



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION



AUSTRALIAN
ENERGY
REGULATOR

Annual Report

2018-19

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

October 2019



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& CONSUMER COMMISSION



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ACCC 10/19_1537

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4 September 2019

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

Dear Treasurer

ACCC and AER Annual Report 2018-19

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 2019. 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

Handwritten signature of Rod Sims in black ink.

Rod Sims
Chair, ACCC

Handwritten signature of Paula Conboy in black ink.

Paula Conboy
Chair, AER

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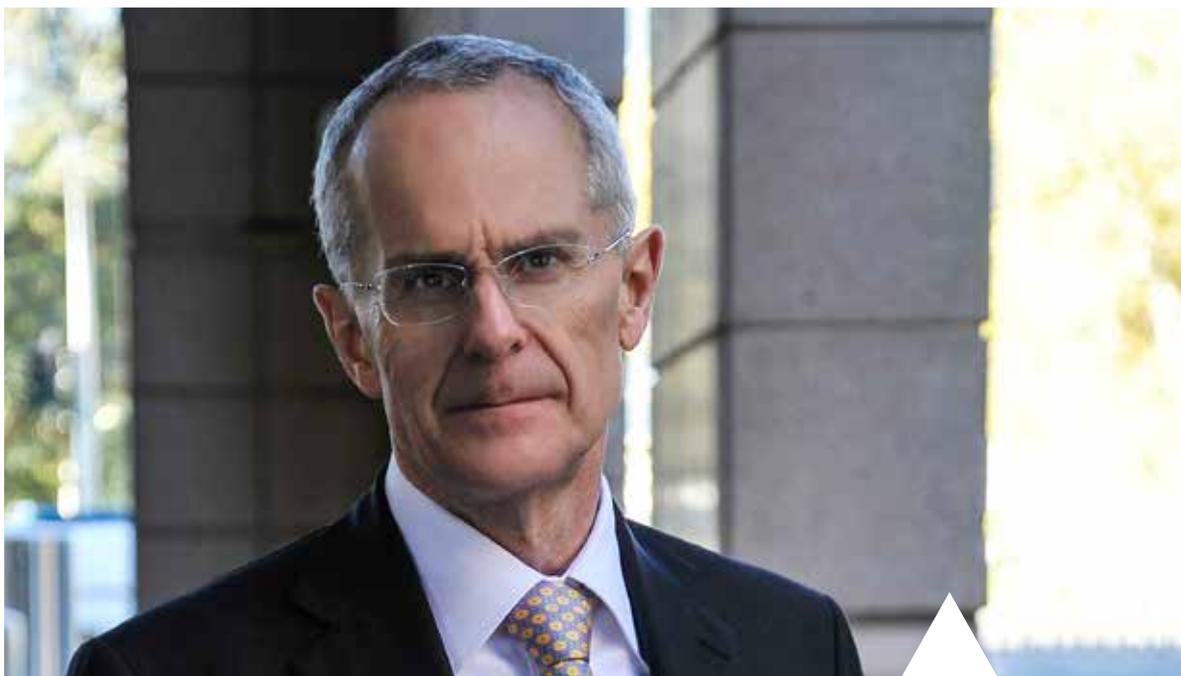
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01

Year in review





2018-19 review: ACCC Chair, Rod Sims

In 2018-19 the ACCC's experience and expertise as the competition and consumer regulator has seen us take a lead role in a number of important government inquiries.

We have conducted a landmark inquiry into the current and future impact of the digital platforms, in particular on the media and advertising sectors, and continued our inquiries into the gas and electricity sectors. All are critical to consumers, businesses and, more broadly, the Australian economy.

A particular focus of our Digital Platforms Inquiry was the disruption of journalism and media businesses by Google and Facebook and their unprecedented market power. The inquiry highlighted the need for greater supervision and regulation in the rapidly evolving digital environment, especially around consumer privacy and rights.

In both electricity and gas, the ACCC's role continues. The ACCC's Gas Inquiry led to the fortnightly publication of the LNG netback price series as one measure to improve transparency of gas prices in the east coast gas market.

Following our Retail Electricity Pricing Inquiry, in August 2018 the then Treasurer directed the ACCC to hold a public inquiry into the prices, profits and margins in the supply of electricity in the National Electricity Market. We have already provided our first report and further reports will be provided at least every six months until 31 August 2025.

A number of the important reforms we suggested in our original Retail Electricity Pricing Inquiry have already been adopted by the government. These reforms will bring down electricity prices significantly for over half a million consumers on excessive standing offers and will help all other customers to better compare offers.

In December 2018 we released our first interim report on the operation of markets for home, contents and strata insurance in northern Australia. The inquiry's main focus for 2019 has been on how to achieve real and meaningful change for northern Australian communities. The inquiry is currently considering measures to improve insurance affordability and availability that are applied overseas and whether they could be applied in northern Australia.

We concluded an inquiry into the pricing of residential mortgage products by authorised deposit-taking institutions subject to the Major Bank Levy. The final Residential Mortgage Price Inquiry report details residential mortgage prices and the basis of price decisions over the price monitoring period. It also includes our findings on whether the Major Bank Levy was passed through to residential mortgage borrowers during this period.

We have also completed our inquiry into the supply of foreign currency conversion services in Australia, which highlighted issues with transparency and impediments to effective price competition in the sector.

We have had a significant year in relation to our enforcement work as well. The ACCC must be, is, and always will be, at its heart, an enforcement agency.

This will not be lost as we do market studies; indeed, it drives our market studies, in two ways in particular. First, trying to promote competition and consumer outcomes is what we are about in our enforcement work. Second, our approach to market studies is one of investigation. This drives the effectiveness of our market studies, and drives the power of any findings and recommendations.

In continuing our critical enforcement work, the specialist competition investigators in our Substantial Lessening of Competition Unit have been working to fast-track investigations and achieve outcomes in a much more commercial timeframe than has been possible in the past, due to a more agile approach and with better resourcing. Last year the unit released our guidance on the new misuse of market power and concerted practice provisions to help businesses to understand and comply with these new laws.

We had a number of other competition matters before the courts in 2018–19, including the following:

- Criminal cartel charges were laid against the Construction, Forestry, Maritime, Mining and Energy Union and its ACT Divisional Branch Secretary following a joint investigation with the Australian Federal Police (AFP).
- Criminal cartel charges were laid against Vina Money Transfer Pty Ltd following a joint investigation with the AFP for allegedly fixing the Australian dollar/Vietnamese dong exchange rate and fees they charged customers.
- Proceedings were instituted against NSW Ports Operations Hold Co. Pty Ltd for making an agreement with the State of New South Wales that is alleged to have an anti-competitive purpose and effect.
- Proceedings were instituted against rail companies Pacific National Pty Ltd and Aurizon Holdings Limited alleging that Pacific National's proposed acquisitions of the Acacia Ridge Terminal intermodal rail terminal and Aurizon's Queensland intermodal business and associated agreements would be likely to result in a substantial lessening of competition.

We achieved significant outcomes in competition matters in 2018–19, including the following penalties:

- PT Garuda Indonesia Ltd—penalties of \$19 million for price-fixing fees and surcharges for air freight services
- Oakmoore Pty Ltd (trading as EGR) and director Rodney Howell—penalties of \$6.35 million; and Palram Australia and Ampelite Australia—penalties of \$5.5 million for being knowingly concerned in exclusive dealing conduct
- Cryosite Limited—penalties of \$1.05 million for engaging in cartel conduct
- Yazaki Corporation Pty Ltd—penalties of \$46 million were upheld by the High Court.

There was, as always, a range of challenging and detailed informal merger reviews, including:

- Sydney Transport Partners Consortium (including Transurban)—proposed acquisition of a majority interest in WestConnex
- Caltex Australia Petroleum Pty Ltd—proposed acquisition of assets from Milemaker Petroleum Pty Ltd
- Bingo Industries Limited—proposed acquisition of Dial-a-Dump Industries Pty Ltd.

Our opposition to Vodafone Hutchison Australia Pty Ltd's proposed acquisition of TPG Telecom Limited has gained significant attention and remains before the Court.

This case, as well as the Pacific National/Aurizon merger case that is currently being appealed to the Full Federal Court, raise significant issues about the application of the s. 50 test.

It is important the ACCC is able to confidently oppose mergers which are likely to substantially lessen competition.

The ACCC considers that there is a case for strengthening Australia's merger laws to ensure that the ACCC has the ability to prevent increasing concentration in Australian markets, so that consumers and small businesses continue to obtain the benefits of strong competition.

The ACCC's consumer work continued to grow this past year. We achieved 46 new Australian Consumer Law (ACL) interventions in 2018-19, exceeding the target of 40. We also achieved significant outcomes in a number of litigated ACL matters, including 10 matters where penalties exceeded \$1 million. Total penalties achieved for breaches of the ACL during the period were \$49.2 million.

The ACCC achieved a number of 'firsts' in the period, including:

- instituting the first proceedings under the excessive surcharging provisions, alleging Europcar charged excessive credit and debit card payment surcharges
- record penalties of \$12 million against We Buy Houses Pty Ltd and \$6 million against sole director, Rick Otton, representing the highest penalties ever imposed for contraventions of the ACL by a corporation and an individual, respectively
- the first financial penalty in respect of the 2017 Horticulture Code, with an infringement notice issued to Sydney fruit and vegetable wholesaler Stuart Dickson Produce Pty Ltd for allegedly trading without having a written Horticulture Produce Agreement with growers in place.

Paramount in all of our product safety work has been consumer welfare. Our Takata Taskforce has worked diligently to facilitate the replacement of well over three million airbags from Australian vehicles. We commissioned research from the Australian National University on the Takata recall, and it showed the recalls are significantly less likely to be responded to in locations where disadvantaged consumers are over-represented. We are doing a number of things to address this, including outreach work in Indigenous and culturally and linguistically diverse communities to find owners of vehicles with affected airbags. Our Quad Bikes Taskforce has recommended the government implement a mandatory safety standard for quad bikes under the ACL, and our important work in this area continues despite strong opposition from parts of the industry.

It is vital the ACCC keeps up to date on market trends and industry practices. To stay informed, we regularly undertake in-depth market, sector or industry reviews. These forensic investigations of sectors, ranging from the wine grapes market to new car retailing, have become essential tools to complement and enhance our effectiveness; they uncover important competition and consumer issues and provide an evidence-based foundation for the ACCC's broader work, including competition advocacy and enforcement.

The ACCC published reports on the petrol industry as well as our innovative Measuring Broadband Australia program, monitoring and reporting on residential National Broadband Network (NBN) fixed-line broadband speeds. The ACCC continues to monitor and report on sectors such as airports, stevedoring, wheat ports and water.

It is a challenging and exciting time for the ACCC. Along with the inquiries we have recently concluded or that continue, we are working hard to develop policies and processes around a new function that we have acquired in the past year: our responsibility for the Consumer Data Right.

When we choose to intervene, via enforcement cases, market studies or via general compliance activity, we do so to ensure that markets function correctly. This is fundamental for business, consumer and investor confidence.

In June 2019 we welcomed Stephen Ridgeway to the ACCC as a Commissioner, taking the place of Roger Featherston at the end of his term. Stephen's wealth of competition, consumer and regulatory experience will be a great asset to the ACCC. I want to especially thank Roger, who has been a wonderful asset to the ACCC over the past five years. We will greatly miss his intellect and commitment and the key wider role he played as part of the ACCC team.

Thanks to all our staff for their incredible work and contribution to making the Australian economy work better in the interest of all Australians.

Rod Sims

Chair, Australian Competition and Consumer Commission

ACCC year in review 2018-19

Enforcement

Total penalties from litigated consumer protection matters

\$49.2m

Total penalties from litigated competition matters

\$13m



96

In-depth investigations concluded

26

Court cases commenced

6

Immunity applications received

Mergers and authorisations

331

Mergers assessed

26

Mergers subject to public or confidential review

305

Mergers finalised by pre-assessment

18

Non-merger authorisation applications assessed

Market studies and inquiries



10

Market studies and inquiries completed or progressed

Product safety



1930

Mandatory injury reports assessed

683

Voluntary recall notifications published

2044

Supplier inspections for compliance with **21** mandatory safety standards, bans or voluntary codes



3.21m

Defective Takata airbags rectified since July 2017

Infrastructure

16

Investigations into breaches of industry specific rules

7

Infrastructure monitoring reports

6

Petrol monitoring reports

575 075

Views of the ACCC petrol price cycles website



Infocentre



315 491

Infocentre contacts served

12 937

Small business Infocentre contacts served

ACCC websites

13.5m

ACCC website page views

6.8m

Scamwatch website page views

8.2m

Product safety website page views



2018-19 review: AER Chair, Paula Conboy

My tenure as the Chair of the AER is soon to end, and it is with great pleasure and more than a little satisfaction and pride that I present this annual report, along with some comments about what I feel we have achieved as an organisation during the past five years and specifically during 2018-19.

Five years ago I set out with a clear focus on the regulation of networks. As an organisation we worked together to put into practice new tools such as the Consumer Challenge Panel (CCP), benchmarking and Rate of Return (ROR) guidelines, and we have called on a more collaborative approach that puts consumers at the heart of our decisions, bringing them into the process—a process that focuses on understanding and testing proposals and what lies behind them and on delivering decisions that everyone can understand. Australia's national electricity and gas markets have changed dramatically through this time as they continue to respond to a diverse range of challenges and opportunities—technological, political and social.

At the same time, the AER has changed. We have more than doubled in size during the past five years. Our budget expanded by almost 60 per cent during the same period, reflecting an appropriate expansion of both our role and our responsibilities in overseeing Australia's dynamic energy market as it embarks on the transition to a new age of energy generation.

This expansion of roles and responsibilities also prompted a corresponding re-evaluation of the AER's governance and organisational structures, culminating over the past year in the implementation of an ambitious transformation program that better aligns our workforce and culture to meet the needs of a fast-changing market and the energy consumers who rely on us so that we keep their long-term interest at the centre of all we do.

Our ongoing objective has not changed; we continue to be guided by the energy objectives, which are about the achievement of economic efficiency in the long-term interests of energy consumers with respect to price, quality, safety, reliability and security of supply of energy. However, we are more agile and adaptable than ever before in how we achieve this and as we operate in an era of unprecedented change in both the electricity and gas markets.

As part of the Energy Security Board, the AER contributes to the implementation of the Council of Australian Governments (COAG) Energy Council agreed energy market reforms put forward by Australia's Chief Scientist, Dr Alan Finkel AO.

Through the Energy Security Board, the AER provides ongoing advice to the COAG Energy Council on energy market development, including on the ACCC retail electricity price review recommendations. We are also supporting consultation on the post-2025 design of the National Electricity Market (NEM).

We are well advanced on the development of the interim guidelines that will enable the Retailer Reliability Obligation to help ensure there is sufficient firm, dispatchable capacity to meet peak demand in each region of the NEM. This has been—and will continue to be—a significant program of work for the AER, with final guidelines for liquidity, contracts, firmness, forecasting and compliance to be set by the end of 2020.

Keeping consumers at the centre of it all is and shall remain our priority, as we are acutely aware that the operation of a secure and reliable NEM lies at the heart of Australia's economic prosperity and development.

One of our important innovations is the Consumer Challenge Panel (CCP), which has continued to deliver tangible benefits in 2018–19. The CCP is a group of dedicated Australians who have relevant expertise in the fields of economic regulation, energy networks and consumer regulation. Its role is to ensure the AER is taking into account the consumer viewpoint in network determinations. Their role is to challenge the AER and the network businesses we regulate from a consumer's perspective. As such, the CCP has become valuable in ensuring that consumers and their long-term interests remain at the forefront of our regulatory decision-making process.

It is very important that stakeholders who are impacted by our decisions are engaged in our processes. This was the impetus to initiating the CCP; however, we continually looked to other means to increase the consumer voice into our decision-making: in developing the RoR guidelines, we established the Consumer Reference Group (CRG). Not only was this valuable input for us but there was also resounding agreement that having the CRG meet with the investor and networks reference groups provided opportunities to understand different points of view.

Since 2009 the Customer Consultative Group (CCG) has been providing us with valuable advice in relation to our functions under the energy laws affecting energy consumers across participating jurisdictions. The CCG also provides us with a venue to test whether our outreach and communications are effective.

We are exploring ways to embed consumer views in an increasingly practical way through our NewReg initiative. The initiative is about developing a new dialogue and a better process to align interests so that revenue proposals and AER determinations reflect the interests of consumers. Stakeholders have also been more active in our processes as evidenced by the increasing number of submissions we received over the year.

Today, the networks that the AER regulates must consult their consumers about any future proposal before they submit a proposal to us, thus placing greater importance on finding the most efficient way of meeting consumer preferences. In keeping with this aim, we have taken an in-depth look at forecast capital expenditures, alongside consumer representatives and businesses. At the same time we have continued with our various public forums, all designed to promote more consumer engagement—and, indeed, engagement of all stakeholders—with the market. Specifically, we have used these channels to engage with consumers on our RoR consultation and the NewReg pilot scheme. The result of all of this is processes that are more collaborative than adversarial and that are focused on understanding the different points of view in assessing network proposals.

We have encouraged TransGrid's work with consumers to develop an innovative way of approaching Powering Sydney's Future project, which will help to ensure that TransGrid has the revenue it needs to provide safe and reliable services to its customers, ensuring that timing is such that consumers do not have to fund the project before it is needed. Given that the market is

changing so rapidly, this also helps to avoid investment in costly assets that in a few years may not actually be needed.

Our efforts to work with stakeholders involved in the cost benefit analysis of the regulatory investment test for transmission (RIT-T) is helping to provide for streamlined regulatory approvals without compromising the rigour those reviews require. This is particularly pressing for the Group One projects identified in the Australian Energy Market Operator's inaugural Integrated System Plan. We will continue to work with all proponents in this area.

Our new binding hardship guidelines set clear obligations for retailers in terms of how they treat customers who are experiencing hardship. This means that there is no longer any doubt about customer rights and our ability to enforce them.

In the area of compliance and enforcement, we are expecting changes to the legislation bringing about new civil penalty provisions and the ability to compel oral evidence and more quickly deploy our information gathering powers. This will strengthen our toolkit in promoting a culture of compliance. Our new Compliance and Enforcement policy makes it clear that we are getting started right away.

In order to ensure appropriate levels of compliance, reliable information is key. As such, this year we have continued to invest in systematically monitoring and reporting on the effectiveness of market arrangements, identifying barriers to achieving the desired state and enforcing compliance when breaches to energy laws and rules occur.

Accuracy, timeliness and transparency of information provides critical market signals to the industry and helps to inform policy direction or rule changes that may need to be considered. In addition, community, industry and government need to trust that we will take appropriate action in response to non-compliance.

The wholesale market is undergoing massive change with the exit of synchronous generation, the entry of variable renewable energy, new means of providing ancillary services and demand-side participation. The Retailer Reliability Obligation took effect on 1 July 2019 and will help ensure that there is sufficient firm, dispatchable capacity available when and where it is needed. The changing dynamics make our role in monitoring the wholesale market even more important. Transparency of information in both the gas and electricity markets, compliance with market rules and laws as well as unbiased, accurate and timely reporting will remain a key focus for us.

As the agency that implements the rules, monitors performance and enforces compliance with energy rules and laws, we are well placed to contribute to the energy policy debate and development. We have established a policy branch, which also addresses a stakeholder desire that we take a strong thought leadership role to better inform the future form of rules and guidelines, particularly for better outcomes for consumers. We have been effective in developing the Default Market Offer (DMO), which is aimed at addressing unjustifiably high standing offers. The DMO will also be used as a reference price to help address the ongoing concern of confusion over market offer discounts. Our policy branch is also developing the Value of Customer Reliability—which is an assessment of the value that different consumers place on reliability.

I have never been more acutely aware of the responsibilities we carry as a regulator. In a market that is under massive transition and increasingly scrutinised, it is more important than ever that as a regulator we focus on communication. A trustworthy and respected regulator is one that can communicate in a measured and strategic way. Our audience extends to those who have an interest beyond the technical and complex detail of regulation.

The AER looks forward with a renewed and strengthened focus on independence, transparency and accountability. I am confident that the AER has the clear and proper purpose it needs to leverage the expertise of our staff and Board members, and the contributions made by energy consumers and other stakeholders, to help navigate the challenging path ahead.

Paula Conboy

Chair, Australian Energy Regulator

AER year in review 2018-19



6 917 664
EME website views

2 906 176
AER website views



16 Infringement notices paid



6 Retail authorisations assessed

100%

Percentage of offers published on EME website within 2 business days of receipt

10 Individual exemptions assessed



87 Weekly electricity and gas monitoring reports



9 Retailers' hardship policies and proposed amendments assessed



2 Targeted reviews of compliance with the national energy rules



7 Completed revenue decisions for electricity networks and gas pipelines

100%

Percentage of disputes resolved within legislated timeframes including on network access and connections, and regulatory investment tests



December 2018 we released *State of the energy market*

Finance and staffing snapshot

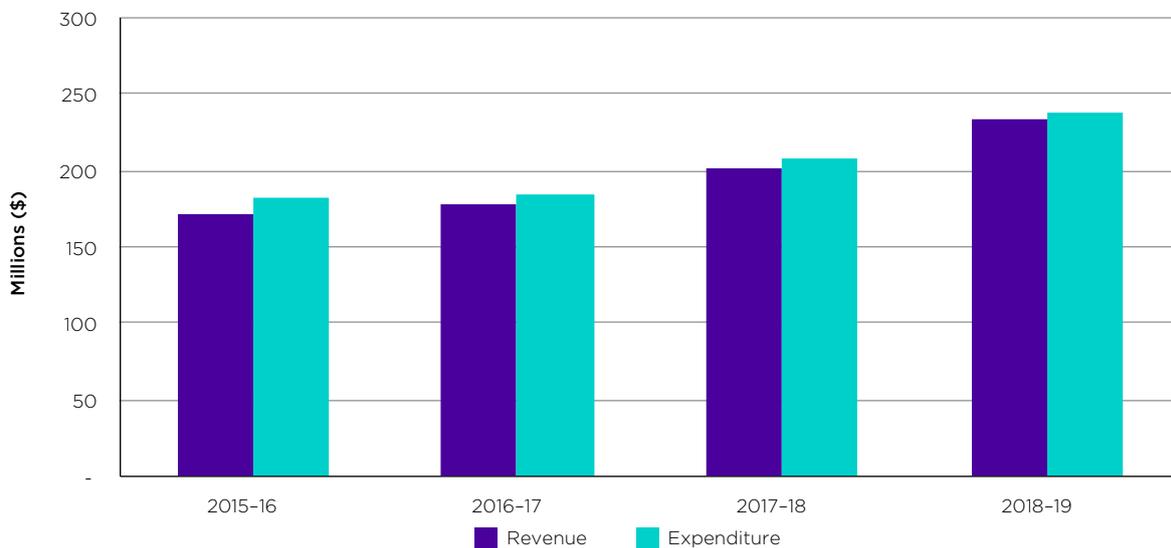
The ACCC received an unqualified audit report on the 2018-19 financial statements from the Australian National Audit Office. These statements can be found in part 5.

The ACCC achieved a surplus of \$1.0 million excluding depreciation and amortisation in 2018-19, compared with a \$0.1 million deficit in 2017-18. This outcome is broadly consistent with the ACCC's budgeted operating result for 2018-19.

The ACCC's net cost of services for 2018-19 was \$233.2 million (2017-18: \$203.3 million), with revenue from government of \$228.9 million (2017-18: \$197.9 million).

In 2018-19 revenue from government increased by \$31.0 million and expenditure on ACCC activities increased by \$30.6 million. The additional revenue was appropriated by government to fund a number of new measures and resulted in corresponding increases in employee expenses of \$18.7 million and supplier expenses of \$6.5 million. A comparison of revenue and expenditure trends over the last four years is illustrated in figure 1.1 below.

Figure 1.1: ACCC revenue and expenditure 2015-16 to 2018-19



Key financial results for ACCC for the financial years 2016-17 to 2018-19 are shown in table 1.1.

Table 1.1: ACCC comparative financial results 2016-17, 2017-18 and 2018-19

	2016-17	2017-18	2018-19
	\$'000	\$'000	\$'000
Expenses			
Employee benefits	102 979	119 105	137 829
Legal fees	20 782	26 593	25,939
Other expenses	61 044	62 296	74 838
Total expenses	184 805	207 994	238 606
Own-source revenue			
Other revenue	4 178	4 621	5 428
Total own-source revenue	4 178	4 621	5 428
Net cost of services	180 627	203 373	233 178
Revenue from Government	173 359	197 951	228 941
Net operating surplus/(deficit)	(7 268)	(5 422)	(4 237)
Changes in asset revaluation reserve	167	112	-
Total comprehensive income	(7 101)	(5 310)	(4 237)
Operating cash balance	1 616	1 692	1 656
Receivables	30 928	34 715	60 337
Total assets	50 927	64 312	91 557
Total liabilities	59 417	65 044	85 322
Total equity	(8 490)	(732)	6 235
Administered fees and fines revenue	42 279	131 164	92 043

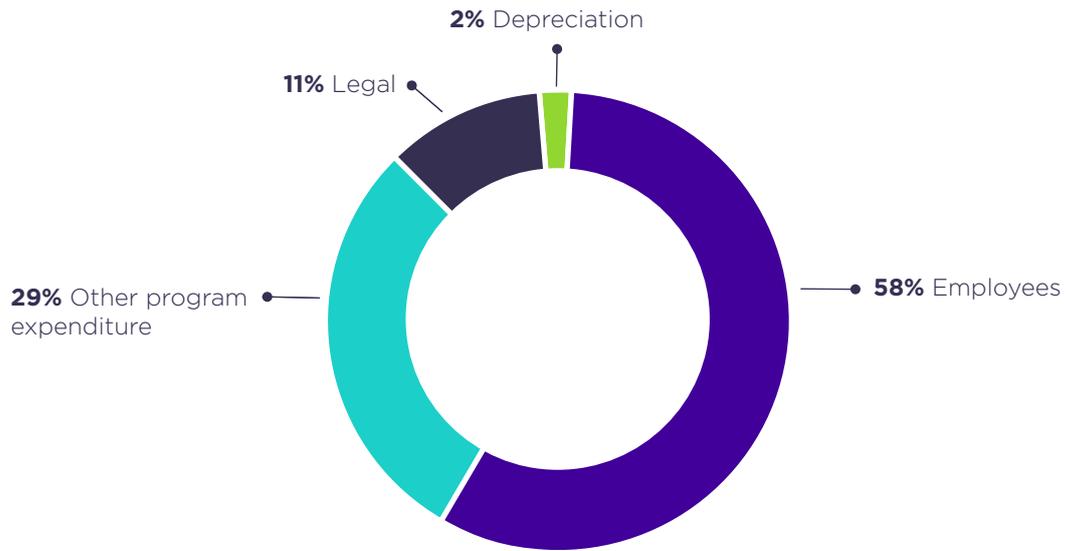
Expenditure

The ACCC is a knowledge-based organisation and, as such, it spends approximately 58 per cent of total expenditure on employee costs (2017-18: 57 per cent).

Legal expenditure can be subject to volatility depending on the timing and outcome of litigation proceedings but has remained consistent between financial years.

Other expenses (excluding depreciation and amortisation) increased by \$12.5 million, or 22 per cent, as the ACCC utilised additional funding received in 2018-19 to deliver on its strategic priorities. Depreciation and amortisation has remained relatively consistent between years.

Figure 1.2: ACCC expenditure 2018-19



Operating statement

During 2018-19 the ACCC recorded a comprehensive operating loss of \$4.2 million compared with an operating loss of \$5.3 million in 2017-18. Excluding an unfunded depreciation expense of \$5.2 million, the Commission achieved a minor operating surplus of \$1.0 million due to lower legal expenses than budgeted. Legal expenses can fluctuate between years depending on the number, nature and status of cases being pursued by the ACCC.

Balance sheet

The ACCC's net assets as at 30 June 2019 totalled \$6.2 million compared with (\$0.7) million in 2017-18.

Assets

Total assets as at 30 June 2019 were valued at \$91.6 million compared with \$64.3 million on 30 June 2018, representing a 42 per cent increase. This variance is largely due to an increase of \$25.0 million 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 \$85.3 million in 2018-19 from \$65.0 million in 2017-18. This increase primarily relates to a \$7.5 million increase in employee provisions, \$6.1 million increase in other provisions and a \$4.9 million increase in supplier payables. Liabilities also increased on recognition of additional property lease incentive liabilities and an increase in the provision for litigation at 30 June 2019.

Administered revenue

In 2018-19 the ACCC received \$92.0 million in administered revenue, representing a decrease of \$39.1 million from 2017-18. This amount includes court-imposed fines and costs.

Staffing summary

Table 1.2: Average staffing level 2014-15 to 2018-19

	Budgeted	Actual
2014-15	735	715
2015-16	739	752
2016-17	739	772
2017-18	868	874
2018-19	964	976



02

Overview of the ACCC and AER



The ACCC and AER at a glance

Who we are

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

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

Our purpose

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

Our strategies

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

Our people



As at 30 June 2019
1172 ACCC and AER
staff were working in
9 ACCC and AER offices
across Australia.

Our values

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



Independent:

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



Expert:

We make timely decisions based on evidence and rigorous analysis.



Strategic:

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



Trustworthy:

We communicate honestly and directly and act respectfully.

About the ACCC and the AER

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

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

The Australian Energy Regulator (AER) is Australia's national energy market regulator. The AER has its own independent Board, comprising 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. 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.

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.

Purpose

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

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

Legislative framework

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

Role and functions

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

- maintaining and promoting competition by preventing anti-competitive mergers, 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
- reporting on the performance of energy markets and energy market businesses
- empowering and informing consumers through the Energy Made Easy website and program.

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. This resulted in an ongoing role for the ACCC to monitor electricity markets until 2025
- 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 foreign exchange currency conversion services

- undertaking an inquiry into the supply of residential building, contents and strata insurance products to consumers in northern Australia. We are monitoring prices, costs and profits to address concerns about the high price of insurance in the region
- undertaking an inquiry into digital platforms to assess the effects of digital search engines, social media platforms and other digital content aggregation platforms on competition in media and advertising services markets. In particular, the inquiry looked 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
- monitoring the removal of GST from menstrual products
- producing industry reports on aspects of consumer interest in the fuel market, including an in-depth petrol report detailing annual average retail petrol prices throughout 2018–19 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 is supported by the Office of the Australian Information Commissioner and the Data Standards Body as it develops the regulatory framework.

As at 30 June 2019 the responsible minister for the ACCC was the Treasurer, the Hon. Josh Frydenberg MP.

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

To strengthen accountability and performance frameworks, the COAG Energy Council and the Australian Government developed [Statements of Expectations](#) for the AER in 2014. The AER developed annual Statements of Intent in accordance with these Statements of Expectations.

In 2017 the [Independent review into the future security of the National Electricity Market—Blueprint for the future](#) report recommended that the Australian Government and the COAG Energy Council issue a combined Statement of Expectations for the AER. The [2017–18 Statement of Intent](#) can be found on the AER website.

In response to the new Statement of Expectations, the AER will publish a new Statement of Intent setting out how it intends to meet the expectations of the Australian Government and the COAG Energy Council over the 2019–20 financial year. This will include how the AER's work program will contribute to progress against the COAG Energy Council's Strategic Energy Plan. The new Statement of Intent is currently well progressed and will contain key deliverables and performance indicators, against which the AER will measure its performance against the expectations of the Australian Government and COAG Energy Council.

Setting priorities

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

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

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

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 or, on occasion, through out-of-session agreement of the 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 Portfolio Budget Statement, 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: To achieve compliance with the CCA and other legislation to protect, strengthen and supplement the way competition works in Australian markets and industries to improve the efficiency of the economy and to increase the welfare of Australians.

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

The details of the ACCC and AER strategies, deliverables and performance indicators are listed in our annual performance statements (pages 26–28).

Organisational structure 2018-19

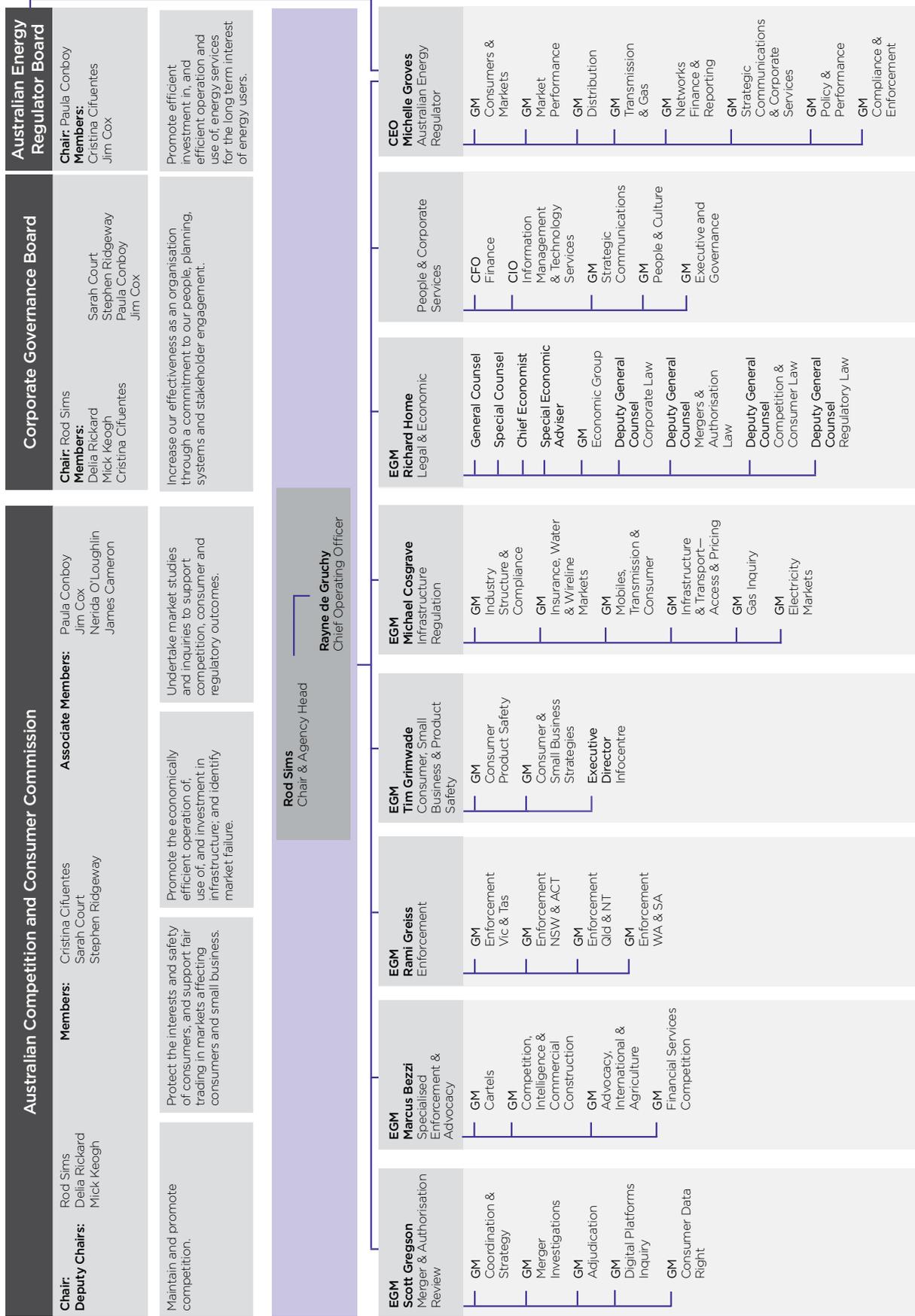
Commissioners

Chair	Rod Sims
Deputy Chairs	Delia Rickard
	Mick Keogh
Members	Cristina Cifuentes
	Sarah Court
	Roger Featherston (until 11 June 2019)
	Stephen Ridgeway (from 27 June 2019)
Associate members	Paula Conboy
	Jim Cox
	Mark Berry (until 31 March 2019)
	Susan Begg (until 12 June 2019)
	Nerida O'Loughlin (from 6 April 2019)
	James Cameron (from 6 April 2019)

Australian Energy Regulator

Chair	Paula Conboy
Members	Cristina Cifuentes
	Jim Cox

Figure 2.1: Organisational structure of the ACCC and AER (at 30 June 2019)



Key: GM—General Manager EGM—Executive General Manager



03

Annual performance statements



Performance reporting framework

This chapter reports on our performance in achieving our outcome and purpose for 2018–19 using the framework and performance indicators reflected in both the 2018–19 ACCC Portfolio Budget Statement (PBS) (contained in the Treasury portfolio PBS) and the ACCC and AER Corporate Plan 2018–19. 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	<i>Public Governance, Performance and Accountability Act 2013</i> (Cth) (PGPA Act) <i>Competition and Consumer Act 2010</i> (Cth) (CCA) ACCC Portfolio Budget Statement ACCC and AER Corporate Plan 2018–19
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 work for consumers, now and in the future.
Program 1.1	Australian Competition and Consumer Commission
Program 1.2	Australian Energy Regulator

Strategies to achieve our purpose

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

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

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

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

Program 1.1 ACCC

Strategy 1: Maintaining and promoting competition

To maintain and promote competition, we:

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

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

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

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

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

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

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

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

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

Program 1.2 AER

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

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

Deliverable 5.1	Deliver network regulation to promote efficient investment in energy network services that customers value
Deliverable 5.2	Build consumer confidence in retail energy markets
Deliverable 5.3	Promote efficient wholesale energy markets
Deliverable 5.4	Contribute our expertise and insight and support energy market reforms

How we measure our performance

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

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

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

Performance indicators

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

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

Activities undertaken and outcomes achieved

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

Performance surveys

ACCC Effectiveness Survey

In 2018-19 the ACCC engaged ORIMA Research to undertake a survey and conduct interviews with key stakeholders to qualitatively measure our effectiveness in achieving our purpose.

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

The key findings from this research have been incorporated into this annual performance statement for 2018–19 and substantially enhance our performance measurement and reporting.

[ORIMA Research's independent report](#) is available on our website.

AER stakeholder survey

The AER commissions a major survey of its stakeholders every two years. To date, five stakeholder surveys have been undertaken. The surveys are conducted by an independent market research agency and comprise a quantitative survey and in-depth telephone interviews with senior people in consumer groups, businesses, peak bodies and government agencies. The surveys examine, among other things, satisfaction with how the AER performs its functions; the extent to which it has a clear direction and purpose, shows leadership and is seen as trustworthy; and how well it engages with stakeholders. The findings of our last stakeholder survey were included in the AER 2017–18 Annual Report and the results of our next stakeholder survey will be included in the 2019–20 Annual Report.

Other measures of performance

We also monitor assessments of our performance provided by external bodies such as the Organisation for Economic Co-operation and Development (OECD) and the Global Competition Review (GCR). This provides an added layer of qualitative assessment of our effectiveness. We discuss these other measures of our performance on page 35.

ACCC self-assessment under the Regulator Performance Framework

The ACCC also measures its performance by undertaking a comprehensive annual self-assessment against the six key performance indicators (KPIs) specified in the Australian Government's Regulator Performance Framework. The framework's purpose is to encourage regulators to impose the minimum burden on regulated entities while undertaking their functions to achieve regulatory objectives. The six KPIs are therefore primarily concerned with how regulators administer regulation. More information about the KPIs and the results from the ACCC's most recent self-assessment is on pages 33–34.

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

For **strategy 5** our reporting aligns directly with the four 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. In these sections we discuss our work in more detail and give examples that demonstrate how we carry out the strategies to achieve our purpose.

Statement of preparation

As the accountable authority of the ACCC, I present the 2018-19 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.

A handwritten signature in black ink, appearing to read 'Rod Sims', is positioned above the printed name and title.

Rod Sims

Chair, ACCC



Program 1.1 Australian Competition and Consumer Commission

Overview of the ACCC's performance

ACCC Effectiveness Survey

In April 2019 the ACCC engaged market research firm ORIMA Research to undertake a survey and interviews with key stakeholders whose knowledge of our work enabled them to provide well-informed views about our effectiveness in achieving our purpose through the strategies set out in our Corporate Plan. This research also measured whether the ACCC is effective in engaging with stakeholders and achieving our core values.

[ORIMA Research's independent report](#), published on the ACCC's website, concluded that 'the assessment feedback shows that the ACCC is achieving its purpose of making markets work for consumers, now and in the future. External stakeholder perceptions of its operations are also generally strong'.

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

- consumer groups
- industry associations
- government senior officials
- legal and economic experts
- regulators and ombudsmen
- journalists and academics.

Stakeholders were asked to rate to what extent they agreed with statements related to particular aspects of the ACCC's effectiveness using a five-point scale ranging from 'strongly agree' to 'strongly disagree'.

ORIMA Research's report provides the detailed results for each statement. For example, 97 per cent of respondents either agreed or strongly agreed that consumers are better off, and that markets are more competitive, due to the ACCC's work.

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

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

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

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

Key index score results are shown in table 3.2.

Table 3.2: ACCC Effectiveness Survey key results

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

The ACCC was rated highly on the five measures directly related to achieving our overall purpose—particularly the first three measures, for which we achieved index scores above 80.

Stakeholders also rated the ACCC favourably on achieving our four strategies, with an index score above 70 for all. The following sections of this report provide more detail about the survey results relevant to each strategy.

Stakeholders rated the ACCC highly on our communication (index score of 75.7) and engagement with stakeholders (index score of 80.8) and were very positive in their responses when asked about the ACCC achieving its four core values of being independent, trustworthy, expert and strategic (index score of 80).

Regulator Performance Framework

In December 2018 the ACCC published its third annual self-assessment under the Australian Government's [Regulator Performance Framework](#). The [ACCC self-assessment report 2017-18](#) is available on our website.

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

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

These KPIs are concerned with how regulators administer regulation. The framework's purpose is to encourage regulators to undertake their functions with the minimum burden necessary to

achieve regulatory objectives. It does not seek to measure the performance of the ACCC on the outcomes we achieve for Australian consumers and the economy.

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

A key element of the ACCC's self-assessment was an online survey to obtain the views of business stakeholders. The survey was conducted independently by market research firm ORC International in June 2018. Over 500 businesses, or their legal representatives, provided feedback on what the ACCC is doing well and what we can improve. We published the results of the survey in conjunction with the ACCC's self-assessment on our website.

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

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

The 2017-18 self-assessment found that the ACCC is generally achieving the six KPIs to a good or very good standard across the entire organisation, with a small number of areas achieving a rating of satisfactory. Table 3.3 below shows the individual rating for each KPI across each of the ACCC's functions.

Table 3.3: Regulator Performance Framework self-assessment ratings 2017-18

KPI	Merger and authorisation review	Small business and product safety	Infrastructure regulation	Enforcement	Market studies and inquiries
1: The ACCC does not unnecessarily impede the efficient operation of regulated entities.	Good	Good	▲ Good	▼ Satisfactory	Very good
2: The ACCC's communication with regulated entities is clear, targeted and effective.	▲ Very good	Very good	▲ Good	▲ Very good	Very good
3: The actions undertaken by the ACCC are proportionate to the regulatory risk being managed.	Good	Good	▲ Good	Good	Good
4: The ACCC's compliance and monitoring approaches are streamlined and coordinated.	▲ Good	Good	Satisfactory	Satisfactory	Good
5: The ACCC is open and transparent in its dealings with regulated entities.	Very good	Very good	Good	▲ Very good	Very good
6: The ACCC actively contributes to the continuous improvement of regulatory frameworks.	▲ Very good	Good	Satisfactory	Good	Very good

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

Rating scale



Other measures of performance

Recognition by the Global Competition Review

The GCR is the world's leading antitrust and competition law journal and news service. The annual GCR awards recognise the cases, law firms, lawyers, economists and enforcers that the international competition community believes have excelled during the year. The GCR seeks nominations from practitioners and observers and collates a shortlist of nominees for the international competition community to vote on.

The ACCC was awarded the 2019 Government Agency of the Year at the GCR 9th Annual Awards Ceremony hosted in Washington DC on 26 March 2019. The GCR highlighted the ACCC's Digital Platforms Inquiry and the complex Nine–Fairfax merger decision. The nomination also recognised that in 2018 the ACCC took its first 'gun-jumping' case against Cryosite Limited—a stem cell storage company. In addition, it noted the ACCC reached another milestone in its decade-long price-fixing case against airlines, with Air New Zealand being the 14th airline to be fined in those proceedings.

The GCR also undertakes an annual survey of the world's leading competition authorities. For 2018 the ACCC was awarded four stars out of five, which puts the ACCC in the top 10 agencies. To determine star ratings, the GCR's editorial team measures antitrust enforcement programs around the world, combining data supplied by the agencies with its own reporting and the feedback of lawyers, economists and local journalists who interact with competition authorities. In its publication *Rating enforcement 2018*, the GCR explains:

The goal is to understand how well each enforcer used the tools available to it—its legal powers, resources and influence—to deter and stop anticompetitive activity in 2017. Both quantity and quality matter. What does it profit an agency if it brings many cases, but loses every one against which the companies appealed? Nor do these ratings live by enforcement actions alone; we also weigh a competition authority's transparency, analytical sophistication, effectiveness in educating governments and people, and more.

OECD indicators of independence and accountability

Every five years the OECD measures the independence and accountability of 130 regulators in 38 countries across five key infrastructure sectors: energy, e-communications, rail, water and air transport. Information about the governance arrangements for the ACCC and AER was included in the findings about Australian regulators contained in the OECD's report [The 2018 indicators on the governance of sector regulators](#).⁵ The report found that Australian regulators performed better in terms of both independence and accountability than the OECD average across each of the five infrastructure sectors.

5 Casullo, L., A. Durand and F. Cavassini (2019), 'The 2018 Indicators on the Governance of Sector Regulators—Part of the Product Market Regulation (PMR) Survey', OECD Economics Department Working Papers, No. 1564, OECD Publishing, Paris.

Strategy 1: Maintaining and promoting competition

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

As Australia's 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 function (below)
- our merger and authorisation review function (see pages 47–60)
- other work we do to promote competition (see pages 61–64).

Enforcement actions to promote competitive markets

Performance results and analysis

Role and functions

The ACCC investigates and takes 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. 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 finite 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 2018 and again in February 2019. Our 2018 and 2019 policies prioritised the following areas in the reporting period:

- competition issues in the financial services sector, including issues concerning foreign exchange services
- competition and consumer issues arising from opaque and complex pricing of essential services—in particular, those in energy and telecommunications
- competition and consumer issues concerning the use of digital platforms, algorithms and consumer data
- competition and consumer issues arising from customer loyalty schemes
- misuse of market power
- competition and consumer issues in the agriculture sector
- competition issues in the commercial construction sector
- cartel conduct (enduring priority)
- anti-competitive agreements and practices (enduring priority).

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

Powers

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

Performance indicators

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

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

Table 3.4: Performance indicators for deliverable 1.1

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

[#] Before 2018-19 market studies were included in this performance indicator. From 2018-19 market studies and inquiries are discussed under a standalone performance indicator under strategy 4.

Analysis of performance

The ACCC [Effectiveness Survey](#) report found that stakeholders positively assessed the ACCC's enforcement action to address anti-competitive conduct, with an overall index score of 76.2 (out of 100). The vast majority of respondents (88 per cent) agreed that the ACCC effectively addresses harm to consumers and businesses resulting from anti-competitive conduct; and 83 per cent agreed that the ACCC's enforcement action is effective in deterring harmful anti-competitive market conduct.

We made five new competition enforcement interventions in 2018-19 (against a target of six), which included:

- the ACCC's successful outcome in its first 'gun-jumping' case against Cryosite Limited regarding its asset sale agreement with Cell Care Australia Pty Ltd, in relation to cartel conduct
- criminal charges laid against the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) and its Australian Capital Territory (ACT) Divisional Branch Secretary, in relation to alleged cartel conduct
- criminal cartel charges laid against Vina Money Transfer Pty Ltd and five individuals for allegedly fixing the Australian dollar/Vietnamese dong exchange rate and fees they charged customers
- proceedings against NSW Ports Operations Hold Co. Pty Ltd and others for making an agreement with the State of New South Wales alleged to have an anti-competitive purpose and effect
- proceedings against rail companies Pacific National Pty Ltd (Pacific National) and Aurizon Holdings Limited (Aurizon) over concerns that Pacific National's acquisition of the Acacia Ridge Terminal intermodal rail terminal would have the likely effect of substantially lessening competition.

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

There were a number of significant outcomes in competition matters in 2018-19, including the following findings by the Federal Court and imposition of penalties:

- **PT Garuda Indonesia Ltd**—penalties of \$19 million for price-fixing fees and surcharges for air freight services

- **Oakmoore Pty Ltd** (trading as EGR) and director Rodney Howell—combined penalties of \$6.35 million
- **Palram Australia and Ampelite Australia**—combined penalties of \$5.5 million for being knowingly concerned in exclusive dealing conduct in the supply of polycarbonate roof sheeting
- **Cryosite Limited**—penalties of \$1.05 million for engaging in cartel conduct
- **Yazaki Corporation**—penalties of \$46 million for cartel conduct upheld after the High Court refused Yazaki’s special leave application to appeal the May 2018 decision of the Full Federal Court.

The ACCC completed 23 in-depth investigations in the period, less than the annual target of 40. This primarily reflected disruption, resourcing and operational challenges related to restructuring and the establishment of new units and functions during the period. One example of this relates to the establishment of the new Financial Services Competition Branch (FSBC). In addition to its focus on investigations relating to the financial services sector, the FSBC contributes considerable resources to other ongoing work. This work included market studies, with the [Residential Mortgage Price Inquiry: Final report](#) being delivered in December 2018, and work on the [Foreign Currency Conversion Services Inquiry](#) continuing. The FSBC is also responsible for managing significant workloads relating to continuing litigation, including the criminal cartel case against Australia and New Zealand Banking Group Ltd (ANZ), Citigroup Global Markets Australia Pty Ltd (Citigroup) and Deutsche Bank Aktiengesellschaft (Deutsche Bank) and several senior executives, which commenced in June 2018; and criminal cartel proceedings commenced in April 2019 against a money transfer business and five individuals for price-fixing in relation to foreign currency conversions.

The ACCC has continued to prioritise enforcement action in relation to alleged cartel conduct, which is 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. In addition to two ongoing criminal cartel proceedings in the financial services sector, the ACCC is managing a third ongoing criminal cartel proceeding against the CFMMEU and its ACT Divisional Branch Secretary.

There were a number of longstanding and ongoing cases dealt with during the period that continued to require considerable resourcing, including a number of important appeals to the Full Federal Court and High Court. Longstanding matters included Yazaki Corporation, PZ Cussons Australia Pty Ltd, PT Garuda Indonesia Ltd, Cascade Coal Pty Ltd and Kawasaki Kisen Kaisha. In addition, significant resourcing is being allocated to supporting ongoing criminal prosecutions by the CDPP against ANZ, Citigroup, Deutsche Bank and Country Care Group Pty Ltd.

Finally, in addition to investigations, other project and policy work was undertaken to promote competition as outlined on pages 61–64 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 for larger companies. This push for higher penalties follows a March 2018 OECD report finding that penalties in Australia for contraventions of the competition laws are significantly lower than those imposed in comparable OECD jurisdictions. The \$46 million penalty judgment against Yazaki Corporation demonstrates progress on this front, but given the importance of significant penalties to deter unlawful conduct, the ACCC will continue to prioritise seeking higher penalties.

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 2018-19 the ACCC was involved in 18 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 10.

Of the competition enforcement proceedings:

- 13 cases were carried over from 2017-18
- five new cases were commenced during 2018-19
- seven cases were finalised
- 11 cases remained ongoing at the end of June 2019.

Cartels

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

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

In 2018-19 key issues of focus in our cartel enforcement work included work to detect, investigate and stop cartel conduct in the financial services sector, including in relation to foreign exchange services. We also focused on issues affecting competition in the commercial construction sector. Both of these were priority areas under the 2018 Compliance and Enforcement Policy, and they remain priorities in 2019. The ACCC also successfully pursued its first case for cartel 'gun-jumping' conduct. Further details are provided in the case studies below.

In 2019 the ACCC continued to assist the CDPP with its first criminal cartel prosecution of an Australian corporation, Country Care Group Pty Ltd. The company and its managers are alleged to have engaged in cartel conduct in relation to assistive technology products used in rehabilitation and aged care. In February 2018 charges were laid against Country Care, its managing director, Robert Hogan, and a former employee, Cameron Harrison. Following a committal hearing in the Magistrates Court of Victoria in March 2019, they were committed to stand trial in the Federal Court on all cartel charges laid against them.

As at 30 June 2019 the ACCC is also continuing its involvement in a range of other ongoing litigation. For example, we are awaiting sentencing of Kawasaki Kisen Kaisha—a global shipping company that pleaded guilty to criminal cartel conduct in 2018.

Immunity and cooperation policy for cartel conduct

Companies and individuals, including cartel participants, help us to detect cartels. Under the ACCC immunity and cooperation policy for cartel conduct, participants can apply for immunity from civil and criminal prosecution by reporting their own involvement in a cartel. Following consultation, the policy was reviewed and updated in December 2018.

Table 3.5: Cartel immunity applications 2018-19

Financial year 2018-19	Number
Approaches	12
First-in approaches	12
Immunity application proffers	6
Proffers not resulting in conditional immunity	3 [#]
Civil conditional immunity granted	6 [#]
Criminal conditional immunity granted by CDPP upon ACCC recommendation	1

[#] Seven of the nine conditional immunity decisions made in 2018-19 relate to proffers made in 2017-18. Four proffers made in 2018-19 are still under investigation pending a decision.

Cartel court cases

Table 3.6: Cases involving cartel conduct 2018-19

Enforcement outcome	Case	Status
Litigation commenced	Construction, Forestry, Maritime, Mining and Energy Union & Anor	Ongoing
Litigation commenced and finalised	Cryosite Limited	Penalties of \$1.05 million
Litigation commenced	Vina Money Transfer Pty Ltd	Ongoing
Litigation finalised [#]	Palram Australia and Ampelite Australia	Penalties of \$3.5 million against Palram Australia and \$2 million against Ampelite Australia
Litigation finalised*	PT Garuda Indonesia Ltd	Penalties of \$19 million
Litigation finalised [#]	Oakmoore Pty Ltd (t/a EGR) & Anor	Penalties of \$6 million against Oakmoore and \$350 000 against director Mr Rodney Horwill
Appeal finalised	PZ Cussons Australia Pty Ltd	ACCC's appeal dismissed
Appeal finalised	Yazaki Corporation	Yazaki's High Court appeal dismissed

[#] These matters involved exclusive dealing.

* Post 30 June 2019 Garuda lodged an application for special leave to the High Court.

► **Case study: Addressing cartel conduct in the commercial construction industry**

The ACCC has continued to prioritise anti-competitive conduct and unfair business practices affecting competition in commercial construction markets. We have a dedicated Commercial Construction Unit (CCU) that assesses and investigates matters of alleged anti-competitive and unfair practices that impact on the industry. Further information on the work of the CCU is provided at page 63.

Following an investigation by the CCU, in August 2018 criminal charges were laid against the CFMMEU and its ACT Divisional Branch Secretary. These charges involve alleged cartel conduct. The defendants were each charged with attempting to induce suppliers of steel-fixing and scaffolding services to agree to contracts, arrangements or understandings containing cartel provisions in relation to services provided to builders in the ACT in 2012 and 2013.

► **Case study: Addressing cartel conduct in the financial services industry**

The ACCC has taken action to address issues identified by our Foreign Currency Conversion Services Inquiry. Further information on this work is provided at page 153.

Criminal charges have been laid against a money transfer business and five individuals for allegedly fixing the Australian dollar / Vietnamese dong exchange rate and fees they charged their customers. The charges arose from a joint ACCC and Australian Federal Police investigation of alleged price-fixing by several Sydney and Melbourne money transfer businesses. The charges relate to exchange rates and transaction fees charged when sending money from Australia to Vietnam between 2011 and 2016. Vina Money Transfer Pty Ltd was charged with making and giving effect to contracts, arrangements or understandings that contain a cartel provision in relation to exchange rates and fees for money transfers to Vietnam.

Money transfers are an important aspect of international trade and travel and are also used by people sending money outside of Australia. Our action aims to protect consumers and other businesses, allowing the market to work freely to set prices based on healthy competition.

In 2018-19 the ACCC continued to assist the CDPP in its prosecution of ANZ, Citigroup and Deutsche Bank and current and former employees for cartel conduct involving trading in ANZ shares following an ANZ institutional share placement in August 2015.

► Case study: First successful action for ‘gun-jumping’ cartel conduct

In 2018–19 the ACCC successfully took action in its first ever case for ‘gun-jumping’ conduct. ‘Gun-jumping’ occurs where parties to a proposed merger or acquisition start coordinating their activities or acting as one entity before the merger is formally completed. Where the parties to the merger are competitors, gun-jumping conduct can constitute cartel conduct. Parties to a transaction must remain independent and continue to act as competitors until the deal is completed, even after they have signed a business or share sale agreement.

In February 2019 the Federal Court ordered, by consent, Cryosite Limited to pay \$1.05 million in penalties for engaging in cartel conduct in its asset sale agreement with Cell Care Australia Pty Ltd. The Court held that Cryosite engaged in cartel conduct:

- when it signed an agreement in June 2017 to sell the assets of its private cord blood and tissue banking business to Cell Care containing a clause requiring Cryosite to refer all customer enquiries to Cell Care before the sale was completed
- when it subsequently gave effect to that clause.

The Court’s decision makes clear that gun-jumping by merger parties that are also competitors will contravene the cartel provisions of the CCA.

► Case study: Record \$46 million penalties against Yazaki upheld

On 19 October 2018 the High Court dismissed a special leave application by Japanese company Yazaki Corporation (Yazaki) to appeal the Full Federal Court’s earlier decision ordering Yazaki to pay \$46 million in penalties for cartel conduct.

Yazaki is a major international manufacturer that supplied wire harnesses to the Australian car manufacturing industry through its local subsidiary, Australian Arrow Pty Ltd.

The full Federal Court, on appeal by the ACCC, had increased the penalties from \$9 million imposed at first instance, to \$46 million.

The High Court’s decision to not hear this appeal finalises this litigation and means the record penalties of \$46 million imposed on Yazaki stand. This outcome acts as a strong deterrent against anti-competitive conduct, particularly when the conduct is engaged in by large national and multinational corporations.

