive conduct relating to online reviews

Recently the ACCC has continued to progress action involving larger companies engaging in misleading or deceptive conduct in relation to reviews of their business on review websites which gives them a potential competitive edge in the market and has the potential to result in consumer detriment.

Court cases

The following cases were ongoing in 2017-18.

Table 3.49: Misleading or deceptive online review proceedings ongoing

Meriton Property Services Pty Ltd		Conduct
Commenced jurisdiction	24 November 2016 Federal Court Melbourne	The ACCC alleges that that Meriton engaged in misleading or deceptive conduct in connection with the posting of reviews
status	On 20 November 2017 the Federal Court found that Meriton engaged in misleading or deceptive conduct in connection with the posting of reviews of its properties on the TripAdvisor website. A hearing on relief against Meriton will be held on a date fixed by the Court.	of its properties on the TripAdvisor website. In particular, the

The following cases were finalised in 2017-18.

Table 3.50: Misleading or deceptive online review proceedings finalised

Aveling Homes Pty Ltd		Conduct
commenced	9 March 2017	The ACCC alleges that Aveling engaged in misleading
concluded	30 November 2017	conduct and false or misleading representations in relation
jurisdiction	Federal Court Perth	to review websites Aveling created for its businesses, Aveling Homes and First Home Owner's Centre
outcome	The Federal Court ordered penalties totaling \$380 000 against Aveling. Aveling undertook to the Court not to engage in similar conduct for a period of three years and agreed to contribute to the ACCC's costs.	Tiones and Histrioine Owner's Centre.
	The company's Group Sales and Marketing Manager, Mr Sean Quartermaine, was ordered to pay \$25 000 for being knowingly concerned in the conduct.	

Undertakings

The following s. 87B undertaking for misleading and deceptive online reviews was finalised in 2017-18. Details are available in full on the undertakings public register on the ACCC website.

Table 3.51: Misleading and deceptive online reviews undertakings finalised

Wisdom Properties Group Pty Ltd s. 87B undertaking dated 5 June 2018	The ACCC has accepted an undertaking from home builder Wisdom to remove contract terms contained in its standard home building agreements which are unfair under the ACL. These unfair terms included non-disparagement clauses that allowed Wisdom to control or prevent any public statements, such as online reviews, that customers made about its services. Wisdom has admitted that these terms were unfair and will not enforce the clauses in existing agreements.
101 Residential Pty Ltd s. 87B undertaking dated 15 December 2017	The ACCC has accepted an undertaking from 101 Residential not to enforce non-disparagement clauses in existing building contracts and will not use them in any future contracts. These non-disparagement clauses allowed 101 Residential to prohibit customers from publishing any unapproved information about the company, including online reviews.

False or misleading online representations

In both 2017 and 2018 the ACCC has also continued action involving larger companies making false or misleading representations online.

Court cases

The following case was commenced in 2017-18.

Table 3.52: False or misleading online representation proceedings commenced

Viagogo		Conduct
commenced jurisdiction	28 August 2017 Federal Court Sydney	The ACCC alleges Viagogo made false or misleading representations, and engaged in misleading or deceptive conduct regarding the price of tickets on its online platform by failing to disclose substantial fees.

Infringement notices

The following infringement notice was paid in 2017-18.

Table 3.53: Infringement notices paid for false or misleading online representations

Hive Empire Pty Ltd	One notice totalling \$10 800
20 November 2017	The ACCC issued an infringement notice because it had reasonable grounds to believe that Hive Empire, trading as finder.com.au, had breached the ACL by making false or misleading claims about the number of health insurance policies it compares.
	Between February and May 2017 Finder represented on its website that its health insurance comparison service allowed consumers to 'compare roughly 65 000 policies' when the number of policies compared was substantially lower than this. Finder has removed the representation from its website.

Non-compliance with court orders

The ACCC will take action when it considers that court orders obtained for the protection of consumers have been breached. This action may include applying for orders to have a debtor declared bankrupt where they fail to pay costs previously ordered by the court.

Court cases

The following non-compliance cases were finalised in 2017-18.

Table 3.54: Non-compliance proceedings finalised

Jacov Vaisman (NRM Corporation Pty Ltd and NRM Trading Pty formerly known as Advanced Medical Institute Pty Ltd)		Conduct
commenced concluded	17 January 2018	In January 2018 the ACCC applied for a sequestration order against Jacov Vaisman after he failed to pay the ACCC's
iurisdiction	31 January 2018 Federal Court Melbourne	costs in the Advanced Medical Institute (AMI) matter which
outcome	The Court granted the ACCC's application for a sequestration order and declared Mr Vaisman bankrupt effective from 4 December 2017.	amounted to over \$3 million. In 2015 the Federal Court found that AMI, its subsequent owner, NRM, and the former director of AMI and NRM, Jacov Vaisman, engaged in unconscionable conduct and used unfair contract terms in the way it promoted and supplied medical services and medications to vulnerable consumers suffering from sexual dysfunction.

Peter Foster (Sensaslim Australia Pty Ltd)		Conduct
commenced	18 December 2017	In January 2018 the ACCC applied for a sequestration
concluded	29 January 2018	order against Peter Foster after he failed to pay costs in the
jurisdiction	Federal Court Sydney	Sensaslim matter.
outcome	The Court granted the ACCC's application for a sequestration order and declared Mr Foster bankrupt effective from 14 December 2017.	In 2014 the Federal Court found that Sensaslim had engaged in misleading or deceptive conduct and had made false or misleading representations by failing to disclose Mr Foster's involvement in the Sensaslim franchise. The Court also found Mr Foster was knowingly concerned in the conduct.
		In 2016 the Court ordered Mr Foster to pay both a \$660 000 penalty and pay the ACCC's costs, which he has not done.

Working with partners: Actions undertaken to achieve our purpose

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

The ACL is a single national set of consumer protection laws. Because the ACL is applied nationally, the ACCC is involved in partnerships to ensure the laws are consistently coordinated and enforced in Australia and that Australian consumer regulators can work collectively on broader issues.

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

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

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

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

Australian partnerships

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

Much of the coordinated work is carried out through interagency and other committees. This year we continued our work with:

- ACL regulators via the Council of Australian Governments (COAG) Legislative and Governance Forum on Consumer Affairs and its subcommittee, CAANZ. Work also progressed through the following CAANZ advisory committees and operational groups:
 - the Compliance and Dispute Resolution Advisory Committee (CDRAC)
 - Fair Trading Operations Group (FTOG)
 - Product Safety Operations Group (PSOG)
 - the Policy and Research Advisory Committee (PRAC)
 - the Education and Information Advisory Committee (EIAC)
- public stakeholders through our consultative committees, including:
 - the Consumer Consultative Committee
 - the Small Business and Franchising Consultative Committee.

Compliance and Dispute Resolution Advisory Committee

CDRAC aims to ensure that compliance, including enforcement activity, and dispute resolution across Australia is coordinated, efficient, responsive and, where appropriate, consistent. It is currently chaired by NSW Fair Trading, and its members include representatives of all ACL regulators. The committee, along with supporting groups FTOG and PSOG, supports broader and targeted approaches to consumer law enforcement.

For example, since August 2017 CDRAC has been considering the possible regulatory response to best address concerns that certain ticket reselling practices cause consumer harm. This includes consumers being misled, exposure to potential scams and inflated ticket prices.

Fair Trading Operations Group

FTOG is a key forum through which the ACCC and state and territory fair trading agencies collaborate on a range of emerging enforcement issues, including enforcement investigations and enforcement outcomes under the ACL. FTOG is a subcommittee of CDRAC and meets via teleconference on a monthly basis.

Product Safety Operations Group

PSOG is a key forum through which the ACCC and state and territory fair trading agencies collaborate on a range of emerging product safety issues. It meets via teleconference on a monthly basis.

The group is made up of representatives of product safety regulators from all Australian states and territories. The Queensland Office of Fair Trading currently chairs the group.

We have also worked in partnership with other federal agencies to deliver and coordinate actions that ensure better safety outcomes. We build relationships with organisations including the Department of Home Affairs; the Asbestos Safety and Eradication Agency; the Department of Health; the Department of Infrastructure, Regional Development and Cities; Kidsafe; the Royal Life Saving Society; various industry associations; Standards Australia; and state and territory fire safety agencies.

In 2017–18 we continued to work closely with suppliers of products containing lithium coin cell (that is, button) batteries to review their voluntary industry code to improve safety of these products. We also continued to work closely with state and territory electrical safety regulators and industry on the Infinity cable recall (see pages 113–114). This year we also worked closely with furniture suppliers to address the hazards associated with unsecured or toppling furniture.

Policy and Research Advisory Committee

PRAC aims to ensure that consumer protection research, policy development and legislative reform are best practice and undertaken in a nationally consistent and cooperative manner. The committee is chaired by the Treasury and has members from all ACL regulators.

The committee has participated in a number of national projects to improve policy coordination and research activities and supports the operation of CAANZ.

Education and Information Advisory Committee

One of our major tasks is consumer education on and awareness of ACL. To achieve this, we work with EIAC—a national body that promotes cooperation and coordination of education and information activities relating to the ACL and consumer issues more generally. We are members of the committee along with other Australian, state and territory ACL regulators.

This year the ACCC has been involved in:

- the campaign to raise awareness of the dangers that some common winter warmers—products like hot water bottles and electric blankets—can pose if the products are old, faulty or used incorrectly
- the campaign which ran in the lead-up to Christmas 2017 to raise awareness of safety during summer holiday activities and ensuring that gifts bought for Christmas were safe
- leading an EIAC campaign to educate consumers with disability and registered providers about their rights and obligations under the CCA. The ACCC also worked with the National Disability Insurance Agency, the Department of Social Services and many stakeholders in the disability sector in delivering this work
- leading an EIAC campaign to educate consumers and service providers in the home care sector about their rights and obligations under the CCA
- informing EIAC about the ACCC's consumer campaign and resources available for the Country of Origin Food Labelling Information Standard 2016, which became mandatory on 1 July 2018.

Consumer Consultative Committee

The Consumer Consultative Committee provides a forum through which consumer protection issues can be addressed collaboratively between the ACCC and consumer representatives. It is co-chaired by Catriona Lowe and the ACCC Deputy Chair, Delia Rickard.

Its current members are CHOICE, Consumer Action Law Centre, Financial Counselling Australia, the Public Interest Advocacy Centre, the Indigenous Consumer Assistance Network, the Council on the Ageing, the Australian Communications Consumer Action Network, Brotherhood of St Laurence, the Youth Action and Policy Association NSW, the Adult Multicultural Education Service and the Consumers Health Forum.

In 2017-18 Consumer Consultative Committee members continued to inform the ACCC's consumer protection work by:

- identifying current consumer issues
- providing input into ACCC priority projects
- supporting ACCC initiatives through their networks and communities.

Members also actively assisted the ACCC in developing the National Consumer Congress program.

Small Business and Franchising Consultative Committee

The Small Business and Franchising Consultative Committee provides a forum where competition and consumer law concerns related to the small business and franchising sectors can be discussed by industry and government. The committee meetings are held twice a year and chaired by the Deputy Chair.

COAG Legislative and Governance Forum on Consumer Affairs

The COAG Legislative and Governance Forum on Consumer Affairs (CAF) consists of all Commonwealth, state and territory and New Zealand ministers responsible for fair trading and consumer protection laws. CAF's role is to consider consumer affairs and fair trading matters of national significance. Where possible, CAF develops a consistent approach to addressing these issues. The national consumer policy objective, endorsed by CAF, is: 'to improve consumer wellbeing through consumer empowerment and protection fostering effective competition and enabling confident participation of consumers in markets in which both consumers and suppliers trade fairly'. CAF meets face-to-face twice yearly.

Examples of the ways in which the ACCC engages in partnership with small business to enhance the effectiveness of our compliance and enforcement initiatives are described on pages 120-130.

Consumer product safety

Since the introduction of the harmonised national product safety system, the ACCC has continued to strengthen relationships with state and territory counterparts. We interact on a formal basis through CAANZ and its subject-matter committees.

Asia-Pacific region and other international partnerships

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

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

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

Regional engagement

The ACCC works actively in the Asia-Pacific region to engage with both established and newly emerging competition and consumer protection regimes.

A significant aspect of this engagement is the Competition Law Implementation Program (CLIP). Under this program the ACCC, in partnership with the Department of Foreign Affairs and Trade and the Association of Southeast Asian Nations (ASEAN), continues to deliver a multi-year, demand-driven program of capacity-building activities for our newer competition law enforcement counterparts in ASEAN. The ACCC works with counterparts to build their capacity to enforce competition laws through projects that factor in local economic, political, legal and social conditions. For further information on CLIP activities in 2017-18, see below.

In addition, our regional engagement activities in 2017-18 included participation in the following events:

- the Asia-Pacific Economic Cooperation (APEC) Policy Dialogue on Sharing Experiences of Giving Economic Evidence in Ho Chi Minh City, Vietnam
- the New Zealand Commerce Commission (NZCC) 'Competition Matters 2017' Competition and Regulation conference in Wellington, New Zealand
- the 13th East Asia Top Level Officials' Meeting on Competition Policy, the 10th East Asia Conference on Competition Policy and Law and the International Academic Seminar on Competition Law and Policy in Bali, Indonesia
- the Forum on Competition in Developing Countries hosted by the Philippines Competition Commission in Manila, the Philippines
- the International Institute of Communications ASEAN Regional Regulators Forum in Singapore
- the International Air Transport Association Legal Symposium in Bangkok, Thailand
- the APEC workshop Use of Economic Evidence in Competition Law Matters in Nha Trang, Vietnam
- the Global Competition Review Live East Asia Summit in Seoul, Korea
- the Indonesian Commission for the Supervision of Business Competition (Komisi Pengawas Persaingan Usaha-KPPU) international competition forum Disruptive Innovation, Competition Policy & Challenge to Emerging Markets in Jakarta, Indonesia
- a Regional Trade Mainstreaming Seminar in Nadi, Fiji
- the 2nd Hong Kong anniversary competition law conference in Hong Kong
- various regional capacity-building workshops.

Full details of our regional engagement and participation are in our quarterly report, *ACCCount*, available on our website.

We are also involved in numerous programs and committees, including:

- CLIP
- PSOG (previously the Product Safety Consultative Committee)
- the Australasian Consumer Fraud Taskforce.

Competition Law Implementation Program

Since 2014 the ACCC has been funded under the ASEAN-Australia-New Zealand Free Trade Agreement Economic Cooperation Support Program to implement CLIP. Through CLIP we deliver targeted capacity-building assistance to ASEAN member states, supporting them as they develop effective national competition laws, implementing rules, institutions and procedures for their implementation. In delivering CLIP we place emphasis on facilitating very practical skills and knowledge exchange to strengthen regional competition law enforcement and cooperation.

This year we continued to lead an intensive program of activities. In addition to conducting training workshops in South-East Asia, ACCC staff spent time working alongside officials in Cambodia, Laos, Myanmar, Thailand and the Philippines to build individual and organisational capacity to develop, promote and enforce competition laws. We also hosted ASEAN officials at the ACCC on secondment and delivered remote mentoring to investigators in ASEAN, delivered significant projects in partnership with the Federal Court of Australia to develop competition law primers for judges, developed an

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ASEAN Regional Cooperation Framework (adopted by the ASEAN Experts Group on Competition in March 2018), and launched CLIP Academy, an online learning management system.

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

International engagement

The ACCC is committed to demonstrating through our actions that we are operating as an efficient and effective regulator.

The ACCC continues to work with the OECD and other key international bodies, including the International Competition Network (ICN) and the International Consumer Protection Enforcement Network (ICPEN), to improve the effectiveness of the ACCC's enforcement and compliance actions. The ACCC's International Unit supports the effective performance of the functions of the ACCC and AER by:

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

Engagement with international regulators

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

An increasing number of cross-border transactions and conduct occur globally. Many of these require review by the ACCC. We regularly engage and exchange information with other regulators internationally on investigations and merger assessments. In 2017-18 we:

- received and responded to requests for information from international agencies, including agencies in Brazil, Canada, the European Commission, India, Japan, New Zealand, Papua New Guinea, South Africa, Spain, Sweden, the UK, the US and the Vietnam
- requested information from agencies in Brazil, Canada, Denmark, the European Commission, Germany, France, Ireland, Italy, Israel, Japan, New Zealand, Switzerland, Singapore, the UK and the US
- prepared reports and made presentations on Australian competition, consumer and regulatory law developments at many international events
- hosted staff on secondment from competition authorities of Cambodia, Laos, Malaysia, Myanmar and the Philippines
- seconded experts to Cambodia, Laos, Myanmar and the Philippines to assist in the development and implementation of their respective competition laws
- met with a delegation from the Korean Fair Trade Commission in Sydney to discuss cartel policy and enforcement
- commenced a 12-month executive exchange program with the Competition Bureau of Canada.

Product safety

Recognising the impact of global marketplaces, we cooperate with the international safety community to address emerging safety hazards and harmonise regulatory approaches. Our international partners include:

- the US Consumer Product Safety Commission
- the European Union and Commission
- Health Canada
- the New Zealand Ministry of Business, Innovation and Employment

 the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China.

The ACCC also:

- delivered product safety training for buyers and sourcing professionals alongside the US Consumer
 Product Safety Commission in Ho Chi Minh City, Vietnam
- jointly led a week-long global safety campaign on the hazards of toppling furniture and televisions in November 2017
- held regular teleconferences with the US Consumer Product Safety Commission to organise a joint buyer training event that was held in Vietnam in March 2018
- commenced work with the European Commission and the OECD Product Safety Working Party on the development of the 2018 global awareness campaign on the safety of products sold online.

For more information on our product safety work this year, see pages 92-93 and 111-119.

International Competition Network

The ACCC collaborates with international counterparts through forums such as the ICN. We are members of the ICN Steering Group and the ICN's Horizontal Coordinator. The ICN provides competition authorities with a specialised yet informal venue for maintaining regular contacts and addressing practical competition concerns. Until May 2017 the ACCC was a co-chair of a subgroup of the Cartel Working Group of the ICN. From May 2017 we have been a co-chair of the Unilateral Working Group of the ICN. Our ongoing work within the ICN in 2017–18 included:

- attending the ICN Cartel workshop 'Combatting Cartels in Public Procurement' in Ottawa, Canada
- with other co-chairs of the ICN Unilateral Conduct Working Group, facilitating and presenting the ICN Unilateral Conduct workshop in Rome, Italy
- attending the ICN merger workshop in Mexico City, Mexico
- attending the ICN OECD Korea Policy Centre's Competition Economics Workshop in Seoul, South Korea
- taking part in the ICN Annual Meeting in New Delhi, India.

Throughout the year we continued to expand our capacity-building assistance to countries in South-East Asia through CLIP (see further information on pages 104-105).

Organisation for Economic Co-operation and Development

We continued to provide input to the OECD through a variety of forums. We also work with the OECD to improve regulatory practice and policy (for more information, see page 166).

In 2017-18 we:

- facilitated research by the OECD into Australian penalties for competition law breaches, which led to the publication of a report entitled *Pecuniary penalties for competition law infringements in Australia* 2018. The report was launched at a workshop in Sydney. For further details on this report, see 'Other work promoting competition' on page 61
- participated in the OECD working party on consumer product safety and the OECD committee for consumer policy in Paris, France
- participated in the OECD Regulatory Policy Committee and Network of Economic Regulators meeting in Paris, France
- participated in the OECD Korea Policy Centre workshop on market studies in Seoul, Korea
- attended the OECD Competition Committee meetings in Paris, France and provided submissions on a number of issues including cooperation between the NZCC and the ACCC in cartel investigations
- coordinated an OECD campaign with the OECD and Health Canada to alert parents and other stakeholders about the dangers posed to children (particularly those aged one to three years) by television, furniture and appliance tip-overs.

International Consumer Protection Enforcement Network

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

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

Other work we did for ICPEN over the year included:

- gathering intelligence on consumer protection priority areas and emerging issues from members and preparing the twice-yearly intelligence report
- leading ICPEN's website redevelopment project. For details of the updated website, see International consumer protection enforcers relaunch website
- participating in the annual ICPEN Internet Sweep. The theme was 'Terms and Conditions in the Digital Economy'. The ACCC focused on transparency and the use of data linked with 'connected' toys and devices
- attending the ICPEN Best Practices Workshop and Fall Conference in Antalya, Turkey
- attending the ICPEN Spring Conference and High Level Meeting in Istanbul, Turkey.

Legislative developments and government liaison

Legislative developments

Country of origin labelling

The Country of Origin Food Labelling Information Standard 2016 commenced on 1 July 2016. It established a new system for country of origin labelling of food products sold in Australia. The standard requires certain foods offered or suitable for retail sale in Australia to carry country of origin labelling identifying where the food was 'made', 'grown', 'produced', or 'packed'. Businesses that sell or supply food suitable for retail sale in stores, at markets, online or from vending machines had up to two years to transition to the revised labelling requirements before they became mandatory on 1 July 2018.

The ACCC has been working to provide education to businesses and consumers in relation to the new country of origin labelling requirements, including attending events, working with industry associations and providing case studies for specific industries. The ACCC has also been working on updating its existing country of origin labelling guidance and developing new materials to assist other ACL regulations when the standard became mandatory on 1 July 2018.

Competition and Consumer Amendment (Payment Surcharges) Act 2015

On 1 September 2017 the excessive payment surcharge ban was applied to all businesses across Australia. The ban restricts the amount a business can charge customers for using EFTPOS (debit and prepaid), Mastercard (credit, debit and prepaid), Visa (credit, debit and prepaid) and American Express cards issued by Australian banks.

The excessive surcharging ban has applied to large businesses since September 2016 and now applies to all businesses that are based in Australia or that use an Australian bank. The ban does not affect businesses that choose not to apply a surcharge to payments.

The ACCC is responsible for enforcing the ban and investigates complaints relating to excessive payment surcharges.

Horticulture Code of Conduct

Since the revised Horticulture Code of Conduct was introduced on 1 April 2017, the ACCC has worked with industry associations to educate growers and traders about their rights and obligations. In July 2017 the ACCC released information for traders to assist with their understanding of how the code will be enforced.

The code is designed to offer new protections for growers and traders. Courts can impose penalties of up to \$63 000 for serious breaches of certain sections of the code. For smaller breaches, the ACCC can issue infringement notices to the value of \$10 500 for body corporates and \$2100 for individuals.

Information standard for free-range eggs

The new national information standard for free-range eggs came into effect on 26 April 2018. The ACCC previously published updated guidance on the application of the ACL to free-range chicken egg claims. This guidance provides egg producers with information on their obligations under the new national information standard and how the ACCC plans to enforce it.

On 15 February 2018 legislation was introduced to parliament which would provide egg producers with a defence against allegations of misleading or deceptive conduct and false representations under the ACL in relation to use of the word 'free range' as long as the egg producer was complying with the standard. This legislation was debated in the House of Representatives on 27 June 2018. The ACCC previously provided feedback to Treasury on the draft 'safe harbour' of the Bill and will update its guidance once this comes into effect.

Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill

On 28 February 2018 the ACCC continued its advocacy for stronger whistleblower protections by making a submission to the Senate Economics Legislation Committee Inquiry into the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017.

The submission explained that enhanced whistleblower protections are likely to lead to increased detection of contraventions of the CCA and higher quality material being provided to us, as well as better enable us to achieve investigative efficiencies.

In the submission the ACCC reiterated its support for the introduction of a national whistleblower protection regime that is broad and inclusive. The submission also stated that, while the ACCC believes the Bill will be an important step toward moving to a national whistleblower protection scheme, improvements could be made.

Treasury Laws (Australian Consumer Law) Bill 2018

The Treasury Laws Amendment (Australian Consumer Law) Bill 2018 was introduced into the House of Representatives on 28 March 2018. The Bill includes amendments that strengthen the ACCC's product safety information-gathering powers.

Policy developments

Australian Consumer Law Review

The ACCC worked closely with the Treasury and its state and territory counterparts to action many of the recommendations from the *Australian Consumer Law review final report*. These actions include:

- assisting Treasury draft a single regulatory impact statement for five proposals arising from the report
- providing feedback on draft legislation to progress other proposals from the report
- participating in a number of joint subcommittees and advising CAANZ on progressing the remaining proposals.

The ACCC attended a number of CAANZ and CAF meetings. We have assisted to progress:

- guidance on 'unsafe' goods and 'reasonable durability' guidance
- guidance to suppliers on their injury reporting obligations
- clarifying and strengthening voluntary recall provisions

- streamlining process for implementing product bans and recalls
- scoping the enhanced collection and dissemination of product safety data in the form of a national database of product safety incidents
- guidance on the application of the ACL to the activities of charities, not-for-profits and fundraisers.
 This guidance was published by CAANZ on 15 November 2017
- CAANZ responses to the findings and recommendations arising from the Productivity Commission's Consumer Law Enforcement and Administration study (which examined multiregulator enforcement and administration arrangements underpinning the ACL and was released 12 April 2017).

On 15 February 2018 legislation to increase the penalties for breaches of the ACL was introduced into parliament. The ACCC has strongly advocated for an increase in ACL penalties and assisted Treasury by providing feedback on drafts of this legislation.

Intellectual Property Arrangement

In August 2017 the Government released its response to the Productivity Commission (PC) *Intellectual property arrangements inquiry final report*. In particular, the Government supported, in principle, the PC's recommendation that Australia introduce a pharmaceutical industry pay-for-delay agreement mandatory reporting regime administered by the ACCC.

Pharmaceutical pay-for-delay agreements are agreements between pharmaceutical patent holders and generic pharmaceutical manufacturers in which the generic agrees, in some way, not to enter or to delay entry to the market for the relevant drug. These agreements limit competition for the affected pharmaceuticals.

Following release of the Government response, the ACCC has been working with the Intellectual Property Policy Group to inform the Government's future consideration of a legislative response.

Australian Charities and Not-For-Profits Commission review

In February 2018 the ACCC made a submission to the Treasury about the review of the Australian Charities and Not-for-Profits Commission legislation. In the submission the ACCC stated that, while the CCA and ACL have a limited role in the regulation of charities when sector participants are engaged in 'trade or commerce', it is not appropriate for the ACCC to be made the principal regulator of the not-for-profit sector.

In May 2018 the ACCC restated that the ACL is not an appropriate substitute for the industry-specific legislation that currently regulates the charities and not-for-profit sector. The ACCC submitted that the wholesale repeal of sector-specific legislation to be replaced by the ACL would remove industry-specific protections and result in regulatory gaps.

A report on the review's findings and recommendations has been provided to the Government.

Inquiry into the Franchising Code and Oil Code

On 22 March 2018 the Senate referred an inquiry into the operation and effectiveness of the Franchising Code of Conduct to the Parliamentary Joint Committee on Corporations and Financial Services. The terms of reference also cover the Oil Code of Conduct and business-to-business unfair contract term legislation. On 11 May 2018 the ACCC made a submission to the inquiry.

The key recommendations in the ACCC's submission are:

- civil pecuniary penalties and infringement notices should be made available for all breaches of the Franchising Code and the Oil Code and that the quantum of penalties currently available should be increased
- civil pecuniary penalties should be available for breaches of unfair contract term legislation and the threshold for the up-front value of the contract as well as the threshold to be considered a small business be reviewed.

The ACCC's submission also makes a number of smaller recommendations aimed at increasing the effectiveness of the codes.

Public hearings are ongoing and the ACCC expects to be called to appear. The final report from the Committee is expected on 6 December 2018.

Food and Grocery Code review

On 2 March 2018 the then Assistant Minister to the Treasurer, the Hon. Michael Sukkar MP, released the terms of reference for the Food and Grocery Code of Conduct review and announced Professor Graeme Samuel as the independent expert to lead the review.

On 11 May 2018 the ACCC made an initial submission to the review. It advocated for a number of changes to the Food and Grocery Code including:

- that the code should be mandatory
- removing code provisions which allow retailers (and in some cases wholesalers) to avoid certain obligations and prohibitions, provided an express opt-out clause is included in their agreements and other elements are satisfied
- introducing civil penalties and infringement notices
- strengthening requirements relating to delisting a supplier's product
- considering ways to encourage suppliers to utilise the code in protecting their rights and resolving disputes.

New Zealand bill on cartel criminalisation

The ACCC continued its advocacy for appropriate penalties against cartel conduct by making a submission on 6 April 2018 to the New Zealand Parliament's Economic Development, Science and Innovation Committee consultation on their Commerce (Criminalisation of Cartels) Amendment Bill.

The ACCC's submission stated that criminalisation is a necessary deterrent against behaviour that is usually covert and highly profitable, and that cartels can see monetary penalties as a 'cost of doing business'. The ACCC also submitted that criminalisation can assist with cross-border investigations.

The Bill is still under consideration by the Select Committee, with a report expected in August 2018.

Consumer product safety: Actions undertaken to achieve our purpose

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

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

Under the current provisions of the ACL, it is not illegal to supply unsafe products in Australia, as it is in a range of places like the UK, the European Union, Canada, Malaysia and Brazil. Faulty products continue to cause serious injury and harm to thousands of Australians, with more than 4.5 million items recalled by suppliers in 2017–18. The ACCC supports the development and introduction of a GSP under the ACL. A GSP would strengthen the product safety regime in Australia and allow the ACCC to respond to product safety hazards faster and support existing consumer remedies in the ACL.

In 2017 and 2018 the ACCC's priority under deliverable 2.3 was working with internet platform providers to prevent the supply of unsafe products into Australia.

We also continued our work on:

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

In 2018 we will also prioritise issues arising from the compulsory Takata airbag recall. We will always prioritise the assessment of product safety issues which have the potential to cause serious harm to consumers.

Product safety priorities

In 2018 we released our first standalone product safety policy setting out the principles we adopt to prioritise and address product safety risks.

The policy included a statement about our priorities for 2018, including:

- the compulsory recall of defective Takata airbags
- improving the safety of quad bikes
- the voluntary recall of Infinity electrical cable and transitioning of oversight to the NSW electrical regulator
- button battery safety
- unsafe baby walkers and toppling furniture
- online marketplace issues
- reviewing safety standards and bans
- conducting market surveillance on a range of banned or regulated consumer products
- progressing reforms to the product safety provisions of the ACL.

For more information see the 'Product safety priorities' page on our website.

Emerging hazards

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

When we receive a report about an unsafe consumer product, the report is risk assessed and prioritised, taking into account the severity and potential severity of any reported harm or injury. Case-specific factors are also taken into consideration. These factors include whether related reports have already been made to us which might indicate an emerging trend or hazard. Our responses may include:

- encouraging the voluntary recall of goods (including reassessing the effectiveness of the recall strategy if the goods are already subject to recall)
- raising awareness or reminding consumers about hazards through social media, the Product Safety Australia website and campaigns
- negotiating voluntary changes to packaging, labelling or product design
- working with industry to encourage safe sourcing and supply
- introducing or reviewing mandatory safety standards and bans
- referring a matter for enforcement consideration.

If our safety assessment indicates issues relevant to other regulators, we will take appropriate steps to share information as permitted by law.

We may also assist with consumer safety responses to complement the work of other regulators. For example, our participation in the Heads of Workplace Safety Authorities national working group for management of asbestos assists with the delivery of a seamless national approach to asbestos in consumer and other products.

We value voluntary compliance and will work cooperatively with stakeholders where this is appropriate. Where suppliers fail to comply with product safety laws, we may consider enforcement action.

We consider each option against the priority of achieving the best safety outcome for consumers.

Compulsory recall

Section 122(1) of the ACL empowers the Commonwealth Minister responsible for product safety matters to issue a compulsory recall notice for consumer goods if it appears they may cause injury and it appears that suppliers have not taken satisfactory action to prevent those goods from causing injury.

In contrast to a voluntary recall, a compulsory recall allows the Minister to prescribe specific recall requirements, including what specific actions suppliers must undertake in carrying out recall action.

Takata airbag recall

The compulsory Takata airbag recall is the world's largest automotive recall and the most significant recall in Australian history. It affects an estimated 100 million vehicles globally and over four million affected airbags in over three million vehicles in Australia. Worldwide, there have been at least 24 deaths and more than 300 serious injuries reported as associated with misdeploying defective Takata airbags. Tragically, in Australia, one death and one serious injury have been associated with misdeployed Takata airbags.

On 5 August 2017 the then Minister for Small Business, the Hon. Michael McCormack MP, issued a <u>Safety Warning Notice</u> to warn consumers about the risks associated with Takata airbags, urging them to check if their vehicle is part of a voluntary recall, and if so to contact their vehicle manufacturer. On 21 September 2017 Minister McCormack issued a Proposed Recall Notice for the compulsory recall of all vehicles with defective Takata airbags.

The ACCC's safety investigation established that certain types of airbags made by Takata Corporation use a chemical called phase-stabilised ammonium nitrate (PSAN) as a propellant. The ACCC's investigation concluded that Takata PSAN airbags without a desiccant (or drying agent) or with a

calcium sulphate desiccant have a design defect. Due to the defect, as the airbag ages and is exposed to high temperatures and humidity, the PSAN propellant is exposed to moisture and degrades. If this happens, when the airbag is triggered and deploys (in a collision), it may deploy with too much explosive force, rupturing the airbag inflator housing causing sharp metal fragments shoot out and hit vehicle occupants, potentially injuring or killing them.

Following the ACCC's safety investigation and extensive consultation, on 28 February 2018 the Hon. Michael Sukkar MP issued the Consumer Goods (Motor Vehicles with Affected Takata Airbag Inflators and Specified Spare Parts) Recall Notice 2018. The recall notice requires suppliers of vehicles with defective Takata airbags to replace these airbags in Australian vehicles by 31 December 2020 (unless on application an alternative date is approved by the ACCC). Some vehicles were required to be recalled immediately, and others as soon as practicable and on a rolling basis, depending on various factors including relative safety risk and parts availability.

The ACCC is responsible for assessing and monitoring compliance with the compulsory recall and has published extensive guidance on the ACCC's Product Safety Australia website. The ACCC has also participated in numerous stakeholder engagement activities to assist consumers and industry to understand their rights and obligations under the recall notice and to maximise the effectiveness of the compulsory recall.

Voluntary recalls

Voluntary recalls continue to be the main solution that businesses adopt when removing unsafe consumer products from the market.

We support the effectiveness of voluntary recalls through the recalls web page on the Product Safety Australia website. When a recall is notified, we develop a short summary for posting to social media, such as Facebook and Twitter, to bring the recall to the attention of a range of relevant audiences who may have purchased the products or know of others who did.

In 2017-18 the most successful posting of a recall was for Mazda vehicles with unsafe Takata airbags. Our organic Facebook post to promote the recall reached 364 643 consumers. The next two highest performers were recalls for Ford Focus vehicles (294 418 people reached) and Kmart butane stoves (201 123 people reached).

Suppliers must advise the Commonwealth Minister within two days of commencing voluntary recall action. At the time of notification many suppliers are still in the process of confirming the arrangements they are making for retrieval, repairs, replacements or refunds. We focus on timely publication with messaging about the safety hazard and action that the purchaser needs to take. Good messaging will call consumers to action so that recall effectiveness is maximised.

During the year we published a total of 591 recall notifications—296 related to general consumer goods, 208 to motor vehicles (excluding Takata), 69 to food and 18 to therapeutic goods.

Effectiveness of voluntary recalls

Following our review of recall reporting and effectiveness last year, we have continued to apply a risk-based approach to recall monitoring. This year we assessed 2071 recall progress reports submitted by suppliers, completed 322 recall effectiveness reviews and contacted 50 suppliers about improvements that are needed to increase recall uptake.

Infinity electrical cable

Infinity cable was supplied in Australia by the Infinity Cable Co Pty Ltd in May 2010 and August 2013. The cable was found to become prematurely brittle with age and could potentially cause electric shock and house fires. As a result, a number of voluntary and compulsory recalls of the product were initiated in 2013.

This is the one of the largest and most complex recalls the ACCC has been involved in, and one of our most important as the risk to homes with Infinity cables remains until the cable is removed.

Following completion of our Infinity cable supplier audits and continued receipt and assessment of progress reports, we estimate that suppliers of voluntary recalls of Infinity cable will have exhausted

all avenues for identifying and remediating affected cable by December 2018, which we expect will achieve a return rate of 52 per cent.

We met with state and territory electrical colleagues in February 2018 to advise that the effectiveness of the voluntary recalls has peaked and that new strategies will be needed to identify installed cable. Most unremediated cable was supplied by NSW suppliers. For the past five years the ACCC has prioritised the recall to identify all cable supplied (nationally) and the businesses that supplied it; and actively monitor and report on voluntary recall performance. The majority of suppliers that still have cable to remediate are located in NSW. From December 2018 the ACCC will hand over the responsibility to the NSW Office of Fair Trading to manage and monitor suppliers of unremediated Infinity cable.

Mandatory reports

If a business becomes aware that a product it has supplied has caused serious injury or death, it must report this to the ACCC. We rely on timely mandatory reporting to quickly identify product safety issues and assess whether further action is needed. Mandatory reports do not necessarily indicate that the relevant product is defective or at fault. We will consider many factors before responding, including:

- the reasonable and foreseeable use or misuse of the product
- any vulnerabilities associated with the injured party
- any inherent product hazards
- the age of the product
- the product's use instructions and whether they have been followed
- the nature of the injury
- how the supplier intends to respond.

If our preliminary assessment identifies a safety concern, we will then undertake a more detailed assessment. This may include seeking advice from suppliers about their quality assurance programs and safety testing. Where needed, we will commission independent accredited product testing.

We received 3255 mandatory reports in 2017-18. We referred 1555 reports to other regulators and assessed 1700 ourselves. We conducted a preliminary assessment of 98.6 per cent of reports relating to serious injury or death within seven days. On average, 2770 reports have been received each year since commencement of the ACL.

Consistent with our review last year, we consider there is both under-reporting and over-reporting by suppliers. Over-reporting is readily observable from receiving reports that are not about serious injuries for which medical treatment was needed or provided.

As forecast, a CAANZ subcommittee has considered our findings. These have informed the preparation of new guidance for suppliers about how to undertake mandatory reporting in compliance with the ACL provisions. The new guidance is expected to be published in 2018-19. It will provide businesses with confidence about when reporting is needed and reduce the burden on businesses that may be overreporting in a precautionary way.

Mandatory safety standards and bans for consumer products

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

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

Sometimes the immediate risk of injury to consumers is very high and the issue requires dedicated resources to achieve a decisive and targeted outcome. This year we adopted a new approach to tackle these issues by establishing two taskforces: the Takata Task Force and the Quad Bike Taskforce. A taskforce enables us to draw on staff with specific expertise without affecting our business-as-usual tasks.

Quad Bike Taskforce

In October 2017 the ACCC commenced an investigation into the safety of quad bikes to determine whether a mandatory safety standard should be made under the ACL. Quad bikes (also known as all-terrain vehicles or ATVs) are heavily utilised in Australian forestry and agricultural industries. They are becoming increasingly popular in recreational and sporting settings.

However, quad bikes have a number of inherent design characteristics that create risks for users, particularly when used on uneven or sloped ground. If the rider loses control of a quad bike, it can flip or roll over, causing serious injury or death.

Quad bike related deaths and injuries cause significant harm and disruption to Australian families and communities. On average, every year there are 16 deaths, over 2000 emergency department presentations and around 650 hospitalisations attributable to the operation of these vehicles. The ACCC estimates that around 29 of these hospitalisations result in permanent and serious disabilities (traumatic brain injuries, paraplegia or quadriplegia).

The ACCC's investigation has identified factors that may contribute to quad bike related deaths and injuries. We are developing a proposed approach to address these factors through a mandatory safety standard that will:

- increase the key operational and functional safety information available to consumers at the point of sale
- set minimum performance standards to improve design features that contribute to making quad bikes unstable and more likely to cause loss of control (for example, rollover or rider displacement)
- address the need for operator protection in the event of a rollover.

On 22 March 2018 the ACCC released a Consultation Regulation Impact Statement for public feedback. The formal consultation period ended on 4 May 2018 and nearly 60 well-informed submissions were received. The ACCC is continuing to engage in more targeted consultation with key stakeholders. We expect to provide the Assistant Minister to the Treasurer with a final recommendation in relation to the proposed mandatory safety standard towards the end of 2018.

Reviewed mandatory safety standards

In this financial year the ACCC completed 12 reviews of mandatory safety standards, with the responsible Minister deciding to make nine new standards which updated existing standards.

Table 3.55: Updated mandatory safety standards

Mandatory safety standard	Description
Baby bath aids	Updated October 2017. Prescribes requirements for a baby bath aid and its packaging to have a safety warning statement that is clearly visible and easy to read.
Sunglasses and fashion spectacles	Updated October 2017. Prescribes requirements for lens categories, construction and labelling.
Vehicle support stands	Updated November 2017. Prescribes the requirements for design, construction, safety marking and packaging.
Portable ramps for vehicles	Updated November 2017. Prescribes requirements for design, construction, performance and labelling of portable ramps for vehicles with a nominated capacity of up to and including 1500 kilograms.
Recovery straps for motor vehicles	Updated November 2017. Prescribes requirements for the information that must be provided with the products, including warning and information on the strap and the packaging.
Basketball rings and backboards	Updated December 2017. Prescribes requirements for safety marking and installation instructions.
Vehicle trolley jacks	Updated December 2017. Prescribes requirements for design and construction, performance, testing and safety markings.
Swimming and flotation aids	Updated December 2017. Prescribes requirements for marking, design and construction and, performance.
Self-balancing scooters	Revised May 2018. Now applies to both single-wheeled and two-wheeled self-balancing scooters. Prescribes safety requirements for components and electrical circuitry.

Consumer product safety compliance

Strategies

To achieve our product safety compliance objectives, we use three integrated and flexible strategies:

- We encourage compliance by educating and informing consumers and businesses about their rights and responsibilities under the CCA.
- We enforce the ACL by resolving possible contraventions administratively and by litigation.
- We work with other agencies to implement these strategies.

The ACCC investigates possible non-compliance with mandatory standards and bans. We receive information on possible non-compliance from a range of sources. We assess these matters and take action where warranted by issuing warnings or seeking clarifications, instigating broad compliance or educative activity or taking appropriate enforcement action.

Market surveillance of consumer products

We regularly survey the market to identify compliance concerns with existing regulations and bans and to assist in the identification of new hazards.

In partnership with ACL regulators and other organisations, we also coordinate and conduct joint surveillance, testing and compliance activities to address safety concerns.

During 2017-18 we conducted 1957 inspections of wholesalers, retailers and online suppliers against 26 mandatory safety standards, bans or product types. Inspections resulted in suppliers withdrawing 16 product types from sale.

Non-compliance identified in market surveillance activities resulted in 23 non-compliant product types being voluntarily recalled by suppliers.

Recalled products include baby bath aids (non-compliance with mandatory safety standard); bicycle helmets (non-compliance with mandatory safety standard); blinds, curtains and window fittings (non-compliance with mandatory safety standard); cosmetics and toiletries (non-compliance with mandatory safety standard); Diethylhexyl phthalate (DEHP) in children's plastic items (non-compliance with a ban); ethanol burners (non-compliance with mandatory safety standard); mini jelly cups containing konjac (non-compliance with ban); nightwear for children (non-compliance with mandatory safety standard); sunglasses and fashion spectacles (non-compliance with mandatory safety standard).

Consumer product safety education

One of the strategies we use to address emerging hazards is to educate suppliers and consumers about potential consumer product safety risks.

In 2017-18 we continued to provide guidance to industry on existing and new product safety regulations.

A comparison of Twitter and Facebook reaches shows that interest can vary by topic, reflecting the different audiences of each channel. Both had at least one post referencing Takata airbags. The most popular recall for our Twitter audiences was a baby teether (27 899 views), followed by two Takata information posts (36 907 combined views).

On Facebook a Takata airbag vehicle recall led with a reach of 364 643, while another vehicle recall (not Takata related) came in second, reaching 294 027 people. A recall for a butane gas stove followed with a reach of 201 123.

Safe Summer and Well Winter campaigns

In December we participated in the Safe Summer social media campaign. It promoted the safe use of products commonly used during summer and school holidays, and safety messages for buying Christmas gifts. The campaign covered products including button batteries, ladders, Christmas toys, toppling furniture, blind cords, portable pools, ethanol burners and banned products. The campaign concluded on 22 December with the ACCC reaching 81 777 consumers through Facebook.

In June we participated in the Well Winter social media campaign, promoting the safe use of products commonly used during colder months. These included heat and wheat packs, children's nightwear, heaters and electric blankets. The campaign concluded on 21 June with the ACCC reaching 2323 consumers via Facebook.

National Toppling Furniture Strategy

In April 2017 the ACCC and other members of the EIAC launched the National Toppling Furniture Strategy. The strategy aims to provide a coordinated approach to the problem of toppling furniture and televisions. The ACCC worked in collaboration with state and territory consumer safety regulators to engage with industry and support a suite of safety initiatives.

The strategy will continue until June 2019. The cornerstone of the strategy is the *Best practice guide* for furniture and television tip-over and prevention, developed by the National Retail Association in coordination with the ACCC and announced by NSW Fair Trading under the EIAC education initiative on 3 April 2017.

The strategy involves engagement with industry to promote widespread adoption of the guide and an information kit for suppliers to assist with staff training. It incorporates printed point of sale posters and postcards. The strategy has also implemented paid social media educational material and other targeted media content and surveillance activities.

The guide urges suppliers to supply anchor devices, as defined by the guide, with any tall furniture and large televisions at the point of sale. It also recommends that manufacturers apply the Australian safety standards to ensure that all furniture, including freestanding furniture, is as stable as possible so that it can accommodate top-heavy loading with TVs and other household items. The guide urges retailers to display in-store signage and provide warnings in assembly instructions, on packaging and

on the product. It also recommends that retail staff be trained to talk to customers about the hazards of unstable furniture.

The OECD made toppling furniture its product safety priority for 2017. The ACCC and Health Canada took a lead role in developing consumer education materials for the OECD. OECD members jointly launched the campaign beginning with a week of intensive social and print media activity in November 2017, involving jurisdictions from around the world.

National safety strategy for consumer products containing button batteries

We are nearing the final stages of our two-year National Strategy for Improving the Safety of Button Battery Consumer Products, which was launched in September 2016. We will evaluate the impact of the strategy in year three, in order to maximise its effectiveness and to keep up momentum in the significant safety improvements many suppliers are making. We are still concerned about the propensity for cheaper novelty items to have unsecured battery compartments or not be sufficiently robust to resist breakage and release of batteries.

This year we assessed more than 85 products containing button batteries against the voluntary safety principles contained in the Industry Code for Consumer Goods that Contain Button Batteries. We contacted suppliers of the products identified as non-compliant with the code to educate them about button battery hazards and to outline actions they could take to ensure the supply of safer products, including recall action.

This year we also continued to assist the industry working group with revision of the voluntary industry code, which provides guidance on making responsible decisions about button battery safety when procuring, designing, developing or retailing button battery powered products.

Since the introduction of the voluntary code in September 2016, suppliers are continuing to advise that they are making significant changes to their sourcing, packaging, labelling and overall design of consumer products powered by button batteries.

Since commencement of the strategy, suppliers have undertaken 21 voluntary recalls (covering more than 40 items, including minor style variations) following identification of button battery hazards. The rate of recall of these products has remained higher than the rate for similar recalls undertaken prior to the strategy (12 recalls in the 2015–16 financial year covering approximately 29 items, including minor style variations).

Product safety enforcement

Businesses must ensure that products they supply comply with mandatory product safety and information standards and are not banned under the ACL. The supply of a product that does not comply with a safety standard is a breach of the ACL, and suppliers may be subject to enforcement action where we consider this is warranted in accordance with the priorities outlined in our Compliance and Enforcement Policy.

Case study: ACCC action concerning false and misleading representations and noncompliance with mandatory reporting requirements for injuries

In April 2018 the Federal Court ordered Thermomix In Australia Pty Ltd (Thermomix) to pay penalties totalling \$4 608 500 for making false or misleading representations and misleading the public in relation to its Thermomix kitchen appliances.

The Court held that Thermomix breached the ACL by making false or misleading representations to certain consumers through its silence about a safety issue affecting its TM31 appliance, which the company knew about.

The company knew from 7 July 2014 there was a potential risk of injury to users caused by the lid lifting and hot food and/or liquid escaping from the mixing bowl before that food and/or liquid had settled.

Thermomix continued to supply and promote its product until 6 September 2014 and did not notify consumers until 23 September 2014 that there was a known safety issue.

In delivering judgment, Justice Murphy stated that this contravention was serious and exposed a large number of consumers to the risk.

The Federal Court also found that Thermomix had made false or misleading representations to certain consumers about their consumer guarantee rights.

Thermomix told certain consumers either that refunds or replacements were not available to them or, in the case of one consumer, that their entitlement to a refund or remedy was conditional on the consumer signing a non-disclosure agreement, preventing them from making negative comments about Thermomix.

The Court also held that Thermomix caused false or misleading statements to be made in the media in March 2016 about the nature of the October 2014 recall of the TM31.

Thermomix also admitted that it failed to comply with mandatory reporting requirements on 14 occasions for injuries arising from the use of Thermomix appliances.

Businesses are required to notify the Commonwealth Minister (via the ACCC) within two days of becoming aware that a person has suffered a serious injury associated with the use, or foreseeable misuse, of a product they supply.

Court cases

The following case was finalised in 2017-18.

Table 3.56: Product safety proceedings finalised

Thermomix In Australia Pty Ltd commenced 16 June 2017 The ACCC alleged that that Thermomix misled customers about their consumer guarantee rights, failed to comply with concluded 11 April 2018 mandatory reporting requirements for injuries arising from jurisdiction Federal Court Melbourne the use of the appliances, made false representations and The Federal Court ordered penalties of outcome engaged in misleading conduct regarding the safety of the \$4 608 500. TM31 model, and made false and misleading statements about its 2014 recall.

Infringement notices

The following infringement notices were paid in 2017-18.

Table 3.57: Product safety infringement notices paid

Dreamz Pty Ltd (trading as GAIA	Three notices totalling \$37 800
Skin Naturals)	The ACCC issued three infringement notices to Dreamz for alleged false or misleading organic
18 June 2017	representations. GAIA described its Natural Baby Bath & Body Wash, Baby Shampoo and Baby
	Moisturiser as 'pure natural organic', when they contained two synthetic chemical preservatives.

Support small business: Actions undertaken to achieve our purpose

Deliverable 2.4: Support a vibrant small business sector

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

In 2017 and 2018 a priority under our Compliance and Enforcement Policy was ensuring small businesses receive the protections of industry codes of conduct, including the Franchising Code of Conduct, as well as the new unfair contract term laws. In addition, work continued to enforce the ban on excessive payment surcharges on debit and credit cards.

To support the priority, we:

- enforced provisions of the ACL that relate to small business
- provided information, education and services to small businesses
- developed partnerships to help us better engage with and inform small businesses
- enforced codes of conduct
- allowed collective bargaining in certain circumstances in the public interest.

Our Agriculture Unit is undertaking:

- engagement
- market studies such as the study of the cattle and beef industry (see page 59)
- an inquiry into the Australian dairy industry (see pages 58-59)
- investigations and enforcement in the agriculture sector (see page 58)
- work with peak horticulture grower and trader organisations on education campaigns (see pages 108 and 128-129)
- work with the newly convened ACCC Agriculture Consultative Committee to establish an information platform for farmers and small agribusinesses.

Agriculture

Court cases

The following case was commenced in 2017-18.

Table 3.58: Agriculture proceedings commenced

Mitolo Group Pty	Ltd & Another	Conduct
commenced jurisdiction	25 June 2018 Federal Court Melbourne	The ACCC alleges that several terms in Mitolo's standard form contracts with potato farmers are unfair contract terms, and that Mitolo has breached the Horticulture Code in its dealings with farmers.

The following case was ongoing in 2017-18.

Table 3.59: Agriculture proceedings ongoing

Murray Goulburn	Cooperative Co Ltd	Conduct
commenced jurisdiction	28 April 2017 Federal Court Melbourne	The ACCC alleges that Murray Goulburn engaged in unconscionable conduct and made false or misleading representations to farmers in its southern milk region between June 2015 and April 2016 about the average farmgate milk price it expected to pay them during 2015–16.
		The ACCC also alleges that Murray Goulburn's former managing director and former chief financial officer were involved in the conduct.

Administrative resolutions

The following administrative resolution was finalised in 2017-18.

Table 3.60: Administrative resolutions for agriculture

Enforcement activities

The ACCC aims to make markets work for everyone, including small businesses. We aim to ensure an even playing field for competing small businesses and to protect their legitimate points of difference from misleading conduct.

Under the CCA and the ACL, small businesses have certain rights—for example, the CCA gives small businesses authority to bargain collectively in some circumstances and protects small companies from misleading and deceptive conduct and anti-competitive behaviour (such as price fixing and market-sharing agreements).

