



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

ACCC self-assessment

Regulator Performance Framework

2016–17

Contents

Overview of performance results.....	2
Methodology	2
External ‘validation’ of results	3
Business stakeholder research	3
Other significant evidence for 2016-17	6
Self-assessment ratings	7
Areas for improvement and action in 2017-18	8
Report on performance results by functional area	10
Merger and Authorisation Review.....	10
Small Business and Product Safety.....	15
Infrastructure Regulation	22
Enforcement.....	29
Appendix A Evidence tables.....	38
Mergers and Authorisation Review evidence.....	38
Small Business and Product Safety evidence	41
Infrastructure Regulation evidence	46
Enforcement evidence.....	52
ACCC-wide evidence	57
Appendix B APCC Feedback	62

Overview of performance results

This report sets out the Australian Competition and Consumer Commission's 2016-17 self-assessment against the Australian Government's [Regulator Performance Framework](#) (RPF).

The framework is concerned with how Commonwealth regulators administer regulation, with the aim of encouraging regulators to undertake their functions with the minimum impact necessary to achieve regulatory objectives. It is therefore important to note that the framework does not seek to measure the performance of the ACCC in relation to the outcomes we achieve for Australian consumers and the economy. This said, there is some interaction between the ACCC's outcomes and the way in which we seek to minimise necessary impact and these emerge in this assessment.

The framework has a common set of six key performance indicators (KPIs) that allow for the assessment of regulator performance. The KPIs primarily focus on regulators' actions in relation to businesses subject to regulatory processes, rather than other stakeholders such as consumers and businesses that benefit from the actions undertaken by regulators.

Methodology

The framework's explanatory guidance notes that judgments on performance should be made by drawing on a range of evidence from different sources and regulators should seek to 'triangulate' this evidence. The ACCC fully endorses, and has implemented, the recommended approach of utilising multiple sources of evidence to substantiate our assessments of performance.

In 2015 the ACCC [identified](#) the methodology we would use and the evidence we would collect to assess our performance against the RPF. The ACCC has collected evidence that relates specifically to each of our four core functional areas:

- Merger and Authorisation Review
- Small Business and Product Safety
- Infrastructure Regulation
- Enforcement

The evidence is a mixture of quantitative performance data and descriptive information that provides stakeholders with a greater appreciation of the systems and processes we have in place to support our engagement with businesses. The results for each piece of evidence are outlined in tables at **Appendix A**.

We also committed to developing and conducting a survey of our business stakeholders focusing on the six KPIs. The following section provides more detail regarding this survey. This direct feedback from businesses regarding our performance is a key input in undertaking our self-assessment.

We have included additional sources of evidence available during the reporting period, which help to provide a full account of our performance.

Based on an assessment of these complementary sources and types of evidence, the ACCC has applied a five point rating scale against each of the six KPIs for each of the four functional areas.

The ACCC considers our methodology for self-assessment is transparent and helps to identify specific aspects of our performance where strategies for improvement can be developed.

External ‘validation’ of results

The ACCC Performance Consultative Committee met in October 2017 to review a draft of this report. The committee is comprised of 15 business, legal and consumer representatives who collectively cover the broad range of stakeholders that the ACCC engages with in undertaking our various functions. External ‘validation’ involves the APCC considering whether the self-assessment results accord with their views of the ACCC’s performance against the KPIs over the assessment period, and that the areas identified for further improvement are appropriate and justified.

The committee provided excellent feedback regarding this self-assessment, and provided suggestions on how to increase stakeholder input via the business stakeholder survey and how to capture the ACCC’s performance in relation to new functions such as market studies. A summary of the APCC’s feedback and how we have addressed it is at **Appendix B**.

One issue raised by the APCC is the ongoing challenge of effectively communicating the role of the ACCC to small businesses. Specifically, small businesses (as well as consumers) often have expectations that the ACCC should take action in situations where we have no power to do so. The ACCC accepts that clearly explaining both our powers and our limitations is an important part of our role — and the continued expectations gap shows that we need to increase our effectiveness in this area.

Although this issue was raised in the context of KPI2 for our small business and product safety function, it is an agency-wide issue that cuts across the four function areas. It is also an issue that falls somewhat outside the scope of the RPF because it relates to our engagement with small businesses as complainants seeking redress under the *Competition and Consumer Act 2010* (CCA) rather than as regulated entities. As noted above, the RPF is primarily concerned with how regulators administer regulation with the aim of minimising the burden on regulated entities.

Nonetheless, as the primary purpose of the self-assessment process is to identify areas for improvement, one of the areas for action we have listed for 2017-18 is continuing to clearly explain the ACCC’s role and to manage the expectations of small businesses by being direct and clear about what we can and cannot achieve.

Business stakeholder research

A key element of the ACCC’s self-assessment is to survey regulated entities via the business stakeholder survey. This survey was conducted for the first time in 2016, and a shorter version was conducted in May 2017. The survey was conducted independently by market research firm ORC International.

The ACCC considered it was essential to obtain the direct views of businesses, so that we could undertake a rigorous self-assessment. Other key stakeholders such as representatives from government departments, fellow regulators and consumer bodies were not included in the survey, reflecting the RPF’s relatively narrow focus on a regulators’ engagement with the businesses subject to its regulatory activities.

The ACCC identified and provided ORC International with contacts for businesses which had engaged with each function area over the preceding 12 months, through processes such as merger reviews, ACCC enforcement investigations or regulatory actions. Separate contacts for small business and product safety stakeholders were identified due to the often different nature of their interactions with the ACCC.

Function area	Sample provided (No.)	Completes (No.)	Response rate (%)
Merger and Authorisation Review	206	61	30
Small Business	254	120	47
Product Safety	450	151	34
Infrastructure Regulation	80	36	45
Enforcement	131	33	25
TOTAL	1121	401	36

From the 1121 stakeholders contacted to participate in the survey, ORC International received 401 responses from businesses or their legal representatives — an overall response rate of 36%. The number of responses and response rate both increased from last year's survey.

The table below provides a high-level summary of the survey results against the framework's six KPIs, each of which is described. The total percentage of respondents that agreed or strongly agreed with a statement regarding our performance against the KPI is represented in green, while the percentage that disagreed or strongly disagreed is in red for each function area. A 'net' score has also been provided in black, which is calculated by subtracting the total percentage of respondents who disagreed or strongly disagreed with the statement from the total that agreed or strongly agreed.

The reader should also be aware that respondents had the opportunity to provide a 'neither agree nor disagree' rating or to say 'unsure/not relevant'. In ORC International's survey report the 'unsure/not relevant' responses have been excluded from the base so that the percentage results reflect only the views of those who provided a rating for each statement, including 'neither agree nor disagree'.

	Merger and Authorisation Review	Small Business	Product Safety	Infrastructure Regulation	Enforcement
KPI 1: The ACCC does not unnecessarily impede the efficient operation of regulated entities	64 / 9 (+55)	66 / 14 (+52)	71 / 6 (+65)	46 / 37 (+9)	59 / 22 (+37)
KPI 2: The ACCC's communication with regulated entities is clear, targeted and effective	61 / 12 (+49)	64 / 12 (+52)	68 / 8 (+60)	54 / 11 (+43)	66 / 22 (+44)
KPI 3: The actions undertaken by the ACCC are proportionate to the regulatory risk being managed	53 / 18 (+35)	51 / 22 (+29)	61 / 11 (+50)	42 / 21 (+21)	55 / 23 (+32)
KPI 4: The ACCC's compliance and monitoring approaches are streamlined and coordinated	50 / 21 (+29)	48 / 20 (+28)	56 / 12 (+44)	51 / 29 (+22)	42 / 23 (+19)
KPI 5: The ACCC is open and transparent in its dealings with regulated entities	58 / 12 (+46)	63 / 13 (+50)	68 / 7 (+61)	58 / 19 (+39)	59 / 22 (+37)
KPI 6: The ACCC actively contributes to the continuous improvement of regulatory frameworks	48 / 7 (+41)	57 / 19 (+38)	54 / 8 (+46)	42 / 19 (+23)	52 / 19 (+33)
<p>Green = Agree and Strongly Agree Red = Disagree and Strongly Disagree</p> <p>Black = Net score (Agree and Strongly Agree minus Disagree and Strongly Disagree)</p>					

The survey found that across all the function areas, business stakeholders have a more positive view of the ACCC's performance than negative, with reference to the framework's six KPIs.

The vast majority of net scores are higher in 2017 than last year, indicating a positive shift overall, away from disagree/strongly disagree towards agree/strongly agree.

When asked for feedback on areas where the ACCC performs well, stakeholders frequently mentioned positive interactions with the ACCC, praising the ACCC's communication, information provision and stakeholder engagement efforts, and the professionalism of staff.

Stakeholders' suggestions for improvement were varied, but quite often included a request for additional information – of a particular type, or on a certain topic. For the Infrastructure Regulation function area in particular, some stakeholders expressed a desire for the ACCC to develop a faster decision-making process. For the Small Business function area, stakeholders wanted the ACCC to continue overseeing the Franchising code of conduct and to continue, or increase, its assistance to franchisees.

The full results of the survey are detailed in the report prepared by ORC International, which has been published alongside this report on the ACCC website.

Other significant evidence for 2016-17

In addition to the survey results, this report outlines other significant evidence collected during 2016-17 that also illuminates how the ACCC has performed in respect of the framework's six KPIs. This includes our commitment to undertake specific actions made in last year's self-assessment.

It is also worth noting the ACCC received a four star rating in the Global Competition Review's [2017 rankings](#) of the world's anti-trust (competition) authorities, which places the agency in the 'Very Good' category. Ratings are based on an assessment of quantitative and qualitative data relating to the enforcement of national anti-competitive provisions by each agency. Confidential feedback is also obtained from competition practitioners regarding how we carry out our duties, as well as our professionalism and independence.

Some key ACCC initiatives and activities from 2016-17 included:

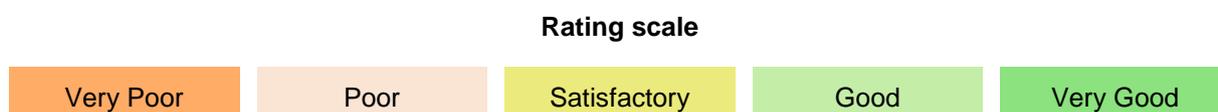
- consultation with stakeholders on draft [Media Merger Guidelines](#)
- rollout of ACCC-wide Negotiation and Stakeholder Engagement training
- publishing the [ACCC Media Code of Conduct](#), which sets out the considerations the ACCC takes into account when commenting on investigations and court cases, and the limitations it observes in making public comments
- revised ACCC Infocentre template material to assist small businesses, increasing the number of referrals to the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) and Small Business Commissioners (SBCs)
- a review by the CSIRO of our current risk rating tools for the product safety function to improve our ability to efficiently balance risk management with the impact on businesses
- consultation on, and review of, the majority of mandatory product safety standards. More than 365 submissions were received concerning reviews of 24 standards
- reviewing record-keeping obligations of regulated entities, including allowing the Telstra Exchange Facilities record-keeping rule to expire and ceasing annual reporting on Australia Post's regulatory account
- publishing [Part IIIA Access Undertaking guidelines](#) to provide guidance on the process for drafting and submitting an access undertaking for assessment by the ACCC, and on the substantive issues that may arise for assessment
- producing 26 resources to help small businesses understand their rights and obligations, including published guidance, website updates, videos and webinars. Over 80% of our compliance guidance was developed in consultation with business stakeholders in order to ensure that the guidance is clear and effective
- releasing [ACCC Guidelines – Use of Section 155 Powers and Section 155 Notices – A Basic Guide for Individuals and Small Business](#), to assist businesses respond to ACCC notices, and understand the process. The development of this guidance involved consultation with a wide range of stakeholders
- consultation on two competition law reform draft guidelines: the [Draft Framework for Concerted Practices Guidelines](#) and the [Draft Framework for Misuse of Market Power Guidelines](#). These guidelines assist businesses in understanding proposed legislative amendments to the Competition and Consumer Act (CCA).