The ACCC will continue its push to increase pecuniary penalties for breaches of competition and consumer laws, particularly in relation to larger businesses.

► Case study: Further penalties in the ACCC’s case against a global air cargo cartel

In May 2019 the Federal Court ordered PT Garuda Indonesia Ltd (Garuda) to pay penalties of \$19 million for colluding on fees and surcharges for air freight services. Garuda has since filed a Notice of Appeal against this decision. This case is a long-running one for the ACCC and part of our court action against a global air cargo cartel. Action against this cartel has now resulted in penalties of \$132.5 million against 14 airlines, including Air New Zealand, Qantas, Singapore Airlines and Cathay Pacific.

This is an important outcome, with decisions in the air cargo cartel investigation sending a strong warning to overseas and domestic operators that the ACCC can and will continue to defend competition and the rights of Australian customers and businesses by taking action against anti-competitive conduct. The ACCC has since entered formal agreements with the Federal Bureau of Investigation on cooperation and information sharing and has strong links to other competition regulators worldwide. This means our scope is much broader than Australian businesses.

Anti-competitive agreements and practices

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

In 2018–19 our enforcement action focused on addressing concerns relating to anti-competitive conduct that has the potential to impact on the supply of transport services in Australia. This includes matters concerning ports and the supply of intermodal and steel rail linehaul services.

In August 2018 the ACCC released updated [Guidelines on concerted practices](#). These are discussed further at page 63.

Court cases concerning anti-competitive conduct

Table 3.7: Cases concerning anti-competitive conduct 2018–19

Enforcement outcome	Case	Status
Litigation commenced	NSW Ports Operations Hold Co. Pty Ltd & Ors	Ongoing
Litigation commenced, finalised and appealed	Pacific National Pty Ltd and Aurizon Holdings Limited	Under appeal

For details of the ACCC’s action against Pacific National and Aurizon, see the case study on page 53.

► Case study: Removing barriers to competition in the supply of port services

The ACCC has taken action to address what it considers to be barriers to the competitive supply of port services in New South Wales (NSW).

In December 2018 the ACCC instituted proceedings in the Federal Court against NSW Ports Operations Hold Co. Pty Ltd (NSW Ports) and its subsidiaries Port Botany Operations Pty Ltd and Port Kembla Operations Pty Ltd for making agreements with the State of NSW that the ACCC alleges had an anti-competitive purpose and effect.

The NSW Government privatised Port Botany and Port Kembla in May 2013 and entered into agreements, known as Port Commitment Deeds, under which, for a period of 50 years, the State of NSW is obliged to compensate the operators of Port Botany and Port Kembla if container traffic at the Port of Newcastle is above a minimum specified cap. The ACCC alleges that entering into each of the Botany and Kembla Port Commitment Deeds was likely to prevent or hinder the development of a container terminal at the Port of Newcastle and had the purpose, or was likely to have the effect, of substantially lessening competition.

Another 50-year deed, signed in May 2014 when the Port of Newcastle was privatised, requires the Port of Newcastle to reimburse the State of NSW for any compensation paid to the operators of Port Botany and Port Kembla under the Botany and Kembla Port Commitment Deeds. The ACCC considers that the reimbursement provision in the Port of Newcastle deed is an anti-competitive consequence of the Port Commitment Deeds and that it makes the development of a container terminal at Newcastle uneconomic. The ACCC alleges that the compensation and reimbursement provisions effectively mean that the Port of Newcastle would be financially punished for sending or receiving container cargo above a minimum level if Port Botany and Port Kembla have spare capacity.

The ACCC’s action seeks to remove a barrier to competition in an important market—the supply of port services—which has significant implications for the cost of goods and services across the economy.

Misuse of market power

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

In August 2018 the ACCC released updated [Guidelines on misuse of market power](#). These are discussed further at page 63.

In 2018-19 a number of investigations of alleged misuse of market power are ongoing, with enforcement action expected to follow. The ACCC also continues to focus on competition issues in the health and medical sector, with litigation against Ramsay Health Care Australia Limited continuing. This is discussed further in the case study below.

During the period, 22 initial assessments were conducted that looked at whether misuse of market power allegations would be investigated by the ACCC.

Court cases against misuse of market power

Table 3.8: Cases concerning misuse of market power 2018-19

Enforcement outcome	Case	Outcome
Litigation finalised	Pfizer Australia Pty Ltd	High Court dismissed the ACCC's application for special leave to appeal the Full Federal Court decision

► Case study: Ongoing action to protect competition in the health and medical sector

In 2018-19 the ACCC continued its ongoing litigation against Ramsay Health Care Australia Limited (Ramsay) for alleged anti-competitive conduct involving misuse of market power and exclusive dealing in the Coffs Harbour region.

The ACCC commenced proceedings against Ramsay in May 2017. The ACCC alleges Ramsay tried to preserve its position in day surgery services in the Coffs Harbour region by making threats to reduce or withdraw individual surgeons' access to operating theatres at Baringa Hospital if they were involved with a competing day surgery facility. The ACCC alleges that the surgeons suspended their plans to establish a competing day surgery facility because of these threats.

The ACCC took on this important case to encourage competitive entry in the day surgery market and to ensure that established operators do not act to prevent the entry of new competitors.

► **Case study: Conclusion of long-running litigation in the pharmaceuticals industry**

In October 2018 the High Court dismissed the ACCC's application for special leave to appeal the Full Federal Court decision in its long-running case against Pfizer Australia Limited (Pfizer).

The ACCC commenced proceedings against Pfizer in 2014. The ACCC alleged that Pfizer misused its market power resulting from its position as the patent holder of atorvastatin to prevent or deter competition from other suppliers selling generic atorvastatin products to pharmacies. The ACCC also alleged Pfizer's conduct was exclusive dealing conduct with the purpose of substantially lessening competition in the market for atorvastatin.

In February 2015 the Federal Court found 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 in January 2012. The Court also found that the ACCC had failed to establish that Pfizer pursued its conduct for the proscribed purpose of deterring or preventing competitors from engaging in competitive conduct or for the purpose of substantially lessening competition.

While the ACCC notes that this decision ends the case, we remain determined to pursue companies where we consider that they have misused their market power, as this behaviour can cause harm to the competitive process and ultimately to consumers.

Merger and authorisation review

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

Performance results and analysis

Role and functions

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

However, 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 pre-assesses matters when it determines that they do not require a detailed review because there is a low risk of the merger substantially lessening competition. Acquisitions that are in the public domain and that the ACCC has determined cannot be pre-assessed undergo a public merger review.

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

The amended merger authorisation test enables authorisation to be granted if the ACCC can be satisfied that the proposed acquisition would not be likely to substantially lessen competition or, alternatively, the likely public benefit from the proposed acquisition outweighs the likely public detriment. The ACCC has received one application for merger authorisation since the revisions to the CCA came into effect in 2017. As at 30 June 2019 that application remained under assessment but was subsequently authorised subject to a condition of divesting certain businesses.

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

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

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

We also assess the rules for certification trade marks to determine whether they may be to the detriment of consumers and 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 trade mark applications in the public interest

Priorities

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

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

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

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

Powers

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

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

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

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

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

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

Performance indicators

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

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

These performance indicators are from the ACCC and AER Corporate Plan 2018-19. Additional performance indicators (those without a target) provide additional transparency on the volume of our work and on our timeliness.

Table 3.9: Performance indicators for deliverable 1.2

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

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

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

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

These performance indicators are from the ACCC and AER Corporate Plan 2018-19. 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 1.3

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

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

^{*} Notification for resale price maintenance conduct was introduced in 2017-18.

[^] 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 ACCC [Effectiveness Survey](#) report concluded that the ACCC's effectiveness in assessing mergers was rated highly by stakeholders, particularly legal and economic experts. Most of the respondents (80 per cent) agreed or strongly agreed that the ACCC's assessment of mergers was effective in preventing structural changes in markets that would substantially lessen competition, resulting in an index score of 71.3.

Similarly, close to three in four respondents agreed that the ACCC was effective in making decisions on authorisation and notification applications that are in the public interest, resulting in an index score of 72.8.

The informal clearance process provides merger parties with an avenue to seek the ACCC's views on a merger before they proceed with it. This allows them to manage the risk of regulatory intervention at a later time. In 2018-19 we assessed 331 mergers that were submitted to the ACCC under the informal clearance regime or identified through monitoring and intelligence gathering.

We aim to deal with non-contentious mergers expeditiously. Consistent with this, we determined that 92 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 8 per cent of mergers that underwent a public review were the more contentious and potentially more complex matters. A number of these involved mergers in concentrated markets where the competition concerns were likely to be higher, and these were also transactions which the public expects the ACCC to scrutinise closely.

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

- [Pacific National Pty Ltd/Linfox—proposed acquisitions of intermodal assets from Aurizon](#)
- TPG Telecom Limited—proposed merger with Vodafone Hutchison Australia Pty Ltd
- Nine Entertainment Co. Holdings Limited—proposed merger with Fairfax Media Limited

- Bingo Industries Limited—proposed acquisition of Dial-a-Dump Industries Pty Ltd
- Sydney Transport Partners Consortium (including Transurban)—proposed acquisition of WestConnex interest.

In some transactions, the parties will decide not to proceed with the transaction after the ACCC releases a statement of issues outlining competition concerns. There was one transaction in 2018-19 where the merger parties withdrew their request for clearance at this point.

While the ACCC endeavours to complete merger reviews as quickly as possible, the focus is on getting the right decision. The ACCC has signalled that it 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 exercised these powers in nine reviews this year.

The greater use of these powers and related complexity of publicly reviewed matters led to an increase in average review length. This factor contributed to not meeting our target 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. We achieved 41 per cent and 88 per cent respectively.

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

- three Council Solutions authorisations (relating to council waste in Adelaide)
- authorisation for Homeworkers' Code of Conduct, which helps reduce the exploitation of textile, clothing and footwear workers in Australia
- authorisation for AgStewardship to continue to collect a levy on the sale of agricultural and veterinary chemicals by participating manufacturers.

All publicly reviewed merger decisions for 2018-19 are published on the [ACCC's mergers public registers](#). All notifications and applications for authorisation are published on the [ACCC's authorisations and notifications registers](#).

Actions undertaken to achieve our purpose

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

How we conduct merger reviews

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

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

Statements of issues

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

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

Public competition assessments

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

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

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

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

Merger remedies

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

Merger matters we considered

We considered 331 matters under s. 50 of the CCA in 2018-19—an increase of 17 per cent on the 281 matters in 2017-18. Of the 331 mergers considered:

- 305 mergers were assessed as not requiring a public or confidential review (pre-assessed)—compared with 252 pre-assessments in 2017-18
- 25 mergers were subject to a public review—a decrease of 14 per cent on the 29 public reviews in 2017-18
- one merger was subject to a confidential review.

Of the 25 public reviews and one confidential review that were conducted in 2018-19:

- we opposed two mergers outright
- we accepted court enforceable undertakings in relation to five mergers to address competition concerns, resulting in these mergers being cleared subject to an undertaking
- one review was discontinued because the parties did not continue with the transaction after we released a statement of issues identifying issues of concern or issues that may raise concerns
- we did not oppose 17 other mergers that underwent a public informal review
- we expressed confidential opposition to, or concerns about, one confidential merger that did not proceed.

We unconditionally cleared 68 per cent of mergers that underwent a public or confidential review. This figure increases to 98 per cent when all mergers (including pre-assessments) are included. In nine matters we used our formal information gathering powers under s. 155.

► Case study: Significant merger review resulting in a decision to oppose—Pacific National Pty Ltd/Linfox, proposed acquisitions of intermodal assets from Aurizon

In August 2017 Aurizon Holdings Limited (Aurizon) announced its exit from intermodal rail operations through the sale of parts of its business to Pacific National Pty Ltd (Pacific National) and closure of the remainder of the business, being its interstate intermodal operations. Pacific National proposed to acquire Aurizon's intermodal rail terminal located at Acacia Ridge in Brisbane and separately acquire Aurizon's Queensland intermodal business. Pacific National and Aurizon also entered a number of related agreements, including a 'terminal services subcontract' by which Pacific National would provide terminal services at the Acacia Ridge terminal if its proposed acquisition did not proceed.

Aurizon's intermodal terminal at Acacia Ridge provides for carriage of freight by rail into and out of Queensland from interstate locations on the standard gauge rail network, as well as carriage of freight to locations between Brisbane and Cairns on the narrow gauge rail network in Queensland. It also provides for the transfer of freight between rail and trucks following pick-up, or for delivery, in south-east Queensland.

Pacific National and Aurizon were each other's closest competitors—they were the only suppliers of intermodal rail haulage services in Queensland and two of three suppliers on interstate routes. They were also the only suppliers to haul containers for third-party freight forwarders.

In July 2018 the ACCC opposed the proposed acquisitions and instituted proceedings against Pacific National and Aurizon alleging that the proposed acquisitions and the terminal services contract would each have the likely effect of substantially lessening competition in interstate and/or Queensland intermodal rail linehaul markets in breach of ss. 50 and 45 of the CCA. The ACCC also alleged that Pacific National and Aurizon reached a 'principal understanding' in breach of s. 45 of the CCA—an allegation that was later withdrawn.

During the ACCC's investigation, Aurizon announced that if the ACCC opposed the sale of its Queensland business to Pacific National, which offered rail haulage services between Brisbane and Cairns, it would shut that business down. It argued that, as the business would otherwise be closed, Pacific National's proposed acquisition of that business should be allowed to proceed.

In August 2018 the ACCC successfully obtained an interlocutory injunction to restrain Aurizon from closing its Queensland intermodal business. Aurizon then sold its Queensland intermodal business to Linfox, maintaining intermodal rail linehaul competition in Queensland.

The trial was part heard in November 2018 and resumed and concluded in February 2019. During the trial Pacific National offered an undertaking to the Court to provide access to Acacia Ridge on non-discriminatory terms, which it offered unconditionally on the final day of the trial.

In May 2019 the Federal Court stated that, in the absence of the undertaking offered by Pacific National, the ACCC would have established that Pacific National's proposed acquisition of Acacia Ridge substantially lessened competition in contravention of s. 50 of the CCA. However, the Court held that with the undertaking, the proposed acquisition was not likely to substantially lessen competition. The Court also held that the terminal services subcontract between Pacific National and Aurizon would not have the effect of substantially lessening competition in contravention of s. 45 of the CCA.

In June 2019 the ACCC lodged an appeal against the Federal Court's decision to dismiss the ACCC's proceedings in relation to Pacific National's acquisition of Aurizon's Acacia Ridge Terminal. The focus of the ACCC's appeal is on the ability of the courts to accept undertakings in these circumstances.⁶

► **Case study: Significant merger review resulting in a decision to oppose—TPG Telecom Limited, proposed merger with Vodafone Hutchison Australia Pty Ltd**

On 8 May 2019 the ACCC announced its decision to oppose the proposed merger between TPG Telecom Limited (TPG) and Vodafone Hutchison Australia Pty Ltd (Vodafone).

Vodafone is the third largest telecommunications provider in Australia. Vodafone owns and operates its own mobile network and began supplying fixed broadband services in 2017.

TPG provides retail fixed broadband and other telecommunications services. In 2017 TPG announced plans to become a mobile network operator and commenced building its own mobile network.

The ACCC considered that the proposed merger would be likely to substantially lessen competition in the supply of mobile services because the proposed merger would preclude TPG entering as the fourth mobile network operator in Australia.

While TPG announced it was ceasing its mobile network rollout in January 2019, the ACCC formed the view that TPG has the capability and a strong commercial incentive to resolve the technical and commercial challenges it was facing.

The ACCC considers that, wherever possible, market structures should be settled by the competitive process, not by a merger which results in a market structure that would be subject to little challenge in the future. Consumers benefit from vigorous competition because it reduces prices and encourages continued product and service innovation that is in their interest. TPG has a proven track record of disrupting the telecommunications sector and has established itself as a successful competitor, and consumers have benefited from this.

⁶ In July 2019 Pacific National filed a cross-appeal raising questions about the application of the statutory test.

The ACCC reached its view following an extensive investigation, including examining documents, submissions and information gathered from the merger parties and other market participants.

On 24 May 2019 Vodafone instituted proceedings in the Federal Court seeking a declaration that the proposed merger would not be likely to have the effect of substantially lessening competition.

Statements of issues released

In 2018-19 we released statements of issues in relation to four mergers. These were all published on our online mergers register.

The ACCC released statements of issues in the following matters in 2018-19:

- Landmark Operations Limited—proposed acquisition of Ruralco Holdings Limited
- TPG Telecom Limited—proposed merger with Vodafone Hutchison Australia Pty Ltd
- Bingo Industries Limited—proposed acquisition of Dial-a-Dump Industries Pty Ltd
- Siemens AG and Alstom SA—proposal to combine Siemens' mobility business with Alstom.

Public competition assessments issued

In 2018-19 we issued public competition assessments for the following seven merger reviews:

- Gebr. Knauf KG—proposed acquisition of USG Corporation and Armstrong World Industries Pty Ltd
- Bingo Industries Limited—proposed acquisition of Dial-a-Dump Industries Pty Ltd
- Thales SA—proposed acquisition of Gemalto NV
- BP Australia Pty Ltd—proposed acquisition of retail service station sites from Woolworths Limited
- CK Consortium—proposed acquisition of APA Group
- Sydney Transport Partners Consortium (including Transurban)—proposed acquisition of a majority interest in WestConnex
- Caltex Australia Petroleum Pty Ltd—proposed acquisition of assets from Milemaker Petroleum Pty Ltd.

Merger remedies

In 2018-19 we accepted s. 87B undertakings to address competition concerns in relation to five mergers. This enabled these acquisitions to be cleared subject to the undertakings.

► **Case study: Significant merger review resolved in light of global divestments—Thales SA, proposed acquisition of Gemalto NV**

On 20 December 2018 the ACCC announced that it had decided not to oppose Thales SA's (Thales) proposed acquisition of Gemalto NV (Gemalto) after accepting a court enforceable undertaking from Thales to divest part of its business.

French company Thales and Dutch company Gemalto both supply data security products, including encryption software and hardware security modules (HSMs) in Australia.

The ACCC's investigation focused on the markets for the supply of general purpose (GP) HSMs and payment HSMs.

Thales and Gemalto are each other's closest competitors in the supply of GP HSMs and the two largest suppliers worldwide and in Australia. The ACCC considered that barriers to entry for overseas suppliers are likely to be high. In particular, customers are deterred from switching due to the time, cost, complexity and risk involved, and they have a strong preference for suppliers with a presence in Australia. The ACCC was therefore concerned about the removal of Gemalto as a competitor of Thales in the development and sale of GP HSMs. We concluded that, without the divestiture undertaking, the proposed acquisition was likely to substantially lessen competition in Australia.

To remedy these competition concerns relating to the supply of GP HSMs, Thales provided a court enforceable undertaking to sell its global GP HSM business. The undertaking that the ACCC accepted is linked to the commitment Thales made to the European Commission, reflecting the global nature of the divestiture obligations, but also requires ACCC approval of the purchaser.

In relation to payment HSMs, the ACCC considered that globally the product is relatively homogenous. Product development and manufacture occurs in one or two countries and from there the product is distributed globally. The ACCC considered that other global players were likely to place a competitive constraint on Thales even if they are not present in Australia at the moment. In addition, most sales are to large financial institutions that are likely to have some degree of countervailing power through their ability to sponsor new entry.

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

How we make non-merger authorisation and notification decisions

Non-merger authorisations

The CCA primarily aims to prevent conduct that damages or is likely to damage competition. However, if markets are not working efficiently and are failing to maximise the welfare of Australians, some 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 for conduct where the likely public benefit outweighs any likely public detriment. With the revisions to the CCA that came into effect on 6 November 2017, the ACCC may now also grant authorisation for certain forms of conduct if it is satisfied that no substantial lessening of competition is likely.

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

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

Notifications

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

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

Certification trade marks

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

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

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

Non-merger authorisation decisions we issued

During 2018–19 we issued 18 final authorisation decisions, excluding minor variations, for arrangements involving a wide range of industries. Among them were infrastructure, agriculture, waste services and retailing.

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

► **Case study: Authorisation to promote potential competition—SA councils' joint waste tenders**

On 12 October 2018 the ACCC granted authorisation to Council Solutions and a group of four Adelaide councils to jointly procure kerbside waste collection services until 30 June 2031.

Council Solutions, on behalf of the Cities of Adelaide, Charles Sturt, Marion and Port Adelaide Enfield (the Participating Councils), sought authorisation to conduct a joint tender and appoint a single provider to supply kerbside waste collection services to residents in their municipalities.

The ACCC received submissions from 44 interested parties about Council Solutions' application, with some interested parties providing more than one submission. There were some strong objections from bodies representing the two national waste companies which currently hold the collection contracts for these councils.

The ACCC considered that the joint tender was likely to:

- stimulate additional competition to provide kerbside waste collection for the Participating Councils. While some potential suppliers may consider the contract too large for them to compete for, others will be attracted by this greater volume
- increase the purchasing power of the Participating Councils, which was likely to be reflected in the negotiated terms and conditions of agreements, resulting in lower prices and/or better quality of waste management services delivered to the Participating Councils' ratepayers
- generate other public benefits in the form of transaction cost savings and other efficiencies compared with each participating council conducting its own procurement process.

The ACCC concluded that the joint tender was unlikely to reduce competition to supply waste collection services in Adelaide in the longer term. While the proposed tender will cover around 180 000 rateable properties, unsuccessful suppliers will continue to have other opportunities to provide waste management services in other parts of Adelaide and around Australia. This will ensure there are a number of competitors for future tender processes.

On 4 May 2018 Council Solutions, on behalf of the Participating Councils, lodged two further applications for authorisation with the ACCC relating to the joint procurement of:

- the receipt and processing of recyclables and organics and the receipt and processing or disposal of residual waste (the Processing Application—AA1000419)
- the collection of bulk bins, hard waste and street/park litter bins (the Ancillary Application—AA1000420).

On 23 November 2018 the ACCC also granted authorisation to the Processing Application and the Ancillary Application.

Notifications we assessed

We assessed five exclusive dealing notification matters in 2018-19.

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 risks substantially lessening competition. This has meant that the number of notifications received by the ACCC has decreased significantly since the revisions came into effect.

Resale price maintenance notifications

In 2018-19 the ACCC revoked one resale price maintenance notification and allowed one to stand.

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. Notification remains in place unless we revoke it. 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. Despite this, legal protection is only available in cases where resale price maintenance is likely to result in public benefits that outweigh the likely public detriments, and the ACCC will continue to examine any such proposals closely.

Collective bargaining notifications

In 2018-19 we allowed notifications involving 13 collective bargaining notifications, compared to just four notifications in the previous two years. The collective bargaining arrangements we considered during the year include arrangements in the dairy, music licensing, logistics and waste services industries.

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

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

Collective bargaining notifications have been available since 2007. Revisions to the CCA in 2017 were designed to make collective bargaining notifications easier and more useful. They can now:

- 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 as a result of the collective boycott.

Certification trade mark applications we assessed

During 2018–19 the ACCC finalised 36 assessments of certification trade mark applications—an increase of 13 per cent on the 32 applications assessed in the previous year.

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

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

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.

Consumer Data Right

The Consumer Data Right (CDR) is a competition and consumer reform announced by the Australian Government in May 2018. The CDR will be facilitated through the Treasury Laws Amendment (Consumer Data Right) Bill 2019, once enacted.⁷

The CDR will allow consumers to easily obtain access to their data and have it transferred to service providers that they trust—for example, comparator or switching services or providers of financial or budgeting advice. The CDR will be implemented first in the banking sector, with the energy and telecommunications sectors expected to follow.

The ACCC is the lead regulator in the development and implementation of the CDR and has various roles, including making the CDR Rules; accrediting service providers to whom consumer data can be transferred; providing consumer education; and enforcing the CDR Rules.

The ACCC has worked closely with its regulatory partners the Office of the Australian Information Commissioner and the Data Standards Body through its advisor Data61 in preparing for the implementation of the CDR.

The ACCC's focus in this start-up phase of the CDR has been on significant stakeholder consultation and the development of the CDR Rules for the first designated CDR sector: banking. This work culminated in the publication of the Exposure draft CDR rules (banking) on 29 March 2019.

In addition, the ACCC has:

- made significant progress in developing the CDR Register and a platform to manage applications for accreditation of CDR participants
- worked with energy industry stakeholders, including the Australian Energy Market Operator and the Department of the Environment and Energy, to plan for the implementation of the CDR in the energy sector.

Competition and consumer issues in the agriculture sector

Addressing competition and consumer issues in the agriculture sector was one of our 2018–19 priorities.

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

⁷ The Treasury Laws Amendment (Consumer Data Right) Bill 2019 was introduced on 24 July 2019 and passed on 1 August 2019.

Engagement with the agriculture sector

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

- conducting a market study of the Australian wine grape industry and releasing an [interim report](#) of findings and recommendations. More information on this market study can be found at page 152
- advocating for and assisting with the development of a mandatory code of conduct for the dairy industry. This follows a key recommendation in the ACCC's [Dairy Inquiry final report](#). On 15 March 2019 the then Minister for Agriculture and Water Resources, the Hon. David Littleproud MP, announced that the code is progressing and that the next steps will include the development of a draft code, with consultation on this draft to be led by the Department of Agriculture and Water Resources
- continuing to advocate for implementation of our cattle and beef market study recommendations. The ACCC is concerned that practices which impede industry efficiency will become further entrenched if our recommendations are not implemented. We are engaging with the Department of Agriculture and Water Resources on certain recommendations that will require legislative reform
- undertaking a research project on potential competition and consumer issues in the agriculture machinery industry.

Our enforcement actions in the agriculture sector resulted in a number of successful outcomes, including:

- successful court outcomes against Murray Goulburn Co-operative and its former Managing Director, Gary Helou. The Federal Court ordered Mr Helou, by consent, to pay \$200 000 in penalties for being knowingly concerned in Murray Goulburn's false or misleading claims about the farmgate milk price it expected to pay dairy farmers during the 2015-16 milk season. Further details of these outcomes are provided at page 118
- a successful court outcome against Landmark Operations Limited (trading as Seednet) for false and misleading advertising to farmers of its Compass variety barley. The Federal Court ordered Landmark Operations, by consent, to pay a \$1 million penalty and contribute to the ACCC's legal costs. Further details of these outcomes are provided at page 119
- removal of unfair contract terms from the milk supply agreements used by a number of dairy processors. Following engagement with the ACCC, these processors agreed to amend specific terms in their agreements to address our concerns that these terms were unfair to dairy farmers. Further details are provided on page 118
- enforcement of the Horticulture Code of Conduct. Following extensive compliance work undertaken by the Agriculture Unit to monitor industry compliance with the Code, the ACCC:
 - issued its first infringement notice alleging a breach of the code, requiring the payment of a financial penalty. Further details on the payment of an infringement notice by Sydney fruit and vegetable wholesaler Stuart Dickson are provided at page 118
 - amendments by a Melbourne fruit wholesaler to its horticulture produce agreements with its growers after concerns raised by the ACCC. Further details are provided at page 120.

Anti-competitive practices in commercial construction

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

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

Following an investigation by the CCU, criminal charges were laid in August 2018 against the CFMMEU and its ACT Divisional Branch Secretary in relation to alleged cartel conduct. The CCU is currently supporting the CDPP in this prosecution. Further information on these proceedings is provided on page 42.

Misuse of market power and concerted practices

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 section 46 misuse of market power provision and 'concerted practices' provisions that came into force in November 2017.

In August 2018 the ACCC published updated [Guidelines on misuse of market power](#), [Guidelines on concerted practices](#) and [Guidelines for authorisation of conduct \(non-merger\)](#). This work follows feedback received on interim versions of these guidelines, published in late 2017, which provided guidance on the new provisions.

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.

Competition in financial services

The ACCC formed the Financial Services Competition Branch (FSCB) in late 2018. The FSCB's mandate is to improve competition in the financial services sector through investigations and enforcement action as well as market studies and advocacy.

The FSCB is responsible for the ACCC's investigations and enforcement action relating to suspected breaches of the competition provisions of the CCA by those in the financial services sector. This includes assisting the CDPP in the prosecution of Citigroup, Deutsche Bank and ANZ, which were charged with criminal cartel offences in June 2018. The FSCB has a number of other matters under investigation.

The FSCB engages closely with members of the Council of Financial Regulators (CFR) and led the ACCC's engagement with the Productivity Commission's Inquiry into Competition in the Australian Financial System.

Arising from that engagement, the FSBC is working closely with the CFR to develop an online calculator that reports on average interest rates paid by different types of residential mortgage borrowers. The Productivity Commission recommended the development of such a calculator in August 2018, and the Australian Government has asked the CFR to accelerate the development of options for its implementation.

The FSBC has undertaken extensive work on two market studies in 2018-19. For details on the [Residential Mortgage Price Inquiry: Final report](#) and the Foreign Currency Conversion Services Inquiry, see page 153.

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 (see page 97) and the Competition Law Implementation Program in South-East Asia (see pages 94–95).

Bannerman Competition Lecture

On 14 February 2019 the ACCC and the Business Law section of the Law Council of Australia hosted the annual Bannerman Competition Lecture in Melbourne.

The lecture, entitled 'New Frontiers of Competition Policy', was delivered by Professor Allan Fels AO, former ACCC Chair.

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

16th Annual Competition Law and Economics Workshop

On 12–13 October 2018 the ACCC and the University of South Australia School of Law hosted the 16th annual Competition Law and Economics Workshop in Adelaide.

The theme of the workshop was 'Competition policy: can it deliver in the New Digital Age?'. The keynote address was delivered by Dr David Evans, who is a leading international academic in the field, and featured Australian and international academics, judges, legal practitioners, economists, business representatives and regulators.

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

Strategy 2: Consumer protection and fair trading

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

Performance results and analysis

Role and functions

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

The ACCC supports consumers and small businesses by:

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

We also 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* (Cth) (CCA) and to encourage businesses to comply with the CCA.

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

Our deliverables in this area are:

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

Priorities

While we carefully consider all reported matters, we rarely get involved in individual disputes and complaints; rather, we dedicate our resources and litigation funding to matters that 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. It can be found on our website.

Enduring priorities

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

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

2018–19 priorities

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

- consumer issues in new car retailing, including responses by retailers and manufacturers to consumer guarantee claims and other matters identified in the ACCC's [new car retailing industry market study final report](#)
- systemic issues involving large or national retailers avoiding or misrepresenting consumer guarantee rights and consumer guarantees on high-value electrical and whitegoods products—in particular, those supplied by large manufacturers
- 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; also, issues arising from opaque and complex pricing of essential services—in particular, those in energy and telecommunications
- 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)
- competition and consumer issues concerning the use of digital platforms, algorithms and consumer data, with a focus on emerging markets, transparency of data practices, the adequacy of disclosure to consumers and matters identified by the ACCC's Digital Platforms Inquiry
- competition and consumer issues arising from customer loyalty schemes
- emerging consumer issues in advertising and subscription service practices on social media platforms, with a focus on the impact on younger consumers
- ensuring small business receives the protections of industry codes and the unfair contract terms (UCT) law, with a focus on Franchising Code of Conduct issues involving large or national franchisors
- competition and consumer issues in the agriculture sector, with a focus on the Dairy Inquiry, Horticulture Code of Conduct enforcement, the viticulture sector and UCTs in supply agreements.

Product safety priorities

Each year we also release a standalone product safety policy setting out the principles we adopt to prioritise and address product safety risks. In 2018 and 2019 our product safety priorities included:

- the compulsory recall of defective Takata airbags
- improving the safety of quad bikes
- supporting strategies that help prevent injuries and deaths to children caused by button batteries
- progressing the development of a General Safety Provision (GSP) and other reforms to the product safety provisions of the ACL.

More information about the 2018 and 2019 consumer product safety priorities may be found on page 103.

Powers

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

We also have certain powers under industry codes and schemes.

Performance indicators

The performance indicators below are from the ACCC and AER Corporate Plan 2018-19.

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 areas with the greatest harm, determining our priorities for action each year. As a strategic regulator, we look to intervention that can influence behaviour across industries and the economy.

Table 3.11: Performance indicators for deliverable 2.1

Performance indicator	2016-17	2017-18	2018-19	
	Result	Result	Target	Result
Number of in-depth ACL investigations completed	98	80	80	73
Percentage of in-depth ACL investigations that are in the priority areas outlined in the Compliance and Enforcement Policy	70.1%	61.25%	60%	63%
Percentage of initial ACL investigations completed within 3 months	88.1%	61.4%	80%	66.7%
Percentage of in-depth ACL investigations completed within 12 months	80.6%	80.3%	80%	86.3%
Number of ACL enforcement interventions (court proceeding commenced, s. 87B undertakings accepted, infringement notices issued, public administrative resolutions) [#] *	48	56	40	49
Percentage of ACL enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy	64.6%	76.8%	60%	87.5%
Percentage of ACL enforcement interventions in the priority areas, or demonstrate the priority factors, outlined in the Compliance and Enforcement Policy	100%	100%	100%	100%
Number of new or revised business compliance resources (published guidance)	26	16	10	25 [^]
Number of times online business education resources have been accessed	1 388 770	1 499 696	1 000 000	1 515 927
Number of surveys and audits for CCA compliance, including in relation to product safety regulations	54	57	20	33
Percentage of business compliance projects that are in priority areas identified in the Compliance and Enforcement Policy	100%	100%	60%	100%

[#] ACL enforcement interventions also include enforcement interventions to protect small business—for example, action taken to address the UCT laws. They do not include enforcement interventions under industry codes—for example, the Franchising Code of Conduct or the Horticulture Code.

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

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

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.

Table 3.12: Performance indicators for deliverable 2.2

Performance indicators	2016-17	2017-18	2018-19	
	Result	Result	Target	Result
Percentage of business compliance resources developed or updated in consultation with business, stakeholder groups and peak bodies	81%	100%	80%	74%
Number of business compliance projects that are delivered jointly with ACL regulators (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)	10	10	5	14
Number of business compliance and consumer education projects that involve partnership or joint delivery with businesses, peak bodies, industry or consumer groups	6	13	5	19

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 warranted.

Table 3.13: Performance indicators for deliverable 2.3

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

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

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

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

Deliverable 2.4: Support a vibrant small business sector

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

Table 3.14: Performance indicators for deliverable 2.4

Performance indicators	2016-17	2017-18	2018-19	
	Result	Result	Target	Result
Number of small business Infocentre contacts served (Small business contacts are contacts through separate small business phone line and web forms)	13 372	14 315	12 000	12 937
Number of new or revised business compliance resources (published guidance) to empower small business	26	8	5	16
Number of CCA and ACL enforcement interventions with substantial benefits to small business sector	12	11	10	12

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

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

Table 3.15: Performance indicators for deliverable 2.5

Performance indicators	2016-17	2017-18	2018-19	
	Result	Result	Target	Result
Number of new or revised consumer education resources (published guidance)	45	19	10	21 [#]
Number of times online consumer education resources have been accessed	3.5 million	4 075 888	2 million	4 251 129
Number of Infocentre contacts served (includes web forms received)	264 462	290 143	200 000	314 175
Number of visits to the Scamwatch website*	2 310 735	2 427 886	1.5 million	3 321 747

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

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

Analysis of performance

The ACCC [Effectiveness Survey](#) found that the vast majority (92 per cent) of respondents agreed that the ACCC's enforcement action is effective in stopping and deterring breaches of the ACL. Almost 90 per cent agreed that the ACCC's enforcement and compliance priorities related to consumer protection are appropriate, resulting in an overall index score of 78.4 for this function.

In 2018-19 we exceeded most of the annual targets set for ACL investigations. We achieved 49 new ACL interventions in 2018-19, exceeding the target of 40. We also achieved significant outcomes in a number of litigated ACL matters, including 10 matters where penalties exceeded \$1 million:

- **We Buy Houses Pty Ltd and Rick Otton**—combined penalty of \$18 million
- **Optus Mobile Pty Ltd**—penalty of \$10 million
- **Equifax Australia Information Services and Solutions Pty Ltd**—penalty of \$3.5 million

- **Meriton Property Services Pty Ltd**—penalty of \$3 million
- **Ultra Tune Australia Pty Ltd**—penalty of \$2.6 million
- **Oticon Australia Pty Ltd** and **Sonic Innovations Pty Ltd**—combined penalty of \$2.5 million
- **Birubi Art Pty Ltd**—penalty of \$2.3 million
- **HJ Heinz Company Australia Pty Ltd**—penalty of \$2.25 million
- **Jetstar Airways Pty Ltd**—penalty of \$1.95 million
- **Landmark Operations Pty Ltd**—penalty of \$1 million.

Total penalties achieved for breaches of the ACL during the period were \$49.2 million.

The ACCC achieved a number of ‘firsts’ in the period, including:

- instituting the first proceedings under the excessive surcharging provisions, alleging CLA Trading Pty Ltd (trading as Europcar) charged excessive credit and debit card payment surcharges
- record penalties of \$12 million against We Buy Houses and \$6 million against sole director, Rick Otton, representing the highest penalties ever imposed for contraventions of the ACL by a corporation and an individual, respectively
- the first infringement notice and associated financial penalty for an alleged breach of the 2017 Horticulture Code, issued to Sydney fruit and vegetable wholesaler Stuart Dickson Produce Pty Ltd for allegedly trading without having a written horticulture produce agreement with growers in place.

In August 2018 legislation was passed that increased maximum financial penalties for breaches of the ACL. Penalties for corporations rose from \$1.1 million to the greater of \$10 million or three times the value of the benefit obtained from the contravention (if this can be determined) or 10 per cent of the annual Australian sales turnover (if the value of the benefit cannot be determined). The maximum penalties for individuals were also increased from \$220 000 to \$500 000. The ACCC strongly advocated these increases, and we will be vigorous in our pursuit of higher penalties to achieve deterrence for breaches of the ACL.

We achieved significant enforcement outcomes in agriculture, with a focus on addressing concerns of power imbalances in the bargaining position between farmers and processors in the dairy industry and between growers and wholesalers in the horticulture industry. These outcomes are discussed further at pages 117-120.

An ACCC priority for 2018 and 2019 was ensuring small businesses receive the protections of the ACL UCT provisions and industry codes, with a focus on the Franchising Code of Conduct. The ACCC continued to focus on protections for small businesses, undertaking a number of investigations and progressing matters in relation to alleged breaches of the Franchising Code. In 2019 we commenced a franchising project that targets compliance checks to address specific problems in the café, restaurant and takeaway food sector. The report of the inquiry into the effectiveness of the franchising and oil codes, published in March 2019, addressed a number of the concerns raised by the ACCC, and we look forward to having input into the inter-agency Franchising Taskforce recommended by the inquiry.

We also finalised a number of formal administrative resolutions relating to the use of UCTs in standard form small business contracts, resulting in the removal of UCTs from contracts widely used in the dairy, stevedoring and waste management industries, as well as in the supply of office spaces and virtual office suites to small business customers. We made a submission to the Review of the Unfair Contract Term Protections for Small Business and in March 2019 the government announced it would introduce amendments to strengthen current laws, subject to a regulatory impact process.

The ACCC will continue to prioritise work to assist Indigenous Australians, which remains an enduring priority under the ACCC’s Compliance and Enforcement Policy. In this period, we have focused on protecting the integrity and value of genuine Indigenous art and, consequently,

protection for Indigenous Australian artists. In addition, we have delivered important messaging around product safety recalls as part of our ongoing outreach and engagement work with Indigenous communities.

We have continued efforts to pursue an integrated approach between our enforcement and compliance work, with successful outcomes in relation to product safety, agriculture and small business protections during the period. Good compliance outcomes can often be achieved by educating businesses about their responsibilities. This year we exceeded our annual targets for small business, consumer and product safety compliance guidance and initiatives, including those that address working in partnership. For example, we published 25 pieces of new or revised business compliance resources this year—significantly higher than our target of 10. This reflects several factors:

- we published a large number of fact sheets to educate businesses about franchising and country of origin food labelling due to the introduction of new ACL penalties
- we published many business compliance resources to support the Takata airbag compulsory recall.

This result also reflects the reactive nature of some of our consumer protection work, which requires us to move resources to address significant issues when they arise.

Feedback from the 2019 ACCC [Effectiveness Survey](#) shows that most stakeholders rate our small business function positively. At interview, some stakeholders commented that small business education resources were effective but that some small to medium enterprises may not be aware that the resources were available. Stakeholders were largely positive about empowering consumers, noting that the ACCC has effective spokespeople and that we work effectively to disseminate information.

We also continue to manage a number of ongoing matters at litigation and appeal stage, including matters that have now been running for multiple years. These ongoing matters continue to require ACCC resourcing, diverting resources from the investigation and progression of new matters. This has been identified as a key reason the ACCC fell slightly short of meeting its performance targets in relation to the number of in-depth investigations completed and the percentage of initial investigations completed within three months during the period.

Addressing the risk of harm from consumer products is an enduring ACCC priority. This year we met or exceeded the majority of the performance targets relating to this area. However, we did not reach our annual target for the number of reviews of mandatory product safety standards, because resources that were assigned to this work were subsumed into our Takata airbag compulsory recall work.

Results from the ACCC [Effectiveness Survey](#) shows that most stakeholders rate our product safety function positively, with an overall index score of 73.2 (out of 100). Stakeholders interviewed commonly reported that their positive survey ratings of the ACCC's performance in this area were based on their perception that the ACCC had performed well on the Takata airbag recall and was generally effective in identifying and communicating about safety issues.

Challenges ahead for the ACCC's consumer protection work include continuing to balance project, policy and market study work with our investigative work. Education is an important aspect of our consumer protection work—a well-informed consumer is less likely to fall victim to scams or to the hazards of unsafe products, for example. This year we published 21 new or revised consumer education resources—in excess of our annual target of 10. This outcome reflects our continued scam disruption work; our focus on educating linguistically diverse consumers about hazards like the recalled Takata airbag and other recalled consumer products; and our information campaigns about open-flued gas heaters, portable heaters and do it yourself (DIY) vehicle maintenance.

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

- institute court proceedings. This year, we commenced 21 new consumer protection and small business protection related court proceedings
- accept court enforceable s. 87B undertakings where a breach, or a potential breach, might otherwise justify litigation. This year, we accepted 12 consumer protection and small business related s. 87B undertakings
- issue infringement notices. This year, we received payment for 23 infringement notices from 12 traders, with penalties totalling \$287 700
- 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 nine 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 court proceedings is included in appendix 10.

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

- vulnerable and disadvantaged consumers
- conduct affecting Indigenous Australians
- consumer guarantees
- essential services
- broadband services
- digital platforms
- product safety
- small business protection, including industry codes and UCTs
- agriculture
- other consumer protection outcomes, including breaches of the excessive surcharging provisions.

Vulnerable and disadvantaged consumers

In 2018–19 conduct affecting vulnerable and disadvantaged consumers remained an enduring priority. The ACCC recognises that vulnerable and disadvantaged consumers can be disproportionately affected by conduct in breach of the ACL—in particular, misleading and deceptive conduct and unfair business practices. We take compliance and enforcement action to protect, educate and empower these consumers.

Key issues of focus in our enforcement work in 2018–19 included the protection of consumers who are hearing impaired; elderly or sick consumers in the aged care system; and inexperienced and price-sensitive investors in the housing market.

We also worked alongside other ACL regulators and stakeholders in the aged care sector to develop resources to assist consumers and educate home care providers in the home care sector, and we continued [our work to raise awareness](#) about consumer rights and provider obligations under the National Disability Insurance Scheme.

Enforcement outcomes

Table 3.16: Enforcement outcomes relating to vulnerable and disadvantaged consumers 2018–19

Enforcement outcome	Case	Status
Litigation commenced	Bupa Aged Care Australia Pty Ltd	Ongoing
Litigation commenced	Productivity Partners Pty Ltd (t/a Captain Cook Colleges)	Ongoing
Litigation commenced and finalised	Oticon Australia Pty Ltd and Sonic Innovations Pty Ltd	Combined penalties of \$2.5 million
Litigation finalised	ACM Group Ltd	Penalties of \$750 000
Litigation finalised	Equifax Australia Information Services and Solutions Pty Ltd	Penalties of \$3.5 million
Litigation finalised	Medibank Private Limited	ACCC appeal dismissed
Litigation finalised	We Buy Houses Pty Ltd and Rick Otton	Penalties of \$12 million against We Buy Houses and \$6 million against sole director, Mr Rick Otton
Litigation awaiting judgment	Cornerstone Investment Aust Pty Ltd (t/a Empower Institute)	Awaiting penalty judgment
Litigation awaiting judgment	Unique International College Pty Ltd	Awaiting penalty judgment
Infringement notices and s. 87B undertaking combined	Australian Hearing Services	3 infringement notices—\$37 800

► Case study: Protection of hearing impaired consumers

In 2018–19 the ACCC continued to target false or misleading conduct in connection with the supply of hearing aids and services to elderly and hearing impaired consumers. In particular, hearing aid retailers and hearing clinics must be truthful in the way they promote and deliver their products and services and must not rely on misleading customers in order to make sales.

Oticon Australia Pty Ltd (Oticon) and Sonic Innovations Pty Ltd (Sonic) were ordered, by consent, to pay combined penalties of \$2.5 million for misleading pensioners through newspaper advertisements for hearing aids sold by AudioClinic and HearingLife clinics. The misleading representations by Oticon and Sonic created a false sense of urgency that consumers had to book a hearing test by a certain date to obtain a free hearing aid. Misleading representations were also made about the functions and benefits of the hearing aids.

Oticon and Sonic were also ordered, by consent, to offer refunds to customers who purchased certain hearing aid accessories, publish a corrective notice and establish an ACL compliance program.

In addition, leading Australian hearing clinic Australian Hearing Services paid infringement notice penalties totalling \$37 800 and provided a court enforceable undertaking in response to ACCC concerns that it had engaged in false or misleading conduct in connection with the supply of hearing services to consumers. Australian Hearing Services made claims that its services were 'unbiased' and 'government funded' and that certain payments for maintenance services were 'mandatory', when this was not the case.

The ACCC's enforcement work builds on research undertaken in 2017–18 to identify concerns in the industry and compliance work to educate consumers and empower them to make informed purchasing decisions involving hearing aids and services. These actions send a strong message to the hearing services sector that they must be truthful in the way they promote and deliver their products and services to customers who are often vulnerable. The ACCC will continue to watch this sector and will take further action to protect hearing impaired customers if necessary.

► Case study: Protection of elderly or sick consumers

The ACCC commenced proceedings against Bupa Aged Care Australia Pty Ltd (Bupa), alleging it made false or misleading representations to its aged care residents in 21 homes about services it did not provide or only partly provided.

The ACCC alleges that between December 2007 and June 2018 Bupa charged thousands of residents a fee for a package of extra services but did not provide, or only partly provided, some of these services—for example, hot breakfasts and air conditioning in all bedrooms. The fees for the extra services package often amounted to thousands of dollars each year. They were for services that were significant to the quality of life of elderly residents and were likely to have attracted many residents and their families to choose Bupa.

Misrepresentations in the aged care sector are of particular concern because, unlike many other services, it is often difficult for elderly residents to move to another provider. The ACCC will continue to take action against anyone seeking to take advantage of vulnerable consumers such as elderly people or those with significant healthcare needs.

Consumer directed aged care project

Aged care in Australia has transitioned to a consumer directed care model which now covers a number of different services such as retirement homes, community care and home care. This year the ACCC [published a series of resources](#) on consumer rights for home care as part of a national campaign conducted by consumer regulators around Australia. The slogan for the campaign was 'Choose your care. Use your rights'.

This was a joint ACL regulator campaign led by the ACCC. It had almost 30 partners, including key organisations such as the Council on the Ageing, state consumer protection agencies, Leading Aged Services Australia, National Seniors Australia, the Department of Health and the Department of Human Services.

Partners promoted the resources by circulating information to their networks (such as home care providers, libraries and medical practitioners), producing e-newsletters and making social media posts.

In December 2018 the Department of Health promoted the resources in its newsletter that went out to more than 17 000 subscribers. Subscribers included service providers, assessors and health professionals.

In February 2019 the ACCC met with staff from the Royal Commission into Aged Care Quality and Safety to discuss complaints the ACCC has received about aged care.

By 30 June 2019 the ACCC (through key stakeholders) had distributed 71 186 consumer brochures and 8069 industry guides.

► Case study: Record penalties for conduct targeting vulnerable consumers

The ACCC achieved record penalties totalling \$18 million against We Buy Houses Pty Ltd and its sole director, Mr Rick Otton, for making false or misleading representations about how people could create wealth through buying and selling real estate. We Buy Houses and Mr Otton targeted investors who were inexperienced, preying on them by using the false hope of creating financial success.

The penalties of \$12 million imposed against We Buy Houses and \$6 million imposed against Mr Otton personally are the highest ever imposed for contraventions of the ACL by a corporation and an individual, respectively.

The Federal Court also ordered that Mr Otton be banned from managing corporations for 10 years in Australia, and it permanently restrained both Mr Otton and We Buy Houses from further involvement in the supply or promotion of services or advice concerning real property transactions or investment.

This action reflects a recent trend of higher penalties for ACL breaches. We can expect this to continue following recent changes to consumer law to increase maximum financial penalties, particularly for egregious conduct found to target vulnerable and disadvantaged consumers.

Conduct impacting Indigenous Australians

In 2018-19 conduct impacting 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. We will always prioritise our work in this area while these challenges remain.

Our work this year continued to focus on protecting the integrity and value of genuine Indigenous art and, consequently, protecting Indigenous Australian artists.

Significant resources were also spent progressing litigation against a number of private colleges for allegedly engaging in unconscionable and misleading or deceptive conduct and making false or misleading representations when enrolling students in VET FEE-HELP funded courses. The Federal Court has found that both Unique International College Pty Ltd and Cornerstone Investment Aust Pty Ltd, trading as Empower Institute, engaged in misleading or deceptive conduct and unconscionable conduct. Proceedings against other colleges are still ongoing. Many of the students were vulnerable consumers and were signed up using door-to-door sales techniques and incentives such as free laptops and cash, unaware that they were incurring a significant debt.

The ACCC is particularly concerned that these practices targeted a number of consumers in remote and Indigenous communities. The ACCC also alleges that some providers removed consumer safeguards from enrolment and withdrawal processes for online courses to improve their financial performance.

Enforcement outcomes

Table 3.17: Enforcement outcomes relating to conduct impacting Indigenous Australians 2018-19

Enforcement outcome	Case	Status
Litigation finalised	Birubi Art Pty Ltd	Penalties of \$2.3 million

► Case study: Birubi Indigenous art

In June 2019 the Federal Court ordered that Birubi Art Pty Ltd (Birubi) (in liquidation) pay \$2.3 million for making false or misleading representations that products it sold were made in Australia and hand-painted by Indigenous Australian artists.

From July 2015 to November 2017 Birubi sold over 18 000 boomerangs, bullroarers, didgeridoos and message stones to retail outlets around Australia. These products featured designs associated with Australian Aboriginal art and words such as 'Aboriginal Art', 'genuine', and 'Australia'; however, they were made in Indonesia.

The Court concluded that the overwhelming impression conveyed by some of the products, and the associated images and representations, is that they were made in Australia and were hand-painted by Australian Aboriginal people. The artwork, images and statements used by Birubi suggested a relationship between Australian Aboriginal people and the production of the products. This relationship did not exist.

This action signals that the ACCC will always prioritise conduct that has the potential to undermine the integrity and value of genuine Indigenous Australian art and, consequently, the rights and livelihoods of Indigenous Australian artists. To ensure that confidence in the Indigenous Australian art industry is maintained, we will not hesitate to take further action against traders who mislead consumers about the nature of their products.

Indigenous outreach work

The ACCC is continuing to build relationships with Indigenous communities to deliver messaging on the Takata airbag and Samsung washing machine recalls, as well as on the dangers of button batteries. To deliver these important messages, we are following the advice we have received from Indigenous Australians that proper communication needs to be done face to face. This means our experienced Indigenous outreach staff visit Indigenous communities to communicate this information.

In identifying which Indigenous communities to visit, there has been a focus on northern Australia, where heat and humidity are known to exacerbate faulty Takata airbags and Samsung washing machines; and more remote communities, where mainstream news is not as prevalent or effective as it is in the capital cities and major regional areas. When visiting Indigenous communities, staff promote the use of the [Is My Airbag Safe](#) website as a way for consumers to check their vehicles and get further information about the recall and how consumers can take action under it. Just as importantly, staff are there to put a face to the ACCC so that consumers feel more confident to contact us for further assistance or information should they require it following the community visits.

Indigenous communities ACCC staff have visited include the Tiwi Islands off the coast of Darwin, and Thursday Island and the Northern Peninsula Area in Far North Queensland.

Further information on the ACCC's broader work on the Takata airbag issue is on page 107. Our work on education on the dangers of button batteries to children is discussed on pages 93–94.

Consumer guarantees

In 2018 the ACCC continued to prioritise systemic issues involving:

- large or national traders that avoid or misrepresent consumer guarantee rights
- the protection of consumer guarantee rights in the new car retailing industry.

Our 2019 Compliance and Enforcement Policy introduced a new priority area: consumer guarantees on high-value electrical and whitegoods products—in particular, those supplied by large retailers and manufacturers. In recent times, the electrical and whitegoods industry has been the subject of the second highest number of complaints to the ACCC after the motor vehicle industry. This signals a clear need to review industry approaches and take action where appropriate to improve compliance to deliver better outcomes for consumers.

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. It is important that consumers are aware of their rights when purchasing goods and that businesses honour those rights and do not mislead consumers about their extent.

In 2018–19 key issues of focus in our enforcement work included:

- addressing consumer guarantee concerns in the new car retailing and airline industries
- taking action to ensure that overseas retailers uphold their obligations when selling goods in the Australian market
- taking action to address non-compliance with consumer guarantees in the sale of National Rugby League (NRL) and Australian Football League (AFL) club merchandise
- taking action in response to concerns surrounding the use of 'lifetime guarantee' claims by GPS navigation system manufacturers.

Enforcement outcomes

Table 3.18: Enforcement outcomes relating to consumer guarantees 2018–19

Enforcement outcome	Case	Status
Litigation commenced	Sony Interactive Entertainment Network Europe Limited	Ongoing
Litigation commenced and finalised	Jetstar Airways Pty Ltd	Penalties of \$1.95 million
Section 87B undertakings	Jetstar Airways Pty Ltd Qantas Airways Limited Tiger Airways Australia Pty Ltd Virgin Australia Airlines Pty Ltd	Amendments to refund policies in the airline industry
Section 87B undertaking	Pandora Jewellery Pty Ltd	Amendments to refund policies
Section 87B undertaking	Volkswagen Group Australia Pty Ltd	Review and amendments to consumer guarantee practices and refund policies
Infringement notices and s. 87B undertaking combined	Wiggle Limited	1 notice—\$12 600
Administrative resolution	9 AFL clubs and 12 NRL clubs	Amendments to refund policies
Administrative resolutions	Garmin Australasia Pty Ltd MiTac Australia Pty Ltd (t/a Navman) TomTom ANZ Pty Ltd	Removal of 'lifetime' claims in advertising relating to navigation systems

► Case study: Protection of consumer guarantees in the airline industry

The ACCC's focus on addressing concerns in the airline industry follows on from previous work, including our December 2017 [Airlines: Terms and conditions report](#), which highlighted common consumer issues in the industry and the ACCC's concerns. In particular, the ACCC raised concerns that Jetstar Airways Pty Ltd (Jetstar), Qantas Airways Limited (Qantas), Tiger Airways Australia Pty Ltd (Tiger) and Virgin Australia Airlines Pty Ltd (Virgin Australia) had made false or misleading representations on their websites about consumer rights to refunds and resupply where there are significant flight delays or cancellations.

In response to these concerns, Jetstar, Qantas, Tiger and Virgin Australia gave court enforceable undertakings, with each airline committing to review their refund policies, compliance programs, websites and booking systems. As a result, consumers will have better access to information on refund entitlements, and airlines will offer remedies to affected passengers.

In addition, the Federal Court ordered Jetstar to pay penalties of \$1.95 million for making false or misleading representations about consumer guarantee rights. Jetstar admitted that it made representations on its website that some fares were not refundable and that consumers could only get a refund if they purchased a more expensive fare.

Our action in the airline industry directly benefits consumers, leading to improved transparency over booking practices and appropriate disclosure of any additional fees, charges and conditions that are likely to apply. The ACCC has also published new [guidance](#) on flight delays and cancellations on its website to help consumers understand their rights in relation to flight delays and cancellations.

This action sends the signal that, no matter how cheap the fares, airlines cannot make a blanket statement to consumers that flights are non-refundable. If a flight is cancelled or significantly delayed, passengers may be entitled to a refund under the consumer guarantee provisions of the ACL, which give consumers a right to a remedy if services are not supplied within a reasonable time.

► Case study: Protection of consumer guarantees in the new car retailing industry

New car retailing has been a priority for the ACCC for several years, and this work has resulted in a number of significant outcomes to benefit consumers and improve industry compliance.

In 2018 the ACCC accepted a court enforceable undertaking from Volkswagen Group Australia Pty Ltd (Volkswagen) to improve compliance with its consumer guarantee obligations. Volkswagen will review past complaints and offer refunds, replacements or repairs to customers where consumer guarantee rights were not previously honoured. Volkswagen has undertaken to establish a 60-day policy under which it will offer refunds or replacements without the need for a consumer to demonstrate a major failure if a defect prevents a vehicle from being driven within the first 60 days after purchase.

Following the ACCC's December 2017 [New car retailing industry market study final report](#), the ACCC published a range of consumer and industry guidance materials. For example, we published a [fact sheet](#) for consumers on their rights under the ACL when purchasing a new car. The fact sheet will be provided to consumers at the point of sale of a new car, as a matter of industry best practice. We have promoted the distribution of this fact sheet directly to industry participants, including dealer networks, manufacturers and motor vehicle industry bodies.

Issues identified in the 2017 final report were addressed in an updated version of [Motor vehicle sales and repairs: An industry guide to the Australian Consumer Law](#), published in September 2018 by the ACCC and other consumer law regulators. It is for use by dealers and other businesses within the industry.

Policy developments prompted by the findings of the new car retailing industry market study final report are discussed on page 100.