In 2017 and 2018 a priority under our Compliance and Enforcement Policy was ensuring small businesses receive the protections of:

- industry codes of conduct, including the Franchising Code of Conduct
- the new unfair contract terms law which came into effect in November 2016. These laws extended the current protection afforded to consumers against unfair contract terms in standard form contracts to small businesses.

Case study: Action to protect small businesses against breaches of the Franchising Code of Conduct

In November 2017 the Federal Court ordered Pastacup franchisor Morild Pty Ltd (Morild) to pay penalties of \$100 000 for breaches of the Franchising Code of Conduct. The company's co-founder and former director, Mr Stuart Bernstein, was also ordered to pay \$50 000 for being knowingly concerned in the breaches.

Mr Bernstein co-founded the Pastacup franchise in 2008. He has managed and been a director of two previous franchisors of the Pastacup franchise system. Each of those franchisors became insolvent.

The Court found that Morild failed to provide franchisees with a disclosure document which complied with the Franchising Code of Conduct in that it failed to disclose Mr Bernstein's previous directorship of the insolvent Pastacup franchisors. The Court held that this was relevant business experience that was required to be disclosed to prospective franchisees in Morild's disclosure document. The Court also found that Mr Bernstein was knowingly concerned in Morild's conduct.

Morild consented to the penalties, declarations and injunctions by the Court and to an order that it pay a contribution to the ACCC's costs.

Case study: Action to enforce new small business unfair contract terms laws

In October 2017 following ACCC action, the Federal Court declared that eight terms in the standard form contract used by JJ Richards & Sons Pty Ltd (JJ Richards) to engage small businesses are unfair and therefore void.

This is the first court action by the ACCC to enforce new laws that protect small businesses from unfair contract terms. The unfair contract term laws were extended to apply to small businesses from November 2016.

JJ Richards is one of the largest privately owned waste management companies in Australia. It provides recycling, sanitary and green waste collection services to small businesses.

The Court declared that eight terms in JJ Richards' standard form contracts with small businesses, which were entered into or renewed after 12 November 2016, were unfair and consequently void.

In finding that each of the terms was unfair, his Honour also found that 'the Impugned Terms tend to exacerbate each other, increasing the overall imbalance between the parties and the risk of detriment to JJR Customers'.

In resolving these proceedings, JJ Richards consented to orders restraining it from relying on the unfair terms in existing small business contracts and from using the terms in future contracts with small businesses. JJ Richards also consented to orders that it publish a corrective notice and provide a copy of the Court's orders to affected small business customers.

In addition, in September 2017 the ACCC instituted its second court action of this kind against Servcorp Ltd and two of its subsidiaries (Servcorp). It is alleged that 19 terms in Servcorp's standard form contract with small businesses are unfair and should be declared void, including a clause that automatically renews a customer's contract and allows Servcorp to then increase the customer's price without notice.

Court cases

The following cases commenced in 2017-18.

Table 3.61: Small business proceedings commenced

Mitolo Group Pty	Ltd & Another	Conduct
commenced jurisdiction	25 June 2018 Federal Court Melbourne	See table 3.58.
Servcorp Ltd ¹		Conduct
commenced jurisdiction	15 September 2017 Federal Court Sydney	The ACCC alleged that a number of terms in Servcorp's standard form small business contracts are void because they are unfair under the ACL.
		For details see the case study on page 122.

Note: 1. On 13 July 2018, the Federal Court declared by consent that 12 terms in standard form contracts used by two Servcorp subsidiaries are unfair and therefore void.

The following cases were ongoing in 2017-18.

Table 3.62: Small business proceedings ongoing

Geowash Pty Ltd	I	Conduct
commenced jurisdiction	31 May 2017 Federal Court Perth	The ACCC proceedings will allege that Geowash made false or misleading representations and engaged in unconscionable conduct in breach of the ACL. It also failed to comply with the good faith obligation in the Franchising Code of Conduct.
Ultra Tune Austra	alia Pty Ltd	Conduct
commenced	19 May 2017	The ACCC alleged that in 2015 Ultra Tune:
jurisdiction	Federal Court Sydney	 failed to act in good faith in its dealing with a prospective franchisee and failed to provide documents the Franchising Code of Conduct specifies must be provided before accepting a non-refundable payment
		 made false or misleading representations about the franchise site, in breach of the ACL
		 failed to provide marketing fund financial statements and audit reports to its franchisees for three financial years.

The following cases were finalised in 2017-18.

Table 3.63: Small business proceedings finalised

Morild Pty Ltd		Conduct
commenced	21 September 2016	The ACCC alleged:
concluded	25 October 2017	Pastacup's current franchisor, Morild, and former director,
jurisdiction	Federal Court Perth	Mr Stuart Bernstein, acted in breach of the Franchising
outcome The Federal Court ordered Morild to pay penalties of \$100 000 for breaches of the Franchising Code of Conduct. Morild consented to the penalties, declarations and injunctions by the Court and to an order that it pay a contribution to the ACCC's costs.	 Mar Diagnostic consistency and a superior of the NA suitable consistency. 	
	The company's co-founder and director, Mr Stuart Bernstein, was also ordered to pay \$50 000 for being knowingly concerned in the breaches.	

JJ Richards & So	ns Pty Ltd	Conduct
commenced	6 September 2017 19 October 2017	The ACCC alleged that 8 clauses in its standard form small business contract are void because they are unfair under the ACL.
jurisdiction	Federal Court Melbourne	For details see the case study on page 122.
outcome	The Federal Court made declarations that eight terms in the standard form contract used by JJ Richards & Sons Pty Ltd are unfai and therefore void.	r

Undertakings

The following s. 87B court enforceable undertaking was finalised in 2017–18. Details of the s. 87B undertakings are available in full on the undertakings public register on the ACCC website.

Table 3.64: Small business undertakings finalised

West Aust Couriers Pty Ltd	The ACCC accepted a court enforceable undertaking from West Aust Couriers, trading
s. 87B undertaking dated 27 November 2017	as Fastway Couriers, to address the ACCC's concerns that it had made false or misleading representations regarding the future earnings of courier franchisees by advertising an 'income guarantee' of \$1500 per week for 30 weeks to prospective franchisees.
	The ACCC was concerned that prospective franchisees would understand this representation to be the likely income they could therefore expect to earn at the end of the stipulated period.
	The company has undertaken to provide actual earnings information to prospective franchisees and not to describe the offered financial support as an 'income guarantee' in future marketing of its courier franchises.
Cardtronics Australasia Pty Ltd s. 87B undertaking dated 26 March 2018	The ACCC accepted a court enforceable undertaking from ATM provider Cardtronics to change terms that may be unfair for small businesses under existing contracts. These unfair terms include automatic renewal for six years, unilateral increase of fees and first right of refusal should businesses seek to change providers at the contract's conclusion. Cardtronics has undertaken not to enforce unfair terms for all existing merchants, some of whom entered contracts six years ago.
Wilson Security Pty Ltd	The ACCC accepted a court enforceable undertaking from Wilson Security to refund 320
s. 87B undertaking dated 30 May 2018	Western Australian customers (predominantly small businesses) a total of \$740 000, after charging for security patrols that were not provided in breach of the ACL.
	Wilson Security was contracted to provide internal premise security patrols. However, in many cases, when replacing scheduled internal security patrols that had been missed, Wilson Security conducted external perimeter security patrols, which are generally cheaper and less time consuming.

Infringement notices

The following infringement notice was paid in 2017-18.

Table 3.65: Small business infringement notices paid

West Aust Couriers Pty Ltd	One infringement notice totalling \$9000
23 November 2017	The ACCC issued an infringement notice against West Aust Couriers Pty Ltd, trading as Fastway Couriers, for alleged non-compliance with the Franchising Code of Conduct.
	Fastway Couriers also provided the ACCC with a court enforceable undertaking—see details at table 3.64.

Administrative resolutions

The following administrative resolution was finalised in 2017-18.

Table 3.66: Administrative resolutions for small business

AWB Harvest Finance Pools	See details at table 3.60—administrative resolutions for agriculture.
Pty Ltd	

Public warning notice

The following public warning notice was issued in 2016-17.

Table 3.67: Public warning notices issued

Digital Sourcing ApS	Conduct
The public warning notice alleges that LuxStyle:	In December 2017 the ACCC issued a public warning notice concerning the overseas-based online retailer Digital Sourcing ApS (Digital Sourcing), formerly known as Lux International Sales
sent unsolicited goods to	ApS (LuxStyle).
Australian consumers	In March 2017 the ACCC issued a public warning notice about the conduct of LuxStyle. LuxStyle
 demanded payment for the unsolicited goods 	allegedly sent unsolicited goods to consumers then demanded payment for the goods. The company changed its name to Digital Sourcing on 1 October 2017.
 continued to make demands for payment to consumers who refused to pay 	
 threatened to refer (and in some instances actually referred) the matter to a debt collection agency. 	

Country of origin labelling

The Country of Origin Food Labelling Information Standard 2016 commenced on 1 July 2016. It provided for a two-year transition period to allow businesses time to change their labels to comply with the new law before it became mandatory on 1 July 2018.

The standard applies to food sold or offered for retail sale in Australia. Under the standard's new country of origin labelling requirements, most foods grown, produced or made in Australia must carry or display a graphic and text label (known as a standard mark), which comprises the 'Australian made, Australian grown' kangaroo logo; a bar chart that shows the proportion of Australian ingredients in the food; and a statement indicating whether the food was grown, produced, made or packed in Australia.

In 2018 the ACCC has focused on providing resources to small and micro traders to ensure they are aware of their obligations under this standard. This has involved:

- developing industry-specific case studies for butchers, fishmongers and market stallholders (distributed via relevant industry associations and, in some cases, direct to businesses)
- promoting the availability of existing ACCC resources to industry associations and traders
- attending events, giving presentations and participating at relevant industry meetings. For example, ACCC staff have participated in a webinar event hosted by the South Australian Small Business Commissioner, given a presentation to Australian Meat Industry Council members and spoken at a meeting for Australian Pork Ltd members
- responding to enquiries from small businesses about the requirements in the standard.

The ACCC is continuing to provide guidance to businesses and industries that identify difficulties in applying the standard or the safe harbour defences:

- The ACCC has been liaising with the Australian Meat Industry Council to ensure butchers, manufacturers and processors are informed of their new country of origin labelling obligations.
- The ACCC has previously provided targeted guidance in relation to the dairy industry and chocolate; and the application of the safe harbours to complementary healthcare products (noting that complementary healthcare products are not captured by the standard).

Small business information, education and services

Under both the CCA and the ACL, small businesses have certain rights—for example, the CCA gives small businesses authority to bargain collectively in some circumstances and protects them from misleading and deceptive conduct and anti-competitive behaviour (such as price fixing and market-sharing agreements).

The ACL also imposes obligations on small businesses—for example, it is illegal for small businesses to mislead or deceive their customers or use unfair selling practices such as pressure tactics. The ACCC works to ensure that small businesses know their obligations and comply with them.

To help small businesses to understand their rights and obligations under the ACL, we provide them with information, education and services.

Our main tools for communicating with small business are:

- our website (which includes a link to a dedicated '<u>Small business</u>' web page) and an online small business complaint form
- the Infocentre small business hotline (1300 302 021)
- the ACCC's Information Network subscription services for small businesses, which provide information about enforcement action, new guides, events and changes to the CCA. These include the:
 - Small Business Information Network (7381 subscribers)
 - Franchising Information Network (2823 subscribers)
 - Agriculture Information Network (1466 subscribers)
 - Oil Code Information Network (711 subscribers)
 - Cartels Information Network (1046 subscribers)
 - Communications Information Network (1882 subscribers)
- targeted publications, mobile apps, online education modules and videos
- specific guidance materials such as the Small business and Competition and Consumer Act publication and the ACCC's Small Business Snapshot
- face-to-face and online education and compliance sessions.

Online education programs

The ACCC continues to promote three free online education programs:

- The ACCC hosts an online education program for small businesses covering the major aspects of the CCA and the ACL. New modules have been added to this education program to reflect legislative changes. In the 2017–18 financial year there were over 4900 users of the program, bringing the total number of users since the program's launch in April 2013 to over 37 400.
- The ACCC funds a franchise pre-entry program now administered by FranchiseEd. More than 1400 people enrolled in this ACCC-sponsored program during 2017–18, bringing the total number of enrolments since the program's launch in July 2010 to over 16 500.
- The ACCC hosts an online education program for tertiary students studying subjects that touch on the CCA or ACL—for example, law, commerce and marketing. Nearly 45 000 users have accessed this program since its launch in 2013.

Small business webinar

On 7 June 2018, in partnership with ASIC, the Australian Taxation Office, the Fair Work Ombudsman and the Australian Small Business and Family Enterprise Ombudsman, we hosted and ran a live webinar for small businesses. The webinar provided information from these agencies on current and future initiatives which are contributing to the small business sector, together with a variety of tools and resources to assist small business. 1046 people registered to receive a recording of the webinar and 245 people watched the webinar live. A video of the webinar is available on our YouTube channel.

Speeches, presentations and publications

ACCC staff gave more than 65 speeches and presentations to small business audiences and attended many expos and other events.

We published two editions of *Small business in focus*—a twice-yearly summary of our activities in the small business and franchising sectors and update on industry codes.

Infocentre

The Infocentre serves the small business hotline (1300 302 021) as well as a dedicated web form for small business. The web form encourages small businesses to submit reports about possible breaches of the CCA. Enquiries from small business generally concern rights and responsibilities under the CCA and the industry codes we regulate; and questions about accessing ACCC guidance materials.

Partnerships for small business

Small Business and Franchising Consultative Committee

The Small Business and Franchising Consultative Committee is a forum where industry and government can discuss competition and consumer law concerns related to the small business and franchising sectors.

Membership of the committee includes industry representatives, legal professionals, small business and franchising advocates and academics. It is chaired by our Deputy Chair, Mick Keogh. Committee meetings are held at least twice a year.

This year the committee met on 13 October 2017 and 26 April 2018. Topics discussed in detail with committee members in these meetings included:

- current enforcement and compliance work of the ACCC
- business-to-business unfair contract terms
- excessive payment surcharges
- country of origin labelling
- the Joint Parliamentary Inquiry into the Operation and Effectiveness of the Franchising Code
- the new franchisor liability provisions under the Fair Work Act 2009
- changes to the CCA following the Harper review reforms.

Small business commissioners

In 2017-18 we continued to work with the four state small business commissioners from Western Australia, South Australia, New South Wales and Victoria, as well as the Queensland Small Business Champion and the Australian Small Business and Family Enterprise Ombudsman, on a range of matters. The group met four times during the year and discussed the types of complaints that each of the commissioners has received, small business initiatives, and new and proposed laws affecting small businesses.

Regulators group on small business issues

A range of Australian Government agencies have small business roles and responsibilities. The Federal Regulatory Agency Group—a cross-government group comprising the ACCC, ASIC, the Australian Taxation Office and the Fair Work Ombudsman and chaired by the Australian Small Business and Family Enterprise Ombudsman—was established to improve regulatory coordination on small business matters.

The group meets quarterly to discuss ways to engage more collaboratively with and educate small businesses. Its activities have led to initiatives such as the (now annual) joint regulator webinar for small businesses and 'fix-it squads' (rapid-design groups made up of small business operators and intermediaries and representatives from federal, state and local government, all working together to examine and solve small business problems).

Codes of conduct

An ACCC priority for 2016-17 was ensuring that small businesses receive the protections of industry codes of conduct.

For 2018 ensuring small businesses receive the protections of unfair contract terms and industry codes, with a particular focus on large or national franchisors, remains a priority for the ACCC.

We are responsible for promoting and enforcing compliance with five mandatory prescribed industry codes—the Franchising Code of Conduct, the Horticulture Code of Conduct, the Oil Code of Conduct, the Port Terminal Access (Bulk Wheat) Code of Conduct and the Unit Pricing Code—and one voluntary prescribed industry code: the Food and Grocery Code of Conduct. For more information on the codes, see our 'Industry codes' web page on our website.

We use a structured process to actively assess reports we receive of misconduct in relation to industry codes, and we escalate matters for investigation where appropriate.

Food and Grocery Code of Conduct

The Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015 (the Food and Grocery Code of Conduct) came into effect on 3 March 2015. The code governs certain conduct by grocery retailers and wholesalers in their dealings with suppliers. It requires that these parties act in good faith and that supply agreements be in writing. It also contains a dispute resolution procedure.

Coles, Woolworths, Aldi and About Life are signatories to the code.

During the 2017-18 year, the ACCC requested documents from the major signatories under the code to check on whether they were complying with it. The main issue arising out of these compliance checks continues to be how retailers notify suppliers when they are removing a supplier's product from their shelves. The code sets out certain requirements for such product delisting, including providing reasonable notice of the delisting, the reasons for it and informing the supplier of their right to have the decision reviewed by a senior buyer.

We will continue to monitor complaints under the code, conduct compliance checks and investigate potential breaches.

Horticulture Code of Conduct

The Horticulture Code of Conduct is a mandatory industry code under s. 51AE of the CCA. It is enforced by the ACCC. The code aims to improve the clarity and transparency of trading arrangements between growers and traders in the horticulture sector.

In February 2017 the Government announced that it would remake the Horticulture Code of Conduct. The new code took effect on 1 April 2017.

The ACCC provided guidance and undertook an education campaign to educate the industry about their rights and obligations under the code and to encourage compliance with the law.

We have prepared guidance materials for industry to help it to adjust to the changes to the code, including:

- updated website guidance on the code with answers to common questions
- updated a factsheet highlighting some of the major changes to the code
- a suite of industry articles on key provisions of the code for peak industry bodies to include in their publications and newsletters.

We also attended several events held by the industry and given presentations to peak industry bodies promoting the new Horticulture Code of Conduct.

Franchising Code of Conduct

The Franchising Code of Conduct aims to regulate the conduct of franchising participants and ensure that prospective franchisees are sufficiently informed before buying into a franchise. It also provides for a cost-effective and formal dispute resolution scheme for franchisees and franchisors.

The ACCC administers and enforces the code and checks franchisors' compliance with it (see 'Industry code compliance checks' below).

The ACCC undertook a number of investigations of alleged breaches of the code by franchisors during the period.

The ACCC is currently taking court action against Ultra Tune Australia Pty Ltd and the former national franchisor Geowash Pty Ltd (subject to Deed of Company Arrangement), alleging breaches of the good faith obligations that were introduced into the Franchising Code of Conduct in 2015, as well as other breaches of the code and the ACL. In each case, the ACCC is seeking pecuniary penalties and redress for affected franchisees.

Other significant litigation outcomes include the following:

- In November 2017 Morild Pty Ltd (trading as Pastacup) paid \$100 000 for failing to disclose that the company's former director had also managed and been a director of two previous franchisors of the Pastacup franchise system that each became insolvent. For details see the case study on page 122.
- In November 2017 West Aust Couriers Pty Ltd (trading as Fastway Couriers (Perth)) paid \$9000 after the ACCC issued it with an infringement notice. The ACCC alleged that a disclosure document provided to a prospective franchisee did not include details of former franchisees that had terminated or transferred their Fastway Courier franchises. Fastway Couriers (Perth) also provided the ACCC with a court enforceable undertaking to address the ACCC's concerns that it had made false or misleading representations regarding the future earnings.

Oil Code of Conduct

The Oil Code of Conduct regulates the conduct of wholesalers and fuel resellers who are involved in the sale, supply or purchase of declared petroleum products, such as unleaded petrol and diesel.

Industry code compliance checks

The ACCC administers and enforces the Franchising Code of Conduct, the Food & Grocery Code of Conduct and the Horticulture Code of Conduct and conducts checks on compliance with these codes. We identify potential breaches of the codes and take enforcement action where appropriate to support our objective of promoting a fair operating environment for small businesses.

In 2017-18 we issued 12 notices under s. 51ADD of the CCA to franchisors to check their level of compliance with the Franchising Code of Conduct and three notices to traders to check their level of compliance with the Food and Grocery Code of Conduct. A s. 51ADD notice requires the addressee to give information or produce documents to the ACCC that they are required to keep, generate or publish under an industry code of conduct. These traders were either selected because they had a history of code-related complaints or were randomly selected from industries that appear to generate a disproportionate volume of complaints.

In 2017–18 we issued three notices under s. 51ADD of the CCA to the major signatories under the code to check their level of compliance with the Food and Grocery Code of Conduct.

In 2017-18 we issued 15 notices under s. 51ADD of the CCA to traders to check their level of compliance with the Horticulture Code of Conduct.

Since 1 January 2011 we have served 139 s. 51ADD notices to monitor compliance with industry codes under the CCA. The majority of traders have been found to be compliant with the relevant code. Where compliance issues have been identified, these concerns have largely been addressed administratively.

We will continue to conduct industry disclosure compliance checks in 2018-19.

Voluntary codes of conduct

We support voluntary industry initiatives to develop codes that promote good business practices consistent with the CCA. Effective codes potentially increase consumer protection and reduce regulatory burdens for business. Our <u>Guidelines for developing effective voluntary industry codes of conduct</u> are available on our website.

During 2017-18 we provided guidance to a number of parties in response to queries relating to voluntary codes. Parties included the Insurance in Superannuation Working Group, Energy Consumers Australia, Business Council of Australia, Live Performance Australia, Consumer Policy Research Centre and Consumer Household Equipment Rental Product Association.

Allowing collective bargaining in the public interest

Other decisions relating to small business

We can approve collective bargaining arrangements—where two or more competing businesses jointly negotiate with a supplier or a customer over terms, conditions and prices—where we are satisfied that the arrangement provides an overall public benefit. Without ACCC approval, such arrangements may contravene the CCA.

Working together, small businesses might be able to negotiate better terms and conditions with large businesses than they could achieve on their own. Potential benefits include sharing the time and cost of negotiating contracts, coordinating ordering and/or delivery, accessing new market opportunities from combining volume, and gaining better access to information.

There can also be benefits for the business the group negotiates with, such as reduced negotiation costs, more certainty of supply and savings from aligning transport and distribution.

During 2017–18 we considered 14 collective bargaining proposals under the authorisation and notification provisions of the CCA. The proposals we considered involving small businesses included chicken growers, cinemas, and freight couriers.

Table 3.68: Overview of authorisations 2017–18

Total authorisations decided (excluding minor variations)	27
Small business authorisations decided (excluding minor variations)	11

Empower consumers: Actions undertaken to achieve our purpose

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

The ACCC's educative function is central to our role in protecting the interests and safety of consumers, because awareness and information are the tools that empower people to understand and exercise their rights as consumers. Our educational and publicity campaigns help consumers to make smart choices even in complex or difficult markets.

Deliverable 2.5 applies beyond what is generally understood to be the scope of consumer issues. Whenever we take on new responsibilities, identify new issues or focus on new priorities, our activities generally progress, in order, through:

- engaging with the relevant industry
- developing guidance materials on rights and responsibilities
- educating consumers and/or small business
- looking out for potential breaches of the relevant regulations
- investigating and taking action on breaches.

These activities may overlap.

To empower consumers by increasing their awareness of their rights, we:

- develop and distribute information materials targeted to particular groups
- publicise our enforcement actions
- conduct public education campaigns on specific issues
- operate the ACCC contact centre (the Infocentre) to respond directly to enquiries and reports on consumer issues and to gather information about current trends to inform our educational work
- gather and analyse intelligence on current trends and emerging issues relating to consumer rights.

Distributing consumer information

In 2017-18 we distributed targeted and general information through our website and Facebook, Twitter and YouTube channels to help consumers and small business:

- The Product Safety Australia website, which provides a user-friendly, single entry point to national, state and territory product safety and recalls information, saw an increase from 4.3 million unique page views last financial year to 12.6 million this year (to 6 June 2018).
- We continued to publish voluntary recalls through social media channels to extend their reach to affected consumers.
- We engaged with influencers and other third parties, such as members of the Consumer Consultative Committee and Australasian Consumer Fraud Taskforce, on campaigns.

Publicising enforcement activities

We seek to maximise the effect of ACCC court cases and other enforcement actions by publicising them, in accordance with the ACCC's Media Code of Conduct. In many instances, we conduct consumer education and business compliance initiatives alongside enforcement activities, each reinforcing the message of the other. The penalties and reputational damage that follow a court judgment are not only powerful deterrents to other traders but also highlight to consumers how they can use their rights.

In 2017-18 we publicised enforcement actions by:

- issuing media releases for enforcement interventions
- organising regular media appearances for the ACCC Chair and Commissioners in which they offered consumer tips and advice as well as discussing the actions more broadly
- engaging on social media
- using actions we have taken as examples in speeches, at conferences and at other events
- sharing our results via our email lists
- preparing content for industry on our court outcomes.

Campaigns

We conduct campaigns, including in our broader priority areas, to educate and empower consumers on specific issues, and we put on events to promote and discuss consumer issues with a range of stakeholders.

For examples of our targeted campaigns in 2017-18, see:

- 'Scams' on pages 89-92
- 'Working with partners' on pages 101-110
- 'Consumers with disability' on page 75
- 'Country of origin labelling' on pages 107 and 125-126.

As well as conducting issue-based campaigns, we use our involvement in various consumer forums to raise awareness about particular aspects of consumer law. In 2017–18 these opportunities included the annual National Consumer Congress, the Ruby Hutchison Memorial Lecture and meetings of the ACCC Consumer Consultative Committee.

National Consumer Congress

The 2018 National Consumer Congress was held in Sydney on 15 March. This event was themed 'Evolving markets, enduring questions'. It was attended by about 182 delegates from consumer organisations, government, academia and the legal sector. Panels and keynote speakers discussed a number of issues, including data and algorithms, retirement villages, whether consumers are experiencing the full benefits of competition, the internet of things, and consumer research.

This high-profile annual event is a valuable opportunity for us to generate interest in and awareness of issues relating to consumer empowerment.

Ruby Hutchison Memorial Lecture

The Ruby Hutchison Memorial Lecture is held annually and is co-hosted by the ACCC and CHOICE. Ruby Hutchison was the founder of the Australian Consumers' Association, which is now known as CHOICE. The lecture was held on 14 March 2018 and was attended by approximately 156 guests.

The 2018 lecture was presented by the Chief Executive Officer of Financial Counselling Australia, Fiona Guthrie. Titled 'The fourth wave', Fiona's lecture covered a historical perspective on the past three waves of consumer protection and then discussed what the fourth might look like—a future wave that is people centred, with empathy and kindness, and involves new business models, responsibility-based regulation and a strong consumer movement.

Consumer Consultative Committee

The Consumer Consultative Committee brings consumer engagement and empowerment issues to our attention and provides a forum for us to inform, discuss issues and seek feedback on the effectiveness of our consumer empowerment activities. See details under 'Working with partners' (deliverable 2.2) on page 103.

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, by letter and through forms on our websites.

The reasons for contacting the ACCC are very broad; however, the majority of contacts are:

- reports about scams
- reports made by consumers seeking information about consumer guarantees
- reports about business conduct that may breach the CCA
- from small business seeking guidance on their responsibilities.

Infocentre officers record information they receive from businesses and consumers in the ACCC database. This data is used throughout the ACCC for investigation, analysis and reporting purposes.

The Infocentre manages the initial triage process for these reports. They are each assessed against the law and the ACCC Compliance and Enforcement Policy and, where appropriate, escalated for further assessment (see 'Under assessments commenced' in table 3.69). The Compliance and Enforcement Policy supports Infocentre officers in informing customers of current and enduring priorities.

Where contacts are beyond the jurisdiction of the ACCC or cannot be individually addressed, Infocentre officers refer customers to appropriate services or agencies and educate the consumer or business on the options available to them.

Responding to enquiries and reports

Our contact statistics for 2017-18 are:

- 290 143 contacts served by telephone and received in writing
- 72 635 web form responses sent (or otherwise completed)
- 758 letter responses made
- 75 246 calls answered.

Our service level statistics for 2017-18 are:

- 22 per cent of calls answered within two minutes
- 91 per cent of written responses sent within 15 working days.

Escalation of investigations

The reports we receive may go through a series of increasingly intensive investigations.

An initial investigation is the first stage of a detailed assessment. It may result in escalation to an indepth investigation. Alternatively, the matter may be resolved administratively or no further action may be taken.

The most serious matters may become in-depth investigations. Depending on the seriousness of the conduct, we may use our coercive investigative powers and resolve the matter by using court enforceable undertakings or infringement notices or by initiating legal action.

We analyse the information contained in our database to establish trends, identify issues for further inquiry and develop compliance responses.

Table 3.69: Actions

Category	2015-16	2016-17	2017-18
Contacts served by telephone and received in writing	233 197	264 462	290 143
Contacts recorded in the database	207 090	234 913	252 091
Scams contacts recorded in the database	N/A	N/A	156 993
Under assessments commenced	590	485	444
Initial investigations commenced	427	259	238
In-depth investigations commenced	167	79	103
Litigation	19¹	241	18

Note: 1. Litigation commenced in period (i.e. new proceedings).

Table 3.70: Small business and franchising contacts

Category	2015-16	2016-17	2017-18
About a small business matter	15 071	13 375	14 290
About a franchise matter	931	607	542
About an online trader or e-commerce	6 126	12 994	16 949

Table 3.71: Top 10 industries, excluding scams, for complaints and enquiries

Industry	2017-18
Car retailing	8532
Non-store retailing	7604
Electrical, electronic and gas appliance retailing	7452
Other personal services	6596
Other administrative services	3673
Internet service providers and web search portals	1945
Furniture retailing	1937
Clothing retailing	1923
Cafes and restaurants	1750
Other telecommunications services	1662

Table 3.72: Top categories of consumer and competition conduct for complaints and enquiries

Conduct	2017-18
Fair trading and consumer protection, including ACL	
18—Misleading or deceptive conduct	27 608
54—Guarantee as to acceptable quality	24 175
36—Wrongly accepting payment	7 361
60—Guarantee as to due care and skill	4 846
55B(1)—Payment surcharges must not be excessive	4 124
56-57—Guarantee relating to the supply of goods by description, sample or demonstration	1996
29(1)(i)—False representation price	1852
29(1)(a)—False representations goods—standard, quality, value, grade, composition, style, etc.	1 565
29(1)(m)—False representations—exclusion or effect of any condition, warranty, guarantee, right or remedy	1371
29(1)(b)—False representations regarding services	1 239
40—Assertion of right to payment for unsolicited goods or services	1 226
50—Harassment and coercion	909
Effective competition and informed markets, Parts IV and IVB of the CCA	
Codes	481
Misuse of market power	439
Exclusive dealing	351

Table 3.73: Geographical location of contacts recorded in the national database

Location	ACL	Scams	Consumer pr	r protection ¹	Restrictive trade practices	de practices	In	Industry codes		Other	Total
	2017-18	2017-18	2016-17	2017-18	2016-17	2017-18	2016-17	2017-18	2016-17	2017-18	2017-18
MSM	21 949	46 354	64 778	68 303	429	461	118	127	3 348	4447	73 338
Qld	17 364	34 282	50 140	51 646	297	287	121	118	2 462	3287	55 338
Vic	20 241	33 794	60 578	54 035	360	364	145	113	2 764	3818	58 330
WA	8 122	14 434	19 812	22 556	137	114	92	09	1 072	1500	24 230
SA	5 829	13 123	17 933	18 952	92	78	35	27	825	1211	20 268
ACT	2 286	4 413	6 578	6699	62	42	14	12	376	458	7 211
Tas	1653	3 660	4 882	5 313	33	29	8	11	218	303	5 656
LZ	649	1511	2 183	2 160	15	15	Н		102	110	2 285
Overseas or not specified	1 191	5 422	6 391	6 613	12	41	2	13	294	626	7 293
Total	79 284	156 993	233 275	236 277	1 440	1 431	531	481	11 461	15 760	253 949
Note: 1. Comprise	1. Comprises ACL and Scams contacts.	is contacts.									

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

Intelligence

The ACCC continually invests in intelligence gathering and analysis to inform strategic enforcement priorities and provide tactical support to investigations.

We perform regular trend analysis on complaints to identify new issues and threats. Regular analysis not only provides a safety net for complaints assessment but also enhances our intelligence and industry knowledge and helps identify new priority areas.

In 2017-18 our intelligence activities included:

- development of key data sources in-house to increase our ability to gather company and business intelligence
- engagement and secondments with various law enforcement taskforces and alliances including the Fraud and Anti-Corruption Centre led by the Australian Federal Police, AUSTRAC's Fintel Alliance and the Phoenix taskforce run by the Australian Taxation Office
- identification of new external data sources and implementation of new analytical methods and tools to enhance intelligence products available to ACCC business areas.

Strategy 3: Promoting efficient investment in, operation of and use of infrastructure

Performance results and analysis

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

Role and functions

Where key infrastructure is provided by only one or a few suppliers, efficient access to that infrastructure may be limited, thereby undermining competition and investment in relevant markets. Appropriate economic regulation of such infrastructure and the efficient provision of access contributes to the efficiency and productivity of the overall economy.

The ACCC has a range of regulatory functions in relation to national infrastructure industries as well as a price oversight role in some markets where competition is limited.

Our objective is to:

- support the long-term interests of end users by promoting effective upstream and downstream competition and the proper functioning of Australian markets
- facilitate efficient investment in key infrastructure networks and services.

We do this by regulating access to bottleneck infrastructure and setting prices for wholesale monopoly services. We also monitor and report on the price and quality of goods and services in these monopoly markets and, where relevant, business compliance with industry-specific laws.

In pursuing this objective, our key functions include:

- regulating access to monopoly infrastructure and services that businesses need to compete in upstream or downstream markets
- regulating access prices where competitive pressures on a supplier are not sufficient to produce efficient prices
- monitoring and enforcing compliance with industry-specific laws for telecommunications services and rural water services in the Murray-Darling Basin
- monitoring and reporting on the prices and quality of particular goods and services to inform industry and consumers about the effects of market conditions
- advocating for competitive, well-functioning markets and efficient regulatory outcomes, including via contributions to law reform and policy processes.

We carry out these functions across a range of sectors, including telecommunications, petrol, water, fuel, rail, gas, bulk wheat export facilities, airports, container stevedoring and postal services. We also undertake inquiries and provide advice on a broader range of sectors when directed by the Government.

We also review our practices and regulatory frameworks on an ongoing basis to ensure they remain fit for purpose by drawing on internal expertise, consulting with industry participants and other regulators domestically and internationally, and holding an annual regulatory conference.

Our deliverables in this area are:

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

Priorities

Our infrastructure regulation priorities for 2017-18 were:

- undertaking access, pricing and regulatory coverage assessments across key infrastructure sectors
- promoting competition and efficiency in sectors undergoing major reform and/or transitioning to new market structures, including communications and water markets
- enforcing and promoting compliance with industry-specific compliance regimes in telecommunications and water
- assessing the implications of emerging competition issues in communications markets through market studies
- advocating for appropriate regulation of monopoly infrastructure, including in areas where there are efficiency concerns independent of competition concerns
- undertaking an increased number of price inquiries, monitoring roles and industry analysis and reporting activities, as directed by the Government, covering a broad range of sectors, including electricity, gas, petrol, airports, stevedoring and communications.

Powers

Our powers and responsibilities to regulate infrastructure arise under several different legislative and administrative frameworks. These include:

- the National Access Regime in Part IIIA of the Competition and Consumer Act 2010 (CCA) (rail)
- industry-specific access regimes in the CCA (communications)
- price monitoring directions from the Government (airports, container stevedoring, petrol)
- price notification provisions (post, air services)
- rules and directions made by ministers in markets where competition is newly emerging or may
 not be working efficiently (rural water, gas, electricity, the northern Australian residential insurance
 market) or there is a deregulatory agenda (wheat, ports).

Performance indicators

Deliverable 3.1: Deliver network regulation that promotes competition in the long-term interests of end-users

This deliverable is about the ACCC using its regulatory powers to facilitate access to bottleneck infrastructure and efficient pricing for that access.

Table 3.74: Performance indicators for deliverable 3.1

Performance indicator	2016-17	2017-18	
	Result	Target	Result
Number of major regulatory decisions	6	2	
Percentage of regulatory decisions completed within statutory timeframes (including 'stop the clock' and timeframe extension provisions in the CCA)	100%	100%	100%

Note: 1. Target performance indicators refer to anticipated decisions for the reporting period. Various factors during regulatory processes can affect anticipated timeframes for decisions.

Deliverable 3.2: Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

This deliverable is about keeping a close watch on the price and quality of goods and services available in markets that may be inefficient because they are highly concentrated or developing.

Table 3.75: Performance indicators for deliverable 3.2

Performance indicator	2016-17	2017-18	
	Result	Target	Result
Number of annual monitoring reports	7	6	6
Number of reports on monitoring of unleaded petroleum products	7	4	6

Deliverable 3.3: Improve the efficient operation of markets by enforcing industry-specific competition and market rules

This deliverable is about the ACCC using its powers to enforce industry-specific rules that promote competitive, efficient markets.

Table 3.76: Performance indicators for deliverable 3.3

Performance indicator	2016-17		2017-18	
	Result	Target	Result	
Number of investigations into potential breaches of rules	19	5	17	

Analysis of performance

Infrastructure plays a significant role in Australia's economic and social development and prosperity. The efficient provision and use of infrastructure—its location, availability, quality and pricing—underpins economic growth, productivity and, ultimately, consumer welfare.

As the economic regulator, the ACCC has a central role in supporting market outcomes through our regulatory functions and by exercising the most effective regulatory tool to promote competition to deliver better outcomes for end users. We are responsive to the dynamic environment in which we regulate, including taking on additional roles and responsibilities at the direction of the Government and at our own initiative where we consider this is necessary to identify and respond to important emerging issues.

During 2017-18 we undertook a number of major regulatory activities including:

- a major regulatory decision not to declare a domestic mobile roaming service (a second expected major regulatory decision was made outside the reporting period)
- commencement of a public inquiry into National Broadband Network (NBN) wholesale service standards
- the publication of multiple monitoring reports on different infrastructure sectors, including airports, bulk wheat ports, container stevedoring and telecommunications and our first fuel industry report under a new ministerial direction, which provide transparency for consumers and businesses about competition and market conditions.

Other key achievements during the year include:

- delivering on new monitoring and inquiry roles in gas, insurance and financial markets, following directives from the Government
- concluding a broad-ranging market study of the communications sector
- investigations into potential breaches of rules in the communications, water and wheat sections

• a number of successful public forums in which consumers, industry and government representatives engaged on important issues, including those affecting rural and regional Australia.

We have a range of regulatory tools to achieve our objectives in various infrastructure sectors. In addition to declaring access to infrastructure or setting terms of access, we seek to promote competition by providing transparent and comparable market and consumer information. Market information promotes competition by providing transparency across the supply chain. Consumer information empowers consumers to make informed purchasing decisions. Activities include:

- releasing our broadband speeds advertising guidance and launching our Measuring Broadband Australia program and the program's first fixed-line broadband performance report
- publishing four quarterly petrol monitoring reports with analysis and commentary on metrics, including the average prices in the five largest cities and over 190 regional locations in Australia and providing regular information on petrol price cycles.

The Infrastructure Regulation Division's focus in 2017–18 reflected the emergence of a diverse range of important market issues that warranted examination and action across regulated sectors. We have taken steps to ensure that our regulatory activities are informed by a sound understanding of market trends and developments that affect the sectors we regulate. For example the communications sector market study shone a light on the significant technological and structural changes occurring throughout the sector (see page 144) and the implications for competition and consumers.

The ACCC's new roles in gas and insurance are also a response to important market issues that are impacting households and businesses. Dedicated resourcing and some redeployment of existing resources enables us to undertake these roles while minimising impact on our broader goals and responsibilities.

Telecommunications: Actions undertaken to achieve our purpose

Deliverable 3.1: Deliver network regulation that promotes competition in the long-term interests of end-users

Deliverable 3.2: Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

Deliverable 3.3: Improve the efficient operation of markets by enforcing industry-specific competition and market rules

The ACCC's work in the telecommunications sector contributes to all three of the deliverables for strategy 3, as it encompasses regulation, monitoring and enforcement.

We are responsible for the economic regulation and monitoring of the telecommunications sector. Our role is to provide effective regulation of telecommunications that will protect, strengthen and supplement competitive market processes to improve the efficiency of the economy and increase the welfare of Australians.

We regulate access to monopoly wholesale telecommunications infrastructure and services at the wholesale level, which helps reduce barriers for operators that seek to enter and compete in downstream markets. This creates an environment where the competitive process can develop and deliver better outcomes for consumers through more innovative and competitive services, lower prices, better quality services, more product differentiation and more investment.

In addition to the CCA, we have responsibilities under the following Commonwealth legislation:

- Broadcasting Services Act 1992
- Copyright Act 1968
- National Broadband Network Companies Act 2011
- Radiocommunications Act 1992
- Telecommunications (Consumer Protection and Services Standards) Act 1999
- Telecommunications Act 1997.

In 2017-18 our priorities relating to telecommunications were:

- undertaking a number of regulatory inquiries regarding telecommunications services, including into:
 - whether to declare a wholesale mobile roaming service
 - a revised proposal by NBN Co to vary its access arrangements
 - NBN service levels and whether regulatory intervention is required
- initiating an in-depth market study of current and emerging trends affecting competition and efficiency in the supply of communications services
- promoting compliance with the Australian Consumer Law by retail service providers advertising broadband speeds
- continuing to administer and monitor compliance with key aspects of the structural reforms of fixed-line telecommunications (including the Telstra structural separation undertaking).

The following section discusses outcomes in these priority areas and other activities.

Access to telecommunications networks and services

Regulating access to telecommunications services

The telecommunications access regime contained in the *Telecommunications Act 1997* supports the development of a competitive telecommunications industry by allowing services to be 'declared'. There are a number of mechanisms by which declaration of a service can occur, including by the ACCC undertaking an assessment of the need for regulation. When making a decision about whether to declare a service, the ACCC assesses whether declaration is in the long-term interests of end users. In doing so, we have regard to the objectives of promoting competition, achieving 'any-to-any' connectivity and encouraging economically efficient use of and investment in the relevant infrastructure.

Once declared, a service must be supplied, on request, to other providers. In addition, the CCA gives the ACCC powers to determine the terms and conditions on which access to regulated services must be provided and sets out the matters to which we must have regard in doing so.

Decision not to declare a mobile roaming service

On 23 October 2017 the ACCC issued its decision not to declare a domestic mobile roaming service. The decision followed an extensive public inquiry into competition for mobile services, including a focus on competition in regional areas.

The ACCC concluded that declaration would not lead to lower prices, better coverage or quality of services for consumers. Further, declaration could harm the interests of consumers by undermining the incentives of mobile network operators to invest and compete with each other in regional areas.

The ACCC separately identified regulatory and policy measures to address inadequate mobile services in regional Australia. These included establishing better transparency about network coverage, quality and operators' investments; reducing the cost of deploying mobile infrastructure in regional areas; and ensuring that competition is properly taken into account in the spectrum management framework.

The ACCC also proposed a review of the Facilities Access Code to identify barriers to co-location or infrastructure deployment; and a review of the ACCC's own Infrastructure Record Keeping Rule (RKR) to improve the information available about mobile networks.

Following the ACCC's draft decision in May 2017, Vodafone Hutchison Australia (VHA) sought judicial review of the ACCC's conduct in holding the inquiry. VHA sought orders to quash the (then) draft decision not to declare the service and to restrain the ACCC from proceeding with the inquiry on the basis of the draft decision. Pending the hearing, the ACCC continued with its inquiry. The Federal Court dismissed VHA's application on 21 December 2017.

Domestic transmission capacity service declaration inquiry

The ACCC commenced a public inquiry on 5 March 2018 to review the declaration of the domestic transmission capacity service (DTCS). The DTCS is the regulated transmission service.³ The inquiry will examine the scope and adequacy of the DTCS regulation and competition and market developments, particularly those associated with the rollout of the NBN.

- The ACCC is conducting the public inquiry in two stages. The first stage will determine the appropriate service description for the DTCS. The second stage will consider the competition criteria in line with the revised service description, the state of competition and any other related issues.
- The ACCC will set out its preliminary findings in a draft report once it has considered submissions on both parts of the inquiry. The ACCC expects to release its final report by 31 March 2019, when the current DTCS declaration expires.

³ Transmission services are high capacity data links primarily used by retail service providers to deliver telecommunications products and services. Transmission networks are critical for the supply of nearly all telecommunications services including residential broadband, business services and mobile services.

Determinations of terms and conditions

NBN wholesale service standards inquiry

On 2 November 2017 the ACCC announced a public inquiry to determine whether wholesale service standards on the NBN are appropriate and to consider whether regulation is necessary to improve customer experience. The inquiry was commenced in response to concerns about poor customer experiences and NBN Co's incentives to meet wholesale service standards set out in its agreements with retail service providers, which were further examined as part of the ACCC's communications sector market study.

On 18 December 2017 the ACCC released a discussion paper that sought views from interested stakeholders on issues including:

- the service levels that NBN Co commits to in its wholesale contracts around connections, fixing faults and appointments
- issues relating to service providers' access to rebates or compensation when NBN Co fails to meet its wholesale service commitments.

The ACCC received 12 submissions to the discussion paper. We are reviewing submissions to determine whether interim regulation is required to promote the long-term interests of end users while final measures considered.

Determination on NBN revenue controls

Under the NBN Co special access undertaking (SAU), the ACCC must make annual determinations specifying the amount of revenue that NBN Co is allowed to earn for each financial year. In making its determination, the ACCC must review NBN Co's submission of regulatory information and decide whether NBN Co has complied with the relevant criteria set out in its SAU.

On 31 October 2017 NBN Co submitted regulatory information for the 2016–17 financial year. On 27 April 2018 the ACCC published its draft determination. Our draft decision was to accept that the regulatory information that NBN Co had submitted complied with the requirements in the SAU. The ACCC received three submissions in response to the draft determination. The submissions did not comment specifically on the ACCC's draft determination for 2016-2017 or NBN Co's compliance with the applicable price controls. On 29 June 2018 we published the final determination for the 2016–17 financial year, which confirmed our view that the requirements of the SAU had been met.

Industry analysis, monitoring and reporting

Communications sector market study

As noted under strategy 1 (page 63) the ACCC released the final report of its communications sector market study on 5 April 2018. The market study identified 28 recommendations and actions that cover a wide range of competition and consumer issues in the Australian communications sector. The market study also led the ACCC to act on concerns heard from regional and rural Australians about the adequacy of their communications services, including through engaging with industry on a number of proposed measures to improve outcomes for regional mobile users.

The ACCC commenced the market study in August 2016 and undertook extensive consultation, including a two-day stakeholder forum held in July 2017. We also engaged directly with consumers on a range of relevant issues through our Consultation Hub and released a consumer factsheet to accompany the final report.

We undertook the market study to deepen our understanding of developments in the Australian communications sector so we are well placed to continue to address instances of market failure, promote competition and benefit consumers into the future.

Overall, the market study found that the current regulatory framework remains fit for purpose in addressing current and emerging issues and ensuring that the long-term benefits of competition are realised.

However, we also found that there are a number of policy issues that will be relevant to continue to support competitive outcomes in the future. In particular, we expressed support for establishing structural arrangements that would further promote competition ahead of any privatisation of the NBN.

We found that there is strong price competition between the major service providers despite considerable concentration in both fixed and mobile retail markets. We expect this price competition will likely increase in the near future with TPG launching its own mobile network and Vodafone offering services over the NBN.

A number of positive developments occurred around the time we published the draft report in October 2017. These include positive industry take-up of the ACCC's broadband speed advertising guidance, the publication of the ACCC's first Measuring Broadband Australia report on typical busy period broadband speeds, and NBN Co's announcement that it would undertake a review of its pricing structure. The ACCC also commenced an inquiry into NBN's wholesale service standards.

In December 2017 NBN Co introduced promotional pricing for its 50 and 100 megabits per second (Mbps) products and began consulting on longer-term pricing and product changes, which go some way towards resolving industry concerns over NBN pricing.

Measuring Broadband Australia

On 29 March 2018 the ACCC released its first Measuring Broadband Australia report. The report focuses on the speeds and performance of NBN fixed-line services against a baseline of asymmetric digital subscriber line (ADSL) services, finding that:

- NBN plans with maximum download speed of 25 Mbps (or above) significantly outperform ADSL services which on average are providing consumers with download speeds of 7.99 Mbps during the busy hours (7 pm to 11 pm)
- The four largest retail brands (iiNet, Optus, Telstra and TPG) each typically deliver speeds between 80 and 90 per cent of their maximum plan speed during the busy hours
- A long tail of poorer speed results reduced the overall average speeds in this report, both in evening busy hours and at other times. As a result, 5 per cent of services tested operated at less than 50 per cent of their maximum plan speeds
- Overall, broadband speeds did not reduce to a material extent during the evening busy hours. This
 indicates that network capacity is typically meeting demand in peak usage periods (including on the
 fastest NBN products).

The first report involved testing 400 NBN and ADSL services supplied by over 10 internet service providers. Over 1000 testing devices have been sent to volunteers, with a further 1000 devices to be issued during 2018 as the NBN rollout continues.

We have ongoing engagement with a range of stakeholders since we began scoping the program. More recently, we have hosted briefings for industry in December 2017 and March 2018.

We will publish regular quarterly reports about broadband speeds with the aim of reaching 4000 Australian homes by mid-2021. A further breakdown of the results and the addition of other access technologies and retailers are planned for future reports.

ACCC annual telecommunications report 2016-17

The ACCC's annual report on <u>Competition and price changes in telecommunications services in Australia 2016-17</u> was tabled in parliament and published on the ACCC's website on 20 March 2018. The report finds that over the year consumers were able to access communications services of growing value as prices fell and inclusions increased.

The report also notes that:

- data downloads rose by 43 per cent over the year, with consumers continuing to rely heavily on fixed broadband connections, which accounted for 92 per cent of all downloads
- real prices for fixed internet services fell by an average 4.5 per cent year-on-year from 2014 to 2017
- the range of plans and bundles available has changed significantly and a quarter of all fixed broadband plans had an unlimited data allowance, up from 5 per cent in 2014

- real prices of mobile services dropped by an average of 7.1 per cent each year from 2014 to 2017, though the price of higher-priced prepaid plans increased in the last year
- the number of mobile voice minutes rose by seven billion over the year, more than offsetting the reduction in fixed-line minutes of three billion
- mobile handsets are also the preferred way of accessing the internet, accounting for 66 per cent of all broadband subscriptions.

Quarterly reports on the NBN wholesale market

We continued to release our quarterly NBN wholesale market Indicators reports. These reports provide a detailed view of the size and structure of emerging NBN wholesale access markets as NBN services become more widely available. However, the reports do not give a view on the structure of emerging retail markets, because retail service providers can choose to directly acquire NBN access services or resell services offered by NBN access seekers.

We have seen developments including the increase of competition as more access seekers have built sufficient scale to directly connect with the NBN at more points of interconnection. Access seekers are also acquiring significantly more connectivity virtual circuit (CVC) to serve their customers following the introduction by NBN Co of its promotional Focus on 50 in December 2017.

Reports were issued on 11 August 2017, 9 November 2017, 8 February 2018 and 10 May 2018.

Quarterly reporting of access agreements

Carriers or carriage service providers who supply declared (regulated) services must lodge quarterly reports with the ACCC regarding all new, varied, cancelled and in-force access agreements in relation to declared services. These quarterly reports assist the ACCC in monitoring industry developments and fulfilling its responsibilities under Parts XIB and XIC of the CCA.

During 2017-18, 18 parties provided reports to the ACCC on their access agreements. This is equivalent to the number of reporting parties in 2016-17. The ACCC found that compliance was generally consistent with the requirements of the CCA. Where quarterly reports were not fully compliant, we worked constructively with carriers to resolve any deficiencies for future reporting.

Review of record-keeping rules

Record-keeping and reporting rules (RKRs) are important regulatory tools that enable the ACCC to collect market information from telecommunications providers. The information assists us to monitor competition and market developments and to inform regulatory decisions. This year we reviewed and amended a number of existing RKRs, made a new RKR and revoked one RKR. The NBN Services in Operation Record Keeping and Reporting Rules (NBN SIO RKR) requires NBN Co to report on the number of wholesale access virtual circuit services in operation and the amount of CVC capacity being acquired; and to provide relevant extracts for publication in the NBN wholesale market indicators report.

On 18 September 2017 the ACCC extended the NBN SIO RKR for a further three years until September 2020. The ACCC also amended the NBN SIO RKR on 18 December 2017 to require more detailed reporting of CVC information. Following consultation, the ACCC varied the NBN SIO RKR Disclosure Direction on 26 March 2018 to require additional information to be included in the NBN wholesale market indicators report.

On 19 December 2017 the ACCC also amended the Audit of Telecommunications Infrastructure Assets RKR to improve clarity and update the list of reporting parties.