The ACCC understands some business stakeholders are interested in how we utilise our compulsory information gathering powers, due to the regulatory burden they can create. During 2016-17 we issued 371 compulsory information gathering notices, which is consistent

with the five-year average of 417 per annum. A detailed analysis of our use of these powers is included at the conclusion of the evidence tables.

Self-assessment ratings

The ACCC has applied a five point rating scale against each of the six KPIs for each of the four functional areas, ranging from 'very poor' to 'very good'.



Ratings have been allocated against the six KPIs for each of the four functional areas (24 in total). There were four 'very good', fourteen 'good' and six 'satisfactory' ratings.

The ratings were developed based on the survey results, evidence measures in Appendix A and other significant evidence. A full discussion on each KPI and the reason for the rating is contained in the Report on performance results by functional area section.

The below table shows the individual rating for each KPI and function area. Arrows indicate that the rating has moved one level since last year. Nine ratings improved one level and two ratings declined one level.

It is important to note that the change in ratings for the Enforcement function is based in part on improved Business Stakeholder Survey scores. As discussed at page 29, these survey scores are likely to have been affected by a change in the criteria for survey participants. In 2016 the stakeholders chosen were all subject to ACCC enforcement action. In 2017 the sample was broadened to include businesses involved in investigations, but who did not necessarily have action taken against them. While this is likely to have had an impact on results, the ACCC considers that this sample reflects a more accurate cross section of business stakeholders who engage with the Enforcement function area. The initiatives and activities that the Enforcement function undertook to improve its performance also contributed to a higher rating are explained in the body of the report.

	Merger and Authorisation Review	Small Business and Product Safety	Infrastructure Regulation	Enforcement
KPI 1: The ACCC does not unnecessarily impede the efficient operation of regulated entities	Good ↑	Good ↑	Satisfactory ↓	Good ↑
KPI 2: The ACCC's communication with regulated entities is clear, targeted and effective	Good	Very good	Very good	Good ↑
KPI 3: The actions undertaken by the ACCC are proportionate to the regulatory risk being managed	Good	Good	Satisfactory	Good
KPI 4: The ACCC's compliance and monitoring approaches are streamlined and coordinated	Satisfactory	Good ↑	Satisfactory	Satisfactory ↑
KPI 5: The ACCC is open and transparent in its dealings with regulated entities	Very good	Very Good ↑	Good ↓	Good ↑
KPI 6: The ACCC actively contributes to the continuous improvement of regulatory frameworks	Good	Good ↑	Satisfactory	Good
↑ Rating moved up one level from last year		↓ Rating moved down one level from last year		

Areas for improvement and action in 2017-18

In 2017-18 the ACCC is undertaking a range of work that will contribute to its performance against the RPF KPIs. The actions and initiatives that will be undertaken to address these areas are outlined by function below.

In relation to the Mergers and Authorisation Review function we will:

1. Release [Media Merger Guidelines](#) given the significant changes taking place in the media environment.
2. Prepare a suite of new or updated guidelines in response to the legislative changes that result from the recommendations of the Competition Policy Review.
3. Continue to clearly explain the ACCC's role in the assessment process and take steps to clarify this role where there is a misunderstanding about what can be achieved through the ACCC process.
4. Continue to report on the proportion of mergers where section 155 notices are issued and monitor for any changes, and increase engagement with businesses prior to issuing notices so that we can have closer regard to the potential burden.
5. Continue our work to streamline our information gathering approaches and provide transparent information regarding our use of these powers.

In relation to the Small Business and Product Safety function we will:

1. Publish the Consumer Product Safety Surveillance Plan for 2017-18 by the end of September 2017.

2. Continue to communicate ACCC decisions and outcomes to a broad range of stakeholders to inform and assist small businesses.
3. Continue to clearly explain the ACCC's role and manage the expectations of small businesses by being direct and clear about what we can and cannot achieve.
4. Continue scoping and planning work ahead of ministerial consideration of a bundled ACL reform package in August 2017.
5. Continue to work with the other Australian Consumer Law regulators in 2017-18 as needed to ensure a streamlined and coordinated approach to education, surveillance, compliance and investigations.
6. Continue to contribute to the continuous improvement of regulatory frameworks through our engagement with other federal regulators and Government networks and providing submissions to Government reviews as needed.

In relation to the Infrastructure Regulation function we will:

1. Continue the current review of the 'NBN services in operation' Record Keeping Rule (RKR) and review two further telecommunications RKR's.
2. Update water guidelines, subject to the Government reforms consulted on last year, and prioritise engagement with water market intermediaries to improve their compliance with the ACL.
3. Ensure that our dealings with regulated entities continue to be characterised by openness and transparency through regular and comprehensive updates in relation to processes, particularly if they are extended or delayed.

In relation to the Enforcement function we will:

1. Continue to focus on the timeliness of investigations through the use of robust governance processes and the use of the ACCC's case management IT system.
2. Review and update the [ACCC Accountability Framework for Investigations](#).
3. Continue to prioritise new ways to improve coordination and adopt a streamlined approach to its enforcement activities to achieve efficiencies. This includes releasing guidelines on changes to powers and legislation, to assist businesses to understand how we will approach enforcement of the law.
4. Continue consultation on the [Draft Framework for Concerted Practices Guidelines](#) and the [Draft Framework for Misuse of Market Power Guidelines](#), and release the final guidelines.
5. Commence public consultations on the review of the [ACCC Immunity and Cooperation Policy for Cartel Conduct](#).

Implementing these actions and initiatives will ensure the ACCC continuously improves our performance in relation to the administration of regulation.

Report on performance results by functional area

This section of the report outlines the key evidence and performance ratings for each of our four core functional areas:

- Merger and Authorisation Review
- Small Business and Product Safety
- Infrastructure Regulation
- Enforcement

In respect of the survey results outlined below, we have only reported the percentage of respondents who agreed (agreed/strongly agreed) or disagreed (disagreed/strongly disagreed) that the ACCC is achieving a KPI. Adding the percentage of respondents who 'neither agreed nor disagreed' would result in a total of 100%.

Merger and Authorisation Review

The Merger and Authorisation Review function relates to the review of proposed mergers and acquisitions to assess whether they would substantially lessen competition. It also includes reviewing applications by businesses that propose to engage in certain potentially anti-competitive arrangements or conduct and are seeking an exemption from the CCA on the grounds that those arrangements or conduct will result in a net public benefit.

Below is an assessment of the function's performance in relation to each KPI, including individual ratings.

KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

In the business stakeholder survey, 64% of respondents agreed that the ACCC does not unnecessarily impede the efficient operation of regulated entities and 9% disagreed.

These results represent a substantial improvement in the survey ratings for the previous year where 47% of respondents agreed and 21% of respondents disagreed.

As detailed in the Appendix, the ACCC met or exceeded all of the seven performance measures relevant to this KPI. These measures relate to:

- providing clear guidance on merger processes and timelines on the ACCC's website
- the manner in which the ACCC triages and processes merger matters
- the duration of merger reviews
- the duration of authorisation reviews, and
- compliance with statutory deadlines for authorisations and notifications.

The ACCC's performance in conducting timely and transparent merger, authorisation and notification reviews provides certainty for businesses.

The ACCC continued to provide clear guidance about merger processes on the ACCC website including publishing [Informal Merger Review Process Guidelines](#) and [Formal Merger Review Process Guidelines](#). These documents assist businesses and their advisers in understanding ACCC and statutory processes, which helps businesses to engage with the ACCC efficiently (for example, by providing relevant information).

The ACCC will maintain an up-to-date suite of relevant publications. We released draft *Media Merger Guidelines* for public consultation in August 2016, given the significant changes taking place in the media environment. We are also preparing to consult on draft *Merger Authorisation Guidelines* which will explain the ACCC's new role in this area following recommendations of the Competition Policy Review.

The ACCC will continue to monitor the effectiveness of the triage process for non-contentious mergers and has commenced reporting on the average time taken to complete those matters cleared without a public review. This information is available on the [online public register](#).

We are available to receive feedback on the performance of our authorisation and notification processes at all Franchising Consultative Committee and Small Business Consultative Committee meetings (now amalgamated as the Small Business and Franchising Consultative Committee).

The ACCC considers our performance in relation to this KPI was Good. This is an improvement of last year's rating of Satisfactory. We believe this rating is appropriate given the survey results and performance against our performance measures.

Overall rating: Good

KPI 2- Communication with regulated entities is clear, targeted and effective

In the business stakeholder survey, 61% of respondents agreed that in conducting the Merger and Authorisation Review function the ACCC's communication with regulated entities is clear, targeted and effective and 12% disagreed.

This is an improvement on the results from last year where 52% of respondents agreed and 16% of respondents disagreed.

The ACCC met or exceeded five of the six performance measures under this KPI. These measures relate to:

- publishing information on public registers
- publishing reasons for complex merger decisions in Public Competition Assessments (PCAs)
- providing transparency to merger parties during reviews, and
- publishing media releases in relation to merger decisions.

The one measure that was not achieved was publishing all PCAs within 30 days, with one merger review decision going beyond this timeline.

The achievement of the measures demonstrates our efforts to ensure that our communication with businesses is clear, accessible and appropriate. Diagrams of stages and indicative timeframes with regard to informal merger reviews, authorisations, exclusive dealing notifications and collective bargaining notifications are provided on the ACCC website in the [Informal Merger Review Process Guidelines](#) and [Authorisation Guidelines](#). The [ACCC and AER Annual Report](#) and quarterly [ACCCount](#) publications outline ACCC mergers and authorisations activities and summarise completed processes. Indicative timeframes are provided on the ACCC's [online public register](#) and are updated on an ongoing basis as reviews progress.

The survey results were positive and we achieved the majority of our performance measures. The survey comments encourage the ACCC to maintain regular and open

engagement with stakeholders and to provide additional education to inform those not familiar with the ACCC's role and processes. The ACCC recognises the importance of providing clear, targeted and timely information about our processes in general and more specifically during an assessment. In 2017-18 we will continue to clearly explain the ACCC's role in the assessment process and take steps to clarify this role where there is a misunderstanding about what can be achieved through the ACCC process.