► Case study: Ensuring compliance with consumer law guarantees by overseas-based retailers

Online sporting goods retailer Wiggle Limited paid a \$12 600 infringement notice penalty and provided a court enforceable undertaking to the ACCC after admitting its customer service staff were likely to have misled Australians about their rights to remedies for faulty products.

Wiggle's customer service staff told some Australian customers who were trying to obtain a refund for faulty products that Wiggle was not subject to the ACL, as Wiggle is based in the United Kingdom. This is incorrect: the law applies to all businesses when selling products to consumers in Australia, including overseas-based businesses. Statements by retailers that seek to limit or exclude the Australian consumer guarantees are misleading and likely to contravene the ACL.

Given that a large number of Australians make online purchases from overseas retailers, this action serves as an important reminder to those retailers that they are not beyond the reach of the ACL. We will continue to monitor this issue and take action to protect the rights of Australian consumers.

Essential services

In 2018 the ACCC continued to address competition and consumer issues in the provision of energy as an essential service, including matters identified in our [Retail Electricity Pricing Inquiry final report](#) and our [Gas Inquiry](#). Work on this important priority area continued in 2019, with a new focus on issues arising from opaque and complex pricing of essential services—in particular, those in energy and telecommunications.

The ACCC is concerned that providers may use opaque and complex pricing to stifle competition and promote their services dishonestly to gain an unfair competitive advantage. The ACCC considers these pricing practices are only in place to confuse and mislead consumers, and we are taking action to simplify the comparison process.

In 2018-19 a key focus of our enforcement work was action to address misrepresentations made by providers in the energy and telecommunications sectors. In particular, action has been taken on false and misleading savings and discounts claims in the promotion of electricity and gas supply; and hidden charges and fees in the supply of mobile telecommunications services. These practices can affect consumer choice and also make it difficult for consumers to compare prices between plans and providers.

Enforcement outcomes

Table 3.19: Enforcement outcomes relating to essential services 2018-19

Enforcement outcome	Case	Status
Litigation commenced	iSelect Limited	Ongoing
Litigation commenced	TPG Internet Pty Ltd	Ongoing
Litigation commenced and finalised	Amaysim Energy Pty Ltd (t/a Click Energy)	Penalty of \$900 000
Litigation commenced and finalised	Optus Mobile Pty Ltd	Penalty of \$10 million
Infringement notices	Revtch Media Pty Ltd	2 notices—\$25 200
Infringement notices	Westfarmers Kleenheat Gas Pty Ltd	2 notices—\$25 200

► **Case study: Misleading marketing claims about electricity and gas discounts**

In 2019 the Federal Court ordered Amaysim Energy Pty Ltd (trading as Click Energy), by consent, to pay penalties totalling \$900 000 for making false or misleading marketing claims about potential discounts and savings available to Victorian and Queensland consumers.

Between October 2017 and April 2018 Click Energy told consumers they would save between \$84 and \$946 during the period if they switched to Click Energy. Click Energy's conduct misled consumers into thinking they were getting a significant discount, when in reality these discounts were often much smaller than advertised. It also led consumers to think they were better off switching to Click Energy, when the advertised savings had nothing to do with switching providers but were savings that someone already on a Click Energy plan could get if they paid on time.

Wesfarmers Kleenheat Gas Pty Ltd (Kleenheat) paid penalties totalling \$25 200 after the ACCC issued two infringement notices in response to allegations that Kleenheat had made false and misleading representations about discounts on gas prices. The ACCC alleged that Kleenheat had advertised that new customers in Western Australia could save 35 per cent on gas charges. However, the discount only applied to gas usage charges, not to other charges like the gas supply charge or account fee.

The ACCC alleged that Kleenheat made representations to potential customers that were false and may have caused some people to switch their account to Kleenheat from other gas suppliers. Qualifications which explain the terms and conditions of a deal must be prominent and not only in fine print, so that consumers understand what the deal involves and can make a clear comparison between different plans.

These actions mean consumers are better able to trust that the discounts and savings advertised by retailers are accurate so they can make informed choices about which energy plans are best for them.

► Case study: Hidden fees and charges by telecommunications providers

In 2019 the Federal Court ordered Optus Mobile Pty Ltd (Optus), by consent, to pay a \$10 million penalty in respect of its dealings with customers who unknowingly purchased games, ringtones and other digital content through its third-party billing service.

Between May 2012 and August 2018 Optus operated a 'direct carrier billing' service, which allowed customers to purchase digital content from third-party developers. Charges were automatically applied to Optus' customers' prepaid or postpaid mobile accounts. The service was a default setting on customer accounts, and through it customers mistakenly bought or subscribed to third-party content.

Optus admitted that the company misled customers when it billed them for that content. Optus did not properly inform customers about the default setting on their accounts and that Optus would bill them directly for any content bought through the service, even unintentionally.

Despite receiving over 600 000 enquiries about the service, Optus failed to put in place appropriate identity verification safeguards. If customers queried these service charges, Optus referred them to third parties.

In addition to penalties, the ACCC's successful action has resulted in Optus committing to contact consumers who were potentially affected. About 240 000 Optus customers have so far received refunds. The ACCC understands that about \$8 million in refunds has been paid by Optus and another \$13 million has been paid by third-party providers.

The ACCC has also commenced proceedings against TPG Internet Pty Ltd (TPG), alleging that TPG signed customers up to a TPG plan requiring them to pay a \$20 fee for what TPG describes as a 'prepayment' to cover costs that might be incurred but are not included in their plan, such as overseas phone calls.

The ACCC alleges that TPG represented on its website that the prepayment could be used for excluded telecommunications services before the consumer cancelled their plan. However, the ACCC alleges that the prepayment operates as a non-refundable fee and that TPG retained at least \$10 of the prepayment when a customer cancelled their plan. The ACCC estimates that from March 2013 TPG is likely to have retained millions of dollars in consumer prepayments that were forfeited.

These actions show that the ACCC will not hesitate to take action over hidden fees and charges which are not only frustrating for consumers but can also result in substantial financial harm.

Broadband services

In 2018-19 the ACCC continued to prioritise consumer issues in the provision of broadband services, including addressing misleading speed claims and statements made during the transition to the NBN. This follows the ACCC's work under our [Measuring Broadband Australia program](#) and supports our commitment to truth in advertising related to broadband speeds. The issue of misleading advertisements on supply of broadband services is similar to those that arise from opaque and complex pricing of essential services. They make it difficult for consumers to understand speeds and make an informed choice about the best package for them.

In 2018-19 we continued to focus on addressing the key issue of misleading speed claims made by broadband service providers.

Enforcement outcomes

Table 3.20: Enforcement outcomes relating to broadband services 2018-19

Enforcement outcome	Case	Status
Litigation commenced	Optus Internet Pty Ltd & Anor	Ongoing
Litigation commenced and finalised	Australian Private Networks Pty Ltd (t/a Activ8me)	Penalty of \$250 000
Infringement notices	MyRepublic Pty Ltd	2 notices—\$25 200
Administrative resolutions	Aussie Broadband	Removal of statements across advertisements the ACCC alleged were misleading

► Case study: Misleading NBN speed claims

The ACCC's latest enforcement action concerning the National Broadband Network (NBN) follows extensive work to educate the industry about appropriate advertising of retail broadband plans and how to substantiate speed claims.

In 2019 the Federal Court ordered Australian Private Networks Pty Ltd (trading as Activ8me) to pay penalties of \$250 000 for making misleading representations and not displaying a single price when advertising its internet services.

The Court found, by consent, that Activ8me made representations that misled hundreds of Australian consumers into signing up to internet services which were at a different price or speed than they expected. The Court also ordered Activ8me to offer to refund set-up fees and allow affected customers to exit or switch plans without charge. This outcome was an important win for affected consumers.

The ACCC had engaged with Activ8me on two previous occasions in 2018 about its advertising practices. This latest outcome signals that we will continue to take action on misleading NBN speed claims and will pay particular attention to repeat offenders.

MyRepublic Pty Ltd paid penalties totalling \$25 200 after the ACCC issued two infringement notices over concerns its speed claim representations were misleading. The MyRepublic website contained fine print disclaimers that the ACCC considered ineffective on the basis that they were not prominent and did not provide clear information to assist consumers to make an informed choice.

Following an ACCC investigation, NBN provider Aussie Broadband removed statements from its advertising that described its broadband services as 'congestion free'. Congestion occurs in broadband networks when demand from users exceeds available capacity, resulting in slower speeds for customers. Previous work under the ACCC's Measuring Broadband Australia program indicates that all broadband providers experience congestion from time to time. The ACCC was concerned that Aussie Broadband's statements might lead consumers to believe their services would not ever experience congestion when that was not the case.

These actions protect consumers by ensuring the availability of transparent and accurate information to assist them in selecting the right broadband plan for their needs.

The ACCC has also published guidance to assist consumers to choose the best broadband service for their needs, including what they need to know about how it will perform during busy periods and any other limitations that may affect their specific connection. Other compliance work in relation to broadband services includes reviewing the effectiveness and scope of speeds claims guidance and ensuring transparency through the ACCC's Measuring Broadband Australia program. These are discussed further on pages 135-137.

Digital platforms

In 2018 the ACCC prioritised competition and consumer issues concerning the use of digital platforms, algorithms and consumer data. This priority continued in 2019, with an additional focus on the collection of consumer data, transparency of data practices and the adequacy of disclosure to consumers. The ACCC's [Digital Platforms Inquiry preliminary report](#) identified a number of potential enforcement issues. These matters remain under investigation.

In 2019 the ACCC has also prioritised emerging consumer issues in advertising and subscription service practices on social media platforms, with a focus on the impact on younger consumers. Social media platforms are used by the vast majority of Australian consumers. As markets change and evolve, it is important that the ACCC closely examines practices in these newer or changing markets.

Customer loyalty schemes are another new priority for the ACCC in 2019. We have begun closely examining the use of personal data collected by various loyalty programs, whether consumers receive the benefits promised and the impact on competing firms and new entrants. These schemes include those in the airline, retail and hospitality sectors.

In 2018-19 key issues of focus in our enforcement work involved the manipulation of online reviews and misleading online representations in relation to price and availability on comparator websites and ticket reselling platforms. The ACCC recognises that Australian consumers often make purchasing decisions based on online rankings and reviews and the price and availability of services promoted. It is therefore important that potential customers are provided with the full picture before they decide to purchase these services.

Enforcement outcomes

Table 3.21: Enforcement outcomes relating to digital platforms 2018-19

Enforcement outcome	Case	Status
Litigation commenced	Kogan Australia Pty Ltd	Ongoing
Litigation commenced	Service Seeking Pty Ltd	Ongoing
Litigation commenced	Trivago NV	Ongoing
Litigation finalised	Meriton Property Services Pty Ltd	Penalties of \$3 million
Litigation awaiting judgment	Viagogo AG	Awaiting penalty judgment

► Case study: Manipulation of online consumer reviews

In 2018–19 the ACCC took enforcement action against two traders alleging that they had manipulated online consumer reviews. We commenced proceedings against online tasking platform Service Seeking Pty Ltd in relation to its ‘Fast Feedback’ feature which, we allege, allowed businesses to use a template form to write their own reviews and choose a star rating after they completed a job for a customer. The proposed review was then emailed to the customer. If the customer did not respond to a business’s self-written review within three days, the review was automatically published under the business’s profile on Service Seeking’s website. The ACCC alleges that Service Seeking’s conduct gave businesses a chance to effectively rate and review themselves without any input from the customer.

The Federal Court also ordered Meriton Property Services Pty Ltd (Meriton) to pay penalties of \$3 million for manipulating TripAdvisor reviews by implementing a practice of ‘masking’ email addresses. Meriton’s ‘masking’ process worked by either inserting additional letters into guests’ email addresses provided to TripAdvisor so that the email prompting the guest to review the service never reached the guest or not sending guest email addresses to TripAdvisor. This practice stopped potentially negative reviews from appearing on TripAdvisor and gave the impression Meriton accommodation was of a higher standard than may have been the case.

These actions improve transparency of online reviews on these digital platforms, with customers better able to trust that reviews are accurate and genuine and rely on their accuracy.

► Case study: Misleading online representations relating to price and availability

The ACCC took action against two traders for making misleading online representations in relation to the price and availability of hotel accommodation and event tickets.

We commenced proceedings against Trivago NV (Trivago) alleging it represented its website as an impartial and objective price comparison service that would help consumers to identify the cheapest prices for hotel rooms. In fact, we allege, the website prioritised advertisers who were willing to pay the highest per-click fee to Trivago. Because of the design of Trivago’s website and representations made, the ACCC alleges consumers were denied a genuine choice on their hotel deal and were misled as a result.

The ACCC’s action against Trivago targets growing concerns in relation to comparison platforms and how algorithms present search results to consumers. There is concern that some platforms convey an impression that their services are designed to benefit consumers when, in fact, listings are based on which supplier pays the most to the platform. The Federal Court found ticket reseller Viagogo AG (Viagogo) made false or misleading representations and engaged in conduct liable to mislead the public when reselling international, music and live sport event tickets. The Court also found Viagogo misled consumers by claiming tickets to certain events were scarce, when the scarcity referred only to tickets available on its resale platform and did not include tickets available elsewhere.

The Court also found that, from 1 May to 26 June 2017, Viagogo’s website claims drew consumers in with a headline price but failed to sufficiently disclose additional fees or to specify a single price for tickets. The additional fees included a 27.6 per cent booking fee which applied to most tickets.

Excessive surcharging

In 2018-19 the ACCC continued to enforce the ban on excessive payment surcharges on debit and credit cards. The ban applied to large businesses in Australia from 1 September 2016 and to all other Australian businesses from 1 September 2017.

The ban on excessive payment surcharges was previously a priority area, and we have continued our focus on this relatively new provision of the law to remind businesses of their obligations and to address non-compliance.

Enforcement outcomes

Table 3.22: Enforcement outcomes relating to excessive surcharging 2018-19

Enforcement outcome	Case	Status
Litigation commenced	CLA Trading Pty Ltd (t/a Europcar)	Ongoing
Infringement notice	Cruisin Motorhomes Pty Ltd	1 notice—\$12 600
Infringement notice	Fitness First Australia Pty Ltd	1 notice—\$12 600
Infringement notices	Lloyd's Auctioneers and Valuers Pty Ltd	3 notices—\$37 800

► Case study: Ban on excessive payment surcharges

In July 2018 the ACCC instituted proceedings in the Federal Court against CLA Trading Pty Ltd (Europcar) for allegedly charging excessive credit and debit card payments. This is the first litigation the ACCC has commenced under these new provisions.

The excessive payment surcharges law requires that businesses must not impose payment surcharges that exceed what it costs the businesses to process a payment. The ACCC alleged that Europcar applied surcharges of up to 1.43 per cent, despite being notified by its bank that this exceeded the actual costs to accept payments by these cards. The ACCC alleges that Europcar continued to charge customers more than this amount.

Three other traders paid penalties totalling \$63 000 after the ACCC issued infringement notices for alleged breaches of the excessive payment surcharges law. These include:

- penalties of \$37 800 paid by Lloyds Auctioneers and Valuers Pty Ltd
- penalties of \$12 600 paid by Fitness First Australia Pty Ltd
- penalties of \$12 600 by Cruisin Motorhomes Pty Ltd.

These actions serve as an important reminder that the ACCC will continue to investigate complaints about businesses imposing excessive surcharges.

Table 3.23: Enforcement outcomes relating to other consumer protection 2018-19

Enforcement outcome	Case	Status
Litigation commenced	Employsure Pty Ltd	Ongoing
Litigation commenced	Quantum Housing Group Pty Ltd	Ongoing
Litigation commenced	Smart Corporation Pty Ltd (t/a Australian 4WD Hire)	Ongoing
Litigation commenced	STA Travel Pty Ltd	Ongoing
Litigation finalised	HJ Heinz Company Australia Pty Ltd	Penalties of \$2.25 million
Infringement notices	Ozwear Connection Pty Ltd	2 notices—\$25 200

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 hundreds of millions of dollars and cause considerable non-financial harm.

The ACCC plays an important role in educating Australians about how to protect themselves from scams. This remained a priority issue for the ACCC in 2018–19. 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.

Targeting scams report

In May 2019 we released the 10th annual [Targeting scams: Report of the ACCC on scam activity 2018](#). The report examines key trends in scam activity and highlights the impact of scams on the community in 2018. It also emphasises the cooperative work of the ACCC, other regulators and law enforcement agencies to disrupt scams and educate consumers.

Figure 3.1: Scam reports 2018



The report includes data from other jurisdictions that receive scam reports or monitor scam activity, including the Australian Cybercrime Online Reporting Network (ACORN),⁸ the Australian Taxation Office and state and territory offices of fair trading, to gain a clearer picture of the significance of losses caused by scam activity in Australia. Combined losses reported to the ACCC and these other agencies totalled almost half a billion dollars (\$489 million).

Scams Awareness Network

The ACCC is the chair of the Scams Awareness Network. The network is made up of 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.

Scam Technology Project

The ACCC is participating in the Australian Communications and Media Authority's Scam Technology Project, which seeks to explore practical technology solutions to address the proliferation of scams over the telecommunications network. The Scam Technology Project will consider scams delivered through phone calls and SMS messages. Submissions responding to the project's discussion paper closed on 10 May 2019.

⁸ ACCC analysis of ACORN data specifically excludes reports that have been made to Scamwatch and those that do not identify whether they have been reported elsewhere.

Scams Intelligence Sharing Project

This year we commenced the Scams Intelligence Sharing Project, which aims to increase the sharing of information between the ACCC and other government agencies. Where Scamwatch reporters have indicated they are willing for their report to be shared across government, we send them to 14 partner agencies. Through this work, Scamwatch reports continue to directly feed into police investigations.

Scams Awareness Week

The Scams Awareness Network runs National Scams Awareness Week—an annual campaign to raise awareness of scam activity within our community. In 2019 the campaign will take place from 12 to 16 August and will use the theme ‘Too smart to be scammed?’ to highlight Australians’ susceptibility to, and ability to spot, scams.

► Case study: Sophisticated investment scam

In 2018 Australians reported investment scam losses of over \$86 million to Scamwatch and other agencies. One such loss of \$50 000 was reported to Scamwatch in July 2018 by an Australian victim targeted by a scam corporation that employs finance-savvy telemarketers and presents a professionally designed trading web platform. The scam victim said:

I was contacted via phone for an investment opportunity. The caller purported to be from a UK-based company. I performed some checks to confirm they were a limited company and the phone number wasn't already on scammers register.

I called reception and spoke a 'receptionist'. They had an account holder portal where I could log in and view holdings. They also called fortnightly to discuss share progress.

Alarm bells were ringing but there seemed to be little I could do once they had my money so I played along in the hope that it wasn't a scam, but it was.

Now, the phone numbers don't get answered and there is no response.

It was quite a sophisticated scam including calls from the US with updates about a take-over of the original UK-based company. The 'new' US company had a fancy website, but as with the other website, it was light on detail and individuals such as directors were never shown.

Since this scam I've had multiple other calls following a very similar system. Broker receives a 'bankers block' of discounted shares or access to discounted IPO shares which they use to build a clientele base.

Generally the [censored] are English and well spoken. They went to a lot of effort to rip me off..

Scamwatch website and awareness raising

The ACCC uses a range of media and communications channels to raise community awareness about scams. Our [Scamwatch website](#) hosts a wealth of information on how to identify and avoid scams, including scams information in 12 languages other than English. The ACCC also undertakes hundreds of media engagements relating to scams awareness each year.

In 2018:

- Scamwatch received over 6.7 million page views
- the ACCC's most popular publication, the [Little black book of scams](#), was downloaded 28 314 times, with 173 878 hard copies distributed across Australia to financial institutions, police stations and community organisations
- we distributed 13 Scamwatch radar email alerts on emerging scams to our subscribers
- the number of subscribers to the email alerts increased by 27 per cent to 86 715
- using our Scamwatch Twitter profile (@Scamwatch_gov) we posted 384 tweets and retweets to our followers. In 2018 the number of followers increased by 16 per cent to over 20 450
- the ACCC responded to Scamwatch reports of fake celebrity endorsement scams on Facebook and Google. Bilateral discussions with both providers are ongoing, and the ACCC has directly contacted the hosting providers of several of the sites requesting web pages be taken down.

Scams Intermediaries Pilot Project

Since September 2016, as part of the Scams Intermediaries Pilot Program, the ACCC has engaged with 10 companies (intermediaries) in an effort to improve their approach to scam prevention. These intermediaries include the four major banks: Australia and New Zealand Banking Group Ltd, Commonwealth Bank of Australia, National Australia Bank and Westpac Banking Corporation, as well as money remittance and transfer platforms. The objectives of the pilot project have been to influence and enable these companies to improve their scam prevention practices to reduce the incidence of scams and the harm experienced by people using or transacting through their business or platform.

In 2018-19 the ACCC undertook a further six-month trial of providing Scamwatch reports to intermediaries where those reporting their concerns to the ACCC allowed us to do so. We sought detailed feedback on the utility of the reports we provided and the project more broadly. We have also undertaken surveys with Scamwatch reporters to better understand what our intermediaries expect after submitting a report to the ACCC. The ACCC has also continued to engage with government agencies to further raise awareness of the objectives and benefits of the program.

The intermediaries involved in the pilot project have reported back to the ACCC that the project has assisted them to prevent numerous scams through greater scam detection, the blocking of scam transactions, the recovery of funds for victims, training for frontline bank staff and the blacklisting of scammer bank accounts. Intermediaries have also reported that, as a result of their involvement in the project, they have devoted additional resources to this important work going forward.

The Scams Intermediaries Pilot Project will transition to a business-as-usual approach in 2019-20, with Scamwatch reports continuing to be provided to intermediaries on an ongoing basis.

Working with partners

Actions undertaken to achieve our purpose

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

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

Because the ACL is applied nationally, the ACCC is involved in partnerships to ensure 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 and New Zealand partnerships

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

Much of our coordinated work is carried out through inter-agency and other committees through the Council of Australian Governments (COAG) framework.

COAG Legislative and Governance Forum on Consumer Affairs

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

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

Table 3.24: COAG Legislative and Governance Forum on Consumer Affairs and associated committees

COAG BODY	
COAG Legislative and Governance Forum on Consumer Affairs (CAF)	<p>Members: all the Commonwealth, state and territory and New Zealand ministers responsible for fair trading and consumer protection laws. New Zealand is the current chairing jurisdiction.</p> <p>Role: to consider consumer affairs and fair trading matters of national significance and, where possible, to develop a consistent approach to addressing these issues. CAF ministers meet at least once a year.</p>
CAF SUBCOMMITTEE	
Consumer Affairs Australia New Zealand (CAANZ)	<p>Members: commissioners or senior managers from consumer protection agencies in Australia and New Zealand. Deputy Chair Delia Rickard is the ACCC's CAANZ representative. State and territory fair trading agencies, the New Zealand Commerce Commission (NZCC), Treasury and ASIC are represented by their commissioners or senior officials.</p> <p>Role: subcommittee to CAF that is responsible for progressing national fair trading and consumer protection issues. CAANZ meets face to face twice a year and provides advice to CAF. CAANZ is advised by several advisory subcommittees that each have a particular function.</p>
CAANZ SUBCOMMITTEES	
Policy and Research Advisory Committee (PRAC)	<p>Members: members from all ACL regulators in Australia, ASIC, the NZCC and Treasury. Chaired by Treasury.</p> <p>Role: aims to ensure that consumer protection research, policy development and legislative reform are best practice and undertaken in a nationally consistent and cooperative manner. Information relevant to these areas is also shared between the Australian ACL regulators and the NZCC. Supports the operation of CAANZ.</p>
Education and Information Advisory Committee (EIAC)	<p>Members: members from all ACL regulators in Australia, ASIC, the NZCC and Treasury.</p> <p>Role: national body that promotes cooperation and coordination of education and information activities relating to the ACL and consumer issues more generally.</p>
Compliance and Dispute Resolution Advisory Committee (CDRAC)	<p>Members: members from all ACL regulators in Australia, ASIC, the NZCC and Treasury. Currently chaired by NSW Fair Trading.</p> <p>Role: to ensure that all compliance, enforcement and dispute resolution activities across Australia are coordinated, efficient, responsive and, where appropriate, consistent. CDRAC supports broader and targeted approaches to compliance and enforcement with the assistance of the FTOG and PSOG. Information relevant to these areas is also shared between Australia and New Zealand. Meets via teleconference once a month and annually face to face.</p>
CDRAC SUBCOMMITTEES	
Product Safety Operations Group (PSOG)	<p>Members: representatives of consumer product safety regulators from Australian states and territories and New Zealand. Currently chaired by the Queensland Office of Fair Trading.</p> <p>Role: key forum through which the ACCC and state and territory consumer product safety regulators collaborate on emerging product safety issues and share reports of product safety incidents. PSOG members will also form working groups to address specific product safety issues. Meets via teleconference on a monthly basis and annually face to face.</p>
Fair Trading Operations Group (FTOG)	<p>Members: staff from compliance and enforcement operational areas of all ACL regulators in Australia, ASIC and the NZCC.</p> <p>Role: a key forum through which the ACCC, ASIC and state and territory fair trading agencies collaborate on a range of emerging enforcement and compliance issues, including enforcement investigations and enforcement outcomes under the ACL. Information relevant to these areas is also shared between the Australian ACL regulators and the NZCC. Meets via teleconference on a monthly basis.</p>

During the period, the ACCC worked closely with the Treasury and state and territory ACL regulators to progress many of the recommendations from the [Australian Consumer Law Review final report](#). At the CAF meeting in October 2018, ministers agreed that certain amendments to the consumer guarantees framework in the ACL should be made and further work on options for other issues should be undertaken regarding five proposals arising from the [Australian Consumer Law Review final report](#). This is discussed further on page 98.

Consumer and industry partnerships

ACCC compliance and enforcement initiatives are enriched by our partnerships with consumer groups and industry representatives. The ACCC hosts and participates in a wide range of consultative committees and forums to encourage discussion around business, consumer and regulatory issues relevant to our work. Details of the committees are on page 183.

► Case study: National safety strategy for consumer products containing button batteries

An estimated 20 children present to emergency departments in Australia each week because of suspected button battery exposure. In 2018 and 2019 one of our product safety priorities was to support strategies that help prevent injuries and deaths to children caused by button batteries.

In 2016 the ACCC commenced a two-year National Strategy for Button Battery Safety in partnership with other ACL regulators and industry. This project demonstrates the value of working in partnership; it spans the work of both the Compliance and Dispute Resolution Advisory Committee (CDRAC) and the Product Safety Operations Group (PSOG) and relies on a significant contribution from industry. In 2016 industry also released a voluntary industry code for suppliers of button battery products. The code includes key recommendations to ensure safer products.

This year we evaluated the impacts of the two-year national strategy. We focused on product surveillance to assess the scope and effectiveness of any voluntary safety improvements made by suppliers in response to the recommendations of the industry code. Our evaluation concluded that many suppliers had improved the safety of their products; however, most of the products we assessed had not adopted the design recommendations. We also examined Australian injury and exposure data, which shows that incident rates, including serious injuries, have not declined. We are now determining the feasibility of a stronger regulatory approach.

On 30 March 2019 the Assistant Treasurer issued a Safety Warning Notice to alert consumers and suppliers of the possible risks associated with the use of button batteries.

On 5 April 2019 the Assistant Treasurer wrote to the ACCC requesting the regulatory impact assessment process required to support the development of future regulation, such as a mandatory standard, be expedited.

The ACCC is also continuing to assist the Industry Working Group with revision of the voluntary Industry Code for Button Battery Safety.

A summary of the Industry Code for Consumer Goods that Contain Button Batteries is being translated into multiple languages. These translations will be made available from the Product Safety Australia website in late 2019. They will assist suppliers whose first language is not English to understand and apply the principles of the code to improve the safety of products containing button batteries.

A number of Indigenous children have suffered serious injuries after swallowing button batteries in the past 12 months. The ACCC recognises that regional communities can have difficulties in accessing information. Consumers in those areas may not receive safety information via online campaigns due to limited internet access. Posters communicating the risks posed by button batteries have been specifically developed for Indigenous audiences and included in ACCC Indigenous outreach programs.

Strategies to address conduct affecting Indigenous Australians are discussed on pages 77-78. Our work to support consumer product safety is also discussed from page 103.

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

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

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

Other regional engagement activities in 2018-19 included participation in the following events:

- 14th East Asia Top Level Officials' Meeting on Competition Policy and the 11th East Asia Conference on Competition Policy and Law in Sydney, Australia. We hosted this year's event
- Global Competition Review Live Singapore 8th Annual Asia Pacific Law Leaders Forum in Singapore
- 7th China Competition Policy Forum
- Asia-Pacific Economic Cooperation (APEC) workshop on Economic Analysis in Horizontal and Non Horizontal Mergers
- a three-month secondment to the New Zealand Commerce Commission
- meetings of the ASEAN-Australia-New Zealand Free Trade Agreement Committee on Competition
- 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:

- the ASEAN-Australia-New Zealand Free Trade Area Committee on Competition
- PSOG (previously the Product Safety Consultative Committee)
- the Australasian Consumer Fraud Taskforce.

Competition Law Implementation Program (CLIP)

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 assistance to ASEAN Member States, supporting them as they develop effective national competition laws, implementing rules, institutions and procedures for their effective 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 capacity-building activities in South-East Asia through CLIP. We:

- conducted training workshops on evidence-handling and interview skills, strategic investigations management, cartel investigations, drafting regulations and guidelines, and remedies for competition law infringements
- hosted a roundtable of head of ASEAN competition agencies in Sydney, Australia
- hosted six staff on secondment from competition authorities of Indonesia, Malaysia, Laos, Philippines and Thailand
- seconded experts to Cambodia, Indonesia, Laos, Malaysia, Myanmar, Thailand and Vietnam to assist in the development and implementation of their respective competition laws
- delivered remote mentoring to investigators in ASEAN
- worked in partnership with the Federal Court of Australia and OECD to develop a series of Competition Law Primers for ASEAN judges
- delivered a sectoral interface workshop with construction and competition regulators from across ASEAN to build awareness and understanding of competition regulation
- developed a toolkit for senior competition investigators for use in building and managing investigation teams
- launched CLIP Academy—an online learning management system with practical training modules for competition agency staff
- initiated the ASEAN Australia New Zealand Free Trade Area Consumer Protection Scoping Project, which explores the merit of extending our cooperation with ASEAN to encompass consumer protection.

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 and AER continue 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 address existing and emerging competition and consumer protection challenges and promote ACCC priorities. The ACCC and AER's international engagement strategy supports the effective performance of our functions by:

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

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.

The ACCC reviews an increasing number of cross-border merger transactions and investigates global market conduct. We regularly engage and exchange information with other regulators internationally on investigations and merger assessments. In 2018-19 we:

- received and responded to requests for information from international agencies, including agencies in Austria, Barbados, Canada, Chile, China, Colombia, Denmark, the European Commission, France, India, Indonesia, Israel, Japan, Kenya, New Zealand, Mexico, Papua New Guinea, Poland, Russia, Saudi Arabia, Seychelles, Singapore, Taiwan, the UK, the US and Vietnam
- requested information from agencies in Canada, Denmark, the European Commission, Germany, Italy, Japan, the Netherlands, New Zealand, Norway, Switzerland, Singapore, South Africa, Sweden, the UK and the US
- prepared reports and made presentations on Australian competition, consumer and regulatory law developments at many international events
- commenced a one-year secondment to the UK Office of Gas and Electricity Markets
- commenced a 13-month secondment to the OECD working on a product recalls effectiveness project
- presented at the American Bar Association Spring Meeting and the US Federal Trade Commission Hearing in Washington DC, US
- participated in the International Consumer Product Health and Safety Organisation Annual Meeting and Training Symposium in Washington DC, US
- participated in a Visiting International Enforcer Program secondment with the US Department of Justice
- participated in a US Federal Trade Commission International Fellow Program
- participated in bilateral meetings with the European Commission Directorate-General for Competition, US Federal Trade Commission and US Department of Justice in Washington DC, US
- entered into a new Memorandum of Cooperation between the ACCC and the US Federal Bureau of Investigations.

International Competition Network (ICN)

The ACCC collaborates with international counterparts through forums such as the ICN. The ICN provides competition authorities with a specialised yet informal venue for maintaining regular contacts and addressing practical competition concerns. The ACCC is a member of the ICN Steering Group, the ICN's Horizontal Coordinator, and was a co-chair of the ICN's Unilateral Conduct Working Group until April 2019. The ACCC then became a project leader of the working group's Vertical Restraints Project.

Our ongoing work within the ICN in 2018–19 included actively participating in:

- the ICN cartel workshop 'How to crack a cartel step by step' in Tel Aviv, Israel
- the ICN Unilateral Conduct Working Group in Stellenbosch, South Africa
- the ICN merger workshop in Tokyo, Japan
- the ICN advocacy workshop in Kiev, Ukraine
- the ICN annual meeting in Cartagena, Colombia
- several projects undertaken by ICN working groups, through written contributions
- the new ICN Framework on Competition Agency Procedures, which aims to ensure a consistent approach to procedural fairness by competition agencies. The ACCC helped to develop the framework and is a foundation member and co-chair with the US Department of Justice and Bundeskartellamt (Germany).

Organisation for Economic Co-operation and Development (OECD)

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 143).

In 2018–19 we:

- continued our participation in the OECD Working Party on Consumer Product Safety (WPCPS) by teleconference and face-to-face meetings in Paris, France during November 2018 and April 2019
- were elected to chair the OECD WPCPS from 1 January 2019. The working party is the only international forum for consumer product safety regulators to discuss, plan and coordinate consumer product safety issues and initiatives
- attended the Joint OECD–European Commission conference on the Internet of Things, artificial intelligence and product safety during International Product Safety Week 2018, hosted by the European Commission in Brussels, Belgium; and participated in the associated OECD Working Party on Consumer Product Safety meeting and the Committee for Consumer Policy
- participated in a one-year secondment to the OECD working on a consumer product recalls effectiveness project
- co-led the November 2018 E-commerce Global Awareness Campaign, with the active participation of 26 international jurisdictions. The campaign provided consumers with tips on ways to buy safe products online and raised the awareness of businesses of the importance of addressing consumer product safety risks in e-commerce. Estimates provided by participants show that the campaign conducted via social media reached over 25 million people
- collaborated with the OECD and the European Commission to organise a Global Awareness Campaign on product recalls effectiveness for October 2019
- attended the International Consumer Product Health & Safety Organisation's (ICPHSO) annual meeting and training symposium in Washington DC, US. The symposium included a one-off event on effective practices for reaching the public with product safety messages
- engaged the OECD, together with the Federal Court of Australia, to produce Competition Primers for ASEAN judges under CLIP
- took part in the OECD Committee on Consumer Policy meetings in Paris, France

- participated in the OECD Regulatory Policy Committee and Network of Economic Regulators meetings in Paris, France
- participated in the 2018 OECD Global Forum on Competition in Paris, France
- attended the OECD Competition Committee meetings in Paris, France. We provided submissions on a number of issues, including the treatment of privileged information in competition cases and the non-price effect of mergers
- presented at the 9th annual OECD/Korea Policy Centre Law Workshop and Seminar for Asia-Pacific Judges in Bangkok, Thailand.

International Consumer Protection Enforcement Network (ICPEN)

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 annual intelligence report
- preparing the annual national activity report
- participating in the annual ICPEN Internet Sweep. The theme was 'Dark Nudge'. The ACCC focused on subscription traps and misleading conduct by social media influencers
- attending the ICPEN Best Practices Workshop and African Consumer Protection Agencies training workshop on investigations in Lusaka, Zambia
- attending the ICPEN Annual Conference and High Level Meeting in Livingstone, Zambia.

Legislative developments and government liaison

Increased penalties for ACL breaches

On 31 August 2018 the *Treasury Laws Amendment (2018 Measures No. 3) Act 2018* (Cth) received royal assent. Included in the amendments was an increase in the available penalties for breaches of the ACL. This arose from a recommendation of the Australian Consumer Law Review in 2017.

Under the Act, penalties for breaches of the ACL rose from \$1.1 million to the greater of \$10 million or three times the value of the benefit obtained from the offence (if this can be determined) or 10 per cent of the annual turnover (if the value of the benefit cannot be determined).

The maximum penalty for individuals was also increased from \$220 000 to \$500 000. The ACCC strongly advocated for this increase in ACL penalties.

Further legislative amendments arising from the Australian Consumer Law Review

The *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* (Cth) commenced on 26 October 2018. The Act contained amendments to the ACL recommended by the [Australian Consumer Law Review final report](#) that did not require a Regulation Impact Statement (RIS) process.

The following amendments were made:

- Consumer empowerment:
 - The Act clarifies the operation of unsolicited services provisions and unsolicited consumer agreements in a public place.
 - It ensures that fees or charges associated with preselected options of online purchases must be included in the single price.
 - It clarifies the scope of the exemption from the consumer guarantees for the transport or storage of goods.
 - It extends the unconscionable conduct protections to publicly listed companies.
- Investigatory and enforcement powers:
 - The Act strengthens the ACCC's powers to obtain information about product safety.
 - It amends evidentiary requirements to allow private litigants to rely on admitted facts from earlier proceedings.
 - It enables third parties to give effect to a community service order.
 - It enables the ACCC to seek information and documents in relation to possible UCTs.

Repeal of section 51(3) of the CCA

Section 51(3) of the CCA has been repealed pursuant to the *Treasury Laws Amendment (2018 Measures No. 5) Act 2019* (Cth). The repeal of s. 51(3) will commence on 13 September 2019 and will mean that conduct involving intellectual property rights is no longer exempt from certain provisions in Part IV of the CCA.

Following the repeal, the ACCC drafted guidelines on the application of Part IV of the CCA to intellectual property. The ACCC released draft guidelines for public comment on 21 June 2019 and will publish a final version before the repeal commences on 13 September 2019.

New mandatory wording required for warranties against defects for services

From 9 June 2019, pursuant to the Competition and Consumer Regulations 2010 (Cth), there are requirements for mandatory text that alerts consumers to their statutory rights for 'warranties against defects' when supplying services or goods with services. These requirements are in addition to those presently required for the supply of goods.

Policy developments and inquiries

General Safety Provision

Progressing the development of a General Safety Provision (GSP) and other product safety reforms is a 2019 product safety priority.

In August 2017, as a part of the CAF, consumer affairs ministers supported public regulatory impact assessment of the proposal to amend the consumer law and asked CAANZ to report back to CAF for subsequent decision.

Under the current provisions of the ACL, it is not illegal to supply unsafe products in Australia as it is in a range of other places, including the UK, the European Union, Canada, Malaysia and Singapore. Consumer products continue to cause serious injury and harm to thousands of Australians. According to our analysis, each day around two people are killed and 145 injured by unsafe products. The ACCC further estimates that the annual cost of harm from unsafe consumer products in Australia is at least \$5 billion, but this is likely to be much higher.

The ACCC supports the development and introduction of a GSP under the ACL. A GSP would strengthen and facilitate a more responsive product safety regime in Australia and support existing consumer protection provisions in the ACL.

Treasury, on behalf of CAANZ, is leading the development of a consultation RIS for the GSP. The ACCC is providing technical product safety support to Treasury.

National product safety incidents database

Improving product safety data by progressing the development of a national product safety incidents database is a 2019 product safety priority.

In April 2017 CAANZ released the [Australian Consumer Law Review final report](#), which put forward a proposal to promote the enhanced collection and dissemination of product safety data, taking into account findings of the Productivity Commission's study *Consumer law enforcement and administration* and initiatives undertaken by other regulatory regimes.

The Productivity Commission found that the proposal for a national database of product safety incidents for use by consumer regulators has merit, as it would enable better identification and analysis of consumer hazards and risks and would help focus regulators' compliance and enforcement activities.

The Productivity Commission found that CAANZ could be tasked to examine the impediments to establishing such a database and its likely costs and benefits. Also, subject to the findings of that analysis, it could develop a plan to implement such a system.

The ACCC, on behalf of CAANZ, is currently working to scope options for a national product safety incidents database.

Review of unfair contract term protections for small business

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

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

Our additional recommendations were:

- the ACL should be amended to make more flexible remedies available for a court to order when it determines that a term in a standard form contract is unfair
- the threshold for the application of the UCT regime should be amended to apply to standard form contracts entered into by businesses with less than \$10 million in annual turnover.

Proposed regulatory interventions in the automotive industry

The Australian Government is proposing regulatory intervention in the automotive industry in relation to two areas examined by the ACCC's new car retailing industry market study. The final report, [The new car retailing industry: A market study by the ACCC](#), was published in December 2017.

Proposed motor vehicle service and repair code

The ACCC's new car retailing industry market study recommended the introduction of a mandatory scheme for car manufacturers to share motor vehicle service and repair information with independent repairers. This would support a competitive car repair and service industry for the benefit of small businesses and consumers.

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

Regulatory Impact Statement—franchise relationships between car manufacturers and new car dealers

The ACCC's new car retailing industry market study identified a power imbalance between car manufacturers and new car dealers and recommended that certain issues raised by dealers in relation to the imbalance of power in their commercial arrangements with manufacturers may require further examination.

In December 2018 the Department of Industry, Innovation and Science released a RIS detailing regulatory options to govern franchise relationships between car manufacturers and new car dealers. The ACCC participated in the consultation process.

Compliance and consumer education resources prompted by the ACCC's new car retailing industry market study are described on page 78.

Senate Select Committee on Charity Fundraising in the 21st Century

On 19 June 2018 the Senate established the Select Committee on Charity Fundraising in the 21st Century to inquire into and report on the current framework of fundraising regulation for charities and options for reform. The ACCC made [a submission](#) on 6 August 2018 and appeared before the committee on 7 November 2018. The final report was tabled on 14 February 2019.

Unit Pricing Code of Conduct review

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

The ACCC's submission supported remaking the code, as it provides valuable information to consumers by increasing price transparency of products of different sizes. Additionally, our submission recommended improving the code by mandating specific requirements regarding the legibility of unit prices, ensuring more consistent display requirements for online retailers and consideration of whether the code should be extended to more retailers.

Inquiry into the Franchising Code and Oil Code

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

The committee made a number of recommendations, including that:

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

A number of recommendations in the report align with concerns that the ACCC raised in our submission to the inquiry—for example, our recommendation that UCTs in standard form contracts offered to small businesses be prohibited and for civil penalties and infringement notices to be available for a breach of that prohibition. The parliamentary committee has recommended that the inter-agency Franchising Taskforce consider this recommendation.

The government has announced that it will establish an inter-agency Franchising Taskforce to examine the feasibility and implementation of the report's recommendations. The taskforce includes representatives from the Department of the Treasury, the Department of Employment,

Skills, Small and Family Business, and the Department of the Prime Minister and Cabinet. The ACCC will be consulted.

Food and Grocery Code review

The final report of the independent [Food and Grocery Code of Conduct review](#) was released on 30 October 2018.

During the independent review, the ACCC made [submissions](#) advocating a number of changes to the code, including:

- making the code mandatory
- providing for civil penalties for breaches of the code
- improving the model for dispute resolution
- banning provisions that allow signatories to the code to ‘opt out’ of certain obligations and prohibitions under the code—for example, retrospective and unilateral variations
- ensuring detailed reasons are provided for delisting a supplier’s product.

Some aspects of our recommendations have been adopted, and there will be an opportunity to assess how the amended code is working at the next review in around three years.

On 27 March 2019 the government released its [response](#) to the Food and Grocery Code of Conduct review.

The government has accepted, or accepted in part, 13 of the 14 recommendations made by the independent review. The only recommendation not accepted by the government was recommendation 7, which suggests the ACCC have a more collaborative approach with signatories, the proposed code arbiters and the independent reviewer. The government has noted this recommendation.

Following the release of its response, on 4 April 2019 the government released draft amendments to the Food and Grocery Code of Conduct for public consultation and invited submissions responding to the draft amendments by 3 June 2019. The ACCC provided a submission on the draft amendments.

New Zealand Ministry of Business, Innovation and Employment discussion paper on unfair commercial practices

On 12 March 2019 the ACCC made a submission to the New Zealand Ministry of Business, Innovation and Employment on its discussion paper on unfair commercial practices. The submission outlined the ACCC’s experience in enforcing the unconscionable conduct and business-to-business UCT provisions of the ACL and the potential adoption of unfair trading practices in Australia.

The Ministry of Business, Innovation and Employment intends to report to the New Zealand Cabinet with any proposals for legislative change by 31 July 2019.

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.

Product safety priorities

Each year we release a standalone product safety policy setting out the principles we adopt to prioritise and address product safety risks. State and territory ACL regulators have endorsed these as national priorities. In 2018 and 2019 our consumer product safety priorities included:

- responding to dangerous Takata airbags and ensuring their replacement
- improving the safety of quad bikes
- supporting strategies that help prevent injuries and deaths to children caused by button batteries
- supporting strategies that help prevent injuries and deaths to infants caused by unsafe sleeping products
- ensuring better product safety outcomes for consumers in the online marketplace
- raising awareness and building capacity to address consumer safety hazards with interconnected devices
- progressing the development of a GSP and other reforms to the product safety provisions of the ACL
- improving product safety data by progressing the development of a national product safety incidents database
- continuing to review and update current mandatory safety standards and bans and conduct surveillance.

We also continued our work on:

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

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

For more information see the [Product safety priorities 2019](#) 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.

Responding to reports of hazards

When we receive a report about an unsafe consumer product, the report is risk assessed and prioritised, taking into account the 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 that 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)
- recommending a compulsory recall of goods if it appears that suppliers have not taken satisfactory action
- raising awareness or reminding consumers about hazards through social media, the Product Safety Australia website and campaigns
- negotiating voluntary changes to packaging, labelling or product design
- working with industry to encourage safe sourcing and supply
- introducing or reviewing mandatory safety standards and bans
- referring a matter for enforcement consideration.

Working with other regulators

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.

Working with stakeholders

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.

Mandatory reports

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

Responding to mandatory reports

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.

Mandatory reports in 2018-19

In 2018-19 we:

- received 3425 mandatory reports
- automatically referred 1495 reports to the food regulators
- assessed 1930 mandatory reports ourselves
- referred 96 reports to other regulators following assessment
- conducted a preliminary assessment of 99.99 per cent of reports relating to serious injury or death within seven days.

On average, 2846 reports have been received each year since commencement of the ACL.

Guidance for suppliers

Consistent with our review in 2017-18, we consider there is both under-reporting and over-reporting by suppliers. Over-reporting is observable in the fact that we receive reports that are not about serious injuries or serious illnesses for which medical treatment was needed or provided.

In 2019-20 we will publish new guidance for suppliers about how to undertake mandatory reporting in compliance with the ACL provisions. The guidance will provide businesses with confidence about when reporting is needed and reduce the burden on businesses that may be over-reporting in a precautionary way.

Voluntary recalls

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

Suppliers must advise the Commonwealth minister responsible for product safety matters within two days of commencing voluntary recall action. 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.

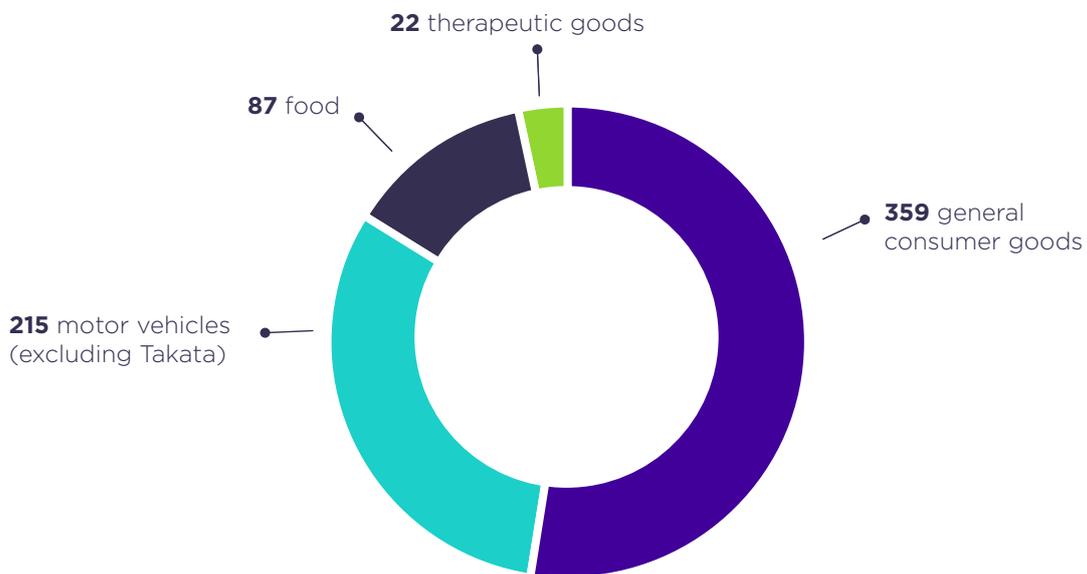
Voluntary recalls in 2018-19

In 2018-19 the three most successful postings of a recall were:

- a Ford Ranger front brake hose recall that reached 113 200 consumers on Facebook
- a GPC Asia Pacific recall of 6000 kg ratchet-type vehicle support stands that reached 74 400 consumers on Facebook
- a Michelin Australia recall of a single type of tyre, which reached 70 400 consumers on Facebook.

During the year we published a total of 683 recall notifications.

Figure 3.2: Recall notifications in 2018-19



Effectiveness of voluntary recalls

We continue to apply a risk-based approach to recall monitoring.

This year we:

- assessed 2194 recall progress reports submitted by suppliers
- completed 335 recall effectiveness reviews.

Compulsory recalls

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.

Compulsory Takata airbag recall

Ensuring the effectiveness of the compulsory recall of vehicles fitted with Takata airbag inflators and specified spare parts is an ACCC product safety priority and ACCC Compliance and Enforcement Policy priority in 2018 and 2019.

The Takata airbag recall is the world's largest automotive recall affecting an estimated 100 million vehicles globally. It is the most significant recall in Australian history—it affects over four million Takata airbag inflators and involves more than three million vehicle recalls. Worldwide, there have been at least 26 deaths and more than 300 serious injuries reported as associated with misdeploying defective Takata airbag inflators. Tragically, one death and one serious injury resulting from misdeployed Takata airbag inflators have been reported in Australia.

On 28 February 2018, following the ACCC's comprehensive safety investigation and extensive consultation, the Assistant Treasurer the Hon. Michael Sukkar MP issued the *Consumer Goods (Motor Vehicles with Affected Takata Airbag Inflators and Specified Spare Parts) Recall Notice 2018*. The compulsory recall aims to achieve a more effective, comprehensive and timely replacement of affected airbags than under voluntary recalls initiated by some vehicle manufacturers before the compulsory recall. It also mandates greater consistency across recall actions by suppliers in specifying the timeframes and the manner in which recall action must occur. Specifically, the recall notice requires companies that supply vehicles with defective Takata airbags to Australia to recall and replace affected airbags as quickly as possible, in accordance with priority factors that take into consideration the safety risks and by 31 December 2020 (unless on application an alternative date is approved by the ACCC). Suppliers may face penalties under the ACL for non-compliance with the recall notice.

Progress to date

The compulsory recall has been very successful in quickly reducing the number of affected airbags on Australian roads. Since July 2017, when the ACCC began overseeing the Takata recall, there have been an average of 101 488 airbag inflators in 82 029 vehicles repaired each month, equating to a staggering 4812 airbag inflator replacements each business day.

As at 30 June 2019 around 3.21 million defective Takata airbags (78.9 per cent) have now been rectified in 2.28 million vehicles, leaving around 603 938 airbag inflators (14.8 per cent) in about 536 932 vehicles remaining for replacement. This excludes 255 745 inflators (6.3 per cent) in 218 207 vehicles identified by vehicle manufacturers as unrepairable (for example, written off, scrapped, modified and unable to have the airbag replaced).

The ACCC is particularly concerned about the approximately 5938 outstanding critical vehicles. This figure includes 4495 alpha vehicles and around 1443 critical (non-alpha) vehicles that have been identified by vehicle manufacturers as requiring urgent repair. A vehicle is 'critical' when the manufacturer identifies it as having a Takata airbag inflator that poses a heightened safety risk and it is critical that replacement occur immediately. This category applies to alpha airbags and also other airbags specified by the vehicle manufacturer. Alpha airbags are a subset of critical Takata airbags that were fitted in certain models of Honda, Toyota, Nissan, BMW, Mazda and Lexus cars sold in Australia between 2001 and 2004. Critical non-alpha vehicles include some Honda and Toyota cars sold in Australia between 2002 and 2012.

Actions to increase the effectiveness of the recall

In February 2019 we published [Communication ideas: Reaching consumers affected by the compulsory Takata recall](#) to help suppliers increase their consumer reach and to maximise the effectiveness of the compulsory recall. We also published Frequently Asked Questions on the Product Safety Australia website to provide further guidance on the application of special circumstances and to encourage suppliers to bring forward replacements where parts become available earlier than scheduled.

The ACCC continues to engage closely with the Federal Chamber of Automotive Industries, the authorised representative of many vehicle manufacturers, to ensure the efficacy of the national mandatory industry consumer awareness and advertising campaign. The campaign's message,

'Faulty airbags? Don't die wondering', calls on consumers to check if their vehicle is affected by going to www.IsMyAirbagSafe.com.au and using the vehicle registration look-up tool or texting 0487 AIRBAG and following the prompts. As at 30 June 2019 the look-up tool had been accessed approximately 7.5 million times, with over 1.2 million affected vehicles identified.

In addition to industry communication activity, in May and June 2019 the ACCC rolled out a Takata outreach program targeted at communities with a high representation of consumers from culturally and linguistically diverse (CALD) backgrounds. These communities were identified as being at high risk because of low replacement rates compared with the general population. ACCC staff met with over 70 community, government, law enforcement and media organisations in the most at-risk suburbs located in Brisbane, Adelaide, Melbourne and Sydney. These 'trusted messengers' generously agreed to help spread the word throughout their networks, helping consumers to check their vehicle and urging them to act if affected. As part of this initiative, we distributed a resource package that included material translated into 19 languages. Through the combined outreach effort of this CALD initiative and the Indigenous outreach program (see deliverable 2.1), the ACCC has reduced the risk of vulnerable consumers being left behind in the progress of the recall.

The ACCC, through the Takata Interagency Group, is working in close consultation with state and territory road transport authorities, state and territory ACL regulators, the Department of Infrastructure, Transport, Cities and Regional Development, the Australian Financial Security Authority and Austroads to progress a number of initiatives to increase consumer awareness and enhance the effectiveness of the compulsory recall. For example:

- A key initiative is consideration by road traffic authorities of registration sanctions for vehicles fitted with high-risk defective Takata critical 'alpha' airbag inflators. The ACCC has welcomed announcements from jurisdictions that have adopted these sanctions and will continue to work closely with its counterparts around the country.
- The Australian Financial Security Authority implemented updates to the Personal Property Securities Register's search certificate so that it now provides consumers and industry with information about whether a vehicle is affected by the Takata recall. To search the Personal Property Securities Register visit www.ppsr.gov.au.
- The ACCC is developing an industry surveillance and outreach program to be rolled out in partnership with the ACL regulators in each state and territory. The intelligence received from this program will assist us as the lead regulator to consider appropriate compliance and enforcement action in accordance with our [Compliance and Enforcement Policy and priorities](#).

Mandatory safety standards and bans for consumer products

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

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

Reviewed mandatory safety standards

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

In 2018–19 the ACCC completed four reviews of mandatory safety standards, with the responsible minister deciding to make four new or amended standards.

Table 3.25: Updated mandatory safety standards

Mandatory safety standard	Description
Disposable cigarette lighters	Updated February 2019. Prescribes requirements for disposable cigarette lighters by allowing compliance with international standards.
Prams and strollers	Updated February 2019. Amended to clarify that strollers include products that can operate in more than one mode, such as a convertible tricycle that converts into a stroller.
Children's nightwear	Updated February 2019. The mandatory standard now references the latest version of the voluntary Australian Standard.
Self-balancing scooters	Updated April 2019. Extends the operation of the standard by 24 months to 16 July 2021 and updates references to international standards.

Quad bike safety

Sometimes a product poses a very high risk of injury to consumers and the issue requires dedicated resources to achieve a decisive and targeted outcome. Quad bike safety is one of these issues. Improving the safety of quad bikes remained a product safety priority in 2018–19. We continued this work through our Quad Bike Taskforce.

Since 2011 quad bikes have caused at least 133 fatalities in Australia, including 21 fatalities involving children. In October 2017 the ACCC commenced an investigation of the safety of quad bikes so that it could advise the Assistant Treasurer whether a mandatory safety standard under the ACL would be necessary to prevent or reduce the risk of injury.

In March 2019 the ACCC provided the Assistant Treasurer with its final recommendation for a mandatory safety standard.

The recommended safety standard requirements are as follows:

- Within 12 months, all new quad bikes must meet certain requirements of the US or European standards, have a warning label affixed and have information in the operator's manual alerting the rider to the risk of rollover. They must also have a hang tag that displays the angle at which the quad bike tips onto two wheels when tested for lateral static stability.
- Within 24 months, new general-use model quad bikes must have an operator protection device fitted or integrated into its design and must meet minimum stability requirements.

On 6 April 2019 the then Assistant Treasurer, the Hon. Stuart Robert MP, announced the Australian Government would seek comment on the ACCC draft mandatory quad bike safety standard. Submissions closed on 10 June 2019. The ACCC will update the Australian Government regarding the feedback we receive.

Consumer product safety compliance

Strategies to improve compliance

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

In partnership with ACL regulators and other organisations, we coordinate and conduct joint surveillance, testing and compliance activities to address safety concerns.

Continuing to survey the market to identify compliance concerns with existing regulations and bans and to assist in the identification of new hazards is a product safety priority for 2019.

During 2018-19 we conducted 2044 inspections of wholesalers, retailers and online suppliers to assess their compliance with 21 mandatory safety standards, bans or voluntary codes. Our inspections resulted in suppliers withdrawing 13 product types from sale and voluntarily recalling 42 non-compliant product types, including:

- 11 brands of mini jelly cups containing konjac—these are subject to a permanent ban
- five pairs of sunglasses or fashion spectacles
- three household cots
- four bunk beds
- 11 bean bags.

Product safety enforcement

The key focus for product safety enforcement during the period was the marketing and sale of unsafe convertible strollers.