On 18 December 2017 the ACCC made a new RKR to assist our Measuring Broadband Australia reporting. The Broadband Performance Monitoring and Reporting RKR requires NBN Co to report certain information quarterly to the ACCC to assist in validating and reporting of anonymised service information. The ACCC made minor amendments to the RKR to simplify its operation and update the reporting format in March 2018.

On 20 October 2017 the ACCC revoked the Regulatory Accounting Framework RKR, which had become redundant due to changes in telecommunications markets and the availability of more recent RKR frameworks administered by the ACCC.

Review of digital broadcast radio instruments

On 23 May 2018 the ACCC made two new digital broadcast radio facilities legislative instruments. These are the Digital Radio Multiplex Transmitter Licences (Decision-Making Criteria) Determination 2018 and the Digital Radio Multiplex Transmitter Licences Procedural Rules 2018.

These instruments are designed to promote transparency in decision-making and to promote the expeditious and efficient exercise of the ACCC's functions and powers under Division 4B of Part 3.3 of the *Radiocommunications Act 1992*.

The two new instruments repeal the previous instruments made in 2008. The ACCC conducted a review before remaking the instruments and, after consultation with industry, has assessed these instruments as operating effectively and efficiently. Therefore, only minor amendments were made to the new instruments.

The new instruments are due to sunset on 1 October 2028.

Enforcement and compliance

Optus—\$1.5 million in penalties for misleading customers during NBN transition

As a result of ACCC enforcement action, the Federal Court imposed penalties of \$1.5 million on Optus Internet Pty Ltd for misleading its customers about Optus' right to cancel its customers' services and the need for them to acquire NBN-based services from Optus. The court also ordered injunctive relief, that Optus improve its complaints-handling system and that it pay a contribution towards the ACCC's legal costs of the proceeding. For more information see the case study on page 85.

NBN Co-Focus on 50 CVC credit offer discrimination complaint

In November 2017 the ACCC received a complaint alleging that NBN Co's CVC pricing discounts under its proposed Focus on 50 CVC credit offer were discriminatory between access seekers. After it had examined the proposed CVC discounts, the ACCC raised concerns with NBN Co about the impact of the discounts on competition in the supply of retail broadband services over the NBN. NBN Co subsequently modified the CVC price discounts for the final Focus on 50 offer introduced in December 2017 so that they addressed the ACCC's competition concerns.

Broadband speed advertising guidance

On 21 August 2017 the ACCC published industry guidance on the marketing of broadband services on next-generation networks. The guidance addresses problematic speed advertising practices by encouraging retailers to move from advertising their services based on the maximum internet speeds that may be delivered during off-peak periods to advertising the speeds consumers can typically expect to achieve during the busy evening period (7 pm to 11 pm).

Since issuing the guidance there has been a significant shift in retailers' marketing practices. In particular, around 90 per cent of the retail market is now advertising the typical busy period speed of their NBN plans. This information assists consumers to more efficiently shop around and select the best internet services for their needs. It also encourages performance-based competition among retailers.

The ACCC will review the guidance in August 2018.

Contributing to structural reform

The telecommunications sector in Australia is continuing a period of structural reform as provision of wholesale services transitions from Telstra's network to the NBN. Key pillars of this reform include:

 NBN Co's SAU. This is the key element of the regulatory framework that governs the price and non-price terms and conditions upon which NBN Co will supply its services to access seekers until 2040. The ACCC accepted NBN Co's SAU in December 2013. Telstra's structural separation undertaking (SSU) and Migration Plan. Together these outline how Telstra will progressively stop supplying telephone and broadband services over its networks and migrate those services to the NBN.

The ACCC has various roles as this transition occurs, including ensuring that the new monopoly NBN services are provided efficiently and support consumer outcomes. We also report to the Minister on Telstra's compliance with the SSU.

NBN Co's revised variation to access arrangements decision

On 22 June 2017 NBN Co withdrew its proposed variation to its SAU and simultaneously lodged a new proposed version for ACCC assessment. The main purpose of the variation is to allow the SAU to reflect NBN Co's move to a Multi-Technology Mix (MTM) model in delivering the NBN. The MTM incorporates a number of different technology platforms, including fibre-to-the-node (FTTN), fibre-to-the-building (FTTB) and hybrid fibre coaxial (HFC).

On 2 August 2017 the ACCC released a consultation paper on the revised SAU variation and invited submissions from interested parties, including on the application of the SAU pricing framework to the MTM services as well as other key changes proposed by NBN Co. On 9 October 2017 the ACCC announced it would not make a decision on a proposed variation to NBN Co's SAU until NBN Co had progressed consultation on its pricing model which may have resulted in changes to the pricing model that applies to NBN services.

On 25 January 2018 the ACCC extended its decision-making period in respect of NBN Co's proposed SAU variation.

SSU Compliance Report 2016-17

The ACCC is required to report to the Minister for Communications each financial year on Telstra's compliance with its SSU. The report details instances where the ACCC considers that, on the balance of probabilities, Telstra has breached its SSU obligations.

The ACCC's 2016-17 report notes that:

- Telstra continued to demonstrate a commitment to compliance with its SSU and Migration Plan
- Telstra reported a reduced number of compliance matters for the year compared to 2015-16
- the ACCC considers that Telstra's overall level of compliance has improved during the year and Telstra has acted responsibly to address breaches as they arise.

The report was tabled in parliament on 9 May 2018.

Telstra's Migration Plan variation

On 6 March 2018 the ACCC approved Telstra's proposed variation to its Migration Plan to enable fibre-to-the-curb (FTTC) as a new access technology for NBN connections. FTTC allows for greater use of existing copper lines to connect customers to the NBN, avoiding the need to dig new lead-in conduits to premises.

Telstra's Migration Plan outlines the steps it will take to progressively migrate voice and broadband services from its existing copper and hybrid-fibre coaxial networks to the NBN.

Telstra's variation to its Migration Plan also included changes to:

- amend the duration of the Order Stability Period (a period which allows Telstra time to clear pending orders before the process of permanently disconnecting existing services and connecting to the NBN commences)
- clarify the application of the cease sale restrictions to include all serviceable locations in multi-dwelling units.

Continued oversight of customer migration to NBN

On 30 November 2017 the ACCC agreed to a request from Telstra for forbearance regarding cease sale obligations in the Migration Plan in relation to customers affected by NBN Co's 27 November 2017 decision to delay connecting premises with NBN HFC.

On 30 May 2018 the ACCC agreed to a request from Telstra for additional forbearance in relation to its Migration Plan, including to:

- defer managed disconnection for HFC premises with disconnection dates between February and May 2018
- manage disconnection of premises within service continuity regions (SCRs) that remain non-NBNserviceable from three months before the SCR disconnection date.

On 12 June 2018 the ACCC approved Telstra's request for regulatory forbearance to extend existing in-train order arrangements for standard voice and broadband services (which were due to expire on 30 June 2018) until 12 November 2018.

Telstra intends to submit a variation to its Migration Plan in relation to these forbearance requests.

Migration Plan forbearance for 'high security sites'

On 7 September 2017 the ACCC approved a Telstra request for regulatory forbearance from its Migration Plan obligations in relation to Australian Government high-security sites. Because of their nature, these sites are posing difficulties for NBN connection. The regulatory forbearance aims to ensure that, where there are difficulties in making these sites serviceable, they can remain connected to existing services for a limited additional period.

Telstra and NBN Co will review the arrangements in 12 months' time.

Participation in industry working groups

During 2017-18 the ACCC participated as an observer on the Telecommunications Consumer Protections Code review and attended a number of working group meetings alongside other regulators, industry and consumer representatives to discuss key issues to be addressed under the code. The following issues have been a particular focus for the ACCC in the review:

- third-party charges
- unauthorised customer transfers
- early termination fees.

The public consultation period for the code review is expected to commence in mid-2018.

The ACCC is an observer on the following Communications Alliance working groups set up to consider migration issues:

- VDSL2 and Vectoring Working Committee 58, which has produced a Draft Industry Code on Next-Generation Broadband Systems Deployment in Customer Cabling and is now working to extend the draft industry code to include new international standards
- NBN FTTN/B/C and HFC Migration Processes Working Committee, which considers the processes to follow in migrating a service onto the NBN FTTN/B and HFC networks.

Assistance and collaboration with other government agencies

The ACCC has contributed to, or been asked by the Government to provide advice or assistance on, a range of projects affecting regulation of telecommunications. In our contributions we seek to promote competitive outcomes, including the efficient use of infrastructure and the long-term interests of end users.

Spectrum management is an area where the ACCC has been particularly active in engaging and collaborating with other government agencies, such as the Department of Communications and the Arts (DoCA) and the Australian Communications and Media Authority (ACMA).

In July 2017 the ACCC made a submission to the DoCA's consultation on a proposed new Radiocommunications Bill as part of the Government's spectrum reform process. The ACCC submitted that spectrum allocation is critical to competition in downstream markets and the promotion of competition should be a key consideration in the new spectrum management framework.

In November 2017 the ACCC Chair Rod Sims gave a keynote speech at the ACMA's RadComms Conference, in which he emphasised the ACCC's interest in spectrum allocation due to its impact on competition. The Chair also discussed the ACCC's likely future approach to considering allocation limits in spectrum allocations, signalling that the ACCC will look at spectrum holdings more holistically.

During 2017-18 the ACCC also provided advice to the Minister for Communications and the Arts on allocation limits on two occasions.

Advice to the Government on allocation limits for unsold spectrum

On 14 August 2017 the ACCC provided advice to the Minister for Communications and the Arts on the auction of unsold spectrum. The spectrum is in the 1800 megahertz (MHz), 2 gigahertz (GHz), 2.3 GHz and 3.4 GHz bands. The ACCC's advice followed a request from the Minister in July 2017.

Under the *Radiocommunications Act 1992* the ACMA may impose allocation limits restricting the amount of spectrum anyone, a specified person or a group of specified persons may acquire as a result of an allocation of spectrum licences if directed by the Minister.

The Minister may seek the ACCC's advice when directing the ACMA on whether and what allocation limits should be imposed. The Minister has previously sought the ACCC's advice on allocation limits for a number of spectrum auctions, including auctions for the Digital Dividend Spectrum in 2013, the 1800 MHz spectrum in regional areas in 2015, and the unsold 700 MHz spectrum.

The ACCC recommended that no allocation limits be placed on the 2 GHz, 2.3 GHz and 3.4 GHz bands. We also recommended the retention of the current allocation limit for spectrum in the 1800 MHz band. We conducted targeted consultation as part of preparing the advice.

On 4 September 2017 the Minister made a direction consistent with the ACCC's advice.

Advice to the Government on allocation limits for 3.6 GHz spectrum

On 8 March 2018 the ACCC received a request for advice from the Minister for Communications and the Arts regarding allocation limits for an auction of 125 MHz of spectrum in the 3.6 GHz band in metropolitan and regional areas of Australia. The Minister requested that the ACCC provide its advice by 30 April 2018.

On 19 March 2018 the ACCC began targeted consultation with relevant stakeholders on a range of issues to inform its consideration of the appropriate allocation limits. The timing of this auction is important, as the band is within the broader 3.3–3.8 GHz band that has been identified as the pioneer band for 5G services. The auction will also provide an opportunity for the new entrant, TPG, to acquire spectrum which will be essential for its network.

Submissions from stakeholders were invited until 3 April 2018. The ACCC provided its advice to the Minister on 4 May 2018.

Submission to the ACMA's new NBN rules

The ACCC made submissions to two ACMA consultations on proposed measures to improve consumer experience in migrating to and using the NBN.⁴ The rules deal with NBN service continuity, complaints handling and consumer information. On 20 April 2018 the ACCC commented on the ACMA's proposed complaints-handling rules that seek to increase the incentives for NBN service providers to resolve and report on NBN consumer complaints. On 11 May 2018 the ACCC provided its views on the ACMA's proposed consumer information and service continuity rules. Broadly, these rules seek to ensure consumers receive the information they require to make informed NBN purchasing decisions and have confidence they receive the NBN speeds they selected and are not left without a working service when migrating.

Our submissions supported the objectives of the new rules in addressing some of the key issues and market failures experienced by consumers migrating to the NBN. The ACCC submissions proposed that additional NBN services be subject to the rules as well as making suggestions to assist the practical implementation. The ACCC continues to engage with the ACMA on implementing the rules.

⁴ ACMA website at https://www.acma.gov.au/theACMA/nbn-rules-consumer-information-service-continuity.

Murray-Darling Basin water markets: Actions undertaken to achieve our purpose

Deliverable 3.1: Deliver network regulation that promotes competition in the long-term interests of end-users

Deliverable 3.2: Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

Deliverable 3.3: Improve the efficient operation of markets by enforcing industry-specific competition and market rules

The ACCC's work in the rural water market in the Murray-Darling Basin (the Basin) contributes to all three of the deliverables, as it encompasses advice, monitoring and enforcement.

The Water Act 2007 aims to promote efficient water markets and sustainable use and management of water resources and water service infrastructure in the Basin. It was introduced because of concerns about the impact of irrigation on the environment, over-allocation of water and increasing water scarcity.

Our role helps to ensure that efficient water markets function in the Basin. This is important because water markets are a key way to allocate water—a scarce but vital resource—between competing uses, in a way that ensures it moves to its most productive use.

Under the Water Act we are responsible for monitoring a range of water charges. We also monitor and enforce compliance with water market and charge rules made under the Water Act. The rules:

- protect irrigators' opportunities to transform their irrigation right held against an irrigation infrastructure operator into a separately held water access entitlement (transformation arrangements)
- regulate the maximum fee that an operator can impose on an irrigator who terminates their access to an irrigation network
- require infrastructure operators, water authorities and government departments to publish their regulated charges
- restrict an infrastructure operator from imposing different charges for the same infrastructure service, in some circumstances.

This year we are reviewing our compliance approach and monitoring report to ensure they meet the changing needs of the sector and to increase confidence and efficiency in water markets.

The following section discusses recent outcomes in these areas.

Monitoring activities

Water monitoring report

The ACCC monitors regulated water charges, transformation arrangements and compliance with rules made under the Water Act across the Basin. We report annually on monitoring results.

We are required under ss. 94 and 99 of the Water Act to monitor regulated water charges, transformation arrangements, and compliance with the water charge and market rules in the Basin and to give a report on the results of this monitoring to the Minister. The ACCC publicly released its <u>Water Monitoring Report</u> on 12 June 2018.

This year's report found 2016-17 was a largely stable period for most on-river and off-river infrastructure operators (IOs) within the Basin. Good water availability and favourable seasonal conditions across much of the Basin resulted in increased water deliveries and lower water allocation prices.

Transformation of irrigation rights and termination of water delivery rights in the Basin dropped to record lows in 2016–17. Around 5.1 gigalitres (GL) of water delivery rights were terminated or surrendered across the Basin and 28 GL of irrigation rights were transformed, compared with 35 GL in 2015–16. Using IO charges to estimate annual customer bills, the ACCC found that charges rose broadly in line with inflation for most off-river IO customers and some on-river IO customers. The report also found that complaints to the ACCC about compliance with water market and water charge rules had declined year-on-year.

Enforcing water industry-specific laws

We enforce the water market and charge rules made under the Water Act. We pursue a risk-based approach aimed at fostering a culture of compliance among regulated stakeholders in the Basin rural water sector. Our aim is to minimise the risk of stakeholders' policies and practices causing harm to water users or impeding the functioning of water markets.

Our 2017–18 compliance agenda prioritised initiatives that contributed to the efficient operation of water markets and reduced barriers to trade. During 2017–18 we received 13 water-related queries and complaints, and conducted five preliminary investigations. From a small base, this represented a slight rise in the number of water-related complaints and queries received by the ACCC (compared with 10 in 2016–17). We did not detect any breaches of the water market and water charge rules in 2017–18. Our approach is to promote compliance with the legal requirements by industry participants. Through our compliance and enforcement activities, we have raised awareness of the rights and responsibilities of water infrastructure operators and their customers under the water rules. As a result, we have seen a downward trend in the overall number of complaints over the last decade (despite the small rise in the number of complaints in 2017–18 compared with 2016–17).

Assistance to and collaboration with other government agencies

Submission to Victorian parliamentary inquiry

In August 2017 the ACCC provided a submission to the Victorian Parliament's Environment, Natural Resources and Regional Development Committee Inquiry into the Management, Governance and Use of Environmental Water.

The submission commented on fees and charges applying to environmental water, barriers to more efficient use and management of environmental water, and access to trade, carryover and other mechanisms to manage environmental water.

The Victorian Inquiry into the Management, Governance and Use of Environmental Water: ACCC submission is available on the ACCC's website.

Submission to the Productivity Commission inquiry into water reform (draft report)

In October 2017 the ACCC provided a submission to the Productivity Commission's inquiry into national water reform. In summary, the ACCC supported the Productivity Commission's draft recommendations:

- about removing remaining unwarranted trade barriers (including between the urban and rural sectors)
- that governments should not provide grant funding for irrigation infrastructure, or part of infrastructure, that is for the private benefit of irrigators
- that all entitlements (such as extractive industries) should be incorporated into the entitlement framework.

The Productivity Commission Inquiry into National Water Reform: ACCC submission on the draft report is available on our website.

Submission to the Productivity Commission's inquiry into the effectiveness of the Basin Plan—five-year assessment

On 19 April 2018 the ACCC provided a submission to the Productivity Commission's issues paper on the five-year assessment of the Murray-Darling Basin Plan (the Basin Plan).

The submission commented about the need for careful consideration of the consistency of water resource plans with the Basin Plan water trading rules. The submission noted that the ACCC remained concerned that a water resource plan may be accredited but subsequently found to contain provisions that are inconsistent with the Basin Plan water trading rules and that this inconsistency could negatively affect people's ability to trade. The submission also commented on the importance of robust compliance, monitoring and enforcement arrangements.

The ACCC's submission to the Productivity Commission Issues Paper on the Murray Darling Basin Plan: Five Year Assessment is available on our website.

Fuel price monitoring: Actions undertaken to achieve our purpose

Deliverable 3.2: Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

The ACCC's work in fuel price monitoring contributes to deliverable 3.2.

We monitor the downstream petroleum industry, including the refining, importing, wholesale and retail sectors, as directed by the Minister under Part VIIA of the CCA. Our role in this sector has changed focus in recent years given the high level of community concern over fuel prices and the degree of competition in retail fuel markets in metropolitan and regional locations. We keep abreast of industry developments, such as changes in international oil prices and exchange rates, and provide timely information and advice to the Government and the public through our monitoring and reporting role in this sector.

Our fuel monitoring program has three broad objectives:

- to comply with the current ministerial direction by analysing prices, costs and profits in the downstream petroleum industry
- to improve consumer awareness about the petrol industry
- to focus on areas where competition may be less effective and on industry conduct that we may need to consider more closely.

Implementation of fuel monitoring arrangements

New petrol monitoring direction

On 20 December 2017 the then Treasurer, the Hon. Scott Morrison MP, issued a new petrol monitoring direction to the ACCC. The direction requires the ACCC to monitor the prices, costs and profits relating to the supply of petroleum products and related services in Australia. It is in place for two years, replacing a previous petrol monitoring direction issued in December 2014 by the then Minister for Small Business, the Hon. Bruce Billson MP, to the ACCC to monitor prices, costs and profits of unleaded petroleum products in Australia for three years and to report at least four times per year.

The new direction enables requests for information to be made to a range of parties involved in the fuel supply chain, and the ACCC can use its compulsory information-gathering powers to inform reports.

On 13 May 2018 the ACCC released its first industry report under the new direction. The report analysed annual average retail prices in 2017 and identified the highest and lowest priced major retailers on average in the five largest cities.

The report found that petrol prices vary significantly between major retailers. In 2017 independent chains on average were the lowest priced major retailers in each city, and Coles Express on average was the highest priced major retailer in each city. The average range between the highest and lowest average priced major retailer in each city in 2017 was 6.3 cents per litre (cpl). These results show that the belief of some consumers that all petrol prices are the same is inaccurate.

The report also examined the difference between average prices in 2017 with those in 2007. It found that the range between the highest and lowest average priced major retailer increased between the two periods. In 2007 the average range across the five cities was 2.4 cpl, which was just over a third of the average range in 2017. The greater range of prices in 2017 suggests that a motorist's decision about where to buy petrol is more important in 2017 than it was in 2007.

The 10-year comparison also highlighted some similar trends. For example, independent chains were the lowest priced major retailer in all five cities in 2017, and an independent chain had the lowest average price in Sydney, Brisbane and Perth in 2007. Woolworths was the lowest priced in Melbourne and Adelaide in 2007.

By choosing to buy petrol at lower priced retailers, consumers can make significant savings over time. The information in the ACCC report can be used by motorists, in conjunction with other publicly available fuel price information from a variety of fuel price apps and websites, to help make more informed purchasing decisions.

Quarterly petrol monitoring reports

In 2017-18 the ACCC published four quarterly reports on the Australian petroleum industry, and completed a Report on the Brisbane petrol market.

The Brisbane petrol market report followed four regional petrol market studies—Darwin (released in 2015-16) and Launceston, Armidale and Cairns (released in 2016-17).

The ACCC's quarterly petrol monitoring reports provided analysis and commentary on a number of topics, including movements in:

- average prices in the five largest cities and over 190 regional locations across Australia
- gross indicative retail differences (the difference between retail prices and published wholesale prices) in the five largest cities
- international benchmark prices for crude oil and refined petrol, diesel and automotive liquefied petroleum gas (LPG).

The reports also provided analysis of issues such as price differentials between regional locations and capital cities, and petrol price cycles, as well as reporting on developments in the industry and ACCC fuel-related activities over the quarter.

Brisbane petrol market study

We released our report on the Brisbane petrol market study on 9 October 2017. It noted that petrol prices in Brisbane were significantly higher than those in the other four largest cities (Sydney, Melbourne, Adelaide and Perth) for the previous eight years. Between 2009–10 and 2016–17 Brisbane motorists paid on average 3.3 cpl more for petrol than motorists in the other four largest Australian cities.

The main factor influencing higher prices in Brisbane was higher retail margins on petrol, which contributed to profits in Brisbane being significantly higher than the average across Australia. The cost to motorists in Brisbane of higher petrol prices has been significant, at around \$50 million per annum.

Over the 10 years to 2017 the number of retail sites in Brisbane has been broadly stable at around 400 sites. The report also found that retail pricing is less competitive in Brisbane, with retailers setting prices higher at the top and bottom of the price cycle than retailers in Sydney. Furthermore, Brisbane has fewer retail chains that price competitively and aggressively.

The report noted that in Brisbane there is usually a wide range of prices at retail petrol sites across the city. Information about current retail petrol prices—from fuel price websites and apps—is also readily available. This enables motorists to shop around and purchase petrol at relatively lower priced retail sites.

Engaging stakeholders

The ACCC's fuel-related web pages continued to be some of the most visited on our website. In 2017-18 the <u>petrol price cycles</u> web page received 426 807 page views, making it the most viewed page on the ACCC website for the year.

To improve transparency about average price movements, the ACCC continued to make pricing information available to consumers, including price movements in the larger capital cities where petrol price cycles occur and 'buying tips' to help price-sensitive consumers better time their fuel purchases.

Commentary on retail market conditions through media releases and other media engagement complemented the information in our general petrol market reporting and the release of findings from selected petrol market studies.

In November 2017 and May 2018 the ACCC hosted half-yearly meetings of the Fuel Consultative Committee.

Promotion of fuel price transparency

On 13 September 2017 ACCC Chair Rod Sims delivered a speech to the Asia Pacific Fuel Industry Forum in Melbourne. The speech outlined how fuel price data from websites and apps empowers price-sensitive consumers and helps drive more competitive markets in petrol retailing.

National infrastructure regulation—rail, gas, wheat export, airports, stevedoring and financial markets:

Actions undertaken to achieve our purpose

Deliverable 3.1: Deliver network regulation that promotes competition in the long-term interests of end users

Deliverable 3.2: Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

The ACCC has regulatory responsibilities in a number of major infrastructure sectors of the economy, in addition to telecommunications, water and fuel. These include:

- rail
- gas
- bulk wheat export facilities
- airports and air services
- container stevedoring⁵
- financial markets
- postal services.

Our work in these areas contributes to deliverables 3.1 and 3.2, as it encompasses both regulation and monitoring.

In the **rail** sector our responsibilities include assessing and administering undertakings given by the Australian Rail Track Corporation (ARTC) which set out terms of access to rail infrastructure.

We have been given new functions to monitor and report on gas markets, directed by the Government.

In relation to **bulk wheat export facilities**, our responsibilities include monitoring and assessing compliance with the Port Terminal Access (Bulk Wheat) Code of Conduct (the Wheat Ports Code) and making determinations on whether a port terminal service provider is exempt from certain requirements under the code. We also assess and approve capacity allocation systems of non-exempt port terminal operators.

In relation to Australia's four major **airports**, we monitor and publish information about prices, costs, profits and quality of both aeronautical and car parking services at those airports.

We also have a role in assessing notifications by Airservices Australia of proposed increases in prices for terminal navigation, en route navigation, and aviation rescue and fire-fighting services. A similar role exists in relation to any proposed price increases by Sydney Airport for regular public transport air services operating wholly within New South Wales. We did not receive a notification in 2017–18 from either Airservices Australia or Sydney Airport.

In the **container stevedoring industry** we monitor the performance, including prices, costs and profits, of container terminal operators at the ports of Adelaide, Brisbane, Fremantle, Melbourne and Sydney. We report to government and the community on our findings.

We also have a developing role in relation to **financial markets**. We have participated in working groups of the Council of Financial Regulators to review competition in clearing and settlement of Australian cash equities (see page 60 in strategy 1). We have also been given a role to hold an inquiry into northern Australian **insurance** markets.

⁵ We have a role under Part X of the CCA in relation to international liner cargo shipping. There are limited exemptions from certain provisions of the CCA for 'registered international liner cargo shipping conferences', and the ACCC is responsible for investigating complaints about conference agreements. The ACCC has rarely been called upon to perform this role.

Our involvement in regulating **postal services** involves assessing notifications from Australia Post for proposed increases in the price of its reserved monopoly services, including the basic postage rate. Australia Post did not make an application to the ACCC during 2017–18. A further role involves inquiring into disputes about the terms and conditions on which Australia Post provides bulk mail services to users. No disputes were notified during 2017–18.6

In 2017-18 our priorities relating to these infrastructure sectors were:

- assessing a replacement access undertaking for the Hunter Valley rail network
- participating in gas market reform processes and taking on new functions conferred by the Government
- monitoring and enforcing compliance with the Wheat Ports Code
- advocating for competitive or effective regulatory outcomes where infrastructure or assets are privatised.

The section below discusses our outcomes in the priority areas and other activities.

Rail

The ACCC assesses and monitors compliance with access undertakings by rail providers regarding rail track infrastructure. To date, only ARTC has rail access undertakings in place with the ACCC. ARTC has one access undertaking for its Hunter Valley rail network in New South Wales and one for its national interstate rail network.

Revised access arrangements for Hunter Valley rail network

On 21 December 2017 ARTC submitted an application to vary the 2011 Hunter Valley Access Undertaking (HVAU) (December 2017 variation) to incorporate path-based pricing, allocate incremental capital costs on the basis of contracted capacity and apply a dual ceiling limit.

On 28 June 2018 the ACCC issued a draft decision proposing to accept ARTC's December 2017 variation to the 2011 HVAU, subject to amendments for clarity and certainty. The ACCC's draft decision noted that although there remain significant concerns with elements of ARTC's proposal, the ACCC's preliminary view is to consent to the variation in light of support by a majority of stakeholders who submit that the 'package' of proposed amendments is preferable to the current HVAU. This stakeholder support is subject to the inclusion of a new review mechanism requested by the Hunter Rail Access Task Force. The draft decision also gave detailed feedback to assist ARTC in developing a revised undertaking.

2018 Interstate Access Undertaking

On 6 March 2018 ARTC submitted its 2018 Interstate Access Undertaking (IAU) application to the ACCC for assessment. This undertaking is intended to replace the 2008 IAU, which is due to expire on 21 August 2018. ARTC proposes the introduction of a 'banded negotiate-arbitrate model', where access pricing is the result of direct negotiation between ARTC and its customers. ARTC also proposes a reduced five-year term, a post-tax nominal rate of return of 8.97 per cent and the incorporation of new and altered segments in the interstate network.

On 26 March 2018 the ACCC published a consultation paper seeking stakeholder submissions on ARTC's proposed undertaking. Submissions to the consultation paper were due on 23 April 2018.

On 22 May 2018 the ACCC sent a request to ARTC to provide further information relating to its regulated asset base and capital expenditure to assist the assessment of the proposed undertaking.

On 28 June 2018 ARTC submitted an application to vary the 2008 IAU to extend the term of the 2008 IAU by four months to 21 December 2018.

⁶ In past years the ACCC issued an annual report of its analysis of Australia Post's regulatory accounts to determine whether Australia Post may have used revenue from its reserved services to cross-subsidise its non-reserved services. Reserved services are services for which Australia Post has a statutory monopoly; non-reserved services are services it provides in competition with other businesses. Australia Post is required, under a formal record-keeping rule, to keep certain records and provide these to the ACCC if requested so that we can undertake a cross-subsidy assessment. However, following several reports concluding that no cross-subsidy had occurred between reserved and non-reserved services, in 2015 we reviewed the need for continued reporting. Accordingly, this report has not been prepared since 2015-16.

ARTC annual compliance assessment 2015

The HVAU requires ARTC to submit documentation to the ACCC on an annual basis for the purposes of assessing whether it has complied with the financial model and pricing principles specified in the undertaking. On 31 August 2017 ARTC submitted its annual compliance documentation for the 2015 calendar year. ARTC submitted that it had a \$40.5 million over-recovery of revenue for the 2015 compliance period, which is to be refunded to users pursuant to the regulatory arrangements.

On 15 September 2017 the ACCC issued a consultation paper on ARTC's 2015 annual compliance documentation. Submissions to the consultation paper were due by 13 October 2017. The ACCC is currently assessing ARTC's compliance with its regulated financial model for the 2015 calendar year.

Gas

East coast gas transparency and supply inquiry

As noted in strategy 1 (page 63), during 2017-18 the ACCC released three interim reports to the Treasurer as part of its new gas market inquiry role. These reports were issued on 22 September 2017, 12 December 2017 and 27 April 2018.

The ACCC reports follow a direction from the Treasurer to the ACCC on 19 April 2017 to inquire into improving transparency and to monitor gas supply in Australia. The ACCC is required to submit interim reports at least every six months, with a final report due by 30 April 2020.

The first report (September 2017) focused on likely supply and demand conditions for 2018 for the east coast gas market given the immediate and apparent supply concerns. The report predicted a likely supply shortfall of up to 55 petajoules (PJ), rising to 108 PJ if domestic demand is higher than expected. The ACCC reported that users of gas, particularly commercial and industrial (C&I) users, are facing very difficult conditions, including limited supply offers, high prices and less flexible terms.

The ACCC reported that demand from the three Queensland liquefied natural gas (LNG) projects is more than twice the level of domestic demand, and it included over 60 PJ of forecast sales on international LNG spot markets above contracted levels. High domestic prices suggest that supply of this additional gas into the domestic market may not deprive the LNG projects of profits they would otherwise earn in overseas markets.

On 3 October 2017 following the ACCC's first report, the Australian Government signed a heads of agreement with the three Queensland LNG exporters. The exporters agreed to offer sufficient gas on reasonable terms to meet any domestic market shortfalls over 2018 and 2019. Under the heads of agreement, the ACCC will monitor the LNG exporters' activities, including sales, offers to sell and bids declined of other suppliers. With the signing of this agreement the Government has decided, at this stage, not to invoke formal export controls.

The second interim report (December 2017) found that, despite increased supply providing important short-term improvements in conditions, the market is still not operating as well as it could. Prices are higher than they would be in a well-functioning and competitive market. This report found that due to increased supply there is lower likelihood of a gas shortfall. Since September 2017, LNG producers have contracted 42 PJ of gas under long-term gas supply agreements to domestic buyers, reducing exports to make this happen.

Prices offered to large C&I users have also come down from a peak of \$16/gigajoule (GJ) in early 2017 to within an \$8-\$12/GJ range since July 2017. While many users were delaying signing contracts at the previous high prices, a number of contracts have now been agreed. However, supply to smaller C&I users is less competitive. These users generally face higher prices than larger users with fewer competing offers.

The third interim report (April 2018) continued the focus on the operation of the east coast gas market. The report covered three topics: an update on gas prices; the ACCC's decision to publish an LNG netback price series on its website; and the ACCC's assessment of new reporting in relation to transportation services for non-scheme pipelines.

For the remainder of the inquiry, the ACCC intends to release three interim reports each year. The ACCC expects these reports to be released in April, July and December each year. A final report is due by 30 April 2020.

ACCC contributions to gas market reform

While continuing its inquiry into the east coast gas market, the ACCC maintains its support for reforms to improve the efficiency and transparency of the market. The ACCC will also make information available to the market as appropriate.

ACCC submissions to the Australian Energy Market Commission

The ACCC made two submissions to the Australian Energy Market Commission (AEMC)—in August 2017 and March 2018—on its review of the economic regulation applied to covered pipelines.

The ACCC supports changes to the National Gas Rules that improve the regulation of covered pipelines. Specifically, the ACCC supports changes that increase the number of reference services that are determined in an access arrangement process and that require expansions of covered pipelines to be automatically covered. The ACCC agrees with the AEMC that the coverage test and form of regulation test are no longer appropriate ways to determine what regulation a pipeline is subject to. The ACCC suggests reviewing these tests in 2019 as part of the review of Part 23 of the National Gas Rules.

The ACCC also recommends simplifying the regulatory framework for gas pipelines by removing light regulation. Pipelines currently subject to light regulation should instead be subject to Part 23 of the National Gas Rules. Part 23 requires upfront information disclosure to provide transparency to access seekers to help them negotiate access to pipelines. It also provides for commercial arbitration if an access seeker and pipeline operator cannot reach agreement on terms of access.

ACCC submission to the Gas Market Reform Group

In November 2017 the ACCC made a submission to the Gas Market Reform Group on the day-ahead auction of contracted but un-nominated capacity and reporting framework. The ACCC supports the day-ahead auction process and considers that the auction should apply to all transmission pipelines, including pipelines in the Northern Territory that will soon be linked to the east coast gas market.

LNG netback price publication

The ACCC announced in its April 2018 report that it would commence publication of an LNG netback price series to improve gas price transparency and information to the market about export parity prices. The ACCC will publish LNG netback prices on its website on a trial basis for the duration of this inquiry.

The publication will commence in the coming months and will include LNG netback prices based on measures of recent and historic Asian LNG spot prices. It will also include a forward LNG netback price indicator extending to the end of the following calendar year. The ACCC will also publish accompanying documentation that will explain the concept of LNG netback pricing and the formula used to derive LNG netback prices, and we will provide guidance on its interpretation. At the conclusion of the inquiry, the ACCC will assess the merits of the publication and will make a recommendation on whether it should continue.

Bulk wheat export facilities

Annual bulk wheat monitoring report

On 13 December 2017 the ACCC released the Bulk wheat ports monitoring report 2016-17. The report examines the nature and concentration of export activity and capacity allocation at Australia's bulk wheat port terminals.

The report notes continuing industry concerns about the structure of some of Australia's bulk grain export supply chains. While competition is emerging at some ports, other regions remain characterised by vertically integrated port operators. This includes South Australia and Western Australia, where Viterra and Co-operative Bulk Handling (CBH) respectively have significant interests in the export market supply chain and also compete in the export market.

The report was first published in 2016 after the ACCC made a commitment to continue to monitor the industry after a number of decisions to reduce the level of regulation at certain port facilities in 2015.

Wheat code exemptions finalised

On 28 July 2017 the ACCC issued final determinations to exempt Riordan Grain Services and Semaphore Container Services Pty Ltd from having to comply with parts of the Bulk Wheat Code when providing services at their respective Port of Geelong and Port of Adelaide facilities.

The exemptions followed public consultation by the ACCC on its draft determinations proposing to exempt the Riordan and Semaphore facilities.

On 11 October 2017 the ACCC also granted exempt service provider status to LINX Cargo Care Group at its Berth 29, Port Adelaide facility. The ACCC previously exempted Patrick Corporation for its operations at the Berth 29, Port Adelaide facility. On 11 October 2017 the ACCC revoked the exemption granted to Patrick Corporation.

Submission to the Wheat Port Code review

In 2017-18 the ACCC made two submissions to the Department of Agriculture and Water Resources review of the Wheat Port Code in response to an issues paper published on 12 December 2017 and an interim report published on 10 May 2018.

The submissions argued that, despite emerging competition at some Australian ports over the last four years, the Wheat Port Code plays an important role in ensuring fair and transparent access to bulk export grain export services. Further, without such access exporters may reduce their participation in export markets, reducing the marketing options for growers and ultimately the price that they can secure for grain. The ACCC considers that industry-specific regulation for bulk wheat port terminal services remains necessary and that the Wheat Port Code should be improved and strengthened.

In response to the department's interim report, the ACCC submitted that:

- the Wheat Port Code should ensure that exporters of all bulk grains (including pulses and oilseeds) have fair and transparent access to port terminal services
- the Wheat Port Code would be considerably more effective if it were extended to apply baseline regulatory access arrangements to vertically integrated upcountry storage and handling networks.

These changes would greatly improve the effectiveness of the Wheat Port Code, promote competition in grain supply chains and ultimately improve the prices that growers are offered for their grain.

The department's final report is due to be presented to the Government in August 2018.

Airports and air services

Airport monitoring report 2016-17

On 26 April 2018 the ACCC released its Airport monitoring report 2016-17. The report revealed that Brisbane, Melbourne, Perth and Sydney airports all significantly increased their profits from aeronautical activities in 2016-17, with profits per passenger also rising.

The four airports earned a combined \$757.6 million in operating profits (EBITA) from aeronautical activities in 2016-17—an increase of 9.9 per cent in real terms from the previous year.

Airport car parking remains very profitable. Sydney airport recorded an operating profit of \$97 million from car parking operations. This represented an operating profit margin of 71.9 per cent of revenues.

Perth and Brisbane airports maintained their 'good' rating for overall service quality on aeronautical and car parking operations, based on data analysis and user feedback. Melbourne and Sydney were rated at the top end of 'satisfactory'. Perth Airport overtook Brisbane Airport with the highest overall quality rating of the four airports, possibly due to its investment program over the past few years.

Container stevedoring

Container stevedoring monitoring report 2016-17

On 1 November 2017 the ACCC released its annual Container stevedoring monitoring report 2016–17. The report stated that, while stevedoring operating profits per 20-foot equivalent unit (TEU) rose by over 25 per cent in 2016–17, there is increased competition with three stevedores now at the nation's three largest container ports. The ACCC noted though that the recent entrants would need to win a commercially viable share of the market for this competition to be sustainable.

The report also found that the volume of containers passing through Australia's container ports is the highest level recorded: Australian stevedores handled 7.2 million TEUs in 2016–17. Stevedoring revenue fell 4.5 per cent to \$138.80 per TEU, continuing a consistent trend as unit stevedoring revenue is about a quarter less than a decade ago in real terms.

The report also noted that the stevedoring industry is not reporting the same level of productivity improvements seen in previous years and the ACCC will be looking for this productivity growth to return in the future.

Financial markets

Northern Australia insurance inquiry

As noted in strategy 1 (page 63), the ACCC commenced an inquiry into the supply of residential building (home), contents and strata insurance products to consumers in northern Australia, following a Government direction in May 2017. The ACCC is required to provide interim reports to the Treasurer by 30 November 2018 and 30 November 2019. It must provide a final report by 30 November 2020.

The ACCC began its public consultation as part of the inquiry in October 2017 with the release of an issues paper seeking comment on a range of issues, including:

- insurance pricing, the key cost components of insurance, and insurer profitability
- competitiveness of markets for insurance in northern Australia
- how consumers interact with insurance markets, including any barriers to consumers making wellinformed choices
- other regulatory issues relevant to the insurance industry and the role that mitigation can play in improving affordability.

In November and December 2017 the ACCC held public forums in Townsville, Cairns, Alice Springs, Darwin, Karratha, Broome, Rockhampton and Mackay. The forums provided local communities with an opportunity to raise their concerns directly with ACCC Commissioners and staff. Local residents and property owners have expressed frustration, confusion and anxiety about the affordability and availability of insurance.

The ACCC also issued detailed information requests to eight insurers. The notices, issued under s. 95ZK of the CCA, required the insurers to provide detailed information on the pricing of insurance, claims data, how premiums for the relevant insurance products are set and a range of other information to assist the inquiry. The ACCC has engaged actuaries to assist in the analysis of this data.

In April 2018 the ACCC published 280 submissions received in response to the issues paper and summaries of the eight public forums.

In June 2018 the ACCC provided an update report to the Treasurer, which contains preliminary observations about the northern Australia insurance market drawn from public consultation and information gathered from insurers. This report noted that, while northern Australia makes up only 5 per cent of the number of policies, it accounts for about 10 per cent of premium revenue. The report also indicates current lines of inquiry including scrutiny of how insurers are setting premiums, the level of competition in insurance markets, the role and significance of commission payments, how insurers account for mitigation initiatives and to what extent insurers are communicating effectively with consumers about their insurance.

The ACCC's next report is due in November 2018. It will contain initial findings and recommendations to the Government and industry on opportunities for change.

Ports

Access dispute over charges at the Port of Newcastle

The ACCC has a role under Part IIIA of the CCA to arbitrate access disputes where a service has been 'declared'. When an access seeker and the provider cannot agree on the terms and conditions of access to the declared service, either party may request the ACCC to arbitrate the dispute.

The ACCC was notified of a third-party access dispute between Glencore Coal Assets Australia Pty Ltd (Glencore) and Port of Newcastle Operations Pty Ltd (PNO) concerning the shipping channel service at the Port of Newcastle. Glencore notified the ACCC of the access dispute on 4 November 2016 and requested that we arbitrate.

The notification relates to the level of access charges and access terms set by PNO for users of the shipping channel service at the port, which was declared under Part IIIA of the CCA by the Australian Competition Tribunal in June 2016.

In November 2017 the Federal Court dismissed an application by PNO for judicial review of the ACCC's decision that an access dispute had been valid

Regulatory guidance

Guidelines on arbitrations under the National Access Regime

The ACCC finalised guidelines for the deferral of arbitrations and backdating of determinations under Part IIIA of the CCA. This followed consultation on draft guidelines commenced in the previous year.

The guidelines provide information on how the ACCC can:

- defer arbitration of an access dispute under Part IIIA where it is also considering an access undertaking on related issues
- backdate a final determination and apply payment of interest to a backdated determination.

The guidelines relating to deferral of arbitrations and backdating of determinations were registered on the Federal Register of Legislative Instruments on 30 August 2017 and have been published on the ACCC website.

Supporting our performance—improving regulatory practices

Each year we seek to improve our effectiveness in our regulatory practices. In 2017-18 we made improvements through a range of activities, including industry consultation and engagement; and engagement with sector regulators, with our international counterparts and in multilateral international forums.

Regulatory Economic Unit

The ACCC Regulatory Economic Unit increases the quality of economic analysis available to the ACCC and AER and promotes the consistent use of economic principles across the different sectors that we regulate. Its economic specialists provide advice to all areas of the ACCC and AER; research and develop best practice regulatory techniques; and contribute to economic discussion, debate and training on regulatory issues.

Industry engagement

The ACCC consults extensively as part of its regulatory processes. We have also established a number of forums for ongoing engagement with industry participants and other regulators, both nationally and internationally. These forums cover the range of regulatory functions that the ACCC performs and the variety of industry sectors with which we are involved.

In particular, we hold regular bilateral meetings with the New Zealand Commerce Commission to discuss communications matters in both countries.

The ACCC and AER also participate in international activities so that we can be at the forefront of developments in regulatory practice and share and learn about different approaches to effective regulation on an ongoing basis. In March 2018 for example, AER Chair Paula Conboy and ACCC Commissioner and AER Board member Cristina Cifuentes delivered presentations to international regulatory leaders at the triennial World Forum on Energy Regulation in Mexico.

Utility Regulators Forum

The Utility Regulators Forum is coordinated by the ACCC and comprises the ACCC and AER and state and territory and New Zealand economic and sector regulators. Its meetings are an important opportunity to share information about priorities and regulatory approaches.

We publish the Utility Regulators Forum's quarterly newsletter *Network* on our website in March, June, September and December. The newsletter features news about regulatory issues and the latest decisions.

The forum meets every six months. The most recent meeting was held in May 2018.

ACCC/AER Infrastructure Consultative Committee

The Infrastructure Consultative Committee facilitates discussions on the broad issues of infrastructure and infrastructure regulation. Membership reflects the diversity of infrastructure interests, including in energy, telecommunications, water, rail, ports, and airports.

The committee meets every six months. At its most recent meeting, in May 2018, the ACCC provided updates for participants on the various market studies and other inquiries that are underway. Energy market conditions and infrastructure-related issues in communications and transportation are important items of discussion among members.

The committee also provides an opportunity for industry representatives to give updates on issues affecting their sectors. For the ACCC and AER this is an important source of feedback from stakeholders in infrastructure sectors.

OECD Network of Economic Regulators

The ACCC's participation in the Organisation for Economic Cooperation and Development (OECD) Network of Economic Regulators Forum provides important opportunities to share learning on regulatory issues and develop best practices. ACCC Commissioner and AER Board member Cristina Cifuentes sits on the board of the Bureau of the Network of Economic Regulators along with seven representatives from other international regulators.

This year the board considered issues such as building regulatory policy systems, stakeholder engagement, the role of regulators in the governance of infrastructure and safeguarding regulators against undue influence.

The most recent OECD forums were held in November 2017 and April 2018.

ACCC Fuel Consultative Committee

The Fuel Consultative Committee was established in 2010 to provide an opportunity for dialogue between the ACCC and representatives from motoring groups, refiner-wholesalers, major and independent fuel retailers and industry peak organisations. The information that committee participants share increases the ACCC's understanding of fuel industry issues and assists it to undertake its role on issues related to competition and consumer protection in the fuel industry.

The committee met in November 2017 and May 2018. The ACCC provided updates on our recent fuel-related activities, including progress of quarterly monitoring reports and petrol market studies, and activities implemented under the new petrol monitoring direction. Committee members provided updates on a range of matters, including developments in the Australian fuel supply chain, feedback on ACCC fuel monitoring activities, implementation of price information arrangements in different jurisdictions, consumer take-up of fuel price information services, and the impact of government regulation on market participants.

ACCC and AER Regulatory Conference

The ACCC and AER host an annual regulatory conference that brings together industry participants, policymakers, academics and regulators from around the world to consider the latest ideas about regulatory theory and practice.

The 2017 conference was held in Brisbane on 27-28 July and was attended by more than 400 delegates. The theme of the conference was 'Innovation and Better Regulation' and included discussion of:

- current issues relating to the economic regulation of infrastructure from a UK, European and US perspective
- how other countries address the potential market power of airports
- innovative regulatory developments in the telecommunications, water and electricity sectors
- what makes for an excellent economic regulator, and new insights on how to reduce the risk of regulatory failure
- international comparisons of legal reviews of regulatory decisions
- gains from innovation in the communications sector
- the role of policy makers in transitioning to the electricity industry of the future
- whether infrastructure regulation is dwarfed or bypassed by innovation.

Program 1.2— Australian Energy Regulator

Strategy 4: Promote efficient investment in, operation of and use of energy services

Performance results and analysis

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

Role and functions

Strategy 4 is the Australian Energy Regulator (AER) strategy. It reflects the objectives of the national energy legislation. This strategy is important because it aims to ensure consumers pay no more than necessary for a safe, reliable and secure supply of energy. The AER operates under the *Competition and Consumer Act 2010* (Cth) (CCA) and the national energy legislation and rules to promote a competitive, innovative and flexible energy sector with appropriate consumer protections. The AER seeks to:

- provide effective network regulation—in particular, regulation relating to the natural monopoly infrastructure elements of the supply chain (energy networks)
- build consumer confidence in retail energy markets and support efficient wholesale energy markets through its compliance and enforcement regime
- monitor and report on the effectiveness of competition and the monitoring and enforcing compliance by participants in the competitive sections of the market.

In 2017-18 we regulated energy markets and networks in eastern and southern Australia as well as networks in the Northern Territory (NT).

Our functions include:

- setting the amount of revenue that network businesses can recover from customers' use of regulated energy networks (electricity poles and wires, and gas pipelines) and ensuring that networks comply with electricity and gas laws and rules
- wide-ranging responsibilities in retail energy markets, including:
 - operating the Energy Made Easy comparator website (www.energymadeeasy.gov.au)
 - promoting compliance with, and enforcing, retail energy laws and rules
 - authorising or exempting new market entrants
 - approving retailers' policies for dealing with customers in hardship
 - administering the national Retailer of Last Resort (RoLR) scheme
 - reporting on retailer performance and market activity
- monitoring wholesale electricity and gas markets to ensure compliance with legislation and rules, taking enforcement action where necessary
- publishing information on energy markets, including the annual State of the energy market report.

Our deliverables in this area are:

Deliverable 4.1	Deliver network regulation to promote efficient investment in energy network services that customers value
Deliverable 4.2	Build consumer confidence in retail energy markets
Deliverable 4.3	Promote efficient wholesale energy markets

Priorities

The AER's priorities for 2017-18 were:

- delivering regulatory outcomes to promote efficient investment in energy network services that customers value
- building consumer confidence in energy markets.

Powers

The AER applies the following laws, regulations and rules, which together make up the national energy legislation and rules:

- National Electricity Law
- National Electricity Regulations
- National Electricity Rules (NER)
- National Energy Retail Law (Retail Law)
- National Energy Retail Regulations
- National Energy Retail Rules (Retail Rules)
- National Gas Law
- National Gas Regulations
- National Gas Rules (NGR).

From 2017-18 the AER is receiving additional funding to ensure we are equipped to meet the challenges of our expanded roles and functions. This will strengthen our ability to make Australian energy consumers better off, now and in the future.

Performance indicators

Deliverable 4.1: Deliver network regulation to promote efficient investment in energy network services that customers value

This deliverable is about regulation that promotes economically efficient investment in, and efficient operation and use of, energy network services for the long-term interests of consumers. Such regulation also supports competition in upstream and downstream markets.

Table 3.77: Performance indicators for deliverable 4.1

Performance indicator	2016-17	2017-18	
	Result	Target	Result
Number of completed revenue decisions for electricity networks and gas pipelines	3	8	8
Percentage of revenue reset determinations for electricity networks and gas pipelines and distribution networks completed within statutory timeframes	67%1	100%	80%
Number of annual benchmarking reports on electricity networks	2	1	1
Percentage of disputes resolved within legislated timeframes, including on network access and connections, and regulatory investment tests	N/A	100%	100%
Number of electricity distribution annual pricing (tariff) proposals and annual gas tariff variations approved	N/A	25	27

Note: 1. The revised proposals from AusNet Services and Transgrid contained a significant amount of material, including consultancy reports. In order to consider the new material submitted by AusNet Services, the AER revised the release date of the final decision from 31 January 2017 to 28 April 2017.

Deliverable 4.2: Build consumer confidence in retail energy markets

This deliverable is about ensuring that consumer confidence—which is essential to effective participation in markets—is strong enough to drive competitive outcomes and innovation. We seek to empower consumers in retail energy markets through activities to raise awareness and understanding of their rights and choices.

Table 3.78: Performance indicators for deliverable 4.2

Performance indicator	2016-17		2017-18	
	Result	Target	Result	
Number of annual reports on compliance in, and performance of, retail energy markets	2	2	2	
Number of retailers' hardship policies and proposed amendments assessed (externally driven)	3	N/A	5	
Percentage of new and amended retailer hardship policies assessed within 12 weeks of receiving all relevant information	67%	100%	80%	
Number of retail authorisations and exemptions assessed (externally driven)	8 authorisations 9 individual exemptions	N/A	14 authorisations 14 individual exemptions	
Percentage of retail authorisations and exemptions applications assessed within 12 weeks of receiving all relevant information	100%—authorisations 89%—exemptions	100%	71%—authorisations 93%—exemptions	
Support the timely transfer of affected customers in the event of a retailer failure (externally driven)	1 electricity RoLR event (Urth Energy)	N/A	0	
Number of formal energy retail enforcement interventions (court proceedings commenced, s. 288 (NERL) undertakings accepted, infringement notices issued) (externally driven)	17 infringement notices paid	N/A	17 infringement notices paid	
Percentage of offers published on the AER's Energy Made Easy price comparator website within two business days of receipt from retailers	100%	100%	100%	

Deliverable 4.3: Promote efficient wholesale energy markets

This deliverable is about conducting monitoring activities that allow the AER to assess whether the market is operating efficiently and, where we identify issues, to take action to prevent further detriment. Targeted enforcement action encourages broad compliance across the market.