We consider a rating of Good is appropriate for this KPI, which is the same result as last year. Continued improvements in communicating and meeting timelines in 2017-18 should see improvement in this rating.

Overall rating: Good

KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed

In the business stakeholder survey, 53% of respondents agreed that the action taken by the ACCC in its performance of the Merger and Authorisation Review function is proportionate to the regulatory risk being managed and 18% disagreed.

This is an improvement on last year's results where 42% of respondents agreed, while 21% disagreed.

The ACCC's risk-based approach to merger assessments is reflected in our [Merger Guidelines](#) and process guidelines, which set out our policy and approach to merger assessments. For example:

- if the ACCC considers that a merger raises a low risk of breaching section 50 of the CCA based primarily on the information provided, the ACCC will clear (pre-assess) these matters without undertaking a public review
- when assessing undertakings as remedies in merger matters, the ACCC will consider the proportionality of the remedy to the competition concerns raised when deciding whether to accept an undertaking.

In 2016-17, 88% of merger matters considered were finalised by pre-assessment. The pre-assessment process involves clearance by a General Manager and then by the Commissioner who chairs the Merger Review Committee, reflecting the lower regulatory risk of these types of mergers decisions.

Our utilisation of pre-assessment in the overwhelming majority of merger matters demonstrates the practical implementation of the risk-based approach committed to in our *Mergers Guidelines* and process guidelines.

We consider that a rating of Good is appropriate for this KPI. This maintains the same rating as last year. We will continue our commitment to risk-based decision making in 2017-18.

Overall rating: Good

KPI 4 - Compliance and monitoring approaches are streamlined and coordinated

In the business stakeholder survey, 50% of respondents agreed that the ACCC's compliance and monitoring approaches in conducting the Merger and Authorisation Review function are streamlined and coordinated and 21% disagreed.

While this is an improvement on the results from the last survey where 33% of respondents agreed, however this result needs to be balanced against an increase in the number of respondents who disagreed which was up from 14% in the last survey. This may be due to the increased number of s.155 notices that were issued in relation to this function this year.

Information requests in merger assessments were made pursuant to the scaled approach set out in the [Informal Merger Review Process Guidelines](#). This means that merger parties are not required to provide a complete package of information upfront, but instead, information will be sought as required throughout the review depending on the complexity of the issues raised. This approach ensures a lower compliance cost for businesses because those transactions that are considered less likely to raise concerns will generally not require as much information to be provided to the ACCC.

During 2016-17, the ACCC issued formal information requests under a section 155 notice in 11 out of 33 public reviews (33%). By comparison, in 2015-16, section 155 notices were issued in 26% of public reviews. The ACCC recognises the burden to businesses in responding to section 155 notices and reserves their use for situations where it is important for our decision making on mergers to have confidence that we have full and complete information on key issues, and where voluntary requests will not deliver the same level of confidence.

The qualitative responses to the survey reflect a desire from businesses that their operational needs be taken into account when the ACCC issues section 155 notices. In recognition of the potential burden that section 155 notices may impose on recipients, the ACCC will continue to report on the proportion of mergers where section 155 notices are issued and monitor for any changes. The ACCC has also increased its engagement with businesses prior to issuing section 155 notices in relation to mergers. This allows us to ensure that the information to be provided will meet our needs while minimising the potential burden on the business.

We consider a rating of Satisfactory reflects our current performance in respect of this KPI, which is the same rating as last year. We will continue to streamline our information gathering approaches and provide transparent information their use.

Overall rating: Satisfactory

KPI 5 - Regulators are open and transparent in their dealings with regulated entities

In the business stakeholder survey, 58% of respondents agreed that the ACCC is open and transparent in its dealings with regulated entities and 12% disagreed.

This result is very similar to that of last year where 59% of respondents agreed that the ACCC is open and transparent in its dealings with regulated entities, while 11% disagreed.

In 2016-17 we published 100% of informal public merger reviews on the online public register and 100% of non-confidential undertakings accepted under section 87B. This

provides transparency and allows stakeholders to understand how the ACCC reached its decisions and the basis on which undertakings were accepted.

Consistent with our open and responsive approach to providing guidance to stakeholders, we consulted on a draft version of revised *Media Merger Guidelines*. A final version of the guidelines will be released in 2017-18. We will adopt this consultative approach when we prepare a suite of new or updated guidelines in response to the legislative changes that result from the recommendations of the Competition Policy Review.

We also consulted on all authorisation applications; we published applications and submissions on our public register and actively contacted market participants in order to allow applicants and interested parties to have their say and inform our decision making.

Overall, we consider our performance against this KPI has been Very Good. This maintains the same rating as last year. The positive survey results reflect transparency in our decision-making and our consultative approach when amending or developing our guidance material and conducting assessments.

Overall rating: Very good

KPI 6 - Regulators actively contributes to the continuous improvement of regulatory frameworks

In the business stakeholder survey, 48% of respondents agreed that the ACCC actively contributes to the continuous improvement of regulatory frameworks and only 7% disagreed.

The result is an improvement on last year where 43% agreed that the ACCC actively contributes to the continuous improvement of regulatory frameworks, while 11% disagreed.

The ACCC adopts a consultative approach with regulated businesses to improve the regulatory framework, while ensuring competition for the benefit of consumers. We demonstrated this approach through ongoing consultation with the Law Council of Australia and other stakeholders regarding changes to the mergers framework resulting from recommendations of the Competition Policy Review. This consultation has helped shape improvements to our processes, including:

- maintaining timeliness for the publication of PCAs
- communication with merger parties during a review on the relevant competition issues
- better engagement with parties who will be issued with s.155 notices.

The ACCC's commitment to continuous improvement was demonstrated by its participation in International Competition Network (ICN) and Organisation for Economic Co-operation and Development (OECD) working groups on merger control, and its close liaison with overseas counterparts on merger issues and specific transactions.

The ACCC's commitment to continuous improvement of the regulatory framework through international and domestic engagement is reflected in stakeholders' views in the survey.

On balance, we consider the survey results and evidence reflect a Good performance rating, which is in line with last year's rating. The focus on the recommendations of the Competition Policy Review in 2017-18 may see an increase in this result.

Overall rating: Good

Small Business and Product Safety

The Small Business and Product Safety functions involve assisting the ACCC to identify important market problems, through its role in research, intelligence gathering, external liaison and product safety hazard assessment. It also contributes to solving market problems through education, persuasion and industry-wide regulation such as codes of conduct and product safety instruments.

Below is an assessment of the function's performance in relation to each KPI, including individual ratings.

KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

In the business stakeholder survey, there were two groups relevant to this function: small business stakeholders and product safety stakeholders.

In the survey of small business stakeholders, 65% of respondents agreed that the ACCC does not unnecessarily impede the efficient operation of regulated entities, while 13% disagreed. This is an improvement on last year, when 53% agreed and 13% disagreed.

For product safety stakeholders, 71% agreed that the ACCC does not unnecessarily impede the efficient operation of regulated entities, while 6% disagreed. This is also an improvement on last year, when 65% agreed and 11% disagreed.

The overall improvement in the stakeholder survey results compared to the 2015-16 results is a reflection on our work of the past year and the actions we have taken in response to last year's self-assessment results.

In last year's self-assessment, we committed to developing and distributing improved information in relation to other agencies that can assist small businesses to ensure that they are referred appropriately. To achieve this, the ACCC Infocentre revised the template material used to support small businesses to provide a better understanding of the role of other agencies and dispute resolution services available. As a result, there has been an increase in referrals to the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) and Small Business Commissioners (SBCs) by the Infocentre.

We also committed to enhancing our methods to better communicate decisions to a broader audience, by utilising peak bodies representing large numbers of small businesses and exploring options to leverage other key sources of information for small businesses. To this end, we communicated outcomes of our business to business unfair contract terms review and our Country of Origin Labelling guidance with a greater range of stakeholders and distributed our Small Business in Focus report more widely. Stakeholders that we communicated with included the Australian Small Business and Family Enterprise Ombudsman, Small Business Commissioners, Small Business and Franchising Consultative Committee members and our information networks, among others. A result of this additional communication has also been an increase in subscribers to our information networks. In 2017-18 we will continue to communicate ACCC decisions and outcomes to a broad range of stakeholders to inform and assist small businesses.

From the product safety perspective, we continued our ongoing review of all mandatory safety standards to ensure they are up to date and do not impose an unnecessary burden on businesses. In 2016-17, we reviewed six safety standards and completed multi-staged reviews of self-balancing scooters and certain decorative alcohol fuelled burners.

This year the ACCC actively participated in product safety aspects of the Australian Consumer Law (ACL) Review and the development of the Final Report, and made submissions to the Productivity Commission (PC) in relation to product safety aspects of their Final Report on Consumer Law Enforcement and Administration.

The Review identified stakeholder concerns that product safety regulatory response mechanisms are not adequately responsive and create unnecessary complexity and uncertainty for businesses. The ACL Report proposed further work in 2017–18 to explore options to streamline processes for product bans and recalls. The PC Study also identified problems with the product safety ban and recall processes and made findings and recommendations to improve these. In 2017–18, we will continue scoping and planning work ahead of ministerial consideration of a bundled ‘ACL reform package’ in August 2017, after which agreed proposals will be implemented.

Our responses to business enquiries need to be prompt to ensure we do not impede the efficient operation of regulated entities. As set out in Appendix A, this year we exceeded the target for responsiveness to complex product safety queries from businesses. While we improved our performance against our target for responsiveness to routine business queries, we did not meet the target. In 2017–18 we will review how enquires are received, allocated and considered to determine if it is feasible to improve our performance against this KPI.

We consider an overall rating of Good is appropriate for this KPI. This rating is an improvement on last year’s Satisfactory rating. Given the significant upward trend in survey results and the areas of improvement in 2016-17, we believe this improved rating is appropriate.

Overall rating: Good

KPI 2- Communication with regulated entities is clear, targeted and effective

In the business stakeholder survey, 64% of small business respondents agreed that the ACCC’s communication is clear, targeted and effective, while 12% disagreed. This is a slight improvement on last year’s results when 59% agreed and 13% disagreed.

For product safety stakeholders, 68% of respondents agreed, while 11% disagreed. Again, this is a slight improvement on last year, when 64% agreed and 13% disagreed.

The increase in positive responses and slight decrease in negative responses indicate that our strategies to communicate our work outcomes are becoming more effective.

Throughout 2016-17 we kept our small business stakeholders engaged by communicating relevant information through our Small Business Information Network and Franchising Information Network. We have over 9 000 subscribers across the two networks. We also provide a wide range of online materials in a dedicated [small business section](#) on our website, which allows us to reach a wide audience with timely information about issues of interest and importance to small businesses.