Enforcement outcomes

Table 3.26: Enforcement outcomes relating to product safety 2018-19

Enforcement outcome	Case	Status
Infringement notices and s. 87B undertakings combined	Baby Bunting Pty Ltd	2 notices—\$25 200
Infringement notices and s. 87B undertakings combined	Target Australia Pty Ltd	3 notices—\$37 800

► Case study: Addressing the risk from the marketing and sale of unsafe convertible strollers

The ACCC's [market-wide review of convertible tricycle/stroller products](#) found that many were designed and marketed to be used as strollers but did not have key safety features required by the relevant mandatory standard, including parking brakes, tether straps and suitable harnesses. After engagement with industry, most of these products were withdrawn from sale at major retailers. In 2018 the ACCC developed and published [guidance for consumers](#) in which we urged consumers to avoid using convertible strollers to transport children, as they do not typically include important safety features.

The ACCC took enforcement action against Target Australia Pty Ltd (Target) and Baby Bunting Pty Ltd (Baby Bunting) for marketing and selling convertible strollers as safe to be used for transporting babies and young children despite the fact they did not comply with the mandatory safety standard for prams and strollers.

Target paid \$37 800 and Baby Bunting paid \$25 200 in penalties after the ACCC issued infringement notices to both retailers. Both retailers have also entered into court enforceable undertakings acknowledging that they are likely to have contravened the ACL by selling products that did not comply with a mandatory safety standard. They have agreed to:

- stop selling the products unless they meet all relevant mandatory safety standards, and
- strengthen their consumer law compliance programs.

Improving product safety in the online marketplace

Improving product safety in the online marketplace was a Compliance and Enforcement Policy priority in 2018 and a product safety priority in 2019.

Online shopping, or e-commerce, is a growing market, driven by convenience and competitive prices. While it offers consumers many benefits, rapid growth in this area means it is likely that non-compliance with product safety regulations will occur.

The ACCC has a strategy, developed in 2017, to gain the cooperation of major online selling platforms, including eBay, Etsy, Alibaba, Gumtree and Catch.com.au, to improve product safety compliance on their platforms.

This year we negotiated with online selling platforms to implement a range of measures to improve awareness and prevent the appearance of unsafe products on their platforms. For example, we have sent tailored compliance alerts with information to sellers about Australian regulations and implemented processes to enable swifter removal of listings of unsafe products before they reach Australian consumers.

We have developed several educational resources to assist online suppliers to meet their obligations under the ACL. For example, we have published:

- a dedicated resource for online sellers and platforms on our [Product Safety Australia website](#)
- a series of [short fact sheets](#) based on some mandatory standards, including a translation program
- targeted product safety letters to marketplace suppliers about products sold online that had high levels of non-compliance. This year the ACCC sent out targeted compliance alerts on household costs, bean bags, internal corded window coverings and small high-powered magnets. These alerts reached over 8800 online sellers. Of those sellers, approximately 2000 were sent compliance alerts in a language other than English.

Support small business

Actions undertaken to achieve our purpose

Deliverable 2.4: Support a vibrant small business sector

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

In 2018 and 2019 the ACCC continued to prioritise ensuring small businesses receive the protections of industry codes of conduct, including the Franchising Code of Conduct, as well as the new UCT laws.

To support the priority, we:

- enforced provisions of the ACL that relate to small business
- provided information, education and services to small businesses
- developed partnerships to help us better engage with and inform small businesses
- enforced codes of conduct
- authorised collective bargaining in certain circumstances in the public interest.

Our Agriculture Unit undertook:

- engagement with a range of industry stakeholders
- a market study of the Australian wine grapes industry (see page 152)
- investigations and enforcement action in the agriculture sector, with a focus on addressing the inherent imbalance of power that exists between processors and their farmer suppliers.

Codes of conduct

An ACCC priority for 2018 and 2019 was ensuring small businesses receive the protections of UCTs and industry codes, with a focus on the Franchising Code of Conduct.

Mandatory codes of conduct

We are responsible for promoting and enforcing compliance with seven mandatory prescribed industry codes:

- the Franchising Code of Conduct
- the Horticulture Code of Conduct
- the Oil Code of Conduct
- the Port Terminal Access (Bulk Wheat) Code of Conduct
- the Sugar Code of Conduct
- the Retail Electricity Code of Conduct
- the Unit Pricing Code.

We are also responsible for one voluntary prescribed industry code: the Food and Grocery Code of Conduct.

For more information on the codes, see the [Industry codes](#) page on our website.

We use a structured process to actively assess reports of misconduct that we receive in relation to industry codes, and we escalate matters for investigation where appropriate.

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 [Guidelines for developing effective voluntary industry codes of conduct](#) are available on our website.

Franchising Code of Conduct enforcement

Addressing concerns under the Franchising Code of Conduct remained a priority in 2018-19. We investigated alleged breaches of the Franchising Code as well as possible false and misleading representations, unconscionable conduct and failures to act in good faith in relation to franchising agreements. We took enforcement action where appropriate.

In 2018 there was significant public focus on franchising, with the Parliamentary Joint Committee on Corporations and Financial Services conducting an inquiry into the sector. Further information on the ACCC's role and submission to the inquiry is provided on pages 101-102.

The ACCC continues to focus on education and awareness within the sector and has conducted a number of compliance checks under the CCA to enhance compliance with the Franchising Code and the CCA more broadly. Compliance with the disclosure document requirements of the Franchising Code are a key area of focus for ACCC's compliance checks. These requirements are important because they assist franchisees and prospective franchisees to make informed decisions about whether they will buy into the franchise or renew their existing agreement.

Given the inherent imbalance in power that exists between parties under the franchising model, the ACCC pursues enforcement action for breaches identified in accordance with its Compliance and Enforcement Policy.

Targeted compliance checks

In 2019 we commenced our Franchising Project, which focuses on conducting targeted compliance checks to address specific problems or harms of special interest or examining industries of concern.

On 7 February 2019 we announced that the café, restaurant and takeaway food services industry will be the target of the ACCC's next round of compliance checks. We selected this industry because we receive more Franchising Code related reports against franchisors in this industry than in any other.

The ACCC is assessing important documents that franchisors provide to prospective franchisees to ensure that they clearly and accurately disclose information that is important for prospective franchisees to consider before they sign franchise agreements or pay non-refundable money.

Pursuant to s. 51ADD of the CCA, we have issued 12 notices to franchisors in the café, restaurant and takeaway food services industry requiring them to provide information and documents to enable us check their compliance with the Franchising Code of Conduct, particularly in respect to their mandatory disclosure obligations such as disclosure of current and former franchisee contact details, disclosure of site or territory history and disclosure of restrictions on where franchisees can buy goods and services.

The Franchising Project will be complemented by an education campaign, which will promote the project outcomes and learnings to the franchise community and other interested stakeholders. The education campaign includes a digital advertising campaign targeted at prospective franchisees, including people from non-English-speaking backgrounds. A campaign web page, new and existing online resources and three videos on specific aspects of buying and operating a franchise will be promoted using digital advertising and social media. The videos and two

fact sheets have been translated into simplified Chinese, traditional Chinese and Hindi to help target these audiences, which are often hard to reach. This campaign aims to achieve increased engagement with prospective franchisees and raise awareness of the importance of reading and understanding information before buying a franchise.

Enforcement outcomes

Table 3.27: Enforcement outcomes relating to franchising 2018-19

Enforcement outcome	Case	Status
Litigation commenced	Jump Loops Pty Ltd & Anor	Ongoing
Litigation finalised [#]	Ultra Tune Australia Pty Ltd	Penalties of \$2 604 000
Litigation awaiting judgment	Geowash	Awaiting penalty judgment
Section 87B undertaking	Husqvarna Australia Pty Ltd	Rectification of issues and future compliance
Administrative resolution	Luxottica Franchising Australia	Rectification of issues and future compliance

[#] Post 30 June 2019 this matter is subject to appeal.

► Case study: Enforcement action to protect franchisees

The ACCC achieved significant outcomes against four franchise systems in 2018-19. We have additional work underway investigating other suspected breaches of the Franchising Code of Conduct, and we expect to commence additional proceedings in 2019-20.

The Federal Court imposed a penalty of \$2 604 000 against Ultra Tune Australia Pty Ltd (Ultra Tune) for breaching both the Franchising Code and the ACL. The Court found that Ultra Tune failed to act in good faith in breach of the code and made false or misleading representations to a prospective franchisee about the price of the franchise, the ongoing rent of the premises and the age of the franchise. Ultra Tune also told the prospective franchisee that a \$33 000 deposit was refundable when this was not the case. These are the first proceedings that the ACCC has brought against a franchisor alleging a breach of the Franchising Code obligation to act in 'good faith' in business dealings with franchisees. Ultra Tune was ordered to pay the prospective franchisee his \$33 000 deposit back with interest.

The ACCC was successful in action against former hand car wash and detailing franchisor Geowash and two associated individuals. The Federal Court found that Geowash had acted unconscionably, made false or misleading representations and failed to act in good faith in breach of the Franchising Code in relation to the sale and marketing of its franchises. The court found that Geowash acted unconscionably towards franchisees through its charging practices for the establishment and fit-out of Geowash franchise sites. The amount Geowash charged its franchisees did not reflect the likely costs of establishing those sites but instead reflected the amount franchisees were willing to pay.

Luxottica Franchising Australia (Luxottica), the franchisor of eyewear retailers OPSM and Laubman and Pank, has committed to be more transparent about the structure and operation of its franchise system to franchisees. This commitment was made following an ACCC investigation that found Luxottica's marketing fund financial statement and disclosure documents were unlikely to comply with the Franchising Code.

Husqvarna Australia Pty Ltd (Husqvarna) has provided a court enforceable undertaking after it admitted it was likely to have misled its franchisees when it stated that the Franchising Code did not apply to their contracts. If an agreement meets the definition of a franchise agreement it will be covered by the code, regardless of the language used to describe it. By claiming that the dealership agreements were not franchising agreements, Husqvarna acknowledged that it was likely to have given dealers the impression that they were not entitled to protections under the code. Husqvarna has since rewritten its dealership agreements and undertaken not to enforce the terms in its existing agreements, which the ACCC considers were likely to be UCTs.

In June 2019 the ACCC commenced proceedings against Jump Loops Pty Ltd and its parent company, Swim Loops Holdings Pty Ltd (collectively Jump Swim), alleging that it made false, misleading or deceptive statements about Jump Swim School franchises in breach of the ACL. It is alleged Jump Swim made representations in its promotional material that a prospective Jump Swim School franchisee would have an operational swim school within 12 months of signing a franchise agreement. There are over 90 Jump Swim franchisees who the ACCC alleges did not receive an operational swim school within 12 months or at all. The initial costs of setting up a Jump Swim School generally ranged from approximately \$150 000 to \$175 000. These proceedings are continuing.

These actions show the importance of franchisors ensuring that they promote and sell legitimate franchise businesses to franchisees based on accurate and truthful information and in accordance with disclosure obligations under the code. The ACCC is committed to pursuing franchisors who disregard their obligations under the code and the ACL in order to better protect franchisees.

Unfair contract terms enforcement

In 2018-19 the ACCC continued to take action to address inclusion of UCTs in business-to-business standard form agreements. Reliance on UCTs can create a significant power imbalance between parties, often resulting in detriment to small business. The ACCC has undertaken significant work advocating for reforms to the current UCT laws. Further discussion of this work is provided on page 100.

In 2018-19 a key issue of focus in our enforcement action was identifying and removing UCTs from standard form agreements in the stevedoring, waste management and dairy industries. By targeting these industries, we have achieved wide-reaching outcomes for small business. Thousands of transport businesses that have standard form agreements with identified stevedoring companies will benefit from the removal of identified UCTs. Similar changes have been made to standard contract terms used throughout the waste and dairy industries.

Enforcement outcomes

Table 3.28: Enforcement outcomes relating to breaches of the unfair contract term laws 2018–19

Enforcement outcome	Case	Status
Litigation finalised	Servcorp Ltd & Ors	Declaration that 12 terms in standard form contracts are unfair and therefore void
Section 87B undertaking	Hutchison Ports Australia Pty Ltd	Undertaking to not rely on unfair contract terms and removal from future agreements
Administrative resolutions	DP World Australia Hutchison Ports Australia Pty Ltd Victoria International Container Terminal	Removal of unfair contract terms in standard form contracts between stevedoring and transport companies
Administrative resolutions	Visy Paper Pty Ltd Cleanaway Pty Ltd Suez Recycling & Recovery Pty Ltd	Removal of unfair contract terms in the waste industry

Further outcomes in relation to the removal of UCTs from dairy supply agreements are discussed below.

Review of Unfair Contract Term Protections for Small Business

On 22 November 2018 the government commenced the Review of Unfair Contract Term Protections for Small Business. The review sought stakeholder views on the impact of the extension of UCT protections to small business, whether the objective set for the original reform has been met and whether any changes are required to improve the current framework.

On 21 December 2018 the [ACCC made a submission](#) to the review in which we supported UCTs in standard form contracts being made a contravention of the CCA and subject to civil pecuniary penalties, along with other remedial orders commonly available to the court for contraventions of the ACL.

On 28 March 2019 the government announced that the review found that, while the current UCT regime has improved protections provided to small business in certain industry sectors, it does not provide strong deterrence for businesses to not use UCTs and therefore does not afford appropriate protections to many small businesses. The government has confirmed that it will introduce amendments strengthening the current laws, subject to the outcomes of a RIS process.

Enforcement work in the agriculture sector

In 2018–19 the ACCC prioritised competition and consumer issues in the agriculture sector, with a particular focus on the Dairy Inquiry, the Horticulture Code of Conduct, the viticulture industry and UCTs in supply agreements.

A key issue of focus in the ACCC’s enforcement work has been addressing the inherent imbalances of power that exist between processors and their farmer suppliers. These imbalances often negatively affect farmers and growers when it comes to negotiating supply and price agreements. We have paid particular attention to these issues in the dairy and horticulture industries.

For information on other agriculture work undertaken in the period, including our compliance and engagement work, see pages 61–62. For details on the ACCC’s market studies, including the wine grapes market study, see page 152.

Enforcement outcomes

Table 3.29: Enforcement outcomes relating to agriculture 2018–19

Enforcement outcome	Case	Status
Litigation commenced and finalised	Landmark Operations Pty Ltd (t/a Seednet)	Penalties of \$1 million
Litigation finalised	Murray Goulburn Co-operative Co Ltd	Penalties of \$200 000 against former Managing Director Gary Helou
Infringement notice	Stuart Dickson Produce Pty Ltd	1 notice—\$10 500 for breach of Horticulture Code
Administrative resolution	Brownes Foods Operations Lion Dairy & Drinks Norco Co-operative Limited Parmalat Australia Fonterra Australia	Removal of unfair contract terms in the dairy industry
Administrative resolution	MV Napoleone & Co Pty Ltd (t/a Red Rich Fruits)	Removal of unfair contract terms in the horticulture industry
Administrative resolution	Warrnambool Cheese and Butter Factory Holdings Limited	Removal of unfair contract terms in the dairy industry

The ACCC has taken action to improve terms and conditions in commercial supply arrangements, resulting in more certainty for farmers around supply and price for their products. Similarly, to protect the interests of growers and their ability to improve their position in negotiations with wholesalers, we have also issued an infringement notice to a wholesaler for an alleged breach of the 2017 Horticulture Code.

► Case study: Removing unfair contract terms in milk supply agreements

Following recommendations made in the ACCC's *Dairy inquiry final report*, significant work has been undertaken to correct imbalances in bargaining power at each level of the dairy supply chain. The ACCC has undertaken considerable work with dairy processors over the past year to ensure that terms in the contracts they offer farmers comply with the business-to-business UCT laws.

Dairy processors Brownes Foods Operations, Lion Dairy & Drinks, Norco Co-operative Limited, Parmalat Australia and Fonterra Australia each agreed to amend specific terms in their milk supply agreements to address the ACCC's concerns that these terms were unfair to dairy farmers. Most processors agreed to provide dairy farmers the right to terminate their contract if the processor varies supply terms such as price or quality requirements in a way which disadvantages the farmer.

The ACCC also raised concerns with some processors about lengthy notice periods required for farmers to terminate their contracts, one-sided termination rights, broad indemnity requirements and terms that restrict a farmer's ability to lease a farm or sell their cattle.

Warrnambool Cheese and Butter Factory Holdings Limited (WCB) altered terms in its milk supply agreements and milk supply handbook following engagement with the ACCC regarding potential UCTs. WCB's contracts with farmers contained terms that allowed it to unilaterally vary the milk price and other milk supply terms, with the farmers unable to terminate the milk supply agreement early without incurring a financial penalty. WCB's contracts also placed restrictions on farmers selling their farm and required farmers to indemnify WCB for loss that could be avoided or mitigated by WCB.

WCB worked with the ACCC to address our concerns and agreed that it would not impose a penalty on any farmer who terminates their milk supply agreement before the expiration date, would not unreasonably withhold consent from a farmer wishing to sell their farm and would narrow the scope of the indemnity required from farmers. WCB has written to farmers who operate under these agreements to advise them of the changes and will also make the relevant changes to its milk supply handbook for the 2018-19 season.

These actions have resulted in significant improvements for farmers, ensuring greater certainty around price and supply when negotiating with processors. They also send a clear message to the industry that the ACCC will continue to take action to address the issues highlighted by the Dairy Inquiry.

► Case study: Addressing false or misleading claims about farmgate milk prices

The Federal Court ordered, by consent, former Murray Goulburn Co-operative Co Ltd managing director, Mr Gary Helou, to pay \$200 000 in penalties for being knowingly concerned in Murray Goulburn's false or misleading claims about the farmgate milk price it expected to pay dairy farmers during the 2015-16 milk season. Murray Goulburn admitted it made false or misleading representations when it represented to farmers in Victoria, South Australia and southern New South Wales on 29 February 2016, and subsequently until 27 April 2016, that it could maintain its opening milk price of \$5.60/kgms.

Mr Helou admitted he was involved in the misleading representations made by Murray Goulburn. This included not informing farmers of risks known to Murray Goulburn and making unfounded assumptions that Murray Goulburn could achieve its milk powder sachet sales targets. As a result of these claims, farmers were denied the opportunity to plan for the impact of the reduced milk price on their businesses, including implementing measures to reduce their exposure to a decrease in the milk price or shopping their milk around to other dairy processors.

The ACCC did not seek a penalty against Murray Goulburn because, as it is a cooperative, any penalty imposed on it could end up being paid by the very farmers who were misled.

Mr Helou has undertaken to the Court that he will not be involved in the dairy industry for three years. The ACCC had earlier resolved its proceedings against Murray Goulburn's former chief financial officer, Mr Bradley Hingle, after he gave an undertaking to the Court that he would not be involved in the dairy industry for three years.

► Case study: Addressing misleading claims about crop qualities and performance

The ACCC took action to address misleading marketing claims in the agriculture sector, making it clear that any representations about the properties or performance of new products must be substantiated.

The Federal Court ordered Landmark Operations Limited (trading as Seednet), by consent, to pay a \$1 million penalty for making false, misleading and deceptive claims in a fact sheet for its barley variety known as 'Compass'. From at least December 2014 to December 2016 Seednet told farmers that Compass barley had strong straw and better straw strength and lodging resistance (ability to remain upright) than an older variety of barley known as 'Commander'. However, this was not the case. Seednet represented that Compass was better suited to early sowing, higher-fertility paddocks and higher nitrogen rates than Commander. In addition, Seednet represented from at least January 2016 through to December 2016 that Compass had higher resistance to a disease known as leaf rust than it actually did.

Seednet admitted it made the lodging and leaf rust claims through fact sheets distributed nationally, despite the fact that Seednet was, or ought to have been, aware that Compass' performance did not support the lodging representations and that the leaf rust representations understated Compass' susceptibility to leaf rust.

The ACCC was concerned that Seednet's conduct may have misled farmers in relation to the crops they were planting. This outcome better positions crop farmers to trust and rely on the information provided by agribusiness about crop qualities and performance.

► Case study: Penalty for the first breach of the 2017 Horticulture Code

Sydney fruit and vegetable wholesaler Stuart Dickson Produce Pty Ltd paid a penalty of \$10 500 in response to an infringement notice issued by the ACCC. This is the first infringement notice issued under the updated 2017 Horticulture Code of Conduct. The ACCC issued the notice after Stuart Dickson allegedly traded with a grower in horticulture produce without having a written horticulture produce agreement in place.

In addition, Melbourne fruit wholesaler MV Napoleone & Co Pty Ltd (trading as Red Rich Fruits) amended its horticulture produce agreements with growers after the ACCC raised concerns that the agreements contained UCTs and terms which may not comply with the Horticulture Code. In particular, the ACCC was concerned that these agreements included a term which allowed Red Rich Fruits to seek credit from a grower for non-complying produce returned by a third party and required the grower to provide credit for the amount the third party had paid Red Rich Fruits, which was likely to include the trader's profit margin. Other terms amended by Red Rich Fruit included pricing and payment clauses that may have breached the Horticulture Code's pricing formula and payment transparency terms.

These actions seek to improve protections for fruit and vegetable wholesalers by ensuring that they receive the benefits of the Horticulture Code.

Country of origin labelling

Since the Country of Origin Food Labelling Information Standard 2016 became mandatory on 1 July 2018, the ACCC and ACL regulators have been working to ensure that businesses are presenting accurate information to consumers about the country of origin of their products.

The ACCC is now conducting compliance checks and requesting that certain food sellers substantiate country of origin claims on selected food products.

The ACCC is continuing to conduct market surveillance with the National Measurement Institute to identify businesses that may not be complying with the food labelling laws. Market surveillance is being conducted on 10 000 food products with a focus on priority foods sold in supermarkets.

'Made in Australia' labelling of complementary healthcare products

Under the country of origin labelling framework, products that are manufactured using imported ingredients must be at least 'substantially transformed' in Australia to have the benefit of the safe harbour defence.

In December 2018 the Federal Court ruled that encapsulation in Australia of imported fish oil and Vitamin D by Nature's Care Manufacture Pty Ltd does not constitute 'substantial transformation' of the product. The product's 'Made in Australia' claim was therefore not protected by the safe harbour defence available under the ACL.

Between December 2018 and February 2019 the Australian Government Complementary Healthcare Taskforce reviewed the impact of recent consumer law changes on the complementary healthcare sector, considering how the current country of origin labelling policy framework, including ACCC guidance regarding the substantial transformation test, interacts with the complementary healthcare sector.

The taskforce provided options for consideration, ranging from no change to examining alternative mechanisms such as brands to help industry develop its export capability and a range of regulatory solutions that would improve access to the Australian Made logo while mitigating negative consequences for its value.

On 5 April 2019 the government announced that it will support continued access to the Australian Made logo for the Australian complementary healthcare industry. Complementary healthcare

products manufactured in Australia in production facilities regulated by the Therapeutic Goods Administration will be able to make the claim 'Australian Made' and use the Australian Made logo.

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 [small business](#) 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 (8066 subscribers)
 - Franchising Information Network (3154 subscribers)
 - Agriculture Information Network (1821 subscribers)
 - Oil Code Information Network (942 subscribers)
 - Competition Law Network (1644 subscribers)
 - Communications Information Network (2540 subscribers)
- targeted publications, mobile apps, online education modules and videos
- specific guidance materials such as the ACCC's [Small business and the Competition and Consumer Act](#) publication and [Small business in focus report](#)
- 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. In 2018-19 there were over 5907 users of the program, bringing the total number of users since the program's launch in April 2013 to over 43 384.
- The ACCC funds a franchise pre-entry program now administered by FranchiseEd. More than 940 people enrolled in this ACCC-sponsored program during 2018-19, bringing the total number of enrolments since the program's launch in July 2010 to over 17 708.
- 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. This year, 3272 people enrolled in this program, bringing the total number of users since its launch in 2013 to 47 949.

Allowing collective bargaining in the public interest

Collective bargaining class exemption

We are in the process of developing a 'class exemption' that will allow small businesses to negotiate collectively.

Smaller businesses can sometimes be better off negotiating with customers or suppliers as a group. Working together, they may be able to negotiate more efficiently with larger businesses and achieve better terms and conditions than they can on their own. However, without some form of legal protection, this kind of joint bargaining would be at risk of breaching the CCA.

The class exemption will effectively provide a safe harbour so that groups of small businesses can collectively bargain without having to seek the ACCC's approval.

The ACCC was given the power to make class exemptions in 2017, and this is to be the first one.

The proposed collective bargaining class exemption would allow:

- a business or independent contractor with aggregated turnover of less than \$10 million (in the preceding financial year) to form or join a collective bargaining group to negotiate with suppliers or customers about the supply or acquisition of goods or services
- franchisees to collectively bargain with their franchisor, regardless of their size or other characteristics
- fuel retailers to collectively bargain with their fuel wholesaler, regardless of their size or other characteristics.

This class exemption would be in addition to the ACCC's existing [authorisation](#) and [notification](#) processes. Businesses will still be able to use these processes to obtain ACCC approval for collective bargaining arrangements (for example, if they do not fit within the class exemption eligibility criteria or they are also seeking legal protection for a collective boycott). The main difference is that businesses that fall within the scope of a class exemption can get automatic exemption; they will not need to apply to the ACCC as they do with authorisations and notifications.

We can make a class exemption where we are satisfied that the type of conduct covered by the class exemption would be unlikely to substantially lessen competition or would provide an overall public benefit. We consider that small business collective bargaining is likely to satisfy these criteria.

The ACCC undertook consultation on a draft version of a collective bargaining class exemption in May and June 2019. The class exemption is expected to be finalised and put in place in the first half of 2019-20.

Decisions on small business collective bargaining proposals

We can approve a collective bargaining arrangement—where two or more competing businesses wish to jointly negotiate with a supplier or a customer over terms, conditions and prices—where we are satisfied that the arrangement provides an overall public benefit. Without ACCC approval, such arrangements may contravene the CCA.

Potential benefits include sharing the time and cost of negotiating contracts, coordinating ordering and/or delivery, accessing new market opportunities from combining volume and gaining better access to information.

There can also be benefits for the business with which the group negotiates, such as reduced negotiation costs, more certainty of supply and savings from aligning transport and distribution.

During 2018–19 we considered 25 collective bargaining proposals under the authorisation and notification provisions of the CCA. The proposals we considered involving small businesses included music licensing, dairy, homeworkers and logistics.

Table 3.30: Overview of small business related authorisations 2018–19

Total authorisations decided (excluding minor variations)	18
Small business related authorisations decided (excluding minor variations)	4

Table 3.31: Overview of small business related collective bargaining notifications 2018–19

Total collective bargaining notifications assessed	13
Small business related collective bargaining notifications assessed	10

Empower consumers

Actions undertaken to achieve our purpose

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

The ACCC's educative function is central to our role in protecting the interests and safety of consumers, because awareness and information are the tools that empower people to understand and exercise their consumer rights. Our educational and publicity campaigns help consumers to make smart choices even in complex or difficult markets.

To empower consumers by increasing their awareness of their rights, we:

- develop and distribute information materials targeted to particular groups
- publicise our enforcement actions
- conduct public education campaigns on specific issues
- operate the ACCC contact centre (the Infocentre) to respond directly to enquiries and reports on consumer issues and to gather information about current trends to inform our educational work
- gather and analyse intelligence on current trends and emerging issues relating to consumer rights.

Distributing consumer information

In 2018-19 we distributed targeted and general information through our website and Facebook, Twitter and YouTube channels to help consumers. For example:

- The Product Safety Australia website provides a user-friendly single entry point to national, state and territory product safety and recalls information. Traffic reached 6 545 148 unique page views last financial year.
- We continued to publish voluntary recalls through social media channels to extend their reach to affected consumers.
- We engaged on campaigns with key consumer and government stakeholders, such as members of the Consumer Consultative Committee and Scams Awareness Network.
- We engaged with a range of private businesses and peak bodies to promote consumer information.

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 2018-19, see:

- 'Scams' on pages 88-90
- 'Working with partners' on pages 91-102
- 'Compulsory Takata airbag recall' on pages 107-108
- consumers with disability on page 74
- 'Consumer directed aged care project' on pages 75-76.

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 2018-19 these opportunities included the annual National Consumer Congress, the Ruby Hutchison Memorial Lecture and meetings of the ACCC Consumer Consultative Committee.

► Case study: Consumer product safety DIY vehicle safety campaign

In June 2019 the ACCC launched a new communication campaign to renew and promote safety messaging targeting people attempting DIY repairs and maintenance on their cars. The campaign included the development and release of two videos, a media release and a targeted social media campaign to raise awareness of this important issue. ACCC Commissioner Mick Keogh also provided media interviews in relation to the renewed campaign.

[The first of these videos is informative](#). It provides consumers with safe use instructions when preparing a vehicle for DIY maintenance and has been designed to appeal to the everyday car enthusiast. This will allow the video to compete with the many other DIY videos found on the internet, which may have unsafe information.

[The second video is an emotive piece](#). Robinette Emonson discusses the loss of her husband, who died when a vehicle rolled off ramps and crushed him at home. This video has been created to drive behavioural change towards carrying out DIY activities with vehicles.

The videos will have a long shelf life, enabling the ACCC to continue use them in safety messaging for the foreseeable future. They were published with an accompanying range of promotional activities to maximise their impact.

At 30 June 2019:

- the *DIY car repair safety* video had nearly 54 000 views on YouTube
- the *Widow urges caution with DIY car repairs* video had over 46 000 views on YouTube.

2019 Ruby Hutchison Memorial Lecture and National Consumer Congress

The ACCC hosted the National Consumer Congress and the Ruby Hutchison Memorial Lecture in March 2019. These annual events bring together people from the public, private and community sectors. Around 200 people attended both events.

Mr Edward Santow, the Australian Human Rights Commissioner, delivered the 2019 Ruby Hutchison Memorial Lecture. He discussed artificial intelligence and new technologies, including the impact on privacy and how our personal information is likely to be used against us.

Following the lecture, the 2019 National Consumer Congress featured topical sessions on the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, product safety and challenges around data and artificial intelligence.

Using complaint data

The ACCC Infocentre is the initial contact point for enquiries and reports about competition, consumer, product safety and fair trading issues. These contacts are received by telephone, by letter and through forms on our websites. This data is a valuable source of intelligence for the ACCC and it informs our enforcement and compliance priorities. We analyse trends, patterns and identify new issues. Regular analysis provides a safety net for complaints assessment and helps identify new priority areas for different work areas of the ACCC. It can also assist enforcement and compliance activities by providing historical context regarding people, companies or industries of interest.

The reasons for contacting the ACCC are very broad; however, the majority of contacts are:

- reports to Scamwatch about scams
- reports made by consumers seeking information about consumer guarantees
- reports about business conduct that may breach the CCA
- from small business seeking guidance on their 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.

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.

Scam reports are generally not investigated and are used to support our intelligence gathering and awareness-raising activities. Some reports (where consent is provided) are referred to intermediaries such as financial institutions and/or government and law enforcement agencies.

Responding to enquiries and reports

Our contact statistics for 2018–19 were:

- 315 491 contacts served by telephone and received in writing
- 70 613 web form responses sent (or otherwise completed)
- 694 letter responses made
- 53 386 calls answered.

Our service level statistics for 2018–19 were:

- 22 per cent of calls answered within two minutes
- 97 per cent of written responses sent within 15 working days.

Contacts to the ACCC

Overall contacts to the ACCC have increased by 19 per cent over the past three years.

Scam contacts increased over 20 per cent with 32 013 more contacts received during 2018–19 compared with 2017–18.

Table 3.32: Contacts recorded 2018–19

Category	2016–17	2017–18	2018–19
Contacts served by telephone and received in writing	264 462	290 143	315 491
Contacts recorded in the database	234 913	252 091	287 313
Scams contacts recorded in the database	N/A	156 993	189 006
Non-scam contacts recorded in the database	N/A	95 098	98 307

Top 10 industries, excluding scams, for complaints and enquiries in 2018-19

The following analysis of contacts is based on higher level grouping of existing Australian and New Zealand Standard Industrial Classification (ANZSIC) categories. The 10 most reported industries made up more than 61 per cent of all non-scam contacts to the ACCC over the past year.

Detailed information about the ACCC's scam complaints and enquiries can be found in our annual [Targeting scams](#) report.

Table 3.33: Top 10 industries for complaints and enquiries 2018-19

Industry	2018-19
Automotive industry	13 718
Electronics and consumer whitegoods	11 734
Non-store retailing	6 895
Clothing and personal goods	4 917
Telecommunications	4 647
Construction	4 221
Passenger transport and transport services	4 131
Ticketing and other administrative services	3 846
Electricity, gas, water and waste	3 090
Homewares, furniture and manchester	3 082

Breakdown of contacts to the ACCC by conduct category—excluding scams

Further analysis of the most reported conduct category, 'Guarantees and warranties' (see table 3.34), demonstrates the large proportion of contacts that relate to the 'Automotive industry' (26 per cent) and 'Electronics and consumer whitegoods' (25 per cent). Key outcomes relating to consumer guarantees are in the case study on pages 79-80.

Table 3.34: Guarantees and warranties 2018-19

Industry	2018-19	Percentage of total
Automotive industry	9 409	26.2%
Electronics and consumer whitegoods	9 003	25.1%
Construction	2 269	6.3%

A breakdown of the contacts regarding misleading and deceptive conduct and false representations reflects the ACCC's continued work in the ticketing industry and the litigation relating to Viagogo (see page 86).

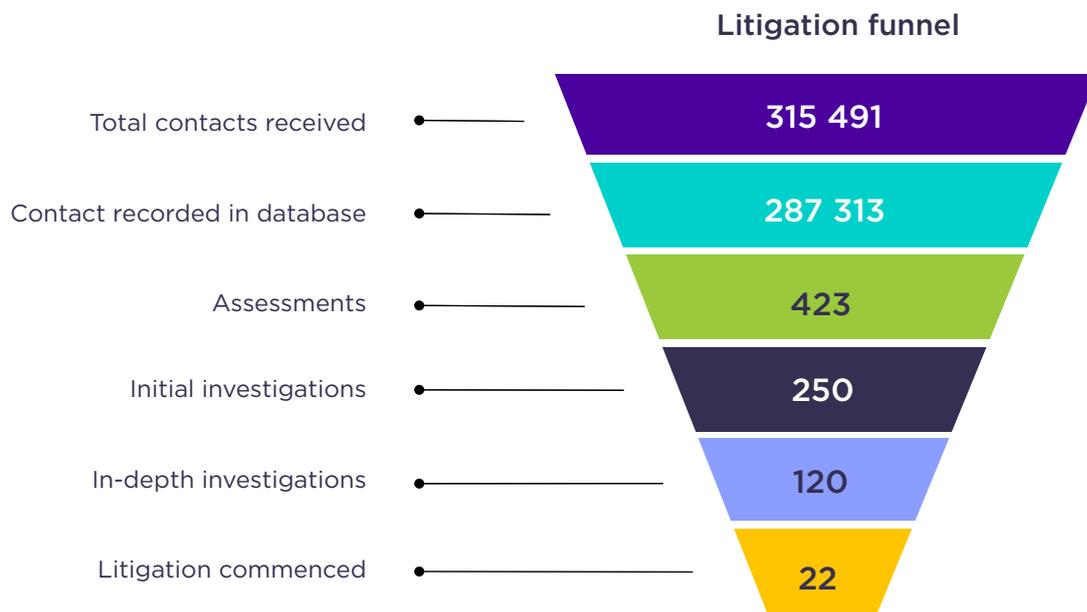
Table 3.35: Misleading and deceptive conduct and false representations 2018-19

Industry	2018-19	Percentage of total
Ticketing and other administrative services	2 635	8.4%
Automotive industry	2 586	8.3%
Electronics and consumer whitegoods	2 445	7.8%

Investigations and litigation

As illustrated by figure 3.3, the contacts and reports we receive may go through a series of increasingly intensive investigations. We analyse the complaints data to establish trends, identify issues for further inquiry and develop compliance responses.

Figure 3.3: Contacts, investigations and litigation 2018-19

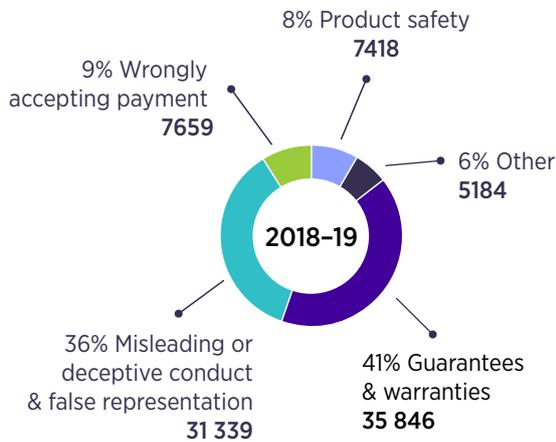


Contacts, enquiries and complaints at a glance 2018-19

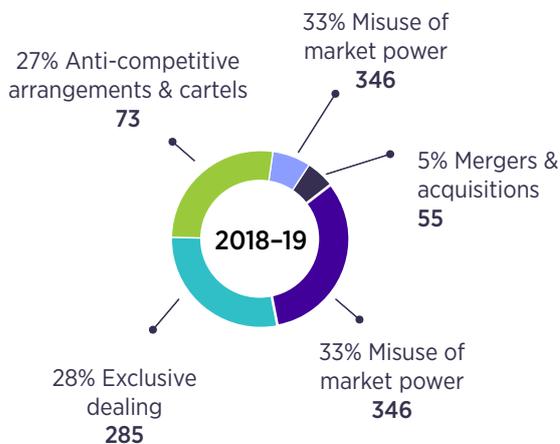
Total Infocentre contacts served



Australian Consumer Law related issues



Competition related issues



Small business

12 937

contacts via the small business line and webform

▲ 10% since 2017-18

Franchising

560

contacts about franchising

▼ 3% since 2017-18

Top 5 most reported industries 2018-19

13 718

Automotive industry

11 734

Electronics & consumer whitegoods

6895

Non store retailing

4917

Clothing & personal goods

4647

Telecommunications

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

Infrastructure regulation and industry monitoring

Performance results and analysis

Role and functions

Infrastructure plays a significant role in Australia's economic and social development and prosperity. The efficient provision and use of infrastructure—its location, availability, quality and pricing—underpins economic growth, productivity and, ultimately, consumer welfare.

Where key infrastructure is provided by only one or a few suppliers, efficient access to that infrastructure may be limited (including through pricing), thereby undermining competition and investment in relevant markets. Appropriate economic regulation of such infrastructure and the efficient provision of access contributes to the efficiency and productivity of the overall economy.

As an economic regulator, the ACCC has a central role in supporting better market outcomes. We undertake a variety of roles across the sectors we regulate, with the extent of our role determined by the nature and scope of the market failure we are seeking to address.

We engage in a range of advocacy activities regarding privatisation, market contestability and strengthening the functioning of markets to improve consumer outcomes.

Sectors where we have this role include telecommunications, petrol, water, rail, bulk grain export facilities, airports, container stevedoring and postal services.

Our objective is to:

- support the long-term interests of end users by promoting effective upstream and downstream competition and the proper functioning of Australian markets
- facilitate efficient investment in key infrastructure networks and services.

In pursuing this objective, our key functions include:

- regulating access to monopoly infrastructure and services that businesses need to enable them to compete in upstream or downstream markets
- regulating access prices where competitive pressures on a supplier are not sufficient to produce efficient prices
- monitoring and reporting on the prices and quality of particular goods and services to inform industry and consumers about the effects of market conditions in newly deregulated and concentrated markets
- enforcing compliance with industry-specific laws for telecommunications services and rural water services in the Murray–Darling Basin.

We also undertake inquiries and provide advice on a broader range of sectors when directed by the government.

Our deliverables in this area are:

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

Our monitoring and reporting functions, and the detailed research and analysis underpinning them, position us to address current and emerging issues in markets that play a vital role in the economy. This work also supports our competition advice and advocacy efforts directed at ensuring Australian markets operate within a policy framework that facilitates competition and efficient investment in key infrastructure networks and services.

Priorities

Our infrastructure regulation priorities for 2018-19 were:

- undertaking access, pricing and regulatory coverage assessments in telecommunications and rail and addressing gaps in existing regulatory arrangements
- enforcing and promoting compliance with industry-specific compliance regimes in telecommunications and water
- promoting market transparency at the wholesale and retail levels by providing market information across the supply chain in a range of sectors and empowering consumers to drive competition by reducing information asymmetry
- contributing expertise to policy and law reform processes to promote consideration of competition, consumer and efficiency outcomes, including for spectrum allocations and consumer safeguards in telecommunications
- advocating for the establishment, retention or modification of regulatory frameworks to target the nature of the market failures that are present in the sectors in which we have a role, including advocating for competition and consumer outcomes to be given primacy in government privatisation processes.

Powers

Our powers and responsibilities to regulate infrastructure arise from several different legislative and administrative frameworks. These include:

- the National Access Regime in Part IIIA of the *Competition and Consumer Act 2010* (Cth) (CCA) (rail)
- industry-specific access regimes in the CCA (communications)
- price monitoring directions from the government (airports, container stevedoring, petrol) issued under the CCA
- price notification provisions (post, air services) of the CCA
- 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 in recently deregulated markets.

Performance indicators

Deliverable 3.1: Deliver network regulation that promotes competition in the long-term interests of end users

The ACCC uses its regulatory powers to facilitate access to bottleneck infrastructure and establish efficient pricing for that access. Efficient access creates conditions for competition to emerge with flow-on impacts for consumers in the form of lower prices, higher-quality products and innovation.

Table 3.36: Performance indicators for deliverable 3.1

Performance indicators	2016-17	2017-18	2018-19	
	Result	Result	Target	Result
Number of major regulatory decisions	6	1 [#]	4	6
Percentage of regulatory decisions completed within statutory timeframes (including 'stop the clock' and timeframe extension provisions in the CCA)	100%	100%	100%	100%

[#] Target performance indicators refer to anticipated decisions for the reporting period. Various factors during regulatory processes can affect anticipated timeframes for decisions.

Deliverable 3.2: Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

This deliverable is about keeping a close watch on the price and quality of goods and services available in markets that are at risk of being inefficient because they are highly concentrated or developing or are otherwise an area of high consumer concern. This transparency can remedy market failure by correcting competition issues. In addition, it puts suppliers in those markets on notice that their conduct is under scrutiny and also informs any regulatory or policy responses that may be required to promote competition or protect consumers.

Table 3.37: Performance indicators for deliverable 3.2

Performance indicators	2016-17	2017-18	2018-19	
	Result	Result	Target	Result
Number of annual monitoring reports	7	6	7	7
Number of reports on monitoring of unleaded petroleum products	7	6	6	6
Number of reports on broadband markets	N/A	N/A	8	8

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. This deliverable seeks to mitigate harm to competition or consumers by stopping conduct or securing appropriate remedies. We exercise these powers,

where appropriate, in response to anti-competitive conduct, abuse of market power and competitive or consumer harm.

Table 3.38: Performance indicators for deliverable 3.3

Performance indicators	2016-17	2017-18	2018-19	
	Result	Result	Target	Result
Number of investigations into potential breaches of rules	19	17	14	16

Analysis of performance

The ACCC prefers competitive over regulated outcomes. We undertake a relatively limited amount of pure economic regulation of bottleneck and wholesale monopoly services. Where we do this, we seek outcomes that mimic those a competitive market would deliver through targeted intervention to promote competition in markets upstream and downstream.

This is reflected in the relatively small number of regulatory decisions in 2018-19 compared with our other activities, such as monitoring, reporting and compliance activities. For instance, for the first time this year we included our broadband performance reports as a key performance indicator, highlighting the importance of market transparency actions in improving regulatory outcomes. In addition, our advocacy and advice role is integral to the work of the Infrastructure Regulation Division and the outcomes we seek to achieve. We perform this role across the industries we regulate as well as other sectors with similar characteristics. For example, we have provided advice on privatised and emerging services in the financial sector such as the regulation of electronic conveyancing and the Reserve Bank of Australia's New Payments Platform.

We periodically review our regulatory frameworks to ensure they remain fit for purpose across each sector. We use various mechanisms, including internal and public inquiries and market studies, to promote best-practice regulation. This enables us to relax up-front regulation as markets and competition develop, maintaining a variety of safeguards to address potentially harmful conduct.

For example, during the year we decided to remove regulation of SMS services due to growing use of over-the-top messaging services.

Results of the ACCC [Effectiveness Survey](#) show that stakeholders perceive our regulatory work as effective in promoting our objectives and agree that our regulatory decisions promote competition in the long-term interests of end-users. This sentiment was also reflected across our monitoring and enforcement functions. Despite this positive view, some stakeholders thought that our monitoring and reporting work has not led to much substantive change, with governments not adopting, or being slow to adopt, our recommendations.

During 2018-19 we met or exceeded our performance indicators. We had a higher number of investigations of potential breaches of rules than anticipated.

Our major regulatory activities included:

- accepting a court enforceable undertaking from NBN Co to make changes to its wholesale terms to support positive consumer experiences, including providing that NBN Co pays a rebate for every late connection and fault rectification and establishing a missed appointment rebate, as part of the public inquiry into National Broadband Network (NBN) wholesale service standards
- undertaking a number of inquiries into the continued regulation and appropriate access settings for certain key wholesale communications services, including for mobiles and legacy fixed-line and transmission services
- finalising an arbitration of a dispute between Glencore Coal Assets Australia Pty Ltd and Port of Newcastle Operations Pty Ltd about terms and conditions of access to the declared shipping channel service at the Port of Newcastle

- the publication of multiple monitoring reports on different infrastructure sectors, including water, airports, bulk grain ports, container stevedoring, telecommunications and petrol industries. These reports provide transparency for consumers and businesses about competition and market conditions.

Other key achievements during the year included:

- investigations of potential breaches of rules leading to market improvements in the communications and water sectors
- assisting broader government and industry initiatives to address consumer issues with NBN migration and establishing measures to promote transparency and positive consumer outcomes, acting on many of the key findings from our 2018 [Communications market study final report](#)
- engaging with government and policy reform processes to promote efficient and pro-consumer outcomes in privatisation processes as well as seeking to refine regulatory frameworks in existing regulated sectors including water, communications and airports.

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.

Our activities addressing information asymmetry in regulated sectors included:

- reviewing the effectiveness and expanding the scope of our broadband speeds advertising guidance, which has been adopted by the key retail service providers (RSPs) to provide consumers with comparable information on the typical broadband speeds they can expect from their service
- taking enforcement action to ensure broadband providers use clear and accurate speed and performance information to describe their retail services
- our quarterly reports under our Measuring Broadband Australia program, which have led to better quality services on the NBN and informed consumers' purchasing decisions
- publishing four quarterly petrol monitoring reports with analysis and commentary on metrics as well as in-depth petrol industry reports on issues of consumer concern
- annual industry monitoring reports in relation to key infrastructure services such as stevedoring, bulk grain ports, water and airports.

The Infrastructure Regulation Division's focus in 2018-19 reflected our aim of ensuring we routinely review our regulatory approaches and environment to efficiently meet our objectives. This included undertaking initiatives to increase market transparency as well as engaging with and shaping a number of policy positions relevant to regulated infrastructure and public assets.

During the year, there were no external factors that affected our performance beyond the adjustments we ordinarily make to our strategies and work programs as we identify and respond to market issues.

Telecommunications

Actions undertaken to achieve our purpose

The ACCC's work in the telecommunications sector contributes to all three of the deliverables for strategy 3, as it encompasses regulation, monitoring and enforcement.

We are responsible for the economic regulation and monitoring of the telecommunications sector. Our role is to provide effective regulation of telecommunications that will protect, strengthen and supplement competitive market processes to improve economic efficiency and increase the welfare of Australians.

We regulate access to monopoly wholesale telecommunications infrastructure and wholesale services, which helps reduce barriers for operators seeking to enter and compete in downstream markets. This creates an environment where the competitive process can develop and deliver better outcomes for consumers through more innovative and competitive services, lower prices, better quality services, more product differentiation and more investment.

Providing advice and expertise and facilitating market transparency are also key roles we undertake, particularly as the telecommunications market evolves.

In addition to the CCA, we have responsibilities under the following Commonwealth legislation:

- *Broadcasting Services Act 1992*
- *Copyright Act 1968*
- *National Broadband Network Companies Act 2011*
- *Radiocommunications Act 1992*
- *Telecommunications (Consumer Protection and Services Standards) Act 1999*
- *Telecommunications Act 1997.*

Responding to the communications market study report

In 2018-19 our priorities in telecommunications were strongly influenced by the findings of the [Communications sector market study final report](#) (concluded in April 2018), which identified 28 recommendations and actions on competition and consumer issues for the ACCC and other agencies.

The key immediate issues of concern related to NBN Co moving from the build to operational phase of deployment. This increased the focus on service levels and consumer experience and led to us pursuing a wide-ranging regulatory response at the wholesale and retail levels to promote better consumer outcomes, including:

- the inquiry into NBN wholesale service standards and consideration of whether further regulatory intervention is required following the acceptance of a court enforceable undertaking from NBN Co
- promoting compliance with the Australian Consumer Law by retail service providers advertising broadband speeds
- reviewing the effectiveness and scope of speeds claims guidance
- retail performance transparency through the Measuring Broadband Australia program
- continued and enhanced scrutiny of developing retail and wholesale NBN markets
- contributing expertise and advocating for market and policy responses to emerging issues such as changes to NBN pricing.

Other key projects included:

- assessing NBN Co's variation to its 2013 Special Access Undertaking (SAU), which seeks to capture NBN Co's expanded range of delivery technologies. NBN Co withdrew its first variation in November 2018 after we expressed a number of concerns. The key concern related to NBN Co's use of pricing discounts, which can be introduced and removed at NBN Co's discretion and are not covered under the SAU. We considered that this outcome is inconsistent with the intent of the SAU as it undermines stability and certainty for access seekers. In May 2019 NBN Co lodged a proposed variation to extend non-price terms in the existing SAU and we called for submissions from stakeholders
- exercising our economic regulatory tools undertaking a number of access inquiries into telecommunications services, including into continued regulation of mobile termination, domestic transmission capacity and fixed-line services
- contributing expertise, including findings from the in-depth communications sector market study and, more broadly, to policy and law reform to promote competition, consumer and efficiency issues on matters including spectrum, regional telecommunications and consumer safeguards
- continuing to administer and monitor compliance with key aspects of the structural reforms of fixed-line telecommunications (including the Telstra structural separation undertaking).

The section below discusses key outcomes in our priority areas and other activities.

Improving NBN consumer outcomes

The ACCC's role in relation to the NBN encompasses the range of regulatory functions, from economic regulation of price and access, to monitoring, reporting and advocacy.

The NBN is a government-owned monopoly wholesale provider of fixed-line broadband services. The terms and conditions relating to access to NBN Co's networks are established in NBN Co's SAU. However, the SAU does not describe wholesale service standards that NBN Co must meet in providing wholesale services. Instead, wholesale service standards are set out in commercial access agreements between NBN Co and RSPs.

As the scale and pace of the NBN rollout increased, there was a high number of complaints from consumers about poor experiences on the NBN, particularly about consumers' experience connecting to NBN services and having faults repaired. As part of the ACCC's communications sector market study, we heard significant concerns from industry that NBN Co's wholesale service standards were not adequate to ensure a positive consumer experience on the NBN. As a result, during 2018-19 the ACCC and other government and industry stakeholders undertook a range of regulatory responses, including a public inquiry into NBN wholesale service standards.

As part of this inquiry, in September 2018 we accepted a court enforceable undertaking from NBN Co to make changes to its wholesale service-level commitments to support positive consumer experiences on the NBN. The key amendments to the service standard commitments include changes to provide that NBN Co pays a rebate for each instance of late connections, faults and missed appointments to address key causes of consumer dissatisfaction.

In the second phase of the inquiry we are continuing to examine whether further regulation is needed to improve consumer experience on the NBN.

A range of other tools and strategies have supported positive consumer outcomes on the NBN during the year, including:

- widespread industry adoption of our broadband speed claims guidance
- the success of our quarterly Measuring Broadband Australia reports in promoting performance-based competition between RSPs
- tackling potentially misleading conduct by key RSPs, including issuing two infringement notices to MyRepublic for alleged misleading NBN speed claims and raising concerns with Aussie Broadband for its use of the words ‘congestion free’.⁹

We also continue to monitor the development of wholesale and retail markets on the NBN through record-keeping rules.

Notably, we have publicly raised concerns over NBN Co’s new pricing structures, which have substantially raised the wholesale cost of basic entry-level services (the 12 megabit per second (mbps) service). This is affecting affordability, efficiency and competition in retail NBN plans. To address this, we are calling for NBN Co to revisit its entry-level offerings to enable retailers to re-anchor these products to existing ADSL pricing at the \$60 price point.

► **Case study: NBN fixed wireless—ACCC initiatives to support consumers with congestion issues**

NBN Co’s fixed wireless network is an important part of NBN Co’s national network, providing broadband services to around 4 per cent of the Australian population upon completion. It is largely targeted at regional and rural communities.

Congestion has been a significant issue for a number of consumers on NBN Co’s fixed wireless network. This has had an impact on the usability of affected consumers’ broadband services because it has affected speeds and may make it difficult to use common internet applications.

NBN Co has committed to upgrading congested cells and installing additional cells to alleviate congestion. While this occurs, the ACCC has undertaken a number of actions during the year to address consumer issues associated with congestion on the fixed wireless network:

- NBN Co now provides weekly reporting to RSPs and the ACCC on congested cells and monthly public reporting on its website in line with the court enforceable undertaking discussed above.
- We worked with RSPs to put in place remedies for consumers who are affected by congestion.
- We released updated and expanded broadband speeds claims guidance that includes fixed wireless services.
- We published guidance for consumers of fixed wireless services to help them understand the nature and limitations of fixed wireless services, the impact of congestion on their usage and what information and remedies are available to them should they be affected.

⁹ See www.accc.gov.au/media-release/congestion-free-claims-removed-from-aussie-broadbands-nbn-advertising and www.accc.gov.au/media-release/myrepublic-pays-penalties-for-nbn-speed-claims.

Murray–Darling Basin water markets

Actions undertaken to achieve our purpose

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* (Cth) (Water Act) aims to promote efficient water markets and sustainable use and management of water resources and water service infrastructure in the Basin. It was introduced in response to concerns about the impact of irrigation on the environment, over-allocation of water and increasing water scarcity.

Water markets are a key way to allocate water—a scarce but vital resource—between competing uses and in a way that ensures it moves to its most productive use.

The ACCC has a number of roles in the Basin, including monitoring regulated water charges, transformations and terminations; and enforcing compliance with the water market and water charge rules.

Monitoring and reporting on water markets

Our monitoring helps highlight where infrastructure operators (which are natural monopoly service providers) may be exercising their market power over irrigators and other customers. Our monitoring also assists policy-makers to determine the appropriate form of regulation for these monopolies.

The ACCC publicly released its [Water monitoring report 2017-18](#) on 24 June 2019. The report found that, while the Basin experienced near drought conditions in 2017-18, it was generally another stable year with regard to regulated water charges.

Enforcing water market and charge rules

The ACCC facilitates effective water (and related) markets by enforcing compliance with the water market and charge rules made under the Water Act. Due to their monopoly position, infrastructure operators are in a position, and have an incentive, to prevent or unreasonably delay trade or transformation requests and increase the cost of termination.

We detected one breach of the Water Charge (Infrastructure) Rules during 2018-19. We found that an infrastructure operator failed to publish all required information on the water charges it imposes under two agreements. The contravention did not disadvantage the infrastructure operator's customer, so we resolved the breach administratively. The operator also undertook to review and improve its internal systems in response to our investigation.¹⁰

¹⁰ See www.accc.gov.au/media-release/murray-irrigation-breaches-water-charge-rules.

Fuel price monitoring

Actions undertaken to achieve our purpose

The ACCC's work in fuel price monitoring contributes to deliverable 3.2, as it involves monitoring highly concentrated markets of consumer concern.

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. The current direction was given to the ACCC in December 2017 and lasts for two years.

Our role in this sector has changed focus in recent years—from preparing detailed annual monitoring reports to more frequent reporting providing helpful information to consumers. This is because of the continued high level of community concern over fuel prices and the degree of competition in retail fuel markets in metropolitan and regional locations.

Under the current direction the ACCC produces two types of reports:

- quarterly 'macro' reports, which look at petrol price movements in the capital cities and over 190 regional locations and the factors that led to price changes over the quarter
- industry reports, which look at particular aspects of consumer interest in the fuel market in relation to prices, costs and profits.

Reporting on petrol market share and price cycles

In 2018-19 we released two industry reports. The first report focused on retail and wholesale petrol market shares in Australia. The second report was on petrol price cycles and offered suggestions on how consumers could save money by using the ACCC website on price cycles and using petrol price comparison apps.

In 2018-19 the fuel-related pages on the ACCC website received a total of 591 002 page views. One of those pages is the petrol price cycle page, which received 575 075 page views. This was the most viewed page on the ACCC website for the 12-month period. There was a 35 per cent increase in the number of views of this page between 2017-18 and 2018-19 (426 807 page views).

National infrastructure regulation—rail, gas, grain export, airports, stevedoring and financial markets

Actions undertaken to achieve our purpose

The ACCC has regulatory responsibilities in a number of major infrastructure sectors of the economy, in addition to telecommunications, water and fuel. These include:

- rail
- airports, including air traffic navigation, and aviation rescue and firefighting services
- container stevedoring and international liner cargo shipping
- bulk grain export facilities
- postal services.

The ACCC also has a role in arbitrating access disputes for services which have been declared under Part IIIA of the CCA.

Our work in these areas contributes to deliverables 3.1 and 3.2, as it encompasses both regulation and monitoring.

As with the other sectors we regulate, our activities in national infrastructure regulation seek to promote effective upstream and downstream competition and the proper functioning of markets to support efficient investment in key infrastructure networks and services.

During 2018-19 we highlighted persistent and emerging deficiencies in some sectors' regulatory arrangements. We also reviewed regulatory settings in light of developments across these sectors.

Rail

In the rail sector, our current responsibilities include assessing and administering undertakings submitted by the Australian Rail Track Corporation (ARTC), which set out terms of access to its Hunter Valley and interstate rail networks. ARTC's rail access undertakings are submitted voluntarily under Part IIIA of the CCA.