Table 3.79: Performance indicators for deliverable 4.3

Performance indicator	2016-17		2017-18
	Result	Target	Result
Number of quarterly reports on compliance in wholesale electricity and gas markets	4	4	4
Percentage of quarterly compliance reports published within 6 weeks of the end of the quarter	50%	100%	0%
Number of audits completed of systems for energy businesses that are critical to market efficiency and energy security	0	2	0
Number of weekly electricity and gas monitoring reports	94	104	104
Percentage of weekly reports published within 12 business days of the end of the relevant week	70%	75%	83%
Number of reports on extreme price events in wholesale electricity and gas markets (externally driven)	25	N/A	14 electricity; 1 gas
Percentage of reports on wholesale electricity market high price events and significant price variations in spot gas markets activity published within statutory timeframes	68%	100%	100%
Number of targeted reviews of compliance with the national energy rules	3	4	7
Number of reports on effective competition in the wholesale electricity market	N/A	1	2
Publish the State of the energy market report	Yes	Yes	No

Analysis of performance

In 2017-18 the AER faced challenges and changes in its operating environment and market conditions. In relation to distribution and transmission networks, the AER completed a number of regulatory reviews and commenced developing the frameworks and approaches for the next round of energy network decisions. Over the year, the AER had South Australian and Victorian/Australian Capital Territory (ACT) matters in the Australian Competition Tribunal (the Tribunal), as well as SA Power Networks appealing a Tribunal decision to the Full Federal Court of Australia. The AER also sought Full Federal Court review of the Tribunal's decisions on the New South Wales (NSW) and ACT networks. These ongoing appeals absorbed significant resources during the year.

A key priority for 2017-18 has been improving the way we engage with stakeholders and the wider community. For the review of the *Rate of return guideline*, the AER undertook an extensive engagement and consultation program. The AER also worked with Energy Consumers Australia, Energy Networks Australia and AusNet Services on the NewReg project—an ongoing project aimed at delivering an enhanced and more open approach to electricity network regulation that gives consumers more of a voice in the process.

In 2017-18 as an outcome of the 2017 review of retailer hardship policies, a series of protective measures were established for vulnerable energy customers who are experiencing financial difficulties. The measures build a clear link with the aims outlined in the AER's Strategic Statement released in August 2017. A new \$1 billion demand management incentive scheme gives electricity consumers more choice and helps them leverage value from technology that manages household electricity use. This demand management initiative will help business to build the networks of the future and will provide the AER with the opportunity to realise key agency outcomes across innovation and engagement with consumers.

Recent developments and policy reviews on wholesale energy markets led us to direct resources to those processes with the aim of improving market efficiency. Much activity related to upstream gas markets and the impacts of a changing generation fleet on power system security in the electricity market.

We focused on a number of high-priority events in the wholesale electricity and gas markets. These included a blackout in South Australia (SA) and several high-price, high-impact events during the 2016–17 summer. This prioritisation restricted our capacity to deliver some of our projects within their scheduled timeframes.

Energy markets are undergoing significant change, from both policy and participant perspectives. Therefore, a flexible approach to managing resources is required. Future challenges include the emergence of new products, services and technologies that are changing the way consumers produce, buy and use energy. Innovative ideas are allowing the development of new business models that are reshaping the energy market. We are aware of, and engaging with, these challenges.

AER reporting

This annual report meets the AER's formal reporting requirements under the *Public Governance*, *Performance and Accountability Act 2013* (Cth). The AER publishes a separate annual report (available on the AER website) to provide more detail on its performance indicators, as well as information on activities, staff and expenditure.

Deliver network regulation to promote efficient investment in energy network services that customers value: Actions undertaken to achieve our purpose

Deliverable 4.1: Deliver network regulation to promote efficient investment in energy network services that customers value

The AER's role in network regulation falls into two broad categories:

- First, we determine the amount of revenue that network businesses can recover from customers' use of regulated energy networks (electricity poles and wires and gas pipelines).
- Secondly, we undertake broader oversight of regulated networks. Some roles (such as annual tariff approvals) recur regularly; the timing of others (such as assessing cost pass-throughs, reviewing contingent projects, and resolving connection and other disputes) is less predictable.

Network revenue decisions

One of the 2017-18 priorities for the AER strategy was to deliver regulatory outcomes to promote efficient investment in energy network services that customers value. During the year we regulated electricity networks and covered gas pipelines in all jurisdictions other than Western Australia (WA).

The regulatory framework requires network businesses to periodically (usually every five years) submit regulatory proposals (electricity) and access arrangements (gas) for the AER's approval. We assess the proposals against legislative criteria, taking account of issues raised in consultation. This process takes around 30 months, when the framework and approach stage is included.

In determining allowable revenues, we account for the efficient costs of providing network services, allowing an adequate return on capital to network owners. We undertake extensive consultation in making network revenue determinations. In electricity reviews we publish a framework and approach, then an issues paper, draft decision and final decision. In gas reviews we publish a draft decision and final decision. We hold public forums and consult with network businesses and other stakeholders, including consumer representatives, governments and investment groups. The Consumer Challenge Panel (CCP) advises us on issues important to consumers. We also consult with state and territory consumer representative groups.

In 2017-18 we completed three electricity network revenue determinations and five gas pipeline decision (final decisions) and progressed a further seven processes (table 3.80). In making our decisions we applied new incentive schemes (with benefit sharing with consumers), implemented a more flexible approach to estimating rates of return, strengthened consultation requirements and placed greater emphasis on benchmarking to assess electricity network proposals.

Table 3.80: Regulatory reviews in 2017-18

Jurisdiction	Business	Determination period	Status
Electricity transmi	ssion networks		
NSW	TransGrid	1 July 2018-30 June 2023	Final determination released 18 May 2018
SA	ElectraNet	1 July 2018-30 June 2023	Final determination released 30 April 2018
Vic-SA	Murraylink interconnector	1 July 2018-30 June 2023	Final determination released 30 April 2018
Tas	TasNetworks	1 July 2019-30 June 2024	Issues paper published 28 March 2018

Electricity distr	ibution networks		
NSW	Essential Energy Ausgrid Endeavour Energy	1 July 2019–30 June 2024	Proposal received 30 April 2018
ACT	Evoenergy	1 July 2019-30 June 2024	Issues paper published 28 March 2018
NT	Power and Water Corporation	1 July 2019-30 June 2024	Issues paper published 28 March 2018
Tas	TasNetworks	1 July 2019-30 June 2024	Issues paper published 28 March 2018
Gas transmissio	on pipelines		
Vic	APA Victorian Transmission Systems	1 January 2018-31 December 2022	Final decisions for the three networks published 30 November 2017
Qld	Roma (Wallumbilla) to Brisbane Pipeline	1 July 2017–30 June 2022	Final decision published 30 November 2017
Gas distribution	n networks		
Vic	Australian Gas Networks (Victoria and Albury) Multinet Gas AusNet Services	1 January 2018-31 December 2022	Final decision published 30 November 2017

Regulatory process improvements

We are progressively strengthening the regulatory framework for energy networks. Some recent improvements are outlined below.

Demand management and innovation

In December 2017 we published a new demand management incentive scheme and innovation allowance mechanism. The scheme's objective is to incentivise electricity distribution businesses to undertake efficient expenditure on non-network options for demand management. The innovation allowance aims to encourage research and development in demand management projects that may potentially reduce network costs in the longer term.

The scheme and mechanism complement our ongoing reforms targeting consumer choice and more efficient network pricing outcomes. These include our work on tariff reform, metering contestability, ring-fencing and strengthening the transparency and efficiency of replacement expenditure.

Review of regulatory tax approach

The estimate of expected tax payments is one component we consider when we set revenue allowances for regulated electricity and gas networks. The AER determines the expected cost of corporate tax in accordance with the relevant legislation—that is, the NER and NGR. It is an incentive framework, so the energy networks retain the benefit (or detriment) where costs are lower (or higher) than expected. By changing the approach to estimating tax for regulated energy networks, we change the total revenue allowance for these businesses.

Preliminary advice from the Australian Tax Office (ATO) identifies a number of drivers causing an apparent material discrepancy between the tax allowances set by the AER and the actual tax payments made to the ATO by the regulated networks. The AER will investigate the difference between tax allowances and tax payments, including using its information-gathering powers if necessary. The AER will examine these drivers and consider how they might be addressed.

We released an issues paper in May 2018 to commence the review. We provided an initial public report in June 2018. A final report and recommendations are expected by December 2018.

Rate of return guideline

Our *Rate of return guideline* sets out the approach by which we will estimate the rate of return. The rate of return comprises the return on debt and the return on equity as well as the value of imputation credits.

Estimation of the rate of return is complex, and the rate of return is a significant driver of regulated revenue.

We commenced review of the guideline in October 2017. We released an issues paper requesting views on whether our current approach to setting the allowed rate of return remains appropriate. This issues paper follows a consultation paper we published in July 2017, in which we sought views on how we could best run the guideline review process, and a pre-issues paper public forum we held in September 2017.

Data management

We continued to refine our database for collecting, storing and reporting on the large volumes of information received from network businesses.

Engaging our stakeholders

To ensure we deliver regulatory outcomes that customers value, we engage our stakeholders and consumers regularly.

Consumer Challenge Panel

Our CCP was set up in July 2013 to provide input on issues of importance to consumers. Regulatory determinations are technical and complex processes which can make it difficult for ordinary consumers to participate—our expert CCP members bring consumer perspectives to the AER to better balance the range of views considered as part of our decisions. During 2017–18, the panel, as a whole, met four times.

NewReg initiative and consultation

In May 2018, together with Energy Networks Australia and Energy Consumers Australia, we launched NewReg—potentially an enhanced, more open approach to electricity network regulation. NewReg is to be tested in a trial with Victorian distribution network AusNet Services.

The NewReg approach aims to improve the efficiency and effectiveness of network regulation, increase consumer trust and confidence in the process, and deliver the outcomes that consumers most value when determining how much they pay for network services.

The NewReg project will run a 'live' public engagement process throughout 2018. This consultation on the approach will happen in parallel with a 'live' trial to enable stakeholders to contribute to the development of the approach in real time.

The combined trial and consultation on the approach will enable the project partners to assess how effective NewReg is in delivering a network revenue proposal where energy consumers' preferences drive network decision-making about investment and operational priorities. The results would inform discussions about possible future changes to the NER.

Regulation of non-scheme pipelines

The AER commenced a role of enforcing and monitoring compliance with the non-scheme pipeline Information Disclosure and Arbitration Framework (Part 23 of the NGR).

On 14 December 2016 the Council of Australian Governments (COAG) Energy Council agreed to the recommendations outlined in Dr Michael Vertigan's *Examination of the current test for the regulation of gas pipelines* report. The examination highlighted the unequal levels of bargaining power and access to information that shippers face when seeking access to pipeline services. The examination recommended the establishment of a new commercial arbitration framework, pricing principles and information disclosure requirements that will apply to unregulated pipelines that provide access to third parties.

The framework became operational on 1 August 2017. It provides for a staged approach to assist shippers seeking to access pipeline services. The stages consist of information disclosure by non-scheme pipelines, access negotiations, and the arbitration of access disputes. The framework is intended to incentivise parties to negotiate rather than relying on arbitration.

Information disclosure

The Information Disclosure and Arbitration Framework provides for pipeline operators to publish the information that shippers need to make an informed decision about whether to seek access to a pipeline service and to assess the reasonableness of an offer made by the pipeline operator. The publication and exchange of this information is intended to facilitate timely and effective commercial negotiations in relation to access to non-scheme pipelines.

A service provider for a non-scheme pipeline must prepare, maintain and publish:

- service and access information
- standing terms
- financial information
- weighted average price information.

Information must be provided in accordance with the access information standard and timetable set out in the rules. The timetable provides for the publication of the first set of:

- pipeline information, pipeline service information and standing terms by 1 February 2018
- service usage information (for January 2018) by 28 February 2018
- service availability information (for the next 36 or 12 months, as applicable) by 31 January 2018
- financial information and weighted average price information by 31 October 2018 or 31 January 2019, depending on the service provider's financial year.

This information is to be published on each service provider's website, and the AER has a compliance and enforcement role with respect to information disclosure.

Arbitration of access disputes

The Information Disclosure and Arbitration Framework provides for an arbitration process to resolve access disputes in relation to non-scheme pipelines.

The arbitration mechanism is intended to provide a credible threat of intervention to constrain the exercise of market power during negotiations. If a dispute is referred to arbitration, the aim is to provide for final resolution in a cost-effective and efficient manner. Part 23 (Division 4) outlines the pricing and other principles that the arbitrator must have regard to when determining access disputes. These principles are designed to provide for access at prices and on other terms and conditions that, so far as practical, reflect the outcomes of a workably competitive market.

Scheme administrator

The AER is the scheme administrator under the arbitration mechanism (except in Western Australia).

The AER has established a pool of experienced arbitrators to determine access disputes. The AER refers access disputes to arbitration and liaises with parties on the appointment of a pool arbitrator. Part 23 (Division 4) of the NGR sets out when a dispute can be referred to arbitration and the process for doing so. Parties may select an arbitrator from the AER's pool of arbitrators. If parties fail to select an arbitrator in accordance with the rules, the AER is then required to decide who the arbitrator will be.

Arbitration guide

In September 2017 the AER published a non-binding arbitration guide—the *Non-scheme pipeline* arbitration guide. The purpose of the guide is to give pool arbitrators, prospective users and service providers for non-scheme pipelines guidance about the process for requesting access and the determination of access disputes under the NGL and the NGR.

Final access determination—Tasmanian Gas Pipeline

In November 2017 the AER was notified of a dispute between the owner of the Tasmanian Gas Pipeline and Aurora Energy (Tamar Valley) Pty Ltd (AETV). The arbitrator appointed by the parties made a final decision on 12 April 2018.

Information regarding the arbitration was published by the AER on its website. The rules are specific about what information the AER is to publish. The contents of the arbitrator's final determination, including price and terms and conditions, will not be published, as it is confidential to the parties.

Exemptions from the framework

Under the NGR, a non-scheme pipeline owner/operator may apply to the AER for an exemption from the Information Disclosure and Arbitration Framework where the pipeline satisfies the relevant exemption criteria. The AER determines whether or not an exemption is granted. Exemptions may be time limited, subject to conditions, and varied at the AER's discretion.

The AER published a form setting out information required for it to make an assessment. To date the AER has considered over 60 exemption applications.

The AER's process of granting an exemption is time limited, and the AER has published and maintains a public register of all the exemptions it has granted.

Appeals against regulatory decisions

In October 2017 the federal Government passed the Competition and Consumer Amendment (Abolition of Limited Merits Review) Bill 2017 (the new legislation), which removes access to the limited merits review (LMR) regime for reviewable regulatory decisions under the national energy laws. Under the LMR, network businesses, consumer groups and others participating in our processes could apply to the Australian Competition Tribunal (the Tribunal) to review our regulatory decisions. A successful review had to demonstrate that addressing the grounds of review would lead to a 'materially preferable outcome in the long-term interests of consumers'. If the Tribunal found that the AER had erred, it could substitute its own decision or remit the matter to the AER to remake the decision. A network business, consumer or party that has lodged a submission to the AER's process could also apply to the Federal Court for judicial review of the AER decision or the Tribunal decision.

New South Wales and ACT networks

In May 2015 the NSW (electricity and gas) and ACT (electricity) distribution networks applied to the Tribunal for a limited merits review of our regulatory decisions for those networks made in April and June 2015. The grounds for review focused on rate of return issues and the use of operating expenditure benchmarks. The Public Interest Advocacy Centre also applied for a Tribunal review of our decisions on the NSW electricity distribution networks, contending that the revenues we allowed were too high.

On 26 February 2016 the Tribunal handed down its decisions. It did not accept the revenues that the businesses proposed. However, it remitted the decisions on operating expenditure to the AER to reconsider using a broader range of modelling and benchmarking; a bottom-up review of operating costs (electricity networks only); and the transition to a new method for estimating return on debt (all networks). The Tribunal substituted an alternative value of gamma (relating to tax imputation credits) for all networks.

The AER appealed the Tribunal decisions to the Full Federal Court. On 24 May 2017 the Full Federal Court handed down its judgment on the matter. It upheld the AER's appeal against the Tribunal's decision on income tax costs but upheld the Tribunal's findings on the networks' operating expenses and the cost of debt.

In May 2018 the AER published its final decision on the remade distribution determination for Essential Energy for the 2014–2019 regulatory control period. In December 2017 the AER published its position paper for stakeholder input on issues related to the remaking decision for electricity distributors Ausgrid, Endeavour Energy, Evoenergy (formerly ActewAGL) and Jemena Gas Networks.

SA Power Networks

SA Power Networks was granted leave in May 2016 to seek merits review of the AER's November 2015 revenue decision on the network. The South Australian Council of Social Service (SACOSS) also sought leave to appeal this decision, but leave was not granted. The Tribunal conducted the merits review hearing in August 2016. The Tribunal did not accept any of SA Power Networks' grounds of review.

SA Power Networks appealed the Tribunal decision to the Full Federal Court. The Full Federal Court heard this matter in May 2017. On 18 January 2018 the Court handed down its judgment dismissing SA Power Networks' appeal and confirming the AER's revenue decision. SA Power Networks also sought judicial review in the Full Federal Court of the Tribunal's decision. The application for judicial review filed in the Federal Court was subsequently discontinued.

Victoria electricity and ACT gas distribution network

The Victorian electricity distribution networks and the ACT gas distribution network sought merits review of the AER's May 2016 revenue decisions.

The Tribunal conducted the merits review hearing in November 2016. In October 2017 the Tribunal handed down its judgment confirming the AER's revenue decision for the five Victorian electricity distribution networks and ACT gas distribution pipeline, rejecting all grounds of review sought by the businesses.

Judicial review of these decisions was sought in addition to applications for merits review. The application for judicial review filed in the Federal Court was subsequently discontinued.

For further information, see appendix 9, pages 308-309.

Oversight of network regulation

The AER's role in network regulation extends beyond making network decisions and approving access arrangements. We also have a wide range of broader regulatory oversight roles.

Tariff assessments

The AER conducts annual reviews of tariffs for electricity distribution services and gas pipeline charges to ensure that they do not breach revenue or pricing limits and that they reflect underlying costs.

In 2017-18 we reviewed and approved tariff applications from 14 electricity distribution businesses and 13 gas transmission and distribution businesses. The proposals related to prices applying in 2018-19. In Victoria, the proposals apply in the 2018 calendar year.

Cost pass-throughs

We assess applications by network businesses to pass through to customers costs arising from events outside their control that were not anticipated when their regulatory decisions were made.

Before approving a pass-through, we must consider the efficiency of the expenditure and actions to mitigate costs. In 2017–18 we approved cost pass-through applications for:

- the return to customers of reductions in costs relating to ElectraNet providing network support
- the return to customers of a change in costs relating to AusNet Services easement tax payable.

Contingency projects

On 1 May 2016 the Electricity Safety (Bushfire Mitigation) Amendment Regulations 2016 (Amended Bushfire Mitigation Regulations) came into effect in Victoria. The amended regulations require Victorian distributors to install Rapid Earth Fault Current Limiters (REFCLs) at designated zone substations.

During 2017–18 Victorian distribution businesses AusNet Services and Powercor made applications to the AER to amend the businesses' approved revenue determination to include funding to comply with new bushfire safety regulations.

On 21 August 2017 the AER made final decisions in relation to the first tranche of Powercor's and AusNet Service's contingent project applications.

On 20 April 2018 Powercor and AusNet Services submitted applications seeking funding for the second tranche of REFCL installations and associated works. On 4 May 2018 we issued a notice to extend the deadline for making a decision in accordance with cl. 6.6A.2(j) of the NER. The new date for the decision is on or before 10 September 2018.

Incentive schemes

We operate incentive schemes for network businesses to improve their performance. We also administer the schemes and monitor compliance.

Electricity transmission incentives

The AER's Service Target Performance Incentive Scheme (STPIS) for electricity transmission networks encourages the network businesses to maintain and improve service performance and to reduce their impact on the wholesale market at times of network outages.

Electricity distribution incentives

Our STPIS for electricity distribution networks encourages the networks to maintain the existing level of supply reliability and to improve the reliability of supply where customers are willing to pay for these improvements. It aims to ensure efficiencies are not achieved at the expense of service performance. We review businesses' performance against the scheme annually.

We are in the process of consulting on improvements to the scheme. We expect to complete this review by August 2018.

Victorian fire reduction incentives

The AER administers the f-factor scheme—a scheme introduced by the Victorian Government to provide incentives for Victorian distribution networks to reduce the risk of fire starts from electricity infrastructure and to reduce the risk of loss or damage caused by fire starts.

All Victorian distribution network service providers reported better results (fewer fire starts) than the relevant benchmark targets in 2016. The rewards ranged from \$70 000 for Jemena to \$3.42 million for AusNet Services in this period. The total of rewards to all distributors was \$5.875 million for their 2016 results.

In December 2016 the Victorian Government introduced a new scheme under which each fire start will be weighted by a 'geography factor' and a 'time factor (fire risk)'. The risk factor of each fire start—known as ignition risk units (IRU)—will be determined by applying these two weighting factors. The overall IRU scores for all fire starts within a financial year will be measured against the benchmark IRU target. This will be applied after 2018.

Complaints and dispute resolution

The AER makes determinations on customer connection disputes with electricity distribution businesses under Part 10 of the National Electricity Law.

A customer who is dissatisfied with a connection offer from a distribution network business may request a review by the AER. These are brought to the Dispute Resolution Advisor.

We also investigate customer and stakeholder complaints and advise the complainants of our findings. If we find that a distribution business has breached its regulatory obligations, we use our enforcement powers to ensure future compliance.

On 2 May 2017 the AER received an application to formally arbitrate a dispute under Part 10 of the National Electricity Law. On 22 June 2017 the AER agreed to hear the matter and commenced an arbitration determination process, which has continued through 2017–18.

Performance reporting

The AER uses regulatory information notices to collect performance information from regulated network businesses. To support transparency and ensure stakeholders can access information affecting their interests, we publish the non-confidential information we receive.

In 2017–18 we published data on the operational and financial performance of electricity distribution networks in NSW, Queensland, South Australia, Tasmania, Victoria and the ACT for 2016–17.

In December 2017 we released our *AER annual benchmarking report: electricity distribution network service providers 2017* for electricity distribution and transmission networks. The report shows that the productivity of distribution networks improved in 2016.

Electricity distribution ring-fencing guideline

On 30 November 2016 we published our *Final ring-fencing guideline for electricity distribution*, which became effective from 1 December 2016. Ring-fencing separates the competitive and regulated parts of distribution network service providers (DNSPs) to protect the long-term interests of consumers. In 2017 the guideline was amended to address the need for improved clarity of certain terms and definitions used in the guideline and to address unintended consequences stemming from the way the guideline was originally drafted.

DNSPs had until 1 January 2018 to comply with the guideline. To give DNSPs time to make any changes necessary to comply with the guideline, 2017 was a transitional year. As part of this process, DNSPs submitted waiver applications to the AER, requesting specific exemptions from guideline obligations. We assessed these waiver applications taking into consideration the cost of complying with the guideline, the long-term interests of consumers and impacts of any waiver on the guideline objectives. We published our final decision in December 2017.

The guideline requires DNSPs to prepare annual compliance reports, accompanied by an assessment of compliance by an independent authority. On 15 June 2018 we published the *AER electricity distribution ring-fencing guideline: compliance reporting best practice manual* to support the guideline. The manual provides further guidance to DNSPs on how best to meet the compliance reporting obligations in the guideline. It will apply to all future DNSP annual compliance reports.

Policy input

We engage in policy reviews and rule changes relating to our network regulation role. In 2017-18 we made submissions to a number of Australian Energy Market Commission (AEMC) and COAG Energy Council policy reviews and rule change processes, including on:

- the distribution market model (draft paper)
- alternatives to grid-supplied network services (consultation paper)
- the Competition and Consumer Amendments (Abolition of Limited Merits Review) Bill 2017
- consumer participation in revenue determinations and associated regulatory processes (consultation paper)
- review of Victoria's electricity and gas networks safety framework (interim report)
- review of Victoria's Electricity Distribution Code (scoping paper)
- creating a binding rate of return instrument (draft legislation)
- Jemena Gas Networks revenue smoothing (consultation paper)
- establishing values of customer reliability (consultation paper and draft determination)

Network exemptions

The AER can exempt small electrical networks, such as those in apartment buildings, shopping centres and industrial parks, from registering with the Australian Energy Market Operator (AEMO). These networks, often referred to as 'embedded networks', are subject to a simplified regulation regime administered by the AER. The regime covers safety, metering, dispute resolution, network charging and access to retail competition.

Anyone who owns, operates or controls a small network can register as an exempt network service provider. We maintain a register on our website of the holders of network exemptions. Since commencing the register in 2012 we have processed around 3200 registrations.

Network planning and expansion

We have been making important improvements to our network planning and expansion framework, including:

- improving the guidance we provide to assist electricity network businesses in applying a cost-benefit analysis to assess the economic efficiency of proposed investments
- improving how the network planning and expansion framework applies to replacement expenditure
- developing guidance to assist electricity network businesses in providing annual planning report information in a more consistent and effective format.

We monitor and promote compliance of network businesses in conducting and consulting on a cost-benefit analysis before making large network investments (known as the 'regulatory investment test'). We also have a role in resolving disputes over how the tests are applied.

To support this role, we have been undertaking a large-scale review of the application guidelines for the regulatory investment tests. These application guidelines guide network businesses on how to apply each regulatory investment test as an effective and fit-for-purpose cost-benefit analysis. This guidance assists network businesses in consistently and transparently giving due consideration to what options are out there before identifying the best way to address needs on their networks.

As part of our application guidelines review, we published an issues paper in February 2018 and held a public forum in March 2018. After consulting on draft revisions to the application guidelines, we will complete the review in the third guarter of 2018.

Also, a rule change we requested relating to replacement expenditure took effect from July 2017. This change improves transparency in the planning of network replacement by requiring that network businesses include information on asset retirements and de-ratings in their annual planning reports. It also extends the current regulatory investment test framework to include replacement expenditure.

We also have a role in monitoring and promoting network businesses in publishing annual planning reports that identify the investments needed to deliver efficient network services. We have been supporting network businesses in providing this information in a more consistent and usable format so non-network businesses and consumers can use this information more easily. For instance, in June 2017, we published a system limitations template to improve the consistency and useability of distribution annual planning reports. We have also started developing guidelines that will provide a similar benefit to transmission annual planning reports.

Build consumer confidence in retail energy markets:

Actions undertaken to achieve our purpose

Deliverable 4.2: Build consumer confidence in retail energy markets

This deliverable aligns with one of the AER's priorities for 2017-18: to build consumer confidence in retail energy markets.

The AER regulates retail energy markets in Queensland, NSW, South Australia, Tasmania (electricity) and the ACT. The Retail Law and Retail Rules set out consumer protections and obligations on energy retailers, including how offers are marketed and the help provided to customers experiencing financial hardship. We:

- maintain the Energy Made Easy energy price comparator website for residential and small business customers
- monitor and enforce compliance (by retailers and distributors) with obligations in the Retail Law and Retail Rules
- oversee retail market entry and exit by assessing applications from businesses looking to become energy retailers, granting exemptions from the requirement to hold a retailer authorisation, and administering the national RoLR scheme to protect consumers and the market if a retailer fails
- report on the performance of the market and energy businesses (including information on energy affordability)
- approve customer hardship policies that energy retailers must implement for customers facing financial hardship and looking for help to manage their bills.

We do not set retail energy prices; rather, we guide and inform energy consumers so they can understand the range of energy offers available, make informed choices about those offers and be aware of their rights and responsibilities when dealing with energy providers. Our Energy Made Easy website is a key vehicle for providing this information in jurisdictions where the Retail Law operates.

We also produce publications (including new publications for consumers and consumer advocates) and web information on areas of the Retail Law.

Supporting consumers

Energy Made Easy

Our Energy Made Easy website includes a price comparison service to help consumers compare all generally available gas and electricity plans from all providers in their area. It also includes consumer information about energy offers, bills, prices and resolving problems.

In 2017-18 Energy Made Easy had 1 275 188 visits. Over the period, we published over 17 000 offers—over 13 000 electricity, over 1600 gas and 2300 dual fuel offers.

On 18 December 2017 the Federal Government announced increased funding to enhance the Energy Made Easy website. While the changes to the website will happen over time, work has commenced and the first phase is due for completion in late July 2018. The work includes a new interface for the website and new energy plan information documents for consumers in accordance with the revised *Retail pricing information guidelines*. Improvements to the website will make it easier for customers to compare energy plans and reduce the complexity of the information when they search for the best plan for them.

Prime Minister's commitments: Retail pricing information guidelines and Benefit change notification guidelines

Since September 2017 the AER has been progressing a number of projects in response to commitments that eight retailers made to the Prime Minister in August 2017 to address mounting community concerns about energy affordability and the retail energy market more generally.

The *Retail pricing information guidelines* mandate how retail energy plans and prices are presented and aim to help customers compare energy prices and make informed choices. They also give direction to energy retailers about providing information for our price comparator website, Energy Made Easy.

On 23 April 2018 the AER released version five of the guidelines. Key amendments include a requirement that energy plans are presented in a new document—the Basic Plan Information Document (BPID), which the AER developed to help customers compare plans. The BPID will contain key facts and features of a plan that can help customers work out if a plan is right for them, without overwhelming them with details. The BPID will also include comparison pricing information to help customers to compare on price rather than discounts. The new guidelines also include obligations about the display of plan information on retailer websites and in advertising and marketing material (including obligations for third-party comparison websites).

The new guidelines come into effect from 31 August 2018. Particular obligations under the guidelines will be introduced in stages by January 2019.

Under new rules, retailers are required to notify customers when a benefit under a market retail contract is ending or changing. The AER *Benefit change notice guidelines* require retailers to provide simple, clear information to customers about the benefit change and the actions they can take to compare plans on Energy Made Easy. Retailers will have to notify customers in accordance with the *Benefit change notice guidelines* from 1 October 2018.

Hardship policies

Once authorised, retailers are required to develop, maintain and implement customer hardship policies for their residential customers. The AER approves retailers' customer hardship policies. The purpose of a hardship policy is to identify customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis.

To be approved, the AER must be satisfied that the customer hardship policy:

- contains the minimum requirements, such as processes to identify customers experiencing payment difficulties due to hardship; and flexible payment options
- will, or is likely to, contribute to achieving the 'purpose' of a customer hardship policy.

We approved the following customer hardship policies in 2017–18:

- Sustainable Savings Pty Ltd, 17 April 2018
- Starcorp Energy Pty Ltd, 17 April 2018
- Flow Systems Pty Ltd, 21 May 2018
- PowerHub Pty Ltd, 7 June 2018.

If a retailer chooses to vary or amend all or part of its customer hardship policy, AER approval is required. In 2017-18 we approved one hardship policy variation: OC Energy Pty Ltd on 24 October 2017.

Engaging with consumers

Customer Consultative Group

Our Customer Consultative Group (CCG) helps us to understand consumer and small business concerns on retail energy issues. It meets at least three times in a calendar year.

The AER held three CCG meetings in 2017-18: in July and November 2017 and March 2018. The November meeting was a combined meeting with the ACCC's Consumer Consultative Committee. Topics discussed at the group's meetings over the year included:

- an update on the ACCC's Retail Electricity Pricing Inquiry
- the AER's work with the Australia and New Zealand Energy and Water Ombudsman Network on expanding dispute resolution services for customers of exempt sellers, including changes to the Retail exempt selling guidelines
- competition in metering
- retailers' hardship policies.

Engaging with consumers through social media

During 2017-18 the AER ran two campaigns using social media to promote our Energy Made Easy website and, in the longer term, increase consumer awareness of the Energy Made Easy brand.

The Tips to Switch campaign ran during August and September 2017. It used infographics posted on Facebook to promote Energy Made Easy and highlight factors customers should consider when searching for an energy plan.

The Switch to Something Better campaign ran during May and June 2018. It used a combination of online and social media channels, including real estate websites, LinkedIn, Facebook, the Chinese language social media platform Weibo, and Google AdWords and Bing search to reach targeted audience segments.

Other engagement

During 2017-18 the AER participated in several forums and workshops to promote better consumer understanding of the energy framework and their rights and obligations and to allow stakeholders to raise any issues of concern:

- We engaged with consumers and stakeholders throughout our network determinations. This
 included public forums on our issues papers and draft determinations and as part of the process of
 assessing tariff structure statements.
- We participated in a number of events aimed at raising consumer awareness of our Energy Made Easy website and promoting our new consumer resources—such as the updated Power to You brochure and animated language captioned videos—to key stakeholder groups. The events included hosting stalls and presenting at the EKKA Brisbane Show (August 2017); EPIC Canberra (October 2017); the Adelaide Home Show (October 2017); EWON Anti-Poverty Week in Penrith (October 2017) and Wagga Wagga (November 2017); the Sydney Royal Easter Show (March 2018); and Financial Counselling Australia's annual conference (Tasmania, May 2018).
- We engaged extensively with consumers, their representatives and other retail energy stakeholders in developing and reviewing AER guidelines and contributing to retail market policy issues. This engagement included:
 - convening a consumer and retailer stakeholder reference group to further inform our views on customer information and engagement issues for development of the revised *Retail pricing information guidelines*
 - collaborating with the Australian and New Zealand Energy Ombudsman on expanding ombudsman membership to include businesses that are on-selling energy in embedded networks ('exempt sellers')
 - holding retailer forums in September 2017 and February 2018. The September forum provided retailers with an update on the new requirements with the introduction of metering contestability in December 2017. The February forum focused on the outcomes of our hardship review and

requirements for the introduction of rules to strengthen the protections for customers using life support equipment

- participating as an observer on the Energy Comparator Code of Conduct working group, led by the Consumer Policy Research Centre
- participating as an observer on the Victorian Government's Retail Market Review implementation reference group
- drafting a rule change to strengthen protections for customers experiencing hardship.

Retail market entry and exit

The Retail Law requires a party selling energy 'to a person for premises' to either hold a national retailer authorisation or be exempt from that requirement. We are responsible for granting those authorisations and for the Retail Law's exempt selling regime. An authorisation allows a party to sell electricity or gas to any consumers in jurisdictions where the Retail Law operates.

Authorisations

A business must apply to the AER for an authorisation to sell energy. It must demonstrate appropriate capacity and suitability to perform as a retailer. We produce guidance for, and work closely with, potential new energy sellers during the application process to make sure they are aware of their obligations.

When we receive an application, we publish it on our website and seek submissions from interested parties before deciding whether to grant an authorisation. In 2017–18 we granted electricity retailer authorisations to:

- Evergy Pty Ltd, 5 June 2018
- ReNu Energy Retail Pty Ltd, 5 June 2018
- GloBird Energy Pty Ltd, 22 March 2018
- Apex Energy Holdings Pty Ltd, 13 March 2018
- Real Utilities Pty Ltd, 9 March 2018
- Discover Energy Pty Ltd, 23 January 2018
- Starcorp Energy Pty Ltd, 19 December 2017
- Sunset Power International Pty Ltd, 8 December 2017
- SIMEC ZEN Energy Retail Pty Ltd, 28 November 2017
- Power Club Ltd, 27 November 2017
- Flow Systems Pty Ltd, 28 September 2017
- PowerHub Pty Ltd, 18 August 2017
- Sustainable Savings Pty Ltd, 10 July 2017.

We granted a gas retailer authorisation to:

• GloBird Energy Pty Ltd, 22 March 2018.

Exemptions

Some energy sellers may be exempt from the requirement to obtain authorisation to sell electricity and gas. There are three types of exemptions:

- **Deemed exemptions**—for small-scale selling arrangements where the costs of registration would outweigh the benefits of increased regulation. A person covered by a deemed exemption need not apply to or register with the AER. Conditions generally apply.
- Registrable exemptions—for defined classes of energy-selling activities that need regulatory oversight, usually because of scale and market impact. These exemptions apply to a particular person or company for a particular site. They must be registered with the AER. As at 30 June 2018 there were around 3000 published registrable class exemptions.
- Individual exemptions—for specific situations where the activity is not covered by a deemed or registrable exemption. In 2017-18 we granted 14 individual exemptions. All but two of these were from businesses retrofitting existing sites to create embedded networks.

Our exempt selling guideline (see below) outlines the classes of deemed and registrable exemptions that apply, as well as the process for obtaining an individual exemption.

Retailer of Last Resort

The AER manages the RoLR scheme. If an energy retailer fails, its customers are transferred to another retailer so that those customers continue to receive electricity and/or gas supply. In 2017-18 we:

- appointed ActewAGL Retail as the default RoLR for gas customers connected to the Evoenergy gas network in the ACT
- appointed AGL Sales Pty Ltd as the default gas RoLR for customers connected to the Allgas gas network in Queensland
- appointed Origin Energy Retail Ltd as the default gas RoLR for customers connected to the Australian Gas Networks gas network in Queensland.

There were no RoLR events in 2017-18.

Amendments to exempt selling guideline

The AER must develop and publish an exempt selling guideline (AER (retail) exempt selling guideline). This guideline sets out who requires exemptions and the processes for registering or applying for exemptions. It outlines the various exemption types and classes, their eligibility criteria and exemption conditions. In addition, the guideline spells out our considerations on the Retail Law's exemption policy principles; and exempt seller-related factors and customer-related factors and how these have influenced our exemption decisions.

In 2017-18 we reviewed the guideline to improve dispute resolution arrangements for exempt customers. The revised guideline was published in March 2018.

New and amended core exemption conditions now require exempt sellers to have appropriate complaints and dispute-handling processes, and exempt sellers with residential customers must be members of, or subject to, energy ombudsman schemes where the scheme allows.

We also made a number of amendments to strengthen protections for exempt customers and to better align the protections of exempt customers to those of customers of authorised retailers.

Compliance and enforcement

The AER employs a risk-based approach to monitoring and enforcing compliance with the Retail Law and Retail Rules, focusing on the impact and probability of a breach. We apply a range of tools to encourage businesses to meet their obligations to their customers and deliver efficient market outcomes. Core approaches include:

- exception reporting, whereby regulated entities track and notify us of their own breaches
- targeted compliance reviews of key consumer protections, such as retailers' implementation of customer hardship policies
- audits of compliance with certain high-risk provisions, in response to market events or inquiries that raise compliance concerns
- engagement with other regulators and organisations (such as energy ombudsmen) to identify compliance issues
- engagement with energy businesses and other participants through forums and meetings on our approach to compliance and enforcement and to address industry concerns.

Our Compliance and enforcement statement of approach sets out how we go about these functions.

Enforcement action

The AER can respond to breaches by:

- accepting an administrative resolution
- seeking a court enforceable undertaking
- issuing an infringement notice of up to \$4000 for an individual or \$20 000 for a body corporate.
 We can issue an infringement notice if we believe that a business has contravened a civil penalty provision. Payment of an infringement notice penalty is not an admission of guilt but finalises the matter.
- starting court action with a civil penalty of up to \$20 000 for an individual or \$100 000 for a body corporate for each breach.

Infringement notices

In 2017-18, 17 infringement notices were paid by retailers and distributors for allegedly failing to meet obligations under the Retail Law and Retail Rules.

Nine of these related to a failure by distributors to provide customers registered as using life support equipment with the required four days' notice of planned interruptions to energy supply. For these:

- Evoenergy (formerly ActewAGL) paid penalties of \$40 000
- Ausgrid paid penalties of \$20 000
- Energex paid penalties of \$60 000
- TasNetworks paid penalties of \$60 000.

Origin Energy Electricity Ltd paid penalties of \$40 000 for its alleged failure to provide hardship assistance to a residential customer and its alleged wrongful disconnection of the customer's premises.

AGL South Australia Pty Ltd, AGL Sales Pty Ltd and AGL Retail Energy Ltd paid penalties totalling \$60 000 for the alleged failure to notify more than 1000 customers across NSW, South Australia and Queensland that their fixed-term retail contracts were due to end during the period between 2013 and 2017.

Taplin Management Pty Ltd, Taplin Properties Pty Ltd and Taplin Realty Pty Ltd paid penalties totalling \$60 000 for allegedly selling electricity at three shopping centres in South Australia without holding a retail authorisation or exemption.

Compliance audits

The AER's audit program focuses on the adequacy of businesses' compliance systems to detect and report on potential breaches of key consumer protection provisions in the Retail Law and Retail Rules.

The program targets a select number of retailers for auditing compliance with specific provisions under the Retail Rules and Retail Law. In November 2017–18 our audit program focused on compliance with disconnection obligations under the Retail Rules as well as reporting obligations to the AER. Five retailers were required to participate in the audit program. These retailers were AGL, Alinta, Ergon Energy, Lumo and Simply Energy. The audit results showed that only one of the retailers—Simply Energy—demonstrated compliance with all disconnection obligations covered by the audit as well as the reporting requirements to the AER. The AER is working with these retailers to ensure they are fully compliant and implement any remediation actions recommended by the auditors.

The second round of audits commenced in April 2018 and is on compliance with obligations around hardship under the Retail Law and reporting obligations to the AER. We expect to complete these audits by the second half of 2018.

Compliance checks and industry guidance

The AER periodically releases compliance checks for industry to highlight obligations and to emphasise the importance of effective compliance processes and systems. We may become aware of issues that require guidance through retailers' reports on their compliance with the Retail Law and Retail Rules or through discussions with ombudsman schemes.

In 2017-18 we issued two compliance checks relating to retailer obligations to resolve customers transferred in error and the guidance for authorised sellers in embedded networks for explicit informed consent.

We also provided guidance to industry on the transitional arrangements for the introduction of new obligations on registration of life support customers. We also commenced a campaign focused on smaller retailers to provide targeted information around reporting obligations and the AER's compliance and enforcement activities.

Compliance reviews

Retailer hardship policies

We commenced a review of retailer hardship policies in September 2017. The review assessed whether retailers were identifying customer hardship and engaging with and providing hardship assistance to their customers in line with the minimum requirements in the Retail Law.

Our review showed that most retailers had deficiencies in at least some aspect of their policy, and there were some discrepancies between commitments in hardship policies and what occurs in practice. We also observed a wide variation in the quality of hardship policies. Many lacked specific action statements as to how a retailer will act or respond and what assistance a customer is entitled to under legislation.

Amendments to compliance procedures and guidelines

We are responsible for energy market regulation, including ensuring compliance with the Retail Law, the Retail Rules and the applicable national regulations. Our Compliance procedures and guidelines support this function.

The Compliance procedures and guidelines establishes an exception reporting framework that requires businesses to report any potential non-compliance with certain obligations under the Retail Law and Retail Rules, and a process for the management of compliance audits under the Retail Law. The guidelines enable us to:

- monitor the extent to which retailers and distributors have complied with key obligations under the Retail Law and Retail Rules
- identify emerging or systemic compliance issues that may warrant further action.

A revised guideline commenced in December 2017. The new guideline incorporated changes to the compliance reporting template to improve both the quality and efficiency of reporting by streamlining requirements. This will permit better analysis of reporting trends and early identification of emerging issues.

With further changes to the Retail Rules and to align the framework with current compliance and enforcement priorities, we commenced consultation on a revised guideline in June 2018. We expect that the new guideline will commence in January 2019.

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Rule change request—strengthening protections for customer hardship

On 21 March 2018 the AER submitted a rule change request to the AEMC proposing changes to Part 3 of the Retail Rules. The changes aim to strengthen current retailer obligation to ensure hardship customers are adequately protected under legislation.

The proposed rule change would allow the AER to develop a binding customer hardship policy guideline that would be a single point of reference to industry on how the hardship obligations should be applied and provide customers with a clear understanding of their rights and entitlements.

Performance monitoring and reporting

On 22 November 2017 we released our fifth annual retail market performance report, AER annual report on compliance & performance of the retail energy market 2016-17. The report covers states and territories where the Retail Law applies. It consolidates quarterly data on the retail market, including customer contracts, competition and switching, customer service and complaints, energy bill debt, payment plans, hardship programs, energy concessions and disconnections. It also reports on energy affordability. This year we also combined our reporting in the compliance space with a chapter highlighting our compliance and enforcement activities.

In addition to a performance report, each quarter we publish key market and retail performance data on a range of indicators, including data on customer switching levels, customers experiencing payment difficulties, customer hardship, disconnections and reconnections, and complaints.

Changes to the retail performance reporting guidelines

In April 2018 we released the updated AER (Retail Law) performance reporting procedures and guidelines. The new guidelines will require retailers to report on new indicators from 1 January 2019. The increased data collected from retailers will provide increased transparency across the retail energy market specifically in relation to contract types, metering contestability and hardship issues.

Promote efficient wholesale energy markets: Actions undertaken to achieve our purpose

Deliverable 4.3: Promote efficient wholesale energy markets

Wholesale market functions

The AER has responsibilities in wholesale electricity and gas markets in jurisdictions other than Western Australia and the Northern Territory. The markets are:

- the National Electricity Market (NEM)—a \$11.7 billion per year spot market in eastern and southern Australia, in which over 300 generators compete to dispatch electricity
- spot markets for gas in Adelaide, Sydney, Brisbane and Victoria, in which 359 petajoules (PJ) are traded each year; and gas supply hubs at Wallumbilla (Queensland) and Moomba (South Australia).

We monitor these markets to:

- ensure that market participants comply with the underpinning legislation and rules
- detect irregularities and wider harm issues.

We report on these issues to strengthen market transparency and confidence. We draw on our monitoring work to support our compliance and enforcement activity; to advise the COAG Energy Council, the AEMC and other bodies on wholesale market issues; and to assist the ACCC—for example, by advising on mergers.

Wholesale market monitoring and reporting

We draw on our market monitoring role to publish weekly market reports as well as special reports relating to significant price events.

In December 2016 the AER acquired a new role in monitoring the effectiveness of competition in the NEM. Our new role focuses on identifying features that impact on the market's efficient functioning. We will monitor the markets on a regular and systematic basis and report at least every two years on performance, including whether there is effective competition and any features that may be detrimental to competition. After consultation with stakeholders, in March 2018 the AER released its final statement of approach and focus for its first biannual report, due be published in December 2018.

In December 2017 the AER published its first report under the new monitoring role, AER electricity wholesale performance monitoring—NSW electricity market advice. The report covered the market outcomes in the NSW wholesale electricity market. In March 2018 the AER published its report on market outcomes in Victoria and South Australia since the closure of Hazelwood power station.

Significant event reporting

We publish a report whenever the spot price for electricity exceeds \$5000 per megawatt hour or if an ancillary service price exceeds \$5000 per megawatt hour for a sustained period. The reports identify factors contributing to the high prices, such as rebidding, network issues, changes to demand and generator availability. We also report on significant price variations for gas.

During 2017-18 we published 14 reports on high-price electricity events. The events included:

- high electricity prices in South Australia and Victoria in January and February 2018
- high frequency control ancillary services (FCAS) prices in South Australia in November 2016 and January, March, April May, August, September and October 2017.

The complexity and unusual quantum of events meant that the statutory timeframe for some reports was not met.

We also publish significant price variation (SPV) reports when one of our established price thresholds for gas is breached. This includes when daily ancillary service payments exceed \$250 000 in the Short Term Trading Market (STTM) or Declared Wholesale Gas Market (DWGM).

On 29 January 2018 the AER published an SPV report in relation to high ancillary service payments on 30 November 2017 in the Victorian DWGM. Daily ancillary service payments in the DWGM reached \$265 929, exceeding the AER's \$250 000 reporting threshold. The payments were a consequence of an unplanned outage at the Longford gas plant.

Weekly reports on wholesale energy markets

We publish weekly reports on:

- activity in the national electricity market, including detailed analysis of extreme prices (those greater than three times the weekly average price in a region and above \$250 per megawatt hour or those below—\$100 per megawatt hour) as they occur
- activity in the Victorian gas market; in the short-term gas trading markets operating in Adelaide,
 Sydney and Brisbane; and at the Wallumbilla and Moomba gas supply hubs.

We aim to publish the reports within 12 business days of the end of the relevant week. In 2017–18 we released 83 per cent of our reports within that timeframe. This result was affected by the complexity of market conditions during the year and the large number of reports on high price events we had to prepare.

State of the energy market

The AER's State of the energy market report provides independent and reliable information to policymakers, industry and the Australian community about what is happening in wholesale electricity and gas markets, the transmission and distribution networks and the rapidly evolving retail sector. It draws on a range of sources, including our internal monitoring and intelligence, regulatory reviews of energy networks and external resources. It uses non-technical language to consolidate this material, highlighting trends and key issues across the electricity and gas industries. Our stakeholder surveys and other engagement provide consistently positive feedback on the report.

Our 10th State of the energy market report was published on 30 May 2017. The 11th edition is due out in 2018-19. The 2018-19 report will capture end-of-year financial information. We update some of the report's data series, including on spot and financial market activity, every quarter on our website.

Wholesale market compliance and enforcement

Our Compliance and enforcement statement of approach sets out how we monitor compliance, how we respond to potential breaches and factors we may consider when deciding whether to take enforcement action.

We take a risk-based approach to targeting and prioritising our monitoring and compliance activity. The risk assessment involves analysing and ranking each obligation to determine its compliance risk, taking into account both the impact and the probability of a breach. We commenced a comprehensive review of the electricity and gas rules throughout the year, reviewing over 5000 provisions and updating our risk assessment and approaches to monitoring.

Compliance reviews

During the year we focused on a number of compliance issues in wholesale energy markets, the majority of which involved investigating compliance during significant market events.

During 2017-18 we completed a targeted compliance review of electricity retailers' practices when upgrading meters where customer consumption levels change and a new meter is required. We continued our review of distributors' compliance with instrument transfer testing obligations, focusing on distributors who elected to test 10 per cent of their population each year. We also commenced a targeted compliance review of electricity distributors' compliance with AEMO's Market Settlement and Transfer Solution, with a focus on the Consumer Administration and Transfer Solution Procedures.

During 2017-18 there have been a number of ongoing major compliance investigations of three market events in the wholesale electricity market:

- the black system event on 28 September 2016 in South Australia
- the South Australian electrical isolation on 1 December 2016

• an event on 8 February 2017 in which a combination of events in South Australia contributed to an unsecure operating state resulting in load shedding under the direction of AEMO.

We expect to be able to report publicly on most of our investigations of these events later in 2018. Each of the three market event investigations noted above have not been without their complexities.

Regarding the September 2016 black system event in particular, the investigation is broad-ranging, covering the period from 27 September until the end of the market suspension period on 11 October 2016. We have taken a forensic approach and made approximately 50 voluntary requests for information to 19 South Australian participants. To date we have assessed close to 20 000 pages of documents as part of those responses.

Three out of four of our investigation streams have been completed:

- the pre-event, which focused on certain participants' actions in the lead-up to the storm event and how they managed power system security under the Electricity Rules
- system restoration, in which we examined the actions of certain participants in relation to the provision and use of System Restart Ancillary Services to restore the network following the black system conditions of the 28 September 2016
- market suspension, in which we assessed participant compliance during the 13-day period in which the spot market in South Australia was suspended.

Those streams were in the final stages of stakeholder consultation stage as at 30 June. The consultation stage is necessary for procedural fairness.

The fourth investigation stream, regarding the circumstances immediately before the black system event in South Australia, is continuing. This aspect of our investigation continues to be a legally complex and technical area of the investigation.

Our investigations of a number of high price events during the 2016-17 summer informed our summer readiness compliance messaging for the 2017-18 summer and our view of industry best practice.

Our summer readiness messaging fed into the much broader work AEMO undertook in the preparation for the 2017-18 summer. We primarily focused on the quality of information provided to AEMO to enable the market operator to make an informed assessment of system security and reliability. Our summer readiness messaging outlined key obligations on participants that the AER considers critical to ensure that the NEM provides secure and reliable electricity to consumers throughout the summer periods.

We provided guidance to electricity market participants to clearly outline our expectations regarding compliance with a number of critical obligations under the NER. We considered it was important to provide this messaging following market events that occurred the previous summer, particularly because forecasts for the 2017–18 summer suggested that at times there was the potential for a lack of reserve to meet the reliability standard.

We continued our focus on ensuring that gas market participants comply with the information requirements of the National Gas Bulletin Board, which aims to make gas production and pipeline flows transparent.

During 2017 we undertook a targeted compliance review of demand forecasting in the Sydney STTM. This was in response to a clear trend in high incidences of over-forecast demand in the Sydney STTM since 2014.

In December 2017 we concluded our targeted review of gas market scheduling at the Longford injection point on the Victoria transmission system. This was in response to an increased incidence of constraints, which affected market participants, at the Longford injection point.

In May 2018 we finalised our audit of Santos Ltd (Santos). The AER decided to audit Santos in March 2018 following Santos's submission of inaccurate data on the National Gas Bulletin Board and its restatement of gas volumes at the Moomba Lower Daralingie Beds storage facility in September 2017. On that occasion, Santos revised down the amount of gas held by 10 PJ.