The ACCC also produced 26 guidelines and resources to help small businesses understand their rights and obligations under the CCA. We deliver these resources in a variety of ways including published guidance, website updates, videos and webinars. Our communication campaigns are targeted to ensure the resources reach the intended audience. We developed over 80% of our compliance resources in consultation with business stakeholders in order to ensure that the guidance is clear and effective.

This year, when communicating outcomes of our business to business unfair contract terms review and our Country of Origin Labelling guidance with stakeholders, we included a number of different literacy and audience styles (key points, calls to action, social media messages, industry articles) to make it easy for stakeholders to share the information with their networks.

In 2016 the ACCC supported industry to develop a voluntary guide for supplying safer products that contain button batteries. The ACCC assisted the industry working group by hosting and facilitating meetings, and by providing policy content. The ACCC launched the code and published it on the [Product Safety Australia](#) website in September 2016.

During 2016-17 product safety staff communicated directly with stakeholders impacted by the review of product safety standards. Input from other interested parties was encouraged by making the consultation papers available via the [ACCC Consultation Hub](#) on the website.

The ACCC increasingly uses social media such as Facebook, Youtube and Twitter to communicate product safety issues. Information provided by these channels can direct stakeholders and general consumers to the product safety helpline or resources available on the website. This educates the wider community about product safety issues and enables them to contribute their views.

In 2017-18, communication about product safety will be improved by reforms adopted in response to the final report of the ACL Review, which was released in March 2017. The ACL Review identified stakeholder concerns with uncertainty around current requirements for mandatory reporting in relation to timeframes and triggers for making a report. The ACL Review proposed further work in 2017-18 to provide improved guidance to industry on their mandatory reporting obligations, including practical examples and case studies to improve understanding.

The ACL Review also identified uncertainty around suppliers' voluntary recall notification requirements, in particular around the meaning of a 'voluntary recall'. The ACL Review proposed further work in 2017-18 to include a statutory definition in the ACL to provide greater clarity to suppliers on their notification requirements.

The ACCC Performance Consultative Committee noted that the ACCC has an ongoing challenge in effectively communicating the limitations of its powers and roles to small businesses. The result of this is that many small businesses do not fully understand the role of the ACCC or competition law in the marketplace, leading to a gap between the expectations of many small business stakeholders and the ACCC's ability to take action.

The ACCC is aware of this ongoing challenge and we have endeavoured to be more direct and clear in our messages to consumers and small businesses about what we can and cannot achieve, and will continue this strategy in 2017-18.

We nevertheless consider an overall rating of Very Good is appropriate for this KPI, which is the same result as last year. This is because KPI 2 focuses on communication with regulated entities rather than all stakeholders, be they consumers or small businesses, seeking redress under the CCA. In the context of the RPF the ACCC interprets KPI 2 to be primarily about our efforts to educate and inform all businesses including small businesses about their compliance obligations under the CCA so as to minimise their regulatory burden. We consider the positive trend in the survey results that capture the views of regulated businesses supports this rating. The forthcoming work prompted by the ACL Review should provide further opportunity to continue to meet this KPI.

Overall rating: Very good

KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed

In the survey, 51% of small business stakeholders agreed that the ACCC's actions are proportionate to the regulatory risk being managed, while 22% disagreed. This is an improvement on last year's results when 44% agreed and 21% disagreed.

For product safety stakeholders, 61% of respondents agreed, while 15% disagreed. This is a similar result to last year, when 57% agreed and 13% disagreed.

The increase in the percentage of positive results indicates a slight improvement in the level of business satisfaction with our risk management approach.

The 2016-17 survey provided similar feedback to the year before. Several small business stakeholders believe the ACCC should have the power to impose tougher penalties while suppliers tend to be concerned about the potential impact of further regulation. This illustrates the need to analyse the risk to ensure that action taken is proportionate.

A key way in which the ACCC ensures our approach is risk-proportionate is by aligning our compliance work with the [Compliance and Enforcement Policy](#). In 2016-17, 100% of business compliance projects were in priority areas identified in the policy, and 85% of matters referred to the ACCC's Under Assessment process related to at least one of the ACCC's current priority areas or factors. These priorities guide our work and ensure that we allocate our resources to those matters that will provide the greatest overall benefit.

This year we committed to review opportunities to use other information providers for small businesses (e.g. other government agencies or industry resources) as channels for information regarding the ACCC's approach to regulatory risk. During the year we used our Small Business and Franchising Consultative Committee to disseminate information about ACCC work and regulatory updates. We also provided small business updates and communicated information about new ACCC projects at inter-agency and national Government committees so that state ACL regulators could also share this information with their networks.

In late 2016 we commissioned the CSIRO to review the current risk rating tools employed in hazard assessment functions of ACCC consumer product safety work and determine whether a data driven predictive tool could be developed to inform the allocation of compliance resources. The analysis will need to be repeated periodically to assist with identification of emerging trends in product hazards. This work will improve the sophistication and efficiency of the product safety triage process, which we use to prioritise those matters that pose the greatest risk to Australian consumers. Such tools are critical when managing risk within the context of finite resources.

The ACCC product safety surveillance priorities are developed using a risk-based methodology. All information about potential product safety hazards is incorporated into an assessment matrix for analysis to determine the appropriate response. Further transparency will be provided by the Consumer Product Safety Surveillance Plan for 2017-18 which will be published by the end of September 2017.

The consultation papers published during this year's review of product safety standards have served to provide insight into the methodology the ACCC uses when assessing and regulating potentially hazardous goods. Comments from several stakeholders confirmed these documents have been informative and useful in understanding the ACCC's approach to regulating product safety.

We consider an overall rating of Good is appropriate for this KPI. This is the same result as last year. While the trend in the survey results is positive, we acknowledge that there is still room for improvement in our performance against this KPI, as outlined above.

Overall rating: Good

KPI 4 - Compliance and monitoring approaches are streamlined and coordinated

In the survey, 48% of small business respondents agreed that the ACCC's compliance and monitoring approaches are streamlined and coordinated, while 20% disagreed. There was an improvement in the level of agreement from last year, while disagreement remained the same. Last year, 36% of respondents agreed and 20% disagreed.

For product safety stakeholders, 56% of respondents agreed that the ACCC's compliance and monitoring approaches are streamlined and coordinated, while 12% agreed. This was a small improvement from last year when 51% agreed and 15% disagreed.

Compliance and enforcement with the ACL is a 'one-law, multiple-regulators' model. The ACCC often works in partnership with other regulators when conducting education, surveillance, compliance and investigations. This reduces the likelihood of duplication of effort, consolidates resources and ensures the sharing of information, while presenting businesses with one consistent message.

This year the ACCC led a joint project with the other ACL regulators to educate consumers with disability, as well as businesses and not-for-profit organisations supplying these consumers under the newly introduced National Disability Insurance Scheme (NDIS). In December 2016 the ACCC and ACL regulators released seven educational resources that seek to empower people with disability to use their consumer rights when buying goods and services under the NDIS and also educate new and existing businesses about their obligations under the ACL.

The ACCC completed 20 audits of recalls being conducted voluntarily by businesses to remediate substandard Infinity cable. Staff provided businesses with lead time to consider the audit program and offered flexibility in scheduling meetings to impact least on business operations. The ACCC also facilitated and chaired three meetings of the Infinity Cable Industry Reference Group established as the liaison point between electrical regulators and business to ensure business perspectives are considered in the administration of the overall Infinity cable recall program.

Other initiatives undertaken in 2016-17 to better streamline and coordinate compliance and monitoring included:

- Participation in integrated product safety strategies with state and territory agencies - joint surveillance activities with the states and territories accounted for approximately 40% of activity
- Membership of an interdepartmental committee examining the safety of quad bikes
- Participation in a Victorian State Government committee examining the safety of miniature motor bikes

We will continue to work with the other ACL regulators in 2017-18 as needed to ensure a streamlined and coordinated approach to education, surveillance, compliance and investigations.

We consider an overall rating of Good is appropriate for this KPI. This is up from Satisfactory last year. We believe this increased rating is suitable given the significant upward trend in survey results, and taking into account the ongoing nature of our collaborative work with consumers, industry and other regulators.

Overall rating: Good

KPI 5 - Regulators are open and transparent in their dealings with regulated entities

In the business stakeholder survey, 63% of small business respondents agreed that the ACCC is open and transparent in our dealings with regulated entities, while 13% disagreed. This is a marked improvement from last year, when 50% of respondents agreed and 20% disagreed.

In relation to product safety respondents, 68% agreed that the ACCC is open and transparent in our dealings with regulated entities, while only 7% disagreed. This was an improvement on last year's results, when 60% agreed and 8% disagreed.

The increase in positive responses from stakeholders is extremely encouraging. The ACCC recognises the importance and value of engaging with stakeholders, communicating effectively and being transparent about processes, and this is reflected in the results.

In 2016-17 the ACCC consulted with business stakeholders on 81% of our new or revised business compliance resources. We also met twice throughout the year with our Small Business and Franchising Consultative Committee.

We committed to gaining a better understanding of the concerns of small business stakeholders in relation to the ACCC's approach to changing policies and practices. Throughout the year, we engaged and consulted with businesses or representative bodies regarding work that impacted on them (including the business to business unfair contract terms review and Country of Origin Labelling guidance material). We also communicated the progression of the ACL review and Harper review in our Small Business and Franchising Consultative Committee meetings and Small Business Commissioner Briefs, as well as through other mediums.

Every submission (except those provided in confidence) the ACCC received in response to reviews of product safety standards was published on the consultation hub on the website.

We also consulted widely before making the decision to recommend a national interim ban on potentially unsafe decorative alcohol fuelled devices. We undertook public consultation, including with state and territory based safety regulators, to inform the development of a long term solution.

We consider an overall rating of Very Good is appropriate for this KPI. This is up from Good last year and appropriate given the significant upward trend in survey results and extensive efforts throughout 2016-17.

Overall rating: Very Good

KPI 6 - Regulators actively contribute to the continuous improvement of regulatory frameworks

In the survey, 57% of small business respondents agreed that the ACCC actively contributes to the continuous improvement of regulatory framework, while 19% disagreed. This was a similar result to last year, when 53% agreed and 16% disagreed.

For product safety stakeholders, 54% of respondents agreed that the ACCC actively contributes to the continuous improvement of regulatory framework, while 8% disagreed. This was a steady improvement on last year, when 45% agreed and 12% disagreed.

A review of the majority of mandatory product safety standards in 2016-17 involved extensive consultation and has likely contributed to this improved stakeholder perception relating to product safety. The review aims to improve the regulatory framework by making sure that all mandatory product safety standards reflect contemporary requirements. More than 365 submissions were received concerning reviews of 24 standards.

The process of review involved liaison with the Office of Best Practice Regulation (OBPR) through the submission of a Regulatory Impact Statements (RIS). This is part of the ACCC's broader commitment to best practice regulation. The RIS process requires consideration of the potential costs and imposts on business of amending or creating a mandatory product safety standard. Comments from affected businesses, consumers and other stakeholders are also taken into account.