In 2018-19 we:

- assessed and accepted:
 - two extensions and one variation to ARTC's 2008 Interstate Access Undertaking (IAU)
 - one variation to ARTC's 2011 Hunter Valley Access Undertaking
- assessed and published a draft decision on an application for a replacement to the 2008 IAU
- released a final determination of ARTC's compliance with the Hunter Valley Access Undertaking for the 2015 calendar year.

In our decision to accept ARTC's variation to the 2008 IAU we expressed concerns about the appropriateness of the current regulatory framework, noting that ARTC submitted its variation for our assessment less than a month before the expiry of the IAU.

Airports

We monitor and publish information about prices, costs, profits and quality of both aeronautical and car parking services at Australia's four major airports.

During the year we made two submissions to the Productivity Commission's inquiry into airport regulation. We submitted that the existing monitoring regime for airports is not effective in

constraining the airports' market power, and we have recommended alternative regulatory options for various airport services. In particular, effective information disclosure, coupled with provision of independent commercial arbitration, would help constrain airports' market power and promote negotiated outcomes between airports and airlines.

Container stevedoring

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. During the year we made a submission to the Senate Rural and Regional Affairs and Transport References Committee inquiry into the policy, regulatory, taxation, administrative and funding priorities for Australian shipping.

Access to shipping channels

► Case study: ACCC arbitration of dispute between Glencore and 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 that the ACCC arbitrate the dispute.

On 18 September 2018 the ACCC made its final determination in the arbitration of a dispute between Glencore Coal Assets Australia Pty Ltd (Glencore) and Port of Newcastle Operations Pty Ltd (PNO) about terms and conditions of access to the declared shipping channel service at the Port of Newcastle.

The parties agreed to use a building block model as their access pricing model for the purposes of the arbitration. The ACCC determined that PNO should reduce by around 20 per cent its charge for ships entering the port chartered by Glencore to carry its coal. The ACCC also determined the appropriate mechanisms for future price changes and decided on certain non-price terms and conditions of access where the parties had been unable to reach an agreement.

PNO and Glencore subsequently applied to the Australian Competition Tribunal for a review of the ACCC's determination. The matter was heard in May 2019, and the Tribunal is expected to reach a decision later in 2019.

We also made a submission to the National Competition Council (NCC) outlining the risks to users and competition in related markets should the NCC decide to revoke declaration of the shipping channel service at the Port of Newcastle.

Grain export

In relation to bulk grain export facilities, our responsibilities include monitoring and assessing compliance with the Port Terminal Access (Bulk Wheat) Code of Conduct and making determinations on whether a port terminal service provider should be exempt from certain requirements under the code. We publish an annual monitoring report that informs industry and the government about the state of competition in the industry.

Postal services

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. No such application was made by Australia Post during 2018-19.

Improving regulatory practices

Actions undertaken to achieve our purpose

Each year we seek to improve effectiveness in both our own and others' regulatory practices. In 2018-19 we made improvements through a range of activities, including:

- industry consultation and engagement
- engagement with sector regulators and our international counterparts
- involvement in multilateral international forums.

Consultation with industry

Fuel Consultative Committee

The Fuel Consultative Committee (FuelCC) was established in 2010 to provide an opportunity for 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.

The ACCC hosted two meetings of its FuelCC, in November 2018 and May 2019. The meetings included an update by the ACCC on recent fuel monitoring and reporting activities and updates from the fuel industry and motoring organisations on a range of issues, including developments at Australian downstream refineries; updates on consumer take-up of fuel price information services; outcomes of state government fuel price inquiries; and international and domestic pricing influences.

Infrastructure Consultative Committee

The Infrastructure Consultative Committee (ICC) was established in 2006 to facilitate discussions on the broad issues of infrastructure and infrastructure regulation. Membership of the group consists of both infrastructure service providers and major customer groups and includes representatives from energy, telecommunication, water, rail, ports and airports. The ICC has recently increased representation of the investment community through the addition of the Queensland Investment Corporation and IFM Investors Pty Ltd.

In 2018-19 the ACCC hosted one meeting of the ICC on 6 December 2018. The meeting included an update from the ACCC and AER on recent regulatory decisions and current processes. Committee members raised a number of issues, including urban water, jet fuel supply, NBN and the broader environment for investment in infrastructure.

Advocacy on privatisations, emerging markets and financial services

During 2018-19 the ACCC engaged extensively with industry and regulators, including the Australian Registrars' National Electronic Conveyancing Council and the New South Wales Office of the Registrar General (ORG), on the regulatory settings for electronic conveyancing of land transactions. While the ACCC does not have a direct regulatory role in electronic conveyancing, the ACCC provided its expertise to assist industry and regulators in developing rules and regulation that facilitates appropriate competition outcomes in this industry.

The ACCC has also provided advice to governments and agencies that are commencing a privatisation process or seeking to introduce contestability into previously closed platforms. For example, we provided advice on and input into the Victorian Government's proposed privatisation

of the Victorian Land Registry and the Reserve Bank of Australia's review examining functionality and access issues with the New Payments Platform for real-time money transfers. In providing advice we have identified areas of concern and proposed adjustments to ensure appropriate protections are in place to facilitate competition, efficiency and ongoing investment.

In 2018-19 we continued our work with the Council of Financial Regulators (CFR) on competition matters in the financial services sector—in particular, advocating for consideration of competition in clearing and settlement of Australian cash equities. In conjunction with the CFR, we also continued to advocate for the Australian Stock Exchange to consider competition issues in its development of the proposed replacement for its Clearing House Electronic Subregister System (CHES). In particular, we have advocated for transparent and non-discriminatory pricing and access to clearing and settlement services.

We are also 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 in relation to access to clearing and settlement services.

We have also been providing our expertise to assist industry and relevant regulators to develop appropriate regulatory settings for the electronic conveyancing of land transactions.

Involvement in multilateral forums

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 2019.

OECD Network of Economic Regulators

The ACCC's participation in the Organisation for Economic Co-operation 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 measuring regulatory performance, regulating disruptive technologies and utilising new regulatory tools and data to improve regulatory outcomes.

The most recent OECD forums were held in November 2018 and April 2019.

ACCC and AER regulatory conference

The ACCC and AER host an annual regulatory conference that brings together industry participants, policy-makers, academics and regulators from around the world to consider the latest issues and ideas about regulatory theory and practice.

The 2018 conference was held in Brisbane on 26-27 July and was attended by more than 400 delegates. The theme of the conference was 'New Frontiers in Regulation' and included sessions covering:

- current issues relating to the economic regulation of infrastructure from US, European and Canadian perspectives

- regulation of digital and intangible assets
- expanding the role of consumers in regulatory determinations
- economic regulation of public-private partnerships infrastructure
- the implications for best-practice regulation arising from the interplay of 'provider of last resort' obligations and changing technology
- the impacts on the role of judges and the behaviour of regulated businesses and regulators following the scaling back of merits review of regulatory decisions in Australia
- the role of regulators in contributing to regulatory public policy.

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

Market studies and inquiries

Performance results and analysis

Role and functions

The *Competition and Consumer Act 2010* (Cth) (CCA) provides that relevant ministers may direct the ACCC to undertake market studies, inquiries and monitoring. These studies enable us to develop a sophisticated understanding of how well competition and markets are working in particular sectors and provide advice on a broader range of competition and consumer issues. The ACCC can also undertake self-initiated market studies and conduct research on matters that affect the interests of consumers.

Market studies and inquiries involve extensive investigation and analysis, including public consultation, with the aim of improving understanding of industry practices and dynamics in those sectors. We undertake market studies and inquiries and report on emerging competition issues to:

- identify market failures and how to address them
- assess the implications of emerging competition issues
- support and inform compliance and enforcement measures
- identify areas for policy consideration.

We also monitor and report on the prices and quality of particular goods and services to inform government, industry and consumers.

We publish our findings in formal reports that help to inform consumers, encourage public debate and inform policy consideration.

Priorities

The ACCC undertakes market studies, inquiries and monitoring covering a broad range of sectors as determined by ministerial direction or guided by our Compliance and Enforcement Policy priorities. The following were completed, continued or commenced in 2018-19:

- Digital Platforms Inquiry—completed
- Residential Mortgage Price Inquiry—completed
- monitoring of the removal of GST from menstrual products—completed
- Gas Inquiry—continued
- Northern Australia Insurance Inquiry—continued
- private health insurance industry annual report to the Senate—continued
- Electricity Market Monitoring Inquiry—commenced
- Foreign Currency Conversion Services Inquiry—commenced

- wine grapes industry market study—commenced
- customer loyalty schemes review—commenced.

Performance indicators

Prior to 2018–19 the number of market studies and inquiries completed was included in the number of competition enforcement interventions under deliverable 1.1. From 2018–19 this became a standalone performance indicator.

Table 3.39: Performance indicator for strategy 4

Performance indicator	2016–17	2017–18	2018–19	
	Result	Result	Target	Result
Number of completed market studies and inquiries	N/A	N/A	4	3

Analysis of performance

In 2018–19 we completed three market studies and inquiries. The wine grapes industry market study was originally scheduled to be completed in 2018–19, but an extension was granted largely to assist with obtaining further information from stakeholders. We also published a number of interim and draft reports for the other market studies and inquiries listed above that continued or commenced in 2018–19. There were no external factors that had a significant impact on our performance.

The ACCC [Effectiveness Survey](#) report found that stakeholders rated the ACCC's market studies and inquiries function very positively, reporting a high index score of 77.4 (out of 100). The vast majority of respondents (90 per cent) consider that the ACCC's market studies and inquiries have been effective in developing an understanding of how well competition and markets are working in particular sectors; and almost 75 per cent agreed that our market studies and inquiries have identified policy and regulatory options that could assist in addressing competition and consumer issues.

The various market studies, inquiries and monitoring we undertook in 2018–19 contributed to achieving the ACCC's purpose of making markets work for consumers by informing stakeholders and encouraging public debate, informing policy consideration and allowing for the adoption of some recommendations.

The ACCC delivered its Retail Electricity Pricing Inquiry (REPI) final report to government on 30 June 2018. The report sets out a comprehensive package of 56 recommendations to bring down prices and restore consumer confidence and Australia's competitive advantage. Its findings contributed to public debate and energy policy consideration throughout 2018–19.

Since the report was released in July 2018, six recommendations have been implemented, including the recommendation that a Default Market Offer should operate as a price cap on standing offers and that there should be a common reference price in South Australia, New South Wales and south-east Queensland. There has also been significant or some progress on around 15 to 20 recommendations. However, in a number of areas progress has been slow.

After the successful completion of the REPI, in August 2018 the Treasurer directed the ACCC to monitor the electricity market until 2025. As part of this electricity market monitoring role, the ACCC is monitoring the progress of the implementation of REPI recommendations.

In March 2019 we released the first report from our Electricity Market Monitoring Inquiry. The report sets out our analytical framework for monitoring and provides information about our expectations of market outcomes and market participant behaviour for a well-functioning market. We continued to advocate to governments and market participants to implement recommendations from the REPI.

The ACCC was also given an enforcement role under a new mandatory code of conduct (the Retail Electricity Code) concerning the pricing and advertising practices of electricity retailers in the National Electricity Market (NEM). On 18 June 2019 we released guidelines to assist electricity retailers to understand their obligations under the code and how we will go about enforcing it to ensure that electricity consumers are able to identify and access better deals.

In 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. The final report of the Digital Platforms Inquiry was provided to the Treasurer on 30 June 2019 and released by government in July 2019. The report identifies a number of adverse effects associated with digital platforms and contains 23 recommendations spanning competition law, consumer protection, media regulation and privacy law, reflecting the intersection of issues arising from the growth of digital platforms.

As part of the current Gas Inquiry, the ACCC contributed to providing greater transparency in the east coast gas market by:

- publishing three interim reports
- releasing a joint paper with the Gas Market Reform Group (GMRG) and making further recommendations to the Council of Australian Governments (COAG) Energy Council Senior Council of Officials on measures to improve transparency in the gas market
- commencing publication of a liquefied natural gas (LNG) netback price series to provide transparency around an export parity price that a gas supplier could expect to receive for exporting its gas.

The ACCC released the Residential Mortgage Price Inquiry (RMPI) final report in December 2018. The RMPI extensively examined the mortgage pricing decisions of the five banks affected by the Major Bank Levy, as well as the level of pricing competition more generally, and made a number of key findings.

In early October 2018 we commenced an inquiry examining the pricing of foreign currency conversion services in Australia and evaluating whether there are impediments to effective competition in the sector.

In December 2018 we released the first interim report of our Northern Australia Insurance Inquiry. The report set out our findings to date and made a number of recommendations and draft recommendations on which stakeholder feedback was sought. Over 110 submissions were received. The report also set out five focus areas for the inquiry in 2019.

Since the report was published we have broadened our investigation to consider measures proposed or implemented in other jurisdictions to improve the affordability or availability of insurance.

The findings of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry have implications for our inquiry. The Royal Commission produced its final report in February 2019. The report contained a number of recommendations relevant to northern Australian insurance markets, including for the application of unfair contract provisions to insurance contracts and a future review of insurance broker remuneration arrangements.

Actions undertaken to achieve our purpose

Gas

Gas Inquiry interim reports

In 2018–19 the ACCC continued to progress its inquiry into the supply of and demand for wholesale gas in Australia. The objective of the inquiry is to improve transparency of the gas market and support its efficient operation.

The matters covered as part of the inquiry include:

- the pricing and availability of offers to supply gas
- the volumes of gas supplied or available for current or future supply
- the pricing, volume and availability of gas for domestic supply compared with the pricing, volume and availability of gas for export
- the pricing, volume and availability of other goods or services, such as goods or services for drilling, storing or processing gas, that enable, assist or facilitate the supply of gas or gas transportation services in Australia.

The ACCC released three interim reports on the Gas Inquiry on 2 August 2018, 18 December 2018 and 30 May 2019. The ACCC has maintained its focus on the operation of the east coast gas market, where there continue to be both immediate and longer term concerns.

While there have been some minor revisions of gas supply forecasts by producers, the risk of a gas supply shortfall in 2019 remains largely unchanged. Sufficient gas is expected to be produced in the east coast gas market to meet expected export and domestic demand, and action by governments and the gas industry to increase domestic gas supply is necessary to bring material price reductions into the future.

The market conditions have generally remained very challenging for gas users. Gas users have continued to raise concerns about gas prices to the ACCC, particularly in the southern states. Our preliminary review of costs and margins of the three largest gas retailers (AGL, EnergyAustralia and Origin) indicate that the retailers have earned material margins on gas sales between 2014 and 2017. The ACCC will continue to conduct its review and will report on its findings in its 2019 interim reports.

The ACCC considers that, to improve market conditions, the east coast gas market requires a greater level and diversity of supply, a more efficient transportation network and greater transparency. The ACCC is working to improve transparency in the east coast gas market by publishing prices offered and agreed for gas supply and the prices for transportation services.

The ACCC is required to produce six-monthly reports. Our final report is due by 30 April 2020.

Liquefied natural gas netback price publication

The ACCC commenced publication of gas export parity prices on its website on 2 October 2018. An LNG netback price is an export parity price that a gas supplier can expect to receive for exporting its gas. It represents the price that a gas supplier would expect to receive from a domestic gas buyer in order to make that gas supplier indifferent as to whether to sell the gas to the domestic buyer or to export it. The publication aims to improve price transparency and reduce the information imbalance between gas buyers and sellers. The published LNG netback price series will assist east coast gas users to identify trends in LNG netback prices and to estimate an indicative reference price of gas for supply over the near term.

The ACCC will refine the LNG netback price series over time as appropriate and will seek industry views on the publication during 2019. At the end of the Gas Inquiry the ACCC will make a recommendation on whether the price series should continue.

ACCC-GMRG joint recommendations to improve gas market transparency

On 20 December 2018 the ACCC and the GMRG released a joint paper on measures to improve the transparency of the east coast gas market. The joint paper follows an announcement by the then Prime Minister, the Hon. Malcolm Turnbull MP, in March 2017 for the ACCC and GMRG to work together to advise on options to quickly improve transparency across the gas supply chain.

The joint paper sets out 18 recommendations to improve the transparency and quality of information on:

- reserves and resources, contracted reserves and other indicators of upstream activities
- infrastructure availability and developments
- wholesale gas prices, retail gas prices and the prices payable for infrastructure services (pipeline, compression and storage services)
- LNG shipments and prices.

If implemented, the proposed measures will improve the functioning of the gas market by ensuring that market participants have ready access to information they require to make informed decisions about gas consumption, production, transportation, investment and risk management in both the short and the long run.

On 31 May 2019 the ACCC provided further advice to the COAG Energy Council Senior Council of Officials to further improve transparency. The advice related to:

- measures to improve transparency of wholesale gas prices
- a framework for the consistent reporting of gas reserves and resources
- the adequacy of the weighted average prices published by non-scheme pipeline operators under Part 23 of the National Gas Rules and whether this metric should be retained and/or refined.

Electricity

Electricity market monitoring 2018-2025

In August 2018 the Australian Government directed the ACCC to hold a public inquiry into the prices, profits and margins in relation to the supply of electricity in the NEM.¹¹ The inquiry will run for seven years, ending in 2025. The ACCC is required to report to the Treasurer at least once every six months.

This is the second inquiry the ACCC has undertaken on the supply of electricity in the NEM. We conducted the REPI throughout 2017 and 2018 (see pages 150-151).

Under the current inquiry, the ACCC has been directed to monitor, in summary:

- electricity prices faced by customers in the NEM
- wholesale market prices
- profits being made by generators and retailers
- contract market liquidity
- the effects of policy changes, including those resulting from recommendations the ACCC made in the REPI final report.

¹¹ The NEM consists of Queensland, New South Wales, Victoria, South Australia, Tasmania, and the Australian Capital Territory.

In addition, where appropriate, the ACCC is to make recommendations to governments on any proportional and targeted action considered necessary to remedy any failure by market participants (or the market as a whole) to deliver competitive and efficient electricity prices for customers.

The ACCC released a discussion paper on 21 November 2018 and invited submissions on the approach we should take in this inquiry. We specifically sought feedback from stakeholders on the analytical framework for monitoring, the type of analysis and measures to be used, and the sources and timing for the collection of information. We received 25 submissions from a diverse range of stakeholders.

On 29 March 2019 the ACCC released its first report for the current inquiry. The March report focused on setting out the analytical framework for monitoring and also provided information about our expectations of market outcomes and market participant behaviour as required by our direction. In addition, it included observations about market and policy developments since the REPI concluded in mid-2018. Key observations were:

- Retailers have continued to advertise in a way that leads to confusion about what represents a better deal.
- Australia's wholesale electricity market prices continue to be high due to a tightening in supply and demand conditions, with more generation capacity needed.
- Action is required in other parts of the electricity market too. For example, writedowns of network assets that reflect past over-investment and abolishing the subsidy for small-scale installations would bring down electricity prices and provide savings for consumers.

We also noted welcome developments in response to REPI recommendations, such as reforms to standing offer prices and advertising practices of retailers.

Retail Electricity Code guidelines

In April 2019 the ACCC was also given an enforcement role under a new mandatory code—the Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019, which is established under the CCA. The code came into effect on 1 July 2019. It requires retailers to advertise in a way that makes their offers clearer and more easily comparable, thereby empowering customers to identify a better deal. It also caps the price that retailers can charge customers who are on standing offers. On 18 June 2019 following consultation with industry and other key stakeholders, the ACCC released guidance for industry on complying with the code.

Outcomes from our 2018 Retail Electricity Pricing Inquiry report

In April 2017 the ACCC commenced its inquiry into retail electricity supply and prices in Queensland, New South Wales, Victoria, South Australia, Tasmania and the Australian Capital Territory. We received over 200 submissions throughout the inquiry. We also held six public forums in various locations that were attended by approximately 250 customers and representative groups. We 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 and released on 11 July 2018. In it, we set out a package of 56 recommendations to bring down electricity prices, restore consumer confidence, improve competition and reduce costs across the supply chain, including:

- government assistance to help certain new generation project proposals secure debt finance to encourage new entry, promote competition and 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 as increasing remedies in line with the Australian Consumer Law (ACL)
- voluntary writedowns of regulatory asset bases in Queensland and Tasmania and rebates to customers in New South Wales to deal with over-investment 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 NEM region, or \$43 million NEM-wide per year) for a grant scheme for consumer and community organisations to provide targeted support to assist vulnerable consumers to improve energy market literacy.

Since the REPI concluded, the ACCC has continued to advocate for governments to implement our REPI recommendations to bring down the current high level of electricity prices for customers. For example, we made submissions to a number of processes being run by various energy bodies and governments, advocating on behalf of customers for approaches that will positively impact consumers on matters that we consider will bring down prices.

There have been a number of developments in response to the REPI recommendations:

- A Default Market Offer has been implemented through a mandatory industry code, discussed above at 'Retail Electricity Code Guidelines' on page 150. The code imposes two main obligations on electricity retailers: a price cap on standing offers and a requirement to present advertising and offers in a way that consumers can more easily compare between retailers.
- The Australian Government has made a rule change request to limit the value of conditional discounts, such that they do not exceed 'a reasonable estimate of the costs to the retailer resulting from a customer's failure to comply with the conditions'.
- An Underwriting New Generation Investments program has been established to underwrite new generation. There have been 12 projects shortlisted, including six renewable pumped hydro projects, five gas projects and one coal upgrade project.
- The Queensland Government has announced its plans to establish CleanCo—a third state-owned generation portfolio that will have ownership or operational control of a mix of low-emissions and no-emissions technology.
- There has been an announcement of \$11.6 million for the Business Energy Advice Program (BEAP) for an energy advisory service and to develop an energy benchmarking tool.

The final report, preliminary report, issues paper and terms of reference are available on the [Electricity supply & prices inquiry](#) page on our website.

Digital platforms

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.

In December 2018 the ACCC published its preliminary report on these issues. We received over 120 submissions in response to the preliminary report, and these are published on the [ACCC website](#). The ACCC also held three forums in early 2019 to directly engage with stakeholders on key issues. The submissions and the forums 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. Summaries of the public forums are published on the [ACCC's website](#).

The ACCC provided its final report to the Treasurer on 30 June 2019. The report identified a number of adverse effects associated with digital platforms, including:

- the market power of major platforms and their ability to adversely impact media and advertising markets and a range of other markets
- the opacity of digital advertising markets, which have highly uncertain money flows, particularly for automated and programmatic advertising
- consumers not being adequately informed about how their data is collected and used and having little control over the huge range of data collected
- news content creators often being reliant on the dominant digital platforms, yet facing difficulties in monetising their content
- Australian society, like others around the world, having been impacted by disinformation and a rising mistrust of news.

The final report of the Digital Platforms Inquiry contains 23 recommendations spanning competition law, consumer protection, media regulation and privacy law, reflecting the intersection of issues arising from the growth of digital platforms.

The ACCC had significant engagement with various platforms, newspaper publishers and broadcasters, advertisers, journalists, consumers, small businesses and academics during the course of the inquiry.

The final report is available from the [ACCC's website](#).

Agriculture

Wine grapes industry market study

In September 2018 the ACCC announced that the wine grapes industry would be the focus of a new ACCC market study. The study is examining competition, contracting practices, transparency and risk allocation issues in the wine grape supply chain.

This market study was initiated by the ACCC in response to a variety of concerns from growers relating to price transparency, risk allocation and lack of competition between grape buyers.

The ACCC released an issues paper in late September 2018 and sought feedback from interested stakeholders, including via an online questionnaire. In November 2018 we held public forums

in Griffith, New South Wales; and Mildura, Victoria. These forums provided an opportunity for growers and grower representatives to speak directly to the ACCC about a range of industry issues.

The ACCC published an interim report in late May 2019. The report contained several interim findings and recommendations relating to wine grape quality assessments, price transparency, payment periods, the voluntary Australian Wine Industry Code of Conduct and contracting practices. Submissions on the interim report were due in late June 2019.

The ACCC expects to release the final report in September 2019.

Financial services

Foreign Currency Conversion Services Inquiry

In early October 2018 the ACCC commenced an inquiry examining the pricing of foreign currency conversion services in Australia and evaluating whether there are impediments to effective competition in the sector.

An issues paper was released on 2 October 2018 and over 200 submissions were received from consumers, small businesses and market participants in response. As part of this process, the ACCC heard from consumers, consumer advocacy groups, small businesses and foreign currency suppliers about their experiences on a range of issues, including transparency of pricing, costs, barriers to entry and other factors affecting competition in the sector.

The ACCC provided its final report to the Treasurer on 31 July 2019.

Residential Mortgage Price Inquiry

The ACCC released the [final report](#) of the Residential Mortgage Price Inquiry (RMPI) in December 2018. The RMPI extensively examined the mortgage pricing decisions of the five banks affected by the Major Bank Levy as well as the level of pricing competition more generally.

The report made the following key findings:

- The opaque discretionary pricing of residential mortgages unnecessarily inflates borrowers' costs (including their time and effort) to discover better offers. This reduces their willingness to shop around.
- While new borrowers pay lower interest rates than existing borrowers on average, existing borrowers can reduce the prices they pay. About 11 per cent of existing variable rate borrowers obtained a reduced interest rate or reduced fees in the year to 30 June 2018 as a result of asking their bank for a better deal or accepting a bank-initiated offer.
- Measures implemented by the Australian Prudential Regulation Authority (APRA) in March 2017 to limit new interest-only residential mortgage lending created an opportunity for banks to synchronise increases to headline variable interest rates for those mortgages.
- There was no evidence of any price changes made specifically to recover the cost of the Major Bank Levy from residential mortgage borrowers.

The ACCC also compared the approach to pricing of a sample of seven banks that were not subject to the inquiry. Three of these banks were particularly focused on competing on price and therefore had lower rates. Some of the banks in the sample relied heavily on brokers and aggregators to gain market share. The report notes that these banks, and other lenders in a similar position, are likely to be more vulnerable to future regulatory changes that affect the use of brokers as a distribution channel.

The report also notes the ACCC's view that the new Consumer Data Right will, among other things, make it much easier for consumers to compare available interest rates and empower consumers in their dealings with banks.

Other inquiries, studies and research

Northern Australia Insurance Inquiry

On 25 May 2017 the Australian Government directed the ACCC to conduct a wide-ranging inquiry into the supply of residential building (home), contents and strata insurance in northern Australia.

On 18 December 2018 the ACCC released its first interim report for the Northern Australia Insurance Inquiry. Our report is the most thorough analysis of the home, contents and strata insurance markets in northern Australia that has been undertaken to date.

We obtained and analysed a significant volume of information and data from insurers on profitability, costs and claims spanning an 11-year period. This included around six million data points relating to insurers' premium and claims.

Our report found that premiums for all insurance products are, on average, considerably higher in northern Australia than the rest of Australia and have increased more in recent years; and that there are a number of factors contributing to this. In effect, markets are concentrated and unusual market dynamics remain. In some areas, insurers are not actively trying to win market share; rather, they are raising prices to limit exposure to markets that may be risky and/or volatile, adding affordability concerns for consumers in the region.

Heavy losses and high and rising costs have also played a large part in rising premiums in northern Australia. The industry as a whole was operating at a loss in the past decade. Those insurers that were profitable had lower returns in northern Australia than in the rest of the country.

Our analysis confirms that greater transparency is needed to improve market conditions for consumers. For example, insurance products are complex and difficult to compare, methods used by insurers to assess risk and calculate premiums (including how mitigation measures are accounted for) are opaque, and conflicts of interest around broker remuneration are also a significant concern.

The report made a number of recommendations for governments and industry that we believe should be acted on without delay. Many of these recommendations could also benefit consumers and insurance markets nationally if more broadly applied. If followed, these recommendations could lead to reductions in premiums (for example, through abolishing stamp duty on insurance products and banning conflicted remuneration/commissions), improved transparency of premium pricing, and products that are easier to understand and compare.

We also put forward a number of draft recommendations and sought stakeholder views on these. We will finalise these recommendations in mid-2019.

The report also identified five focus areas for the next stage of the inquiry. Those focus areas cover:

- how issues of insurance affordability and availability have been considered around Australia and/or internationally and in relation to other forms of insurance and their potential to address the issues identified in northern Australia insurance markets
- case studies on sub-regions in northern Australia, including a look at the insurance profile of Townsville in light of the February 2019 flood event
- an examination of the effects of premium adjustments on retail premiums in northern Australia
- an investigation of barriers to expansion (or re-entry) into northern Australian markets, which will discuss a recent new entrant to the market
- an understanding of non-insurance and how it may be addressed, which includes a commissioned survey of residents of northern Australia.

Monitoring of the removal of GST from menstrual products

On 28 November 2018, in anticipation of the removal of GST from menstrual products on 1 January 2019, the Treasurer directed the ACCC to monitor the prices, costs and profits relating to the supply of menstrual products in the feminine hygiene products industry in Australia.

To carry out this monitoring task the ACCC used a combination of its own in-store and online price research. We also issued s. 95ZK compulsory information notices to a cross-section of retailers, such as supermarkets, pharmacies, convenience stores and online stores. Consumer inquiries and complaints were monitored in conjunction with the Australian Taxation Office, although very few were received.

The ACCC provided its report to the Treasurer on 25 March 2019 and published it shortly thereafter. Overall, the ACCC observed that nearly all businesses removed GST on menstrual products from 1 January 2019, with consumers generally seeing the expected 9.1 per cent reduction in retail prices.

Private health insurance report

On 26 November 2018 the ACCC released the annual report to the Australian Senate on the private health insurance industry for the period 1 July 2017 to 30 June 2018. This report analyses key competition and consumer developments and trends in the private health insurance industry that have affected consumers' health cover and out-of-pocket expenses during the reporting period. This report also focuses on how private health insurers should communicate detrimental policy changes to consumers. This is particularly relevant in the context of private health insurance reforms that came into effect on 1 April 2019.

Customer loyalty schemes review

Consumer and competition issues arising from customer loyalty schemes are a current priority for the ACCC.

In February 2019 the ACCC commenced a review of consumer-facing customer loyalty schemes, with a focus on the major customer loyalty schemes available in Australia. The objective of this review is for the ACCC to gain a better understanding of how customer loyalty schemes operate; the collection, use and disclosure of consumer data; and the terms and conditions of these schemes.

The ACCC will consider competition and consumer issues associated with participation in loyalty schemes, including:

- whether consumers are properly informed of the use and trading of their personal information
- whether consumers receive the benefits touted by many of these programs and the extent of restrictions associated with redeeming rewards
- the impact of consumer loyalty on competing firms—in particular, new entrants
- new and emerging practices relating to customer loyalty schemes.

The ACCC expects to release a report in the second half of 2019 after targeted engagement with the operators of major customer loyalty schemes and the analysis of publicly available material and information obtained by the ACCC through other processes.



Program 1.2 Australian Energy Regulator

Strategy 5: Promoting efficient investment in, operation of, and use of energy services

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

Performance results and analysis

Role and functions

Strategy 5 is the Australian Energy Regulator (AER) strategy. The AER's program and priorities are guided by the objectives of the national energy legislation. The common objective through the legislation is to promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of end users of energy with respect to price, quality, safety, reliability and security.

The AER works across the energy supply chain to drive effective competition where it is feasible; and to provide effective regulation where it is not feasible largely because of the natural infrastructure monopoly of electricity transmission and distribution networks and gas pipelines.

Through our various regulatory, monitoring, compliance and enforcement responsibilities, our overall role is to drive the efficient delivery of energy supplies and services in a way that promotes positive price and reliability outcomes for consumers, as well as consumer confidence and trust.

This means not only regulating energy businesses but also equipping consumers to choose the services they want and protecting those who are unable to look after their own interests.

While we consider the interests of consumers today, we take a long-term perspective and use our expertise to inform debate about Australia's energy future, the long-term interests of consumers and the regulatory landscape.

In 2018-19 we regulated energy markets and networks in eastern and southern Australia as well as networks in the Northern Territory (NT).

Our functions include not only regulation and enforcement but also measures to monitor and improve competitive markets and implement energy market reforms. Our achievements against these responsibilities are detailed against our strategic deliverables below.

Priorities

The AER identified the following specific priorities for 2018-19 in support of this strategy:

Deliverable 5.1	Deliver network regulation to promote efficient investment in energy network services that customers value
Deliverable 5.2	Build consumer confidence in retail energy markets
Deliverable 5.3	Promote efficient wholesale energy markets
Deliverable 5.4	Contribute our expertise and insight to inform energy policy development processes and working in partnership with the Council of Australian Governments (COAG) Energy Council, the Energy Security Board and other market institutions to advance energy market reforms

Powers

The AER applies the following laws, regulations and rules, which together make up the national energy legislation and rules:

- National Electricity Law (Electricity Law)
- National Electricity Regulations
- National Electricity Rules (Electricity Rules)
- National Energy Retail Law (Retail Law)
- National Energy Retail Regulations
- National Energy Retail Rules (Retail Rules)
- National Gas Law (Gas Law)
- National Gas Regulations
- National Gas Rules (Gas Rules).

The AER also assists the ACCC with energy-related issues arising under the *Competition and Consumer Act 2010* (Cth) (CCA), including enforcement and mergers.

Performance indicators

Deliverable 5.1: Deliver network regulation to promote efficient investment in energy network services that customers value

The electricity and gas rules require that network businesses periodically (usually every five years) submit regulatory proposals (electricity) and proposed access arrangements (gas) to the AER for approval. We must assess the compliance of network businesses' regulatory proposals with the legislative criteria.

Table 3.40: Performance indicators for deliverable 5.1

Performance indicator	2016-17	2017-18	2018-19	
	Result	Result	Target	Result
Number of completed revenue decisions for electricity networks and gas pipelines	3	8	7	7
Percentage of revenue reset determinations for electricity networks and gas pipelines and distribution networks completed within statutory timeframes	67% [#]	80%	100%	100%
Number of annual benchmarking reports on electricity networks	2	2	1	2
Percentage of disputes resolved within legislated timeframes, including on network access and connections, and regulatory investment tests	N/A	100%	100%	100%
Number of electricity distribution annual pricing (tariff) proposals and annual gas tariff variations approved	N/A	27	22	24

[#] 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 5.2: Build consumer confidence in retail energy markets

Under the Retail Law, the AER regulates retail markets in Queensland, New South Wales, South Australia, Tasmania (electricity only) and the Australian Capital Territory (ACT). The Retail Law sets out the obligations of energy retailers and key consumer protections. These include requirements for how retailers market their offers and retailer responsibilities to help customers in financial hardship.

Table 3.41: Performance indicators for deliverable 5.2

Performance indicator	2016-17	2017-18	2018-19	
	Result	Result	Target	Result
Number of annual reports on compliance in, and performance of, retail energy markets	2	2	2	2
Number of retailers' hardship policies and proposed amendments assessed (externally driven)	3	5	N/A	12
Percentage of new and amended retailer hardship policies assessed within 12 weeks of receiving all relevant information	67%	80%	100%	33.3%
Number of retail authorisations and exemptions assessed (externally driven)	8 authorisations 9 individual exemptions	14 authorisations 14 individual exemptions	N/A	6 authorisations 10 individual exemptions
Percentage of retail authorisations and exemptions applications assessed within 12 weeks of receiving all relevant information	100%—authorisations 89%—exemptions	71%—authorisations 93%—exemptions	100%	33%—authorisations 10%—exemptions
Support the timely transfer of affected customers in the event of a retailer failure (externally driven)	1 electricity RoLR [#] event (Urth Energy)	0	N/A	2 RoLRs (but no customer transfers)
Number of formal energy retail enforcement interventions (court proceedings commenced, s. 288 (Retail Law) undertakings accepted, infringement notices issued) (externally driven)	17 infringement notices paid	17 infringement notices paid	N/A	16 infringement notices paid
Percentage of offers published on the AER's Energy Made Easy price comparator website within 2 business days of receipt from retailers	100%	100%	100%	100%

[#] Retailer of Last Resort.

Deliverable 5.3: Promote efficient wholesale energy markets

The AER is responsible for monitoring and enforcement in wholesale electricity and gas markets in all jurisdictions except Western Australia and the NT—specifically, the National Electricity Market (NEM), which is a spot market in eastern and southern Australia; and spot markets for gas in Adelaide, Sydney, Brisbane and Victoria and gas supply hubs at Wallumbilla (Queensland) and Moomba (South Australia).

Table 3.42: Performance indicators for deliverable 5.3

Performance indicator	2016-17	2017-18	2018-19	
	Result	Result	Target	Result
Number of quarterly reports on compliance in wholesale electricity and gas markets	4	4	4	0
Percentage of quarterly compliance reports published within 6 weeks of the end of the quarter	50%	0%	100%	0%
Number of audits completed of systems for energy businesses that are critical to market efficiency and energy security	0	0	1	0
Number of weekly electricity and gas monitoring reports	94	104	104	87
Percentage of weekly reports published within 12 business days of the end of the relevant week	70%	83%	75%	37%
Number of reports on extreme price events in wholesale electricity and gas markets (externally driven)	25	14 electricity 1 gas	N/A	6
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%	100%
Number of targeted reviews of compliance with the national energy rules	3	7	4	2
Number of reports on effective competition in the wholesale electricity market	N/A	2	1	1

Deliverable 5.4: Contribute our expertise and insight and support energy market reforms

The AER will contribute its expertise and insight to inform energy policy development processes and work with the COAG Energy Council, the Energy Security Board and other market institutions to advance energy market reforms.

Table 3.43: Performance indicators for deliverable 5.4

Performance indicator	2016-17	2017-18	2018-19	
	Result	Result	Target	Result
Publish the <i>State of the energy market</i> report	Yes	No	Yes	Yes

Analysis of performance

The AER's work takes place in the context of technological, behavioural and systemic change. Our first biennial report on the performance of the wholesale electricity market was released in December 2018. It reported that the market is undergoing a significant transformation, with market dynamics changing as it transitions to a lower emissions generation mix.

In 2018–19 we undertook an evaluation of governance and organisational structures, resulting in reviews of priorities and reporting in some areas of work. During the year, some performance indicators, including indicators relating to hardship policies, retail authorisations, quarterly compliance reports, weekly electricity and gas monitoring reports, along with targeted reviews of compliance, were not met, as priority work was redetermined.

The AER monitored the performance of the wholesale market and analysed key issues, staying mindful of existing policy, review and rule change processes that are underway. Our target of publishing weekly reports within 12 business days of the end of the relevant week was not consistently achieved, as our resources were focused on reporting on longer term market trends. This provides higher value information to market participants and policy-makers and is consistent with our effective competition role.

We publish the outcomes of our enforcement work via our website and media releases. However, with the creation of the Compliance and Enforcement branch in September 2018, we have been reviewing our compliance reporting. Pending the outcome of the review, no quarterly compliance reports were published in 2018–19. We also released our annual report, *State of the energy market*, which details what is happening in Australia's energy markets.

With the energy market in transition and facing significant challenges, energy affordability is a central concern for consumers. In line with rising expectations, we have engaged more deeply with consumers to ensure our decisions reflect their needs. We have also developed new ways to assess the revenue that regulated and competitive businesses need in order to deliver the services the community needs.

A key piece of work for the AER in 2018–19 was determining Default Market Offer (DMO) prices. The DMO price is a compulsory price cap for residential and small business electricity customers on standing offer contracts. These are default contracts that a customer might be on if they have never switched to a retailer's market offer, or if they were placed on one when their market offer expired. They apply in distribution zones where there is no retail price regulation (in south-east Queensland, South Australia and New South Wales). The AER's final determination was released on 30 April 2019 and the DMO prices will apply from 1 July 2019 to 30 June 2020. These changes will reduce unjustifiably high standing offers for consumers who are unable or unwilling to engage in the market. The DMO price will also act as a 'reference price' that retailers must compare all their plans against in advertising, on their websites, or other places. It is designed to make it easier for customers to compare energy plans and find the best offer for them.

To strengthen consumer protections, in 2019 the AER released the first Customer Hardship Policy Guideline. This binding and enforceable hardship guideline is the product of a rule change initiated by the AER. It strengthens protections for energy customers who are experiencing hardship in an environment where more Australian households are experiencing difficulty in paying their bills. It ensures that energy retailers apply the hardship protections to vulnerable customers consistently and effectively and that customers are aware of their rights and entitlements. Importantly, the improved clarity and consistency of policies resulting from the guideline will improve the enforceability of the hardship protections under the Retail Law. Development of the guideline took place in a compressed timeframe (prescribed by the rules) and involved extensive consultation with consumer and industry stakeholders across workshops, forums and written submissions. The AER reallocated resources from other consumer work streams to meet the deadline of 2 April 2019 for publication of the guideline.

Our work in retail energy markets aims to equip consumers with information and confidence to engage in a challenging and transforming market environment. Energy Made Easy, our free and

independent price comparator website, has been helping consumers and businesses compare energy plans from all providers since 2012. On 1 July 2018 we received \$8 million in government funding to enhance Energy Made Easy so it continues to help Australians make informed energy choices. In July 2018 we set up a dedicated team and began the two-year project to redevelop the website so that it incorporates the broader range of products and services now available and those likely to be developed in the foreseeable future. We are engaging with a broad range of stakeholders, including retailers, consumers, small business, government and industry representatives, to understand how we might best enhance Energy Made Easy.

On 30 April 2019 the AER published final determinations on proposals put forward by six regulated businesses in New South Wales, South Australia, Northern Territory and the ACT. This represents the culmination of a significant body of work undertaken over several years. This work ensures consumers have a safe and reliable electricity network at the most efficient cost.

A key change in these proposals is that many networks are engaging with consumers before they submit their revenue proposals. This new collaborative dynamic gives consumers greater influence and leads to an improved regulatory process without compromising the rigour of our assessment.

One of the ways we test whether we are meeting stakeholder needs and expectations is through our biannual surveys. The 2018 survey asked for stakeholders' perceptions of our overall performance and sought more specific feedback on three core areas: consultation, communication and dealings with stakeholders. It included questions relating to the key capabilities of a good regulatory agency, such as impartiality, transparency and timeliness of decisions.

The average level of overall stakeholder satisfaction has increased since 2016, with 79 per cent of the AER's stakeholders satisfied overall with how effectively the AER performs its functions as a regulator.

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 5.1: 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).
- Second, 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

The AER sets the amount of revenue that network businesses can recover from their customers and ensures that networks comply with electricity and gas laws and rules.

Our role is to promote economically efficient investment in and efficient operation of energy network services for the long-term interests of consumers. Such regulation also supports competition in upstream and downstream markets.

In 2018–19 we completed seven revenue decisions for electricity networks and gas pipelines.

Innovations in network regulation

In 2018–19 a number of innovations were rolled out to enhance network regulation. The primary focus has been on improving transparency and accountability, as well as formalising and strengthening the voice of consumers in regulatory decision-making.

Accessibility of Regulatory Information Notices

For the first time, annual Regulatory Information Notices (RINs), which collate performance information from regulated network businesses, were published online. By making this data readily accessible we hope to facilitate stakeholder participation in the regulatory process and support public scrutiny of network businesses' performance outcomes.

First Rate of Return Instrument released

We have increased our own transparency by releasing the first Rate of Return Instrument (RRI) in December 2018. The RRI sets out how we will determine the regulated rate of return on capital from our revenue determinations to provide greater certainty for network businesses.

In setting the rate of return, we balance the need for efficient and stable investment to build and maintain Australia's future energy networks while ensuring consumers pay no more than necessary for safe and reliable energy.

The first round of regulatory determinations under the instrument were completed in April 2019. Under new legislation developed by the Council of Australian Governments (COAG) Energy Council, the instrument binds regulatory revenue decisions for the next four years.

The instrument is expected to reduce consumer bills by around \$30 to \$40 a year on average, relative to the approach set out in the 2013 Rate of Return Guideline.

As consumers pay for the network through their electricity bills, we need to ensure that the rate of return is high enough to attract investment in these long-term regulated assets but not so high that it attracts over-investment. The instrument is a critical tool that promotes efficient investment in energy network services that is ultimately in the long-term interests of consumers.

Comprehensive consumer engagement

The 2018 RRI was the result of the most comprehensive consultation process we have ever undertaken involving consumers, investors and businesses throughout the process. For example, there were multiple rounds of stakeholder submissions and public forums.

Transparency has been the theme of our approach to consumer engagement. We are engaging with consumers through the pioneering NewReg consultation process, the use of other consumer engagement approaches and greater involvement of our Consumer Challenge Panel in network revenue proposals.

We employed several new consultation elements so that differing stakeholder perspectives could be understood. For example, we held concurrent expert evidence sessions to provide advice on key issues and invited an independent panel of leading figures in the field to review our decision.

Reforms to Australia's gas industry pipeline regulation

On 3 July 2018 the Australian Energy Market Commission (AEMC) released its final report on the review of the scope of economic regulation applied to covered pipelines (the Parts 8-12 review) and associated rule changes.

This was the first comprehensive review of the regulatory framework for gas pipelines since 1997. It has introduced new requirements for the AER to produce financial reporting guidelines for light regulation pipelines and a guideline for application of the AER's post-tax revenue model to gas regulation. These are both well progressed and are expected to be released in October 2019.

Capacity trading reforms developed through the COAG Energy Council Gas Market Reform Group commenced operation in early 2019. These reforms are designed to foster the development of more liquid secondary gas transportation capacity markets. The AER is now responsible for monitoring and enforcing compliance with new market conduct obligations in the Gas Law and the Gas Rules. We are also responsible for granting transportation facility exemptions to the reforms, overseeing the classification of transitional firm services and publishing record-keeping guidelines relating to nominations and scheduling.

To ensure the reforms are delivering greater access to gas reserves, we will review compliance with the rules for standard gas transportation contracts by early 2020 and report on participation and volume of trade in the markets to inform further policy thinking.

This is addition to our ongoing, continuing work in assisting the COAG with the development of a full Regulation Impact Statement (RIS) to revise the tests used to apply gas pipeline regulation (for example, the coverage test), examine the number and forms of regulation (full regulation, light regulation and Part 23) and examine the governance arrangements for pipeline regulation. Consultation on this reform is designed to identify and evaluate options to deliver a more efficient, effective and well-integrated regulatory framework for gas pipelines. That consultation is well underway and will continue during 2019-20.

Build consumer confidence in retail energy markets

Actions undertaken to achieve our purpose

Deliverable 5.2: Build consumer confidence in retail energy markets

Consumer confidence is essential to driving competitive outcomes and innovations in energy markets. Given this, our role is to provide the support consumers need to actively participate in the retail energy market and ensure that safeguards are in place to protect their interests and rights.

This includes helping consumers to make informed choices when choosing an energy contract, both through our price comparator website (Energy Made Easy) and by making consumers aware of protections that are available to them.

Monitoring retail markets and enforcing compliance

In 2018-19 we have continued to monitor energy retailers' performance and enforce compliance with energy law obligations.

We completed five compliance audits under the Retail Law and initiated a further three. We issued three targeted guidance documents on new rules and guidelines to inform and support retailer and distributor compliance. We issued 16 infringement notices and published three quarterly reports on performance of the retail market and an annual report on compliance and performance of the retail energy market, including affordability analysis. These reports, launched at an industry forum in December 2018, cover the territory and states where the Retail Law applies: the ACT, New South Wales, Queensland, South Australia and Tasmania (electricity only). Our analysis of energy affordability also includes Victoria, as part of the NEM.

Protecting vulnerable energy customers

Much of our focus this year has been on strengthening protections for vulnerable energy customers, particularly those experiencing hardship, and ensuring that retailers are complying with their obligations to provide reliable energy services for life support customers.

In recent years, consumer confidence in participating in the market has been impacted by the retail prices they are paying for the energy they use.

In its final report of the Retail Electricity Pricing Inquiry, published in July 2018, the ACCC found that standing offers, which were originally intended as a default protection for consumers who were not engaged in the market, were unjustifiably high and causing financial harm to consumers.

As a result, the Australian Government asked the AER to develop a mechanism to set the maximum price for DMO offers, consistent with the ACCC's recommendations, for implementation by 1 July 2019. This included setting a new regulated electricity standing offer maximum price for New South Wales, South Australia and south-east Queensland.

Default Market Offer final determination on pricing

From November 2018 to March 2019 in developing the DMO we consulted extensively via a range of papers, forums and submissions which were carefully considered against three policy objectives:

- reducing unjustifiably high standing offer prices for customers

- allowing retailers to recover the efficient costs of providing services, including a reasonable profit margin and customer acquisition and retention costs
- maintaining market competition, innovation, investment and market participation by both consumers and retailers.

We used a 'top-down' approach to setting the DMO. We used observed price data available in the market to establish a range for each distribution zone and then determined a DMO price within this range to best meet the policy objectives outlined above. We also considered forecast changes to input costs for 2019–20, including network, wholesale energy and environmental scheme costs.

The DMO price final determination, released in April 2019, reduces electricity standing offer tariffs from 1 July 2019 and sets a reference bill amount to help consumers compare electricity market offers.

These changes to default pricing will boost consumer confidence in retail energy markets by:

- reducing the unjustifiably high standing offers for consumers who are unable or unwilling to engage in the retail market
- creating a comparison point for consumers to use in deciding what is the best offer for them.

The new electricity DMO will be effective from 1 July 2019. From that date, DMO prices apply to residential and small business standing offer customers on flat rate tariffs in New South Wales, South Australia and south-east Queensland. There are approximately 758 000 residential customers and 119 000 small business customers currently on standing offers in these jurisdictions.

The final determination delivers annual reductions from the standing offer bill for residential customers of:

- between \$129 and \$181 for New South Wales (depending on distribution zone)
- \$118 for south-east Queensland
- \$171 for South Australia.

It will also reduce prices for small business customers who are on standing offers. For small business customers, annual reductions from the standing offer bill will be approximately:

- between \$579 and \$878 for New South Wales (depending on distribution zone)
- \$457 for south-east Queensland
- \$896 for South Australia.

The ACCC has noted that DMO prices will have two further benefits for consumers:

- They will act as a cap on the price of default offers to limit the 'loyalty tax' that is levied on disengaged consumers.
- They can be used to set a reference bill amount from which all discounts must be calculated. This is intended to stop retailers from offering meaningless headline discounts and help customers to determine more easily whether one offer is more likely to deliver lower bills than another.

New rules for life support compliance

An unexpected loss of power supply for customers who rely on life support equipment can be dangerous or even fatal.

All retailers and distributors that operate under the Retail Law and Rules are required to comply with obligations to protect customers that are reliant on energy-powered life support equipment.

It was disappointing that, in 2018–19, penalties totalling \$220 000 for contraventions of the life support rules were issued to three distributors. This compares with \$180 000 in penalties last financial year.

Beyond these penalties, this year also marked the start of a new set of rules, made in response to a proposal from the AER to strengthen the legal obligations on energy companies and give people reliant on life support equipment even greater peace of mind.

The new rules commenced on 1 February 2019. They compel both energy retailers and distributors to provide greater protections to life support customers from the time they inform the company of their need for the equipment, closing a gap in the Retail Rules.

The new rules require the retailer or distributor contacted by the customer to:

- clearly notify customers of their rights and obligations under the life support rules
- follow an explicit process to obtain medical confirmation of a customer's eligibility to be on the life support register
- follow an explicit process if the retailer or distributor chooses to deregister a customer where medical confirmation is not provided.

We worked closely with the AEMC, the Australian Energy Market Operator (AEMO), retailers and distributors on the preparations for and implementation of the new rules. Our work included developing guidance for industry to assist retailers and distributors to understand their responsibilities to customers who rely on life support equipment under these new rules and to help with the implementation of and transition to the new rules.

The AER also administers a binding reporting framework that requires retailers and distributors to report possible breaches of the Retail Law and Rules. Any breaches of the new life support obligations must be reported within two business days to ensure that timely action is taken to restore compliance and prevent future incidents.

Promote efficient wholesale energy markets

Actions undertaken to achieve our purpose

Deliverable 5.3: Promote efficient wholesale energy markets

Our role in relation to wholesale markets is twofold. We have had a longstanding responsibility to monitor wholesale energy markets to identify instances of participant non-compliance with the market rules. Also, we work to ensure energy businesses in the NEM and wholesale gas markets in southern and eastern Australia comply with the energy legislation and rules and we take enforcement action where necessary.

Comprehensive market monitoring and reporting

This year, in line with the growing impact of wholesale energy prices on end consumers, we have assumed a broader responsibility to determine whether wholesale markets are effectively competitive and operating efficiently in the long-term interests of consumers and identify areas for further reform.

In December 2018 the AER released the first comprehensive long-term monitoring report of the wholesale markets to help inform advice to the COAG Energy Council on the operation of the NEM. The report contributes to the AER's strategic objective of promoting efficient wholesale energy markets, as well as allowing the AER to share its expertise and insight, and further supports reform to the energy market.

The detailed analysis of the effectiveness of competition in the market found that market dynamics are changing as the market transitions to a lower emissions generation mix. In recent years, average wholesale electricity prices have risen significantly as a result of the exit of low-cost generation and increasing fuel costs. Despite the vulnerability of energy markets to the exercise of market power, we did not identify short-term behaviour as contributing to recent price rises. However, we will need to monitor this over the long term.

The report also included the AER's first levelised cost of energy (LCOE) analysis, which highlighted that current wholesale spot prices would provide a range of generation technologies with the ability to recover their costs if they entered the market. It also identified that, while there was considerable investment in new wind generation and solar generation investment is also on the horizon, market participants have identified a range of potential barriers to entry, including policy instability and unpredictability, interventions in the market and difficulties in obtaining finance.

Analysis of market opportunities for alternative technologies

While the NEM continues to meet the reliability standard, supply and demand conditions have tightened and prices have risen to such a level that a signal for some lower cost technologies is emerging, consistent with the considerable investment in new wind and solar generation on the horizon. However, market participants have identified a range of potential barriers to entry, including policy instability and unpredictability, interventions in the market and difficulties in obtaining finance.

As we continue to monitor the performance of the wholesale market, we will analyse some key issues in more detail over the coming year. We will also monitor and contribute to policy, review and rule change processes affecting competition in the wholesale markets.

Support energy market reforms

Actions undertaken to achieve our purpose

Deliverable 5.4: Contribute our expertise and insight and support energy market reforms

As the regulator and market monitor, the AER is in a unique position to contribute to the development of energy policy and reforms.

In line with our overall strategy to increase transparency to inform and empower decision-making by industry, governments and consumers, we make as much information publicly available as possible and actively engage with stakeholders in driving our own decision-making, as well as contributing to theirs.

We have actively engaged in reform proposals, providing guidance and direction that will benefit consumers and business customers as well as retailers and distributors while ensuring the market remains stable, reliable and cost effective.

International engagement

The AER participates in international forums to contribute our expertise and insight. The AER is a member of the Energy Intermarket Surveillance Group (EISG)—the peak international group for coordination between energy market surveillance and enforcement bodies.

The AER is also a participant in the Asia Pacific Energy Regulatory (APER) Forum, held in November 2018 in Tokyo. The forum brings together representatives from energy regulatory agencies and other organisations in the Asia-Pacific region.

Developing the Retailer Reliability Obligation

A key recent policy reform is the development of the Retailer Reliability Obligation (RRO). The RRO supports the reliability of the NEM by incentivising retailers and some large energy users to contract or invest in dispatchable and 'on demand' resources.

The development of the RRO was an intensive project undertaken by the Energy Security Board (ESB) over a short period of time (four months). It will result in a number of new rules. The AER actively contributed to its development, providing advice on policy, supporting engagement with stakeholders and assisting with the development of the new regulatory framework.

The RRO will have important and complex strategic impacts for the AER in our market performance and wholesale monitoring functions. The AER will participate in the development of rules and guidelines to implement the RRO to ensure the enforcement approach achieves the strategic objectives of the obligation.

State of the energy market report

Since 2007 the AER has reported on the state of the energy market in this flagship report. We aim to provide independent and accessible information to policy-makers, industry and the community on Australia's wholesale electricity and gas markets, the transmission and distribution networks, and the rapidly evolving energy retail market.

This publication is valued by stakeholders as a ready source of unbiased and up-to-date information. Energy markets are complex, and media reporting, public commentary and political debate on energy issues can be conflicting and confusing. This report aims to give readers a

working understanding of how the markets operate so they can make their own assessment of the issues.

Among the most debated issues in 2018 were why retail energy bills are higher than in the past, how renewable generation is changing the market, how Australia's gas industry is balancing the needs of foreign and domestic customers, how energy networks can be managed to meet changing customer expectations, and the impact of government intervention in the market.

The *State of the energy market* report is evolving as the market itself evolves. In 2019 we aim to publish the report's most frequently requested data sets online. We will also look to update key data series on a more regular basis.



04

Management and accountability



Senior leadership

The ACCC's senior leadership comprises members of the Commission (appointed by the Governor-General) and Senior Executive Service (SES) employees. In 2018-19 the ACCC expanded its senior leadership team by appointing General Managers to lead the Executive Office and the Financial Sector Competition Branch.

The AER's senior leadership comprises the AER Board and SES employees who are engaged exclusively on energy matters. In 2018-19 the AER's SES cohort was expanded to include a General Manager, Policy and Performance and a General Manager, Compliance and Enforcement.

Details of the leadership structure are in figure 2.1 on page 24.

Australian Competition and Consumer Commission

The ACCC has a Chair, two Deputy Chairs, three Commissioners and four Associate Members. Their names and appointment terms are shown in table 4.1.

Table 4.1: Terms of appointment—current ACCC members at 30 June 2019

Position	Name	Appointed until
Chair	Rod Sims	31 July 2022
Deputy Chairs	Delia Rickard	26 July 2022
	Mick Keogh	30 May 2023
Commissioners [#]	Cristina Cifuentes	29 May 2023
	Sarah Court	30 April 2023
	Stephen Ridgeway	26 June 2024
Associate Members [*]	Paula Conboy	30 September 2019
	Jim Cox	25 June 2020
	James Cameron	4 August 2021
	Nerida O'Loughlin	13 October 2022

[#] Roger Featherston retired as a Commissioner of the ACCC on 12 June 2019 after a five-year term. Stephen Ridgeway was appointed for a five-year term commencing 27 June 2019.

^{*} Susan Begg's and Mark Berry's appointments as Associate Members of the ACCC ceased on 16 June 2019 and 31 March 2019 respectively.

Biographies—ACCC

Chair

Mr Rod Sims



Rod Sims was appointed Chair of the Australian Competition and Consumer Commission (ACCC) in August 2011 for an initial five-year term, reappointed for a further three years in August 2016, and reappointed again for a further three years until July 2022, making him the longest serving Chair of the ACCC.