Quarterly compliance reports

We publish quarterly reports on our compliance monitoring and enforcement activities in wholesale gas and electricity markets. The reports summarise the results of investigations (including special reports on significant market or power system events), compliance audits, targeted compliance reviews and rebidding inquiries undertaken during the quarter.

In 2017-18 we published four compliance reports. Due to competing resource priorities, all were released outside our target timeframe of six weeks from the end of the relevant quarter.

We aim to work cooperatively with NEM participants to help them to understand their obligations under the national energy framework and to help them achieve compliance with those obligations. In December 2017 the AER withdrew Compliance Bulletin No. 8, Confidentiality requirements for energy, metering and NMI standing data, which highlighted two compliance issues relating to access to confidential information by participants in the NEM. This bulletin was no longer required, as the NER has been changed to allow access in both circumstances.

We also clarified the status of Compliance Bulletin No. 6, Instrument transformer testing, following the changes to the NER which came into effect on 1 December 2017.

Wholesale energy market development

We draw on our regulatory and monitoring work to advise the COAG Energy Council, the AEMC and other bodies on wholesale market issues and to advocate solutions. We also support our Chair in her role on the Energy Security Board. To the extent that resourcing allows, we engage in policy reviews and rule change processes by sharing information, making submissions and participating in forums.

We engage in policy reviews and rule changes relating to our wholesale role. We made submissions to a number of AEMC and COAG Energy Council policy reviews and rule change processes in 2017-18, including on:

- the scope of economic regulation applied to covered pipelines (issues paper and draft report)
- improvements to Natural Gas Bulletin Board (see below)
- five-minute settlement (draft determination)
- reliability frameworks (issues paper)
- regulatory arrangements for embedded networks (draft report)
- contestability of energy services (draft determination)
- system restart plan release provisions (consultation paper)
- testing of system restart ancillary services capability (consultation paper)
- generator technical performance standards (consultation paper)
- integrated system plan (consultation paper)
- gas liquidity metrics (scoping paper)
- register of distributed energy resources (consultation paper).

Commencement of new rules to introduce metering contestability

Under the 'Power of Choice' rule changes, metering contestability commenced on 1 December 2017 in the ACT, NSW, Queensland, South Australia and Tasmania.

During the last half of 2017 the AER focused on participant readiness for these changes, including by holding two industry forums with distributors and metering businesses on the new requirements. Since the first half of 2018 we have been monitoring the implementation of the new rules.

Reforming the Natural Gas Bulletin Board

The AER is participating in the implementation of reforms to the Natural Gas Bulletin Board. This follows the submission of a rule change request by the COAG Energy Council and the subsequent NGR determination by the AEMC: National Gas Amendment (Improvements to the Natural Gas Services Bulletin Board) Rule 2017.

In August 2017 we made a submission to the AEMC's stakeholder consultations on bulletin board reform. Our submission supported the proposal and its measures to attach civil penalties to the quality of data that gas market participants submit. We have been engaging with AEMO on the future design of the bulletin board and have commenced engagement with market participants regarding their new reporting obligations from 30 September 2018.

Liquidity in wholesale markets

One of the measures agreed to by the Energy Council in 2016 was for the AEMC to conduct biennial reviews into trading liquidity in the markets for wholesale gas and pipeline capacity trading. As required by the Energy Council, the first review was completed before the mid-2018 Energy Council meeting. The review covered the Wallumbilla gas supply hub only, but subsequent reviews will cover all gas spot markets operating in Australia, including derivatives markets and new markets for pipeline and compression capacity trading that are scheduled to be operational by summer 2018–19.

Under the terms of reference, the AER contributes to the reviews by regularly publishing quantitative liquidity metrics on its website so that market participants, energy market bodies and policymakers can monitor liquidity in the relevant markets on an ongoing basis. As required by the terms of reference, just before the mid-2018 Energy Council meeting we began publishing Wallumbilla gas supply hub liquidity metrics in addition to those already on our website.

During 2017-18 we strengthened systems and frameworks to develop this data, building on the work we currently undertake. We engaged with the Australian Securities and Investments Commission (ASIC) and the Australian Financial Markets Association on linkages between spot gas and derivative markets; and with the AEMC and AEMO on the development of the metrics themselves.

Market manipulation in gas markets

The AER has a legislative function to monitor for market manipulation in gas supply hubs at Wallumbilla (Queensland) and Moomba (South Australia).

In 2017-18 we continued reviewing our market monitoring systems and arranged discussions with fellow domestic and international regulatory agencies in order to refine our analytical capabilities in this space.

In May 2018 we performed an analysis of market trends and conduct at the Wallumbilla gas supply hub. The results of this exercise will further inform our work in 2018-19.

International activity

The AER is a founding member of the Energy Intermarket Surveillance Group—the peak and only international group coordinating and sharing skills between energy market surveillance and enforcement bodies. It is a not-for-profit organisation, with 22 member agencies representing 17 electricity markets in North America, Latin America, South-East Asia, Australia and New Zealand.

In 2017-18 we participated in one meeting of the group, at which energy market monitoring agency representatives discussed electricity and gas market monitoring, compliance and design issues. AER representatives delivered formal presentations on the Australian context.

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 and SES employees who are engaged exclusively on energy matters. In 2017-18 the AER expanded its senior leadership team by appointing a General Manager for Strategic Communications and External Affairs to develop its strategy and capability in relation to media relations, communications and stakeholder engagement.

Details of the leadership structure are in figure 2.1 on page 20.

Australian Competition and Consumer Commission

The ACCC has a Chair, two Deputy Chairs, three Commissioners and four Associate Commissioners. Their names and appointment terms are shown in table 4.1.

Table 4.1: Terms of appointment—current ACCC members at 30 June 2018

Position	Name	Appointed until	
Chair	Rod Sims	31 July 2019	
Deputy Chairs ¹	Delia Rickard	27 July 2022	
	Mick Keogh	30 May 2023	
Commissioners	Cristina Cifuentes	29 May 2023	
	Sarah Court	30 April 2023	
	Roger Featherston	12 June 2019	
Associate Commissioners	Paula Conboy	30 September 2019	
	Jim Cox	25 June 2020	
	Susan Begg	16 June 2019	
	Mark Berry	31 March 2019	

Note: 1. Dr Michael Schaper served as Deputy Chair until 29 May 2018 and Mr Mick Keogh served as a part-time Associate Commissioner until 29 May 2018.

Biographies—ACCC

Chair

Mr Rod Sims



Rod Sims was appointed Chair of the ACCC in August 2011 for a five-year term. He was reappointed for a further three-year term until 2019.

Rod has extensive business and public sector experience. Immediately prior to his appointment to the ACCC, he was the Chairman of the Independent Pricing and Regulatory Tribunal of New South Wales (IPART), Commissioner on the National Competition Council, Chairman of InfraCo Asia, Director of Ingeus Ltd, 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 Ltd, where he advised the CEOs and boards of some of Australia's top 50 companies on commercial corporate strategy over many years. Rod relinquished all of these roles on becoming Chair of the ACCC.

Rod is also a past Chairman of the New South Wales 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 he was the Deputy Secretary in the Commonwealth Department of the Prime Minister and Cabinet. In that role he was responsible for economic, infrastructure and social policy and the Cabinet Office. He also worked as a Deputy Secretary in the Department of Transport and Communications.

Rod Sims holds a first-class honours degree in commerce from the University of Melbourne and a Master of Economics from the Australian National University.

Deputy Chairs

Ms Delia Rickard



Delia Rickard was appointed to the position of Deputy Chair of the ACCC in June 2012 for a period of five years. In July 2017 she was reappointed for a further five years.

Delia has extensive public service experience in the area of consumer protection. She takes a particular interest in the ACCC's consumer protection work. She plays an active role in the Commission's product safety work as well as its consumer protection compliance and enforcement work and scam disruption.

Immediately prior to her appointment to the ACCC, Delia held a range of senior positions at the Australian Securities and Investments Commission (ASIC). She led much of ASIC's consumer protection work covering areas such as financial literacy, dispute resolution schemes, e-payments and industry self-regulation. She was responsible for developing the first National Financial Literacy Strategy and chaired several Organisation for Economic Co-operation and Development financial literacy subcommittees. She also led ASIC's role in the implementation of the government's Super Choice policy and was the founding Chair of ASIC's Corporate Social Responsibility program.

Delia is a former head of the ACCC's then Consumer Protection Branch and was a member of the secretariat to the Wallis inquiry into the regulation of Australia's financial system.

She is a trustee of the Jan Pentland Foundation—an organisation dedicated to providing scholarships for those who want to work as financial counsellors—and a judge of the annual MoneySmart Week awards. She is also a pro bono director of Fairtrade Australia New Zealand and Chair of Good Shepherd's Advisory Committee on Financial Inclusion Action Plans.

In the January 2011 Australia Day Awards, Delia was awarded the Public Service Medal for her contribution to consumer protection and financial services.

Delia is a member of the ACCC's Enforcement Committee, Adjudication Committee, Communications Committee and Enforcement Committee—Strategic Compliance. She is also Co-Chair of the ACCC's Consumer Consultative Committee.

Delia holds a Bachelor of Arts and a Bachelor of Law from the University of New South Wales.

Mr Mick Keogh



Mick Keogh was appointed as a Commissioner of the ACCC in February 2016 for a five-year term. In 2018 he was appointed Deputy Chair until 2023.

Mick's work has a key focus on the ACCC's small business, franchising and industry association work.

Mick also plays a key role in the work of the Agriculture Unit, which identifies competition and fair trading issues in agriculture markets and engages with a range of key industry groups. He oversees the ACCC's agriculture work program and chairs the ACCC's Agriculture Board and Agriculture Consultative Committee. He also plays a key role in decision-making on agriculture matters across the ACCC.

Mick has a long and diverse history of involvement with the agriculture sector. This has included periods of employment as a farm manager, a university researcher, an agribusiness consultant and an agriculture policy advisor.

In 2003 Mick was appointed Executive Director of the Australian Farm Institute—an independent policy research institute that conducts research on strategic policy issues of importance to Australian agriculture.

In 2011 Mick was appointed as Chair of the Australian Government panel which reviewed drought support measures. He also chaired the Australian Government's National Rural Advisory Council from 2012 to 2015.

In 2015 Mick was awarded a Medal of the Order of Australia for services to agriculture. He holds bachelor's and master's degrees in wool and pastoral science, both obtained at the University of New South Wales.

Dr Michael Schaper



Dr Michael Schaper served as Deputy Chair until 29 May 2018. Michael's work had a special focus on small business, franchising, industry associations and business liaison with the ACCC. Michael was first appointed a Commissioner of the ACCC in July 2008.

A previous president of the Small Enterprise Association of Australia and New Zealand, he has also previously served as Small Business Commissioner for the Australian Capital Territory (ACT), Chairperson of the ACT Small & Micro-Business Advisory Council and a director of the International Council for Small Business. In 2009 he received the National Small Business Champion Award from the Council of Small Business Organisations of Australia. Michael is also a Fellow of the Institute of Public Accountants and a divisional councillor with the Australian Institute of Company Directors.

Michael has previously managed a community small business centre; been an adviser to government at both state and federal levels; and held lecturing, professorial and dean roles at a number of Australian universities. He is currently an Adjunct Professor with Curtin University and a senior honorary research fellow at the University of Western Australia. He also chairs the advisory board of Griffith University's Asia-Pacific Centre for Franchising Excellence. He holds a PhD and a Master of Commerce, as well as a Bachelor of Arts. His latest books are *Competition law and SMEs in the Asia-Pacific*; *Entrepreneurship and small business: Asia-Pacific*; and *Governments, SMEs and entrepreneurship development*.

Commissioners

Ms Cristina Cifuentes



Cristina Cifuentes was appointed a Commissioner of the ACCC in May 2013 for a five-year term. She was reappointed for a further five-year term in 2018.

Cristina has a breadth of experience in both the public and private sectors across public policy, finance and utility regulation, including positions at the Reserve Bank of Australia, the New South Wales Treasury and the Australian Securities Commission. She served as the state part-time member of the AER between 2010 and 2013. She was a member of IPART between 1997 and 2006.

Cristina is Chair of the ACCC's Communications Committee and Infrastructure Committee.

She oversees the ACCC's regulatory role in relation to key infrastructure in areas such as telecommunications, wheat ports, rail, and water. She is also the Commonwealth member of the AER Board, which has responsibility for regulating the national electricity and gas markets.

Before becoming an ACCC Commissioner, Cristina held a number of directorships, including with the Hunter Water Corporation and First State Super Trustee Corporation.

Cristina holds a first-class honours degree in law and a degree in economics from the University of Technology Sydney and the University of Sydney respectively.

Ms Sarah Court



Sarah Court was appointed a Commissioner of the ACCC in April 2008. She was reappointed for further five-year terms in 2013 and 2018. She is also an Associate Commissioner of the New Zealand Commerce Commission.

Sarah is a former senior executive lawyer and director with the Australian Government Solicitor. She brings to her role extensive experience in Commonwealth legal work, including restrictive trade practices, consumer protection and law enforcement litigation.

Sarah is a full-time Commissioner. She oversees the ACCC's enforcement and litigation program and is Chair of the Enforcement Committee and the Legal Committee. She takes an active role in the Commission's enforcement and compliance work and engages closely with investigating teams and lawyers on Commission policies and enforcement investigations. Sarah also sits on the Merger Review Committee and the Adjudication Committee.

Sarah holds a Bachelor of Arts (Jurisprudence) and a Bachelor of Law (Honours) from the University of Adelaide as well as a Graduate Diploma in Legal Practice from the Australian National University.

Mr Roger Featherston



Roger Featherston was appointed a Commissioner of the ACCC in June 2014. He was also appointed as an Associate Member of the New Zealand Commerce Commission on 16 April 2018.

Roger has a wealth of experience from his previous roles as a lawyer in the private and public sectors. Roger was formerly a partner at Mallesons Stephen Jaques, leading the firm's competition law team and advising a broad spectrum of commercial and governmental clients on competition law and enforcement issues, consumer protection, informal merger clearances, access and pricing issues, and telecommunications matters.

In addition to this extensive private sector experience, Roger acted for the former Trade Practices Commission early in his career and, for the two years before his appointment, acted as Special Counsel at the ACCC advising on a range of major competition and consumer protection matters.

Roger is a life member and former Chairman of the Business Law Section of the Law Council of Australia, and a member and former Chairman of the Competition and Consumer Law Committee of the Law Council of Australia.

Roger is a full-time Commissioner. He is Chair of the ACCC's Mergers Committee and Adjudication Committee and is also a member of the ACCC's Enforcement Committee and Communications Committee.

Roger holds a Bachelor of Laws (Honours) and a Bachelor of Economics from the Australian National University.

Australian Energy Regulator

The AER Board has three members, including the Chair of the AER Board, Paula Conboy.

Table 4.2: Terms of appointment—current AER members at 30 June 2018

Position	Name	Appointed until
Chair	Paula Conboy	30 September 2019
Members	Cristina Cifuentes	29 May 2023
	Jim Cox	25 June 2020

Biographies—AER

Chair

Ms Paula Conboy



On 21 July 2014 Paula Conboy was appointed as the full-time state/territory member and AER Chair for a five-year period from 1 October 2014.

Paula has over 20 years' experience in public utility regulation in Australia and Canada. She has held roles at the Industry Commission, Sydney Water Corporation and Ontario electricity distribution utility PowerStream Inc. Most recently she was a full-time member of the Ontario Energy Board in Canada from March 2010. In that role she oversaw policy development and adjudicated applications for cost of service, performance-based regulation, mergers and acquisitions, and leave to construct electricity and gas networks. She was an active member of CAMPUT—Canada's energy and utility regulator—and chaired its 2013 annual conference. She is also a mentor with the International Confederation of Energy Regulators' Women in Energy initiative.

Paula holds Bachelor of Science and Master of Science degrees in agricultural economics from the University of Guelph. She conducted her thesis research at La Trobe University.

Members

Ms Cristina Cifuentes

Cristina is the Commonwealth's appointee to the AER Board.



See 'Biographies-ACCC' above for a full biography.

Mr Jim Cox



On 23 May 2017 Jim Cox was reappointed as a full-time state/territory member of the AER Board for a further three-year term. He was initially appointed in an acting capacity in September 2013. He was confirmed in the role for three years from 26 June 2014.

Jim has held positions with the Reserve Bank of Australia, the Department of the Prime Minister and Cabinet and the Social Welfare Policy Secretariat of the Department of Social Security. He was a principal economist at the Office of the Economic Planning Advisory Council between 1986 and 1989. Between 1989 and 1992 was a consultant to the New South Wales Cabinet Office. Jim was Principal Adviser to the Government Pricing Tribunal of New South Wales from 1992 and was a member of IPART from January 1996 to September 2013. He was Acting Chairman of IPART in 2004, 2009–10 and 2011 and a visiting fellow at Monash University in 1985.

Jim assisted the New Zealand Government with social policy changes during the early part of 1991.

Jim has also written extensively on economic and social policy issues. This work has been published by, among others, the New Zealand Business Roundtable and the Centre for Independent Studies.

Jim was awarded the Public Service Medal in the Australia Day honours list in 2011 for outstanding public service to IPART.

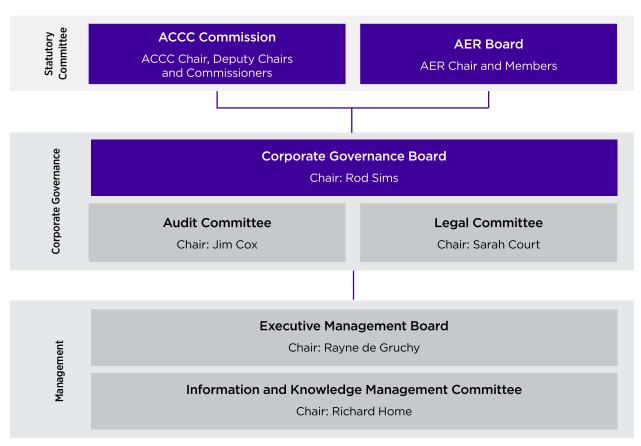
Managing the ACCC and AER

Committees

The ACCC makes statutory decisions through the Commission, aided by specialist subject-matter committees (see table 4.3) comprising subgroups of Commissioners. The AER makes its decisions through its Board. The agencies are governed and their administration overseen by corporate governance committees.

The ACCC and AER governance structure is shown in figure 4.1.

Figure 4.1: ACCC and AER governance structure



Corporate governance

The ACCC and AER corporate governance framework provides oversight of the agency's planning, performance, financial management, resource management and accountability.

The corporate governance framework consists of two types of committees:

- corporate governance committees
- management committees.

Corporate governance committees

Corporate Governance Board

The Corporate Governance Board is at the apex of the corporate governance structure. It meets 10 times each year (generally on a monthly basis). All ACCC Commissioners and AER Board members are part of the Corporate Governance Board. The Audit Committee and Legal Committee support its work. The Corporate Governance Board, aided by these committees and by senior management committees, is well equipped to oversee our strong corporate and financial performance.

Responsibilities include:

- strategy setting and corporate planning
- internal budgets and resource management
- performance monitoring and reporting
- agency accountability.

Members: Rod Sims (Chair), ACCC Deputy Chairs, Commissioners, AER Chair and Board members.

Audit Committee

The Audit Committee acts as a source of independent advice and assurance to the accountable authority (the Chair), through the Corporate Governance Board, on the financial reporting, performance

reporting, risk oversight and management and system of internal control of the ACCC and AER. It meets quarterly. Its responsibilities are to review, report and provide advice on:

- accounting policies, procedures and external financial disclosure
- internal financial controls and reporting
- internal budget process, aligning budget allocations with the external budget
- internal and external audit functions
- systems and procedures for performance reporting
- compliance with applicable laws, regulations and guidelines
- effective oversight and management of risk, including an appropriate fraud and corruption prevention and detection control plan
- the adequacy of the agency's governance arrangements.

Members: Jim Cox (Chair from January 2018), Cristina Cifuentes (Chair until December 2017), Clare Lewis (independent member), Lee White (independent member until March 2018).

Legal Committee

The Legal Committee meets monthly and oversees the ACCC's and AER's processes and systems to:

- manage and forecast the pipeline of investigations and cases and the resulting legal and related expenditure
- monitor the use and procurement of external legal services
- assist and advise the Corporate Governance Board accordingly.

The Legal Committee reviews legal and enforcement resource implications and provides greater accountability around the tracking and forecasting of legal expenditure over the life of ACCC and AER investigations and court proceedings. The committee also reviews the agency's compliance with external obligations such as the Legal Services Directions 2017; and ACCC and AER input into policy processes affecting agency legal services.

Members: Sarah Court (Chair), Chief Operating Officer, senior managers.

Management committees

The ACCC has a number of management committees that support the corporate governance committees and help to ensure that the organisation is managed effectively.

Executive Management Board

The Executive Management Board manages the organisation in line with the expectations and limitations set by the accountable authority (the Chair) and the Corporate Governance Board.

Members: Chief Operating Officer (Chair), Executive General Managers, Chief Information Officer, Chief Financial Officer, General Manager People and Culture, General Manager Strategic Communications.

Information and Knowledge Management Committee

The Information and Knowledge Management Committee provides advice on information and knowledge management and the enabling information and communications technology (ICT) to aid in decision-making that ensures alignment and compliance with the ACCC's strategic direction, government policies, Australian law and legal standards.

Members: Executive General Manager, Legal and Economic Division (Chair); Executive General Manager, Enforcement Division; Chief Information Officer; senior management representatives from the AER, Enforcement Division and Infrastructure Regulation Division; staff from the Merger and Authorisation Review, Legal and Economic, Consumer, Small Business and Product Safety, and People and Corporate Services divisions; one external independent advisor.

Figure 4.2: ACCC operational committees

Statutory Committee **ACCC Commission Enforcement Committee— Enforcement Committee Strategic Compliance** Chair: Sarah Court Chair: Sarah Court **Subject Matter Committees Mergers Review Committee Adjudication Committee** Chair: Roger Featherston Chair: Roger Featherston Infrastructure Committee **Communications Committee** Chair: Cristina Cifuentes Chair: Cristina Cifuentes **Consumer Data Right Committee** Chair: Sarah Court

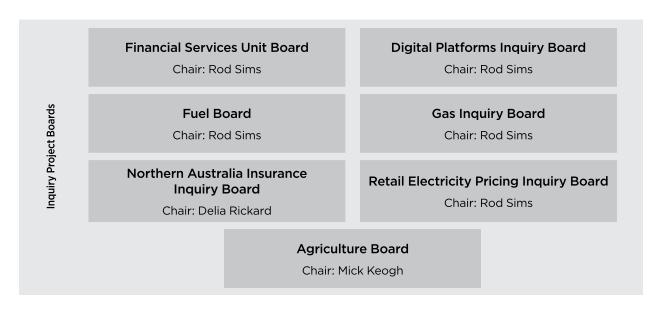


Table 4.3: Subject-matter committees of the ACCC—current roles and membership at 30 June 2018

Adjudication Committee	Members: Roger Featherston (Chair), Sarah Court, Mick Keogh, Delia Rickard, Rod Sims.
	Role: The committee considers authorisation applications, notifications and certification trade marks; and refers recommendations to the Commission for decision. It meets fortnightly.
	The Adjudication Committee sits as a division of the Commission under s. 19 of the <i>Competition and Consumer Act 2010</i> (Cth) (CCA) in respect of certain non-merger matters under Part VII of the CCA.
Communications	Members: Cristina Cifuentes (Chair), Roger Featherston, Delia Rickard, Rod Sims.
Committee	Role: The committee considers telecommunications industry regulatory issues; and refers recommendations to the full Commission for decision. It meets fortnightly.
Enforcement Committee	Members: Sarah Court (Chair), Roger Featherston, Mick Keogh, Delia Rickard, Rod Sims.
	Role: The committee oversees ACCC actions to ensure compliance with and enforcement of the CCA; and refers recommendations to the Commission for decision. It meets weekly.
Enforcement	Members: Sarah Court (Chair), Mick Keogh, Delia Rickard, Rod Sims.
Committee—Strategic Compliance	Role: The committee considers emerging compliance issues and the ACCC's response, including engagement with industry stakeholders and media communication. It meets fortnightly.
Infrastructure Committee	Members: Cristina Cifuentes (Chair), Jim Cox, Mick Keogh, Rod Sims.
	Role: The committee oversees access, price monitoring, transport and water regulatory issues. It meets fortnightly.
Mergers Review	Members: Roger Featherston (Chair), Sarah Court, Mick Keogh, Rod Sims.
Committee	Role: The committee considers merger reviews and refers certain recommendations to the Commission for decision. It meets weekly.
Consumer Data Right	Members: Sarah Court (Chair), Delia Rickard, Rod Sims.
Committee	Role: The committee oversees the ACCC's role in the implementation of the Government's consumer data right policy. It meets fortnightly.
•	

Figure 4.3: ACCC consultative committees

The ACCC hosts and participates in a wide range of consultative committees and forums to encourage discussion around consumer, competition and regulatory issues relevant to our work.

Agriculture Consultative Committee

The Agriculture Consultative Committee was established by the ACCC to provide advice and information on issues affecting the agriculture sector that fall within the scope of the CCA, and to provide a forum where competition and consumer law concerns related to the agriculture sector can be considered and addressed collaboratively.

Consumer Consultative Committee

The ACCC established the Consumer Consultative Committee in 2001 to provide a forum through which consumer protection issues could be addressed collaboratively between our organisation and consumer representatives.

Fuel Consultative Committee

The Fuel Consultative Committee was established in 2010 to provide an opportunity for meaningful dialogue between the ACCC, the fuel industry, and motoring organisations. The information shared increases our understanding of fuel industry issues and assists us in undertaking our role on issues related to competition and consumer protection in the fuel industry.

Infrastructure Consultative Committee

The Infrastructure Consultative Committee was set up in 2006 to facilitate discussions on the broad issues of infrastructure and infrastructure regulation. The committee was selected to be representative of the diversity of infrastructure interests and includes representatives from energy, telecommunication, water, rail, ports, and airports.

Small Business and Franchising Consultative Committee

The Small Business and Franchising Consultative Committee was established by the ACCC to provide a forum where competition and consumer law concerns related to the small business and franchising sectors could be discussed by industry and government.

ACCC Performance Consultative Committee

The ACCC Performance Consultative Committee was established in 2015 to act as the ACCC's stakeholder consultation body under the Australian Government's Regulator Performance Framework. The framework has established a common set of six outcomes-based key performance indicators that will allow for the comprehensive assessment of Commonwealth regulators' performance and engagement with stakeholders.

Corporate and business plans

The ACCC and AER Corporate Plan 2017-18 meets the requirements of the *Public Governance*, *Performance and Accountability Act 2013* (PGPA Act) and Public Governance, Performance and Accountability Rule 2014, as well as our obligations under the Regulator Performance Framework. To achieve our purpose, each division of the agency develops an annual business plan that aligns our operations and risk management with the strategies and priorities set out in the Corporate Plan and the 2017-18 Portfolio Budget Statement. Our Corporate Plan is available on the ACCC website. This annual report describes the outcomes against both the Portfolio Budget Statement and the Corporate Plan.

Internal audit and assurance

The ACCC's internal audit function provides assurance that we are meeting our obligations and adds value to the management and governance of our operations.

This plan is reviewed annually with the oversight of the Audit Committee and is approved by the Corporate Governance Board.

The following internal audits were conducted during 2017-18:

- Procurement
- Payroll
- Information security and the handling of confidential information
- Investigation practices and standards
- Product safety recalls and hazard management.

Risk management

Risk management is a key element of our strategic planning, decision-making and business operations.

In accordance with the PGPA Act, the Commonwealth Risk Management Policy and Australian National Audit Office (ANAO) and Comcover better practice guides, the ACCC has a risk management framework to support the effective management of organisational risk.

This framework covers the agency's strategic risks, as well as agency-wide and operational risks that sit across and within the agency's business units.

The ACCC and AER aim for best practice in controlling all risks by identifying priority exposures, addressing them through improvement strategies and contingency planning, and monitoring and reviewing ongoing risk.

Business continuity

Business continuity management strengthens business resilience, lessening the likelihood of incidents that may adversely affect ACCC and AER operations and minimising the impact if such incidents occur.

The ACCC and AER Business Continuity Plan was created in April 2017 following a substantial review of the business continuity framework. The Business Continuity Plan is subject to regular review and testing to ensure it continues to meet the needs of the agency.

Fraud control

The ACCC and AER Fraud Control Plan for 2017-19 directs the agency's approach to fraud prevention, detection, investigation, reporting and data collection procedures in a way that meets our specific needs and complies with the PGPA Act and the Commonwealth Fraud Control Guidelines.

Environmental performance

Mandatory environmental reporting

The ACCC is required to report annually on its environmental performance under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). It has nominated to report on its performance internally on an annual basis.

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.

Environmental performance

The ACCC remains committed to the development of best practice in environmental sustainability and performance. Our environmental policy includes strategies to improve sustainability and performance consistent with the Australian Government ICT Sustainability Plan 2010–2015 and better practices outlined by the ANAO.

Ethical standards

Conflicts of interest

The ACCC and AER are proud of our ethical standards and ensure there is continued public confidence in our integrity and that of our staff. Given that we often investigate misrepresentation of information or unconscionable business conduct and determine charges that impact on cost of living, it is vital that we maintain the trust of the Australian people, government and businesses.

To maintain confidence in our integrity, the ACCC and AER have strict procedures to identify and properly manage any personal interests that may cause an actual or perceived conflict of interest.

As statutory office holders, Commissioners and Board members are held to high standards of conduct. These standards arise from the high ethical standards we set ourselves and are backed by legislation, codes of conduct and the common law.

ACCC members must provide the Chair with an annual statement of material personal interests and not participate in matters in which they, or a member of their direct family, may have a real or perceived conflict of interest. ACCC members are also required to disclose interests not previously declared at Commission and committee meetings. AER Board members are required to disclose conflicts of interest at a Board meeting.

The ACCC and AER conflict of interest policy provides for all conflict of interest action to be recorded using a suite of online forms. Conflict of interest action requires a self-assessment and, where a conflict is identified, disclosure of the conflict and a plan to manage the conflict. The policy also provides for reporting on completion of the conflict of interest to senior management.

As a general rule, ACCC Commissioners, AER Board members and staff cannot accept gifts and hospitality, because acceptance could compromise, or be seen to compromise, the organisation's integrity. In limited circumstances, employees are able to accept gifts such as chocolates or wine if they are related to their participation at a conference or received from a foreign delegation. To ensure transparency, a \$50 minimum threshold is in place for formal declarations. This allows us to display a high level of integrity and ethical behaviour in our day-to-day work.

Values and code of conduct

The ACCC and AER are committed to driving a respectful culture throughout the organisation and upholding and promoting the behaviours specified in the Australian Public Service (APS) Values and Code of Conduct.

Employees learn about the APS Values and Code of Conduct in corporate induction sessions, and additional awareness training is incorporated into leadership programs.

Alleged misconduct by employees may be dealt with under the APS Code of Conduct. In 2017–18 the ACCC and AER investigated two potential breaches of the code. However, before final conclusions could be drawn, both employees elected to resign and the investigations did not reach a final sanction determination.

External scrutiny

As an Australian Government agency, the ACCC and AER are held to account for their activities by a variety of external bodies, including:

- courts
- tribunals
- parliament
- agencies with administrative oversight, including the Commonwealth Ombudsman.

These bodies have the power to review our decisions or work, investigate them and either uphold the decision of the ACCC or AER or order or recommend that the ACCC or AER make changes if necessary. Each year the ACCC reports on its interaction with these bodies to ensure transparency on external scrutiny.

Judicial decisions

On 16 August 2017 the Full Federal Court dismissed an application by Port of Newcastle Operations Pty Ltd (PNO) for judicial review of a decision of the Australian Competition Tribunal on 16 June 2016. The Tribunal had made an order declaring, pursuant to s. 44K(8) of the CCA, the right to access and use shipping channels. The ACCC was an intervener in the proceedings: see Port of Newcastle Operations Pty Ltd v Australian Competition Tribunal [2017] FCAFC 124.

On 21 December 2017 the Federal Court dismissed a challenge by Vodafone of the validity of the ACCC's inquiry into the possible declaration of a domestic mobile roaming service. Vodafone alleged that the ACCC's process was legally deficient and non-compliant with the requirements of Part 25 of the Telecommunications Act 1997 (Cth): see Vodafone Hutchison Australia Pty Ltd v Australian Competition Consumer Commission [2017] FCA 1549.

On 18 January 2018 the Full Federal Court dismissed an appeal by SA Power Networks of a decision of the Australian Competition Tribunal on 26 October 2016. The Tribunal had affirmed the original decision of the AER setting the total amount of revenue that SA Power Networks was entitled to recover from customers for using its network (electricity poles and wires) for 2015–2020: see SA Power Networks v Australian Competition Tribunal (No. 2) [2018] FCAFC 3.

Administrative Appeals Tribunal

There were no decisions by the Administrative Appeals Tribunal in respect of decisions made by the ACCC or AER in 2017-18.

Office of the Merit Protection Commissioner

No application for review was made to the Office of the Merit Protection Commissioner in 2017-18.

Office of the Australian Information Commissioner

Four requests for freedom of information review concerning the ACCC were lodged with the Office of the Australian Information Commissioner in 2017-18. These requests are in the early stages of review.

Privacy Commissioner

The Privacy Commissioner did not investigate any complaints about the ACCC and AER in 2017-18.

Australian Competition Tribunal

Prior to the revisions to the CCA which came into effect on 6 November 2017, merger parties could seek legal protection from court action under s. 50 of the CCA by applying directly to the Tribunal for authorisation of a merger proposal. The test that the Tribunal applied was a public benefits test. This differed from reviews under s. 50, where a substantial lessening of competition test is applied. The Tabcorp merger authorisation application discussed below predates the amendments to the merger authorisation provisions that came into effect on 6 November 2017.

In June 2017 the Tribunal made a determination to grant authorisation for Tabcorp to acquire Tatts Group and published its reasons. The ACCC sought judicial review of the Tribunal's determination. On 20 September 2017 the Full Federal Court handed down its judgment regarding the ACCC's application for judicial review, setting aside the Tribunal's determination and remitting the matter to the Tribunal for rehearing. In October 2017 the Tribunal reheard the matter. On 22 November 2017 it published a new determination granting authorisation for Tabcorp to acquire Tatts, subject to conditions. For more information about the Tribunal decision, see part 3, strategy 1, page 56.

In October 2017 the Tribunal reviewed the AER's 2016 revenue decisions for five Victorian electricity distribution networks and ACT gas distribution pipelines, rejecting all grounds of review sought by the businesses. For more details, see part 3, strategy 4, page 178.

Parliamentary scrutiny

The ACCC appeared before the House of Representatives Standing Committee on Economics on 16 August 2017 and 29 June 2018. Topics covered at the 16 August 2017 hearing included the ACCC's Financial Services Unit, the ACCC's broadband performance monitoring program, the ban on excessive payment surcharging, energy, and the Takata airbag recall. Topics covered at the 29 June 2018 hearing included energy affordability, ACCC cartel investigations, Australian Consumer Law penalty reforms, consumer issues in the financial services sector, codes of conduct in the agricultural sector, the ACCC's work on the consumer data right and open banking, and factors affecting ACCC litigation timeframes.

The ACCC's testimony at the 16 August 2017 hearing was subsequently referred to in the committee's report Review of the Australian Competition and Consumer Commission annual report 2016, which was tabled on 16 October 2017.

The ACCC also appeared before the Senate Economics Committee on 25 October 2017 for a Budget Supplementary Estimates hearing; on 1 March 2018 for an Additional Estimates hearing; and on 30 May 2018 for a Budget Estimates hearing. Topics covered included energy regulation and affordability; product safety investigation—in particular, the Takata compulsory recall; toll road concessions; the ACCC's new car retailing industry market study; telecommunications; the introduction of the effects test; banking; petrol; and the consumer data right and open banking.

The ACCC's testimony at the 1 March 2018 hearing was subsequently referred to in the committee's report, Economics Legislation Committee: Additional estimates 2017–18, which was tabled on 28 March 2018.

The ACCC's testimony at the 30 May 2018 hearing was subsequently referred to in the committee's report, Economics Legislation Committee: Budget estimates 2018–19, which was tabled on 26 June 2018.

The AER appeared before the Senate Estimates Committee on 30 May 2018. Topics covered included how the AER has been meeting the Prime Minister's commitments to consumers, and the tax review.

Freedom of information

Agencies operating under the *Freedom of Information Act 1982* (Cth) 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. See the ACCC's freedom of information website for our plan.

Service charter

The ACCC and AER each have service charters stating the standard of service you can expect to receive from us.

Our service charters also set out:

- what you should do if you wish to complain about a business or market issue
- what you should do if you wish to complain about your dealings with us
- what we ask of you.

The service charters are available from the ACCC and AER websites respectively.

Attracting, selecting and retaining capable people

The People and Culture team supported a 15 per cent increase (paid full-time equivalent) in the ACCC and AER's workforce during 2017-18 and worked with staff to develop a new recruitment policy. The new policy:

- incorporates staff feedback, as well as better practices from other employers and leading research
- facilitates our commitment to providing a mobile, inclusive and diverse workforce
 - through techniques to minimise the potential for bias
 - by raising awareness about the challenges faced by minority groups when seeking employment and career advancement
- will be supported by improved guidance for selection committees, a new online recruitment system and mandatory training for delegates and their selection committees.

Performance management

During 2017-18 the ACCC and AER rolled out a new approach to performance management based on continuous feedback and no ratings. In the first year of a multi-year program we have run facilitated team workshops to help employees work through how they can best work together to deliver results. Business planning and performance discussions normally focus on what we deliver. The new performance program places more emphasis on how we should engage and what behaviours are needed to support each other. These workshops were very well received. Teams have developed a range of goals largely focused on innovation; skills development and knowledge sharing; and building better connections and higher performance across geographically distributed and flexible groups.

Supporting our people

The ACCC and AER continue to invest in the development of our people through an extensive program of learning and development, both formal and on the job. This includes discipline-specific knowledge, such as the continuous learning and education program for legal professionals; and more general skills through leadership programs, personal and professional development programs, rotational programs and more. Employees can also access studies assistance to support higher learning.

Leadership activities

The ACCC and AER continued to support the development of leaders across the organisation through in-house leadership programs aimed at the APS and executive levels. These programs are marked for review in 2018–19 to ensure that their content reflects evolving policies and business practices as we move to a more flexible workforce. Employees accessed leadership programs conducted by external providers such as the Australian Public Service Commission and the Australia and New Zealand School of Government.

Negotiation and stakeholder engagement

During 2017-18 the ACCC and AER continued to run training in the area of negotiation and stakeholder engagement. The training equipped employees with practical skills and strategies for enhanced engagement with external stakeholders.

E-learning catalogue

The Learning and Development Unit continued to enhance the e-learning offerings available to employees. Additions to the catalogue include legal seminars to build technical knowledge; and online programs to build personal skills and meet compliance requirements. E-learning programs were the main source of training for the upgrade to the agency's records management system in early 2018.

Risk-based regulatory practice

The ACCC and AER were fortunate to have Professor Malcolm Sparrow from Harvard present two workshops for employees focusing on risk-based regulatory practice. The workshops explored trends in reform and the definition and measurement of success across a variety of jurisdictions.

Effective conversations

To support the changes to performance management, workshops for managers and employees were run to assist them in improving the effectiveness of their performance conversations.

Unconscious bias

Unconscious bias training was an initiative identified in our 'Building inclusion: advancing gender balanced leadership' strategy. In October and November 2017 workshops were delivered to Executive Level 2 (EL2) and SES staff across the agency.

This training supports the building of a diverse and agile workforce and inclusive culture necessary to leverage the knowledge, skills and attributes of our people. The workshops have raised awareness of where bias comes from, how it influences us, and how it affects the decisions we make and the culture we create.

Learning and development summary

Training and development costs in 2017-18 were \$2 144 572.84.

Approximately 40 per cent of the budget was held centrally to support organisation-wide development programs. The remaining 60 per cent was devolved for divisions to address specific needs relating to technical skills.

A key element of our learning program is our Studies Assistance Scheme. The scheme provides assistance for employees undertaking postgraduate studies. The key areas of study are economics, law and business. Study assistance for employees can include leave and full or partial reimbursement of tuition fees for approved courses.

During the year we supported 65 employees to study. We reimbursed \$240 612.03 in fees for employees to attend lectures and tutorials.

Table 4.4: Attendance at courses, seminars and learning activities—2015–16, 2016–17 and 2017–18

Туре	Number of attendees			
	2015-16	2016-17	2017-18	
Operating skills and knowledge	2055	2393	3702	
Legal skills and knowledge	607	716	582	
Applying the CCA	139	299	178	
Economics and regulatory	110	199	280	
Leadership, supervision and management	335	487	473	

Our staffing profile

Figure 4.4: Age profile of ACCC staff at 30 June 2018

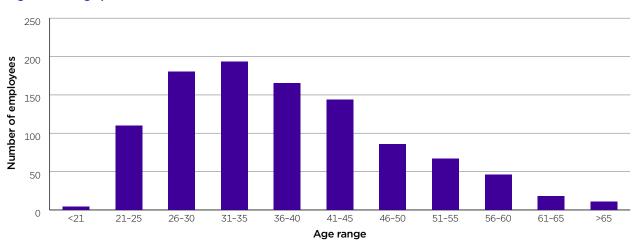


Figure 4.5: Gender profile of ACCC staff at 30 June 2018

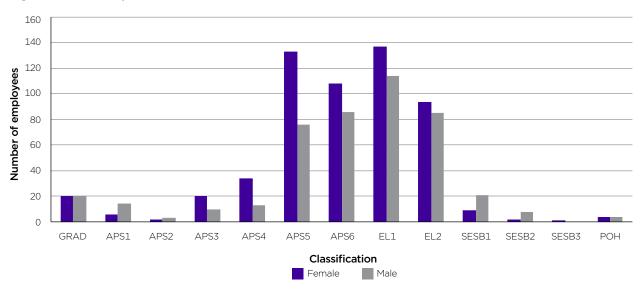


Table 4.5: Staff turnover according to separation type, 2017-18

Separation	Classification	Number of staff
External transfer or promotion	Non-SES	13
Retirement	Non-SES	2
Contract expired	Non-SES	30
Resignation	Non-SES	68
	SES	1
Redundancy	Non-SES	5
Other	Non-SES	1
Total		120

Improving the work environment

Action on mental health

During 2017-18 we continued to promote our workplace contact officer (WCO) network. The WCO network held quarterly meetings, and WCOs reported on the nature of employee approaches. No employee approaches related to mental health.

Intranet articles were published during the year promoting various support services for mental health management. The Employee Assistance Program was available to employees requesting help with a mental health issue. Of the 47 Employee Assistance Program users in 2017–18, 31.8 per cent reported a mental health issue.

Senior human resources managers provided one-on-one coaching in mental health management to managers working with people with a mental health issue and to individuals who came forward with their personal experience.

Rehabilitation management

In May 2017 our Rehabilitation Management System (RMS) and active compensation cases were audited and received a 100 per cent conformance rating. Verbal feedback from an external audit of the RMS conducted in May 2018 was positive. The outcome of the audit will be reported in next year's annual report.

Consultative committees

The ACCC and AER have an Employee Council that consists of three SES and 14 employee members. It meets at least quarterly to discuss conditions of employment, improvements to policies and procedures, and a range of other workplace issues. The Employee Council met in July, September, December, March, May and June. It reviewed policies and consulted on the rollout of the new performance management approach and a coordinated approach to recognition in the organisation.

The Health and Safety Committee is a joint management and staff committee established in accordance with the *Workplace Health and Safety Act 2011* (Cth) to facilitate:

- consultation and cooperation between the agency and employees on work health and safety matters
- continuous improvement in managing these matters by the agency.

Appendix 3 details workplace health and safety programs and outcomes for the year.

Making the most of our diversity

The ACCC and AER are committed to a workplace that reflects the community we serve. We recognise that diversity brings a range of experiences, perspectives and ideas contributing to an innovative workplace. The Diversity Reference Group supports diversity as part of our core business and delivers the organisation's diversity programs. We have champions for multicultural; disability; Aboriginal and Torres Strait Islander; and lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) employees.

The ACCC and AER LGBTIQ Ally Network consists of employees at all levels of the organisation and raises awareness of LGBTIQ issues. In April 2018 the network arranged a talk on transgender issues, which was available to all staff to mark Transgender Day of Visibility.

The ACCC and AER Reconciliation Action Plan 2016-18 (RAP) recognises the importance of Aboriginal and Torres Strait Islander people as one of the ACCC's and AER's key stakeholder groups. The plan outlines initiatives to raise awareness of ACCC and AER functions in Aboriginal and Torres Strait Islander communities with a view to improving their consumer experience. The RAP also commits the ACCC to supporting, retaining and expanding the numbers of Aboriginal and Torres Strait Islander employees.

In 2017-18 we increased our involvement with the CareerTrackers Indigenous internship program, with 10 interns joining us for the summer and winter programs. Two interns were recruited through the Indigenous Australian Government Development Program. We continued our involvement with the not-

for-profit organisation Jawun, which arranges secondments from corporate and government partners to Indigenous organisations, with an ACCC employee completing the program.

The ACCC and AER continued its commitment to flexible work practices, including part-time and job-sharing arrangements and compressed work hours, to enable our employees to balance their unique and changing needs during different life and career stages. In 2017-18 we regularly reported on our uptake of these practices and focused on facilitating participation in flexible work arrangements.

Table 4.6: Workplace diversity profile at 30 June 2018

	Total number	Female	ATSI	CLDB	PWD
SES and ACCC/AER members	49	16	0	1	0
APS1	20	6	2	3	2
APS2	5	2	1	0	1
APS3	30	20	5	7	1
APS4	47	34	2	9	2
APS5	209	133	4	46	7
APS6	194	108	0	50	5
EL1	251	137	2	41	7
EL2	179	94	2	18	1
Graduates	40	20	0	4	6
Totals	1024	570	18	179	32
Proportion of the total (%)		55.7%	1.8%	17.5%	3.1%

Note: ATSI = Aboriginal and Torres Strait Islander; CLDB = people from culturally or linguistically diverse backgrounds; PWD = people with disability. A staff member could be classified under multiple classifications. All classifications are self-identified

Disability employment

The ACCC and AER continued our commitment to the National Disability Strategy 2010-2020. Our 2018 graduate cohort includes seven graduates who were selected through the RecruitAbility scheme—an initiative of the Australian Public Service Commission that aims to attract and develop applicants with a disability. In 2017-18 we extended our use of RecruitAbility to our bulk recruitment processes.

In early 2018 the ACCC and AER launched our Disability and Carers Employee Network. The network enables employees to get to know each other and share information; and acts as a consultative body for matters affecting employees with a disability or caring responsibilities.

Disability reporting

Since 1994 Commonwealth non-corporate entities have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007-08 reporting on the employer role was transferred to the Australian Public Service Commission's State of the service report and the APS statistical bulletin. These reports are available at www.apsc.gov.au. From 2010-11 entities have no longer been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by the National Disability Strategy 2010-2020, which sets out a 10-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high-level two-yearly report will track progress against each of the six outcome areas of the strategy and present a picture of how people with disability are faring. The first of these reports was published in 2014, and can be found at www.dss.gov.au..

Employment agreements

Enterprise agreement

In 2017-18 the ACCC Enterprise Agreement 2016-2019, which came into effect in December 2016, continued to operate.

Senior executive remuneration

Remuneration for ACCC and AER members is determined by the Remuneration Tribunal in accordance with:

- the Remuneration Tribunal Act 1973 (Cth)
- Determination 2016/19, Remuneration and Allowances for Holders of Full-Time Public Office
- Determination 2015/20, Remuneration and Allowances for Holders of Part-Time Public Office.

Tables 4.7 and 4.8 set out the nature and amount of remuneration for ACCC and AER members.

Table 4.7: Remuneration of members of the ACCC at 30 June 2018

Full-time	Position	Base salary	Total remuneration of office
1	Chair	\$665 376	\$760 690
1	Deputy Chair (Small Business)	\$484 688	\$570 520
1	Deputy Chair (Consumer Affairs)	\$492 820	\$570 520
1	Commissioner	\$407 174	\$489 020
1	Commissioner	\$427 746	\$489 020
1	Commissioner	\$415 451	\$489 020

Associate members who are state or territory members of the AER and other associate members who may serve on an ad hoc basis are paid a daily fee if and when they attend Commission meetings.

Table 4.8: Remuneration of members of the AER at 30 June 2018

Full-time	Position	Base salary	Total remuneration of office
1	AER—Chair	\$507 690	\$543 350
1	AER—Board member	\$379 471	\$407 520

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). Other benefits included in SES determinations include car allowance, performance pay and superannuation.

Common law contracts and Australian Workplace Agreements

No employees are covered by common law contracts or Australian Workplace Agreements.

Non-salary benefits

Non-salary benefits provided to employees under the enterprise agreement include:

- options for home-based work
- ability to work part-time
- flexible working arrangements
- access to different leave types
- influenza vaccinations
- access to the Employee Assistance Program.

Table 4.9: Number of employees covered by each industrial instrument at 30 June 2018

	ACCC Enterprise Agreement 2016-19	IFAs	Section 24 determinations
APS1	20	0	0
APS2	5	0	0
APS3	30	0	0
APS4	47	0	0
APS5	209	2	0
APS6	194	2	0
EL1	251	19	0
EL2	179	41	1
SESB1	0	0	30
SESB2	0	0	10
SESB3	0	0	1
Graduates	40	0	0

Note: IFA = individual flexibility arrangement.

Table 4.10: Salary ranges for APS employees at 30 June 2018

	ACCC Enterprise Agreement 2016-19	Section 24
APS1	\$47 099-\$52 058	-
APS2	\$53 300-\$59 104	-
APS3	\$60 706-\$65 526	-
APS4	\$67 667-\$73 469	-
APS5	\$75 472-\$80 026	-
APS6	\$83 541-\$93 635	-
EL1	\$103 796-\$114 871	-
EL2	\$120 335-\$141 021	\$162 326
SES1	-	\$183 933-\$201 715
SES2	-	\$245 355-\$307 263
SES3	-	\$329 990
Legal 1	\$65 526-\$129 120	-
Legal 2	\$136 452-\$144 630	
Graduates	\$59 104-\$67 667	

Table 4.11: Performance pay

	SES B1	SES B2	SES B3 ¹	ACCC
Number who received bonus	29	10	1	40
Total bonus	\$413 632	\$223 050	-	\$636 682
Average bonus	\$14 263	\$22 305	-	\$16 325
Range	\$5 861-\$16 978	\$14 684-\$27 383	-	\$5 861-\$27 383

Note: 1. As the ACCC has only one SES Band 3 employee, details have been omitted to protect privacy.

Enhanced business systems and online presence

In 2017-18 we completed the implementation of a case management and workflow solution for authorisation and notification processes. This coincided with the development and implementation of a contemporary online public register publication system. The redevelopment of the public registers significantly improves the search functionality of the registers and provides a better user experience and alert service.

This work has been a significant enabler for the Merger and Authorisation Review Division to institute improved businesses processes and enhance rigor around work practices, approval flows and caseload management.

Workplace flexibility

In September 2017 the Melbourne office was relocated. As well as meeting our whole-of-government requirements, the new location is a more collaborative and flexible work space tailored specifically for the ACCC and AER. It will be flexible and adaptable over the lease period and is supported by our national rollout of mobile technology such as laptop devices, better collaboration tools and document management capability to support a more mobile workforce both in and away from the office. The work done in designing our new Melbourne office created a template that has since been applied to the design of the Perth and Adelaide offices and will be applied to our other office leases as they come up for renewal.

Knowledge management

The significant increase in the ACCC's work on market studies and inquiries in 2017–18 has reinforced the need for improved knowledge management practices across the agency. Over the past year, there has been a particular emphasis on effective induction practices for new staff, improved awareness and connectivity of staff skills and experience via intranet profiles, and trialling of different collaboration platforms. The organisation has also broadened and deepened its use of communities of practice to effectively and efficiently share information across various divisions.

Overall, the knowledge management strategy aims to facilitate the effective capture, discovery and dissemination of knowledge. Much of this is tacit. However, a key objective is to digitise knowledge where possible. There has been much focus on the appropriate use of records and document management systems, and work is well advanced on a substantial upgrade of the ACCC's primary records management system. There is also better uptake and usage of other systems such as our intranet, which enables the organisation to provide more targeted information to different levels.

Supporting the National Competition Council

We entered into a memorandum of understanding (MOU) with the National Competition Council (NCC) in 2014. Under the MOU we provide secretariat services to the NCC, including advice and support in relation to NCC recommendations, decisions and reports, and administrative services.

Details of the NCC's activities during 2017-18 are in its own annual report.

The MOU is available on our website.