In relation to small business, during 2016-17 we contributed to the review of the Horticulture Code of Conduct and the Oil Code of Conduct by providing submissions on improving the effectiveness of the Codes. We also continued to participate in the national Small Business Commissioners forums, held every two months and consisting of the four state and territory small business commissioners and the Federal Small Business and Family Enterprise Ombudsman. We also continued to work with other federal regulators within the Federal Regulatory Agencies Group, chaired by the Small Business and Family Enterprise Ombudsman.

In February 2017 our approach to engaging with small businesses across Australia was revised, to foster a greater understanding of the issues facing small businesses and the avenues the ACCC can utilise to communicate our messages with small businesses. Throughout 2016-17 we kept our stakeholders engaged by communicating relevant information through our Small Business Information Network and ACCC Franchising Information Network.

We continued to chair the Australasian Consumer Fraud Taskforce, working with over 20 government regulatory agencies and departments to discuss consumer and small business protection against frauds and scams.

This year the ACCC actively participated in the ACL Review and the development of the Final Report, and assisted the Productivity Commission in developing its Final Report on Consumer Law Enforcement and Administration. In 2017-18, we will continue scoping and planning work ahead of ministerial consideration of a bundled 'ACL reform package' in August 2017, after which agreed proposals will be implemented.

In 2017-18 we will continue to contribute to the continuous improvement of regulatory frameworks through our engagement with other federal regulators and Government networks and providing submissions to Government reviews as needed.

We consider an overall rating of Good is appropriate for this KPI. This is an improvement on last year's Satisfactory rating. We believe that the significant work in regulatory reform, coupled with the improved survey results substantiates this result.

Overall rating: Good

Infrastructure Regulation

The Infrastructure Regulation function relates to fostering competitive, efficient and informed markets in critical infrastructure sectors across communications, transport, rural water, post and other sectors, as well as the monitoring of certain industries such as fuel and airports.

Overall, the survey results for this period are lower than those achieved in the previous reporting period, notwithstanding that a range of activities have been undertaken against each KPI.

Below is an assessment of the Infrastructure Regulation function's performance in relation to each KPI, including individual ratings.

KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

In the business stakeholder survey, 46% of infrastructure regulation stakeholders agreed that the ACCC does not unnecessarily impede the efficient operation of regulated entities, while 37% disagreed. This is decline from last year's results when 48% agreed and 16% disagreed. While the number of respondents agreeing with the statement only declined slightly, a significant number of respondents shifted from 'neither agree nor disagree' to 'disagree'. We will work to understand the drivers of this change, in particular whether it is the result of any change in ACCC processes or variation caused by the relatively small sample size (this year's survey had 36 respondents and last year's had 31), and to identify further opportunities for improvement.

The ACCC maintains on its website a [two-year planning and work program](#) that details planned activities and important milestones. We also publish a [document](#) that tracks the age and distribution of infrastructure regulation matters assessed by the ACCC. Due to revisions (including what is included as a 'matter'), figures may differ from those published previously. In 2016-17, 5 of the 6 major infrastructure regulation decisions undertaken by the ACCC were completed within standard statutory timeframes, and 1 was subject to 'stop the clock' or extension provisions.

The major reason for extending the timeframe was to align the processes for making access determinations for two similar telecommunications services. The survey results indicate some concerns over the length of time taken on regulatory decisions. Due to the complexity of issues involved and often unanticipated need for additional information from stakeholders, delays to decision making timeframes can occur. We will however examine practices around setting and communicating timeframes for regulatory processes, particularly for circumstances where timeframes change.

The ACCC continues to utilise stakeholder forums to increase its understanding of the operating environment of the businesses subject to regulation. These forums include the Utility Regulators Forum, Infrastructure Consultative Committee and Fuel Consultative Committee, all of which were held during 2016-17. In addition, as part of our market study into the communications sector, we hosted a stakeholder forum on 3-4 July 2017. Among other matters, this forum enabled stakeholders of various sizes to provide feedback on regulatory issues impacting the sector.

We continued to produce monitoring reports examining how specific sectors operate, including airports, stevedoring, water, fuel and telecommunications. These reports assist us to understand and respond appropriately to factors that are having an impact on businesses.

In December 2016 we released our first [bulk wheat ports monitoring report](#). The shift to monitoring the sector reflects changing market dynamics and a reduction in the need for direct regulatory intervention.

During the year the Government directed the ACCC to undertake inquiries aimed at increasing transparency in gas markets and the Northern Australian residential insurance market. As a result, the ACCC will monitor the pricing and availability of gas supply offers, and assess current and future needs for businesses and consumers, and will monitor prices, costs and profits of residential building, contents and strata insurance.

The ACCC/AER held its annual Regulatory Conference on 4-5 August 2016, with the theme of *'The future of economic regulation: does the conventional wisdom still apply?'* Key sessions explored how regulators can adjust regulatory settings as technology and markets evolve, and how regulators themselves can learn from experience.

The ACCC also took steps to reduce the regulatory burden on businesses subject to regulation. This included reviewing (and in some cases removing) record-keeping obligations on regulated entities. In June 2017 the ACCC completed a review of the Telstra Exchange Facilities record-keeping rule (RKR). We decided to allow the RKR to expire on 14 July 2017 given the changes in the telecommunications sector that are alleviating issues with access to Telstra's exchanges. We have also commenced a review of the 'NBN services in operation' RKR and intend to review two further telecommunications RKR's in due course.

Similarly, the ACCC previously issued an annual report of its analysis of Australia Post's regulatory accounts, (with the aim of assessing whether Australia Post had used revenue from its monopoly services to cross-subsidise its competitive services). We decided to cease these reports, as Australia Post's monopoly services were making increasing losses, meaning there could not be any cross-subsidy to its competitive business. In conjunction with this decision, we revised the RKR obligation on Australia Post so that it was only required to provide regulatory accounts and related information if requested by the ACCC.

The ACCC carefully assesses situations where regulation may be imposed. In May 2017 we released a draft decision not to declare a mobile roaming service. In reaching this view the ACCC carefully assessed often competing arguments and evidence from a broad range of stakeholders. The ACCC considered that while declaration of the service may improve the choice of mobile service providers for consumers in some regional areas, it may also damage incentives for operators to invest and may lead to higher prices to cover the cost of roaming access. In the draft decision the ACCC also indicated an intention to examine non-regulatory mechanisms to improve competition for mobile services in regional areas.

The ACCC considers that combining the satisfactory overall survey result with the other evidence collected for this KPI indicates a rating of Satisfactory is appropriate. While the overall rating has declined from Good last year, the ACCC has led several initiatives this year to reduce reporting burdens on regulated entities. However, we recognise that a significant number of businesses consider that we need to make further progress in reducing the impact of our activities on regulated entities. The ACCC will continue to closely evaluate any specific concerns raised by businesses and explain the impacts that we consider are likely to flow from our regulatory decisions. These actions should assist in improving the overall rating for the 2017-18 period.

Overall rating: Satisfactory

KPI 2- Communication with regulated entities is clear, targeted and effective

In the survey, 54% of respondents agreed that the ACCC's communication with regulated entities is clear, targeted and effective, while 11% disagreed. This result is a decrease from last year, when 68% of respondents agreed and 13% disagreed.

All major regulatory determinations during 2016-17 were accompanied by a decision document. While the format of these documents varies depending on the nature of the matter, they typically include details of:

- the legal framework the ACCC must apply in reaching its decision
- the views and submissions of stakeholders that have been gathered during public consultation
- the ACCC's analysis of relevant issues, including consideration of stakeholder submissions, and
- the ACCC's decisions and reasons for the conclusions reached.

The ACCC also maintains a range of diagrams on the ACCC's website outlining typical stages and indicative timeframes for the following regulatory processes:

- [declaration under Part XIC](#)
- [access determinations under Part XIC](#)
- [anti-competitive conduct under Part XIB](#)
- [record-keeping rules under Part XIB](#)
- [assessments under Part IIIA](#), and
- [price notifications under Part VIIA](#).

During the year we continued our focus on updating guidance material about major infrastructure regulation processes. This included the development and publication of guidelines on access undertakings submitted under Part IIIA of the CCA. The [Part IIIA Access Undertaking guidelines](#) provide guidance the legislative regime, the ACCC's processes for assessing applications, on the process for drafting and submitting an access undertaking for assessment by the ACCC, and on the substantive issues that may arise for assessment. We have also initiated a process to remake the guidelines relating to deferral of arbitrations and backdating of determinations under Part IIIA of the CCA.

During the reporting period we also revised our [Statement of regulatory approach to assessing price notifications under Part VIIA of the CCA](#). This statement replaces a version from 2009, and sets out the legislative framework within which price notifications are assessed, the ACCC's approach to assessment, and the information that the ACCC is likely to require from a declared firm. This statement is important to help businesses prepare their notifications for ACCC consideration.

We anticipate that we may also update water guidelines subject to the Government implementing reforms it consulted on last year.

We have also continued to provide information to interested parties on our regulatory functions in the communications sector, through the [Communications Information Network \(CIN\)](#). This is an email subscription service that advises interested parties of our activities in cases where we would not issue a media release.

We also engage through a range of formal and informal stakeholder forums to understand the concerns of businesses subject to regulation. This allows us to understand their needs and improve our efforts to communicate with them directly. Our Infrastructure Consultative Committee is representative of the diversity of infrastructure interests and includes representatives from energy, telecommunications, water, rail, ports, and airports. Our Fuel Consultative Committee provides an opportunity for constructive dialogue between the ACCC, the fuel industry, and motoring organisations. In 2017 we held a stakeholder forum in relation to our Communications market study. We also engage with a range of externally initiated forums, such as the Communications Alliance Working Groups and industry bodies in the water sector as well as a range of informal engagement. These varied sources allow a two way exchange of information that further our ability to develop targeted and effective communications with the variety of businesses in the Infrastructure sector.

The ACCC considers that combining the good overall survey result with the other evidence outlined above indicates that retaining the 2015-16 rating of Very Good is appropriate. While the net survey result has declined slightly, we have progressed a number of initiatives to provide stakeholders with accessible and clear guidance. In the coming year we will continue practices to communicate effectively with stakeholders across the sectors we regulate. For example, we will undertake additional steps in the water sector to engage more closely with smaller scale infrastructure operators and in the communications sector we are developing clear guidance to assist retail service providers improve customer experience as they transition to the NBN.

Overall rating: Very good

KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed

In the business stakeholder survey, 42% of Infrastructure Regulation stakeholders agreed that actions undertaken by the ACCC are proportionate to the regulatory risk being managed while 21% disagreed. This is an improvement on last year's results when 32% agreed and 19% disagreed with the statement.

As described in KPI 2 and 5, we maintain a wide range of guidance materials explaining the conceptual framework applied when ACCC-administered regulation is imposed or existing ACCC-administered regulation is removed. The ACCC also maintains a document on its [website](#) that categorises regulations by either their expiry dates or sunset clauses. This document also notes any regulations that have neither, and when they were last reviewed. This document was last updated on 25 July 2017.