Rod has extensive business and public sector experience. Immediately prior to his appointment to the ACCC, he was the Chairman of the Independent Pricing and Regulatory Tribunal of New South Wales (IPART), Commissioner on the National Competition Council, Chairman of InfraCo Asia, Director of Ingeus Limited, and a member of the Research and Policy Council of the Committee for Economic Development of Australia. Rod was also a Director of Port Jackson Partners Limited, where he advised the CEOs and boards of some of Australia's top 50 companies on commercial corporate strategy over many years. Rod relinquished all of these roles on becoming Chair of the ACCC.

Rod is also a past Chairman of the NSW Rail Infrastructure Corporation and the State Rail Authority and has been a director of a number of private sector companies. During the late 1980s and early 1990s, Rod worked as the Deputy Secretary in the Commonwealth Department of the Prime Minister and Cabinet responsible for economic, infrastructure and social policy and the Cabinet Office. He also worked as Deputy Secretary in the Department of Transport and Communications. Between 1988 and 1990 Rod was the Economic Advisor to Australia's Prime Minister.

Rod holds a first-class honours degree in commerce from the University of Melbourne and a Master of Economics from the Australian National University.

Deputy Chairs

Ms Delia Rickard



Delia Rickard was appointed to the position of Deputy Chair of the ACCC in June 2012 for a period of five years and reappointed for a further five years in July 2017. She is also an Associate Member of the Australian Communications and Media Authority.

Delia has extensive public service experience. Her passion is for consumer protection and she has worked in a variety of senior roles primarily at the ACCC and the Australian Securities and Investments Commission.

Delia sits on the ACCC's enforcement, adjudication, communications and strategic compliance committees. She also chairs the ACCC's market study into the cost of insurance in Northern Australia and is a member of the board for a number of other ACCC market studies.

Outside work she is a trustee of the Jan Pentland Foundation, an organisation dedicated to providing scholarships for those who want to work as financial counsellors, and a director of Fairtrade Australia New Zealand. She is also the Chair of Good Shepherd's Advisory Committee on Financial Inclusion Action Plans and a member of the Consumer Policy Research Centre's reference group.

Delia was awarded the Public Service Medal in 2011 for her contribution to consumer protection and financial services. She has also been awarded the Society of Consumer Affairs Professionals Lifetime Achievement Award. She holds bachelor's degrees in law and arts from the University of New South Wales.

Mr Mick Keogh

Mick Keogh was appointed to the ACCC in February 2016, and then as Deputy Chair of the ACCC in 2018. Mick has a long and diverse history of involvement with the agriculture sector, which has included periods of employment as a farm manager, a university researcher, an agribusiness consultant and an agriculture policy advisor.

In 2003 Mick was appointed Executive Director of the Australian Farm Institute, an independent policy research institute that conducts research into strategic policy issues of importance to Australian agriculture. Mick continued in that role until his appointment as Deputy Chair of the ACCC in June 2018.

During his time as Executive Director of the Australian Farm Institute, Mick was also appointed chairperson of the Australian Government panel which reviewed drought support measures, and chaired the Australian Government's National Rural Advisory Council from 2012 to 2015.

Mick was awarded the Order of Australia Medal for services to agriculture in 2015. He holds bachelor's and master's degrees in wool and pastoral sciences, both obtained at the University of New South Wales.

Mick remains involved in family farming interests in southern New South Wales.

Mick's role at the ACCC includes involvement in a range of committees, as well as oversight of the small business, franchising and agriculture units of the ACCC.

Commissioners**Ms Cristina Cifuentes**

Cristina Cifuentes was appointed a Commissioner of the ACCC in May 2013 for a five-year term. She was reappointed for a further five-year term in 2018. She is also an Associate Member of the Australian Communications and Media Authority and a member of the OECD Network of Economic Regulators.

Cristina has a breadth of experience in both the public and private sectors across public policy, finance and utility regulation, including positions at the Reserve Bank of Australia, the New South Wales Treasury and the Australian Securities Commission. She served as the state part-time Member of the Australian Energy Regulator between 2010 and 2013. Cristina was a member of the IPART between 1997 and 2006.

Cristina is chair of the ACCC's Communications Committee and the ACCC's Infrastructure Committee. She oversees the ACCC's regulatory role in relation to key infrastructure in areas such as telecommunications, wheat ports, rail, and water. 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.

Ms Sarah Court

Sarah Court was appointed a Commissioner of the ACCC in May 2008, and reappointed for a third term in 2018. She is also an Associate Commissioner of the New Zealand Commerce Commission.

Sarah is a former senior executive lawyer with the Australian Government Solicitor. She brings to her role extensive experience in Commonwealth legal work, including restrictive trade practices, consumer protection and law enforcement litigation.

Sarah oversees the ACCC's enforcement and litigation program and is chair of the Commission's Enforcement Committee, Compliance Committee, Consumer Data Right Committee and Legal Committee. She also sits on the Merger Review Committee and the Adjudication Committee.

Sarah holds a Bachelor of Arts (Jurisprudence) and a Bachelor of Law (Honours) from the University of Adelaide, as well as a Graduate Diploma in Legal Practice from the Australian National University. She is a Fellow of the Australian Institute of Company Directors.

Mr Stephen Ridgeway

Stephen Ridgeway was appointed a Commissioner of the ACCC in June 2019. Stephen brings a wealth of experience from his previous roles as a lawyer in the private and public sectors. He is widely recognised as one of Australia's leading competition and consumer lawyers and an expert in the field. In 2018 Stephen retired as a senior partner at King & Wood Mallesons.

Early in his career, Stephen acted for the ACCC and its predecessor, the Trade Practices Commission, in enforcement litigation as a senior lawyer with the Australian Government Solicitor. Since joining private practice in 1998, Stephen has had extensive involvement in merger clearance applications in a wide variety of industries, including energy and telecommunications in particular. He has extensive experience in regulatory enforcement actions, including a number of landmark ACCC enforcement matters in recent years.

During 2011 and 2012 Stephen was National Chairman of the Competition and Consumer Committee of the Law Council of Australia, and led consultations with the ACCC and Treasury about policy and enforcement matters. He has been an Executive Member of the Business Law Section of the Law Council of Australia since 2016.

Stephen chairs the ACCC's Merger Review Committee and Adjudication Committee, and is a member of the ACCC's Enforcement Committee and Water Project Board.

Stephen holds a Bachelor of Science (Honours) from the University of New South Wales and a Bachelor of Laws from the Australian National University.

Australian Energy Regulator

The AER Board has three members, including the Chair of the AER Board, Paula Conboy.

Table 4.2: Terms of appointment—current AER members at 30 June 2019

Position	Name	Appointed until
Chair	Paula Conboy	30 September 2019
Commonwealth Member	Cristina Cifuentes	29 May 2023
Member	Jim Cox	25 June 2020

Biographies—AER

Chair

Ms Paula Conboy

Paula Conboy has been the full-time state/territory member and Chair of the AER Board for five years from 1 October 2014. On 8 February 2019, Paula announced she would not be seeking a further term as AER Chair or as a member of the Board.

Paula came to the AER with over 20 years' experience in public utility regulation in Australia and Canada. She held roles at the Industry Commission, Sydney Water Corporation and Ontario electricity distribution utility PowerStream Inc. She was also 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 was a Member of the Energy Security Board.

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 he was a consultant to the New South Wales Cabinet Office. Jim was Principal Adviser to the Government Pricing Tribunal of New South Wales from 1992 and was a member of IPART from January 1996 to September 2013. He was Acting Chairman of IPART in 2004, 2009–10 and 2011 and a visiting fellow at Monash University in 1985.

Jim assisted the New Zealand Government with social policy changes during the early part of 1991.

Jim has also written extensively on economic and social policy issues. This work has been published by, among others, the New Zealand Business Roundtable and the Centre for Independent Studies.

Jim was awarded the Public Service Medal in the Australia Day honours list in 2011 for outstanding public service to IPART.

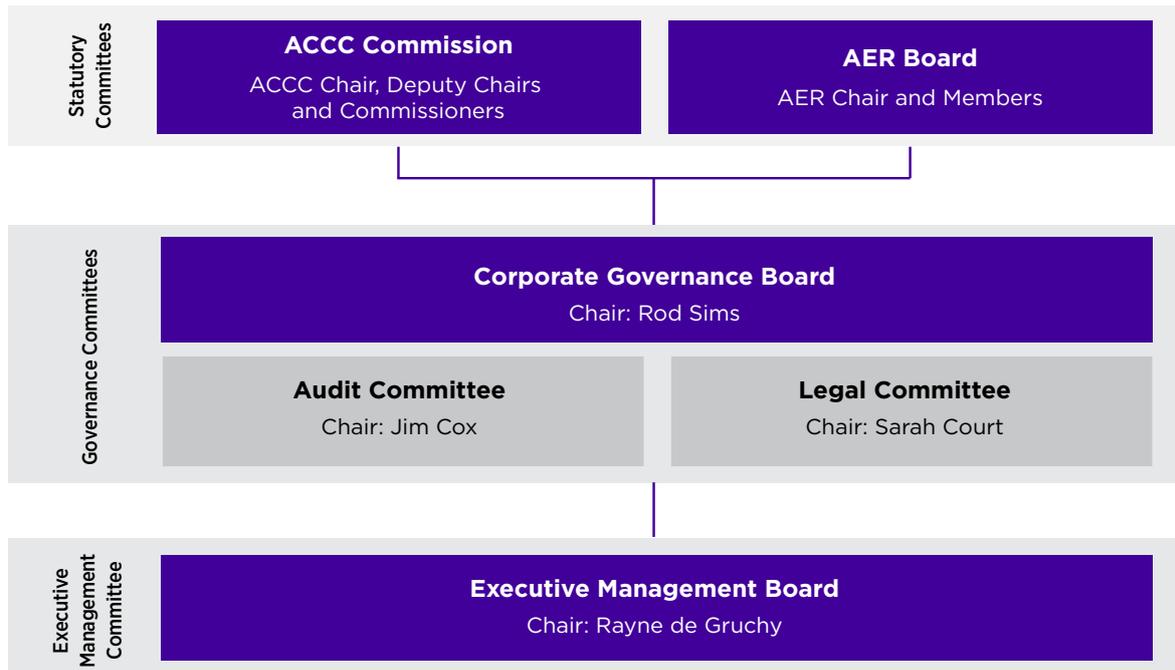
Managing the ACCC and AER

Committees

The ACCC makes statutory decisions through the Commission, aided by specialist subject-matter committees (see figure 4.2 and table 4.3) comprising subgroups of Commissioners. The AER makes its decisions through its Board. The agencies are governed and their administration is overseen by 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:

- governance committees
- executive management committees.

Governance committees

Corporate Governance Board

The Corporate Governance Board is at the apex of the corporate governance structure. It meets at least 10 times each year (generally on a monthly basis). All ACCC Commissioners and 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 executive management committees, is well equipped to oversee our strong corporate and financial performance.

Responsibilities include:

- strategy setting and corporate planning
- internal budgets and resource management
- performance monitoring and reporting
- risk oversight and management
- agency accountability.

Members: Rod Sims (Chair), ACCC Deputy Chairs and Commissioners, AER Chair and Board members.

Audit Committee

The Audit Committee provides independent advice and assurance to the Accountable Authority (the Chair) through the Corporate Governance Board. Its responsibilities are to review, report on and provide advice on the entity's financial reporting, performance reporting, risk oversight and management, and system of internal control of the ACCC and AER. The committee provides an annual written statement to the Chair setting out its views about these four areas. It meets four times per year and holds an additional meeting focusing on the ACCC and AER financial statements.

Members: Jim Cox (Chair), Clare Lewis (independent member), Kathy Grigg (independent member).

Legal Committee

The Legal Committee meets monthly and oversees the ACCC's and AER's processes and systems, including to:

- manage and forecast its pipeline of investigations and cases and the resulting legal and related expenditure, within its budget, and ensure accurate information and forecasts relating to legal expenditure are provided monthly to the Corporate Governance Board
- oversee the ACCC/AER's pipeline of investigations and cases and the resulting legal and related expenditure and provide advice to the Board
- ensure accurate information and forecasts relating to legal expenditure are provided monthly to the Board
- review the ACCC's approaches to enhancing the effectiveness of the reporting of the ACCC's legal and related expenditure relevant to achieving outcomes in the interests of consumers and the economy
- advise the Board on the effectiveness of our internal enforcement and specialist legal and economic resourcing, coupled with our external legal services panel arrangements, to best meet the needs of the ACCC and AER
- provide advice generally to the Board on the ACCC/AER's policies, processes and systems that relate to its standing and capacity as an agency which uses litigation and refers briefs for criminal prosecution as key regulatory tools.

Members: Sarah Court (Chair), Chief Operating Officer, senior managers.

Executive management committees

The ACCC has a number of executive management committees that support the governance committees and help to ensure that the organisation is managed effectively.

Executive Management Board

The Executive Management Board manages the organisation in line with the expectations and limitations set by the Accountable Authority (the Chair) and the Corporate Governance Board.

Members: Chief Operating Officer (Chair), Executive General Managers, AER Chief Executive Officer, Chief Information Officer, Chief Financial Officer, General Manager Executive and Governance, General Manager People and Culture, General Manager Strategic Communications.

The Executive Management Board is supported by subcommittees, led by senior managers, which provide advice to it as required.

Figure 4.2: ACCC operational committees

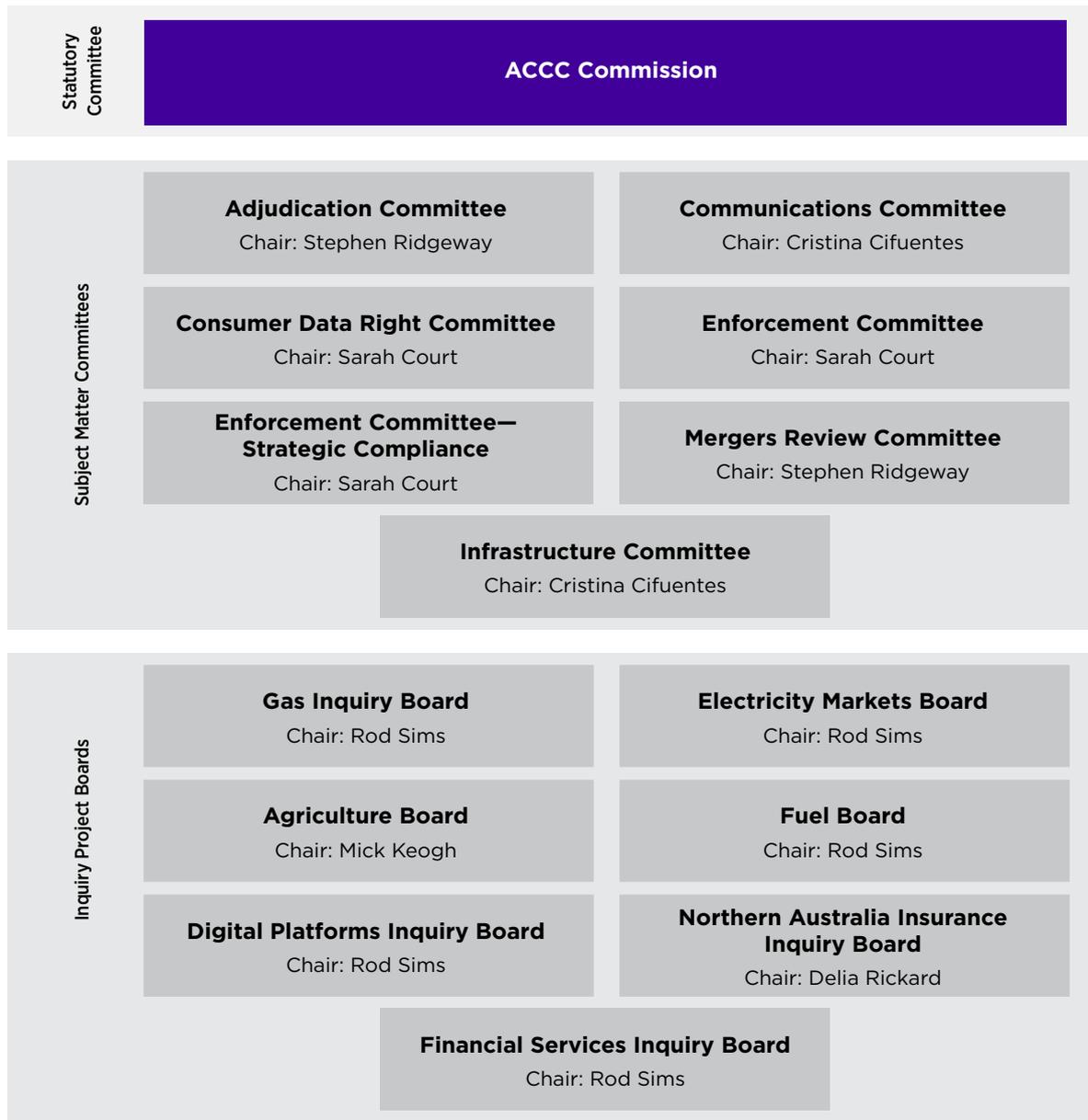


Table 4.3: Subject-matter committees of the ACCC—current roles and membership at 30 June 2019

Adjudication Committee	<p>Members: Stephen Ridgeway (Chair), Sarah Court, Mick Keogh, Delia Rickard, Rod Sims.</p> <p>Role: The committee considers authorisation applications, significant notifications of exclusive dealing and collective bargaining conduct, and significant certification trademarks applications. It subsequently refers all applications for authorisation to the Commission for decision. It meets fortnightly.</p> <p>The Adjudication Committee sits as a division of the Commission under s. 19 of the <i>Competition and Consumer Act 2010</i> (Cth) (CCA) in respect of certain non-merger matters under Part VII of the CCA.</p>
Communications Committee	<p>Members: Cristina Cifuentes (Chair), Stephen Ridgeway, Delia Rickard, Rod Sims.</p> <p>Associate Members: Nerida O’Loughlin, James Cameron.</p> <p>Role: The committee considers regulatory and competition issues arising in the communications sector, and refers major statutory matters to the Commission for decision. It meets fortnightly.</p>
Consumer Data Right Committee	<p>Members: Sarah Court (Chair), Delia Rickard, Rod Sims.</p> <p>Role: The committee oversees the ACCC’s role in the implementation of the government’s Consumer Data Right policy, including the development of rules and approval of standards and recommendations regarding designation of future sectors. It meets fortnightly.</p>
Enforcement Committee	<p>Members: Sarah Court (Chair), Stephen Ridgeway, Mick Keogh, Delia Rickard, Rod Sims.</p> <p>Role: The committee oversees ACCC actions to ensure compliance with and enforcement of the CCA and refers recommendations to the Commission for decision. It meets weekly.</p>
Enforcement Committee—Strategic Compliance	<p>Members: Sarah Court (Chair), Mick Keogh, Delia Rickard, Rod Sims.</p> <p>Role: The committee sets the policy and strategic direction for the ACCC’s contacts (for example through the Infocentre), consumer, small business and product safety functions; makes decisions about policy recommendations, law reform proposals and the exercise of relevant statutory powers and functions; and oversees the strategic compliance and education functions that relate to consumer, small business and product safety programs. It meets fortnightly.</p>
Infrastructure Committee	<p>Members: Cristina Cifuentes (Chair), Jim Cox, Mick Keogh, Rod Sims.</p> <p>Role: The committee oversees access, price monitoring, transport and water regulatory issues. It meets fortnightly.</p>
Mergers Review Committee	<p>Members: Stephen Ridgeway (Chair), Sarah Court, Mick Keogh, Rod Sims.</p> <p>Role: The committee considers if mergers and acquisitions are likely to substantially lessen competition. It refers decisions to oppose mergers or to accept an undertaking to remedy competition concerns to the Commission for decision. It meets weekly.</p>

Consultative committees

The ACCC and AER host and participate in a wide range of consultative committees and forums to encourage discussion around consumer, competition and regulatory issues relevant to our work (see tables 4.4 and 4.5).

Table 4.4: ACCC consultative committees

ACCC Performance Consultative Committee	The ACCC Performance Consultative Committee was established in 2015 to act as the ACCC's stakeholder consultation body under the Australian Government's Regulator Performance Framework. The framework has established a common set of six outcomes-based key performance indicators that allow for comprehensive assessment of Commonwealth regulators' performance and engagement with stakeholders.
Agriculture Consultative Committee	The 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 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.
Utility Regulators Forum	The Utility Regulators Forum was established in 1997 to encourage cooperation between the Commonwealth and state and territory based regulators.
Wholesale Telecommunications Consultative Forum	The Wholesale Telecommunications Consultative Forum was established in 2012 to provide an opportunity for meaningful dialogue between the ACCC and the telecommunications industry. It also provides information to increase the ACCC's understanding of structural separation and migration issues and so assist the ACCC in undertaking its role under the CCA and the <i>Telecommunications Act 1997</i> (Cth).

Table 4.5: AER consultative committees

Customer Consultative Group	The Customer Consultative Group was established in 2009 and is one of the AER's primary forums for engagement with representatives of energy consumers. The CCG provides the AER with insight into issues facing consumers in the energy market and gives participating organisations the opportunity to inform the AER about issues impacting their constituents.
Energy Security Board	The Energy Security Board (ESB) was established by the COAG Energy Council to coordinate the implementation of the reform blueprint produced by Australia's Chief Scientist, Dr Alan Finkel AO, and also provide whole of system oversight for energy security and reliability to drive better outcomes for consumers. The ESB comprises an Independent Chair, an Independent Deputy Chair and the heads of the AER, the Australian Energy Market Commission and Australian Energy Market Operator.
Infrastructure Consultative Committee	Refer to the table above for description.
Utility Regulators Forum	Refer to the table above for description.

Corporate and business plans

The ACCC and AER Corporate Plan 2018–19 meets the requirements of the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act) and Public Governance, Performance and Accountability Rule 2014, as well as our obligations under the Regulator Performance Framework. To achieve our purpose, each division of the agency develops an annual business plan that aligns our operations and risk management with the strategies and priorities set out in the Corporate Plan and the 2018–19 Portfolio Budget Statement. Our [Corporate Plan](#) is available on the ACCC website. This annual report describes the outcomes against both the Portfolio Budget Statement and the Corporate Plan.

Internal audit and risk

Internal audit

The ACCC's internal audit function provides assurance that we are meeting our obligations and adds value to the management and governance of our operations.

The ACCC and AER Internal Audit Plan sets out a four-year internal audit work program. This plan is reviewed annually with the oversight of the Audit Committee and is approved by the Corporate Governance Board. Audit topics are selected with reference to areas of significant risk and to ensure that all major functions, systems and divisions are audited on a regular basis.

The following internal audits were conducted during 2018–19:

- Change management
- Accounts payable and accounts receivable
- Credit card usage
- AER compliance systems
- Agency-wide intelligence function.

Risk management

Risk management is a key element of our strategic planning, decision-making and business operations.

The ACCC and AER Risk Management Framework has been established to deliver on our obligations under the PGPA Act, and developed in accordance with the Commonwealth Risk Management Policy.

This framework formalises our risk management practices, and details policies and strategies to strengthen risk culture and review risk management performance. It covers the agency's strategic risks, as well as agency-wide and operational risks that sit across and within the agency's business units.

The ACCC and AER aim for best practice in managing risk by identifying priority exposures, addressing them through improvement strategies and contingency planning, and monitoring and reviewing 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). 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 sustainability and performance

The ACCC remains committed to the development of best practice in environmental sustainability and performance. Our environmental strategies to improve sustainability and performance are consistent with the Australian Government ICT Sustainability Plan 2010-2015.

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 the cost of living, it is vital that we maintain the trust of the Australian people, government and businesses.

To maintain confidence in our integrity, the ACCC and AER have strict procedures to identify and properly manage any personal interests that may cause an actual or perceived conflict of interest.

As statutory office holders, Commissioners and Board members are held to high standards of conduct. These standards arise from the high ethical standards we set ourselves and are backed by legislation, codes of conduct and the common law.

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.

In addition, SES level staff must declare any material personal interests in connection with their employment at the ACCC, and this must include a management plan to address any conflicts which arise from the declaration of interests.

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 some limited circumstances, employees are able to accept hospitality or gifts such as chocolates or wine. To ensure transparency, a \$50 minimum threshold is in place for formal declarations. This allows us to display a high level of integrity and ethical behaviour in our day-to-day work.

The agency has recently implemented a revised gifts and hospitality policy for ACCC Commissioners, AER Board members and staff. The revised policy was published on our website on 20 May 2019. A new feature is that the ACCC will publish a gifts register. This will be updated bi-annually for Commissioners and the AER Board and annually for staff.

APS Values and Code of Conduct

The ACCC and AER are committed to driving a respectful culture throughout the organisation and upholding and promoting the behaviours specified in the Australian Public Service (APS) Values and Code of Conduct.

Employees learn about the APS Values and Code of Conduct in corporate induction sessions, and additional awareness training is incorporated into leadership programs.

Alleged misconduct by employees may be dealt with under the APS Code of Conduct. In 2018-19 the ACCC and AER investigated one potential breach of the code. The investigation has not yet concluded.

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 agency reports on its interaction with these bodies to ensure transparency on external scrutiny.

Council of Australian Governments Energy Council

The Council of Australian Governments (COAG) Energy Council is a ministerial forum for the Commonwealth, states and territories and New Zealand to work together in the pursuit of national energy reforms. The COAG Energy Council has overarching responsibility and policy leadership for Australian gas and electricity markets. The AER is accountable to the COAG Energy Council and submits an annual report on its performance in delivering on its roles and functions as prescribed under the national energy laws and rules and the Energy Council's expectations of the AER.

Judicial review decisions

There were no judicial review decisions in respect of decisions made by the ACCC or AER in 2018-19.

Administrative Appeals Tribunal

There were no decisions by the Administrative Appeals Tribunal in respect of decisions made by the ACCC or AER in 2018-19.

Australian National Audit Office

In March 2019 the Australian National Audit Office (ANAO) commenced a performance audit of how effectively the AER undertakes its regulatory activities. Broadly, the performance audit will assess how the AER has communicated regulatory requirements to market participants and information to consumers; its compliance strategies and activities; its performance of other regulatory activities; and its governance and performance management arrangements. The audit will conclude in December 2019 and the final audit report is expected to be tabled in parliament in January 2020 and published on the ANAO website.

Office of the Merit Protection Commissioner

No application for review of an ACCC or AER decision was made to the Office of the Merit Protection Commissioner in 2018–19.

Office of the Australian Information Commissioner

Two requests for freedom of information review concerning the ACCC were lodged with the Office of the Australian Information Commissioner (OAIC) in 2018–19. These requests are with the OAIC for decision.

Privacy Commissioner

The Privacy Commissioner did not investigate any complaints about the ACCC or AER in 2018–19.

Australian Competition Tribunal

In May 2019 the Australian Competition Tribunal heard the application for merits review by Port of Newcastle Operations Pty Ltd (PNO) of the ACCC's arbitral determination of an access dispute between PNO and Glencore Coal Assets Australia Pty Ltd. The access dispute concerned access charges and other conditions of access to the 'declared' shipping channel service at the Port of Newcastle. The Tribunal's decision is reserved as at the time of this report.

There were no decisions of the Australian Competition Tribunal in respect of s. 50 of the CCA in 2018–19.

There were no AER matters before the Australian Competition Tribunal during 2018–19.

Parliamentary scrutiny

In 2018 the House of Representatives Standing Committee on Economics examined the ACCC's performance and operation as part of its review of the *ACCC Annual Report 2016–17*. The ACCC responded to the committee's questions on notice, including on new car retailing, the Horticulture Code of Conduct, unfair contract terms, litigation, wholesale gas prices, broadband speeds, petrol prices and the authorisation process. On 15 October 2018 the committee tabled its report *Review of the Australian Competition and Consumer Commission Annual Report 2017*.

The ACCC appeared before the Senate Economics Committee on 25 October 2018 for a Budget Supplementary Estimates hearing and on 21 February 2019 for an Additional Estimates hearing. Topics covered included divestiture in the energy sector; the gas market; the Takata airbag compulsory recall; country of origin labelling; the ACCC's new car retailing industry market study; telecommunications; competition laws; banking; petrol; and the Consumer Data Right and Open Banking. The ACCC also responded to the committee's questions on notice, including on the number of subscriptions to product safety alerts, faulty Takata airbag replacements, unfair contract terms, the Australian Energy Market Operator, the Quantum Housing Group investigation, airline cancellations, complementary medicines, the wholesale demand response register and departmental functions.

The ACCC's testimony at the 21 February 2019 hearing was subsequently referred to in the committee's report *Economics Legislation Committee: Additional Estimates 2018-19*, which was tabled on 2 April 2019.

The AER also appeared before the Senate Economics Committee at Additional Estimates hearings on 25 October 2018 and 21 February 2019. Topics covered included the AER's Energy Made Easy comparator website, implementation of the Commonwealth's Default Market Offer, energy retailers' fact sheets for consumers, and a question on notice response regarding the operation and security of the integrated power system within the National Energy Market.

Freedom of information

Agencies operating under the *Freedom of Information Act 1982* (Cth) (FOI Act) must publish information for the public as part of the Information Publication Scheme. This requirement has replaced the former requirement to publish a statement in the annual report. Each agency's website must include a plan that shows the information it publishes in accordance with the scheme's requirements. The ACCC's Information Publication Scheme statement pursuant to Part II of the FOI Act can be found at the ACCC's [freedom of information website](#).

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.

Our people

Innovation

In 2018 the ACCC and AER embarked upon a National Innovation Project with the aim of developing a series of measures that will ensure a culture and structure within the ACCC and AER that supports a sustained commitment and capability to innovate into the future. The project was informed by research conducted by an external research agency, which incorporated the views of staff at all levels of the ACCC and AER to identify the barriers to innovation within the organisation, and proposed actions to develop and foster an enhanced culture of innovation. The ACCC/AER Innovation Roadmap, adopted in late 2018, consists of a program of initiatives intended to improve our innovation culture, to be implemented in five phases by the end of 2020. Implementation of the measures is well underway, and census results have already shown an improvement in the agency's innovation rating since the project commenced.

Supporting our people

In 2018 the ACCC and AER approved a new learning and development framework that encourages employees to take control of their learning journey and career development. The framework retains a focus on building discipline-specific knowledge while building leadership skills that align with the Australian Public Service Commission leadership capabilities for the most senior APS roles. The intention is to create a clear leadership development path from junior positions to the most senior—building the skills expected of each level and preparing employees for the next. The general development framework is supported by a new leadership framework that focuses on

building a cohesive approach to leadership throughout the organisation. The new programs are in their infancy; we will have a clearer view of their effectiveness over the next two years.

Selecting for senior appointments

During 2018–19 we refined how we select our SES employees. This included focusing our assessment on leadership capabilities (incorporated from our new learning and development framework) and addressing risks of bias in the selection process. Applicants' responses to application questions were de-identified and assessed against a descriptively anchored rating scale, and applicants completed objective assessments including abstract reasoning ability tests. Some applicants also completed personality profiles and, with the support of a trained psychologist, we assessed applicants' emotional and social competence. This approach allowed for a holistic assessment of applicants' claims against the requirements of SES positions and has been leveraged to make a number of SES appointments.

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 2018–19 we facilitated workshops for our leadership teams to work through how they can best support each other to deliver results. Underlying this program is an ongoing strategy to build the feeling of psychological safety in teams in support of higher performance and innovation. Census results have shown an improvement in key indicators related to performance management in the two years since the program began.

Flexibility

In 2018–19 the ACCC/AER appointed a Working Flexibly Reference Group to champion working flexibly across the organisation, develop and implement measures to support the organisation's commitment to flexible work practices, and provide feedback and other advice developed to support working flexibly.

Diversity and inclusion

The ACCC/AER Diversity and Inclusion Strategy 2019–2021 was launched in early 2019. The strategy outlines the agency's commitment to a fair, equitable and supportive workplace, dedicated to embracing diversity and fostering an inclusive environment. We strive to ensure our people are valued and supported, have equal access to opportunities and feel fully able to participate and thrive.

The ACCC and AER established its first Indigenous Employee Network in late 2018. The network is a deliverable of the ACCC and AER Reconciliation Action Plan (RAP) 2016–2018, which demonstrates our commitment to improving the economic outcomes for Aboriginal and Torres Strait Islander peoples through employment, education and support. The network has two important roles that support the RAP: to provide support to its members and to offer strategic advice to the ACCC and AER on workplace and workforce matters impacting on Aboriginal and Torres Strait Islander employees. The network provides an important mechanism for Aboriginal and Torres Strait Islander employees to support each other and share information and experiences. It is an opportunity to provide guidance and support to other members, encouraging peer support and mentoring that promotes career development for Aboriginal and Torres Strait Islander employees. The network also allows the views and aspirations of Aboriginal and Torres Strait Islander employees to be heard and addressed in a positive and solutions focused manner.

In early 2018 the ACCC and AER Disability and Carers Employee Network (DaCEN) was launched to form part of the ACCC/AER's ongoing commitment to workplace diversity and inclusion. The DaCEN meets quarterly and is open to employees with disability, employees who are carers and those with an interest in workplace accessibility and disability inclusion. It is intended to raise awareness of disability and carers in the workplace; provide a safe forum for employees to speak up with confidence regarding issues and challenges relating to workplace accessibility,

disability inclusion and reasonable adjustment; facilitate consultation with this important group of employees; and enable members to exchange information and provide support to one another.

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.

Wellbeing

A new ACCC and AER wellbeing approach has been designed and its implementation is being rolled out.

Creating a workplace culture of psychological safety is the underlying premise of the ACCC and AER wellbeing approach. Achieving such a culture will enable team members to feel safe to take risks and be vulnerable in front of each other. People will be able to show who they are without fear of negative consequences to self-image, status or career.

We recognise that work is only one aspect of a person's life, though it is a factor that influences and is interrelated with wellbeing. Work provides not just money but also purpose, goals, skill development, friendships and a sense of belonging. We already have a good foundation but there are aspects we can improve on by taking a holistic approach.

The purpose of the ACCC and AER wellbeing approach is to provide health and wellbeing skill-building activities, services and resources which engage, empower and encourage employees to improve their lifestyle choices and provide a work environment that supports health and wellbeing.

The approach is designed to focus on five wellbeing pillars that influence one's state of wellbeing and help individuals with the resources and skills they may need to enable them to face life's daily challenges. These pillars are body, mind, social, finance (essential needs) and work environment. For each pillar, we are delivering various activities, promotions, support services and resources, together with ensuring that our people policies incorporate wellbeing thinking and modern practices.

In 2018–19 the following wellbeing initiatives were conducted for employee needs, interest, participation and connection:

- guidelines for setting up individual workstations ergonomically—including demonstrations from an external accredited provider, together with reference material
- workstation assessments both in the office and for home-based work
- lighting and acoustic assessments of office accommodation
- the influenza vaccination program through the provision of in house clinics and reimbursement for costs of off-site vaccinations. Over 600 employees received flu vaccinations under the program
- the healthy lifestyle reimbursement scheme supporting healthy lifestyle choices. In 2018–19 approximately 890 claims were reimbursed at an average claim value of about \$265

- early invention strategies assisting employees with minor injuries—coverage of medical expenses, time off work and support services
- mental health external support coaching and counselling for individuals at high risk
- psychosocial reviews undertaken by two divisions
- resilience sessions
- mental health sessions targeted for employees and managers
- sessions to support employees with managing pressure
- team sessions on different working and personality styles, inclusion and diversity, with the objective to minimise workplace conflict and support interpersonal relationships
- sessions on how to have difficult conversations
- continuation of the Workplace Contact Officer network—employees have been using the network for different types of workplace issues
- participation in Ride to Work Day
- participation in R U OK? Day
- information articles on gender health, essential needs management, managing email information, health at work, and stress management.

Our staffing profile

Figure 4.3: Age profile of ACCC staff at 30 June 2019

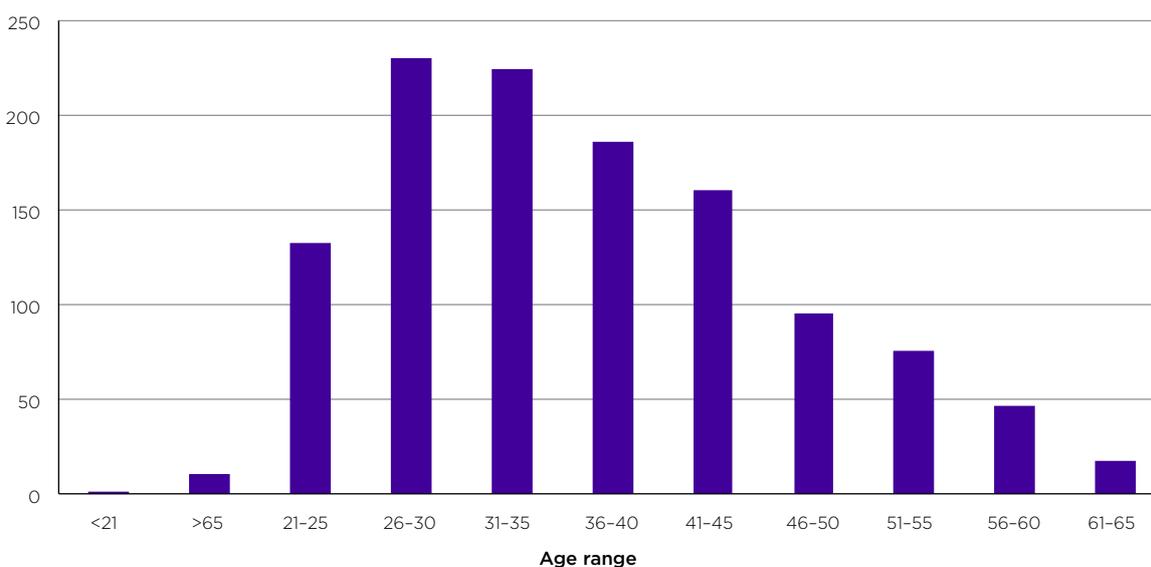
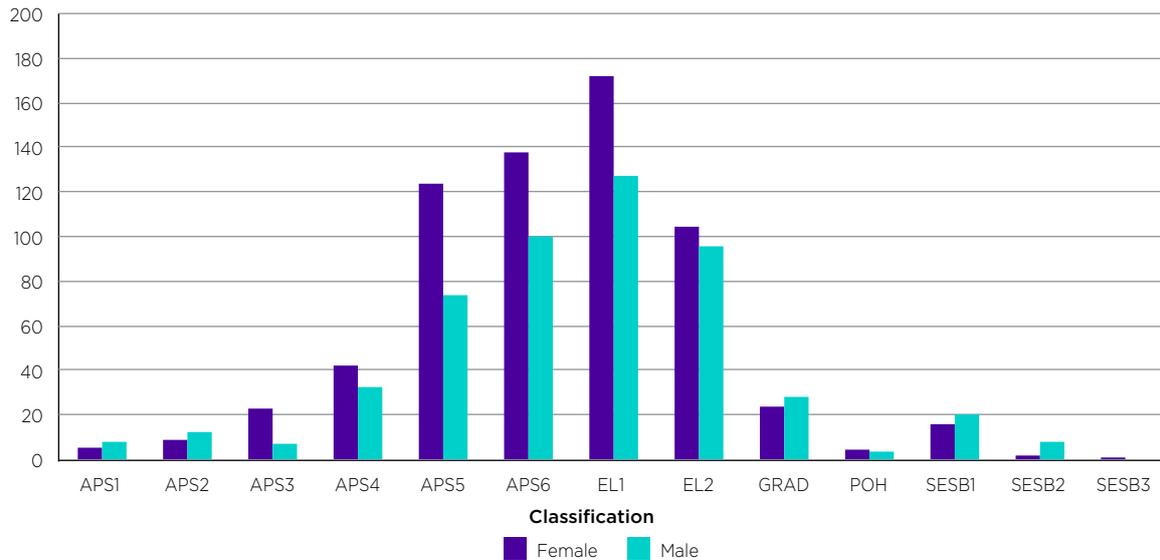


Figure 4.4: Gender profile of ACCC staff at 30 June 2019



Note: POH = public office holder.

Table 4.6: Staff turnover according to separation type 2018-19

Separation	Classification	Number of staff
External transfer or promotion	Non-SES	29
Retirement	Non-SES	7
	SES	1
Contract expired	Non-SES	32
Resignation	Non-SES	49
Redundancy	Non-SES	6
Other	Non-SES	2
Total		126

Employment agreements and remuneration

Enterprise agreement

The ACCC Enterprise Agreement 2016-2019, which came into effect in December 2016, continues to operate. Some people covered by the Enterprise Agreement perform roles with responsibilities that are above the expectations of their classification. In some instances proposals are made to pay these people above the salary cap for their classification. Proposals are considered under clause 11 of the Enterprise Agreement (Individual Flexibility Arrangement), are consistent with the ACCC/AER Individual Flexibility Arrangement Policy and require endorsement by the Executive Management Board.

Senior executive remuneration

Remuneration for ACCC and AER members is determined by the Remuneration Tribunal in accordance with:

- the *Remuneration Tribunal Act 1973* (Cth)
- [Remuneration Tribunal \(Remuneration and Allowances for Holders of Full-time Public Office\) Determination 2018](#).

Mandatory executive remuneration reporting is detailed in appendix 3.

Determinations

SES employees are subject to individual determinations covering remuneration, leave and a range of other employment conditions. Determinations are made in accordance with the *Public Service Act 1999* (Cth) and ACCC/AER SES remuneration policies, and approved by the Chief Operating Officer or Chair. Other benefits covered in SES determinations include an allowance, performance pay and superannuation.

Common law contracts and Australian Workplace Agreements

No employees were covered by common law contracts or Australian Workplace Agreements in 2018-19.

Non-salary benefits

Non-salary benefits provided to employees under the enterprise agreement include:

- options for home-based work
- ability to work part time
- flexible working arrangements
- access to different leave types
- influenza vaccinations
- access to the Employee Assistance Program.

Table 4.7: Number of employees covered by each industrial instrument at 30 June 2019

	ACCC Enterprise Agreement 2016-2019	IFAs	Section 24 determinations
APS 1	13	0	0
APS 2	18	0	0
APS 3	30	0	0
APS 4	74	0	0
APS 5	200	1	0
APS 6	239	4	0
EL 1	301	24	0
EL 2	199	53	1
SES 1	0	0	37
SES 2	0	0	10
SES 3	0	0	1
GRAD	52	0	0

Note: IFA = individual flexibility arrangement.

Table 4.8: Salary ranges for APS employees at 30 June 2019

	ACCC Enterprise Agreement 2016–2019	Section 24 determinations
APS 1	\$47 570–\$52 579	-
APS 2	\$53 833–\$59 695	-
APS 3	\$61 313–\$66 181	-
APS 4	\$68 344–\$74 204	-
APS 5	\$76 227–\$80 826	-
APS 6	\$84 376–\$94 571	-
EL 1	\$104 834–\$116 020	-
EL 2	\$121 538–\$142 431	\$163 949
SES 1	-	\$185,772–\$220 732
SES 2	-	\$247 809–\$310 336
SES 3	-	\$333 290
L 1	\$66 181–\$130 411	-
L 2	\$137 817–\$146 076	-
GRAD	\$59 695–\$68 344	-

Table 4.9: Performance pay

	SES B1	SES B2	SES B3	ACCC
Number who received bonus	30	10	1	41
Total bonus	\$421 987	\$229 020	\$29 699	\$680 707
Average bonus	\$14 066	\$22 902	\$29 699	\$16 603
Range	\$2 275–\$16 626	\$19 742–\$27 654	\$29 699–\$29 699	\$2 275–\$29 699

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 and administrative services to the NCC, including advice and support in relation to NCC recommendations, decisions and reports.

Details of the NCC's activities during 2018–19 are in its own annual report.

The MOU is available [on our website](#).

Effective communication

The ACCC and AER prioritise communication with our audiences and stakeholders, and we maintain a significant media and online presence. In 2018–19 our websites had a combined total of 38 339 533 page views.

Our engagement approach

Both organisations strategically target varied audiences, which include:

- Australian consumers from diverse cultural backgrounds and demographics
- consumer and advocacy groups, including those representing vulnerable and disadvantaged consumers
- small to medium businesses and their representative associations

- media personnel who can help to spread compliance and consumer rights messages and publicise successful legal action that will help to 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.

We aim to inform and educate so that consumers and small businesses can confidently exercise their rights, and businesses have the necessary knowledge and skills to comply with the law. Importantly, we also aim to increase stakeholder awareness of the ACCC and its function in making markets work across the Australian economy.

Our communication channels include:

- the ACCC website (www.accc.gov.au) and associated websites dedicated to product safety and recalls (www.productsafety.gov.au), scams (www.scamwatch.gov.au) and freedom of information (www.foi.accc.gov.au)
- the AER website (www.aer.gov.au) and Energy Made Easy (www.energymadeeasy.gov.au)
- mainstream and social media
- the AER monthly newsletter *Energy dispatch*
- the ACCC Infocentre telephone lines—a general enquiries and consumer reporting line and specific numbers for:
 - Indigenous consumers
 - small businesses
- the AER Infocentre telephone line, which handles general enquiries and complaints, including for the Energy Made Easy price comparison website
- educational guides, online learning modules, webinars, apps and video content
- information translated into languages other than English
- face-to-face education outreach for small businesses
- paid media placement through digital channels
- distribution of regular e-newsletters to a range of information networks and topic-based subscription groups
- speeches by the Chair, ACCC Commissioners, AER Board members and senior figures
- guides and publications on a broad range of topics
- energy comparison information translated into languages other than English.

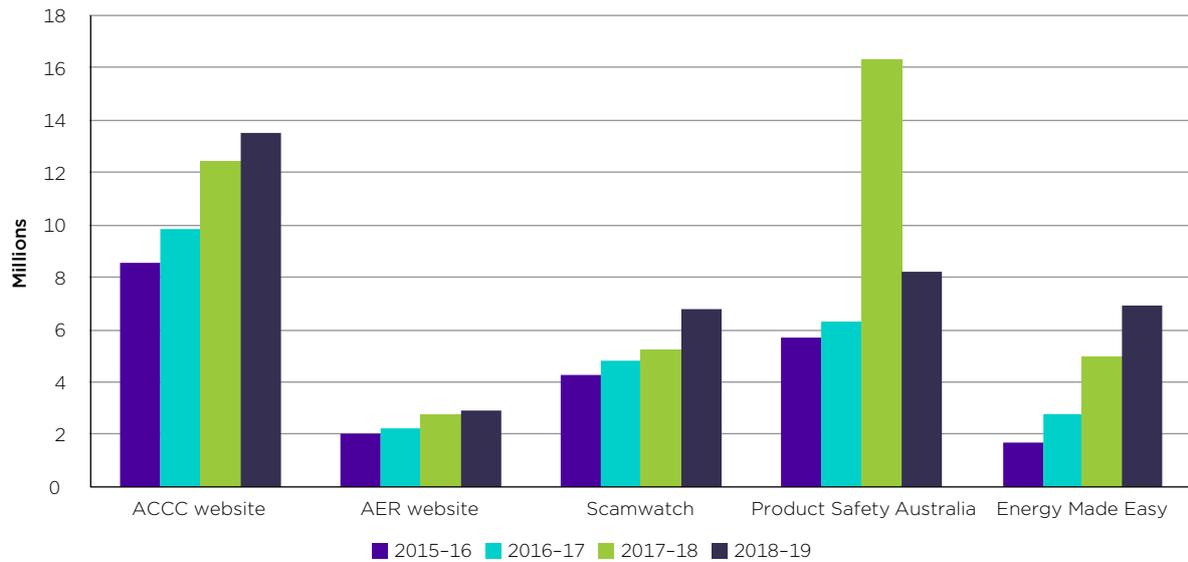
Communicating our messages

The ACCC's Strategic Communications Branch and the AER's Strategic Communications and External Affairs Branch develop strategies and collaborate with the operational areas of each organisation to inform consumers, business, media and government about our functions and work. As well as managing daily media issues, they liaise with business areas to develop and publish information that is accessible, easily understood and specific to audience needs.

ACCC and AER websites

Traffic to most of our websites increased overall in 2018–19. In the 2017–18 financial year, the Product Safety Australia website received significant increases in traffic due to publishing of compulsory Takata airbag recalls. This increased demand has subsided since July 2018 when the dedicated ismyairbagsafe.com.au went online.

Figure 4.5: Website page view growth between 2017-18 and 2018-19



ACCC social media

The ACCC's Strategic Communications Branch works with business areas to provide social media governance and guidance. They also manage our corporate social media accounts on Facebook, YouTube, Twitter and LinkedIn.

Facebook and Twitter are two of the largest referrers of traffic to the ACCC website, which demonstrates the effectiveness of our cross-platform communication strategies.

We manage three Facebook pages:

- ACCC Consumer Rights—building awareness of consumer issues and responding to simple enquiries and comments
- ACCC Product Safety—sharing product safety news, tips and recalls.
- ACCC-Your Rights Mob-Indigenous Consumers—delivering targeted consumer protection messages for Indigenous Australians.

We maintain three Twitter accounts:

- @accgovau—promoting ACCC news, activities and tips and responding to queries.
- @ACCCprodsafety—sharing recalls, product safety news and tips
- @Scamwatch_gov—alerting social media users to new scams and providing tips on how to avoid being scammed

The ACCC and Product Safety YouTube channels host videos on a range of topics for consumers and small business.

Our ACCC LinkedIn company page engages small businesses and other professionals on consumer and competition issues, and positions us as an employer of choice.

ACCC social media 2018-19

Our online communities continue to grow



Seeing a great return on investment across all channels



Our top performing posts for the year



Media releases and speeches

In 2018-19 the ACCC issued 266 media releases and the AER issued 35.

The Chair, Commissioners and AER Board members spoke at numerous public forums throughout the year, with 22 speeches published on the ACCC website. The ACCC Commissioners spoke 94 times at public events including speeches, panels and roundtables.

The speeches program enables us to engage with many stakeholder groups, from local communities, small business associations and industry and professional bodies to the boards of multinational corporations.

Reports and guides

The ACCC and AER produce a number of reports for parliament and ministers. We also prepare comprehensive detailed guides for consumers, businesses and industries on varied competition and consumer matters. 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 2018–19 our online publications received 1 008 891 page views—up from 875 015 in 2017–18.

Our [Little black book of scams](#)—a guide to detecting and avoiding scams—remained popular, especially with the elderly and vulnerable audiences. We distributed 173 878 copies of this publication in 2018–19, many through police stations, aged care facilities, federal ministerial electorate offices, and consumer affairs and fair trading organisations.

Asset management and procurement

The Finance Branch is responsible for all ACCC financial matters and asset management. Our Corporate Operations and Property Management teams maintain our offices and plan and coordinate moves and office fit-outs.

Asset management

The ACCC's asset management framework incorporates asset policies and procedures that enable the efficient acquisition and effective management of assets.

Assets managed by the ACCC include:

- buildings, including fit-outs and leasehold improvements
- infrastructure, plant and equipment, including office equipment, furniture and fittings and computer equipment
- intangibles, including computer software.

In 2018–19 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.

Information on all ACCC contracts awarded with a value of \$10 000 (inclusive of GST) or more is available on AusTender (www.tenders.gov.au).

The ACCC had no exempt contracts for the financial year.

There were no contracts of \$100 000 or more (inclusive of GST) during 2018–19 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/procurement/statistics-on-commonwealth-purchasing-contracts).

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 2018-19, 89 new consultancy contracts were entered into involving total actual expenditure of \$6.4 million. In addition, 29 ongoing consultancy contracts were active during the period, involving total actual expenditure of \$2.1 million.

The ACCC and AER engage consultants where we lack specialist expertise or when independent research, review or assessment is required. Consultants typically investigate or diagnose a defined issue or problem; carry out reviews or evaluations; or provide independent advice, information or creative solutions to assist ACCC or AER decision-making.

Before engaging consultants, we take into account the skills and resources that are required for the task, the skills that are available internally and the cost-effectiveness of engaging external expertise.

The decision to engage a consultant is made in accordance with the PGPA Act and related regulations, including the Commonwealth Procurement Rules.

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website (www.tenders.gov.au).

Table 4.10: Number and expenditure on consultants 2018-19

	Total
No. of new contracts entered into during the period	89
Total actual expenditure during the period on new contracts (including GST)	\$6.4 million
No. of ongoing contracts engaging consultants that were entered into during a previous period	29
Total actual expenditure during the period on ongoing contracts (including GST)	\$2.1 million

Grant programs

Neither the ACCC nor the AER administers any grant programs.

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 ('the Entity') for the year ended 30 June 2019:

- (a) comply with Australian Accounting Standards – Reduced Disclosure Requirements and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Entity as at 30 June 2019 and its financial performance and cash flows for the year then ended.

The financial statements of the Entity, which I have audited, comprise the following statements as at 30 June 2019 and for the year then ended:

- Statement by the Accountable Authority and Chief Financial Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement;
- Administered Schedule of Comprehensive Income;
- Administered Schedule of Assets and Liabilities;
- Administered Reconciliation Schedule;
- Administered Cash Flow Statement; and
- Notes to the financial statements, comprising a Summary of Significant Accounting Policies and other explanatory information.

Basis for opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Entity in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) to the extent that they are not in conflict with the *Auditor-General Act 1997*. I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Accountable Authority's responsibility for the financial statements

As the Accountable Authority of the Entity, the Chair is responsible under the *Public Governance, Performance and Accountability Act 2013* (the Act) for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Reduced Disclosure Requirements and the rules made under the Act. The Chair is also responsible for such internal control as the Chair determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Chair is responsible for assessing the ability of the Entity to continue as a going concern, taking into account whether the Entity's operations will cease as a result of an administrative restructure or for any other reason. The Chair is also responsible for disclosing, as applicable, matters related to

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going concern and using the going concern basis of accounting unless the assessment indicates that it is not appropriate.

Auditor's responsibilities for the audit of the financial statements

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with the Accountable Authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office



Lorena Skipper
A/g Executive Director

Delegate of the Auditor-General
Canberra

28 August 2019

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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 2019 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
28 August 2019



Peter Maybury
Chief Financial Officer
28 August 2019

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Statement of Comprehensive Income

for the period ended 30 June 2019

	Notes	2019 \$'000	2018 \$'000	Original Budget \$'000
NET COST OF SERVICES				
Expenses				
Employee benefits	1.1A	137,829	119,105	126,266
Suppliers	1.1B	88,897	82,432	87,740
Depreciation and amortisation	3.2A	5,268	5,235	4,672
Finance costs	1.1C	15	21	24
Write-down and impairment of assets	1.1D	425	456	-
Settlement of litigation		6,172	745	-
Total expenses		238,606	207,994	218,702
Own-Source Income				
Own-source revenue				
Sale of goods and rendering of services	1.2A	1,299	1,296	3,953
Rental income	1.2B	1,003	1,002	-
Other revenue	1.2C	3,126	2,323	94
Total own-source revenue		5,428	4,621	4,047
Net (cost of) services		(233,178)	(203,373)	(214,655)
Revenue from Government	1.2D	228,941	197,951	209,983
Surplus/(Deficit) attributable to the Australian Government		(4,237)	(5,422)	(4,672)
OTHER COMPREHENSIVE INCOME				
Items not subject to subsequent reclassification to net cost of services				
Changes in asset revaluation surplus		-	112	-
Total other comprehensive income		-	112	-
Total comprehensive income/(loss) attributable to the Australian Government		(4,237)	(5,310)	(4,672)

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 2019

	Notes	2019 \$'000	2018 \$'000	Original Budget \$'000
ASSETS				
Financial assets				
Cash and cash equivalents	3.1A	1,656	1,692	1,616
Trade and other receivables	3.1B	60,337	34,715	42,384
Total financial assets		61,993	36,407	44,000
Non-financial assets				
Leasehold improvements	3.2A	15,893	14,996	11,731
Plant and equipment	3.2A	3,439	4,374	3,146
Computer software	3.2A	5,624	4,474	3,584
Other non-financial assets	3.2B	4,608	4,061	2,572
Total non-financial assets		29,564	27,905	21,033
Total assets		91,557	64,312	65,033
LIABILITIES				
Payables				
Suppliers	3.3A	12,198	7,312	9,953
Other payables	3.3B	22,777	20,941	18,317
Total payables		34,975	28,253	28,270
Provisions				
Employee provisions	6.1A	40,329	32,878	34,713
Other provisions	3.4A	10,018	3,913	3,188
Total provisions		50,347	36,791	37,901
Total liabilities		85,322	65,044	66,171
Net assets		6,235	(732)	(1,138)
EQUITY				
Contributed equity		99,283	88,079	91,713
Reserves		4,197	4,197	4,086
Retained surplus/(Accumulated deficit)		(97,245)	(93,008)	(96,937)
Total equity		6,235	(732)	(1,138)

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 2019

	2019 \$'000	2018 \$'000	Original Budget \$'000
CONTRIBUTED EQUITY			
Opening balance			
Balance carried forward from previous period	88,079	75,011	88,079
Adjusted opening balance	88,079	75,011	88,079
Transactions with owners			
Contributions by owners			
Equity injection - appropriations	1,100	11,100	1,100
Departmental capital budget	10,104	1,968	2,534
Total transactions with owners	11,204	13,068	3,634
Closing balance as at 30 June	99,283	88,079	91,713
RETAINED EARNINGS			
Opening balance			
Balance carried forward from previous period	(93,008)	(87,586)	(92,265)
Adjusted opening balance	(93,008)	(87,586)	(92,265)
Comprehensive income			
Surplus/(Deficit) for the period	(4,237)	(5,422)	(4,672)
Total comprehensive income	(4,237)	(5,422)	(4,672)
Closing balance as at 30 June	(97,245)	(93,008)	(96,937)
ASSET REVALUATION RESERVE			
Opening balance			
Balance carried forward from previous period	4,197	4,085	4,086
Adjusted opening balance	4,197	4,085	4,086
Comprehensive income			
Other comprehensive income	-	112	-
Total comprehensive income	-	112	-
Closing balance as at 30 June	4,197	4,197	4,086

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Statement of Changes in Equity

for the period ended 30 June 2019

<i>(cont)</i>	2019 \$'000	2018 \$'000	Original Budget \$'000
TOTAL EQUITY			
Opening balance			
Balance carried forward from previous period	(732)	(8,490)	(100)
Adjusted opening balance	(732)	(8,490)	(100)
Comprehensive income			
Surplus/(Deficit) for the period	(4,237)	(5,422)	(4,672)
Other comprehensive income	-	112	-
Total comprehensive income	(4,237)	(5,310)	(4,672)
Transactions with owners			
Contributions by owners			
Equity injection - appropriations	1,100	11,100	1,100
Departmental capital budget	10,104	1,968	2,534
Total transactions with owners	11,204	13,068	3,634
Closing balance as at 30 June	6,235	(732)	(1,138)

The above statement should be read in conjunction with the accompanying notes.