Improving specialist services

Legal and economic services

Our Legal and Economic Division provides specialist legal, economic and data analysis services. The division comprises the Legal Group, the Economic Group and the Strategic Data Analysis Unit. It is also responsible for the retail electricity inquiry.

The Legal Group consists of general and special counsel and four core units that provide in-house legal services to specific business areas. It assists the ACCC and AER to make legally informed decisions and manage litigation, including by facilitating, as an informed purchaser, external litigation services. It also assists in managing the agency's corporate legal obligations.

The Economic Group consists of the Chief Economist and two core units that provide in-house strategic economic advice and related services to specific business areas. It aims to facilitate the consistent use of economic principles in decision-making, increase the quality of economic analysis and contribute to economics-related learning and development initiatives. It is committed to strengthening the quality of economic analysis in the organisation and to maximising the influence of economic ideas.

The Strategic Data Analysis Unit provides expert quantitative analytical support across the agency.

The Legal and Economic Division's objectives are directed at increasing the effectiveness of the ACCC and AER and providing expert advisory services and assistance to help the agency to achieve its strategies and deliverables. It aims to provide its specialist services efficiently and to help the agency obtain value for money from external legal and economic service providers. It also invests in projects to improve organisational effectiveness; and improve the capability of the agency in making high-quality decisions through its contributions to legal and economic discussion, guidance and training.

During 2017-18 we undertook a number of initiatives to improve the effectiveness of the Legal and Economic Division and enhance organisational capabilities. These included:

- developing and providing an internal legal and economic training program to improve capability to investigate and litigate competition matters
- coordinating a network of quantitative data analysts from across the agency to share skills and initiate targeted training to improve analytical capabilities
- taking a lead role in the implementation of the ACCC and AER's Knowledge Management Strategy, including the establishment of an Economics Network to share skills and expertise, and the establishment of a Market Studies and Inquiries Community of Practice
- contributing to Commonwealth legal coordination initiatives, including through participation in the Commonwealth's General Counsel Working Group and the Australian Government Legal Network
- ensuring that processes focus on value for money from external legal services providers
- coordinating processes for evaluating internal and external legal work
- developing and implementing training on strategic use of litigation technology to improve the efficiency of investigations and litigation where there are large numbers of documents
- providing strategic legal and economic advice on the implementation of the competition reforms coming out of the Harper review and the Australian Consumer Law reforms
- coordinating the 15th annual Competition Law and Economics Workshop in conjunction with the University of South Australia School of Law
- coordinating the annual ACCC and AER Regulatory Conference, which more than 400 delegates attended

• organising the Utility Regulator's Forum, held twice yearly, which involves all state and Commonwealth economic regulators, as well as the New Zealand Commerce Commission.

The Legal Group comprises four core units:

- the Competition and Consumer Law Unit, which provides legal services to our Enforcement and Consumer, Small Business and Product Safety Divisions
- the Merger and Authorisation Law Unit, which provides legal services to our Merger and Authorisation Review Division
- the Regulatory Law Unit, which provides legal services to our Infrastructure Regulation Division and the AER
- the Corporate Law Unit, which deals with corporate in-house issues, strategic development initiatives, legal technology services and freedom of information requests.

General and special counsel provide additional high-level independent strategic advice on complex major issues across all areas of the ACCC and AER.

The roles of in-house lawyers include providing legal advice, specialist drafting of legal documents and helping to prepare and manage litigation. Our in-house lawyers also manage external lawyers who are engaged where additional resources are needed or as required under the Legal Services Directions. Inhouse lawyers are located in most ACCC offices to ensure that specialist legal services are available to staff at all times.

Legal technology services

The Legal Technology Services Unit specialises in the technological aspects of case management, including the electronic management and analysis of evidence and case material and its production to the courts and third parties. The unit is also responsible for national coordination of the ACCC's evidence management and managing the Legal Document Management Services panel.

Economic advice

The Economic Group comprises two units:

- the Regulatory Economic Unit, which provides economic services to our Infrastructure Regulation Division and the AER
- the Competition and Consumer Economic Unit, which provides economic services to our Enforcement and Consumer, Small Business and Product Safety Divisions and Merger and Authorisation Review Division.

Our Chief Economist provides additional high-level independent strategic economic advice on complex major issues across all areas of the ACCC and AER.

Economic Group specialists provide economic advice and research support on strategic projects; and develop and educate staff to improve understanding of the application of economic techniques to competition and regulatory issues.

Data analysis

The Strategic Data Analysis Unit provides quantitative advice and support across the ACCC and AER. Strategic data analysts work on key inquiries and matters where the use of data and analysis is critical.

Transforming the AER

Since the AER was set up in 2005, the energy market has undergone major disruptions and our operating environment has changed significantly. Following independent reviews of the Australian energy sector between 2015 and 2017, and our requests for more resources and funding, the Australian Government responded by providing new funding of \$67.4 million over four years from July 2017 and expanding our roles and responsibilities to meet the growing needs of an evolving energy market.

In August 2017 the AER published its Strategic Statement, which clearly outlines our purpose: 'The AER's role is to make all Australian energy consumers better off, now and in the future'. The AER's objectives are to:

- drive effective competition where it is feasible to do so
- provide effective regulation where it is not
- equip consumers to participate effectively, and protect those who are unable to safeguard their own interests
- use our expertise to inform debate about Australia's energy future, the long-term interests of consumers and the regulatory landscape
- take a long-term perspective while also considering the impact on consumers today.

An extensive review of the AER's governance, structure and culture took place to assess what was needed to meet these objectives and its growing remit. A team was set up to manage the review process and to design and implement the organisational changes the AER needs.

Effective communication

The ACCC and AER focus strongly on communicating with all our audiences and stakeholders. We have a significant media and online presence. In 2017-18 our websites had a combined total of 41 585 408 page views, compared with 26 052 415 in the previous year.

Our approach to engagement

The ACCC and AER take a strategic approach to targeting different audiences, including:

- Australian consumers with a variety of cultural backgrounds, ages and experiences
- consumer and advocacy groups, including those representing vulnerable and disadvantaged consumers
- small to medium businesses and the associations that represent them
- journalists who can help to spread compliance and consumer rights messages and publicise successful legal action that will deter illegal conduct
- infrastructure industries and regulated industries
- our state and territory counterparts and other relevant regulators
- legal and business support professionals
- international forums and groups.

Our aim is to inform and educate so that consumers and small businesses feel confident to exercise their rights; and businesses have the knowledge and skills to comply with the law. It is also important that a wide range of stakeholders are aware of the ACCC and its work in making markets work across the Australian economy.

The channels we use to engage the target groups include:

- the ACCC website (<u>www.accc.gov.au</u>), and associated websites dedicated to product safety and recalls (productsafety.gov.au), scams (<u>www.scamwatch.gov.au</u>), and freedom of information (<u>www.foi.accc.gov.au</u>)
- the AER website (www.aer.gov.au) and Energy Made Easy (www.energymadeeasy.gov.au)
- mainstream and social media
- the AER bi-monthly Energy dispatch newsletter
- the ACCC Infocentre telephone lines: a general enquiries and consumer reporting line and specific numbers for:
 - Indigenous consumers
 - small businesses
 - unit pricing
 - energy price comparison
- the AER Infocentre telephone line, which handles general enquiries and complaints
- education guides, online learning modules, webinars and apps

- information translated into languages other than English
- face-to-face education outreach for small businesses and compliance
- paid media placement through digital channels
- distribution of regular e-newsletters to various information networks and topic-based subscription groups
- speeches by the Chair, ACCC Commissioners, AER Board members and senior leaders
- guides and publications on a wide range of topics
- energy comparison information translated into languages other than English.

Communicating our messages

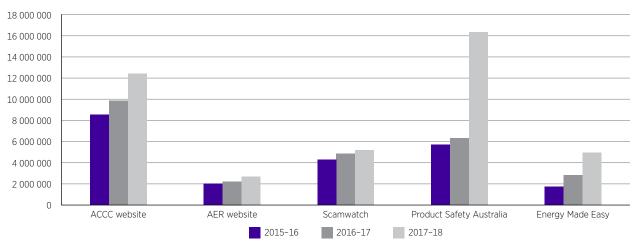
The ACCC's Strategic Communications Branch and the AER's Strategic Communications and External Affairs Branch develop strategies and work with the operational areas of the ACCC and AER to inform consumers, business, media and government about our role and work. As well as working daily on media issues, they liaise with business areas to ensure that our information is clear and easy to understand, targeted to audience needs and readily accessible.

They are leading the change to a 'digital first' approach to communication by using the ACCC and AER websites as the default channels.

ACCC and AER websites

Traffic to all our websites increased overall in 2017-18.

Figure 4.6: Website page view growth between 2015–16 and 2017–18



ACCC's social media

The ACCC's Strategic Communications Branch works with operational areas to provide social media governance and guidance. They also manage our corporate social media accounts on Facebook, YouTube, Twitter and LinkedIn.

Two of the largest referrers of traffic to the ACCC website are Facebook and Twitter. This demonstrates the effectiveness of our cross-platform communication strategies.

We have three Facebook pages:

- ACCC Consumer Rights—building awareness of consumer issues and responding to simple enquiries and comments. As at 30 June 2018 it had 69 535 'likes', adding 13 725 in 2017-18. We posted to the page 204 times, potentially reaching 25 302 455 users.
- ACCC Product Safety—sharing product safety news, tips and recalls. As at 30 June 2018 it had 45 367 'likes', adding 6462 in 2017-18. There were 640 posts to the page, potentially reaching 7 691 679 users.

 ACCC—Your Rights Mob Tiwi Islands—delivering targeted consumer protection messages for Indigenous Australians in the Tiwi Islands. As at 30 June 2018 it had 4985 'likes', adding 303 in 2017-18. There were 124 posts to the page, potentially reaching 104 577 users.

We maintain three Twitter accounts:

- @acccgovau—promoting ACCC news, activities and tips and responding to queries. As at 30 June 2018 it had 17 375 followers, adding 3319 in 2017-18. There were 650 tweets from the account, seen 1 846 207 times
- @ACCCprodsafety—sharing recalls and product safety news and tips. As at 30 June 2018 it had 8130 followers, adding 626 in 2017-18. There were 567 tweets from the account, seen 1 076 976 times
- @Scamwatch_gov—alerting social media users to new scams and providing tips on how to avoid being scammed. As at 30 June 2018 it had 17 594 followers, adding 3528 in 2016-17. There were 249 tweets from the account, seen 4 384 057 times.

The ACCC and Product Safety YouTube channels host videos on a range of topics for use on other social media sites and the ACCC website. Videos on the ACCC channel were viewed 74 028 times in 2017-18. Videos on the Product Safety channel were viewed 40 328 times in 2017-18.

Our ACCC LinkedIn company page engages small businesses and other professionals on a range of consumer and competition issues; promotes campaigns, events and consultations; and positions us as an employer of choice. As at 30 June 2018 it had 7852 followers, adding 1439 in 2017-18. There were 72 posts to the account, potentially reaching 436 945 users.

Media releases and speeches

In 2017-18 the ACCC issued 274 media releases and the AER issued 48.

The Chair, Commissioners and AER Board members undertook numerous public speaking engagements including 22 speeches published on the ACCC website. Through the speeches program, we engage with many stakeholder groups, from local communities, small business associations and industry and professional groups to the boards of multinational corporations.

Reports and guides

The ACCC and AER are required to produce a number of reports to parliament and ministers. We also prepare specific, more detailed guides for consumers, businesses and industries on a range of competition and consumer issues. We continue to favour digital production and distribution over hard copy for these reports and guides, but we provide hard copies for disadvantaged and hard to reach audiences.

In 2017-18 our online publications received 875 015 page views—up from 756 743 in 2016-17.

Our *Little black book of scams*—a guide to detecting and avoiding scams—continued to be popular, especially with the elderly and vulnerable audiences. We distributed 187 787 copies of this publication in 2017–18, many through police stations, aged care facilities, federal ministerial electorate offices, and consumer affairs and fair trading organisations. This compares with 137 085 copies distributed in 2016–17.

Focus on AER communications

During 2017-18 the AER renewed its efforts to improve engagement with consumers and stakeholders.

In September 2017 we published the latest version of our Stakeholder Engagement Framework. The revised framework sets out the principles that will guide our public engagement with consumers, energy businesses and other stakeholders affected by our activities. It provides a structure that allows stakeholders' needs and interests to be consistently, transparently and meaningfully considered in our activities. The framework is published on the AER website.

The AER engages with stakeholders on a formal basis through:

- the Consumer Challenge Panel, which provides input on issues of importance to consumers (see part 3, page 175, for more details).
- the Customer Consultative Group, which helps us understand consumer and small business concerns on retail energy issues (see part 3, page 184, for more details).

In early 2018 we commissioned Orima Research to undertake our 2018 stakeholder survey. We endeavour to conduct these surveys every two years. The final report on the latest survey was delivered in early July 2018.

The AER's new Energy dispatch stakeholder newsletter was launched in June 2017. It is sent out every two months. At the end of 2017-18 it had 390 subscribers.

By the end of 2017-18 the AER's LinkedIn page featured 22 posts and had 1472 followers, 483 of whom were added in 2017-18.

Transforming corporate support

Finance and corporate services

The Finance Branch is responsible for all ACCC financial matters and asset management. Our Corporate Operations and Property Management teams maintain our offices and plan and coordinate moves and office fit-outs.

Assets management

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 2017-18 we undertook a stocktake and an independent fair value assessment of our buildings, infrastructure, plant and equipment to confirm the validity and value of our asset portfolio.

Purchasing

The ACCC uses Australian Government resources and spends public money in accordance with the requirements of the PGPA Act and the Commonwealth Procurement Rules.

Responsibility for procurement lies with the financial delegates in each business unit, who have support from a central procurement team. The team advises on risk management, probity, specification development and contract management. Low-risk procurements (valued at less than \$80 000) are managed by business units. Procurements of \$80 000 or more and whole-of-government and panel arrangements are managed by both the business unit and the central procurement team, ensuring that we comply with the Commonwealth Procurement Rules.

The ACCC had no exempt contracts for the financial year.

There were no contracts of \$100 000 or greater (inclusive of GST) during 2017-18 that did not provide for the Auditor-General to have access to the contractor's premises.

The ACCC supports small business participation in the Commonwealth Government procurement market through:

- the Small Business Engagement Principles (outlined in the government's Industry Innovation and Competitiveness Agenda), such as communicating in clear, simple language and presenting information in an accessible format
- the use of the Commonwealth Contracting Suite for low-risk procurements valued under \$200 000
- electronic systems or other processes used to facilitate on-time payment performance, including the use of payment cards.

Small and medium enterprise (SME) and small enterprise participation statistics are available on the Department of Finance's website (www.finance.gov.au).

Tenders

We advertise all tender opportunities through the AusTender website (<u>www.tenders.gov.au</u>). All tenders undertaken in 2017-18 were carried out in accordance with the Commonwealth Procurement Rules. Information on contracts and consultancies that we award is also available on the AusTender website.

Information on procurements expected to be undertaken in the coming year is included in the ACCC's annual procurement plan. This plan is updated as and when circumstances change.

Consultancy contracts

During 2017-18 the ACCC and AER entered into 81 new consultancy contracts involving actual expenditure of \$5.3 million. In addition, 25 ongoing consultancy contracts were active during the period, involving total actual expenditure of \$2.4 million.

The ACCC and AER engage consultants where we lack specialist expertise or when independent research, review or assessment is required. Consultants typically investigate or diagnose a defined issue or problem; carry out reviews or evaluations; or provide independent advice, information or creative solutions to assist ACCC or AER decision-making.

Before engaging consultants, we take into account the skills and resources that are required for the task, the skills that are available internally and the cost-effectiveness of engaging external expertise.

The decision to engage a consultant is made in accordance with the PGPA Act and related regulations, including the Commonwealth Procurement Rules. In 2017-18 we engaged 81 consultants through open public tender and select or limited tender (including through panel arrangements).

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 (www.tenders.gov.au).

Table 4.12: Consultancy trend data

	2015-16	2016-17	2017-18
Number of new consultancies	56	62	81
Expenditure on new consultancies	\$2.9 million	\$4.9 million	\$5.3 million
Number of ongoing consultancies	13	10	25
Expenditure on ongoing consultancies	\$1.2 million	\$0.4 million	\$2.4 million

Grant programs

Neither the ACCC nor the AER administers any grant programs.

Financial performance

Our financial statements, both administered and departmental, are in part 5 of this report. A financial reporting summary, including information about revenue and expenditure, an operating statement and a staffing summary, appears in part 1.

Our outcome summary in appendix 1 contains a resource summary.

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.

05

Financial statements





INDEPENDENT AUDITOR'S REPORT

To the Treasurer

Opinion

In my opinion, the financial statements of the Australian Competition and Consumer Commission for the year ended 30 June 2018:

- (a) comply with Australian Accounting Standards Reduced Disclosure Requirements and the Public Governance, Performance and Accountability (Financial Reporting) Rule 2015; and
- (b) present fairly the financial position of the Australian Competition and Consumer Commission as at 30 June 2018 and its financial performance and cash flows for the year then ended.

The financial statements of the Australian Competition and Consumer Commission, which I have audited, comprise the following statements as at 30 June 2018 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 Australian Competition and Consumer Commission 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* to the extent that they are not in conflict with the *Auditor-General Act 1997* (the Code). 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 Australian Competition and Consumer Commission the Chair is responsible under the *Public Governance*, *Performance and Accountability Act 2013* for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under that Act. The Chair is also responsible for such internal control as the Chair determines is necessary to enable the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Chair is responsible for assessing the Australian Competition and Consumer Commission's ability to continue as a going concern, taking into account whether the

GPO Box 707 CANBERRA ACT 2601 19 National Circuit BARTON ACT Phona (02) 6203 7300 Fax (02) 6203 7777 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 those charged with governance 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

Kristian Gage Executive Director

Delegate of the Auditor-General Canberra

31 August 2018

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AUSTRALIAN COMPETITION AND CONSUMER COMMISSION STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2018 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 non-corporate Commonwealth entity will be able to pay its debts as and when they fall due.

Rod Sims

Chair and Accountable Authority

31 August 2018

Peter Maybury Chief Financial Officer

31 August 2018

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION Statement of Comprehensive Income

for the period ended 30 June 2018

for the period ended 30 dane 2010		2018	2017	Original Budget
	Notes	\$'000	\$'000	\$'000
NET COST OF SERVICES				
Expenses				
Employee benefits	1.1A	119,105	102,979	108,456
Suppliers	1.1B	82,432	67,440	84,886
Depreciation and amortisation	3.2A	5,235	5,372	5,475
Finance costs	1.1C	21	45	46
Write-down and impairment of assets	1.1D	456	14	-
Settlement of litigation		745	8,955	_
Total expenses		207,994	184,805	198,863
Own-Source Income				
Own-source revenue				
Sale of goods and rendering of services	1.2A	1,296	1,208	3,953
Rental income	1.2B	1,002	1,002	-
Other revenue	1.2C	2,323	1,968	94
Total own-source revenue		4,621	4,178	4,047
Net (cost of) services		(202 272)	(180,627)	(194,816)
,		(203,373)	, ,	, ,
Revenue from Government	1.2D	197,951	173,359	189,341
Surplus/(Deficit) attributable to the Austra Government	lian	(5,422)	(7,268)	(5,475)
OTHER COMPREHENSIVE INCOME				
Items not subject to subsequent reclassifi	cation			
to net cost of services				
Changes in asset revaluation surplus		112	167	-
Total other comprehensive income		112	167	-
Total comprehensive income/(loss) attributhe Australian Government	table to	(5,310)	(7,101)	(5,475)

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 2018

Notes Notes S'000 S'00	as at 30 June 2016				Original
ASSETS Financial assets Cash and cash equivalents 3.1A 1,692 1,616 2,000 Trade and other receivables 3.1B 34,715 30,929 27,704 27,705 27,704 27,705 27,704 27,704 27,704 27,705 27,704 27,		Nata -	2018	2017	Budget
Financial assets Cash and cash equivalents 3.1A 1,692 1,616 2,000 Trade and other receivables 3.1B 34,715 30,929 27,704 Total financial assets 36,407 32,545 29,704 Non-financial assets 28,407 32,545 29,704 Non-financial assets 3.2A 14,996 9,433 12,278 Plant and equipment 3.2A 4,374 3,109 3,583 Computer software 3.2A 4,474 3,268 2,759 Other non-financial assets 3.2B 4,061 2,572 1,511 Total non-financial assets 27,905 18,382 20,131 Total assets 50,927 49,835 LIABILITIES 8 20,941 11,241 19,114 Total payables 3.3B 20,941 11,241 19,114 Total payables 28,253 19,369 26,155 Provisions 6.1A 32,878 30,129 29,141 Other provi	ASSETS	Notes	\$7000	\$1000	\$1000
Cash and cash equivalents 3.1A 1,692 1,616 2,000 Trade and other receivables 3.1B 34,715 30,929 27,704 Total financial assets 36,407 32,545 29,704 Non-financial assets 3.2A 14,996 9,433 12,278 Plant and equipment 3.2A 4,374 3,109 3,583 Computer software 3.2A 4,474 3,268 2,759 Other non-financial assets 3.2B 4,061 2,572 1,511 Total non-financial assets 27,905 18,382 20,131 Total assets 64,312 50,927 49,835 LIABILITIES Payables 3.3A 7,312 8,128 7,041 Other payables 3.3B 20,941 11,241 19,114 Total payables 28,253 19,369 26,155 Provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 6.1A 32,878 30,129 29,141					
Trade and other receivables 3.1B 34,715 30,929 27,704 Total financial assets 36,407 32,545 29,704 Non-financial assets Leasehold improvements 3.2A 14,996 9,433 12,278 Plant and equipment 3.2A 4,374 3,109 3,583 Computer software 3.2A 4,474 3,268 2,759 Other non-financial assets 3.2B 4,061 2,572 1,511 Total non-financial assets 27,905 18,382 20,131 Total assets 64,312 50,927 49,835 LIABILITIES 294 11,241 19,114 Other payables 3.3A 7,312 8,128 7,041 Other payables 3.3B 20,941 11,241 19,114 Total payables 28,253 19,369 26,155 Provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total liabilities		3.1A	1.692	1.616	2.000
Non-financial assets Leasehold improvements 3.2A 14,996 9,433 12,278 Plant and equipment 3.2A 4,374 3,109 3,583 Computer software 3.2A 4,474 3,268 2,759 Other non-financial assets 3.2B 4,061 2,572 1,511 Total non-financial assets 27,905 18,382 20,131 Total assets 64,312 50,927 49,835 LIABILITIES 8 12 50,927 49,835 Payables 3.3A 7,312 8,128 7,041 Other payables 3.3B 20,941 11,241 19,114 Total payables 28,253 19,369 26,155 Provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 3.4A 3,913 9,919 3,871 Total liabilities 65,044 59,417 59,167 Net assets (732) <td>·</td> <td>3.1B</td> <td>•</td> <td>30,929</td> <td>,</td>	·	3.1B	•	30,929	,
Leasehold improvements 3.2A 14,996 9,433 12,278 Plant and equipment 3.2A 4,374 3,109 3,583 Computer software 3.2A 4,474 3,268 2,759 Other non-financial assets 3.2B 4,061 2,572 1,511 Total non-financial assets 27,905 18,382 20,131 Total assets 64,312 50,927 49,835 LIABILITIES Payables 3.3A 7,312 8,128 7,041 Other payables 3.3B 20,941 11,241 19,114 Total payables 28,253 19,369 26,155 Provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919	Total financial assets		36,407	32,545	29,704
Plant and equipment 3.2A 4,374 3,109 3,583 Computer software 3.2A 4,474 3,268 2,759 Other non-financial assets 3.2B 4,061 2,572 1,511 Total non-financial assets 27,905 18,382 20,131 Total assets 64,312 50,927 49,835 LIABILITIES Payables 8,128 7,041 Suppliers 3.3A 7,312 8,128 7,041 Other payables 3.3B 20,941 11,241 19,114 Total payables 28,253 19,369 26,155 Provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit)	Non-financial assets				
Computer software Other non-financial assets 3.2A 3.2B 4,061 2,572 1,511 2,572 1,511 Total non-financial assets 27,905 18,382 20,131 20,131 Total assets 64,312 50,927 49,835 49,835 LIABILITIES Payables Suppliers 3.3A 7,312 8,128 7,041 7,041 11,241 19,114 Other payables 3.3B 20,941 11,241 19,114 19,114 Total payables 28,253 19,369 26,155 Provisions 6.1A 32,878 30,129 29,141 29,141 Other provisions 3.4A 3,913 9,919 3,871 30,712 Total provisions 36,791 40,048 33,012 33,012 Total liabilities 65,044 59,417 59,167 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Leasehold improvements	3.2A	14,996	9,433	12,278
Other non-financial assets 3.2B 4,061 2,572 1,511 Total non-financial assets 27,905 18,382 20,131 Total assets 64,312 50,927 49,835 LIABILITIES Payables Suppliers 3.3A 7,312 8,128 7,041 Other payables 3.3B 20,941 11,241 19,114 Total payables 28,253 19,369 26,155 Provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Plant and equipment	3.2A	4,374	3,109	3,583
Total non-financial assets 27,905 18,382 20,131 Total assets 64,312 50,927 49,835 LIABILITIES Payables Suppliers 3.3A 7,312 8,128 7,041 Other payables 3.3B 20,941 11,241 19,114 Total payables 28,253 19,369 26,155 Provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	•	3.2A	4,474	3,268	2,759
Total assets 64,312 50,927 49,835 LIABILITIES Payables Suppliers 3.3A 7,312 8,128 7,041 Other payables 28,253 19,369 26,155 Provisions Employee provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Other non-financial assets	3.2B	4,061	2,572	1,511
LIABILITIES Payables 3.3A 7,312 8,128 7,041 Other payables 3.3B 20,941 11,241 19,114 Total payables 28,253 19,369 26,155 Provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Total non-financial assets		27,905	18,382	20,131
Payables Suppliers 3.3A 7,312 8,128 7,041 Other payables 3.3B 20,941 11,241 19,114 Total payables 28,253 19,369 26,155 Provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Total assets		64,312	50,927	49,835
Suppliers 3.3A 7,312 8,128 7,041 Other payables 3.3B 20,941 11,241 19,114 Total payables 28,253 19,369 26,155 Provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	LIABILITIES				
Other payables 3.3B 20,941 11,241 19,114 Total payables 28,253 19,369 26,155 Provisions 50,14 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Payables				
Total payables 28,253 19,369 26,155 Provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Suppliers	3.3A		8,128	7,041
Provisions Employee provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Other payables	3.3B	20,941	11,241	19,114
Employee provisions 6.1A 32,878 30,129 29,141 Other provisions 3.4A 3,913 9,919 3,871 Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Total payables		28,253	19,369	26,155
Other provisions 3.4A 3,913 9,919 3,871 Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Provisions				
Total provisions 36,791 40,048 33,012 Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Employee provisions	6.1A	32,878	30,129	29,141
Total liabilities 65,044 59,417 59,167 Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Other provisions	3.4A	3,913	9,919	3,871
Net assets (732) (8,490) (9,332) EQUITY 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Total provisions		36,791	40,048	33,012
EQUITY 88,079 75,011 78,079 Contributed equity 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Total liabilities		65,044	59,417	59,167
Contributed equity 88,079 75,011 78,079 Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Net assets		(732)	(8,490)	(9,332)
Reserves 4,197 4,085 3,919 Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	EQUITY				
Retained surplus/(Accumulated deficit) (93,008) (87,586) (91,330)	Contributed equity		88,079	75,011	78,079
	Reserves		4,197	4,085	3,919
Total equity (8,490) (9,332)	Retained surplus/(Accumulated deficit)		(93,008)	(87,586)	(91,330)
	Total equity		(732)	(8,490)	(9,332)

The above statement should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION Statement of Changes in Equity

for the period ended 30 June 2018

Tor the period chaca do bane 2010	2018 \$'000	2017 \$'000	Original Budget \$'000
CONTRIBUTED EQUITY	7	+ 555	4 000
Opening balance		- 4.004	== 044
Balance carried forward from previous period	75,011	71,624	75,011
Adjusted opening balance	75,011	71,624	75,011
Transactions with owners			
Contributions by owners			
Equity injection - appropriations	11,100	1,400	1,100
Departmental capital budget	1,968	1,987	1,968
Total transactions with owners	13,068	3,387	3,068
Closing balance as at 30 June	88,079	75,011	78,079
RETAINED EARNINGS			
Opening balance Balance carried forward from previous period	(87,586)	(80,273)	(85,855)
Adjustment for prior period	(87,386)	(45)	(83,833)
Adjusted opening balance	(87,586)	(80,318)	(85,855)
, and the control of	(01,000)	(00,010)	(00,000)
Comprehensive income			
Surplus/(Deficit) for the period	(5,422)	(7,268)	(5,475)
Total comprehensive income	(5,422)	(7,268)	(5,475)
Closing balance as at 30 June	(93,008)	(87,586)	(91,330)
ASSET REVALUATION RESERVE			
Opening balance			
Balance carried forward from previous period	4,085	3,918	3,919
Adjusted opening balance	4,085	3,918	3,919
Comprehensive income	112	167	
Other comprehensive income		167	
Total comprehensive income	112		-
Closing balance as at 30 June	4,197	4,085	3,919

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION Statement of Changes in Equity

for the period ended 30 June 2018

Closing balance as at 30 June	(732)	(8,490)	(9,332)
Total transactions with owners	13,068	3,387	3,068
Departmental capital budget	1,968	1,987	1,968
Equity injection - appropriations	11,100	1,400	1,100
Transactions with owners Contributions by owners			
Total comprehensive income	(5,310)	(7,101)	(5,475)
Other comprehensive income	112	167	
Surplus/(Deficit) for the period	(5,422)	(7,268)	(5,475)
Comprehensive income			
Adjusted opening balance	(8,490)	(4,776)	(6,925)
Adjustment for prior period	-	(45)	
TOTAL EQUITY Opening balance Balance carried forward from previous period	(8,490)	(4,731)	(6,925)
	\$'000	\$'000	\$'000
(cont)	2018	2017	Original Budget

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.

Restructuring of Administrative Arrangements

Net assets received from or relinquished to another Government entity under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION Cash Flow Statement

for the period ended 30 June 2018

•			Original
	2018	2017	Budget
Notes	\$'000	\$'000	\$'000
OPERATING ACTIVITIES Cash received			
Appropriations	220,988	175,547	196,479
Sale of goods and rendering of services	1,382	1,516	4,269
Net GST received	8,151	6,238	6,127
Other	2,859	2,341	
Total cash received	233,380	185,642	206,875
Cash used	44	400 470	400.000
Employees	115,988	102,473	109,868
Suppliers Section 74 receipts transferred to OPA	91,405 23,886	76,571 4,871	91,829 4,269
Settlement of litigation	5,228	8,418	4,209
Total cash used	236,507	192,333	205,966
Net cash from/(used by) operating activities	(3,126)	(6,691)	909
INVESTING ACTIVITIES Cash received Other	10,085	-	6,300
Total cash received	10,085	_	6,300
Total dash received	10,000		
Cash used Purchase of non-financial assets Other	15,559 1,469	2,387	8,868 1,409
Total cash used	17,028	2,387	10,277
Net cash from/(used by) investing activities	(6,943)	(2,387)	(3,977)
FINANCING ACTIVITIES Cash received			
Contributed equity	10,146	9,405	3,068
Total cash received	10,146	9,405	3,068
Net cash from/(used by) financing activities	10,146	9,405	3,068
Net increase/(decrease) in cash held	76	327	
Cash and cash equivalents at the beginning of the reporting period	1,616	1,289	2,000
Cash and cash equivalents at the end of the reporting period 3.1A	1,692	1,616	2,000

The above statement should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION Administered Schedule of Comprehensive Income

for the period ended 30 June 2018

NET COST OF SERVICES	Notes	2018 \$'000	Restated 2017 \$'000	Original Budget \$'000
Expenses Impairment and repayment of fees and				
fines	2.1A	14,236	7,364	
Total expenses		14,236	7,364	-
Income Revenue Non-taxation revenue				
Fees and fines	2.2A	131,164	42,279	40,000
Total non-taxation revenue		131,164	42,279	40,000
Total income		131,164	42,279	40,000
Net (cost of)/contribution by services		116,928	34,915	40,000
Surplus/(Deficit)		116,928	34,915	40,000
Total comprehensive income/(loss)		116,928	34,915	40,000

The above schedule should be read in conjunction with the accompanying notes. Refer to the restatement of prior period disclosures in the overview note.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION Administered Schedule of Assets and Liabilities

as at 30 June 2018

		2018	Restated 2017	Original Budget
	Notes	\$'000	\$'000	\$'000
ASSETS				
Financial assets				
Cash and cash equivalents	4.1A	-	1	1
Trade and other receivables	4.1B	32,615	2,298	7,682
Total financial assets		32,615	2,299	7,683
Total assets administered on behalf of Government		32,615	2,299	7,683
Net assets/(liabilities)		32,615	2,299	7,683

The above schedule should be read in conjunction with the accompanying notes. Refer to the restatement of prior period disclosures in the overview note.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION Administered Reconciliation Schedule

for the period ended 30 June 2018

		Restated
	2018	2017
	\$'000	\$'000
Opening assets less liabilities as at 1 July	2,299	7,554
Adjusted opening assets less liabilities	2,299	7,554
Net (cost of)/contribution by services		
Income	131,164	42,279
Expenses	(14,236)	(7,364)
Transfers (to)/from the Australian Government		
Appropriation transfers to Official Public Account		
Transfers to Official Public Account	(85,612)	(40,169)
Transfers from other entities	(1,000)	
Closing assets less liabilities as at 30 June	32,615	2,299

The above schedule should be read in conjunction with the accompanying notes. Refer to the restatement of prior period disclosures in the overview note.

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.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION Administered Cash Flow Statement

for the period ended 30 June 2018

	Notes	2018 \$'000	2017 \$'000
OPERATING ACTIVITIES			
Cash received			
Fines and costs		85,451	39,944
Other fees		168	230
Total cash received		85,619	40,174
Cash used			
Refund of fees and fines		8	5
Total cash used		8	5
Net cash from/(used by) operating activities		85,611	40,169
Cash to Official Public Account			
Appropriations		(85,612)	(40,169)
Total cash to Official Public Account		(85,612)	(40,169)
Cash and cash equivalents at the beginning of the reporting period		1	1
Cash and cash equivalents at the end of the reporting period	4.1A	0	1

This schedule should be read in conjunction with the accompanying notes.

OVERVIEW

The Commission is an Australian Government controlled not-for-profit entity.

The Basis of Preparation

The financial statements are general purpose financial statements and are required by section 42 of the *Public Governance*, *Performance and Accountability Act 2013*.

The financial statements have been prepared in accordance with:

- a) Public Governance, Performance and Accountability (Financial Reporting) Rule 2015 (FRR) for reporting periods ending on or after 1 July 2015; and
- b) Australian Accounting Standards and Interpretations Reduced Disclosure Requirements issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The financial statements are presented in Australian dollars.

Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in these statements the Commission has made assumptions or estimates in the following areas that have the most significant impact on the amounts recorded in the financial statements:

- the fair value of leasehold improvements and property, plant and equipment 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.
- leave provisions involve assumptions based on the expected tenure of existing staff, patterns of leave claims and payout, future salary movements and future discount rates. Leave liabilities have been determined by reference to the work of an actuary as at 30 June 2018 and are subject to ongoing assessment by management.

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.

New Accounting Standards

Prior to the signing of the statements by the Accountable Authority and Chief Financial Officer, no 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.

Taxation

The Commission is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Related Parties

The Commission is an Australian Government controlled entity. Related parties to this entity are Key Management Personnel including the Portfolio Minister and Executive, and other Australian Government entities.

Significant transactions with related parties can include:

- the payments of grants or loans;
- purchases of goods and services;
- asset purchases, sales transfers or leases;
- debts forgiven; and
- guarantees.

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.

Reporting of Administered activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules and related notes.

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.

Restatement of prior period disclosures

During 2017-18 the Commission re-assessed its interpretation of Accounting Standard AASB 110 - Events after the Reporting Period . Historically, the Commission has reflected favourable court judgements post balance date as adjusting events to the Administered Schedules. On review, this position was in contrast to the requirements of AASB 137 - Provisions, Contingent Liabilities and Contingent Assets. The Commission now treats such events as unadjusting events and reports the outcome of these judgements as Contingent Assets. As a result, the Commission has restated a number of 2016-17 disclosures under the requirements of AASB 108 – Accounting Policies, Changes in Accounting Estimates and Errors .

The table below details the financial statement line items and amounts adjusted:

	2017	Adjustment	2017
	\$'000	\$'000	\$'000
Financial Statements Line Item	(Original)		(Restated)
Administered Schedule of Comprehensive Income)		
Fees and fines	46,699	-4,420	42,279
Total income	46,699	-4,420	42,279
Net (cost of)/contribution by services	39,335	-4,420	34,915
Administered Schedule of Assets and Liabilities			
Trade and other receivables	6,848	-4,550	2,298
Total financial assets	6,849	-4,550	2,299
Net assets/(liabilities)	6,849	-4,550	2,299
Administered Reconciliation Schedule			
Income	46,699	-4,420	42,279
Closing assets less liabilities as at 30 June	6,849	-4,550	2,299

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 2017-18 total \$13,109,173 (2017: \$13,641,023) refer to *Telecommunications (Carrier Licence Charges) Act 1997 Determination* under paragraph 15(1)(b) No.1 of 2018. This cost includes a component of depreciation expense \$0.5m (2017: \$0.5m) which is not appropriation funded.

The Determination enforcing the above activity is available at https://www.legislation.gov.au/Details/F2018L00784

The Cost Recovery Impact Statement for the above activity is available at http://www.acma.gov.au/theACMA/About/Corporate/Accountability/cost-recovery-impact-statements-acma.

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 7.1.

1.1 Expenses

	2018	2017
	\$'000	\$'000
1.1A: Employee benefits		
Wages and salaries	91,220	79,366
Superannuation		
Defined contribution plans	9,486	7,828
Defined benefit plans	6,252	6,178
Leave and other entitlements	11,028	8,596
Separation and redundancies	564	522
Other employee benefits	556	489
Total employee benefits	119,105	102,979

Accounting PolicyAccounting policies for employee related expenses is included in the People and Relationships section.

4 4Dr Oursellieus		
1.1B: Suppliers		
Goods and services supplied or rendered		
Legal expenses	26,593	20,782
Consultants and contracted services	18,441	13,478
Information technology and communications	8,998	8,948
Property operating expenses	4,211	4,131
Travel expenses	5,163	3,994
Employee related expenses	2,322	1,772
Information management expenses	2,743	1,875
Other administration expenses	3,110	1,232
Total goods and services supplied or rendered	71,581	56,212
Goods supplied	2,622	1,621
Services rendered	68,958	54,591
Total goods and services supplied or rendered	71,581	56,212
Other suppliers		
Operating lease rentals		
Minimum lease payments	10,248	10,435
Workers compensation premiums	603	793
Total other suppliers	10,851	11,228
Total suppliers	82,432	67,440

1.1B: Suppliers (cont)

Leasing commitments

The Commission in its capacity as leasee has operating lease commitments for office space. Most lease payments for office space are subject to annual increases of between 3% and 5% per annum. Some leases are subject to minimum lease payment market reviews. The current terms of the office space leases will expire between 2018 and 2029 with many leases containing extension options. There are no purchase options available to the Commission.

	2018	2017
	\$'000	\$'000
Commitments for minimum lease payments in relation to non- cancellable operating leases are payable as follows:		
Within 1 year	13,264	13,246
Between 1 to 5 years	41,562	46,333
More than 5 years	36,290	37,571
Total operating lease commitments	91,116	97,150

Accounting Policy

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets. The Commission has no finance leases.

1.1C: Finance costs		
Unwinding of discount	21	45
Total finance costs	21	45

Accounting Policy

All borrowing costs are expensed as incurred.

1.1D: Write-down and impairment of assets

Total write-down and impairment of assets	456	14
Revaluation decrements	167	_
Write-down on disposal	289	14

1.2 Own-Source Revenue

	2018 \$'000	2017 \$'000
Own-Source Revenue		
1.2A: Sale of goods and rendering of services		
Rendering of services	1,296	1,208
Total sale of goods and rendering of services	1,296	1,208

Accounting Policy

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- a) the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- b) the probable economic benefits associated with the transaction will flow to the Commission.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

1.2B: Rental income

Operating lease		
Sublease rent	1,002	1,002
Total rental income	1,002	1,002

Subleasing rental income commitments

The Commission in its capacity as leasee has two operating subleases for office space (2017:2). These subleases in Sydney and Canberra are effectively non-cancellable. Each lease has annual rental increases of between 3-4% and the lease terms will expire in two to four years.

1.2C: Other revenue

Project revenue	2,229	1,874
Resources received free of charge		
Remuneration of auditors	94	94
Total other revenue	2,323	1,968

Accounting Policy

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.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition.

	2018 \$'000	2017 \$'000
1.2D: Revenue from Government Appropriations	Ψ	φοσο
Departmental appropriations	197,951	173,359
Total revenue from Government	197,951	173,359

Accounting Policy

Revenue from Government

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government 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.

Income and Expenses Administered on Behalf of the Government

This section analyses the activities that 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.

2.1 Administered - Expenses

	2018 \$'000	2017 \$'000
2.1A: Impairment and repayment of fees and fines		
Impairment of receivables	14,236	7,364
Total impairment and repayment of fees and fines	14,236	7,364

Income and Expenses Administered on Behalf of the Government

This section analyses the activities that 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.

2.2 Administered - Income

		Restated
	2018	2017
	\$'000	\$'000
Revenue		
Non-Taxation Revenue		
2.2A: Fees and fines		
Fines and costs	130,996	42,049
Authorisation fees	110	161
Notifications	44	69
Arbitration fees	14	
Total fees and fines	131,164	42,279

Refer to the restatement of prior period disclosures in the overview note.

Accounting Policy

All administered revenues are revenues relating to ordinary activities performed by the Commission on behalf of the Australian Government. As such, administered appropriations are not revenues of the individual entity that oversees distribution or expenditure of the funds as directed.

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 payment.

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.

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.

3.1 Financial Assets

	2018	2017
	\$'000	\$'000
2.4A. Cook and cook aminulants		
3.1A: Cash and cash equivalents		
Cash on hand or on deposit	1,692	1,616
Total cash and cash equivalents	1,692	1,616

Accounting Policy

Cash is recognised at its nominal amount. Cash and cash equivalents are deposits in bank accounts.

3.1B: Trade and other receivables		
Goods and services receivables		
Goods and services	815	607
Total goods and services receivables	815	607
Appropriations receivables		
Appropriation receivable	32,607	28,836
Total appropriations receivables	32,607	28,836
Other receivables		
Statutory receivables	1,293	1,486
Total other receivables	1,293	1,486
Total trade and other receivables (gross)	34,715	30,929
Less impairment allowance	-	-
Total trade and other receivables (net)	34,715	30,929

Credit terms for goods and services were within 30 days (2017:30 days).

Accounting Policy

Loans and Receivables

Trade receivables, loans and other receivables that have fixed or determinable payments and that are not quoted in an active market are classified as 'loans and receivables'. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Financial assets are assessed for impairment at the end of each reporting period.

3.2 Non-Financial Assets

3.2A: Reconciliation of the opening and closing balances of property, plant and equipment and intangibles

Signo Signo Signo Signo		Leasehold	Plant and	Computer	TotoF
\$'000 \$'000		improvements	equipment	software ¹	lota
14,877 5,791 12,327 (5,444) (2,682) (9,059) 9,433 3,109 3,268 7,947 3,056 1,076 - 1,376 - 1,376 - (167) (167) (2,458) (1,532) (1,246) (3,203) (1,234) (3,771) (4,996 4,374 11,009 14,996 4,374 11,009 14,996 4,374 4,474		\$,000	\$,000	\$,000	\$,000
14,877 5,791 12,327 (5,444) (2,682) (9,059) (9,059) (1,544) (2,682) (9,059) (1,059) (1,076					
14,877 5,791 12,327 (5,444) (2,682) (9,059) (9,059) (9,433 3,109 3,268 3,268	As at 1 July 2017				
9,433 3,109 3,268 9,433 3,109 3,268 7,947 3,056 1,076 -	Gross book value	14,877	5,791	12,327	32,995
9,433 3,109 7,947 3,056 (167) - (1,532) (1,234) 1) 2,998 1,142 14,996 4,374	Accumulated depreciation, amortisation and impairment	(5,444)	(2,682)	(6,059)	(17,185)
7,947 3,056	Total as at 1 July 2017	9,433	3,109	3,268	15,810
7,947 3,056	Additions				
	Purchase	7,947	3,056	1,076	12,079
orehensive income 278 - (167) - (167) (2,458) (1,532) (3,203) (1,234) 2,998 1,142 14,996 4,374	Internally developed	•	•	1,376	1,376
- (167) (2,458) (1,532) (1,234) 1) 2,998 1,142 14,996 4,374 	Revaluations and impairments recognised in other comprehensive income	278	•	•	278
(3,203) (1,532) (1,234) (1,234) (1,4996 4,374 (14,996 4,374	Revaluations recognised in net cost of services	•	(167)	•	(167)
(1,234) 2,998 1,142 14,996 4,374 14,996 4,374	Depreciation and amortisation	(2,458)	(1,532)	(1,246)	(5,235)
(1,234) 2,998 1,142 14,996 4,374 14,996 4,374	Disposals				
1,142 14,996 14,374 14,996 14,374 14,996 14,374	Other disposals/writedowns (gross book value)	(3,203)	(1,234)	(3,771)	(8,208)
14,996 4,374 14,996 4,374 1	Other disposals/writedowns (accumulated depreciation)	2,998	1,142	3,771	7,911
14,996 4,374 1	Total as at 30 June 2018	14,996	4,374	4,474	23,844
14,996 4,374 1	Total as at 30 June 2018 represented by				
14 996	Gross book value	14,996	4,374	11,009	30,379
14 996 4 374	Accumulated depreciation, amortisation and impairment			(6,535)	(6,535)
	Total as at 30 June 2018	14,996	4,374	4,474	23,844

The carrying value of leasehold improvements, plant and equipment and intangibles (computer software) were reviewed at 30 June 2018. No 1. The carrying amount of computer software includes \$1.5m purchased software and \$3.0m internally generated software. indicators of impairment were found.

Leasehold improvements and plant and equipment assets may be sold or disposed in 2018-19 coinciding with the termination of some lease arrangements.

No property, plant and equipment are held under finance lease.

Revaluations of non-financial assets

All revaluations were conducted in accordance with the revaluation policy stated at Note 7.4. An independent valuer conducted the revaluations over the course of May and June 2018.

3.2 Non-Financial Assets

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.

Assets acquired at no cost, or for nominal consideration, Depreciable property, plant and equipment assets are are initially recognised as assets and income at their fair written-off to their estimated residual values over their value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at amounts which were recognised in the transferor's accounts immediately prior to the restructuring.

Asset recognition threshold

Purchases of property, plant and equipment are recognised initially at cost in the statement of financial position, except for purchases under the capitalisation threshold, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

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 'make good'.

Revaluations

Following initial recognition at cost, property, plant and equipment are 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 fair value less costs of disposal and its value in use. reporting date. The regularity of independent valuations Value in use is the present value of the future cash 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.

All revaluations were conducted in accordance with the revaluation policy stated at Note 7.4. A full revaluation was undertaken at 30 June 2018.

Depreciation

estimated useful lives to the Commission using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates for each class of depreciable asset are based on the following useful lives:

Asset class	2018 and 2017
Leasehold improvements	Lesser of lease
	or 15 years
Furniture and fittings	10 years
Office equipment	5 years
Computer hardware	3 to 5 years
Computer software	3 to 7 years

Impairment

All assets were assessed for impairment at 30 June 2018. 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.

An impairment loss of \$0.46m (2017:\$0.01m) for property, plant and equipment was recognised in the Statement of Comprehensive Income.

The recoverable amount of an asset is the higher of its 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.

Accounting Policy (cont)

Intangibles

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. These assets are carried at cost if above the capitalisation threshold or they are expensed in the year of purchase.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the Commission's software are 3 to 7 years (2017: 3 to 7 years).

All software assets were assessed for indications of impairment as at 30 June 2018.

Contractual commitments for the acquisition of property, plant and equipment and intangible assets

The Commission has contractual commitments for the acquisition of leasehold improvements of \$0.3m (2017: \$3.8m), commitments for intangible assets of \$0.6m (2017: \$1.0m) and no commitments for property plant and equipment (2017: \$2.4m).

3.2 Non-Financial Assets

	2018	2017
	\$'000	\$'000
3.2B: Other non-financial assets		
Prepayments	2,282	2,370
Lease incentive asset	1,537	-
Leasehold rights	242	202
Total other non-financial assets	4,061	2,572

No indicators of impairment were found for other non-financial assets.

3.3 Payables

	2018	2017
	\$'000	\$'000
3.3A: Suppliers		
Trade creditors and accruals	7,312	8,128
Total suppliers	7,312	8,128

Settlement is usually made within 30 days.

3.3B: Other payables		
Lease incentives	13,097	3,451
Superannuation	140	110
Operating lease payment increases	5,104	5,218
Wages and salaries	1,412	1,085
Unearned income	1,020	1,220
Salary sacrifice payable	168	157
Total other payables	20,941	11,241

3.4 Other Provisions

3.4A: Other provisions

	Provision for litigation \$'000	Provision for onerous leases \$'000	Provision for restoration \$'000	Total \$'000
As at 1 July 2017	4,483	3,506	1,929	9,918
Additional provisions made	-	-	167	167
Amounts used	(4,483)	(384)	(1,326)	(6,193)
Unwinding or change of discount rate	-	5	16	21
Total as at 30 June 2018	-	3,127	786	3,913

The Commission currently has 8 agreements (2017:11) for the leasing of premises which have provisions requiring it to restore the premises to their original condition at the conclusion of the lease. The Commission has an onerous lease contract for premises (2017:1).

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.

4.1 Administered - Financial Assets

		Restated
	2018	2017
	\$'000	\$'000
4.1A: Cash and cash equivalents		
Cash on hand or on deposit	-	1
Total cash and cash equivalents	-	1
4.1B: Trade and other receivables		
Other receivables		
Fines and costs	39,980	11,873
Total other receivables	39,980	11,873
Total trade and other receivables (gross)	39,980	11,873
Less impairment allowance	(7,365)	(9,575)
Total trade and other receivables (net)	32,615	2,298

Credit terms for fines and costs were within 30 days or as stipulated by court judgements (2017:30 days).

Refer to the restatement of prior period disclosures in the overview note.

Reconciliation of the Impairment Allowance

Movements in relation to other receivables		
Opening balance	9,575	12,160
Amounts written off	(4,660)	(9,949)
Increase/(Decrease) recognised in net cost of services	2,450	7,364
Closing balance	7,365	9,575

Accounting Policy

Loans and Receivables

Where loans and receivables are not subject to concessional treatment, they are carried at amortised cost using the effective interest method. Gains and losses due to impairment, derecognition and amortisation are recognised through profit or loss.

Funding

This section identifies the Commission's funding structure.

5.1 Appropriations

5.1A: Annual appropriations ('recoverable GST exclusive')

Annual Appropriations for 2018

3,848	222,906	226,754	15,735	211,019	Total departmental
2,922	8,178	11,100	•	11,100	Equity Injections
					Other services
•	1,968	1,968	•	1,968	Capital Budget³
926	212,760	213,686	15,735	197,951	Ordinary annual services
					Departmental
\$.000	\$.000	\$.000	\$.000	000.\$	
Variance	years)	appropriation	appropriation ²	Appropriation ¹	
	Total (current and prior	Total (Adjustments to	Annual	
	applied in 2018				
	Appropriation				

^{1.} No portion of the 2017-18 annual appropriations have been withheld under section 51 of the PGPA Act and quarantined for administrative purposes.

^{2.} Adjustment to the ordinary annual services appropriation is to recognise PGPA Act s74 receipts.

^{3.} 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.

5.1A: Annual appropriations ('recoverable GST exclusive') (cont)

Annual Appropriations for 2017

	Annual Appropriation ¹ \$'000	Adjustments to appropriation ² \$'000	Total appropriation \$'000	Appropriation applied in 2017 (current and prior years)	Variance ³ \$'000
Departmental					
Ordinary annual services	173,359	4,871	178,230	175,168	3,062
Capital Budget ⁴	1,987	ı	1,987	2,039	(52)
Other services					
Equity Injections	1,400	1	1,400	7,418	(6,018)
Total departmental	176,746	4,871	181,617	184,625	(3,008)

1. No portion of the 2016-17 annual appropriations have been withheld under section 51 of the PGPA Act and quarantined for administrative purposes.