Consultation is essential to effective decision-making, and the ACCC has a long-standing and continuing practice of ensuring that all regulatory decisions are supported by opportunities for interested parties to make submissions. This includes allowing businesses the opportunity to make submissions on the appropriate level of regulation given the risk being managed.

We have also taken a risk-proportional approach to a range of industry-specific compliance functions. We have provided updated guidance to internet service providers (ISPs) on best practices when advertising broadband speeds, a move we hope will also assist ISPs in complying with the ACL. During 2017-18 we are intending to prioritise engagement with water market intermediaries to improve their compliance with the ACL. Prioritising up-front compliance in part seeks to reduce the need for formal enforcement action.

ACCC Commissioners and staff have also engaged with relevant regulated industry sectors via a wide range of formal and informal forums that allow discussion of matters raised in last year's survey. We have used our various consultative committees and informal meetings to speak directly with industry stakeholders about our approach to regulatory issues.

We consider an overall rating of Satisfactory remains appropriate for this KPI. The survey results demonstrate a material increase in the number of respondents' agreeing that actions undertaken by the ACCC are proportionate to the risks being managed, and should progress be sustained, an overall rating of good should be reached next year.

Overall rating: Satisfactory

KPI 4 - Compliance and monitoring approaches are streamlined and coordinated

In the survey, 51% of respondents agreed that the ACCC's compliance and monitoring approaches are streamlined and coordinated while 29% disagreed. The results are a small decline from last year when 52% agreed and 26% disagreed.

The ACCC aims to be transparent regarding its compliance monitoring processes, including online information explaining the process for making RKR's under section 151BU of the CCA. As noted under KPI1, the ACCC also regularly reviews these RKR's to ensure that they are still required and proportionate.

The ACCC collects a range of tailored information from businesses to monitor competition, market developments and inform regulatory decisions in relation to infrastructure regulation. We recognise the costs and time involved in preparing responses to both formal and informal information requests, and activities are undertaken with a view to minimising regulatory burden.

In performing their respective roles, the ACCC and the Australian Communications and Media Authority (ACMA) seek to consult and collaborate where possible on matters of shared interest (i.e. preventing scams and other forms of consumer protection). This collaboration was enhanced during the year through the signing of a refreshed memorandum of understanding (MoU). The new MoU, signed on 16 December 2016, provides for greater sharing and collaboration which should ensure that the two agencies' interaction with businesses is more coordinated and streamlined.

As indicated last year, when formulating information requests and regulatory approaches we have had regard to using publicly available and other existing sources of information, where this would be appropriate and fit for purpose. For example, when preparing monitoring reports we seek to obtain as much information as possible from various public or existing sources, including companies' annual reports and websites, the Australian Bureau of Statistics and other government agencies. During the year we also began an internal review of the collation and content of the annual [*Prices changes for telecommunications services in Australia*](#) report. This included looking at ways to streamline collection of pricing data and utilise more public data. The Infrastructure Regulation Division has also participated in the ACCC's agency-wide review of knowledge management, and is participating in a related project on business intelligence, which includes exploring practices to enhance data collection and management.

We consider our performance against this KPI to be Satisfactory, which is the same rating as last year. While the survey results are broadly similar to last year, we have made significant progress on the key initiatives indicated in last year's report. For the 2017-18 reporting period, the ACCC will continue its agency-wide review of knowledge management and

consider recommendations on the better use and management of information. Further refinement of our information management and continued review of our information requests should assist in elevating our rating in the next reporting period to good.

Overall rating: Satisfactory

KPI 5 - Regulators are open and transparent in their dealings with regulated entities

In the survey, 59% of respondents agreed that the ACCC is open and transparent in its dealings with regulated entities, while 19% disagreed. This is a decline from the last reporting period, when 71% agreed and 6% disagreed.

The ACCC maintains its strong commitment to openness and transparency in its dealings with regulated entities. During 2016-17, all major inquiries included an opportunity for stakeholders to provide written submissions. We published public submissions on the ACCC website and publicly addressed stakeholder views in draft and final decisions. All performance measurement information committed to in the ACCC and AER Corporate Plan for the Infrastructure Regulation Division has also been published in the [ACCC and AER Annual Report](#).

As noted in KPIs 1 and 3, we have engaged with businesses via a wide range of formal and informal mechanisms, and as noted in our response to KPI 2, consulted in the preparation of guidelines that explain the regulatory framework.

We note that there has been a net decline in the survey results for this reporting period and accordingly, we consider our performance this reporting year has been Good - compared to Very Good for the previous period. As demonstrated by the supporting evidence, the ACCC has well established practices in place for ensuring that our engagement with stakeholders is open and transparent, particularly in regard to major regulatory decisions that can have significant implications for businesses. Our open and transparent approach is maintained through non-statutory processes such as the communication sector market study. While we consider our performance has been good for the year, we will ensure that our dealings with regulated entities continue to be characterised by openness and transparency through regular and comprehensive updates on the website in relation to processes, particularly if they are extended or delayed.

Overall rating: Good

KPI 6 - Regulators actively contribute to the continuous improvement of regulatory frameworks

In the survey, 42% of Infrastructure Regulation stakeholders agreed that the ACCC actively contributes to the continuous improvement of regulatory frameworks and 19% disagreed. This is an improvement on the 37% who agreed and 27% who disagreed last year.

As noted under KPI 1, we have used industry forums to assist business to understand and provide feedback on potential changes to regulatory settings. In addition to ACCC initiated forums, we are active in engaging with external forums such as Communications Alliance Working Groups and industry bodies in the water sector. These forums assist in developing industry led codes, regulations and strategies in relation to emerging issues and services.

The ACCC also has regular engagement with relevant policy departments, including the Treasury and Department of Communications, via liaison meetings at staff and

Commissioner level. During the year the ACCC has actively shared its knowledge and expertise of regulated industries to inform policy and regulatory reform. For example, we supported the repeal of aspects of the telecommunications-specific anti-competitive conduct regime in Part XIB of the CCA in light of the proposed amendments to the general misuse of market power provision in section 46.

Our communications market study is also looking to identify improvements for regulatory frameworks and to explore how current and emerging issues and developments may impact on competition and efficiency in communications markets. We are likely to make recommendations and identify options for regulatory adjustments, including the relaxation of regulation. The ACCC is aiming to report outcomes from the market study in late 2017 or early 2018.

During the year we conducted a review of the Infrastructure Consultative Committee (ICC). The purpose of the review was to examine whether the scope and membership of the ICC remain appropriate, and assess potential options for change. We are proposing to make a number of minor procedural amendments to the ICC meetings in response to stakeholder views.

The ACCC continues to learn and share experiences with international organisations and national regulatory authorities about best regulatory practices and processes. This includes via the Utility Regulators Forum (URF), which brings together Commonwealth, state and territory economic regulators, and which convened in June and November 2016, and in May 2017. The ACCC actively participates at the Organisation for Economic Co-operation and Development (OECD), particularly through the Network of Economic Regulators (NER). ACCC representatives also took part in the international regulators' forum conducted by International Institute of Communications in Bangkok, Thailand, in October 2016. We also meet regularly with counterparts from the New Zealand Commerce Commission on telecommunications matters.

While the above demonstrates the ACCC is active in contributing to the improvement of regulatory frameworks, we consider a rating of Satisfactory remains appropriate as the business stakeholder survey results indicate that there is still some room for improvement.

Overall rating: Satisfactory

Enforcement

The Enforcement function involves investigating and taking compliance and enforcement action in relation to potential breaches of the CCA. Below is an assessment of the function's performance in relation to each KPI, including individual ratings.

The Enforcement function area performed well across all six KPI's in 2017, with net survey scores for all six KPI's in 2017 substantially higher than in 2016. There were large positive increases in the proportion of respondents in agreement with all six individual KPI's, with an extra 13% to 34% agreeing with each KPI in 2017. The proportions of respondents disagreeing with the six KPI's also all improved in 2017, with falls of 11% to 27% recorded. Overall there was a very positive shift from 2016 to 2017, with both marked increases in agreement and marked decreases in disagreement, across all KPI's.

In interpreting these results, we are mindful that the methodology for identifying the types of stakeholders to form part of the survey sample in 2017 was broadened compared to 2016. In 2016, the stakeholders chosen were all subject to ACCC enforcement action. This also contributed to a particularly small sample size of respondents and recognition by ORC International that the results needed to be interpreted with caution.

However, in 2017 the sample was broadened to include businesses that were involved in an investigation, but did not necessarily have an action taken against them. This was also a contributing factor to a larger sample size of respondents being identified. Whilst this may have had an impact on the results, the ACCC considers that this sample reflects a more accurate cross-section of the types of business stakeholders who engaged with the Enforcement Division. This effect aside, the free text response to the survey support conclusions that the Enforcement Division has made material inroads into fully achieving the KPIs.

The rating against each KPI below is a combination of the business survey results, the evidence in Appendix A and other evidence relevant to the KPI this year, including the extent to which any improvement were actioned as proposed in the 2015-16 self-assessment.

KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

In the business stakeholder survey, 59% of Enforcement respondents agreed that the ACCC does not unnecessarily impede the efficient operation of regulated entities, while 22% disagreed. This is a significant improvement on last year's results when 29% agreed and 43% disagreed.

The ACCC's main goals are to maintain and promote competition and remedy market failure, and to protect the interests and safety of consumers and support fair trading in markets. With these goals in mind, the ACCC takes action to stop unlawful conduct, deter future offending conduct, obtain remedies to undo harm caused by contravening conduct (where possible), encourage the effective use of compliance systems and obtains court orders to impose penalties or fines and deter others from breaching the CCA (where warranted).

The ACCC's role is to focus on those circumstances that will, or have the potential to, harm the competitive process or result in widespread consumer detriment. The ACCC therefore exercises its discretion to direct resources to matters that provide the greatest overall benefit for competition and consumers.

The [Compliance and Enforcement Policy](#) identifies priority factors and priority areas that assist the ACCC in determining whether to give compliance and enforcement priority to a matter. These include enduring priority areas that reflect conduct that is so detrimental to

consumer welfare and the competitive process that the ACCC will always regard it as a priority.

The ACCC reviews its priorities regularly. Priorities are set following an assessment of existing, new or emerging issues and their impact on consumer welfare and the competitive process. This assessment, known as the strategic review process, includes extensive consultation with the ACCC's stakeholders both internal and external through a public survey and meetings. The strategic review also involves information and intelligence gathering on emerging issues and trends from a wide variety of sources including businesses and industry associations.

In February 2017 the ACCC Chairman communicated our enforcement approach under the 2017 *Compliance and Enforcement Policy* in a speech and media release to the Committee for Economic Development Australia. The speech, media release and policy are published on the ACCC website. The ACCC also communicates this policy and its enforcement approach (including possible enforcement action) to parties involved with the investigative process. This is further detailed in the response to KPI 3.

The ACCC's general approach to prioritising its enforcement action is to adopt a range of compliance and enforcement strategies that are flexible and integrated while seeking to maximise their impact across an industry sector. While the ACCC encourages and assists genuine voluntary compliance initiatives by individual businesses and industry sectors, the ACCC's enforcement approach is harm-driven and it recognises the potential for greater consumer detriment from the action of larger companies as well as the likelihood that these companies can influence market behaviour.