Accounting Policy

Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Cash Flow Statement

for the period ended 30 June 2019

	Notes	2019 \$'000	2018 \$'000	Original Budget \$'000
OPERATING ACTIVITIES				
Cash received				
Appropriations		225,864	220,988	216,161
Sale of goods and rendering of services		1,321	1,382	3,953
Net GST received		8,076	8,151	-
Other		3,875	2,859	-
Total cash received		239,136	233,380	220,114
Cash used				
Employees		130,404	115,988	126,710
Suppliers		95,262	91,405	89,596
Section 74 receipts transferred to OPA		15,788	23,886	4,308
Settlement of litigation		-	5,228	-
Total cash used		241,454	236,507	220,614
Net cash from/(used by) operating activities		(2,318)	(3,127)	(500)
INVESTING ACTIVITIES				
Cash received				
Other		2,909	10,085	-
Total cash received		2,909	10,085	-
Cash used				
Purchase of non-financial assets		5,658	15,559	3,134
Other		3	1,469	-
Total cash used		5,661	17,028	3,134
Net cash from/(used by) investing activities		(2,752)	(6,943)	(3,134)
FINANCING ACTIVITIES				
Cash received				
Contributed equity		5,034	10,146	3,634
Total cash received		5,034	10,146	3,634
Net cash from/(used by) financing activities		5,034	10,146	3,634
Net increase/(decrease) in cash held		(36)	76	-
Cash and cash equivalents at the beginning of the reporting period		1,692	1,616	1,616
Cash and cash equivalents at the end of the reporting period	3.1A	1,656	1,692	1,616

The above statement should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Administered Schedule of Comprehensive Income

for the period ended 30 June 2019

	Notes	2019 \$'000	2018 \$'000	Original Budget \$'000
NET COST OF SERVICES				
Expenses				
Impairment and repayment of fees and fines	2.1A	21,421	14,236	-
Total expenses		21,421	14,236	-
Income				
Non-taxation revenue				
Fees and fines	2.2A	92,043	131,164	40,000
Total non-taxation revenue		92,043	131,164	40,000
Total income		92,043	131,164	40,000
Net (cost of)/contribution by services		70,622	116,928	40,000
Surplus/(Deficit)		70,622	116,928	40,000
Total comprehensive income/(loss)		70,622	116,928	40,000

The above schedule should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Administered Schedule of Assets and Liabilities

as at 30 June 2019

	Notes	2019 \$'000	2018 \$'000	Original Budget \$'000
ASSETS				
Financial assets				
Cash and cash equivalents	4.1A	-	-	1
Trade and other receivables	4.1B	22,970	32,615	6,848
Total financial assets		22,970	32,615	6,849
Total assets administered on behalf of Government		22,970	32,615	6,849
Net assets/(liabilities)		22,970	32,615	6,849

The above schedule should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Administered Reconciliation Schedule

for the period ended 30 June 2019

	2019 \$'000	2018 \$'000
Opening assets less liabilities as at 1 July	32,615	2,299
Net (cost of)/contribution by services		
Income	92,043	131,164
Expenses	(21,421)	(14,236)
Transfers (to)/from the Australian Government		
Appropriation transfers to Official Public Account		
Transfers to Official Public Account	(76,766)	(85,612)
Transfers from other entities	(3,501)	(1,000)
Closing assets less liabilities as at 30 June	22,970	32,615

The above schedule should be read in conjunction with the accompanying notes.

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 2019

	Notes	2019 \$'000	2018 \$'000
OPERATING ACTIVITIES			
Cash received			
Fines and costs		76,627	85,451
Other fees		141	168
Total cash received		76,768	85,619
Cash used			
Refund of fees and fines		2	8
Total cash used		2	8
Net cash from operating activities		76,766	85,611
Cash to Official Public Account			
Appropriations		(76,766)	(85,612)
Total cash to Official Public Account		(76,766)	(85,612)
Cash and cash equivalents at the beginning of the reporting period		0	1
Cash and cash equivalents at the end of the reporting period	4.1A	0	0

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); 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 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.

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 2018-19, subject to finalisation of the Telecommunications (Carrier Licence Charges) Act 1997 Determination, totals \$13,295,863 (2018: \$13,109,173). This cost includes components for the Measuring Broadband Australia program of \$1,531,854 (2018: nil) and depreciation expense of \$0.4m (2018: \$0.5m), the latter of which is not appropriation funded.

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

	2019 \$'000	2018 \$'000
1.1A: Employee benefits		
Wages and salaries	102,364	91,220
Superannuation		
Defined contribution plans	11,334	9,485
Defined benefit plans	6,979	6,252
Leave and other entitlements	15,537	11,028
Separation and redundancies	1,041	564
Other employee benefits	574	556
Total employee benefits	137,829	119,105

Accounting Policy

Accounting policies for employee related expenses is included in the People and Relationships section.

1.1B: Suppliers		
Goods and services supplied or rendered		
Legal expenses	25,939	26,593
Consultants and contracted services	23,358	18,441
Information technology and communications	10,568	8,998
Property operating expenses	4,331	4,211
Travel expenses	5,759	5,163
Employee related expenses	2,344	2,322
Information management expenses	2,995	2,743
Other administration expenses	3,448	3,110
Total goods and services supplied or rendered	78,742	71,581
Goods supplied	3,349	2,622
Services rendered	75,393	68,959
Total goods and services supplied or rendered	78,742	71,581
Other suppliers		
Operating lease rentals		
Minimum lease payments	9,867	10,248
Workers compensation premiums	288	603
Total other suppliers	10,155	10,851
Total suppliers	88,897	82,432

1.1B: Suppliers (cont)

Leasing commitments

The Commission in its capacity as lessee 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 2019 and 2029 with many leases containing extension options. There are no purchase options available to the Commission.

	2019 \$'000	2018 \$'000
Commitments for minimum lease payments in relation to non-cancellable operating leases are payable as follows:		
Within 1 year	13,937	13,264
Between 1 to 5 years	37,488	41,562
More than 5 years	35,224	36,290
Total operating lease commitments	86,649	91,116

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	15	21
Total finance costs	15	21

Accounting Policy

All borrowing costs are expensed as incurred.

1.1D: Write-down and impairment of assets

Write-down on disposal	124	289
Impairment of plant and equipment	301	-
Revaluation decrements	-	167
Total write-down and impairment of assets	425	456

1.2 Own-Source Revenue

	2019 \$'000	2018 \$'000
Own-Source Revenue		
1.2A: Sale of goods and rendering of services		
Rendering of services	1,299	1,296
Total sale of goods and rendering of services	1,299	1,296

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	1,003	1,002
Total rental income	1,003	1,002

Subleasing rental income commitments

The Commission in its capacity as leasee has two operating subleases for office space (2018: 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	3,011	2,229
Resources received free of charge		
Remuneration of auditors	115	94
Total other revenue	3,126	2,323

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.

	2019 \$'000	2018 \$'000
1.2D: Revenue from Government		
Appropriations		
Departmental appropriations	228,941	197,951
Total revenue from Government	228,941	197,951

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

	2019 \$'000	2018 \$'000
2.1A: Impairment and repayment of fees and fines		
Impairment of receivables	21,421	14,236
Total impairment and repayment of fees and fines	21,421	14,236

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

	2019 \$'000	2018 \$'000
Revenue		
Non-Taxation Revenue		
2.2A: Fees and fines		
Fines and costs	91,902	130,996
Authorisation fees	111	110
Notifications	30	44
Arbitration fees	-	14
Total fees and fines	92,043	131,164

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

	2019 \$'000	2018 \$'000
3.1A: Cash and cash equivalents		
Cash on hand or on deposit	1,656	1,692
Total cash and cash equivalents	1,656	1,692

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	881	815
Total goods and services receivables	881	815
Appropriations receivables		
Appropriation receivable	57,642	32,607
Total appropriations receivables	57,642	32,607
Other receivables		
Statutory receivables	1,814	1,293
Total other receivables	1,814	1,293
Total trade and other receivables	60,337	34,715

Credit terms for goods and services were within 30 days (2018: 30 days).

Accounting Policy

Trade and other receivables

Trade and other receivables that are not provided at below market rates and held for:

- the purpose of collecting contractual cash flows; and
- receiving payments that are solely principal and interest

are subsequently measured at amortised cost using the effective interest rate method, adjusted for any impairment allowance.

3.2 Non-Financial Assets

3.2A: Reconciliation of the opening and closing balances of property, plant and equipment and intangibles

	Leasehold improvements \$'000	Plant and equipment \$'000	Computer software ¹ \$'000	Total \$'000
As at 1 July 2018				
Gross book value	14,996	4,374	11,009	30,379
Accumulated depreciation, amortisation and impairment	-	-	(6,535)	(6,535)
Total as at 1 July 2018	14,996	4,374	4,474	23,844
Additions				
Purchase	3,316	1,010	827	5,153
Internally developed	-	-	1,652	1,652
Impairments recognised in other comprehensive income	-	(301)	-	(301)
Depreciation and amortisation	(2,419)	(1,561)	(1,288)	(5,268)
Disposals				
Other disposals/writedowns (gross book value)	-	(186)	(1,799)	(1,985)
Other disposals/writedowns (accumulated depreciation)	-	103	1,758	1,861
Total as at 30 June 2019	15,893	3,439	5,624	24,956
Total as at 30 June 2019 represented by				
Gross book value	18,312	5,198	11,688	35,198
Accumulated depreciation, amortisation and impairment	(2,419)	(1,759)	(6,064)	(10,242)
Total as at 30 June 2019	15,893	3,439	5,624	24,956

1. The carrying amount of computer software includes \$1.5m purchased software and \$4.1m internally generated software. Leasehold improvements, plant and equipment may be sold or disposed in 2019-20 coinciding with the termination of some lease arrangements.

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, are initially recognised as assets and income at their fair 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 restoration.

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 reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

An independent valuer conducted the revaluations over the course of May and June 2018.

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Commission using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates for each class of depreciable asset are based on the following useful lives:

Asset class	2019 and 2018
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 2019. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

A write-down and impairment loss of \$0.43m (2018:\$0.46m) for non-financial assets was recognised in the Statement of Comprehensive Income.

The recoverable amount of an asset is the higher of its fair value less costs of disposal and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the entity were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use.

Accounting Policy (cont)

Fair Value Measurement

The ACCC engaged the valuation services of Jones Lang LaSalle (JLL) to conduct an independent valuation of the tangible non-financial asset classes. An annual assessment is undertaken to determine whether the carrying amount of the assets is materially different from the fair value. Comprehensive valuations are carried out at least once every three years with the previous valuation of all tangible property, plant and equipment conducted at 30 June 2018.

The methods utilised to determine and substantiate the unobservable inputs are derived and evaluated as follows:

Physical depreciation and obsolescence - assets that do not transact with enough frequency or transparency to develop objective opinions of value from observable market evidence have been measured utilising the Depreciated Replacement Cost approach. Under the Depreciated Replacement Cost approach the estimated cost to replace the asset is calculated and then adjusted to take into account physical depreciation and obsolescence. Physical depreciation and obsolescence has been determined based on professional judgement regarding physical, economic and external obsolescence factors relevant to the asset under consideration. For all leasehold improvement assets, the consumed economic benefit / asset obsolescence deduction is determined based on the term of the associated lease.

The ACCC's policy is to recognise transfers into and transfers out of fair value hierarchy levels as at the end of the reporting period. There have been no transfers during the year (2018: nil).

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 (2018: 3 to 7 years).

All software assets were assessed for indications of impairment as at 30 June 2019.

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 \$0.5m (2018: \$0.3m), commitments for intangible assets of \$3.4m (2018: \$0.6m) and commitments for property plant and equipment of \$0.1m (2018: nil).

3.2 Non-Financial Assets

	2019 \$'000	2018 \$'000
3.2B: Other non-financial assets		
Prepayments	1,785	2,282
Lease incentive asset	2,585	1,537
Leasehold rights	238	242
Total other non-financial assets	4,608	4,061

No indicators of impairment were found for other non-financial assets.

3.3 Payables

	2019 \$'000	2018 \$'000
3.3A: Suppliers		
Trade creditors and accruals	12,198	7,312
Total suppliers	12,198	7,312

Settlement is usually made within 30 days.

3.3B: Other payables		
Lease incentives	15,017	13,097
Superannuation	147	140
Operating lease payment increases	5,138	5,104
Wages and salaries	1,426	1,412
Unearned income	840	1,020
Salary sacrifice payable	209	168
Total other payables	22,777	20,941

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 2018	-	3,127	786	3,913
Additional provisions made	6,173	-	-	6,173
Amounts used	-	(369)	(15)	(384)
Unwinding or change of discount rate	-	316	-	316
Total as at 30 June 2019	6,173	3,074	771	10,018

The Commission currently has 7 agreements (2018:8) 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 (2018:1).

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

	2019 \$'000	2018 \$'000
4.1A: Cash and cash equivalents		
Cash on hand or on deposit	-	-
Total cash and cash equivalents	-	-

Cash and cash equivalents does not include amounts held in trust of \$54,377 (2018: \$54,377). See note 5.2 Special Accounts for more information.

4.1B: Trade and other receivables

Other receivables		
Fines and costs	37,798	39,980
Total other receivables	37,798	39,980
Total trade and other receivables (gross)	37,798	39,980
Less impairment allowance	(14,828)	(7,365)
Total trade and other receivables (net)	22,970	32,615

Credit terms for fines and costs were within 30 days or as stipulated by court judgements (2018: 30 days).

The Commission is in possession of a mortgage security over real property of approximately \$0.9m in the event of default by the debtor.

Funding

This section identifies the Commission's funding structure.

5.1 Appropriations

5.1A: Annual appropriations ('recoverable GST exclusive')

Annual Appropriations for 2019

	Annual Appropriation ¹ \$'000	Adjustments to appropriation ² \$'000	Total (current and prior years) \$'000	Appropriation applied in 2019 \$'000	Variance \$'000
Departmental					
Ordinary annual services ³	228,941	7,444	236,385	217,556	18,829
Capital Budget ⁴	10,104	-	10,104	2,534	7,570
Other services					
Equity Injections ⁵	1,100	-	1,100	2,500	(1,400)
Total departmental	240,145	7,444	247,589	222,590	24,999

1. No portion of the 2018-19 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. The variance in ordinary annual services appropriations is primarily due to the 2018-19 operating result and timing of supplier payments.

4. 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. Appropriation applied includes use of both current and prior year equity injections. As at 30 June 2019 \$11.1m of equity injections remain available for use in future reporting periods.

5.1A: Annual appropriations ('recoverable GST exclusive') (cont)

Annual Appropriations for 2018

	Annual Appropriation ¹ \$'000	Adjustments to appropriation ² \$'000	Total appropriation \$'000	Appropriation applied in 2018 (current and prior years) \$'000	Variance ³ \$'000
Departmental					
Ordinary annual services	197,951	15,735	213,686	212,760	926
Capital Budget ⁴	1,968	-	1,968	1,968	-
Other services					
Equity Injections	11,100	-	11,100	8,178	2,922
Total departmental	211,019	15,735	226,754	222,906	3,848

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. The Commission applied prior year equity injection appropriations to make cash settlements of litigation costs under Litigation Contingency 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 separately identified in the Appropriation Acts.

5.1B: Unspent annual appropriations ('recoverable GST exclusive')

	2019 \$'000	2018 \$'000
Departmental		
Appropriation Act (No. 2) 2016-17	-	942
Supply Act (No.2) 2016-17	-	458
Appropriation Act (No. 1) 2017-18	-	17,497
Appropriation Act (No. 2) 2017-18	-	1,100
Appropriation Act (No. 3) 2017-18	-	2,610
Appropriation Act (No. 4) 2017-18	10,000	10,000
Appropriation Act (No. 1) 2018-19	20,014	-
Appropriation Act (No. 2) 2018-19	1,100	-
Appropriation Act (No. 3) 2018-19	26,528	-
Total departmental	57,642	32,607

In addition to the unspent appropriations disclosed above, at 30 June 2019 the Commission had cash and cash equivalents of \$1.656m (2018: \$1.692m).

5.1C: Special appropriations ('recoverable GST exclusive')

Authority	Type	Purpose	2019 \$'000	2018 \$'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.	2	8
Total special appropriations applied			2	8

5.2 Special Accounts

	Services for Other Entities and Trust Moneys	
	2019	2018
	\$'000	\$'000
Administered		
Balance brought forward from previous period	54	54
Total increases	-	-
Available for payments	54	54
Total decreases	-	-
Total balance carried to the next period	54	54

Appropriation: *Public Governance, Performance and Accountability Act 2013 section 78*

Establishing Instrument: *Financial Management and Accountability (Establishment of Special Account for Australian Competition and Consumer Commission) Determination 2011/02*

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.

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

	2019 \$'000	2018 \$'000
6.1A: Employee provisions		
Leave	39,480	32,694
Separations and redundancies	849	184
Total employee provisions	40,329	32,878

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.

Leave

The liability for employee benefits includes provision for annual leave and long service leave. The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the Commission's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The leave liabilities have been determined by reference to the work of an actuary as at 30 June 2018. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and Redundancy

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. In 2018-19 the Commission assessed key management personnel to be the members of the Corporate Governance Board, Chief Operating Officer and Chief Finance Officer. In previous years the Commission had also included members of the Executive Management Board. Key management personnel remuneration is reported in the table below and comparative information has been updated to align with the new assessment:

	2019 \$'000	2018 \$'000
Short-term employee benefits	4,379	4,742
Post-employment benefits	580	544
Other long-term employee benefits	109	113
Total key management personnel remuneration expenses	5,068	5,399

The total number of key management personnel that are included in the above table is 10 (2018: 11).

The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the 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 2019, the Commission has matters before the Courts alleging breaches of the *Competition and Consumer Act 2010*. These cases are at various stages of completion.

Departmental

In the event of an unfavourable judgement by the Courts, the Commission stands to be liable for court costs. If it had been possible to estimate the amounts of eventual payments these would have been reported as departmental liabilities. The Commission has no quantifiable contingent liabilities arising from court action to report.

The Commission is in possession of a bank guarantee in the amount of \$0.1m. This bank guarantee is a contingent asset which would be exercised in the event of a default by a 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 2019.

However, prior to these statements being authorised court judgements have demonstrated that the Commission has quantifiable administered contingent assets totalling \$0.7m (2018: \$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

	2019 \$'000	2018 \$'000
7.2A: Categories of financial instruments		
Financial assets under AASB 139		
Loans and receivables		
Cash and cash equivalents	-	1,692
Trade and other receivables	-	815
Total loans and receivables	-	2,507
Financial assets under AASB 9		
Financial assets at amortised cost		
Cash and cash equivalents	1,656	-
Trade and other receivables	881	-
Total financial assets at amortised cost	2,537	-
Total financial assets	2,537	2,507
Financial Liabilities under AASB 139 & AASB 9		
Financial liabilities at amortised cost		
Trade creditors	12,198	7,312
Unearned income	840	1,020
Total financial liabilities measured at amortised cost	13,038	8,332
Total financial liabilities	13,038	8,332

Accounting policy

Financial assets

Financial assets are recognised when the Commission becomes party to the contract and has a legal right to receive cash. Financial assets are derecognised when the contractual rights to cash flows expire or are transferred. The Commission classifies its financial assets as 'financial assets at amortised cost' with income recognised using the effective interest rate method.

The new requirements of AASB 9 Financial Instruments have been applied for the first time in the 2018-19 financial year. Prior to the application of AASB 9 the Commission classified financial assets as 'loans and receivables'.

Impairment of Financial Assets

Financial assets are assessed for impairment at the end of each reporting period. The Commission applies the simplified approach for trade and other receivables by recognising impairment equal to the lifetime expected credit losses.

Financial liabilities

Financial liabilities, consisting of trade creditors and unearned income, are initially measured at fair value net of transaction costs. Trade creditors are recognised to the extent the goods and services have been received (and irrespective of having been invoiced). Financial liabilities are derecognised upon 'trade date'. Financial liabilities are classified as 'financial liabilities at amortised cost' with interest expense recognised using the effective interest rate method.

8.1 Budgetary Reporting

Explanations of major variances between the actual amounts presented in the financial statements and the corresponding original budget amounts.

Departmental Activities

Operational Funding

At portfolio additional estimates the Commission received additional operating funding of \$18.9m compared to the 2018-19 Budget. The additional resourcing has been used to deliver on the Commission's strategic priorities, as set out in the ACCC Strategic Direction Statement (Portfolio Budget Statements) and the Commission's Corporate Plan. The Commission uses a mix of employees and third party experts depending on the type and ongoing nature of the work. During 2018-19 the additional funding has resulted in corresponding increases in both supplier and employee expenses compared to expectations set at the time of establishing the 2019-20 Budget.

The increased staffing levels and a decrease in the Commonwealth bond rate (used to discount leave provisions) has also resulted in a higher employee provision compared to budget.

An amount of \$8.1m of GST refunds has been recognised as Section 74 receipts transferred to the OPA and correspondingly drawn down as appropriation funding. Consistent with previous years, GST received from the Australian Taxation Office and swept to the OPA has not been reflected in the budgeted amounts due to its nil impact on total operating cash flows.

Affected line items: *Employee Benefits, Supplier Expenses, Revenue from Government, Employee Provisions, Cash received - Appropriations, Cash Used - Suppliers, Cash Used - Employees, Cash used - Section 74 receipts transferred to the OPA, Contributed Equity.*

Capital Funding

At portfolio additional estimates the Commission received additional capital funding of \$7.6m compared to the 2018-19 Budget. The additional resourcing is being leveraged to assist the Commission in delivering on initiatives related to power prices and National Consumer Data Rights. Funding provided in 2018-19 was not fully expended by 30 June 2019 and work is expected to continue during the 2019-20 financial year.

Affected line items: *Contributed equity, Purchase of non-financial assets, Non-financial assets.*

Appropriation Receivable

The higher trade and receivables balances compared to budget is primarily due to an increase in the Commission's appropriation receivable. The 2018-19 operating result and unspent capital funding at 30 June 2019 resulted in an increase in the receivable balance.

Affected line items: *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 \$52.0m in 2018-19. However, the budget did not anticipate impairments for overdue debtor balances of \$21.4m resulting in a final administered outcome that is different to the budget by \$30.6m.

The final receivables balance is difficult to estimate as it is the balance as at the reporting date which is a factor of the penalties and court costs imposed as well as debtors' ability to pay and the timing of their payments. The Commission has a number of penalties and awarded costs owing at the end of the financial year, including one high dollar value case totalling \$19m, where payment had not been received by 30 June 2019.

Affected line items: *Fees and fines revenue, Impairment of fees and fines, Trade and other receivables.*

8.2 Aggregate Assets and Liabilities

Departmental

	2019 \$'000	2018 \$'000
Assets expected to be recovered in:		
No more than 12 months	65,809	39,951
More than 12 months	25,748	24,361
Total assets	91,557	64,312
Liabilities expected to be settled in:		
No more than 12 months	36,542	22,665
More than 12 months	48,780	42,379
Total liabilities	85,322	65,044

Administered

	2019 \$'000	2018 \$'000
Assets expected to be recovered in:		
No more than 12 months	22,085	32,361
More than 12 months	885	254
Total assets	22,970	32,615



06

Appendixes



Appendix 1: Entity resource statement and expenses by outcome

Table A1.1: Entity resource statement 2018–19

		Actual available appropriations for 2018–19 \$'000	Payments made in 2018–19 \$'000	Balance remaining \$'000
		(a)	(b)	(a–b)
Ordinary annual services ¹				
Departmental appropriation ²		266 596	220 090	46 506
Total ordinary annual services	A	266 596	220 090	46 506
Other services³				
Departmental non-operating				
Equity injections		13 600	2 500	11 100
Total other services	B	13 600	2 500	11 100
Special accounts				
Opening balance		54	–	54
Total special account	C	54	–	54
Total net resourcing and payments for ACCC (A+B+C)		280 250	222 590	57 660

¹ Appropriation Act (No. 1) 2018–19 and Appropriation Act (No. 3) 2018–19, prior year departmental appropriation and s. 74 (Public Governance and Accountability Act 2013 (PGPA Act)) retained revenue receipts.

² Includes an amount of \$10.1m in 2018–19 for departmental capital budget. For accounting purposes this amount has been designated as 'contributions by owners'.

³ Appropriation Act (No. 2) 2018–19, Appropriation Act (No. 2) 2017–18, Appropriation Act (No. 4) 2017–18, Appropriation Act (No. 2) 2016–17 and Supply Act (No. 2) 2016–17.

Table A1.2: Expenses for outcome 1, 2018–19

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.	Budget¹ expenses 2018–19 \$'000	Actual expenses 2018–19 \$'000	Variation 2018–19 \$'000
	(a)	(b)	(a)–(b)
Program 1.1: Australian Competition and Consumer Commission			
Departmental expenses			
Departmental appropriation ²	170 695	170 654	41
Expenses not requiring appropriation in the budget year	5 494	5 268	226
Total for program 1.1	176 189	175 922	267
Program 1.2: Australian Energy Regulator (AER)			
Departmental expenses			
Departmental appropriation ²	62 199	62 684	(485)
Total for program 1.2	62 199	62 684	(485)
Outcome 1 Total by appropriation type			
Departmental expenses			
Departmental appropriation ²	232 894	233 338	(444)
Expenses not requiring appropriation in the budget year	5 494	5 268	226
Total expenses for outcome 1	238 388	238 606	(218)
		2017–18	2018–19
Average staffing level (number)		874	976

¹ Full-year budget, including any subsequent adjustment made to the 2018–19 budget at Additional Estimates.

² Departmental appropriation combines Ordinary Annual Services (Appropriation Acts Nos. 1, 3 and 5) and retained revenue receipts under section 74 of the PGPA Act.

Appendix 2: Staffing

Tables A2.1 to A2.17 provide details of the ACCC and AER staffing complement in 2018–19.

Table A2.1: All ongoing employees 2018–19

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	55	3	58	80	13	93	0	0	0	151
Qld	23	1	24	38	13	51	0	0	0	75
SA	27	1	28	30	9	39	0	0	0	67
Tas	2	0	2	8	1	9	0	0	0	11
Vic	207	12	219	177	37	214	0	0	0	433
WA	10	0	10	13	3	16	0	0	0	26
ACT	123	4	127	144	42	186	0	0	0	313
NT	3	0	3	3	0	3	0	0	0	6
Overseas	0	0	0	0	0	0	0	0	0	0
Total	450	21	471	493	118	611	0	0	0	1 082

Table A2.2: All non-ongoing employees 2018–19

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	8	7	15	4	2	6	0	0	0	21
Qld	0	1	1	3	1	4	0	0	0	5
SA	2	0	2	4	2	6	0	0	0	8
Tas	0	0	0	0	1	1	0	0	0	1
Vic	5	7	12	10	7	17	0	0	0	29
WA	0	1	1	1	1	2	0	0	0	3
ACT	7	3	10	5	7	12	0	0	0	22
NT	1	0	1	0	0	0	0	0	0	1
Overseas	0	0	0	0	0	0	0	0	0	0
Total	23	19	42	27	21	48	0	0	0	90

Table A2.3: All ongoing employees 2017-18

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	44	3	47	60	14	74	0	0	0	121
Qld	24	1	25	29	13	42	0	0	0	67
SA	18	1	19	17	7	24	0	0	0	43
Tas	1	0	1	3	2	5	0	0	0	6
Vic	172	12	184	147	39	186	0	0	0	370
WA	10	0	10	12	3	15	0	0	0	25
ACT	120	5	125	122	45	167	0	0	0	292
NT	0	0	0	7	0	7	0	0	0	7
Overseas	0	0	0	0	0	0	0	0	0	0
Total	389	22	411	397	123	520	0	0	0	931

Table A2.4: All non-ongoing employees 2017-18

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	5	2	7	5	1	6	0	0	0	13
Qld	0	3	3	3	0	3	0	0	0	6
SA	0	1	1	3	1	4	0	0	0	5
Tas	0	0	0	0	1	1	0	0	0	1
Vic	10	7	17	12	3	15	0	0	0	32
WA	0	0	0	0	1	1	0	0	0	1
ACT	7	4	11	11	5	16	0	0	0	27
NT	0	0	0	0	0	0	0	0	0	0
Overseas	0	0	0	0	0	0	0	0	0	0
Total	22	17	39	34	12	46	0	0	0	85

Table A2.5: Australian Public Service Act ongoing employees 2018-19

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 3	0	0	0	1	0	1	0	0	0	1
SES 2	8	0	8	2	0	2	0	0	0	10
SES 1	18	2	20	15	1	16	0	0	0	36
EL 2	89	3	92	71	31	102	0	0	0	194
EL 1	115	8	123	129	38	167	0	0	0	290
APS 6	88	8	96	105	25	130	0	0	0	226
APS 5	69	0	69	99	16	115	0	0	0	184
APS 4	29	0	29	36	5	41	0	0	0	70
APS 3	5	0	5	11	2	13	0	0	0	18
APS 2	1	0	1	0	0	0	0	0	0	1
APS 1	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
Graduate	28	0	28	24	0	24	0	0	0	52
Total	450	21	471	493	118	611	0	0	0	1082

Table A2.6: Australian Public Service Act non-ongoing employees 2018-19

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 3	0	0	0	0	0	0	0	0	0	0
SES 2	0	0	0	0	0	0	0	0	0	0
SES 1	0	0	0	0	0	0	0	0	0	0
EL 2	4	0	4	1	1	2	0	0	0	6
EL 1	2	2	4	4	1	5	0	0	0	9
APS 6	4	0	4	6	2	8	0	0	0	12
APS 5	4	1	5	8	1	9	0	0	0	14
APS 4	3	0	3	1	0	1	0	0	0	4
APS 3	2	0	2	7	3	10	0	0	0	12
APS 2	3	8	11	1	8	9	0	0	0	20
APS 1	1	7	8	0	5	5	0	0	0	13
Other	0	0	0	0	0	0	0	0	0	0
Total	23	18	41	28	21	49	0	0	0	90

Table A2.7: Australian Public Service Act ongoing employees 2017-18

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 3	0	0	0	1	0	1	0	0	0	1
SES 2	8	0	8	2	0	2	0	0	0	10
SES 1	19	2	21	8	1	9	0	0	0	30
EL 2	77	3	80	63	30	93	0	0	0	173
EL 1	99	8	107	91	37	128	0	0	0	235
APS 6	76	6	82	75	26	101	0	0	0	183
APS 5	74	2	76	110	17	127	0	0	0	203
APS 4	10	0	10	18	8	26	0	0	0	36
APS 3	6	0	6	9	4	13	0	0	0	19
APS 2	0	1	1	0	0	0	0	0	0	1
APS 1	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
Graduate	20	0	20	20	0	20	0	0	0	40
Total	389	22	411	397	123	520	0	0	0	931

Table A2.8: Australian Public Service Act non-ongoing employees 2017-18

	Male			Female			Indeterminate			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES 3	0	0	0	0	0	0	0	0	0	0
SES 2	0	0	0	0	0	0	0	0	0	0
SES 1	0	0	0	0	0	0	0	0	0	0
EL 2	3	2	5	0	1	1	0	0	0	6
EL 1	7	0	7	8	1	9	0	0	0	16
APS 6	3	1	4	5	2	7	0	0	0	11
APS 5	0	0	0	5	1	6	0	0	0	6
APS 4	3	0	3	8	0	8	0	0	0	11
APS 3	3	1	4	7	0	7	0	0	0	11
APS 2	1	1	2	0	2	2	0	0	0	4
APS 1	2	12	14	1	5	6	0	0	0	20
Other	0	0	0	0	0	0	0	0	0	0
Total	22	17	39	34	12	46	0	0	0	85

Table A2.9: Australian Public Service Act employees by full-time and part-time status 2018-19

	Ongoing			Non-ongoing			Total
	Full-time	Part-time	Total ongoing	Full-time	Part-time	Total non-ongoing	
SES 3	1	0	1	0	0	0	1
SES 2	10	0	10	0	0	0	10
SES 1	33	3	36	0	0	0	36
EL 2	160	34	194	5	1	6	200
EL 1	244	46	290	6	3	9	299
APS 6	193	33	226	10	2	12	238
APS 5	168	16	184	12	2	14	198
APS 4	65	5	70	4	0	4	74
APS 3	16	2	18	9	3	12	30
APS 2	1	0	1	4	16	20	21
APS 1	0	0	0	1	12	13	13
Other	0	0	0	0	0	0	0
Graduate	52	0	52	0	0	0	52
Total	943	139	1 082	51	39	90	1 172

Table A2.10: Australian Public Service Act employees by full-time and part-time status 2017-18

	Ongoing			Non-ongoing			Total
	Full-time	Part-time	Total ongoing	Full-time	Part-time	Total non-ongoing	
SES 3	1	0	1	0	0	0	1
SES 2	10	0	10	0	0	0	10
SES 1	27	3	30	0	0	0	30
EL 2	140	33	173	3	3	6	179
EL 1	190	45	235	15	1	16	251
APS 6	151	32	183	8	3	11	194
APS 5	184	19	203	5	1	6	209
APS 4	28	8	36	11	0	11	47
APS 3	15	4	19	10	1	11	30
APS 2	0	1	1	1	3	4	5
APS 1	0	0	0	3	17	20	20
Other	0	0	0	0	0	0	0
Graduate	40	0	40	0	0	0	40
Total	786	145	931	56	29	85	1 016

Table A2.11: Australian Public Service Act employment type by location 2018-19

	Ongoing	Non-ongoing	Total
NSW	151	21	172
Qld	75	5	80
SA	67	8	75
Tas	11	1	12
Vic	433	29	462
WA	26	3	29
ACT	313	22	335
NT	6	1	7
Overseas	0	0	0
Total	1 082	90	1 172

Table A2.12: Australian Public Service Act employment type by location 2017-18

	Ongoing	Non-ongoing	Total
NSW	121	13	134
Qld	67	6	73
SA	5	43	48
Tas	6	1	7
Vic	370	32	402
WA	25	1	26
ACT	292	27	319
NT	7	0	7
Overseas	0	0	0
Total	931	85	1 016

Table A2.13: Australian Public Service Act Indigenous employment 2018-19

	Total
Ongoing	17
Non-ongoing	1
Total	18

Table A2.14: Australian Public Service Act Indigenous employment 2017-18

	Total
Ongoing	13
Non-ongoing	5
Total	18

Table A2.15: Australian Public Service Act employment arrangements 2018-19

	SES	Non-SES	Total
ACCC Enterprise Agreement 2016-2019	0	1 126	1 126
Individual flexibility arrangements	0	82	82
Section 24(1) determinations	48	1	49
Total	48	1 209	1 257

Table A2.16: Australian Public Service Act employment salary ranges by classification level (minimum/maximum) 2018-19

	Minimum salary	Maximum salary
SES 3	\$333 290	\$333 290
SES 2	\$247 809	\$310 336
SES 1	\$185 772	\$203 732
EL 2	\$121 538	\$142 431
EL 1	\$104 834	\$116 020
APS 6	\$84 376	\$94 571
APS 5	\$76 227	\$80 826
APS 4	\$68 344	\$74 204
APS 3	\$61 313	\$66 181
APS 2	\$53 833	\$59 695
APS 1	\$47 570	\$52 579
Other	0	0
Graduate	\$59 695	\$68 344
Total	-	-

Table A2.17: Australian Public Service Act employment performance pay by classification level 2018-19

	Number of employees receiving performance pay	Aggregated (sum total) of all payments made	Average of all payments made	Minimum payment made	Maximum payment made
SES 3	1	\$29 699	\$29 699	\$29 699	\$29 699
SES 2	10	\$229 020	\$22 902	\$19 742	\$27 654
SES 1	30	\$421 987	\$14 066	\$2 275	\$16 626
EL 2	0	0	0	0	0
EL 1	0	0	0	0	0
APS 6	0	0	0	0	0
APS 5	0	0	0	0	0
APS 4	0	0	0	0	0
APS 3	0	0	0	0	0
APS 2	0	0	0	0	0
APS 1	0	0	0	0	0
Other	0	0	0	0	0
Total	41	\$680 707			

Appendix 3: Mandatory executive remuneration reporting

Executive remuneration policies and practices and governance arrangements are disclosed in the annual report at pages 192–193.

In 2019 key management personnel comprised members of the Corporate Governance Board, the Chief Operating Officer and the Chief Finance Officer, as set out in the table below.

Table A3.1: Key management personnel

Name	Position	Term
Rod Sims	Chair	Full term
Delia Rickard	Deputy Chair	Full term
Mick Keogh	Deputy Chair	Full term
Cristina Cifuentes	Member	Full term
Sarah Court	Member	Full term
Roger Featherston	Member	1 July 2018–12 June 2019
Paula Conboy	Associate Member	Full term
Jim Cox	Associate Member	Full term
Rayne de Gruchy	Chief Operating Officer (COO)	Full term
Peter Maybury	Chief Finance Officer (CFO)	Full term

The ACCC disclosed key management personnel remuneration in note 6.2 to the financial statements for the period ending 30 June 2019.

Table A3.2: Information about remuneration for key management personnel

Name	Position title	Base salary	Short-term benefits			Post-employment benefits			Other long-term benefits			Termination benefits	Total remuneration
			Bonuses [#]	Other benefits and allowances		Superannuation contributions		Long service leave	Other long-term benefits				
Rod Sims	Chair	505 005	0	0	0	96 911		16 723	0	0	0	618 640	
Delia Rickard	Deputy Chair	482 866	0	5 849	0	72 795		12 400	0	0	0	573 911	
Mick Keogh	Deputy Chair	494 821	0	0	0	75 214		12 182	0	0	0	582 217	
Cristina Cifuentes	Member	433 546	0	18 841	0	69 307		11 053	0	0	0	532 746	
Sarah Court	Member	457 020	0	0	0	69 307		11 547	0	0	0	537 874	
Roger Featherston	Member	433 767	0	0	0	64 179		10 248	0	0	0	508 194	
Paula Conboy	Associate Member	516 411	0	0	0	25 000		12 772	0	0	0	554 183	
Jim Cox	Associate Member	396 521	0	0	0	20 531		9 535	0	0	0	426 587	
Rayne de Gruchy	COO	370 393	29 848	6 034	0	50 917		8 172	0	0	0	465 364	
Peter Maybury	CFO	206 297	16 153	5 757	0	35 620		4 682	0	0	0	268 510	
Total		4 296 647	46 001	36 481	0	579 781		109 314	0	0	0	5 068 226	

[#] Bonuses are based on an accrued estimate at 30 June 2019. The actual cash bonus paid during 2019-20 may differ to this amount following final assessment and approval processes.

Table A3.3: Information about remuneration for senior executives

Total remuneration bands	Number of senior executives	Average base salary	Short-term benefits				Post-employment benefits			Other long-term benefits			Termination benefits		Total remuneration
			Average bonuses#	Average other benefits and allowances	Average superannuation contributions	Average long service leave	Average other long-term benefits	Average termination benefits	Average other long-term benefits	Average termination benefits	Average total remuneration				
\$0-\$220 000	10	142 015	4 587	327	20 451	2 705	0	0	0	0	0	0	0	170 085	
\$220 001-\$245 000	3	186 599	11 216	0	31 463	3 882	0	0	0	0	0	0	0	233 160	
\$245 001-\$270 000	12	208 051	14 764	2 610	34 463	4 490	0	0	0	0	0	0	0	264 378	
\$270 001-\$295 000	13	219 410	15 404	3 400	34 705	4 658	0	0	0	0	0	0	0	277 577	
\$295 001-\$320 000	4	231 651	17 704	7 930	39 408	5 009	0	0	0	0	0	0	0	301 702	
\$320 001-\$345 000	1	262 825	19 727	5 714	44 848	6 076	0	0	0	0	0	0	0	339 190	
\$345 001-\$370 000	2	274 997	21 576	2 942	46 295	6 076	0	0	0	0	0	0	0	351 886	
\$370 001-\$395 000	3	290 071	23 202	8 615	49 080	6 477	0	0	0	0	0	0	0	377 445	
\$395 001-\$420 000	1	312 484	27 792	0	47 409	7 609	0	0	0	0	0	0	0	395 294	
\$420 001-\$445 000	1	334 512	27 792	20 115	36 943	7 609	0	0	0	0	0	0	0	426 971	
Total number of senior executives	50														

Bonuses are based on an accrued estimate at 30 June 2019. The actual cash bonus paid during 2019-20 may differ to this amount following final assessment and approval processes.

Table A3.4: Information about remuneration for other highly paid staff

Total remuneration bands	Number of other highly paid staff	Average base salary	Short-term benefits				Post-employment benefits			Other long-term benefits			Termination benefits		Total remuneration
			Average bonuses [#]	Average other benefits and allowances	Average superannuation contributions	Average long service leave	Average other long-term benefits	Average termination benefits	Average total remuneration						
\$220 001-\$245 000	4	189 026	2 619	2 915	30 659	4 327	0	0	0	0	0	0	229 546		
\$245 001-\$270 000	3	208 386	0	3 840	37 085	5 423	0	0	0	0	0	0	254 734		
\$270 001-\$295 000	1	229 901	0	6 097	42 521	5 581	0	0	0	0	0	0	284 100		
\$295 001-\$320 000	1	269 011	0	0	40 882	6 561	0	0	0	0	0	0	316 454		
Total number of other highly paid staff	9														

[#] Bonuses are based on an accrued estimate at 30 June 2019. The actual cash bonus paid during 2019-20 may differ to this amount following final assessment and approval processes.

Appendix 4: 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).

WHS activities have been included in the wellbeing holistic measures identified in part 4 of this report.

Health and safety outcomes

Comcare premiums

The ACCC's Comcare premium for 2018–19 was 0.31 per cent of payroll. This rate is well below the overall scheme rate of 1.06 per cent.

Compensation claims

There was one new compensation claim accepted by Comcare from the ACCC and AER during 2018–19. The ACCC and AER had seven open historical compensation claims at the end of the 2018–19 financial year. Each year historical cases are reviewed with Comcare.

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 2018–19 early intervention assistance and psychological support was provided to nine employees.

Incident statistics

There were 25 reports of incidents of an injury or a 'near miss' involving employees in 2018–19. There were no notifiable incidents during the financial year.

Investigations, directions and notices

The ACCC received no notices under the *Work Health and Safety Act 2011* and did not conduct any investigations during 2018–19.

Rehabilitation Management System Audit

Because the ACCC's and AER's Rehabilitation Management System (RMS) audit achieved 100 per cent compliance in the last two years, the audit schedule has moved to every two years. The next external RMS audit is 2019–20.

Appendix 5: Advertising and market research

Under s. 311A of the *Commonwealth Electoral Act 1918* (Cth), the ACCC is required to provide details of payments over \$13 800 (GST inclusive) to advertising agencies, market research organisations, polling organisations, direct mail organisations and media advertising agencies.

Table A5.1 sets out payments that the ACCC made to external organisations for advertising and market research services in 2018–19.

During 2018–19 the ACCC conducted the following advertising campaigns: Consumer directed aged care campaign; Consumer guarantees and advice campaign; Consumer rights in the new car retail industry campaign; DIY car maintenance campaign; Energy Made Easy website campaign; Franchising awareness campaign and the Measuring Broadband Australia campaign. Further information on these campaigns is available at www.accc.gov.au. The ACCC did not undertake any advertising campaigns with expenditure in excess of \$250 000.

Table A5.1: Advertising and market research payments of more than \$13 800 in 2018–19

Advertising and market research organisation	Description of advertising and market research services	Amount \$
Dentsu Mitchell Media Australia	Digital advertising for Scams Awareness Week campaign 2017–18	31 868
Dentsu Mitchell Media Australia	Digital advertising for the Country of Origin Food Labelling consumer campaign 2017–18	37 105
Dentsu Mitchell Media Australia	Digital advertising for the Energy Made Easy campaign 2018–19	148 994
Universal McCann	Digital advertising campaign to increase awareness about consumer rights in the new car retail industry 2018–19	26 726
Universal McCann	Digital advertising campaign to promote consumer guarantees and advice 2018–19	19 965
Universal McCann	Digital advertising campaign to promote DIY car maintenance 2018–19	19 999
Universal McCann	Digital advertising for the Consumer Directed Aged Care campaign 2018–19	40 000
ORC International	Market research 2019 ACCC Business Stakeholder Survey	49 131
Colmar Brunton Pty Limited	Market research into ACCC brand awareness and perceptions with a focus on youth 2017–18	45 000
Colmar Brunton Pty Limited	Market research into consumer purchasing and use of baby walkers 2018–19	15 000
Roy Morgan Research Ltd	Market research into consumer views and behaviours on digital platforms 2018–19	79 856
Roy Morgan Research Ltd	Market research into news usage in Australia	62 118

Appendix 6: Ecologically sustainable development

How the ACCC's activities and administration of legislation accord with principles of ecologically sustainable development

The ACCC administers legislation that ensures lawful competition, consumer protection and regulated national infrastructure markets and services. At all times, the ACCC pursues its outcomes and objectives in a manner that provides the maximum benefit to the maximum number of consumers with the least impact on resources and the environment.

How the ACCC's outcome contributes to ecologically sustainable development

In achieving its outcome, the ACCC employs decision-making which, in line with s. 3A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), factors in the economic, environmental, social and equitable considerations over both the short and the long term.

ACCC activities that affect the environment

To ensure the ACCC is able to effectively administer legislation and regulate national infrastructure markets and services, it has established offices at 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 Information and Communications Technology (ICT) Strategy and remains committed to environmental sustainability and performance.

Measures taken to minimise the effect of activities on the environment

The ACCC is committed to reducing the environmental impact of its activities in a range of areas.

Property

- Optimising environmental opportunities through refurbishment and new building projects.
- Exploring energy-efficient building options for new leases, reducing fit-out size, using sustainable materials where possible, and reusing or recycling office furniture.
- Using efficient, low-energy LED lighting when opportunities arise.
- Programming supplementary air conditioning to reduce energy and water consumption.
- Installing programmable and efficient office lighting, including motion sensors, in new fit-outs.

Information technology

- Retaining main servers in offsite locations, reducing onsite energy consumption.
- Using power-saving modes for ICT equipment when not in use.
- Increasing use of ISO 14001 accredited printers for external printing services where appropriate.

- Reducing printer numbers and improving printing efficiency in accordance with government requirements.
- Using duplex printing and photocopying as a default setting on all printers and multi-function devices.

Travel

- Using ICT options as an alternative to business travel.
- Reducing vehicle fleet and servicing vehicles in accordance with manufacturers' specifications.
- Using E10 fuels for lease vehicles where possible.

Workplace efficiencies

- Placing emphasis on electronic records and electronic working arrangements.
- Promoting access to ACCC publications electronically rather than in print.

Purchasing and procurement

- Purchasing 100 per cent post-consumer recycled content copy paper.
- Procuring office equipment with low energy consumption.

Waste management

- Improving waste segregation practices, including paper, commingled recycling, general waste, e-waste and, in some offices, organic waste.
- Recycling paper and cardboard products, including pulping classified waste and providing use-again office envelopes.
- Disposing of toner cartridges through a recycling outlet.
- Recycling all fluorescent tubes.
- Disposing of mobile phones and batteries through a recycling outlet.

Information and education

- Collaborating regularly with building management to identify initiatives and participate in local environmental activities.

Mechanisms for reviewing and increasing the effectiveness of measures

The ACCC environmental strategy focuses on better environmental and sustainable practices. The ACCC utilises a process of informal, continuous review of the various measures it employs to reduce the environmental impact of its activities.

Where further efficiencies are identified in the course of business, the ACCC endeavours to put in place the measures required to realise these efficiencies. All of the above is done in accordance with both the applicable funding and environmental guidelines available to the ACCC.

Appendix 7: Competition and Consumer Act 2010 and other legislation

Competition and Consumer Act and key legislation

Airports Act 1996 (Cth)

Australian Postal Corporation Act 1989 (Cth)

Competition and Consumer Act 2010 (Cth) (CCA)

National Electricity Law and Rules

National Gas Law and Rules

National Energy Retail Law and Rules

Telecommunications Act 1997 (Cth)

Water Act 2007 (Cth)

Water Market Rules 2009 (Cth)

Water Charge (Termination Fees) Rules 2009 (Cth)

Water Charge (Infrastructure) Rules 2010 (Cth)

Water Charge (Planning and Management Information) Rules 2010 (Cth)

Lawful competition and informed markets

Table A7.1: Parts of the Competition and Consumer Act 2010 dealing with competition

IV	Cartel conduct: price fixing; output restrictions; bid rigging; allocating customers, suppliers or territories Other anti-competitive conduct: boycotts; agreements substantially lessening competition; anti-competitive disclosure of pricing and other information; misuse of market power; exclusive dealing; resale price maintenance; mergers substantially lessening competition
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 is illegal for all businesses in Australia.

Court cases

The ACCC takes court action where, after considering all aspects of a matter, we see it as the best way to achieve our enforcement and compliance objectives. We are more likely to litigate where we see the conduct as particularly bad, where we are concerned about likely future behaviour or where the party involved fails to resolve the matter satisfactorily.

The ACCC may refer matters involving alleged criminal cartel offences to the Commonwealth Director of Public Prosecutions for possible criminal prosecution.

For individuals, a cartel offence is punishable by imprisonment 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 Australian sales turnover (whichever is the greater).

In relation to civil cartel prohibitions and other forms of anti-competitive conduct, the ACCC may initiate court action for contraventions of the CCA.

To enforce the civil provisions of the CCA relating to anti-competitive conduct, the ACCC can seek:

- declarations of contraventions
- findings of facts
- injunctions
- damages and compensation
- community service orders
- probation orders
- divestiture orders
- disqualification of a person from managing corporations
- adverse publicity orders
- corrective advertising, public notices and disclosure
- penalties of up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater) for companies; and \$500 000 for individuals.

Enforceable undertakings

The ACCC often resolves alleged breaches of the CCA by accepting court enforceable undertakings from the business involved. In these undertakings, which we record on a public register, the businesses often undertake to:

- make good the harm they have caused
- accept responsibility for their actions
- establish or review and improve their compliance programs and culture.

If necessary, we can take action to enforce the undertaking in the Federal Court of Australia.

We may also accept court enforceable undertakings to address our competition concerns with a proposed merger or acquisition.

The ACCC maintains a public register of enforceable undertakings.

Administrative resolution

In some cases—for example, where we assess the potential risk of harm to competition or consumer detriment from particular conduct as low—we may accept an administrative resolution. Administrative resolutions generally involve the business agreeing to stop the conduct, compensate those who suffered, and take other measures needed to prevent future recurrences.

Education and advice

We believe that preventing a breach of the CCA is better than acting after a breach has occurred. Therefore, the ACCC runs regular educational campaigns to inform and advise consumers and businesses about their rights and obligations under the CCA and to encourage compliance. Our campaigns aim to educate both big and small businesses.

The ACCC publishes targeted and general information, including tips and tools, to encourage businesses to comply with the CCA. We use a wide range of channels to disseminate this information. We also liaise extensively with business, consumer and government agencies about the CCA and our role in its administration.

Mergers

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

To assist business, the ACCC has an informal clearance process that enables parties who are planning a merger or acquisition to seek the ACCC's view on whether the proposed transaction is likely to have the effect of substantially lessening competition. Businesses may also apply to the ACCC for an authorisation of a merger or acquisition which, if granted, provides statutory protection from s. 50.

There is no legislation underpinning the informal process; rather, it has developed over time so that merger parties can seek the ACCC's view before they complete a merger.

The ACCC assesses mergers that come to our attention where they potentially raise concerns under s. 50. These mergers are generally notified by the merger parties via a request for informal clearance. Alternatively, the ACCC may become aware of a proposed or a completed acquisition by monitoring media reports, from complaints or through referrals from Australian and overseas regulators.

We use the information available to us to determine whether a public review is required. Where we are satisfied that there is a low risk of a substantial lessening of competition based on an initial assessment, we may decide that a public review of the merger is unnecessary. These mergers are described as being 'pre-assessed'. A significant proportion of the mergers we consider are pre-assessed. Clearing mergers by pre-assessment enables the ACCC to respond quickly where there are no substantive competition concerns.

Mergers can be pre-assessed, without conducting a public review, on the basis of the information from the parties or other information before us. Alternatively, in some non-confidential mergers we may conduct targeted inquiries to help inform the decision.

Where pre-assessment is not considered suitable or possible, the ACCC conducts a public review for non-confidential mergers.

On 6 November 2017 amendments to the CCA that give the ACCC power to authorise proposed acquisitions came into effect (referred to as 'merger authorisation'). These amendments 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 proposed acquisitions.

While a merger authorisation is in force, the authorised parties will be able to acquire the relevant shares or assets without the risk of the ACCC or third parties taking legal action for a contravention of s. 50 of the CCA.

Non-merger authorisations and notifications

The CCA primarily aims to prevent conduct that damages or is likely to damage competition. However, if markets are not working efficiently and they are failing to maximise welfare, some restrictions on competition may be allowed in the public interest.

Authorisation provides businesses with statutory protection from legal action to engage in potentially anti-competitive arrangements.

The authorisation process recognises that, in certain circumstances, particular conduct may not harm competition or may give rise to benefits to the public that outweigh the public detriment.

The ACCC may, if the authorisation test is met, grant authorisation to conduct to which one or more provisions in Part IV of the CCA would or might apply, including:

- contracts, arrangements, understandings or concerted practices that have the purpose, effect or likely effect of substantially lessening competition
- anti-competitive arrangements, including cartel provisions (such as price fixing, controlling output, sharing markets or collective bargaining)
- secondary boycotts (where two or more parties prevent a third party such as a potential customer or supplier from doing business with a target)
- conduct that may be considered to fall within the misuse of market power provisions
- exclusive dealing (where a person trading with another imposes restrictions on the other's freedom to choose with whom, in what or where they deal)
- resale price maintenance (where the supplier specifies a minimum price below which goods or services may not be resold)
- dual-listed company arrangements that affect competition.

The legal test that the ACCC must apply when assessing an application for authorisation depends upon the conduct for which authorisation is sought.

For conduct that is prohibited outright (such as cartel conduct), the ACCC may grant authorisation if it is satisfied that the likely public benefit from the conduct outweighs the likely public detriment.

For other conduct, the ACCC may grant authorisation if it is satisfied that either:

- the conduct would not be likely to substantially lessen competition, or
- the likely public benefit from the conduct outweighs the likely public detriment.

As an alternative to authorisation, the CCA allows parties to obtain statutory protection from legal action under the notification regime in relation to exclusive dealing, certain collective bargaining and collective boycott arrangements, and resale price maintenance. In some cases the notification process can be faster than seeking authorisation, but it is not available for all types of conduct.

For exclusive dealing notifications, the ACCC will assess whether the notified conduct:

- has the purpose, effect or likely effect of substantially lessening competition, and
- if so, will result in a likely public benefit that would outweigh the likely public detriment.

For collective bargaining and resale price maintenance notifications, the ACCC will assess whether the likely benefit to the public from the conduct will outweigh the likely detriment to the public from the conduct.

Both the notification and authorisation processes are public. The ACCC publishes the applications, public submissions and ACCC decisions on the [public register on our website](#).

Fair trading and consumer protection

Table A7.2: Parts of the Competition and Consumer Act 2010 (including the Australian Consumer Law) dealing with fair trading and consumer protection

Competition and Consumer Act 2010	
IVB	Industry codes of conduct: the franchising, horticulture, oil and unit pricing codes are mandatory codes prescribed under Part IVB
Australian Consumer Law—Schedule 2 to the Competition and Consumer Act 2010	
Chapter 2	General protections: misleading or deceptive conduct; unconscionable conduct; unfair contract terms
Chapter 3	Specific protections: 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 \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater) for companies; and \$500 000 for individuals.

Court enforceable undertakings

To protect consumers and resolve matters under investigation, in appropriate circumstances we can accept court enforceable undertakings rather than taking litigation.

Under a court enforceable undertaking, a company or an individual will generally agree to:

- remedy the harm caused by the conduct
- accept responsibility for their actions
- establish or review and improve their compliance programs and culture.

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 have reasonable grounds to believe that a person has contravened a relevant provision of the CCA but we consider that a resolution is possible without going to court, we can also issue an infringement notice. We may also issue infringement notices in combination with a court enforceable undertaking.

The penalty amount in each infringement notice will vary depending on the alleged contravention, but in most cases it 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 reoffends after they have accepted an administrative resolution, we are likely to resolve the new matter differently.

Infrastructure services and markets where competition is limited

Table A7.3: Parts of the Competition and Consumer Act 2010 dealing with regulated industries and prices surveillance

IIIAA	Regulatory and enforcement responsibilities under 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 of, use of and investment in Australia's key infrastructure. The effect of competition and investment will therefore enhance community welfare and promote the long-term 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 electricity networks and setting the prices that pipeline operators can charge users of fully regulated gas pipelines. The AER regulates the costs of electricity network services in eastern and southern Australia and electricity networks in the Northern Territory. The AER regulates access prices for covered pipelines in jurisdictions other than Western Australia.

The AER monitors 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 has a range of 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 Queensland. These include authorising retailers to sell energy; administering the national Retailer of Last Resort scheme aimed at protecting customers and the market in the event of a retail business failure; monitoring the performance and compliance of energy businesses and taking enforcement action where appropriate; and maintaining a price comparator website (Energy Made Easy) to assist residential and small business energy customers choose an energy plan that suits their needs.

The AER and ACCC also have roles under the Competition and Consumer (Industry Code—Retail Electricity) Regulations 2019. The AER sets price caps for standing offers for retail electricity supply in certain distribution zones in Australia and the ACCC has enforcement responsibility for compliance with the code, which includes additional controls over the representation of discounts for market offers for retail electricity supply.