2. Adjustment to the ordinary annual services appropriation is to recognise PGPA Act s74 receipts.

Funding arrangements. The underspend in ordinary annual services funding is largely contributable to the underspend on external legal expenses. 4. Departmental Capital Budgets are appropriated through Appropriation Acts (No.1,3,5). They form part of ordinary annual services, and are not 3. The Commission applied prior year equity injection appropriations to make cash settlements of litigation costs under Litigation Contingency

separately identified in the Appropriation Acts.

5.1B: Unspent annual appropriations ('recoverable GST exclusive')

	2018	2017
	\$,000	\$,000
Departmental		
Appropriation Act (No. 4) 2013-14	•	11,596
Appropriation Act (No. 2) 2015-16	•	1,300
Appropriation Act (No. 4) 2015-16	•	6,878
Appropriation Act (No. 1) 2016-17	•	18,267
Appropriation Act (No. 2) 2016-17	942	942
Appropriation Act (No. 3) 2016-17	•	991
Supply Act (No.2) 2016-17	458	458
Appropriation Act (No. 1) 2017-18	17,497	•
Appropriation Act (No. 2) 2017-18	1,100	ı
Appropriation Act (No. 3) 2017-18	2,610	ı
Appropriation Act (No. 4) 2017-18	10,000	1
Total departmental	32,607	40,432

In addition to the unspent appropriations disclosed above, at 30 June 2018 the Commission had cash and cash equivalents of \$1.692m (2017: 1.616m).

Appropriation applied

5.1C: Special appropriations ('recoverable GST exclusive')

			2018	2017
Authority	Type	Purpose	\$.000	\$,000
PGPA Act, 2013 s.77, Administered	Refund	To provide an appropriation where an Act or other law requires or permits the 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.	ω	ιΩ
Total special appropriations applied			∞	2

5.2 Special Accounts

Services for Other Entities and Trust Moneys

	2018	2017
Administered	\$'000	\$'000
Balance brought forward from previous period	54	54
Total increases		20
Available for payments	54	74
Total decreases		20
Total balance carried to the next period	54	54

- 1. Appropriation: Public Governance, Performance and Accountability Act 2013 section 78
- 2. Establishing Instrument: Financial Management and Accountability (Establishment of Special Account for Australian Competition and Consumer Commission) Determination 2011/02
- 3. The purpose of the account is:
- (a) amounts to be held on trust or otherwise for the benefit of a person other than the Commonwealth:
- (b) amounts received in the course of the performance of functions that relate to the purpose of the Services for Other Entities and Trust Moneys Australian Competition and Consumer Commission Special Account;
- (c) amounts received from any person for the purposes of the *Services for Other Entities and Trust Moneys Australian Competition and Consumer Commission Special Account*; and (d) amounts to be held on trust or otherwise for the benefit of a person other than the Commonwealth.
- 4. The total balance carried to the next period is cash held in the Commission's bank account.

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.

6.1 Employee Provisions

	2018	2017
	\$'000	\$'000
6.1A: Employee provisions		
Leave	32,694	29,871
Separations and redundancies	184	258
Total employee provisions	32,878	30,129

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 minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

<u>Leave</u>

The liability for employee benefits includes provision for annual leave and long service leave. The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the Commission's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The leave liabilities have been determined by reference to the work of an actuary as at 30 June 2018. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The Commission recognises a provision for termination 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.

6.2 Key Management Personnel Remuneration

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity. The Commission has determined the key management personnel to be the members of the Corporate Governance and Executive Management Boards. Key management personnel remuneration is reported in the table below:

	2018	2017
	\$'000	\$'000
Short-term employee benefits	6,742	6,769
Post-employment benefits	897	936
Other long-term employee benefits	674	633
Termination benefits	-	165
Total key management personnel remuneration expenses	8,313	8,503

The total number of key management personnel that are included in the above table is 20 (2017: 21).

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 entity.

Managing uncertainties

This section analyses how the Commission manages financial risks within its operating environment.

7.1 Contingent Assets and Liabilities

At 30 June 2018, 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 contingent liabilities. The Commission has no quantifiable contingent liabilities arising from court action to report.

The Commission is in possession of a bank guarantee in the amount of \$0.1m. This bank guarantee is a contingent asset which would be exercised in the event of a default by a subleasee. It is not expected that this bank guarantee will be exercised and it is due to expire 30 September 2021.

Administered

In the event of a favourable judgement by the Courts, the Commission stands to gain by way of penalties or costs awarded. Due to the inherent uncertainty of litigation it was not possible to estimate the value of case outcomes at 30 June 2018.

However, prior to these statements being authorised court judgements have demonstrated that the Commission has quantifiable administered contingent assets totalling \$11.4 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.

7.2 Financial Instruments

	2018	2017
	\$'000	\$'000
7.2A: Categories of financial instruments		
Financial Assets		
Loans and receivables		
Cash and cash equivalents	1,692	1,616
Trade and other receivables	815	607
Total loans and receivables	2,507	2,223
Total financial assets	2,507	2,223
Financial Liabilities		
Financial liabilities measured at amortised cost		
	= 0.10	0.400
Trade creditors	7,312	8,128
Unearned income	1,020	1,220
Total financial liabilities measured at amortised cost	8,332	9,348
Total financial liabilities	8,332	9,348

7.2: Financial Instruments (cont)

Accounting Policy

Financial Assets

The Commission classifies its financial assets as loans and receivables.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition. Financial assets are recognised and derecognised upon trade date.

Effective Interest Method

Income is recognised on an effective interest rate basis except for financial assets that are recognised at fair value through profit or loss.

Financial Assets at Fair Value Through Profit or Loss Financial Liabilities at Fair Value Through Profit or Financial assets are classified as financial assets at fair value through profit or loss where the financial assets:

- selling in the near future;
- are derivatives that are not designated and effective as a hedging instrument; or
- are parts of an identified portfolio of financial instruments that the entity manages together and has a recent actual pattern of short-term profit-taking.

Assets in this category are classified as current assets.

Financial assets at fair value through profit or loss are stated at fair value, with any resultant gain or loss recognised in profit or loss. The net gain or loss amortised cost. Liabilities are recognised to the recognised in profit or loss incorporates any interest earned on the financial asset.

Impairment of Financial Assets

Financial assets are assessed for impairment at the end of each reporting period.

Financial assets held at amortised cost - if there is objective evidence that an impairment loss has been incurred for loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the Statement of Comprehensive Income.

Financial assets held at cost - if there is objective evidence that an impairment loss has been incurred, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

Financial Liabilities

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities. Financial liabilities are recognised and derecognised upon 'trade date'.

Loss

Financial liabilities at fair value through profit or loss are initially measured at fair value. Subsequent fair a) have been acquired principally for the purpose of value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

Other Financial Liabilities

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs. These liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective interest basis.

Supplier and other payables are recognised at extent that the goods or services have been received (and irrespective of having been invoiced).

7.3 Administered - Financial Instruments

		Restated
	2018	2017
	\$'000	\$'000
7.3A: Categories of financial instruments		
Financial assets		
Loans and receivables		
Cash on hand or on deposit	-	1
Fines and costs receivable	32,615	2,298
Total loans and receivables	32,615	2,299
Total financial assets	32,615	2,299
7.3B: Net gains or losses on financial assets		
Loans and receivables		
Impairment	(14,236)	(7,364)
Net gains/(losses) on loans and receivables	(14,236)	(7,364)
Net gains/(losses) on financial assets	(14,236)	(7,364)

Refer to the restatement of prior period disclosures in the overview note.

7.4 Fair Value Measurement

7.4A: Fair value measurement

Fair value measurements at the end of the reporting period

	2010	2017
	\$'000	\$'000
Non-financial assets		
Leasehold improvements	14,996	9,433
Plant and equipment	4,374	3,109

2040

2017

No non-financial assets were measured on a non-recurring basis at 30 June 2018 (2017:Nil)

Accounting Policy

The above table provides an analysis of assets and liabilities that are measured at fair value. The remaining assets and liabilities disclosed in the statement of financial position do not apply the fair value hierarchy.

The different levels of the fair value hierarchy are defined below.

Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities that the entity can access at measurement date.

Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3: Unobservable inputs for the asset or liability.

There have been no transfers between level 1 and level 2 of the hierarchy during the year

The ACCC engaged the valuation services from Jones Lang LaSalle (JLL) to conduct an independent valuation of the tangible non-financial asset classes. An annual assessment is undertaken to determine whether the carrying amount of the assets is materially different from the fair value. Comprehensive valuations are carried out at least once every three years with the previous valuation conducted at 30 June 2015. JLL undertook a full revaluation of all tangible property, plant and equipment as at 30 June 2018.

The methods utilised to determine and substantiate the unobservable inputs are derived and evaluated as follows:

Physical depreciation and obsolescence - assets that do not transact with enough frequency or transparency to develop objective opinions of value from observable market evidence have been measured utilising the Depreciated Replacement Cost approach. Under the Depreciated Replacement Cost approach the estimated cost to replace the asset is calculated and then adjusted to take into account physical depreciation and obsolescence. Physical depreciation and obsolescence has been determined based on professional judgement regarding physical, economic and external obsolescence factors relevant to the asset under consideration. For all leasehold improvement assets, the consumed economic benefit / asset obsolescence deduction is determined based on the term of the associated lease

The ACCC's policy is to recognise transfers into and transfers out of fair value hierarchy levels as at the end of the reporting period.

8.1 Budgetary Reporting

Explanations of major variances between the actual amounts presented in the financial statements and the corresponding original budget amounts.

Departmental

Operational Funding & Melbourne Accommodation Project

At portfolio additional estimates the Commission received additional operating funding of \$8.6m which was one contributor to the increase in appropriation drawdowns compared to the original budget in the cash flow statement. A significant portion of this funding was for additional resourcing for the Australian Energy Regulator (AER). Additional staff numbers, particularly for the AER is the key driver of the increase in employee benefits and associated leave provisions.

The additional s74 receipts relates to the cash recieved as a component of the lease incentive for the Commission's new Melbourne office of \$10.1m. An additional component of the lease incentive is a rent abatement period, this has contributed to the unbudgeted increase in other non-financial assets. The cash funding component was subsequently drawn from appropriation funding to construct the new office fitout, which is also a factor in the increase in the cash used for the purchase of non-financial assets. The total increase in staff numbers, necessitated unbudgeted additional leasehold fitout work as well as the purchase of additional IT hardware and software.

A further \$8.2m of GST refunds has been recognised as Section 74 receipts transferred to the OPA and correspondingly drawn down as appropriation funding. The GST received from the Australian Taxation Office was not factored into the original budget and is considerably higher than in prior years due to the increase in the Commission's operating budget.

Affected line items: Employee Benefits, Departmental revenue from Government, Employee Provisions, Cash received - Appropriations, Cash received - Other (investing), Cash Used - Employees, Cash Used - Purchase of non-financial assets, Cash used - Section 74 receipts transferred to the OPA.

Litigation Contingency Funding

The Commission's Litigation Contingency Fund (LCF) was replenished with \$10m via contributed equity appropriation during 2017-18 as part of the portfolio additional estimates process. The net increase to the LCF balance was \$4.8m after taking into account \$5.2m of payments from the LCF to fund legal settlements of court costs. The additional appropriations obtained at additional estimates heavily contributed to the higher than budgeted trade and other receivables balance. The LCF top up was required to ensure the Commission had adequate reserves to fund settlements going forward.

Affected line items: Contributed equity, Equity Injection - appropriations, Cash Used - Settlement of Litigation, Cash Received - Contributed Equity, Trade and other receivables.

Administered Activities

The Commission uses a historical average to budget for fees and fines revenue due to the complexity and uncertainty in predicting the future outcome of litigation. The resulting variance between budget and actual fees and fines is a favourable \$91.1m in 2017-18. However, the budget did not anticipate impairments for overdue debtor balances of \$14.2m resulting in a final administered outcome that is different to the budget by \$76.9m.

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. In June 2018 the Commission recognised penalties for two high dollar value cases totalling \$24m. The Commission had not received payment for these as at 30 June 2018.

Affected line items: Fees and fines revenue, Impairment of fees and fines, Trade and other receivables.

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Appendixes

Appendix 1: Agency and outcome resource statements

Table A1.1: Agency resource statement, 2017-18

		Actual available appropriations for 2017–18 \$'000	Payments made in 2017-18 \$'000	Balance remaining \$'000
		(a)	(b)	(a-b)
Ordinary annual services ¹				
Departmental appropriation		234 912	214 805	20 107
Total ordinary annual services	Α	234 912	214 805	20 107
Other services ²				
Departmental non-operating				
Equity injections ³		20 678	8 178	12 500
Total other services	В	20 678	8 178	12 500
Special accounts				
Opening balance		54	-	54
Total special account	С	54	-	54
Total net resourcing and payments for AC (A+B+C)	СС	255 644	222 983	32 661

¹ Appropriation Act (No. 1) 2017-18 and Appropriation Act (No. 3) 2017-18, prior year departmental appropriation and section 74 (Public Governance and Accountability Act 2013 (PGPA Act)) retained revenue receipts.

² Appropriation Act (No. 2) 2017-18, Appropriation Act (No. 4) 2017-18, Appropriation Act (No. 2) 2016-17, Supply Act (No. 2) 2016-17, Appropriation Act (No. 2) 2015-16 and Appropriation Act (No. 4) 2015-16.

Excludes \$11.596 million of *Appropriation Act (No. 4) 2013-14* repealed in 2017-18.

Table A1.2: Budget expenses and resources for Outcome 1, 2017–18

Outcome 1: Lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation, including enforcement, education,	Budget¹ expenses 2017-18 \$'000	Actual expenses 2017–18 \$'000	Variation 2017-18 \$'000
price monitoring and determining the terms of access to infrastructure services.	(a)	(b)	(a-b)
Program 1.1: Australian Competition and Consumer Commission			
Departmental expenses			
Departmental appropriation ²	154 222	154 469	(247)
Expenses not requiring appropriation in the Budget year	5 569	5 372	197
Total for Program 1.1	159 791	159 841	(50)
Program 1.2: Australian Energy Regulator (AER)			
Departmental expenses			
Departmental appropriation ²	47 682	48 153	(471)
Total for Program 1.2	47 682	48 153	(471)
Outcome 1 Total by appropriation type			
Departmental expenses			
Departmental appropriation ²	201 904	202 622	(718)
Expenses not requiring appropriation in the Budget year	5 569	5 372	197
Total expenses for Outcome 1	207 473	207 994	(521)

¹ Full-year budget, including any subsequent adjustment made to the 2017-18 budget at Additional Estimates.

Table A1.3: Average staffing level (number)

	Budgeted	Actual
2016-17	739	772
2017-18	868	874

² Departmental appropriation combines Ordinary Annual Services (Appropriation Acts Nos. 1, 3 and 5) and Retained Revenue Receipts under s. 74 of the PGPA Act.

Appendix 2: Staffing

Table A2.1 and table A2.2 provide details of the ACCC and AER staffing complement in 2017–18.

Table A2.1: APS staff employed, by classification and location (at 30 June 2018)

Actual classification	Adelaide	Brisbane	Canberra	Darwin	Hobart	Melbourne	Perth	Sydney	Townsville	Total
POH			3			2		3		8
SESB3			1							1
SESB2			5			4		2		11
SESB1		3	10			17	1	9		40
EL2	12	12	56	1		94	3	26		204
EL1	9	19	78		2	108	7	26	1	250
APS6	15	14	50	2	3	80	7	35	2	208
APS5	8	12	69	1	2	56	7	17		172
APS4	1	2	19	3		10		7		42
APS3	1	3	15			1		2	1	23
APS2			1			3	1			5
APS1	1	2	7			8		2		20
GRAD	1	2	8			21		8		40
Total	48	69	322	7	7	404	26	137	4	1024

Note: POH = public office holder

Table A2.2: APS staff employed, by gender and location (at 30 June 2018)

	Adelaide	Brisbane	Canberra	Darwin	Hobart	Melbourne	Perth	Sydney	Townsville	Total
Ongoing										
Female full- time	17	28	122	7	3	147	12	60	1	397
Male full-time	18	23	120	0	1	172	10	44	1	389
Female part- time	7	11	45	0	2	39	3	14	2	123
Male part-time	1	1	5	0	0	12	0	3	0	22
Non-ongoing										
Female full- time	3	3	11	0	0	12	0	5	0	34
Male full-time	0	0	7	0	0	10	0	5	0	22
Female part- time	1	0	5	0	1	3	1	1	0	12
Male part-time	1	3	4	0	0	7	0	2	0	17
Public Office Holder										
Female full- time	0	0	2	0	0	1	0	1	0	4
Male full-time	0	0	1	0	0	1	0	2	0	4
Male part-time	0	0	0	0	0	0	0	0	0	0
Total	48	69	322	7	7	404	26	137	4	1024

Appendix 3: Work health and safety

Work health and safety management

The ACCC and AER have continued to enhance human resources policies, guidelines and practices to meet the requirements of the *Work Health and Safety Act 2011* (Cth) and the Work Health and Safety Regulations 2011 (Cth).

Health and safety activities

The ACCC and AER are committed to the health and wellbeing of their workers. This commitment is reflected in a variety of actions taken during 2017–18:

- Building on the establishment of the Workplace Contact Officer (WCO) network, quarterly meetings have been held to discuss the nature of approaches from employees and to provide coaching from Human Resources. The WCOs have been active in promoting the network and membership remains strong. Annual training is provided to WCOs in mental health management and how to receive sensitive employee issues.
- Influenza Vaccination: this program provides all employees with access to fully funded vaccinations at the workplace or offsite as arranged by the employee. In 2017–18 approximately 49 per cent of staff participated in the program.
- Communication to employees has been active in promoting the Employee Assistance Program (EAP). The EAP provides employees and their immediate families with access to a free professional counselling service for both personal and employee related matters. The EAP provider also provides access to a range of wellbeing information through its online portal. There has been uptake of the EAP, with 47 employees seeking support for mental health, partner relationships, health, workplace relationships and work satisfaction issues. Seventy-five per cent of this was non-work related and 25 per cent was work related. Statistics and the nature of assistance from the EAP help inform wellbeing activities.
- Healthy Lifestyle Reimbursement: the healthy lifestyle reimbursement scheme supports healthy lifestyle choices by eligible employees. In 2017–18 approximately 838 claims were reimbursed at an average claim value of \$251.
- ACCC and AER Ally Network: the Ally Network is made up of 99 employees at all levels who have chosen to show their support for the LGBTIQ community. The network reflects the ACCC's and AER's commitment to an inclusive workplace free from discrimination or bullying.
- New guidelines are being developed to address the potential risks associated with employees working from home. The development of the enhanced guidelines is due to the increase in numbers of employees engaging in home-based work. The guidelines are being developed to guide employees on how to set up their work stations at home and to be conscious of the potential risks in the home environment. The policy provides support to the organisation's working flexibly lead.
- An online wellbeing portal was trialled with the Enforcement Division. The portal offered various wellbeing information, articles and programs where employees could engage online and search for related topics of interest. The trial ran for two months. Unfortunately the trial was not strongly taken up by employees; however, valuable learning was gained and will be built into next year's wellbeing activities.

Work health and safety (WHS) considerations were front of mind in the design of the new Melbourne office accommodation project. Melbourne is home to over 400 employees, and the proactive approach to WHS has improved their working conditions and demonstrated the ACCC's and AER's commitment to its people's wellbeing. Employees were provided with modern and advanced ergonomic workstations—all employees were issued with sit-stand desks, high-quality ergonomic chairs, and laptops—together with modern breakout spaces and office environments. An external professional ergonomist provided employees with workstation set-up advice in the first few weeks of the move. The Melbourne office accommodation project set the design principles for other offices. This has seen WHS enhancements being made in the Adelaide, Perth and Sydney offices as accommodation projects

have taken place. Portable equipment such as Varidesks have been transferred to the Canberra office, providing more sit-stand desks for employees.

Health and safety outcomes

Comcare premiums

The ACCC's Comcare premium for 2017–18 was 0.57 per cent of payroll. This rate is well below the overall scheme rate of 1.23 per cent.

Compensation claims

There were no new compensation claims accepted by Comcare from the ACCC and AER during 2017–18. There was one new claim lodged but it was later withdrawn by the employee. The ACCC and AER had five open compensation claims at the end of the 2017–18 financial year.

Non-compensable cases

The ACCC and AER support employees suffering from non-compensable physical and psychological injuries or illnesses to maintain or resume attendance at work. During 2017–18 this assistance was provided to two employees.

Incident statistics

There were 26 reports of incidents of an injury or a 'near miss' involving employees in 2017–18 including one notifiable incident. The notifiable incident was reported to Comcare but no further action was required from the ACCC and AER.

Investigations, directions and notices

The ACCC received no notices under the *Work Health and Safety Act 2011*, and did not conduct any investigations during 2017–18.

Appendix 4: Advertising and market research

Under s. 311A of the *Commonwealth Electoral Act 1918*, the ACCC must report annually on its use of advertising agencies, market research organisations, polling organisations, direct mail organisations and media advertising agencies.

The reporting requirement seeks information on payments of more than \$13 500 (GST inclusive) that the ACCC made to such agencies in 2017–18. Payments over this threshold are listed in table A4.1.

Table A4.1: Advertising and market research payments of more than \$13 500 in 2017-18

Date	Description of advertising and market research services	Advertising and market research firm	Amount
April to June 2017	Digital advertising on Google to promote Energy Made Easy	Dentsu Mitchell Media Australia	20 000
June 2017	Digital advertising for the infinity electrical cable recall	Dentsu Mitchell Media Australia	20 000
June 2017	Digital advertising for the small business online education program	Dentsu Mitchell Media Australia	34 995
August to September 2017	Digital advertising on Facebook to promote Energy Made Easy	Dentsu Mitchell Media Australia	39 990
September 2017	Digital advertising for the Takata airbag recall	Dentsu Mitchell Media Australia	20 000
April to May 2018	Digital advertising for the consumer guarantees online shopping campaign	Dentsu Mitchell Media Australia	32 995
December 2017 to June 2018	Market research into consumer outcomes in the National Electricity Market	Colmar Brunton Social Research	179 857

During 2017-18 the ACCC conducted advertising campaigns as outlined in the table above. The ACCC did not undertake any advertising campaigns with expenditure in excess of \$250 000.

Appendix 5: Ecologically sustainable development

How the ACCC's activities and administration of legislation accord with principles of ecologically sustainable development

The ACCC administers legislation that ensures lawful competition, consumer protection, and regulated national infrastructure markets and services. At all times, the ACCC pursues its outcomes and objectives in a manner that provides the maximum benefit to the maximum number of consumers with the least impact on resources and the environment.

How the ACCC's outcome contributes to ecologically sustainable development

In achieving its outcome, the ACCC employs decision-making which, in line with s. 3A of the *Environment Protection and Biodiversity Conservation Act 1999*, factors in the economic, environmental, social and equitable considerations over both the short and long term.

ACCC activities that affect the environment

To ensure the ACCC is able to effectively administer legislation and regulate national infrastructure markets and services, it has established offices at nine locations around Australia. The ACCC's work aims to foster competitiveness and fairness, leading to more efficient and sustainable markets. The ACCC operates in line with the Energy Efficiency in Government Operations Policy and the APS ICT Strategy and remains committed to environmental sustainability and performance.

Measures taken to minimise the effect of activities on the environment

The ACCC is committed to reducing the environmental impact of its activities in a range of areas.

Property

- Optimising environmental opportunities through refurbishment and new building projects
- Exploring energy efficient building options for new leases, reducing fitout 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 fitouts.

Information technology

- Retaining main servers in offsite locations, reducing onsite energy consumption
- Using power-saving modes for information and communications technology (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 duplex printing and photocopying as a default setting on all printers and multi-function devices.

Travel

- Using ICT as an alternative to business travel
- Reducing vehicle fleet and servicing vehicles in accordance with manufacturers' specifications
- Using E10 fuels for lease vehicles where possible.

Workplace efficiencies

- Placing emphasis on electronic records and electronic working arrangements
- Promoting access to ACCC publications electronically rather than in print.

Purchasing and procurement

- purchasing 100 per cent post-consumer recycled content copy paper
- procuring office equipment with low energy consumption.

Waste management

- Improving waste segregation practices including paper, co-mingled 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 policy puts in place strategies towards better environmental and sustainable practices. The ACCC utilises a process of informal, continuous review of the various measures it employs to reduce the environmental impact of its activities.

Where further efficiencies are identified in the course of business, the ACCC endeavours to put in place the measures required to realise these efficiencies. All of the above is done in accordance with both the applicable funding and environmental guidelines available to the ACCC.

Appendix 6: Competition and Consumer Act 2010 and other legislation

Competition and Consumer Act and key legislation

Airports Act 1996 (Cth)

Australian Postal Corporation Act 1989 (Cth)

Competition and Consumer Act 2010 (Cth)

National Electricity Law and Rules

National Gas Law and Rules

National Energy Retail Law and Rules

Telecommunications Act 1997 (Cth)

Water Act 2007 (Cth)

Water Market Rules 2009 (Cth)

Water Charge (Termination Fees) Rules 2009 (Cth)

Water Charge (Infrastructure) Rules 2010 (Cth)

Water Charge (Planning and Management Information) Rules 2010 (Cth)

Lawful competition and informed markets

Table A6.1: 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
VI	Enforcement and remedies for anti-competitive conduct
VII	Authorisations and notifications
XIA	The Competition Code

Enforcement

The ACCC investigates cartel and other types of anti-competitive conduct—which are illegal for all businesses in Australia.

Court cases

The ACCC takes court action where, after considering all aspects of a matter, we see it as the best way to achieve our enforcement and compliance objectives. We are more likely to litigate where we see the conduct as particularly bad, where we are concerned about likely future behaviour or where the party involved fails to resolve the matter satisfactorily.

The ACCC may refer matters involving criminal cartel offences to the Commonwealth Director of Public Prosecutions for possible criminal prosecution.

For individuals, the cartel offence is punishable by imprisonment of up to 10 years and/or fines up to \$420 000 per contravention. Corporations found guilty of a cartel offence may be fined up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater).

In relation to civil cartel prohibitions and other forms of anti-competitive conduct, the ACCC may initiate court action for contraventions of the *Competition and Consumer Act 2010* (CCA).

To enforce the civil provisions of the CCA relating to anti-competitive conduct, the ACCC can seek:

- declarations of contraventions
- findings of facts
- injunctions
- damages and compensation
- community service orders
- probation orders
- divestiture orders
- disqualification of a person from managing corporations
- adverse publicity orders
- corrective advertising, public notices and disclosure
- penalties of up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater) for companies; and \$500 000 for individuals.

Enforceable undertakings

The ACCC often resolves alleged breaches of the CCA by accepting court enforceable undertakings from the business involved. In these undertakings, which we record on a public register, the business usually agrees to:

- make good the harm they have caused
- accept responsibility for their actions
- establish or review and improve their compliance programs and culture.

If the business later breaches the undertaking, we seek to have it enforced in the Federal Court of Australia.

We may also use court enforceable undertakings where we have competition concerns with a proposed merger or acquisition. In an enforceable undertaking a merger party may agree to action that addresses concerns about a substantial lessening of competition, allowing the merger or acquisition to go ahead.

The ACCC maintains a public register of enforceable undertakings.

Administrative resolution

In some cases—for example, where we assess the potential risk of harm to competition or consumer detriment from particular conduct as low—we may accept an administrative resolution. Administrative resolutions generally involve the business agreeing to stop the conduct, compensate those who suffered, and take other measures needed to prevent future recurrences.

Education and advice

We believe that preventing a breach of the CCA is better than acting after a breach has occurred. Therefore, the ACCC runs regular educational campaigns to inform and advise consumers and businesses about their rights and obligations under the CCA and to encourage compliance. Our campaigns aim to educate both big and small businesses.

The ACCC publishes targeted and general information, including tips and tools, to encourage businesses to comply with the CCA. We use a wide range of channels to disseminate this information. We also liaise extensively with business, consumer and government agencies about the CCA and our role in its administration.

Mergers

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

To assist business, the ACCC has an informal clearance process that enables parties that are planning a merger or acquisition to seek the ACCC's view on whether the proposed transaction is likely to have the effect of substantially lessening competition. Businesses may also apply to the ACCC for authorisation of mergers or acquisitions which, if granted, provides statutory protection from s. 50.

There is no legislation underpinning the informal process; rather, it has developed over time so that merger parties can seek the ACCC's view before they complete a merger.

The ACCC assesses mergers that come to our attention where they potentially raise concerns under s. 50. These mergers are generally notified by the merger parties via a request for informal clearance. Alternatively, the ACCC may become aware of a proposed or a completed acquisition by monitoring media reports, from complaints or through referrals from Australian and overseas regulators.

We use the information available to us to determine whether a public review is required. Where we are satisfied that there is a low risk of a substantial lessening of competition based on an initial assessment, we may decide that a public review of the merger is unnecessary. These mergers are described as being 'pre-assessed'. A significant proportion of the mergers we assess are pre-assessed. Clearing mergers by pre-assessment enables the ACCC to respond quickly where there are no substantive competition concerns.

Mergers can be pre-assessed, without conducting a public review, on the basis of the information from the parties or other information before us. Alternatively, in some non-confidential mergers we may conduct targeted inquiries to help inform the decision.

Where pre-assessment is not considered suitable or possible, the ACCC conducts a public review for non-confidential mergers.

On 6 November 2017 amendments to the CCA which give the ACCC power to authorise proposed acquisitions came into effect (referred to as 'merger authorisation'). These recommendations resulted from recommendations by the Competition Policy Review, chaired by Professor Ian Harper, and alter the previous test for merger authorisation.

Merger authorisation provides an alternative clearance option to the informal merger review process. In order to grant merger authorisation, the ACCC must be satisfied that either:

- the proposed acquisition would not be likely to substantially lessen competition, or
- the likely public benefit from the proposed acquisition outweighs the likely public detriment, including any lessening of competition.

The ACCC's power to grant merger authorisation is limited to future acquisitions.

While the merger authorisation is in force, the authorised parties will be able to acquire the relevant shares or assets without risk of the ACCC or third parties taking legal action for a contravention of s. 50 of the CCA.

Authorisations and notifications

The CCA primarily aims to prevent conduct that damages or is likely to damage competition. However, if markets are not working efficiently and they are failing to maximise welfare, some restrictions on competition may be allowed in the public interest.

Authorisation provides businesses with statutory protection from legal action to engage in potentially anti-competitive arrangements.

The authorisation process recognises that, in certain circumstances, particular conduct may not harm competition or may give rise to benefits to the public that outweigh the public detriment.

The ACCC may, if the authorisation test is met, grant authorisation to conduct to which one or more provisions in Part IV of the CCA would or might apply, including:

- contracts, arrangements, understandings or concerted practices that have the purpose, effect or likely effect of substantially lessening competition
- anti-competitive arrangements, including cartel provisions (such as price fixing, controlling output, sharing markets or collective bargaining)
- secondary boycotts (where two or more parties prevent a third party such as a potential customer or supplier from doing business with a target)
- misuse of market power
- exclusive dealing (where a person trading with another imposes restrictions on the other's freedom to choose with whom, in what or where they deal)
- resale price maintenance (where the supplier specifies a minimum price below which goods or services may not be resold)
- dual-listed company arrangements that affect competition.

The legal test that the ACCC must apply when assessing an application for authorisation depends upon the conduct for which authorisation is sought.

For conduct that is prohibited outright (such as cartel conduct), the ACCC may grant authorisation if it is satisfied that the likely public benefit from the conduct outweighs the likely public detriment.

For other conduct, the ACCC may grant authorisation if it is satisfied that either:

- i. the conduct would not be likely to substantially lessen competition, or
- ii. the likely public benefit from the conduct outweighs the likely public detriment.

As an alternative to authorisation, the CCA allows parties to obtain statutory protection from legal action under the notification regime in relation to exclusive dealing, certain collective bargaining and collective boycott arrangements, and resale price maintenance. In some cases the notification process can be faster than seeking authorisation, but it is not available for all types of conduct.

For exclusive dealing notifications, the ACCC will assess whether the notified conduct:

- has the purpose, effect or likely effect of substantially lessening competition, and
- if so, will result in a likely public benefit which would outweigh the likely public detriment.

For collective bargaining and resale price maintenance notifications, the ACCC will assess whether the likely benefit to the public from the conduct will outweigh the likely detriment to the public from the conduct.

Both the notification and authorisation processes are public. The ACCC publishes the applications, public submissions and ACCC decisions on the public register on our website.

Fair trading and consumer protection

Table A6.2: Parts of the Competition and Consumer Act 2010 (including the Australian Consumer Law) dealing with fair trading and consumer protection

Competition	and Consumer Act 2010		
IVB	Industry codes of conduct—the franchising, horticulture, oil and unit pricing codes are mandatory codes prescribed under Part IVB		
Australian Co	onsumer Law—Schedule 2 to the <i>Competition and Consumer Act 2010</i>		
Chapter 2	General protections: misleading or deceptive conduct; unconscionable conduct; unfair contract terms		
Chapter 3	Specific protections: unfair practices: unsolicited supplies; pyramid selling; pricing; consumer guarantees; unsolicited consumer agreements; lay-by agreements; product safety and information		
Chapter 4	Criminal conduct relating to fair trading and consumer protection		
Chapter 5	Enforcement and remedies for contraventions of the Australian Consumer Law		

Enforcement

To enforce the civil provisions of the CCA (including the Australian Consumer Law) relating to fair trading and consumer protection, the ACCC can seek:

- declarations of contraventions
- findings of facts
- injunctions
- damages and compensation, including for non-party consumers
- community service orders
- probation orders
- disqualification of a person from managing corporations
- adverse publicity orders
- corrective advertising, public notices and disclosure
- penalties of up to \$1.1 million for companies and \$220 000 for individuals, per contravention.

Court enforceable undertakings

To protect consumers and resolve matters under investigation, we can accept enforceable undertakings where a breach, or a potential breach, might otherwise justify litigation.

Under an enforceable undertaking, a company or an individual will generally agree to:

- remedy the harm caused by the conduct
- accept responsibility for their actions
- establish or review and improve their compliance programs and culture.

The ACCC may seek:

- corrective advertising in the print and electronic media
- refunds to affected customers
- community service remedies
- industry-wide education programs funded by the company providing the undertaking.

Infringement notices

Where we believe that a breach of the CCA requires a more formal sanction than an administrative resolution but we consider that a resolution is possible without going to court, we can issue an infringement notice for certain provisions.

The penalty amount in each infringement notice will vary, depending on the alleged contravention, but in most cases is fixed at \$12 600 for a corporation (or \$126 000 for a listed corporation) and \$2520 for an individual for each alleged contravention.

Administrative resolutions

In some cases—for example, where we assess the potential risk as low—we may accept an administrative resolution.

Depending on the circumstances, administrative resolutions can range from a commitment by a trader in writing to a signed agreement between the ACCC and a trader setting out detailed conditions.

Administrative resolutions generally involve the trader agreeing to stop the offending conduct, compensate those adversely affected and take other measures necessary to ensure that the conduct does not recur. If a trader re-offends after they have accepted an administrative resolution, we are likely to resolve the new matter differently.

Infrastructure services and markets where competition is limited

Table A6.3: Parts of the Competition and Consumer Act 2010 dealing with regulated industries and prices surveillance

IIIAA	Regulatory and enforcement responsibilities under the National Energy Laws and Rules
	regulatory and emorcement responsibilities drider the National Energy Laws and rules
IIIA	Access to the services of essential national infrastructure facilities such as rail tracks and grain port terminals
IVB	Industry Code regulating access to port terminal facilities for bulk wheat exports
VIIA	Price inquiries and surveillance in relation to industries or businesses as directed by the Australian Government
X	Limited exemptions for anti-competitive conduct in relation to international liner cargo shipping
XIB	Anti-competitive conduct in telecommunications
XIC	Access to services for telecommunications

Regulation

The ACCC and AER regulate access to monopoly infrastructure services and the price for that access where there is no or limited competition.

The ACCC has regulatory responsibility in relation to a number of key infrastructure services in the economy, including telecommunications, rail, water, fuel, bulk wheat export, postal services, ports and airports. As the infrastructure in each of these sectors is generally provided by one or a small number of suppliers, regulation by the ACCC will promote the economically efficient operation, use and investment in Australia's key infrastructure. The effect of competition and investment will therefore enhance community welfare and promote the long-term interest of Australian consumers.

The AER regulates the electricity and gas industries. The AER promotes the economically efficient operation of, use of and investment in Australia's key energy infrastructure by setting the amount of revenue that network businesses can recover from customers for using networks (electricity poles and wires and gas pipelines) that transport energy. The AER regulates the costs of electricity network services in eastern and southern Australia, and electricity networks in the Northern Territory. The AER regulates access prices for covered pipelines in jurisdictions other than Western Australia.

The AER also monitors and enforces the wholesale electricity and gas markets to ensure suppliers comply with the National Electricity Law and Rules and the National Gas Law and Rules.

The AER also has monitoring and enforcement roles and functions under the National Energy Retail Law and the National Energy Retail Rules in the ACT, Tasmania, South Australia, New South Wales and, from 1 July 2015, Queensland. These functions include authorising retailers to sell energy and administering the national retailer of last resort scheme aimed at protecting customers and the market in the event of a retail business failure.

Legislative amendments in 2017–18

Amendments to the Competition and Consumer Act 2010

Competition and Consumer Amendment (Misuse of Market Power) Act 2017—commenced 6 November 2017

This amends s. 46 of the *Competition and Consumer Act 2010* to prohibit a corporation with a substantial degree of market power from engaging in conduct that has the 'purpose, effect or likely effect' of substantially lessening competition.

Competition and Consumer Amendment (Competition Policy Review) Act 2017—commenced 6 November 2017 (substantive provisions)

This makes a number of substantive changes to competition laws. Key changes are:

- limiting the cartel conduct provisions to conduct which affects competition in Australian markets
- broadening the exceptions from cartel conduct for joint ventures, so that cartel provisions do not capture joint ventures which are pro-competitive
- repealing the price-signalling provisions and replacing them with a prohibition on concerted practices that substantially lessen competition
- amending the provisions governing 'third line forcing' so that they only apply when the tying arrangement substantially lessens competition (rather than operating regardless of their impact on competition)
- providing the ACCC with a new power to issue class exemptions, which allows the ACCC to exempt a category of conduct from having to apply for authorisation or notification if that conduct is unlikely to raise competition concerns or is likely to generate net public benefits—this means individual companies or persons who engage in that conduct will not have to each make a separate application for authorisation or notification
- changes to the collective bargaining notification process to make it more flexible for small businesses
 by allowing the notification to extend to future members of the bargaining group who join after the
 ACCC is notified, and allowing one notice to deal with multiple counterparties so the group does not
 need to issue multiple notices
- a new power for the ACCC to issue a 'stop notice' requiring a collective boycott to stop when we see collective boycott conduct in a collective bargaining notification
- changing the national access regime in Part IIIA in a number of ways, including clarifying that the
 criteria for declaration are whether the facility is of national significance, whether access would
 promote a material increase in competition in at least one market for the service, and whether access
 to the service would promote the public interest
- allowing merger parties to have their transactions cleared on either competition or net public benefit grounds, and a streamlined merger authorisation and formal clearance process.

Competition and Consumer Amendment (Abolition of Limited Merits Review) Act 2017—commenced 31 October 2017

This amends the CCA to prevent the Australian Competition Tribunal from reviewing certain decisions made under the national energy laws and to ensure that decisions made by the AER under those laws are not subject to merits review by any state or territory body.

Petroleum and Other Fuels Reporting (Consequential Amendments and Transitional Provisions) Act 2017—commenced 24 August 2017

This enables the ACCC to share fuel information with the Department of the Environment and Energy.

Public Governance and Resources Legislation Amendment Act (No. 1) 2017—commenced 23 August 2017

This makes a number of minor amendments to the CCA to harmonise it with the *Public Governance, Performance and Accountability Act 2013* and its related rules and instruments.

Competition and Consumer Amendment (Misuse of Market Power) Act 2017 (Cth)—commenced 6 November 2017

This amends Part XIB of the CCA by removing the cross-reference to s. 46. The effect of the amendment is that a contravention of s. 46 will not constitute a contravention of the competition rule under s. 151AK of the CCA.

Amendments to the Competition and Consumer Regulations 2010

Competition and Consumer Amendment (Australian Consumer Law Review) Regulations 2018—commenced 9 June 2018

The regulations were amended to clarify that disclosure requirements for unsolicited consumer agreements do not apply to certain exempt agreements and updating the mandatory text requirements for warranties against defects by developing text specific to services and services bundled with goods.

Competition and Consumer Amendment (Competition Policy Review) Regulations 2017—commenced 6 November 2017

These make consequential amendments to the Competition and Consumer Regulations 2010 following amendments made to the CCA following the Harper review.

Key features of the regulations include:

- notifications for third line forcing now commence immediately (which is consistent with notifications for other forms of exclusive dealing)
- resale price maintenance notifications come into force 14 days after they are given (subject to a
 transition period where they come into force after 28 days). The period for applying for review under
 ss 101A or 101B of the CCA (relating to collective bargaining and class exemptions respectively) is
 21 days.

Telecommunications legislation

Determinations made under the Telecommunications Act 1997

Nil.

Amendments to the Broadcasting Services Act 1992

Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017—commenced 16 October 2017

This amends the *Broadcasting Services Act 1992* to abolish the '75 per cent audience reach rule' and the '2 out of 3 cross-media rule'. It also makes a number of amendments relating to the free-to-air broadcasting sector and the anti-siphoning regime.

Broadcasting Legislation Amendment (Digital Radio) Act 2017—commenced 5 March 2018

This makes a number of amendments to the *Broadcasting Services Act 1992* relating to the rollout of digital radio across Australia.

Amendments to record keeping rules (RKRs)

Broadband Performance Monitoring and Reporting RKR

The ACCC made a new record keeping rule to assist in its reporting for the Measuring Broadband Australia (MBA) program on 18 December 2017.

The Broadband Performance Monitoring and Reporting RKR requires NBN Co to report certain information quarterly to the ACCC to assist with the validating and reporting of the MBA results. The ACCC made minor amendments to the RKR to simplify its operation and update the reporting format in March 2018.

Audit of Telecommunications Infrastructure Assets RKR

On 19 December 2017 the ACCC amended the Audit of Telecommunications Infrastructure Assets RKR. The amendments updated the list of parties required to report, clarified the information required to be reported on mobile and fibre-to-the-building infrastructure, and clarified the geographic boundaries for customer access networks.

National Broadband Network (NBN) Services in Operation (SIO) RKR

The NBN SIO RKR requires NBN Co to provide information on the number of wholesale access virtual circuit services in operation, the amount of connectivity virtual circuit (CVC) capacity being acquired, and the average CVC utilisation over the NBN.

On 18 September 2017 the ACCC extended the NBN SIO RKR for a further three years until September 2020.

The NBN SIO RKR was also amended on 18 December 2017 to require more detailed reporting of CVC information.

Following consultation, on 21 March 2018 the ACCC varied the NBN SIO RKR Disclosure Direction, requiring NBN Co to provide more detailed information for publication in the NBN wholesale market indicators report.

Regulatory Accounting Framework RKR

On 2 October 2017 the ACCC revoked the Regulatory Accounting Framework RKR, which had become redundant due to changes in telecommunications markets and the availability of more recent record keeping and reporting frameworks administered by the ACCC.

Remaking of guidelines

Guidelines relating to deferral of arbitrations and backdating of determinations under Part IIIA of the Competition and Consumer Act 2010—commenced 28 August 2017

These guidelines explain how the ACCC might apply the provisions on deferral of arbitrations and backdating of final determinations when making decisions under Part IIIA of the CCA.

In August 2017 the ACCC remade the original 2007 guidelines, which were due to sunset on 1 October 2017.

Water legislation

Amendments to the Water Act 2007

Nil.

Water determinations under the Water Charge (Infrastructure) Rules 2010

Nil.

Wheat legislation

Nil.

National Electricity Law and National Gas Law

Amendments to National Electricity Law and National Gas Law Rules

National Electricity (South Australia) (Australian Energy Regulator—Wholesale Market Monitoring) Amendment Act 2016—commenced 15 December 2016

Provides the AER with power to monitor the markets on a regular and systematic basis and report
at least every two years on performance, including whether there is effective competition and any
features that may be detrimental to competition.

Statutes Amendment (National Electricity and Gas Laws—Information Collection and Publication) Act 2016—commenced 15 December 2016

- Amends the National Electricity Law (NEL) and NGL to ensure the AER has sufficient and clear powers to collect and publish data necessary to benchmark the performance of electricity and gas network service providers (NSPs).
- Clarifies that the AER must prepare performance reports if required by the NER or the NGR. It also clarifies that performance reports published by the AER, (Regulatory Information Instrument) may deal with the financial or operational performance of a NSP in relation to the efficiency of the network service provider in providing the services.
- Places the onus of claiming confidentiality of information requested in a Regulatory Information Instrument on the NSP. Importantly, information provided to the AER in response to a Regulatory Information Instrument which is not subject to an express claim of confidentiality under the new process is not regarded as being confidential.

National Electricity Rules

National Electricity (South Australia) (Australian Energy Regulator—Wholesale Market Monitoring) Amendment Act 2016—commenced 15 December 2016

Provides the AER with power to monitor the markets on a regular and systematic basis and report
at least every two years on performance, including whether there is effective competition and any
features that may be detrimental to competition.

Statutes Amendment (National Electricity and Gas Laws—Information Collection and Publication) Act 2016—commenced 15 December 2016

- Amends the NEL and NGL to ensure the AER has sufficient and clear powers to collect and publish data necessary to benchmark the performance of electricity and gas NSPs.
- Clarifies that the AER must prepare performance reports if required by the NER or the NGR. It
 also clarifies that performance reports published by the AER, (Regulatory Information Instrument)
 may deal with the financial or operational performance of a NSP in relation to the efficiency of the
 network service provider in providing the services.
- Places the onus of claiming confidentiality of information requested in a Regulatory Information Instrument on the NSP. Importantly, information provided to the AER in response to a Regulatory Information Instrument which is not subject to an express claim of confidentiality under the new process is not regarded as being confidential.

National Gas Rules

- Access to non-scheme pipelines (Part 23)—commenced 1 August 2017. This introduces an information disclosure obligation and an arbitration framework for non-scheme pipelines.
- Improvements to Natural Gas Bulletin Board—Schedule 3 commenced 3 October 2017, Schedule 2 commenced 15 May 2018, and Schedule 1 commences 30 September 2018. This rule change requested by the COAG Energy Council enhances the breadth and accuracy of information provided to the market through the Natural Gas Bulletin Board. Schedule 1 provides for enhanced information reporting requirements.
- Unintended scheduling results—decision timing—commenced 1 November 2017.
- Changes to period review of market parameters in short term trading market—commenced 10 October 2017.

National Energy Retail Rules

- Notification of end of fixed benefit period and strengthening protections for customers requiring life support equipment—1 February 2018.
- Expanding competition in metering and related services—commenced 1 December 2017.
- Notification of end of fixed benefit period—commenced 14 November 2017.
- Improving accuracy of customer transfers—commenced 3 August 2017.

New standards

Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017—commenced 26 April 2018

Under the Free Range Egg Labelling Information Standard, egg producers may only use the words 'free range' where eggs (whether packaged or unpackaged) were laid by hens that satisfy certain outdoor range access and stocking density requirements. It also requires the packaging or, for unpackaged eggs, signage to prominently state the outdoor stocking density if the words 'free range' are used.

Country of Origin Food Labelling Information Standard 2016—mandatory from 1 July 2018

The information standard established a new country of origin labelling system for most food offered or suitable for retail sale in Australia. The information standard commenced on 1 July 2016 with a two-year transition period for businesses to adopt the new labels. The information standard requirements became mandatory on 1 July 2018.

Under the information standard, 'priority' foods that are grown, produced or made in Australia will need to display a text and graphic label with the 'kangaroo in a triangle' symbol, a statement indicating whether the food was grown, produced or made in Australia and a bar chart shaded to indicate the minimum proportion, by ingoing weight, of Australian ingredients in the food.

From 1 July 2018, the ACCC will enter the compliance phase to ensure businesses are complying with the standard. The ACCC, in conjunction with the National Measurement Institute, will conduct market

surveillance checks to make sure businesses are labelling their foods correctly. The ACCC will also call on businesses to substantiate the country of origin claims they make about their food products.

In the first year of the operation of the mandatory standard, the ACCC will look to resolve most compliance matters by educating businesses with guidance and seeking changes to address non-compliance. In line with the principles set out in our Compliance and Enforcement Policy, we will escalate matters for an enforcement approach where stronger action is warranted.

Consumer Goods (Baby Bath Aids) Safety Standard 2017

The new standard prescribes mandatory requirements for a baby bath aid and its packaging to have a safety warning statement that is clearly visible and easy to read. The instrument repeals the Trade Practices (Consumer Product Safety Standard) (Baby Bath Aids) Regulations 2005 after the end of the transitional period.

Consumer Goods (Sunglasses and Fashion Spectacles) Safety Standard 2017

The new standard prescribes mandatory requirements for design, construction, safety markings and packaging. The instrument repeals the Consumer Product Safety Standard: Sunglasses and Fashion Spectacles (Consumer Protection Notice No. 13 of 2003 made under subsection 65E(1) of the *Trade Practices Act 1974*) from 1 July 2019.

Consumer Goods (Vehicle Support Stands) Safety Standard 2017

The new standard prescribes the mandatory requirements for design, construction, safety markings and packaging. The instrument repeals the Consumer Product Safety Standard for Vehicle Support Stands (Consumer Protection Notice No. 12 of 2008) after the end of the transitional period.

Consumer Goods (Portable Ramps for Vehicles) Safety Standard 2017

The new standard prescribes the mandatory requirements for design, construction, performance and labelling of portable ramps for vehicles with a nominated capacity of up to and including 1500 kgs. The instrument repeals the Consumer Product Safety Standard for Portable Ramps for Vehicles (Consumer Protection Notice No. 2 of 2010) after the end of the transitional period.

Consumer Goods (Motor Vehicle Recovery Straps) Safety Standard 2017

The new standard prescribes the mandatory requirements for the information that must be provided with the products, including warning and information on the strap and the packaging. The instrument repeals the Trade Practices (Consumer Product Safety Standard) (Motor Vehicle Recovery Straps) Regulations 2010 after the end of the transitional period.

Consumer Goods (Basketball Rings and Backboards) Safety Standard 2017

The new standard prescribes the mandatory requirements for safety marking and installation instructions. The instrument repeals the Trade Practices (Consumer Product Safety Standard) (Basketball Rings and Backboards) Regulations 2005 after the end of the transitional period.

Consumer Goods (Trolley Jacks) Safety Standard 2017

The new standard prescribes the mandatory requirements for design and construction, performance, testing and safety markings. The instrument repeals the Consumer Product Safety Standard for Trolley Jacks (Consumer Protection Notice No. 10 of 2008) after the end of the transitional period.

Consumer Goods (Swimming and Flotation Aids) Safety Standard 2017

The new standard prescribes the mandatory requirements for marking, design and construction and, performance. The instrument repeals the Consumer Product Safety Standard for Swimming Aids and Flotation Aids for Water Familiarisation and Swimming Tuition (Consumer Protection Notice No. 3 of 2009) after the end of the transitional period.

Consumer Goods (Self-balancing Scooters) Safety Standard 2018

The new standard extends the Commonwealth regulation of self-balancing scooters until 16 July 2019 and expands the scope of regulation to include single-wheeled self-balancing scooters. It also allows

compliance with new voluntary standards and the voluntary standards referenced in the repealed standard. The instrument repeals the Consumer Goods (Self-balancing Scooters) Safety Standard 2016.

Appendix 7: Information required under the Competition and Consumer Act 2010

Section 171(2) reporting requirements

Section 51(1) of the *Competition and Consumer Act 2010* (CCA) provides that conduct that would normally contravene the law may be permitted if it is specifically authorised under other Australian, state or territory legislation. Section 171(2) of the CCA requires this report to list all such laws.

Exceptions under Australian, 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 which the ACCC has been notified of or has otherwise become aware of.