The ACCC is guided by principles including timeliness to ensure that the investigative process and resolution of matters are conducted as efficiently as possible to avoid costly delays and business uncertainty.

In 2016-17 the ACCC released guidance to the business community, their advisers and the public titled [ACCC Guidelines – Use of Section 155 Powers and Section 155 Notices – A Basic Guide for Individuals and Small Business](#) about the ACCC's procedures and approach in exercising these powers. This guidance was updated following Government endorsement of the Competition Law Review Recommendation for guidance to address how the ACCC will reduce the burden on recipients of a s.155 notice. This guidance emphasises the increased need for consultation and engagement between the ACCC and a recipient or proposed recipient in appropriate circumstances to facilitate more targeted s.155 notices.

This guidance was prepared following broad consultation with stakeholder involved in the Competition Law Review process, including the Law Council Small Business and Enterprise Committee and the Small Business and Franchising Consultative Committee. Internal guidance to staff in the Enforcement Division accompanies this guidance and is consistent with the approach and strategies outlined.

The ACCC has other guidance in place that acknowledges the potential for timely and efficient dispute resolution such as the [Guidelines on the Use of Infringement Notices](#).

The ACCC has also committed to completing investigations in a timely manner. In 2017 these targets were met, as detailed at Appendix A.

In last year's self-assessment we proposed improvements to enhance the use of intelligence in identifying harms for prioritisation. These improvements were implemented in 2016-17 by increasing the intelligence contribution to the assessment triage process carried out to identify complaints for further enforcement investigation. Intelligence also informs the ACCC's *Compliance and Enforcement Policy* and the strategic review process.

In 2015-16, the Enforcement Division proposed improvements to give enhanced attention to the timeliness of investigations. In 2016-17, this focus was increased by the development of more robust governance processes and monitoring of the use of the ACCC's case management IT system. This regular monitoring and enhanced reporting function has contributed to increased performance and efficiency in these KPIs compared to 2015-16. This focus will continue in 2017-18.

In the last self-assessment, we proposed improvements to give continued attention to balancing the burden of investigations on affected businesses while achieving regulatory objectives. In 2016-17, the ACCC has taken a more collaborative and consultative approach with its stakeholders when formulating guidelines about its functions and powers. This is demonstrated by the consultation in relation to the new guidelines. Further information about this approach is included in response to KPI 3 and KPI 5.

In light of the above developments and the survey result, which is a marked improvement from last year's result, we believe a rating of Good is appropriate for this KPI. This is an increase from Satisfactory last year.

Overall rating: Good

KPI 2- Communication with regulated entities is clear, targeted and effective

In the survey results, 66% of respondents agreed that the ACCC's communication with regulated entities is clear, targeted and effective in relation to its enforcement activities, while 22% disagreed. This is a significant improvement over last year's results, when 40% agreed and 33% disagreed.

Importantly, some of the qualitative feedback in the survey acknowledged the Enforcement Division's 'clear, transparent communication' and effective 'communication with outcomes'.

During 2016-17 we increased our focus on meaningful communication with parties involved in investigations, including closer engagement with businesses prior to taking any enforcement action against them. The ACCC has a protocol for updating complainants and businesses subject to investigation on the status of investigations. We undertook another high-level audit of this communication, which again demonstrated appropriate engagement with the business under investigation in each matter, including in most instances engagement prior to decision-making and providing an opportunity for the business to provide additional information.

To facilitate clear, targeted and effective communication with businesses, we are in the process of publishing a visual diagram on the ACCC website which will outline the typical stages of an investigation and indicate timeframes for these stages. This information is also included in the [ACCC Accountability Framework for Investigations](#) and [ACCC Service Charter](#).

More generally, the ACCC communicates its enforcement approach in its *Compliance and Enforcement Policy* as outlined in response to KPI 1. The ACCC's enforcement approach and priorities are often the subject of speeches and media releases published in accordance with the newly updated [ACCC Media Code of Conduct](#) released in October 2016. The code aims to balance fairness to individuals, corporations and businesses involved in ACCC investigation and enforcement action with informing the public about the ACCC's enforcement work and being transparent about what action the ACCC is taking and why.

The business community is updated on ACCC enforcement activity via consultative committees such as the Small Business and Franchising Consultative Committee and the

Agriculture Consultative Committee and in other forums such as the annual meeting for the Committee for Economic Development of Australia and the Australian Food and Grocery Leaders Forum. The [ACCC and AER Annual Report](#) and quarterly *ACCCount* publication also provide details of enforcement activity in the relevant period.

This year we published approximately 20 guides to assist small businesses in understanding and complying with their obligations under the CCA and the ACL. Approximately nine speeches were also given to assist small businesses. The details of these guides and speeches are at Appendix A.

We also released the [Draft Framework for Concerted Practices Guidelines](#) and [Draft Framework for Misuse of Market Power Guidelines](#) for public consultation. These relate to the Competition Policy Review law reform proposals. We also consulted on guidance materials in relation to the revised Horticulture Code of Conduct. This is further outlined in response to KPI 5.

In last year's self-assessment, we proposed developing internal guidelines for investigators on stakeholder engagement during investigations. This work has not yet been completed and will be a priority for 2017-18. The proposed Negotiation and Stakeholder training Program has been implemented with ACCC wide training rolled out in 2017 and scheduled for completion in 2018. Work has commenced on updating the *ACCC Accountability Framework for Investigations* which will be prioritised in 2017-18.

While not developing the specific guidelines as proposed, the Enforcement Division developed internal guidelines implementing changes to the use of its s.155 powers. Much of this guidance deals with engagement with businesses that are the subject of investigations and addresses some of the issues intended to be dealt with. Similarly, the Division continues to entrench more formalised practices adopted in recent years of approaching parties in appropriate matters, as investigations draw to a close, inviting further information to assist decision making.

Despite the improved survey results for this KPI this year compared to 2016, the ACCC acknowledges that there is still room for increased and more consistent communication in its investigations, particularly in relation to timing. To address this, the ACCC has prioritised its work in relation to this KPI and will also monitor its communications with parties involved in investigations in 2017-18.

In acknowledgement of the above developments and the significant improvement in survey results, we consider a Good rating is appropriate for this KPI, compared to a Satisfactory rating in 2016.

Overall rating: Good

KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed

In the business stakeholder survey, 55% of Enforcement respondents agreed that the ACCC's actions undertaken are proportionate to the regulatory risk being managed and 23% disagreed. This is a notable improvement on last year's result, when 38% agreed and 38% disagreed.

As noted in response to KPI 1 and KPI 2, the ACCC reviewed and updated its [Compliance and Enforcement Policy](#) in 2017 which sets out how the ACCC prioritises enforcement matters including the factors it takes into account.

Consistent with the *Compliance and Enforcement Policy*, the ACCC uses its compliance and enforcement tools to encourage compliance and the first priority is always to achieve the best possible outcome for the community and to manage risk proportionately. The ACCC conducts its investigations efficiently through its risk assessment approach which uses a range of graduated compliance and enforcement tools to address conduct and directs resources to conduct identified as high risk.

Where the ACCC assesses potential risk flowing from conduct as low, we are more likely to accept an administrative resolution from a company such as a commitment to stopping the conduct and remedying any detriment. Where the ACCC assesses conduct as particularly egregious (having regard to priority factors) and assesses the potential risk flowing from the conduct (and/or future conduct) as high, the ACCC is more likely to take legal action to stop the conduct and remedy any detriment.

The [ACCC Accountability Framework for Investigations](#) sets out the governance and management structures, systems and processes that enable the ACCC to exercise its powers in a transparent and accountable manner. Enforcement Division staff are required to adhere to this framework.

Each financial year, the Enforcement Division prepares a business plan detailing how the division intends to implement particular strategies and actions aligned with the [ACCC and AER Corporate Plan](#). These plans assess external and organisational risks associated with undertaking the ACCC's activities. These plans are not made publicly available but are accessible by all ACCC staff to assist them in working towards the ACCC's wider goals. The risks identified in this Division Plan fit within the wider risk management framework outlined in the Corporate Plan and they are updated on a quarterly basis to capture any new risks arising.

The ACCC's approach to the investigation of complaints and triage of matters is also outlined in the *ACCC Accountability Framework for Investigations*. This includes the assessment triage process where complaints are considered against the *Compliance and Enforcement Policy* for possible escalation for investigation. This also includes consideration of investigations by the ACCC's specialist Enforcement Committee consisting of the Chairman and some Commissioners. A more streamlined assessment triage process was implemented in 2016-17 and is outlined further in response to KPI 4.

The ACCC has also committed to performance indicators and targets that prescribe the level of competition and ACL interventions in priority areas or demonstrating priority factors set out in the *Compliance and Enforcement Policy*. These include 80% of competition enforcement interventions and 60% of ACL enforcement interventions in the identified priority areas and 90% of competition and ACL interventions in priority areas or demonstrating priority factors. These targets were met in 2016-17 and in particular, 100% of competition and ACL enforcement interventions were in priority areas or demonstrating priority factors.

In light of the above developments and the survey results, we believe a Good rating is appropriate for this KPI. Although this is the same rating achieved in 2015-16, in comparative terms the Enforcement Division improved its performance in relation to this KPI, and further continued development should lead to an increased rating next year.

Overall rating: Good

KPI 4 - Compliance and monitoring approaches are streamlined and coordinated

In the survey results, 42% of respondents agreed that the ACCC's compliance and monitoring approaches are streamlined and coordinated, while 23% disagreed. Again, this is a significant improvement from last year, when 29% agreed and 50% disagreed.

The ACCC's compliance and monitoring approaches are streamlined and coordinated through standardised processes that set out the approach to enforcement functions and powers. The ACCC's 'reason to believe' minutes that accompany the issue of s.155 notices and the guidelines on the use of these powers (along with the internal guidance) demonstrate a consistent approach to s.155 powers. In particular, these processes weigh up the value of the material sought with the time and cost burden on the recipient of a s.155 notice. Enforcement Division staff are required to operate in accordance with these processes and guidelines, including other operational guidelines in relation to investigations.

The ACCC has shifted to a more efficient exception reporting approach for s.87B compliance programs targeted to 'material failures' in compliance, as identified by an independent reviewer. If a material failure is identified, an opportunity is provided for the business to rectify these failures and the ACCC is kept informed with an opportunity to provide input as required. Past reporting processes for s.87B compliance involved ongoing reporting and review of compliance programs to identify possible compliance failures. This streamlined process has been incorporated into s.87B undertaking templates used in the Enforcement Division.

In order to avoid duplication and target resources to widespread detriment, the ACCC has ongoing engagements and regular meetings to discuss consumer protection and competition law issues. This includes regular meetings with other government agencies (Treasury, ASIC, state and territory consumer protection agencies) as well as consumer groups, industry associations and businesses.