Legislative amendments in 2018–19

Amendments to the Competition and Consumer Act 2010

Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019—commenced 5 April 2019 (with effect from 1 July 2019)

These regulations set out new obligations giving effect to the Default Market Offer (DMO) recommended by the ACCC's Retail Electricity Price Inquiry. Part 2 of the regulations prescribes a mandatory industry code under which retailers must not charge standing offer customers more than a price determined by the AER. It also requires that offers be marketed in reference to the AER-determined price and that conditional discounts must not be the most prominent price-related feature in an advertisement. Part 3 of the regulations confers price-setting functions on the AER.

Treasury Laws Amendment (2018 Measures No. 3) Act 2018—commenced 1 September 2018

This Act amends the CCA to align the maximum penalties under the Australian Consumer Law (ACL) with the maximum penalties under the competition provisions of the CCA; amends the ACL to provide for a safe harbour defence to an allegation of false, misleading or deceptive conduct

where a person has complied with an information standard about free range eggs; and ensures the confidentiality of supplier information obtained by the AER in performing its wholesale market monitoring and reporting functions.

Treasury Laws Amendment (Gift Cards) Act 2018—commenced 26 October 2018

This Act amends the CCA to introduce a national regime to regulate gift cards, including requirements that:

- gift cards must have a minimum three-year expiry period
- information about the expiry of a gift card must be displayed prominently on the card itself
- terms and conditions cannot allow certain post-supply fees to be charged
- certain fees cannot be charged after the gift card is supplied.

The amendments have commenced, but they only apply to gift cards supplied after 1 November 2019.

Treasury Laws Amendment (Australian Consumer Law Review) Act 2018— commenced 26 October 2018

This Act amends the CCA to clarify and strengthen consumer protections relating to consumer guarantees, unsolicited consumer agreements, voluntary recalls and false billing. It also extends information gathering powers in relation to product safety and unfair contract terms matters.

Treasury Laws Amendment (2018 Measures No. 4) Act 2019—commenced 1 April 2019

This Act repeals s. 44AAJ of the CCA, removing the requirement for the AER to produce its own annual report and allowing the AER to instead produce a combined report with the ACCC.

Treasury Laws Amendment (2019 Measures No. 1) Act 2019—commenced 6 April 2019

This Act makes a number of changes to the CAA:

- It amends the period of time within which a corporation must comply with a notice to obtain information or produce documents in relation to compliance with industry codes. This amendment enables subsequent extensions of time to be sought under the one notice.
- It inserts para. 90(8)(ba) to ensure authorisation of conduct under ss. 45E and 45EA is subject to the same test as all other per se conduct and can only be authorised if it results in a net public benefit.
- It inserts a new provision to ensure that, despite s. 44(1) of the *Legislation Act 2003*, instruments made under s. 95AA of the CCA are subject to disallowance in accordance with s. 42 of the *Legislation Act 2003*.
- It amends the way in which an inquiry body publishes a notice that it is holding an inquiry. Notification is now given by a notifiable instrument rather than by publication in the gazette and as an advertisement in a newspaper circulating in each state and territory.
- It amends s. 155 of the CCA to expressly provide for a member of the ACCC to vary the time specified in a notice and to enable the delegation of the same power to a senior executive service (SES) (or acting SES) employee of the ACCC.

Treasury Laws Amendment (2018 Measures No. 5) Act 2019—commenced 12 September 2019 and 13 March 2019

Schedule 4 of this Act repeals s. 51(3) of the CCA to remove the exemption for conditional licensing or assignment of intellectual property rights—such as patent, registered design, copyright or eligible circuit layout rights—from prohibitions on restrictive trade practices.

Schedule 5 of this Act amends s. 82 of the CCA so that a person who brings proceedings under Part IV of the CCA can seek an order from the court that the applicant is not liable for the costs of the respondent, regardless of the outcome of the proceedings.

Amendments to the Competition and Consumer Regulations 2010

Treasury Laws Amendment (Professional Standards Schemes No. 2) Regulations 2018—commenced 3 October 2018

These amendments give effect to the decisions the Professional Standards Councils made to approve or amend professional standards schemes in their respective jurisdictions. This includes the CPA Australia Ltd Professional Standards (Accountants) Scheme and the Institute of Public Accountants Professional Standards Scheme as new professional standards schemes that have capped civil liability for misleading or deceptive conduct under the CCA, as these schemes have become approved professional standards schemes in New South Wales. Modifications are also made to extend the Law Society of New South Wales Scheme to reflect the extension of the scheme approved in New South Wales, extend the Bar Association of Queensland Scheme to reflect the extension of that scheme approved in Queensland, amend the New South Wales Bar Association Scheme and the Law Society of South Australia Professional Standards Scheme to reflect changes to the schemes approved by the various states, and amend the Australian Property Institute Valuers Limited Scheme to reflect changes to the scheme approved in New South Wales.

Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018—commenced 8 December 2018

These amendments insert a new section outlining information that an identity card for inspectors must contain.

Treasury Laws Amendment (Gift Cards) Regulations 2018—commenced 14 December 2018

These amendments insert provisions into the Competition and Consumer Regulations 2010 to specify articles that are not gift cards, identify fees that are not considered post-supply fees, and exempt gifts cards supplied in certain circumstances from some or all of the requirements in the *Treasury Laws Amendment (Gift Cards) Act 2018*.

Treasury Laws Amendment (Professional Standards Scheme) Regulations 2019—commenced 26 March 2019

These amendments give effect to the decisions of the Professional Standards Councils made to approve or amend professional standards schemes in their respective jurisdictions as published in the relevant state government gazette or on the relevant state government legislation website. This includes prescribing replacement schemes (new schemes that replace currently prescribed schemes) and extending currently prescribed schemes. The regulations also update the list of prescribed schemes by removing those that have expired.

Telecommunications legislation

Determinations made under the Telecommunications Act 1997

Nil.

Amendments to the Telecommunications Act 1997

Nil.

Amendments to the Broadcasting Services Act 1992

Nil.

Record-keeping rules

Internet Activity Record Keeping Rule

The ACCC released a new Internet Activity Record Keeping Rule (RKR) on 11 December 2018 to assist it with its annual communications market report as well as other regulatory decisions to improve competition in relevant markets. This followed the decision by the Australian Bureau of Statistics to discontinue its Internet Activity Survey. Its final release of data, for the June 2018 reporting period, was in October 2018.

The Internet Activity RKR requires retail service providers to submit to the ACCC information on their internet activity, such as the services in operation and data download volume for fixed-line and mobile services in Australia on a biannual basis, with the first data collection in December 2018.

Remaking of guidelines

Copyright guidelines

On 11 April 2019 the ACCC published copyright guidelines to assist the Copyright Tribunal in the determination of copyright remuneration for the purposes of s. 157A of the *Copyright Act 1968*. The guidelines provide an overview of the economics of copyright and set out some approaches to pricing of copyright material. The guidelines may also help collecting societies and copyright users to negotiate reasonable copyright remuneration for blanket licences outside the Copyright Tribunal.

Telecommunications—competition notice guidelines

On 15 August 2018 the ACCC published updated guidelines in respect of the competition notice regime contained in Part XIB of the CCA. The guidelines were updated following changes to s. 46 and Part XIB of the CCA. The guidelines set out the matters that the ACCC will consider when deciding whether to issue a competition notice and the appropriateness of the ACCC issuing competition notices as opposed to taking other action under the CCA.

Water legislation

Amendments to the Water Act 2007

Nil.

Amendments to water charge rules

On 3 April 2019 the Australian Government Minister for Agriculture and Water Resources made changes to the water charge rules. The Minister had already accepted the ACCC's advice to remove requirements for some infrastructure operators to prepare network service plans, with this change coming into on effect 1 July 2017. Under the new changes:

- the three existing sets of water charge rules will be combined into the Water Charge Rules 2010
- infrastructure operators will be required to include more information on their schedule of charges about pass-through charges and provide more information to their customers about termination fees
- termination fees will be calculated using only fixed volumetric charges
- regulation of on-river infrastructure operators will largely be returned back to Basin states' regulatory frameworks.

Although the Minister initially intended these changes to the water charge rules to commence on 1 July 2019, after further consultation this was postponed until 1 July 2020. The additional time before the changes take effect will allow a smooth transition to the amended rules.

Water determinations under the Water Charge (Infrastructure) Rules 2010

Nil.

Wheat legislation

Nil.

National Electricity Law, National Gas Law and National Energy Retail Law

Amendments to National Electricity Law, National Gas Law and National Energy Retail Law

Statutes Amendment (National Energy Laws) (Rules) Act 2018—commenced 20 September 2018

These amendments to the National Electricity, National Gas and National Energy Retail Laws are to account for the creation of the Energy Security Board (ESB). The changes allow the AER to disclose information to the ESB and for the South Australian Energy Minister to make rules upon the recommendation of the COAG Energy Council and the ESB in relation to the energy security and reliability of the National Electricity Market (NEM) or long-term planning of the NEM or long-term planning in relation to investment in and operation and use of natural gas services.

National Electricity (South Australia) (Retailer Reliability Obligation) Amendment Bill 2019

This Bill amends the National Electricity Law to give effect to the Retailer Reliability Obligation. The amendments provide the AER with responsibility to assess requests from the Australian Energy Market Operator for the issuing of a reliability instrument if a reliability gap is identified in the Electricity Statement of Opportunities. The AER also has ongoing compliance monitoring responsibilities for liable entity net contract positions, including opt-in entities as well as parties required to perform the Market Liquidity Obligation.

Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Act 2018—commenced 13 December 2018

This Act amends the National Energy Laws to introduce a binding rate of return instrument that sets out the approach to calculating the rate of return parameters for all network businesses. The AER will make a binding instrument through a single industry-wide process once every four years in line with the processes set out in this Act. This Act also includes transitional provisions to give effect to the first binding rate of return instrument, which the AER made in December 2018.

National Gas (South Australia) (Capacity Trading and Auctions) Amendment Act 2018—commenced 22 November 2018

Along with a role to grant exemptions and to classify some grandfathered rights for the auction, this legislation provides a broad market oversight role for the east coast wide secondary capacity-trading platform and day-ahead auction for contracted but un-nominated capacity, which commenced on 1 March 2019. The AER also became the custodian of the [Operational Transportation Service Code](#). Within the first 12 months of the capacity trading reforms being implemented, the AER is required to conduct a review of the compliance of Standard Operational Transportation Service Agreements and standardisation charges with the principles in the National Gas Rules and the code.

National Electricity Rules

- Managing power system fault levels—Schedules 4–9 commenced operation on 1 July 2018.
- Managing the rate of change of power system frequency—Schedules 1–7 commenced operation on 1 July 2018.
- Transmission Connection and Planning Arrangements—Schedules 1,2, 4, 5 and 6 commenced operation on 1 July 2018.
- Generating System Model Guidelines—Schedules 1–4 commenced operation on 1 July 2018.
- Minor changes—commenced on 1 July 2018.
- Reliability Panel governance arrangements—commenced on 1 July 2018.
- Reinstatement of long notice Reliability and Emergency Reserve Trader—Schedule 1 commenced operation on 13 July 2018; Schedule 2 commenced operation on 21 July 2018.
- Establishing values of customer reliability—commenced operation on 13 July 2018.
- Register of distributed energy resources—Schedule 4 commenced operation on 18 September 2018.
- Generator technical performance standards—commenced operation on 5 October 2018.
- Minor changes 2—commenced operation on 9 November 2018.
- Generator three-year notice of closure—commenced operation on 9 November 2018.
- Participant compensation following market suspension—Schedule 1 commenced operation on 20 December 2018; Schedule 3 commenced operation on 22 November 2018.
- Global settlement and market reconciliation—Schedule 5 commenced operation on 13 December 2018.
- Metering installation timeframes—commenced operation on 1 February 2019.
- Binding Rate of Return Instrument—commenced operation on 1 February 2019.
- Early implementation of ISP priority projects—commenced operation on 11 April 2019.
- Enhancement to the Reliability and Emergency Reserve Trader Schedule 3—commenced operation on 2 May 2019.
- Application period for contingent project revenue—commenced operation on 2 May 2019.

National Gas Rules

- Facilitating capacity trades and the capacity auction (Part 24) and Capacity auction (Part 25)—commenced on 1 March 2019. These introduce a secondary capacity-trading platform and mandatory day-ahead auction of contracted but un-nominated capacity on gas pipelines.
- Improvements to Natural Gas Bulletin Board—Schedule 3 commenced on 3 October 2017; Schedule 2 commenced on 15 May 2018; and Schedule 1 commenced on 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.
- Measures to improve information disclosure, support more effective negotiations and improve access by pipeline users to covered pipelines—commenced on 21 March 2019. The COAG Energy Council requested these measures based on recommendations in the Australian Energy Market Commission’s review of Parts 8–12 of the National Gas Rules to address concerns that customers may be paying more than necessary for gas pipeline services.
- Cross-period revenue smoothing—commenced operation on 6 September 2018.
- Improvements to Natural Gas Bulletin Board—Schedule 1 commenced operation on 30 September 2018.
- Minor changes 2018 (gas)—Schedule 2 commenced on 30 September 2018.

- Capacity trading and auctions—Schedules 1, 2, 3, 6, 8, 9, 10 and 11 commenced operation on 22 November 2018. Schedule 4 commenced operation on 1 March 2019.
- Binding Rate of Return Instrument—commenced operation on 1 February 2019.
- Regulation of covered pipelines—Schedules 1 and 5 commenced operation on 21 March 2019; Schedule 3 commenced operation on 21 April 2019; and Schedule 4 commenced operation on 21 June 2019.

National Energy Retail Rules

- Preventing discounts on inflated energy rates—commenced on 1 July 2018.
- Minor changes 2 (retail)—commenced on 9 November 2018.
- Strengthening protections for customers in hardship—commenced on 15 November 2018.
- Estimated meter reads—commenced on 1 February 2019.
- Metering installation timeframes—commenced on 1 February 2019.
- Advanced notice of price changes—commenced on 1 February 2019.
- Strengthening protections for customers requiring life support equipment—commenced on 1 February 2019.
- Minor changes 2018 (retail)—Schedule 2 commenced 1 February 2019.

New standards, amendments to standards, new bans

Consumer Goods (Disposable Cigarette Lighters) Safety Standard 2019

The new safety standard prescribes mandatory requirements for the supply of disposable cigarette lighters by allowing compliance with international standards. The standard commenced in February 2019. It repeals the Trade Practices (Consumer Product Safety Standard) (Disposable Cigarette Lighters) Regulations 1997, although suppliers may continue to comply with the repealed standard during the 12-month transitional period.

Consumer Goods (Prams and Strollers) Amendment Safety Standard 2019

The instrument commenced in February 2019. It amends the existing safety standard for prams and strollers, Consumer Protection Notice No. 8 of 2007. The amendment clarifies that strollers include products that can operate in more than one mode, such as a convertible tricycle that converts into a stroller.

Consumer Goods (Children's Nightwear and Limited Daywear and Paper Patterns for Children's Nightwear) Amendment Safety Standard 2019

The instrument commenced in February 2019. It amends the existing safety standard for children's nightwear, Consumer Goods (Children's Nightwear and Limited Daywear and Paper Patterns for Children's Nightwear) Safety Standard 2017. The amendment includes reference to the latest version of the voluntary Australian standard.

Consumer Goods (Self-balancing Scooters) Amendment Safety Standard 2019

The instrument commenced in April 2019. It amends the existing safety standard for self-balancing scooters, Consumer Goods (Self-balancing Scooters) Safety Standard 2018. The amendment extends the operation of the standard by 24 months to 16 July 2021 and updates references to international standards.

New bans

No new bans (interim or permanent) were imposed on consumer goods or product-related services in 2018–19.

Appendix 8: Information required under the Competition and Consumer Act 2010

Section 171(2) reporting requirements

Section 51(1) of the *Competition and Consumer Act 2010* (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 of which the ACCC has been notified or has otherwise become aware.

Commonwealth

Australian Postal Corporation Act 1989

Banking Act 1959

Competition and Consumer Act 2010 (ss. 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 Act 2016

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

Liquor Act 2007

Major Events Act 2009

Passenger Transport Act 2014

Point to Point Transport (Taxis and Hire Vehicles) Act 2016

Rice Marketing Act 1983

Sporting Venues Authorities Act 2008

Thoroughbred Racing Act 1996

Totalizator Act 1997

Waste Avoidance and Resource Recovery Act 2001

Northern Territory

Competition Policy Reform (Northern Territory) Act 1996

Consumer Affairs and Fair Trading Act 1990

Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations 1996

Electricity Reform Act 2000

Environmental Protection (Beverage Containers and Plastic Bags) Act 2011

Liquor Act 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

Liquor Control Act 1988

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

On 18 September 2018 the ACCC issued the final determination of an arbitration of a dispute between Glencore Coal Assets Australia Pty Ltd (Glencore) and Port of Newcastle Operations Pty Ltd about terms and conditions of access to the 'declared' shipping channel service at the Port of Newcastle. This final determination was publically released on 8 October 2018. Glencore had originally notified the ACCC of the access dispute under s. 44S of the CCA on 4 November 2016.

Decisions on access undertaking applications and access code applications

Rail

In 2017–18 the Australian Rail Track Corporation (ARTC) submitted the 2018 Interstate Access Undertaking (2018 IAU) to the ACCC for assessment under Part IIIA of the CCA. The 2018 IAU was intended to replace the 2008 Interstate Access Undertaking (2008 IAU), which was originally due to expire on 21 August 2018.

In 2018–19, while the 2018 IAU was being assessed, the ACCC accepted two applications to extend the 2008 IAU by:

- four months until 21 December 2018 (submitted by ARTC on 28 June 2018, accepted on 25 July 2018)
- a further two months until 28 February 2019 (submitted by ARTC on 16 November 2018, accepted on 12 December 2018).

On 20 December 2018 the ACCC published a draft decision indicating its intention to reject ARTC's 2018 IAU application, expressing a number of concerns about the proposed terms of the 2018 IAU. ARTC withdrew its application on 25 January 2019.

On 29 January 2019 ARTC submitted an application to vary the 2008 IAU. Following stakeholder feedback, this application was withdrawn and a new variation application was made on 22 February 2019. On 28 February 2019 the ACCC accepted ARTC's variation application. This provided regulatory coverage to industry while the ACCC works with ARTC to develop a replacement undertaking. The accepted variation included extending the term of the 2008 IAU by one year to 29 February 2020.

On 28 September 2018 ARTC applied to the ACCC to vary its 2011 Hunter Valley Access Undertaking (HVAU). The ACCC accepted the application on 29 November 2018.

Decisions on applications under section 44PA(1)

No decisions were made on applications under s. 44PA(1).

Notices under sections 155 and 155A

General description of matters for which notices were given

A total of 269 notices were issued during investigations of conduct potentially in contravention of restrictive trade practices provisions, industry codes and consumer and small business protection provisions of the CCA during 2018–19.

Types of notices issued

- 147 notices under s. 155(1)(a) and (b) (requiring the addressee to furnish information in writing and to produce documents)
- five notices under s. 155(1)(a) (requiring the addressee to furnish information)
- 49 notices under s. 155(1)(b) (requiring the addressee to produce documents)
- 62 notices under s. 155(1)(c) (requiring the addressee to appear in person and give evidence)
- six 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

One proceeding was instituted to challenge the validity of a notice, which was subsequently withdrawn.

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 eight 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 four separate investigations. Seven warrants related to alleged contraventions of ss. 45, 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK of the CCA (as of 6 November 2017: ss. 45AF, 45AG, 45AJ, 45AK) (relating to alleged making and giving effect to contracts, arrangements or understandings containing cartel provisions or provisions with the purpose, effect or likely effect of substantially lessening competition). One warrant related to alleged contraventions of ss. 45(1), 45E and 45EA of the CCA (relating to the making and giving effect to anti-competitive contracts, arrangements or understandings).

Challenges to the validity of search warrants

There were no challenges to the validity of the search warrants.

Entry to premises

There were 1011 entries onto premises under s. 133B or s. 133C or Division 6 of Part XI.

There were no entries to premises with consent under s. 154D (Part XID).

Inspectors appointed under ss. 133(1) and 133(2) of the CCA may enter the premises from which a person in trade or commerce supplies consumer goods and service, if the public has access to the premises at the time of entry. While on the premises, the inspector may take photographs, inspect consumer goods and equipment or purchase consumer goods and services. During 2018–19 surveillance staff appointed as inspectors undertook 1011 entries onto premises under ss. 133B or 133C as part of the ACCC routine surveillance program.

Complaints received by the ACCC

Details on the number of complaints received by the ACCC in 2018-19 and a summary of the kinds of complaints received and how they were dealt with are on pages 125-129—'Responding to enquiries and reports'.

Substantiation notices issued

No substantiation notices were issued pursuant to s. 219(2)(a) and (c) of the CCA requiring addressees to provide a written signed statement or produce documents substantiating or supporting their claims.

Audit notices issued

In 2018-19, 17 notices were issued under s. 51ADD (requiring the addressee to give information or produce documents). Three of these notices were issued to organisations to check their compliance with the Horticulture Code of Conduct, and 14 notices were issued to franchisors to check their level of compliance with the Franchising Code.

Intervention in proceedings

In 2018-19 the ACCC intervened in one matter and the AER intervened in no matters.

The ACCC intervened in the proceedings between Nature's Care Manufacture Pty Ltd (NCM) and Australian Made Campaign Limited (AMCL): *Nature's Care Manufacture Pty Ltd v Australian Made Campaign Limited* [2018] FCA 1936. On 3 December 2018 the Federal Court dismissed an application by NCM seeking a declaration that its 'Fish Oil + Vitamin D' soft gel capsules are substantially transformed in Australia for the purposes of s. 255 of the ACL. AMCL, which administers the 'Australian Made, Australian Grown' logo, had decided that it would not extend NCM's licence to use the logo because it intended to follow ACCC guidelines, which expressed the view that soft gel fish oil capsules do not satisfy the safe harbour protections in s. 255 of the ACL for the purpose of country of origin claims.

Appendix 9: Undertakings accepted, adverse publicity orders issued and infringement notices paid in 2018-19

Competition and Consumer Act 2010 section 87B undertakings

Undertakings accepted by the ACCC are available in full on the [undertakings public register](#) on the ACCC website.

[Undertakings accepted by the AER](#) are available in full on the AER website.

Competition and Consumer Act 2010 section 86D adverse publicity orders

There were no public warning notices issued in 2018-19. Information on public warning notices is available on the [public warning notice register](#).

Competition and Consumer Act 2010 infringement notices

Details of [infringement notices](#) are available on the ACCC website.

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

The ACCC conducted an investigation of Murray Irrigation Limited (MIL) and formed a view it was breaching the Water Charge (Infrastructure) Rules by not including on its schedule of charges information about charges it imposed on two non-irrigation customers, WaterNSW and the Office of Environment and Heritage. MIL undertook to review and improve its internal systems and train senior staff to prevent a recurrence of the issue, and the matter was resolved administratively.

Section 288 National Energy Retail Law undertakings

Nil.

Section 59A National Electricity Law undertakings

Table A9.1: National Electricity Law and National Gas Law undertakings 2018–19

National Electricity Law and National Gas Law	
<p>Failure to follow dispatch instructions and related obligations</p>	<p>Clause 4.9.8(a) of the National Electricity Rules (NER) requires registered participants to follow dispatch instructions issued by the Australian Energy Market Operator (AEMO) unless to do so would, in the participant’s reasonable opinion, be a hazard to public safety or materially risk damaging equipment. Clause 4.9.2(d) requires scheduled generators or semi-scheduled generators, when they submit dispatch offers with an availability greater than 0 MW availability, to ensure that appropriate personnel are available at all times to respond to, receive and immediately act upon dispatch instructions.</p> <p>The AER accepted an enforceable undertaking in relation to Synergen Energy’s alleged failure to comply with cl. 4.9.8(a) by not following dispatch instructions issued to the Dry Creek generating units on multiple occasions on 1 December 2016. Synergen Energy is part of a group of companies trading as ENGIE in Australia. The enforceable undertaking was offered by Synergen Energy’s Australian parent, International Power (Australia) Holdings Pty Ltd, and put in place various measures to improve compliance. These measures include additional support to traders when working from home, revised processes around the operation of Dry Creek and ongoing training for staff regarding NER obligations.</p> <p>We accepted s. 59A undertakings from NSW and ACT businesses in 2018–19 relating to network tariffs for this period. This continued the undertakings from previous years, which were introduced following the Australian Competition Tribunal’s setting aside of the AER distribution determinations in 2016–17.</p>

Infringement notices paid under National Energy Retail Law and Rules

Table A9.2: National Energy Retail Law and Rules infringement notices paid 2018–19

Trader	Date paid and amount
Alinta Energy Retail Sales Pty Ltd	3 July 2018 Two notices totalling \$40 000
EnergyAustralia Pty Ltd	7 August 2018 One notice totalling \$20 000
Alinta Energy Retail Sales Pty Ltd	7 August 2018 Two notices totalling \$40 000
Energex Limited	13 August 2018 Three notices totalling \$60 000
Tasmanian Networks Pty Ltd	31 August 2018 Four notices totalling \$80 000
Icon Distribution Investments Limited and Jemena Networks (ACT) Pty Ltd trading as 'Evoenergy'	7 December 2018 Two notices totalling \$40 000
Energex Limited	7 December 2018 Two notices totalling \$40 000

Infringement notices paid under National Energy Law and Rules

Table A9.3: National Energy Law and Rules infringement notices paid 2018–19

Syngren Power Pty Ltd	6 July 2018 Three notices totalling \$60 000
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Appendix 10: Litigation matters, review proceedings and tribunal proceedings in 2018-19

ACCC

Strategy 1 Maintain and promote competition

Table A10.1: Litigation commenced in 2018-19

Competition		
Cartel	Construction, Forestry, Maritime, Mining and Energy Union & Anor	
	commenced	16 August 2018
	jurisdiction	ACT Magistrates Court
Anti-competitive conduct	Pacific National Pty Ltd & Ors	
	commenced	19 July 2018
	jurisdiction	Federal Court Melbourne
Anti-competitive conduct	NSW Ports Operations Hold Co. Pty Ltd & Ors	
	commenced	10 December 2018
	jurisdiction	Federal Court Sydney
Cartel	Vina Money Transfer Pty Ltd & Ors	
	commenced	11 April 2019
	jurisdiction	Melbourne Magistrates Court

Note: Matters commenced and concluded in the same financial year are included in the concluded litigation table below.

Table A10.2: Litigation concluded in 2018-19

Competition		
Cartel	Cryosite Limited	
	commenced	16 July 2018
	concluded	13 February 2019
	jurisdiction	Federal Court Melbourne
	outcome	Penalties of \$1.05 million
Exclusive dealing	Palram Australia and Ampelite Australia	
	commenced	23 June 2016
	concluded	13 August 2018
	jurisdiction	Federal Court Brisbane
	outcome	Penalties of \$3.5 million against Palram Australia and \$2.1 million against Ampelite Australia

Exclusive dealing	Oakmoore Pty Ltd	
	commenced	23 June 2016
	concluded	29 September 2018
	jurisdiction	Federal Court Brisbane
	outcome	Penalties of \$6 million against Oakmoore Pty Ltd and \$350 000 against director, Mr Rodney Horwill
Misuse of market power	Pfizer Australia Pty Ltd (High Court special leave application)	
	commenced	16 July 2018
	concluded	19 October 2018
	jurisdiction	High Court of Australia
	outcome	High Court dismissed the ACCC's application for special leave to appeal to the High Court
Cartel	PZ Cussons Australia Pty Ltd (Full Federal Court appeal)	
	commenced	20 February 2018
	concluded	24 May 2019
	jurisdiction	Full Federal Court Sydney
	outcome	Full Federal Court dismissed the ACCC's appeal against a ruling that there was insufficient evidence to find that PZ Cussons Australia Pty Ltd engaged in cartel behaviour
Cartel	Yazaki Corporation (High Court appeal)	
	commenced	9 July 2018
	concluded	19 October 2018
	jurisdiction	High Court of Australia
	outcome	High Court dismissed Yazaki Corporation's application for special leave to appeal to the High Court

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

Table A10.3: Litigation commenced in 2018–19

Consumer and small business protection		
Vulnerable and disadvantaged consumers	Bupa Aged Care Australia Pty Ltd	
	commenced	16 April 2019
	jurisdiction	Federal Court Melbourne
Excessive payment surcharges	CLA Trading Pty Ltd (t/a Europcar)	
	commenced	25 July 2018
	jurisdiction	Federal Court Melbourne
Priority factor—conduct that results in substantial consumer or small business detriment	Employsure Pty Ltd	
	commenced	21 December 2018
	jurisdiction	Federal Court Sydney
Essential services	iSelect Limited	
	commenced	12 April 2019
	jurisdiction	Federal Court Melbourne
Franchising	Jump Loops Pty Ltd & Anor	
	commenced	18 June 2019
	jurisdiction	Federal Court Melbourne
Digital platforms	Kogan Australia Pty Ltd	
	commenced	23 May 2019
	jurisdiction	Federal Court Melbourne
Vulnerable and disadvantaged consumers	Productivity Partners Pty Ltd (t/a Captain Cook Colleges)	
	commenced	9 November 2018
	jurisdiction	Federal Court Sydney
Priority factor—conduct that is of significant public interest or concern	Quantum Housing Pty Ltd	
	commenced	29 April 2019
	jurisdiction	Federal Court Perth
Digital platforms	Service Seeking Pty Ltd	
	commenced	14 December 2018
	jurisdiction	Federal Court Perth
Priority factor—conduct that results in substantial consumer detriment	Smart Corporation Pty Ltd (t/a Australian 4WD Hire)	
	commenced	18 April 2019
	jurisdiction	Federal Court Perth
Priority factor—conduct by a large trader, results in substantial consumer detriment	STA Travel Pty Ltd	
	commenced	28 March 2019
	jurisdiction	Federal Court Melbourne

Broadband services	TPG Internet Pty Ltd	
	commenced	4 December 2018
	jurisdiction	Federal Court Melbourne
Digital platforms	Trivago NV	
	commenced	23 August 2018
	jurisdiction	Federal Court Melbourne

Table A10.4: Litigation concluded in 2018–19

Consumer and small business protection		
Vulnerable and disadvantaged consumers	ACM Group Limited	
	commenced	2 June 2016
	concluded	21 December 2018
	jurisdiction	Federal Court Sydney
	outcome	Penalty of \$750 000
Essential services	Amaysim Energy Pty Ltd (t/a Click Energy)	
	commenced	9 July 2018
	concluded	27 March 2019
	jurisdiction	Federal Court Melbourne
	outcome	Penalty of \$900 000
Broadband services	Australian Private Networks Pty Ltd (t/a Activ8me)	
	commenced	5 December 2018
	concluded	15 March 2019
	jurisdiction	Federal Court Melbourne
	outcome	Penalty of \$250 000
Conduct impacting Indigenous Australians	Birubi Art Pty Ltd	
	commenced	21 March 2018
	concluded	26 June 2019
	jurisdiction	Federal Court Sydney
	outcome	Penalty of \$2.3 million
Vulnerable and disadvantaged consumers	Equifax Pty Ltd	
	commenced	16 March 2018
	concluded	2 October 2018
	jurisdiction	Federal Court Sydney
	outcome	Penalty of \$3.5 million
Health and medical sector (2016 priority)	HJ Heinz Company Australia Pty Ltd	
	commenced	21 June 2016
	concluded	24 August 2018
	jurisdiction	Federal Court Melbourne
	outcome	Penalty of \$2.25 million

Consumer guarantees	Jetstar Airways Pty Ltd	
	commenced	17 December 2018
	concluded	30 May 2019
	jurisdiction	Federal Court Sydney
	outcome	Penalty of \$1.95 million
Agriculture	Landmark Operations Limited (t/a Seednet)	
	commenced	6 August 2018
	concluded	7 December 2018
	jurisdiction	Federal Court Melbourne
	outcome	Penalty of \$1 million
Vulnerable and disadvantaged consumers	Medibank Private Limited (appeal)	
	commenced	15 June 2016
	concluded	20 December 2018
	jurisdiction	Federal Court Melbourne
	outcome	Full Federal Court dismissed the ACCC's appeal
Digital platforms	Meriton Property Services Pty Ltd	
	commenced	24 November 2016
	concluded	31 July 2018
	jurisdiction	Federal Court Melbourne
	outcome	Penalty of \$3 million
Agriculture	Murray Goulburn Cooperative Co. Limited	
	commenced	28 April 2017
	concluded	6 December 2018
	jurisdiction	Federal Court Melbourne
	outcome	Penalty of \$200 000 against managing director, Mr Gary Helou, and an undertaking he would not be involved in the dairy industry for 3 years. Undertaking by former chief financial officer Mr Bradley Hingle that he would not be involved in the dairy industry for 3 years.
Broadband services	Optus Mobile Pty Ltd	
	commenced	17 October 2018
	concluded	6 February 2019
	jurisdiction	Federal Court Melbourne
	outcome	Penalty of \$10 million
Vulnerable and disadvantaged consumers	Opticon Australia Pty Ltd and Sonic Innovations Pty Ltd	
	commenced	6 September 2018
	concluded	1 November 2018
	jurisdiction	Federal Court Sydney
	outcome	Penalty of \$2.5 million

Unfair contract terms	Servcorp Limited & Ors	
	commenced	15 September 2017
	concluded	13 July 2018
	jurisdiction	Federal Court Sydney
	outcome	Federal Court declared 12 terms in standard form contracts unfair and therefore void
Franchising	Ultra Tune Australia Pty Ltd	
	commenced	19 May 2017
	concluded	18 January 2019
	jurisdiction	Federal Court Sydney
	outcome	Penalty of \$2 604 000
Vulnerable and disadvantaged consumers	We Buy Houses Pty Ltd and Rick Otton	
	commenced	2 March 2015
	concluded	15 November 2018
	jurisdiction	Federal Court Sydney
	outcome	Penalties of \$12 million against We Buy Houses Pty Ltd and \$6 million against sole director, Mr Rick Otton. Mr Otton banned from managing corporations in Australia for 10 years. Mr Otton and We Buy Houses Pty Ltd both permanently banned from further involvement in the supply or promotion of services or advice concerning real property transactions or investment.

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

Table A10.5: Litigation commenced during 2018-19

False or misleading representations made during the transition to the NBN	Optus Internet Pty Ltd and Optus Mobile Pty Ltd	
	Commenced jurisdiction	24 June 2019 Federal Court Melbourne

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

AER

There was no litigation commenced or concluded for the AER during 2018-19.

There were no Australian Competition Tribunal matters that took place during 2018-19.

Appendix 11: Draft and final decisions in relation to regulated industries in 2018-19

Draft and final decisions by the ACCC are available in full on the ACCC website.

[Draft and final decisions by the AER](#) are available in full on the AER website.

AER

Electricity transmission decisions

- [ElectraNet—Eyre Peninsula Electricity Supply Options regulatory investment test—transmission \(RIT-T\)](#)
- [AER publishes draft decision on revised cost thresholds for the regulatory investment tests](#)
- [Electra Net System Strength SA](#)
- [AER publishes draft decision on revised cost thresholds for the regulatory investment tests](#)

Electricity distribution decisions

- [Ausgrid Distribution 2019-24 Final Decision](#)
- [Essential Energy 2019-24 Final Decision](#)
- [Endeavour Energy 2019-24 Final Decision](#)
- [Endeavour Energy—Determination 2014-19—Remittal](#)
- [TasNetworks—Determination 2019-24](#)
- [Power and Water Corporation—2019-24 Final Decision](#)
- [Evoenergy \(ActewAGL\)—Determination 2019-24](#)
- [Evoenergy \(ActewAGL\) Distribution—Determination 2014-19—Remittal](#)
- [AER releases its draft decision on its approach to forecasting opex productivity growth for electricity distribution](#)

Gas transmission and distribution decisions

- [Australian Gas Networks Mount Barker Final Decision](#)
- [Jemena Gas Networks \(NSW\)—Access arrangement 2015-20—Remade final decision](#)

Retail energy market decisions

- [Blue Aurora Pty Ltd—Cairns Beach Resort application for individual exemption—Draft Decision](#)
- [Mirvac Real Estate Pty Ltd granted individual exemption for Cherrybrook Village Shopping Centre](#)
- [Lightsource Labs Australia Pty Ltd granted individual exemption](#)
- [Mirvac Real Estate Pty Ltd granted individual exemption for Stanhope Village Shopping Centre February](#)
- [Mirvac Real Estate Pty Ltd granted individual exemption for Birkenhead Point Brand Outlet February](#)
- [The trustee for The Seaford Property Investment Unit Trust granted individual exemption August](#)
- [AER issues Default Market Offer decision](#)

Electricity retailer authorisations

- [ReAmped Energy Pty Ltd granted electricity retailer authorisation](#)
- [Arc Energy Corporation Pty Ltd granted electricity retailer authorisation](#)
- [Elysian Energy Pty Ltd granted electricity retailer authorisation](#)
- [The Embedded Networks Company Pty Ltd granted electricity retailer authorisation](#)

Gas retailer authorisations

- [Sumo Gas Pty Ltd granted gas retailer authorisation](#)
- [Real Utilities Pty Limited granted gas retailer authorisation](#)

Individual exemptions

Nil.

Retailer of Last Resort

- [Flow Systems Pty Ltd—authorised electricity retailer](#)

Hardship policies

- [Customer Hardship Policy Guideline](#)

Telecommunications

- Decision to extend the declaration of Telstra's fixed line services regulation until 30 June 2024, 26 November 2018.
- Draft decision and final decision to vary and extend the Domestic Transmission Capacity Service (DTCS) declaration for another five years from 31 March 2019 (5 December 2018 and 1 April 2019 respectively).
- Decision to make binding rules of conduct (BROC) setting interim prices for wholesale transmission services to Christmas Island, 19 December 2018.
- Decision to vary Telstra's Migration Plan, which sets out the steps Telstra will take to progressively migrate voice and broadband services from its copper and hybrid fibre coaxial networks to the National Broadband Network (NBN), 26 October 2018.
- Decision to accept three new access undertakings in relation to the commencement of digital radio services in Canberra, Darwin and Hobart, 18 March 2019.
- Draft report for the mobile terminating access service declaration inquiry, 2 May 2019.
- Final report for the mobile terminating access service declaration inquiry, 28 June 2019.
- Decision to extend the final access determinations for Telstra's fixed line services to 30 December 2019, 6 June 2019.
- Decision to not make proposed dark fibre and NBN wholesale aggregation service record keeping rules, 16 May 2019.

Transport

Rail

- Decision to accept an extension of ARTC's 2008 Interstate Access Undertaking (2008 IAU) by four months until 21 December 2018, 25 July 2018.
- Decision to accept a further extension of ARTC's 2008 IAU by two months until 28 February 2019, 12 December 2018.
- Draft decision to not accept ARTC's 2018 Interstate Access Undertaking application, 20 December 2018 (application withdrawn by ARTC on 25 January 2019).
- Decision to accept a variation to ARTC's 2008 IAU, including an extension of one year until 29 February 2020, 28 February 2019.
- Decision to accept a variation to ARTC's 2011 Hunter Valley Access Undertaking (HVAU), 29 November 2018.

Ports

- Announced the ACCC's determination of the arbitration of a dispute between Glencore Coal Assets Australia Pty Ltd (Glencore) and Port of Newcastle Operations Pty Ltd about terms and conditions of access to the 'declared' shipping channel service at the Port of Newcastle, 8 October 2018. Glencore had notified the ACCC of the access dispute under s. 44S of the CCA on 4 November 2016.

Wheat export port terminal services

Nil.

Appendix 12: Major regulatory reports and reviews in 2018–19

Major regulatory reports and reviews by the ACCC are available in full on the ACCC website.

[Major regulatory reports and reviews by the AER](#) are available in full on the AER website.

AER

Reports

- State of the energy market, December 2018
- Investigation report into South Australia's 2016 statewide blackout, December 2018
- Wholesale electricity market performance report, December 2018
- Guidance note—Natural Gas Services Bulletin Board, September 2018
- Quarterly compliance report: national electricity and gas laws, September 2018
- Annual report on compliance and performance of the retail energy market 2017–18, December 2018
- Electricity distribution ring-fencing annual compliance report, July 2018
- Reports and guidance notes regarding AusNet Services New Reg trial, July 2018, May 2019
- Electricity distribution ring-fencing annual compliance report, March 2019
- Electricity report 24, 30 March 2019
- Prices above \$5000/MWh, 24 January 2019 (Vic and SA)
- Prices above \$5000/MWh, 25 January 2019 (Vic and SA)
- Prices above \$5000/MWh, 1 March 2019 (Vic and SA)
- FCAS prices above \$5000/MW, 8 July 2018 (SA)

Guidelines and other consultation

- Rate of return guideline 2018, December 2018
- AER (Retail Law) compliance procedures & guidelines (Version 6), September 2018
- AER practice guide for (Retail Law) compliance audits, September 2018
- Life support registration guide, January 2019
- Compliance update—timeframes for the installation and repair of meters for small customers, February 2019
- AER final determination—Default Market Offer 2019–20, April 2019
- Consultation paper—Values of customer reliability, October 2018
- AER customer hardship guideline, March 2019
- DMO consultation paper, November 2019
- VCR update document, April 2019

Telecommunications

Reports

- Measuring Broadband Australia quarterly reports, 31 July 2018, 5 November 2018, 6 February 2019, 7 May 2019
- NBN Wholesale Market Indicators quarterly reports, 13 August 2018, 13 November 2018, 12 February 2019, 21 May 2019
- Communications market report 2017-18, 28 February 2019
- Internet activity report December 2018, 14 May 2019

Guidelines and other consultation

- Report on effectiveness of broadband speeds claims guidance and consultation on further enhancement, 21 November 2018
- Submission to the Department of Communications and the Arts' (DoCA) Consumer Safeguards Review—Part A, 9 August 2018
- Submission to the Australian Communications and Media Authority's Review of the International Mobile Roaming Standard 2018, 11 September 2018
- Submission to the DoCA's Consumer Safeguards Review—Part B (Reliability of Services), 18 January 2019
- Submission to the Australian Communications and Media Authority's consultation on options for wireless broadband in the 26 GHz band, 9 November 2018
- Submission to the Australian Communications and Media Authority's consultation on the draft five-year spectrum outlook 2019-23, 16 May 2019
- Australian Communications and Media Authority's consultation on reconfiguring the 900 MHz band
- NBN wholesale service standards inquiry—second discussion paper, 7 December 2018

Fuel

Reports

- Petrol monitoring quarterly reports, 21 August 2018, 20 December 2018, 19 February 2019, 31 May 2019
- Petrol industry report—Retail and wholesale petrol market shares in Australia, 25 September 2018
- Petrol industry report—Petrol price cycles in Australia, 6 December 2018

Transport

Reports

- Container stevedoring monitoring report 2017-18, 30 October 2018
- Bulk grain ports monitoring report 2017-18, 14 December 2018
- Airport monitoring report 2017-18, 25 February 2019

Guidelines and other consultation

- Submission to the Bulk Wheat Code review, 12 December 2017 and 10 May 2018
- Submissions to the Productivity Commission's review of the economic regulation of airports, 17 September 2018 and 1 April 2019
- Submission to the Senate committee inquiry into the policy, regulatory, taxation, administrative and funding priorities for Australian shipping, 28 February 2019

Water

Reports

- Water monitoring report 2017–18, 24 June 2019

Guidelines and other consultation

- Nil.

Gas

Reports

- Gas Inquiry interim reports, 2 August 2018, 18 December 2018, 29 May 2019

Insurance

Reports

- Northern Australia insurance inquiry first interim report, 18 December 2018

Electricity Market Review

Reports

- Electricity Market Review—Discussion paper, 21 November 2018
- First report on Electricity Monitoring Inquiry, 29 March 2019

Monitoring removal of GST from menstrual products

Reports

- Price monitoring of menstrual products following GST changes, 29 March 2019

Other

- Submission to the Australian Registrars National Electronic Conveyancing Council's issues paper on the electronic conveyancing intergovernmental agreement (IGA), 26 March 2019
- Submission to NSW Government on Australian Registrars National Electronic Conveyancing Council on draft model operating requirements, 3 October 2018

Appendix 13: 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, Casselden Place, 2 Lonsdale Street Melbourne Vic 3000 Telephone: (03) 9290 1444
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 13 3677 or visit the website www.nationalrelayservice.com.au.

Regional offices

Adelaide office

Level 11
1 King William Street
Adelaide SA 5000
Ph: (08) 8213 3444

Brisbane office

Level 24
400 George Street
Brisbane Qld 4000
Ph: (07) 3835 4666

Darwin office

Level 8
National Mutual Centre
9-11 Cavenagh Street
Darwin NT 0800
Ph: (08) 8946 9666

Hobart office

Level 2
70 Collins Street
(Corner of Collins and
Argyle Streets)
Hobart Tas 7000
Ph: (03) 6215 9333

Melbourne office

Level 17
2 Lonsdale Street
Melbourne Vic 3000
Ph: (03) 9290 1800

Perth office

Level 5
1 William Street
Perth WA 6000
Ph: (08) 9325 0600

Sydney office

Level 20
175 Pitt Street
Sydney NSW 2000
Ph: (02) 9230 9133

Townsville office

Suncorp Plaza
Suite 2 Level 9
61-73 Sturt Street
Townsville Qld 4810
Ph: (07) 4729 2666

Appendix 14: Correction of material errors in previous annual reports

Table 3.77 of the 2017–18 annual report incorrectly stated that we published one annual benchmarking report for electricity networks in 2017–18 under Deliverable 4.1: Deliver network regulation to promote efficient investment in energy network services that customers value. We actually published two annual benchmarking reports—one report for distribution networks and one report for transmission networks.

Table 3.78 of the 2017–18 annual report incorrectly stated that eight infringement notices were issued in 2017–18 under Deliverable 4.2: Build consumer confidence in retail energy markets. The actual figure was 17 and this figure was correctly reported in the commentary on page 187 of the 2017–18 annual report.

Glossary and abbreviations

A/g	Acting
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
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AFL	Australian Football League
AFP	Australian Federal Police
AMCL	Australian Made Campaign Limited
ANAO	Australian National Audit Office
Anor	another
ANZ	Australia and New Zealand Banking Group Ltd
ANZSIC	Australian and New Zealand Standard Industrial Classification
AO	Officer of the Order of Australia
APCC	ACCC Performance Consultative Committee
APEC	Asia-Pacific Economic Cooperation
APER	Asia Pacific Energy Regulatory Forum
APRA	Australian Prudential Regulation Authority
APS	Australian Public Service
ARTC	Australian Rail Track Corporation
ASEAN	Association of Southeast Asian Nations
ASIC	Australian Securities and Investments Commission
BEAP	Business Energy Advice Program
BROC	binding rules of conduct
CAANZ	Consumer Affairs Australia New Zealand
CAF	COAG Legislative and Governance Forum on Consumer Affairs
CALD	culturally and linguistically diverse

CCA	<i>Competition and Consumer Act 2010</i>
CCG	Customer Consultative Group
CCP	Consumer Challenge Panel
CCU	Commercial Construction Unit
CDPP	Commonwealth Director of Public Prosecutions
CDR	Consumer Data Right
CDRAC	Compliance and Dispute Resolution Advisory Committee
CEO	Chief Executive Officer
CFMMEU	Construction, Forestry, Maritime, Mining and Energy Union
CFO	Chief Finance Officer
CFR	Council of Financial Regulators
CHESS	Clearing House Electronic Subregister System
CLIP	Competition Law Implementation Program
Co	company
COAG	Council of Australian Governments
COO	Chief Operating Officer
CRG	Consumer Reference Group
CSS	Commonwealth Superannuation Scheme
Cth	Commonwealth
DaCEN	Disability and Carers Employee Network
DC	District of Columbia
DCB	Departmental Capital Budget
DIY	do it yourself
DMO	Default Market Offer
DoCA	Department of Communications and the Arts
DTCS	Domestic Transmission Capacity Service
EGM	Executive General Manager
EIAC	Education and Information Advisory Committee
EISG	Energy Intermarket Surveillance Group
EL	Executive Level
EMB	Executive Management Board
ESB	Energy Security Board
ESD	ecologically sustainable development
FBT	Fringe Benefits Tax

FCAS	frequency control ancillary services
FOI Act	<i>Freedom of Information Act 1982</i>
FRR	Public Governance, Performance and Accountability (Financial Reporting) Rule 2015
FSBC	Financial Services Competition Branch
FTOG	Fair Trading Operations Group
FuelCC	Fuel Consultative Committee
GCR	Global Competition Review
GHz	gigahertz
GM	General Manager
GMRG	Gas Market Reform Group
GP HSM	general purpose hardware security module
GRAD	graduate
GSP	General Safety Provision
GST	Goods and Services Tax
Hon.	honourable
HSM	hardware security module
HVAU	Hunter Valley Access Undertaking
IAU	Interstate Access Undertaking
IAU	Interstate Access Undertaking
ICARE	Impartial, Committed to service, Accountable, Respectful and Ethical
ICC	Infrastructure Consultative Committee
ICN	International Competition Network
ICPEN	International Consumer Protection and Enforcement Network
ICPHSO	International Consumer Product Health and Safety Organisation
ICT	information and communication technology
IFA	individual flexibility arrangement
IGA	intergovernmental agreement
IP	intellectual property
IPART	Independent Pricing and Regulatory Tribunal of NSW
IPO	initial public offering
JLL	Jones Lang LaSalle
kgms	kilogram of milk solids
KPI	key performance indicator
L	lawyer

LCOE	levelised cost of energy
LED	light emitting diode
LNG	liquefied natural gas
Ltd	Limited
Mbps	megabits per second
MHz	megahertz
MIL	Murray Irrigation Limited
MOU	memorandum of understanding
MP	Member of Parliament
MW	megawatt
MWh	megawatt hour
N/A	not applicable
NAB	National Australia Bank
NBN	National Broadband Network
NCC	National Competition Council
NCM	Nature's Care Manufacture Pty Ltd
NEM	National Electricity Market
NER	National Electricity Rules
NRL	National Rugby League
NSW	New South Wales
NT	Northern Territory
OAIC	Office of the Australian Information Commissioner
OECD	Organisation for Economic Co-operation and Development
OPA	Official Public Account
ORG	Office of the Registrar General
Ors	others
PBS	Portfolio Budget Statement
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	Public Governance, Performance and Accountability Rule 2014
PMR	Product Market Regulation
PNO	Port of Newcastle Operations Pty Ltd
POH	public office holder
PRAC	Policy and Research Advisory Committee
PSOG	Product Safety Operations Group

PSS	Public Sector Superannuation Scheme
PSSap	PSS accumulation plan
Pty Ltd	Proprietary Limited
Qld	Queensland
RAP	Reconciliation Action Plan
REPI	Retail Electricity Pricing Inquiry
RIN	Regulatory Information Notice
RIS	Regulation Impact Statement
RIT-T	Regulatory investment test for transmission
RKR	Record Keeping Rule
RMPI	Residential Mortgage Price Inquiry
RMS	Rehabilitation Management System
RoLR	retailer of last resort
ROR	rate of return
RRI	Rate of Return Instrument
RRO	Retailer Reliability Obligation
RSP	retail service provider
SA	South Australia
SAU	Special Access Undertaking
SES	Senior Executive Service
SLC Unit	Substantial Lessening of Competition Unit
SME	small and medium enterprise
t/a	trading as
Tas	Tasmania
UCT	unfair contract terms
UK	United Kingdom
US	United States
VET	vocational education and training
Vic	Victoria
WA	Western Australia
WCB	Warrnambool Cheese and Butter Factory Holdings Limited
WHS	work health and safety
WPCPS	Working Party on Consumer Product Safety

Compliance index

List of requirements

This schedule provides, for the purposes of paragraph 17AJ(d) of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule), the list of requirements to be included in a non-corporate Commonwealth entity's annual report for a reporting period. The schedule is prepared for subsection 46(3) of the *Public Governance, Performance and Accountability Act 2013*.

PGPA Rule Reference	Part of report	Description	Requirement	Page number
17AD(g)	Letter of transmittal			
17AI		A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with section 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	iii
17AD(h)	Aids to access			
17AJ(a)		Table of contents.	Mandatory	v–vi
17AJ(b)		Alphabetical index.	Mandatory	313–321
17AJ(c)		Glossary of abbreviations and acronyms.	Mandatory	297–301
17AJ(d)		List of requirements.	Mandatory	302
17AJ(e)		Details of contact officer.	Mandatory	ii
17AJ(f)		Entity's website address.	Mandatory	295
17AJ(g)		Electronic address of report.	Mandatory	ii
17AD(a)	Review by accountable authority			
17AD(a)		A review by the accountable authority of the entity.	Mandatory	3–11
17AD(b)	Overview of the entity			
17AE(1)(a)(i)		A description of the role and functions of the entity.	Mandatory	20
17AE(1)(a)(ii)		A description of the organisational structure of the entity.	Mandatory	23–24
17AE(1)(a)(iii)		A description of the outcomes and programmes administered by the entity.	Mandatory	22
17AE(1)(a)(iv)		A description of the purposes of the entity as included in corporate plan.	Mandatory	19 and 26–28

17AE(1)(aa)(i)	Name of the accountable authority or each member of the accountable authority	Mandatory	30
17AE(1)(aa)(ii)	Position title of the accountable authority or each member of the accountable authority	Mandatory	23 and 174
17AE(1)(aa)(iii)	Period as the accountable authority or member of the accountable authority within the reporting period	Mandatory	174
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		
	<i>Annual performance statements</i>		
17AD(c)(i); 16F	Annual performance statement in accordance with paragraph 39(1)(b) of the Act and section 16F of the Rule.	Mandatory	25-172
17AD(c)(ii)	<i>Report on financial performance</i>		
17AF(1)(a)	A discussion and analysis of the entity's financial performance.	Mandatory	12-15
17AF(1)(b)	A table summarising the total resources and total payments of the entity.	Mandatory	242
17AF(2)	If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results.	N/A	N/A 200

17AD(d) Management and accountability			
Corporate governance			
17AG(2)(a)	Information on compliance with section 10 (fraud systems)	Mandatory	185
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	174-186 and 192-194
17AG(2)(d) - (e)	A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to non-compliance with Finance law and action taken to remedy non-compliance.	N/A	N/A
External scrutiny			
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	186-188
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	186-187

17AG(3)(b)	Information on any reports on operations of the entity by the Auditor-General (other than report under section 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, Mandatory	186-188
17AG(3)(c)	Information on any capability reviews on the entity that were released during the period.	If applicable, Mandatory	N/A
Management of human resources			
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	188-192
17AG(4)(aa)	Statistics on the entity's employees on an ongoing and non-ongoing basis, including the following: (a) statistics on full-time employees; (b) statistics on part-time employees; (c) statistics on gender (d) statistics on staff location	Mandatory	192 and 244-249
17AG(4)(b)	Statistics on the entity's APS employees on an ongoing and non-ongoing basis; including the following: <ul style="list-style-type: none"> ■ statistics on staffing classification level ■ statistics on full-time employees ■ statistics on part-time employees ■ statistics on gender ■ statistics on staff location ■ statistics on employees who identify as Indigenous. 	Mandatory	192 and 244-251
17AG(4)(c)	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subsection 24(1) of the <i>Public Service Act 1999</i> .	Mandatory	192-193

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	192-194 and 250
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level.	Mandatory	194 and 250
17AG(4)(c)(iii)	A description of non-salary benefits provided to employees.	Mandatory	193
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay.	If applicable, Mandatory	192-194 and 251
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level.	If applicable, Mandatory	192-194 and 251
17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, Mandatory	192-194 and 251
17AG(4)(d)(iv)	Information on aggregate amount of performance payments.	If applicable, Mandatory	192-194 and 251
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	198
Purchasing			
17AG(6)	An assessment of entity performance against the Commonwealth Procurement Rules.	Mandatory	198-199
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	199

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	199
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	199
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	199
Australian National Audit Office access clauses			
17AG(8)	If an entity entered into a contract with a value of more than \$100 000 (inclusive of GST) and the contract did not provide the Auditor-General with access to the contractor’s premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	If applicable, Mandatory	N/A 198-199

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 198-199
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	198-199
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	198-199
17AG(10)(c)	If the entity is considered by the Department administered by the Finance Minister as material in nature—a statement that “[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury’s website.”	If applicable, Mandatory	N/A
Financial statements			
17AD(e)	Inclusion of the annual financial statements in accordance with subsection 43(4) of the Act.	Mandatory	202-240
Executive remuneration			
17AD(da)	Information about executive remuneration in accordance with Subdivision C of Division 3A of Part 2-3 of the Rule.	Mandatory	252-255

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	257
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, Mandatory	257
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 200
17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	190
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	188
17AH(1)(e)	Correction of material errors in previous annual report	If applicable, mandatory	296
17AH(2)	Information required by other legislation	Mandatory	310-312

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 s. 51(1) of this Act or s. 51(1) of the Competition Code (as defined in s. 150A).	273-276
The time taken to make final determinations under s. 44V in relation to access disputes.	276
The time taken to make decisions on access undertaking applications or access code applications (within the meaning of s. 44B).	276
The time taken to make decisions on applications under s. 44PA(1).	276
The number of notices given by the Commission under s. 155.	277
The number of notices given by the Commission under s. 155A.	277
A general description of the nature of the matters in respect of which the notices were given.	277
The number of proceedings brought to challenge the validity of the notices.	277
The number of search warrants issued by a judge under s. 135Z or signed by a judge under s. 136.	277
The number of search warrants issued by a magistrate under s. 154X or signed by a magistrate under s. 154Y.	277
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.	277
The number of proceedings brought to challenge the validity of the search warrants referred to in paragraph (ca) or (d).	277
The number of entries onto premises under s. 133B or 133C, Division 6 of Part XI or Part XID.	277
The number of complaints received by the Commission.	124-128 and 278
A general summary of the kinds of complaints received by the Commission and how it dealt with them.	124-128 and 278
A general description of the major matters investigated by the Commission.	23-172
The number of times the Commission has intervened in proceedings and a general description of the reasons for doing so.	278

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.	257

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.	190-191
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.	256
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.	256
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> .	256
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).	258-259
How the outcomes (if any) specified for the entity in an Appropriations Act relating to the period contribute to ESD.	258-259
The effect of the entity's activities on the environment.	258-259
Any measures the reporter is taking to minimise the impact of activities by the entity on the environment.	258-259
The mechanisms, if any, for reviewing and increasing the effectiveness of those measures.	258-259

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