Commonwealth

Australian Postal Corporation Act 1989

Banking Act 1959

Competition and Consumer Act 2010 (s. 173 and 151DA)

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 Amendment Act 2017

New South Wales

Australian Jockey and Sydney Turf Clubs Merger Act 2010

Betting and Racing Act 1998

Casino Control Regulation 2009

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

Liguor Act 2007

Major Events Act 2009

Passenger Transport Act 2014

Point to Point Transport (Taxis and Hire Vehicles) Act 2016

Rice Marketing Act 1983

Sporting Venues Authorities Act 2008

Thoroughbred Racing Act 1996

Totalizator Act 1997

Waste Avoidance and Resource Recovery Act 2001

Northern Territory

Competition Policy Reform (Northern Territory) Act 1996

Consumer Affairs and Fair Trading Act 1990

Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations 1996

Electricity Reform Act 2000

Environmental Protection (Beverage Containers and Plastic Bags) Act 2011

Liquor Act 1978

Water Supply and Sewerage Services Act 2000

Queensland

Competition Policy Reform (Queensland) Act 1996

Gladstone Power Station Agreement Act 1993

Racing Act 2002

Sugar Industry Act 1999

Transport Operations (Passenger Transport) Act 1994

Waste Reduction and Recycling Act 2011

South Australia

Authorised Betting Operations Act 2000

Authorised Betting Operations Regulations 2016

Competition Policy Reform (South Australia) Act 1996

Cooper Basin (Ratification) Act 1975

Roxby Downs (Indenture Ratification) Act 1982

Tasmania

Competition Policy Reform (Tasmania) Act 1996

Electricity Reform Act 2012

Electricity Supply Industry Act 1995

Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995

Gaming Control Act 1993

Rail Company Act 2009

TOTE Tasmania (Sale) Act 2009

Water and Sewerage Corporation Act 2012

Victoria

Access to Medicinal Cannabis Act 2016

Gambling Regulation Act 2003

Gas Industry (Residual Provisions) Act 1994

Health Services Act 1988

Legal Profession Uniform Law Application Act 2014

Liquor Control Reform Act 1998

Outworkers (Improved Protection) Act 2003

Owner Drivers and Forestry Contractors Act 2005

State Owned Enterprises Act 1992

Western Australia

Competition Policy Reform (Western Australia) Act 1996

Electricity Corporations Act 2005

Electricity Industry (Wholesale Electricity Market) Regulations 2004

Electricity Industry Act 2004

Energy Coordination Act 1994

North West Gas Development (Woodside) Agreement Act 1979

Owners-Drivers (Contracts and Disputes) Act 2007

Section 171(3) reporting requirements

Time taken to make final determinations and decisions

Final determinations on access disputes under section 44V

The ACCC made no determinations on access disputes under s. 44V in 2017-18.

Decisions on access undertaking applications and access code applications Rail

On 21 December 2017 the Australian Rail Track Corporation (ARTC) submitted an application to vary the 2011 Hunter Valley Access Undertaking (HVAU) (December 2017 variation).

On 28 June 2018 the ACCC issued a draft decision proposing to accept ARTC's December 2017 variation to the 2011 HVAU subject to certain amendments. As part of this negotiated agreement with stakeholders, the ACCC understands that ARTC intends to withdraw and resubmit its application to vary the 2011 HVAU to incorporate a review mechanism agreed to by the majority of Hunter Rail Access Task Force members. The current expiry of the HVAU is 31 December 2021.

Time taken to make decisions on applications under subsection 44PA(1)

No decisions were made on applications under ss. 44PA(1).

Notices under sections 155 and 155A

General description of matters for which notices were given

Notices were issued in the course of investigations into conduct potentially in contravention of restrictive trade practices provisions, industry codes and consumer and small business protection provisions of the *Competition and Consumer Act 2010* and/or *Trade Practices Act 1974*.

Types of notices issued

- 101 notices under ss. 155(1)(a) and (b) (requiring the addressee to furnish information in writing and to produce documents)
- 16 notices under ss. 155(1)(a) (requiring the addressee to furnish information)
- 46 notices under ss. 155(1)(b) (requiring the addressee to produce documents)
- 73 notices under ss. 155(1)(c) (requiring the addressee to appear in person and give evidence).
- four notices under s. 155AAA (prohibiting ACCC staff from disclosing any information obtained by the ACCC)
- no notices under s. 155A.

Challenges to the validity of notices

There were no proceedings brought to challenge the validity of the notices.

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 six 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

The warrants issued pursuant to s. 154X related to two separate investigations. All six warrants related to alleged contraventions of sections 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK of the CCA (relating to alleged 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 1133 entries onto premises under s. 133B or 133C, Division 6 of Part XI.

There were no entries to premises with consent under s. 154D (Part XID).

Inspectors appointed under ss. 133(1) and 133(2) of the CCA may enter the premises from which a person in trade or commerce supplies consumer goods and service, if the public has access to the premises at the time of entry. While on the premises, the inspector may take photographs, inspect consumer goods and equipment, or purchase consumer goods and services. During 2017–18 surveillance staff appointed as inspectors undertook 1133 entries onto premises under s. 133B or 133C as part of the ACCC routine product safety surveillance program.

Complaints received by the Commission

Details on the number of complaints received by the ACCC in 2017–18, a summary of the kinds of complaints received and how they were dealt with and a general description of the major matters investigated are on pages 133–136—Responding to enquiries and reports.

Substantiation notices issued

Two substantiation notices were issued pursuant to subsections 219(2)(a) and (c) of the CCA requiring each of the addressees to provide a written signed statement or produce documents substantiating or supporting their claims about the supply of sheepskin footwear made in Australia.

Audit notices issued

Thirty two notices under s. 51ADD (requiring the addressee to give information or produce documents) were issued in 2017-18. Sixteen of these notices were issued to horticulture wholesalers across Australia to check their compliance with the Horticulture Code of Conduct, 13 notices were issued to franchisors to check their level of compliance with the Franchising Code, and three notices were issued to traders to check their level of compliance with the Food and Grocery Code of Conduct.

Intervention in proceedings

The ACCC and AER intervened in no matters in 2017-18.

Appendix 8: Undertakings accepted and infringement notices paid in 2017-18

Competition and Consumer Act 2010 s. 87B undertakings

Undertakings accepted by the ACCC are available in full on the undertakings public register on the ACCC website.

Water Act 2007 section 163 undertakings

No undertakings were accepted under s. 163 of the Water Act 2007.

Water Act 2007 section 156 infringement notices

No infringement notices were issued under s. 156 of the Water Act 2007.

Water Act 2007 administrative actions

No administrative actions were accepted in 2017-18.

Section 288 National Energy Retail Law undertakings

Nil.

Section 59A National Electricity Law undertakings

National Electricity Law and National Gas Law

Pricing in NSW and the ACT

As a result of the Australian Competition Tribunal's decision in Public Interest Advocacy Centre Limited and Ausgrid [2016] ACompT 1, it was not clear what network charges would apply from 1 July 2016 or how the ACT and NSW service providers should meet their 2016–17 pricing compliance obligations.

Ausgrid, Endeavour Energy and ActewAGL

The undertakings for these businesses established 'revenue targets' for 2017–18, by applying two years of CPI to revenue targets from their 2015–16 pricing proposals. These revenue targets were established to facilitate implementation of the tariff structure statements.

Essential Energy

The undertaking for Essential Energy established 'revenue targets' for 2017–18, by applying one year of CPI to forecast revenue for 2016–17. This revenue target was established to facilitate implementation of its tariff structure statement.

Jemena Gas Networks (JGN)

JGN's undertaking required prices for 2017–18 to be derived according to the tariff variation mechanism in its access arrangement. The undertaking specified the X factor (and CPI adjustment) to be inputted into the tariff variation mechanism.

All five distribution network services business also gave undertakings which provide for all non-price components of the distribution determinations and access arrangement (e.g. connections policies, classification of services, provision of alternative control services and reference service agreements) to be maintained.

Infringement notices paid under National Energy Retail Law and Rules

Trader	Date paid and amount
ActewAGL Distribution	8 September 2017
	One notice totalling \$20 000
Ausgrid	8 September 2017
	One notice totalling \$20 000
TasNetworks	3 October 2017
	Three notices totalling \$46 000
Energex	3 October 2017
	Two notices totalling \$40 000
Origin Energy Electricity Limited	17 November 2017
	Two notices totalling \$40 000
AGL South Australia Pty Limited	14 December 2017
	Three notices totalling \$60 000
Taplin Management Pty Ltd, Taplin Properties Pty Ltd and Taplin Realty Pty Ltd	7 March 2018
	Three notices totalling \$60 000
Energex	16 March 2018
	Three notices totalling \$60 000
Evoenergy	13 June 2018
	One notice totalling \$20 000

Appendix 9: Litigation matters, review proceedings and tribunal proceedings in 2017-18

ACCC

Strategy 1: Maintain and promote competition

Litigation concluded and judgments in 2017-18

Cartel	Air New Zealand	d (I	HC appeal)		
	commenced		18 April 2016		
	concluded		27 June 2018		
	jurisdiction		High Court of Australia		
	outcome		Pecuniary penalties of \$15 million and contribution of \$2 million towards the ACCC's legal costs		
Cartel	Australian Eggs	Australian Eggs Corporation Limited (AECL) & Others			
	commenced		26 May 2014		
	concluded		25 September 2017		
	jurisdiction		Federal Court Adelaide		
	outcome		ACCC appeal dismissed against AECL. Penalty of \$120 000, compliance orders and contribution to costs against Mr Lendich		
Anti-competitive agreements	Cement Australi	ia F	Pty Ltd & Others (appeal)		
	commenced		6 June 2016		
	concluded		5 October 2017		
	jurisdiction		Federal Court Brisbane		
	outcome		Pecuniary penalties of \$20.6 million		
Anti-competitive agreements	Construction Fo	Construction Forestry Mining and Energy Union (CFMEU)			
	commenced		20 November 2014		
	concluded		14 February 2018		
	jurisdiction		Federal Court Melbourne		
	outcome		Pecuniary penalties of \$1 million		
Anti-competitive agreements	Flight Centre Ltd	d (HC appeal)		
	commenced		11 March 2016		
	concluded		4 April 2018		
	jurisdiction		High Court of Australia		
	outcome		Pecuniary penalties of \$12.5 million		
Cartel	Nippon Yusen K	(ab	ushiki Kaisha Pty Ltd		
	commenced		14 July 2016		
	concluded		3 August 2017		
	jurisdiction		Federal Court NSW Criminal Division		
	outcome		Penalty of \$25 million		

Cartel	Prysmian Cavi e Sistemi Energ		stemi Energia S.R.L (appeal)
	commenced		14 August 2017
	concluded		3 March 2018
	jurisdiction		Federal Court Adelaide
	outcome		Pecuniary penalty of \$3.5 million

Litigation commenced in 2017-18

Cartel	Australia and I	New	Zealand Banking Group Ltd (ANZ) & Others
	commenced		5 June 2018
	jurisdiction		Downing Centre Local Court Sydney
Cartel	Citigroup Glob	al M	arkets Australia Pty Limited & Others
	commenced		5 June 2018
	jurisdiction		Downing Centre Local Court Sydney
Cartel	Country Care I	Pty L	td & Others
Cartel	Country Care I commenced	Pty L	.td & Others 14 February 2018
Cartel		Pty L 	
Cartel Cartel	commenced jurisdiction		14 February 2018
	commenced jurisdiction		14 February 2018 Magistrate's Court of Victoria

Strategy 2: Protect the interests and safety of consumers and support fair trading in markets affecting consumers and small business

Litigation concluded in 2017–18

Scam disruption	ABG Pages Pty Ltd			
	commenced		15 December 2016	
	concluded		20 March 2018	
	jurisdiction		Federal Court Brisbane	
	outcome		Pecuniary penalties of \$30 000 against ABG. Sole director Michelle McCullough ordered to pay a \$40 000 penalty and be disqualified from managing corporations for five years. ABG and McCullough ordered to jointly make a contribution of \$25 000 towards the ACCC's costs	
Misleading representations—consumer guarantees	Apple Pty Ltd and Apple Inc.			
	commenced		6 April 2017	
	concluded		19 June 2018	
	jurisdiction		Federal Court Melbourne	
	outcome		Pecuniary penalties of \$9 million	

Online reviews—misleading or deceptive conduct	Aveling Home	s Pt	y Ltd		
	commenced		9 March 2017		
	concluded		30 November 2017		
	jurisdiction		Federal Court Perth		
	outcome	1	Pecuniary penalty of \$380 000 against Aveling Homes, undertaking not to engage in similar conduct for a period of three years and to contribute to the ACCC's costs. Group Sales and Marketing Manager Mr Sean Quartermaine ordered to pay \$25 000		
Scams disruption	Domain Name	Domain Name Corp Pty Ltd & Others			
	commenced		4 August 2017		
	concluded		15 June 2018		
	jurisdiction		Federal Court Perth		
	outcome		Pecuniary penalties of \$1.95 million and injunctions. Sole director Mr Steven Bell (also known as Steven Jon Oehlers) disqualified from managing a corporation for five years and ordered to pay \$8000 towards the ACCC's costs		
Car retailing	Ford Motor Company of Australia Limited				
	commenced		26 July 2017		
	concluded		26 April 2018		
	jurisdiction		Federal Court Melbourne		
	outcome		Pecuniary penalties of \$10 million		
Vulnerable and disadvantaged consumers	Get Qualified	Aust	tralia Pty Ltd		
	commenced		30 March 2017		
	concluded		30 August 2017		
	jurisdiction		Federal Court Melbourne		
	outcome		Penalties of \$8 million against Get Qualified. Penalties of \$500 000 against sole director Mr Adam Wadi and an order disqualifying Mr Wadi from managing a corporation for seven years		
Unfair contract terms	JJ Richards &	Son	s Pty Ltd		
	commenced		6 September 2017		
	concluded		19 October 2017		
	jurisdiction		Federal Court Melbourne		
	outcome		Declaration that eight terms in standard form contract used are unfair and therefore void		
Franchising	Morild Pty Ltd				
-	commenced		21 September 2016		
	concluded		25 October 2017		
	jurisdiction		Federal Court Perth		
	outcome		Pecuniary penalty of \$100 000, declarations, injunction and contribution to the ACCC's costs. Morild's co-founder and director Mr Stuart Bernstein ordered to pay \$50 000		

Misleading representations—consumer guarantees	MSY Technology Pty Ltd				
	commenced	1 December 2016			
	concluded	25 October 2017			
	jurisdiction	Federal Court Sydney			
	outcome		by consent including sive Australian Consumer Law program, publication orders		
False or misleading representations made during the	Optus Internet Pty Ltd				
transition to the NBN	commenced	15 December 2017			
	concluded	23 May 2018			
	jurisdiction	Federal Court Melbourne			
	outcome	Pecuniary penalty of \$1.5	million		
Credence claims	Pental Limited	ntal Products Pty Ltd			
	commenced	12 December 2016			
	concluded	12 April 2018			
	jurisdiction	Federal Court Sydney			
	outcome	Pecuniary penalties of \$70	000 000		
Vulnerable and disadvantaged consumers	Swishette Pty L	d Letore Pty Ltd			
	commenced	30 March 2017			
	concluded	12 February 2018			
	jurisdiction	Federal Court Melbourne			
	outcome	Order for Letore to comperesidency program for am	ensate victims of a permanent sounts they paid to Clinica		
Credence claims	Snowdale Holdings Pty Ltd				
	commenced	9 December 2013			
	concluded	25 July 2017			
	jurisdiction	Federal Court Perth			
	outcome		50 000. Orders to implement am and pay a contribution		
False or misleading representations in	Telstra Corpora	Ltd			
telecommunications sector	commenced	26 March 2018			
	concluded	26 April 2018			
	jurisdiction	Federal Court Melbourne			
	outcome	Pecuniary penalties of \$10) million		
Product safety	Thermomix in A	alia Pty Ltd			
	commenced	16 June 2017			
	concluded	11 April 2018			
	jurisdiction	Federal Court Melbourne			
	outcome	Pecuniary penalties of \$4	608 500		
Misleading representations—consumer guarantees	Valve Corporat	ty Ltd (appeal)			
	commenced	10 December 2015			
	concluded	20 April 2018			
	jurisdiction	Federal Court Sydney			
	outcome	establishment (and mainte	a consumer rights notice, enance for three years) of an for each Valve employee, and		

Litigation commenced in 2017-18

Consumer—health	Ashley & Martin Pty Ltd			
	commenced 29 November 2017			
	jurisdiction Federal Court Perth			
Indigenous consumers	Birubi Art Pty Ltd			
	commenced 21 March 2018			
	jurisdiction Federal Court Sydney			
Unconscionable conduct, vulnerable consumers	Equifax Pty Ltd			
	commenced 16 March 2018			
	jurisdiction Federal Court Sydney			
False or misleading representations—health	GlaxoSmithKline Consumer Healthcare Australia Pty Ltd & Novartis Consumer Health Australasia Pty Ltd			
	commenced 5 December 2017			
	jurisdiction Federal Court Sydney			
Unconscionable conduct, vulnerable consumers	Jayco Corporation Pty Ltd			
Consumer guarantees	commenced 29 November 2017			
	jurisdiction Federal Court Melbourne			
Small business—unfair contract terms	Mitolo Group Pty Ltd & Another			
	commenced 25 June 2018			
	jurisdiction Federal Court Melbourne			
Small business—unfair contract terms	Servcorp Ltd & Others			
	commenced 14 September 2017			
	jurisdiction Federal Court Sydney			
Consumer—online	Viagogo			
	commenced 28 August 2017			
	jurisdiction Federal Court Sydney			
False or misleading representations	Woolworths Limited			
	commenced 2 March 2018			
	jurisdiction Federal Court Melbourne			

Other proceedings

Non-compliance with court orders		•	RM Corporation Pty Ltd and NRM Trading Pty formerly ed Medical Institute Pty Ltd)
	commenced		17 January 2018
	concluded		31 January 2018
	jurisdiction		Federal Court Melbourne
	outcome	1	ACCC's application for a sequestration order granted and Mr Vaisman declared bankrupt from 4 December 2017
Non-compliance with court orders	Peter Foster (Sens	aslim Australia Pty Ltd)
	commenced		18 December 2017
	concluded	1	20 1 2010
	concluded	- 1	29 January 2018
	jurisdiction		Federal Court Sydney

Public warning notices

There was one public warning notice issued in 2017–18 in relation to Digital Sourcing ApS/Lux International Sales ApS.

Disqualification orders

There were two disqualification orders issued during 2017–18.

Adam Wadi		
The ACCC alleged that Get Qualified Australia Pty Ltd made false or misleading representations and engaged in misleading and unconscionable conduct in connection with its supply of services to consumers seeking recognition of their prior learning to gain qualifications.	commenced concluded jurisdiction outcome	30 March 2017 30 August 2017 Federal Court Melbourne Disqualified from managing a corporation for a period of seven years
Michele McCullough		
The ACCC alleged that ABG Pages Pty Ltd engaged in misleading or deceptive conduct, false or misleading representations, undue harassment and systemic unconscionable conduct in its dealings with small businesses that were actual or potential customers of ABG's online business directory service.	commenced concluded jurisdiction outcome	15 December 2016 20 March 2018 Federal Court Brisbane Disqualified from managing a corporation for a period of five years

Administrative resolutions 2017-18

Truth in advertising	Aldi Foods Pty Limited	13 October 2017
Agriculture	AWB Harvest Finance Pools Pty Ltd	14 March 2018
Small business		
Truth in advertising	CompassCorp Pty Ltd	1 December 2017
Consumer guarantees	Davantage Group Pty Ltd	28 September 2017
Truth in advertising	Telstra	19 October 2017

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

Litigation concluded during 2017-18

Communications—judicial review	Vodafone Hutchison Australia (VHA) v Australian Competition and Consumer Commission under the Administrative Decisions (Judicial Review) Act 1977			
	commenced		2 June 2017	
	concluded		21 December 2017	
	jurisdiction		Federal Court Sydney	
	outcome		Dismissed VHA's application for judicial review of the ACCC's conduct in holding the inquiry. VHA sought orders to quash the (then) draft decision not to declare the service, and to restrain the ACCC from proceeding with the inquiry on the basis of the draft decision	
Communications—court action	Australian Competition and Consumer Commission v Optus Internet Pty Ltd			
	commenced		15 December 2017	
	concluded		22 May 2018	
	jurisdiction		Federal Court	
	outcome		Ordered Optus to pay penalties of \$1.5 million for making misleading representations to customers about their transition from Optus' hybrid fibre coaxial (HFC) network to the NBN, in addition to injunctions, improved complaints handling and a contribution to the ACCC's costs of the proceeding	

AER

Litigation concluded during 2017-18

Judicial review of AER gas distribution access arrangement	Jemena Gas Networks (NSW)		
	commenced 1 July 2015		
	jurisdiction Federal Court		
	Judicial review of this decision was sought in addition to an application for merits review.		
	The application for judicial review filed in the Federal Court was discontinued.		
Judicial review of AER electricity distribution determinations	Ausgrid		
	Endeavour Energy		
	Essential Energy		
	ActewAGL Distribution		
	commenced 28 May 2015		
	jurisdiction Federal Court		
	Judicial review of these decisions was sought in addition to applications for merits review.		
	The application for judicial review filed in the Federal Court was discontinued.		
Judicial review of Australian Competition Tribunal decision in relation to AER electricity distribution determination	SA Power Networks		
	commenced 25 November 2016		
	jurisdiction Full Federal Court		
	The Full Federal Court heard this matter in May 2017.		
	On 18 January 2018 the Full Federal Court handed down its judgment.		

Judicial review of AER electricity distribution determination	SA Power Networks		
	commenced 22 July 2016		
	jurisdiction Federal Court		
	Judicial review of this decision was sought in addition to applications for merits review.		
	The application for judicial review filed in the Federal Court was discontinued.		
Judicial review of AER electricity distribution determinations	CitiPower		
	Powercor		
	United Energy		
	Jemena		
	AusNet Services		
	commenced 22 June 2016		
	jurisdiction Federal Court		
	Judicial review of these decisions was sought in addition to applications fo merits review.		
	The application for judicial review filed in the Federal Court was discontinued.		
Judicial review of AER gas distribution access	ActewAGL Distribution		
arrangement	commenced 22 June 2016		
	jurisdiction Federal Court		
	Judicial review of this decision was sought in addition to an application for merits review.		
	The application for judicial review filed in the Federal Court was discontinued.		
Judicial review of AER electricity transmission	AusNet Transmission Services		
determination	commenced 18 May 2017		
	jurisdiction Federal Court		
	Judicial review of this decision was sought in addition to the application for merits review.		
	The application for judicial review filed in the Federal Court was discontinued.		

Australian Competition Tribunal matters

Applications for leave and review of AER electricity distribution determinations in relation to CitiPower, Powercor, United Energy, Jemena and AusNet Services were lodged on 17 June 2016. The merits review hearings concluded on 25 November 2016. The Australian Competition Tribunal (the Tribunal) extended the time for making a decision until 27 October 2017. On 17 October 2017 the Tribunal handed down its decision to affirm the AER's determinations. United Energy withdrew its application for merits review during 2017–18.

An application for leave and review of the AER gas distribution access arrangement in relation to ActewAGL Distribution was lodged on 17 June 2016. The merits review hearings concluded on 25 November 2016. The Tribunal extended the time for making a decision until 27 October 2017. The Tribunal handed down its decision on 17 October 2017 affirming the AER's determination.

An application for leave and review of the AER's electricity transmission determination in relation to AusNet Transmission Services was lodged on 18 May 2017. AusNet Transmission Services withdrew its application for merits review in July 2017.

For further information see pages 177-178 in strategy 4 and page 209 in part 4.

Appendix 10: Draft and final decisions in relation to regulated industries in 2017-18

AER

Electricity transmission decisions

- Draft decision: TransGrid transmission determination 2018-2023, September 2017
- Draft decision: Murraylink transmission determination 2018-2023, September 2017
- Draft decision: Electranet transmission determination 2018-2023, October 2017
- Decision: Approved a network support pass through for ElectraNet, December 2017
- Decision: Approved a negative cost pass through for AusNet Services for easements tax change, March 2018
- Final decision: Electranet transmission determination 2018-2023, April 2018
- Final decision: TransGrid transmission determination 2018-2023, May 2018

Electricity distribution decisions

- Decision: Approved the cost allocation method for Essential Energy, July 2017
- Final decision: AusNet Services' contingent project application, August 2017
- Final decision: Powercor's contingent project application, August 2017
- Decision: Approved revised annual pricing proposals for 2018 for Victorian businesses, November 2017
- Decision: CitiPower/Powercor—Ring fencing waivers 2017, December 2017
- Decision: Evoenergy—Ring fencing waivers 2017, December 2017
- Decision: Ausgrid—Ring fencing waivers 2017, December 2017
- Decision: AusNet Services—Ring fencing waivers 2017, December 2017
- Decision: Essential Energy—Ring fencing waivers 2017, December 2017
- Decision: Jemena—Ring fencing waivers 2017, December 2017
- Decision: TasNetworks—Ring fencing waivers 2017, December 2017
- Decision: Endeavour Energy—Ring fencing waivers 2017, December 2017
- Decision: United Energy—Ring fencing waivers 2017, December 2017
- Decision: SA Power Networks—Ring fencing waivers 2017, December 2017
- Decision: Ergon Energy—Ring fencing waivers 2017, December 2017
- Decision: Energex—Ring fencing waivers 2017, December 2017
- Decision: Approved the cost allocation method for Power and Water Corporation, January 2018
- Decision: Approved the cost allocation method for SA Power Networks, February 2018
- Draft decision: Essential Energy distribution determination 2014-2019 remittal, March 2018
- Final decision: Approved the cost allocation method for Endeavour Energy, March 2018
- Decision: Approved annual pricing proposal for 2018–2019 for Power and Water Corporation, April 2018
- Final decision: Essential Energy distribution determination 2014-2019 remittal, May 2018
- Decision: Approved annual pricing proposals for 2018-19 for Queensland, South Australia, Tasmanian, New South Wales and ACT businesses, May 2018

Gas transmission and distribution decisions

- Draft decision: Australian Gas Networks (Albury) distribution decision 2018-2022, July 2017
- Draft decision: Australian Gas Networks (Victoria) distribution decision 2018-2022, July 2017
- Draft decision: Roma to Brisbane gas pipeline transmission decision 2017-2022, July 2017
- Draft decision: Multinet distribution decision 2018–2022, July 2017
- Draft decision: AusNet Services distribution decision 2018-2022, July 2017
- Draft decision: APA Victorian transmission system transmission decision 2018-2022, July 2018
- Final decision: Roma to Brisbane gas pipeline transmission decision 2017-2022, November 2017
- Final decision: APA Victorian transmission system transmission decision 2018-2022, November 2017
- Final decision: Australian Gas Networks (Albury) distribution decision 2018-2022, November 2017
- Final decision: AusNet Services distribution decision 2018-2022, November 2017
- Final decision: Multinet distribution decision 2018–2022, November 2017
- Final decision: Australian Gas Networks (Victoria) distribution decision 2018-2022, November 2017
- Decision: Approved annual tariffs for 2018 for Victorian businesses and AGN (Albury), November 2017
- Decision: Approved annual tariff variation for 2018-19 for Evoenergy gas network, April 2018
- Decision: Approved annual tariff variation for 2018-19 for Jemena Gas Networks, June 2018
- Decision: Approved annual tariffs for 2018-19 for Central Ranges Gas Pipeline, June 2018
- Decision: Approved annual tariff variation for 2018-19 for Roma to Brisbane Pipeline, June 2018
- Decision: Approved annual tariff for 2018-19 for Australian Gas Networks (SA), June 2018
- Decision: Approved annual tariff for 2018-19 for Amadeus Gas Pipeline, June 2018

Retail energy market decisions

Electricity retailer authorisations

- Granted Sustainable Savings Pty Ltd an electricity retailer authorisation, July 2017
- Granted PowerHub Pty Ltd an electricity retailer authorisation, August 2017
- Granted Flow Systems Pty Ltd an electricity retailer authorisation, September 2017
- Granted Power Club Limited an electricity retailer authorisation, November 2017
- Granted SIMEC ZEN Energy Retail Pty Ltd an electricity retailer authorisation, November 2017
- Granted Sunset Power International Pty Ltd an electricity retailer authorisation, December 2017
- Granted Starcorp Energy Pty Ltd an electricity retailer authorisation, December 2017
- Granted Discover Energy Pty Ltd an electricity retailer authorisation, January 2018
- Granted Real Utilities Pty Ltd an electricity retailer authorisation, March 2018
- Granted Apex Energy Holdings Pty Ltd an electricity retailer authorisation, March 2018
- Granted GloBird Energy Pty Ltd an electricity retailer authorisation, March 2018
- Granted ReNu Energy Retail Pty Ltd an electricity retailer authorisation, June 2018

Gas retailer authorisations

Granted GloBird Energy Pty Ltd a gas retailer authorisation, March 2018

Individual exemptions

- Granted Riyala CTS 32485 (Riyala) an individual exemption, 7 July 2017
- Granted Body Corporate for Space the Residence CTS34806 (Space The Residence) an individual exemption, 7 July 2017
- Granted Riviere on Golden Beach CTS 25001 (Riviere) an individual exemption, 7 July 2017
- Granted Pumicestone Blue CTS 33280 (Pumicestone Blue) an individual exemption, 7 July 2017
- Granted Seabrae CTS 16658 (Seabrae Apartments) an individual exemption, 7 July 2017
- Granted Northwind CTS 10720 (Northwind Apartments) an individual exemption, 7 July 2017

- Granted Atrio Apartments CTS 46116 (Atrio Apartments) an individual exemption, 7 July 2017
- Granted Pinnacles Caloundra CTS 33776 (The Pinnacles) an individual exemption, 7 July 2017
- Granted AMP Capital Investors Ltd (Macquarie Shopping Centre) an individual exemption, 8 September 2017
- Granted Stockland Trust Management Limited (Green Hills Shopping Centre) an individual exemption, 28 September 2017
- Granted EN Project Company One Pty Ltd an individual exemption, 8 November 2017
- Granted Building Utilities and Property Services (Nero Newstead) an individual exemption, 18 December 2017
- Granted Hamilton Island Services Pty Ltd an individual exemption, 29 January 2018
- Granted Charter Hall Holdings Pty Limited an individual exemption, 16 April 2018

Retailer of last resort

There were no retailer of last resort events in 2017-18

Hardship policies

- Approved one hardship policy variation: OC Energy Pty Ltd on 24 October 2017
- Approved a hardship policy for Sustainable Savings Pty Ltd, 17 April 2018
- Approved a hardship policy for Starcorp Energy Pty Ltd, 17 April 2018
- Approved a hardship policy for Flow Systems Pty Ltd, 21 May 2018
- Approved a hardship policy for PowerHub Pty Ltd, 7 June 2018

Telecommunications

- Decision to approve Telstra request for regulatory forbearance from its migration plan obligations,
 7 September 2017
- Decision not to declare a domestic mobile roaming service, 23 October 2017
- Decision to approve Telstra's proposed variation to its migration plan to enable fibre-to-the-curb as a new access technology for NBN connections, to amend the duration of the Order Stability Period, and clarify the application of the Cease Sale restrictions, 6 March 2018
- Decision to remake digital broadcast radio instruments, (sent to Federal Register of Legislation on 22 May 2018)
- Draft decision on Long Term Revenue Constraint Methodology (LTRCM) for 2016-17, 27 April 2018
- Final decision on Long Term Revenue Constraint Methodology (LTRCM) for 2016-17, 29 June 2018

Transport

Rail

 Draft decision on the December 2017 variation to the 2011 Hunter Valley Access Undertaking (HVAU) submitted by the Australian Rail Track Corporation (ARTC), 28 June 2018

Wheat export port terminal services

- Final Determination—Riordan Grain, Port of Geelong Services, Port of Geelong—Exemption
 assessment of a bulk wheat port terminal facility under the Port Terminal Access (Bulk Wheat) Code
 of Conduct, 28 July 2017
- Final Determination—Semaphore Container Services, Port of Geelong—Exemption assessment of a bulk wheat port terminal facility under the Port Terminal Access (Bulk Wheat) Code of Conduct, 28 July 2017
- Final Determination—LINX, Port Adelaide—Exemption assessment of a bulk wheat port terminal facility at Berth 29, Port Adelaide, under the Port Terminal Access (Bulk Wheat) Code of Conduct, 11 October 2017

Appendix 11: Major regulatory reports and reviews in 2017-18

AER

Reports

- FCAS prices above \$5000/MW-9 November 2016 (SA), September 2017
- FCAS prices above \$5000/MW-25 November 2016 (SA), September 2017
- FCAS prices above \$5000/MW—23 January 2017 (SA), September 2017
- FCAS prices above \$5000/MW—21 March 2017 (SA), September 2017
- FCAS prices above \$5000/MW—30 March 2017 (SA), September 2017
- FCAS prices above \$5000/MW—18 April 2017 (SA), September 2017
- FCAS prices above \$5000/MW-22 May 2017 (SA), September 2017
- Market operator service allocation cost 2017, October 2017
- AER Annual Report 2016-17, October 2017
- FCAS prices above \$5000/MW-28 August 2017 (SA), November 2017
- FCAS prices above \$5000/MW—14 September 2017 (SA), November 2017
- AER annual report on compliance and performance of the retail energy market 2016–17, November 2017
- AER electricity wholesale performance monitoring—NSW electricity market advice, December 2017
- Distribution network service providers 2017 benchmarking report, December 2017
- Transmission network service providers 2017 benchmarking report, December 2017
- Significant price variation report—30 November 2017 (Victorian gas market), January 2018
- FCAS prices above \$5000/MW—24 October 2017 (SA), January 2018
- FCAS prices above \$5000/MW—13 and 14 October 2017 (SA), January 2018
- Prices above \$5000/MW−18 January 2018 (Vic and SA), March 2018
- Prices above \$5000/MW—19 January 2018 (Vic and SA), March 2018
- AER electricity wholesale performance monitoring—Hazelwood advice, March 2018
- Prices above \$5000/MW—7 February 2018 (Vic and SA), April 2018
- Wholesale electricity market performance monitoring report—statement of approach, March 2018
- Compliance check—resolving customer transfers without consent, April 2018
- Compliance check—authorised retailers—explicit informed consent in an embedded network, June 2018
- Quarterly compliance report: national electricity and gas laws, August 2017, December 2017, March 2018, May 2018
- Electricity reports, weekly
- Gas reports, weekly

Guidelines and other consultation

- Distribution annual planning report template, July 2017
- Confidentiality guidelines 2017, August 2017
- AER revised stakeholder engagement framework, September 2017
- Electricity ring-fencing guidelines, October 2017
- Review of expected inflation, December 2017

Telecommunications

Reports

- Draft report on communications sector market study, 30 October 2017
- Final report on communications sector market study, 5 April 2018
- Competition and price changes in telecommunications services in Australia 2016-17, 20 March 2018
- Measuring Broadband Australia, first quarterly report, 29 March 2018
- Telstra's compliance with its structural separation undertaking (SSU) for 2016-17, 9 May 2018
- NBN wholesale market indicators report for the June quarter 2017, 11 August 2017
- NBN wholesale market indicators report for the September quarter 2017, 9 November 2017
- NBN wholesale market indicators report for the December quarter 2017, 8 February 2018
- NBN wholesale market indicators report for the March quarter 2018, 10 May 2018

Guidelines and other consultation

- Broadband speed advertising guidance, 21 August 2017
- Advice to the Minister for Communications and the Arts on allocation limits for unsold spectrum, 14 August 2017
- Advice to the Minister for Communications and the Arts on the level of retail competition in South Brisbane and the potential implications of extending Telstra's exemption from the NBN level playing field arrangements for its South Brisbane Exchange network, March 2018
- Advice to the Minister for Communications and the Arts on allocation limits for the proposed auction of 125 MHz of spectrum in the 3.6GHz band, 4 May 2018

Fuel

Reports

- Report on the Australian petroleum market—March quarter 2018, 5 June 2018
- Report on the Australian petroleum market—December quarter 2017, 23 February 2018
- Report on the Australian petroleum market—September quarter 2017, 6 November 2017
- Report on the Australian petroleum market—June quarter 2017, 31 August 2017
- Report on petrol prices by major retailer in 2017, 13 May 2018
- Report on Brisbane petrol market—9 October 2017

Transport

Reports

- Airport monitoring report for 2016-17, 26 April 2018
- Container stevedoring report for 2016–17, 1 November 2017
- Bulk wheat ports monitoring report 2016-17, 13 December 2017

Guidelines and other consultation

Submission to the Bulk Wheat Code review, 12 December 2017 and 10 May 2018

Water

Reports

Water Monitoring Report 2016-17, 12 June 2018

Guidelines and other consultation

- Submission to the Productivity Commission inquiry into Basin Plan effectiveness, 19 April 2018
- Submission to the Productivity Commission National Water Reform Inquiry, 19 October 2017
- Submission to Victorian Parliament Inquiry into the Management, Governance and Use of Environmental Water, 25 August 2017

Gas

- Gas inquiry 2017-2020 Interim report, 25 September 2017
- Gas inquiry 2017-2020 Interim report, 13 December 2017
- Gas inquiry 2017-2020 Interim report, 27 April 2018

Insurance

Reports

Update report on the Northern Australia Insurance Inquiry, 8 June 2018

Guidelines and other consultation

Northern Australia Insurance Inquiry—Issues Paper, 24 October 2018

Appendix 12: Mergers in 2017-18—major assessments

All publicly reviewed merger decisions for 2017-18 are published on the ACCC merger public register.

Notable merger reviews—not opposed

- Birketu Pty Ltd and Illyria Nominees Television Pty Limited—proposed joint bid for interests in Ten Network Holdings Limited
- Bayer AG—proposed acquisition of Monsanto Company
- Platinum Equity—proposed acquisition of OfficeMax
- Seven & Nine—proposed acquisition of Ten's shares in TX Australia
- Cleanaway Waste Management Limited—proposed acquisition of Tox Free Solutions Limited
- Zodiac and Fluidra—merger of pool equipment businesses globally and in Australia
- Moly-Cop—proposed acquisition of Donhad
- AAPC Limited (Accor)—proposed acquisition of Mantra Group Limited

Notable merger reviews—opposed

BP Australia Pty Ltd—proposed acquisition of retail service station sites from Woolworths Limited

Public merger reviews resolved by court enforceable undertakings

During 2017-18 the ACCC accepted undertakings in the following review:

Saputo Dairy Australia Pty Ltd—proposed acquisition of Murray Goulburn's operating assets

Appendix 13: Significant authorisation and notification decisions in 2017-18

Authorisations

In 2017–18 the ACCC issued 27 decisions (excluding minor variations). Copies of all authorisation decisions for 2017–18 are published on the ACCC website at www.accc.gov.au/publicregister.

Notable authorisations granted

- Virgin Australia Airlines Pty Ltd & Others—Authorisations A91575 & A91576
- Shopping Centre Council of Australia Limited—Revocation and Substitution—Authorisations A91591 & A91592
- Eastern Energy Buyers Group—Authorisations A91594 & A91595
- Central Petroleum and Macquarie Mereenie—Authorisation AA1000398-1
- Independent Cinemas Australia Inc—Authorisation A91587

Notable authorisations granted with conditions

- BP Australia Pty Ltd & Others—Authorisations A91580—A91582
- Port of Brisbane Pty Ltd & Carnival plc—Authorisation AA1000399-1
- Qantas Airways Limited & Emirates—Revocation and Substitution—Authorisation AA1000400-01

Collective bargaining notifications

In 2017-18 three collective bargaining notifications were allowed to stand.

Copies of all collective bargaining notifications are available from the ACCC's website at www.accc.gov.au/publicregister.

Exclusive dealing notifications

In 2017–18 the ACCC assessed 268 exclusive dealing notifications. Copies of all exclusive dealing notifications are available from the ACCC's website at www.accc.gov.au/publicregister.

Resale price maintenance notifications

In 2017–18 the ACCC received one resale price maintenance notification, which remains under assessment as at 30 June 2018. A copy of this notification is available from the ACCC's website at www.accc.gov.au/publicregister.

Appendix 14: Correction of material errors in previous annual reports

The 2016–17 annual report incorrectly stated that five substantiation notices were issued pursuant to subsections 219(2)(a) and (c) of the *Competition and Consumer Act 2010* requiring each of the addressees to provide a written signed statement or produce documents substantiating or supporting their claims about electronic cigarette products. However, these notices pertained to the previous financial year, 2015–16. No substantiation notices were issued in 2016–17.

In 2016-17 the following s. 87B undertakings were reported, when they pertained to the previous financial year. The s. 87B undertakings were correctly reported in the 2015-16 annual report.

- Withdrawal of the Peter McInnes Pty Ltd s.87B undertaking
- Acceptance of a s. 87B undertaking from Eureka Operations Pty Ltd trading as Coles Express
- Acceptance of s. 87B undertakings from BP Australia Pty Ltd, Caltex Australia Petroleum Pty Ltd, Woolworths Ltd, 7-Eleven Stores Pty Ltd, Informed Sources (Australia) Pty Ltd

Glossary of abbreviations and acronyms

AASB Australian Accounting Standards Board

ACCC Australian Competition and Consumer Commission

ACL Australian Consumer Law

ACMA Australian Communications and Media Authority
ACORN Australian Cybercrime Online Reporting Network

ACT Australian Capital Territory

ADSL Asymmetric digital subscriber line
AECL Australian Egg Corporation Ltd

AEMC Australian Energy Market Commission

AEMO Australian Energy Market Operator

AER Australian Energy Regulator
AFL Australian Football League

AIPE Australian Institute of Professional Education Pty Ltd

AMI Advanced Medical Institute Pty Ltd
ANAO Australian National Audit Office
APEC Asia-Pacific Economic Cooperation

APS Australian Public Service

ARTC Australian Rail Track Corporation

ASEAN Association of Southeast Asian Nations

ASIC Australian Securities and Investments Commission

ATO Australian Tax Office
ATV all-terrain vehicles

AUSLAN Australian Sign Language

BPID Basic Plan Information Document

CAANZ Consumer Affairs Australia New Zealand

CAF COAG Legislative and Governance Forum on Consumer Affairs

C&I commercial and industrial
CBH Co-operative Bulk Handling

CCA Competition and Consumer Act 2010

CCG Customer Consultative Group
CCP Consumer Challenge Panel
CCU Commercial Construction Unit

CDPP Commonwealth Director of Public Prosecutions

CDRAC Compliance and Dispute Resolution Advisory Committee

CFR Council of Financial Regulators

CLDB culturally or linguistically diverse background
CLIP Competition Law Implementation Program

COAG Council of Australian Governments

CPI consumer price index

cpl cents per litre

CSS Commonwealth Superannuation Scheme

CVC connectivity virtual circuit

DEHP diethylhexyl phthalate

DNKi Do Not Knock informed

DNSP distribution network service provider

DoCA Department of Communications and the Arts

DTCS Domestic Transmission Capacity Service

DWGM Declared Wholesale Gas Market

EAP Employee Assistance Program

EBITA earnings before interest, taxes and amortisation

EGM Executive General Manager

EIAC Education and Information Advisory Committee

EL executive level

ESD ecologically sustainable development

EU European Union
FBT Fringe Benefits Tax

FCAS frequency control ancillary services
FOI Act Freedom of Information Act 1982
FTOG Fair Trading Operations Group

FTTB fibre-to-the-building
FTTC fibre-to-the-curb
FTTN fibre-to-the-node

FSU Financial Services Unit

GHz gigahertz
GJ gigajoule
GL gigalitre

GM General Manager

GSP General Safety Provision
GST Goods and Services Tax

Harper review the Competition Policy Review

HFC hybrid fibre coaxial

HVAU Hunter Valley Access Undertaking
IAU Interstate Access Undertaking

ICPEN International Consumer Protection and Enforcement Network

ICT information and communications technology

International Competition Network

IO infrastructure operators

ICN

IPART Independent Pricing and Regulatory Tribunal of NSW

IRU ignition risk units

JAG Junior Adventures Group

JGN Jemena Gas Networks

KPI key performance indicator

KPPU Indonesian Commission for the Supervision of Business Competition (Komisi Pengawas

Persaingan Usaha)

LCF Litigation Contingency Fund

LGBTIQ lesbian, gay, bisexual, transgender, intersex and queer

LMR limited merits review

LNG liquefied petroleum gas

LPG liquefied natural gas

LTRCM Long Term Revenue Constraint Methodology

MBA Measuring Broadband Australia

Mbps megabits per second

MHz megahertz

MOU memorandum of understanding

MTM Multi-Technology Mix

NBN National Broadband Network
NCC National Competition Council

NDIS National Disability Insurance Scheme

NEL National Electricity Law
NEM National Electricity Market
NER National Electricity Rules

NGR National Gas Rules

NICS National Indigenous Consumer Strategy

NSP network service providers

NSW New South Wales
NT Northern Territory

NZCC New Zealand Commerce Commission

OECD Organisation for Economic Co-operation and Development

PBS portfolio budget statement
PBPL Port of Brisbane Pty Ltd
PC Productivity Commission
PDB Premium Direct Billing

PGPA Act Public Governance, Performance and Accountability Act 2013
PGPA Rule Public Governance, Performance and Accountability Rule 2014

PJ petajoule

PNO Port of Newcastle Operations Pty Ltd

POH Public Office Holder

PRAC Policy and Research Advisory Committee

PSAN phase-stabilised ammonium nitrate
PSOG Product Safety Operations Group

PSS Public Sector Superannuation Scheme

PSSap PSS accumulation plan
PST PowerShift transmission
RAP Reconciliation Action Plan

REFCL Rapid Earth Fault Current Limiter

Retail Law National Energy Retail Law Retail Rules National Energy Retail Rules

RKR record-keeping rules

RMS Rehabilitation Management System

RoLR retailer of last resort

SA South Australia

SAPN SA Power Networks

SAU special access undertaking
SCR service continuity regions
SES Senior Executive Service
SIO Services in Operation

SLC Unit Substantial Lessening of Competition Unit

SME small and medium enterprise
SPV significant price variation

SSU structural separation undertaking

STPIS service target performance incentive scheme

STTM short term trading market
TEU twenty-foot equivalent unit

UK United Kingdom
US United States

VHA Vodafone Hutchison Australia

WA Western Australia

WCO workplace contact officer
WHS work health and safety

Compliance index

List of requirements

This list of requirements for inclusion in a non-corporate Commonwealth entity's annual report for a reporting period is provided in accordance with paragraph 17AJ(d) of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) and ss. 46(3) of the Public Governance, Performance and Accountability Act 2013.

PGPA Rule reference	Part of report	Description	Requirement	Page number
17AD(g)	Letter of	f 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	iii
17AD(h)	Aids to a	access		
17AJ(a)		Table of contents.	Mandatory	٧
17AJ(b)		Alphabetical index.	Mandatory	331-338
17AJ(c)		Glossary of abbreviations and acronyms.	Mandatory	319-322
17AJ(d)		List of requirements.	Mandatory	323-328
17AJ(e)		Details of contact officer.	Mandatory	ii
17AJ(f)		Entity's website address.	Mandatory	ii
17AJ(g)		Electronic address of report.	Mandatory	ii
17AD(a)	Review l	by accountable authority		
17AD(a)		A review by the accountable authority of the entity.	Mandatory	1-13
17AD(b)	Overvie	w of the entity		
17AE(1)(a)(i)		A description of the role and functions of the entity.	Mandatory	16 and 18
17AE(1)(a)(ii)		A description of the organisational structure of the entity.	Mandatory	19-20
17AE(1)(a)(iii)		A description of the outcomes and programmes administered by the entity.	Mandatory	18
17AE(1)(a)(iv)		A description of the purposes of the entity as included in corporate plan.	Mandatory	18 and 24
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	23-194
17AD(c)(ii)	Report on financial performance		
17AF(1)(a)	A discussion and analysis of the entity's financial performance.	Mandatory	10-13
17AF(1)(b)	A table summarising the total resources and total payments of the entity.	Mandatory	273-274
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.	If applicable, mandatory	N/A (page 224)
17AD(d)	Management and accountability		
	Corporate governance		
17AG(2)(a)	Information on compliance with section 10 (fraud systems).	Mandatory	iii and 206
17AG(2)(b)(i)	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	iii
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	iii
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	iii
17AG(2)(c)	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	196-207, 215-217
17AG(2)(d)-(e)	A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to noncompliance with Finance law and action taken to remedy noncompliance.	If applicable, mandatory	N/A

Ex	ternal scrutiny		
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	208-209
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	208-209
17AG(3)(b)	Information on any reports on operations of the entity by the Auditor General (other than report under s. 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, mandatory	208-209
17AG(3)(c)	Information on any capability reviews on the entity that were released during the period.	If applicable, mandatory	N/A
Mā	anagement of human resources		
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	210-217, 277-278
17AG(4)(b)	Statistics on the entity's APS employees on an ongoing and nonongoing basis; including the following: Statistics on staffing classification level Statistics on full-time employees Statistics on part-time employees Statistics on gender Statistics on staff location Statistics on employees who identify as Indigenous.	Mandatory	212-214, 275-276
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 Public Service Act 1999.	Mandatory	215-216
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	215-217
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level.	Mandatory	216
17AG(4)(c)(iii)	A description of non-salary benefits provided to employees.	Mandatory	216
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay.	If applicable, mandatory	217
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level.	If applicable, mandatory	217
17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, mandatory	217

17AG(4)(d)(iv)	Information on aggregate amount of performance payments.	If applicable, mandatory	217
	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	223
	Purchasing		
17AG(6)	An assessment of entity performance against the Commonwealth Procurement Rules.	Mandatory	223-224
	Consultants		
17AG(7)(a)	A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST).	Mandatory	224
17AG(7)(b)	A statement that "During [reporting period], [specified number] new consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]."	Mandatory	224
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	223-224
17AG(7)(d)	A statement that "Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website."	Mandatory	224
	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 AuditorGeneral with access to the contractor's premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	If applicable, mandatory	N/A (page 223)

	Exempt contracts		
17AG(9)	If an entity entered into a contract or there is a standing offer with a value greater than \$10 000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.	If applicable, mandatory	N/A (page 223
	Small business		
17AG(10)(a)	A statement that "[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance's website."	Mandatory	223
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	223
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 ss. 43(4) of the Act.	Mandatory	225-269
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	279
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, mandatory	279
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	N/A (page 224)

17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	214
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	209
17AH(1)(e)	Correction of material errors in previous annual report.	If applicable, mandatory	318
17AH(2)	Information required by other legislation.	Mandatory	329-330

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* (CCA), the *Work Health and Safety Act 2011*, the *Commonwealth Electoral Act 1918* and the *Environment Protection and Biodiversity Conservation Act 1999*.

Competition and Consumer Act 2010 requirements

Under s. 171 of its enabling legislation, the CCA, the ACCC is required to include the following matters in its annual report.

Requirement	Page
Cumulative list of all Commonwealth, state and territory laws that the Commission knows about that authorise things for the purposes of ss 51(1) of this Act or ss 51(1) of the Competition Code (as defined in s. 150A).	295-297
The time taken to make final determinations under s. 44V in relation to access disputes.	298
The time taken to make decisions on access undertaking applications or access code applications (within the meaning of s. 44B).	298
The time taken to make decisions on applications under ss 44PA(1).	298
The number of notices given by the Commission under s. 155.	298
The number of notices given by the Commission under s. 155A.	298
A general description of the nature of the matters in respect of which the notices were given.	298
The number of proceedings brought to challenge the validity of the notices.	298
The number of search warrants issued by a judge under s. 135Z or signed by a judge under s. 136.	298
The number of search warrants issued by a magistrate under s. 154X or signed by a magistrate under s. 154Y.	298
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.	298
The number of proceedings brought to challenge the validity of the search warrants referred to in paragraph (ca) or (d)	299
The number of entries onto premises under s. 133B or 133C, Division 6 of Part XI or Part XID.	299
The number of complaints received by the Commission.	133-136, 299
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The number of times the Commission has intervened in proceedings and a general description of the reasons for doing so.	299

Commonwealth Electoral Act 1918 requirements

Under s. 311A of the *Commonwealth Electoral Act 1918*, the ACCC is required to report on the following matters in its annual report.

Requirement	Page
A statement setting out particulars of all amounts more than \$13,500 paid by, or on behalf of, the Commonwealth Department during the financial year to: advertising agencies; market research organisations; polling organisations; direct mail organisations; and media advertising organisations; and the persons or organisations to whom those amounts were paid.	279

Work Health and Safety Act 2011 requirements

In accordance with Schedule 2, Part 4 of the *Work Health and Safety Act 2011*, the matters the ACCC must include in its annual report are as follows.

Requirement	Page
Initiatives taken during the year to ensure the health, safety and welfare of workers who carry out work for the entity.	277-278
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.	277-278
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.	277-278
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> .	277-278
Such other matters as are required by guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.	N/A

Environment Protection and Biodiversity Conservation Act 1999 requirements

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires Commonwealth entities and Commonwealth companies to report on the following matters.

Requirement	Page
How the activities of, and the administration (if any) of legislation by, the entity during the period accorded with the principles of ecologically sustainable development (ESD).	280
How the outcomes (if any) specified for the entity in an Appropriations Act relating to the period contribute to ESD.	280
The effect of the entity's activities on the environment.	280
Any measures the reporter is taking to minimise the impact of activities by the entity on the environment.	280-281
The mechanisms, if any, for reviewing and increasing the effectiveness of those measures.	281

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