Much of the coordinated ACL work is carried out through interagency and other committees. In 2016-17, the ACCC continued its work with Consumer Affairs Australia and New Zealand (CAANZ) and various committees as well as the Council of Australian Governments (COAG) Legislative and Governance Forum on Consumer Affairs, and public stakeholder committees including the Consumer Consultative Committee and the Small Business and Franchising Consultative Committee.

The ACCC continued its long engagement with the International Consumer Protection Enforcement Network (ICPEN) comprising of consumer protection agencies from over 60 countries. ICPEN aims to protect consumers' economic interests around the world, share information about cross-border commercial activities impacting consumers and encourage global co-operation among law enforcement agencies.

To achieve enforcement outcomes in competition, the ACCC works through our regional and international partnerships. In particular, it does this by engaging and sharing information with overseas regulators, helping to combat anti-competitive conduct in our region and cooperating with international investigations and proceedings.

In 2016-17 we continued to expand our capacity-building assistance to countries in South-East Asia through the Competition Law Implementation Program (CLIP). These cooperative relationships are a vital part of our international engagement and will be the platform from which future cross-border enforcement cooperation will grow.

The ACCC continued to work with the Organisation for Economic Cooperation and Development (OECD) in 2016-17 and to advocate for international cooperation in

competition investigations and proceedings as well as wider consideration of competition issues impacting on Australia and the region in its work with the OECD Competition Committee.

The ACCC also has a number of Memoranda of Understanding (MoUs) in place with other regulators to facilitate information sharing and the number of these increased in 2017. These are available at Appendix A. The ACCC also engages in joint investigations with other regulators where appropriate and joint litigation. For example, in relation to VET FEE-HELP Private Colleges matters, the ACCC worked with both NSW Fair Trading and the Commonwealth of Department of Education and Training in relation to four legal proceedings against colleges. ACL regulators also publish a large amount of joint information at consumerlaw.gov.au.

The Enforcement Division has also improved internal systems to better coordinate its operations in 2016-17. This includes increasing the intelligence contribution to the assessment triage process, as outlined in response to KPI 1, along with refining this process to consistently capture all complaints made. As stated in response to KPI 2, the ACCC will be updating its *Accountability Framework for Investigations* in 2017-18 and this will also incorporate these improvements.

As mentioned in response to KPI 1, in 2016-17 improvements have also been made to the ACCC's case management system to improve its functionality and reliability. This includes extracting better reports in relation to the portfolio of investigations and tracking the Division's progress against KPI targets. Internal measures have also been introduced on the ACCC intranet to better facilitate information sharing and collaboration within the Enforcement Division. These system improvements have enhanced knowledge management and coordination within the Enforcement Division.

In 2017-18, the Enforcement Division will continue to prioritise new ways to improve coordination and adopt a streamlined approach to its enforcement activities to achieve efficiencies. This includes releasing guidelines, as appropriate, in relation to its powers and/or legislative changes to assist businesses to understand how we will approach enforcement of the law, for example, in relation to the *Concerted Practices Guidelines* and *Misuse of Market Power Guidelines*. This also includes the development of internal guidelines for investigators on stakeholder engagement during investigations referred to in response to KPI 2.

In light of the above developments and the survey result, we believe a Satisfactory rating is appropriate for this KPI, compared to a Poor rating last year.

Overall rating: Satisfactory

KPI 5 - Regulators are open and transparent in their dealings with regulated entities

In the survey results, 59% of respondents agreed that the ACCC is open and transparent in its dealings with regulated entities and 22% disagreed. This was a marked improvement on last year's results when only 25% agreed and 42% disagreed.

As previously mentioned, there has been a continued effort in 2016-17 to consult widely with industry and other representatives in developing ACCC guidelines and policies. This includes as part of the strategic review process and the *Compliance and Enforcement Policy* as well as the *ACCC Guidelines – Use of Section 155 Powers* and *Section 155 Notices – A Basic Guide for Individuals and Small Business*.

In 2016-17, the ACCC invited the public to provide feedback in relation to its two competition law reform draft guidelines: the *Draft Framework for Concerted Practices Guidelines* and the *Draft Framework for Misuse of Market Power Guidelines*. These frameworks were published on the ACCC website and consumers, businesses and other stakeholders were invited to provide feedback about issues and topics that the ACCC could provide guidance on to assist them in understanding proposed legislative amendments to the CCA. There will be continued consultation with stakeholders in relation to these draft guidelines in 2017-18 prior to their final release.

The ACCC also held a public consultation in developing its *Media Code of Conduct* released in October 2016 which included input from business and consumer groups, the legal community and journalists.

The ACCC raised awareness of the forthcoming prohibition on excess credit card surcharges impacting on merchants by engaging with businesses to ensure they are aware of their obligations and publishing guidance materials on the ACCC website.

In 2016-17 the ACCC's Agriculture Unit undertook significant industry and public consultation in conducting its Cattle and Beef Market Study and Dairy Inquiry. Market participants and interested parties were invited to attend a number of public forums around Australia and share their views about competition and fair trading in these industries. This input contributed to the findings made in the [Cattle and Beef Market Study – Final Report](#) and will form part of the final report into the Dairy Industry due to be released in late 2017.

In 2017, guidance materials were developed in consultation with industry in relation to changes made to the *Horticulture Code of Conduct*. The ACCC is continuing to develop further guidance materials working with industry.

In 2017-18, the ACCC will also continue its approach to increased consultation and opportunities for feedback from stakeholders when it reviews the [ACCC Immunity and Cooperation Policy for Cartel Conduct](#) which will go through a public consultation process.

In light of the above developments and the survey result, we believe a Good rating is appropriate for this KPI compared to a Satisfactory rating last year.

Overall rating: Good

KPI 6 - Regulators actively contribute to the continuous improvement of regulatory frameworks

In the survey, 52% of respondents agreed that the ACCC actively contributes to the continuous improvement of regulatory frameworks, 19% disagreed. This was an improvement on last year's results, when 30% agreed and 40% disagreed.

During 2016-17 the ACCC continued to participate in the ACL Review as part of an ACL Review Working Group with Commonwealth, state and territory counterparts. The ACCC provided advice and support to the ACL Review Secretariat in development of the interim and final reports which were published by the Australian Government.

Similarly, the ACCC has worked constructively with the Government to implement the recommendations made by the Government in its Competition Policy Review. In 2017 the ACCC provided comments on the draft explanatory memorandum for the Competition and Consumer Amendment (Competition Policy Review) Bill 2017 before it was introduced to Parliament.

The ACCC also provided input into the Government's revision of the Horticulture Code of Conduct. The ACCC collaborated with an interdepartmental committee of Federal Government agencies to assist in developing the government response to the review's recommendation and made a submission as to how the Code should be amended. Guidance materials were also released after consultation with industry to highlight some of the major changes to the Code and are expected to be ongoing.

Other regulatory reform processes the ACCC was involved with in 2016-17 included the Free Range Egg Labelling Information Standard and the new Credit Card Excess Surcharge Fees Prohibition.

The ACCC continued engaging with regional, international and other stakeholders with a view to sharing views on the wider regulatory framework and approach, as outlined in response to KPI 4. This included the expansion of the CLIP program and building capacity in South-East Asia to develop, promote and enforce competition laws.

The ACCC also continued its work with the OECD in 2016-17 to improve regulatory practice and policy through its work including in examining best practice principles for the governance of regulators and how productivity and economic growth potential can be unlocked through better regulatory policies.

In light of the above developments and the survey result, a Good rating has been applied to this KPI. Although this is consistent with the rating achieved in 2016, in comparative terms the Enforcement Division improved its performance in relation to this KPI in 2017.

Overall rating: Good

Appendix A Evidence tables

Note: The evidence tables below outline the results for the evidence the ACCC committed to collecting in our [self-assessment methodology, measures and evidence document](#).

Mergers and Authorisation Review evidence

KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

M1.1	Clear guidance about Mergers' processes is provided on the ACCC website including in published guides to the Informal Merger Review Process and the Formal Merger Review Process. These publications contain guidance on expected timelines. Timelines for public reviews of proposed acquisitions are published on the ACCC's online public register and updated on an ongoing basis as the review proceeds.
M1.2	In 2016-17, 88% of merger matters considered were finalised by pre-assessment, exceeding the performance target of 80%.
M1.3	80% of merger matters only subject to Phase 1 of a public review were finalised within 8 weeks excluding time periods where information is outstanding, exceeding the performance target of 50%.
M1.4	94% (or 87.5% if we exclude unfinalised reviews) of merger matters subject to Phase 2 of a public review were finalised within 20 weeks (excluding time periods where information is outstanding), exceeding the performance target of 90%.
M1.5	100% of applications for authorisation were assessed for validity within statutory timeframes, which is the performance target. 100% of authorisations had determinations made within statutory timeframes, which is the performance target.
M1.6	100% of notifications were assessed for validity within statutory timeframes, which is the performance target.
M1.7	The General Manager or an experienced Director of the Adjudication Branch attended all Franchising Consultative Committee and Small Business Consultative Committee meetings. Note: These committees have merged to become the Small Business and Franchising Consultative Committee.

KPI 2- Communication with regulated entities is clear, targeted and effective

M2.1	Diagrams of stages and indicative timeframes for informal merger reviews, authorisations, exclusive dealing notifications and collective bargaining notifications are provided on the ACCC website in the Informal Merger Review Guidelines 2013 and Authorisation guidelines 2013. The ACCC and AER Annual Report and quarterly ACCCount publications contain ACCC activities and summarise completed processes. Indicative timeframes are provided on the ACCC's online public register and updated on an ongoing basis as reviews progress.
M2.2	100% of public register entries were published within 5 business days of a decision, which is the performance target.
M2.3	Out of the 3 Published Competition Assessments in 2016-17, 100% were published within 30 business days of decision, which is the performance target. A PCA for a merger review decision made on 4 May 2017 had not been published as at 30 June.

-
- M2.4** Market concerns letters were sent for every public review where significant competition concerns were identified. Market concerns letters were not sent in relation to completed mergers.
-
- M2.5** Over 86% of market inquiries letters were published within 5 business days of the matter commencing for public merger review, exceeding the performance target of 70%.
-
- M2.6** 100% of merger public review decisions were accompanied by a media release, exceeding the performance target of 70%.
-

KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed

- M3.1** All mergers pre-assessment decisions are initially considered by a General Manager and then by a Commissioner who is a member of the Mergers Review Committee (in most cases the chair of the Mergers Review Committee). In a small number of instances the Commissioner may refer a pre-assessment to the Mergers Review Committee.
- M3.2** The Mergers Guidelines which set out the policy and approach to merger assessment are available on the ACCC website.
-

KPI 4 - Compliance and monitoring approaches are streamlined and coordinated

- M4.1** Merger parties seeking clearance under the Informal Merger Review process are expected to provide sufficient information to the ACCC to allow it to commence a review. To assist merger parties in this regard the ACCC publishes guidance regarding the type of basic information that the ACCC requires. The ACCC requested any further information on an as-needed, matter-specific basis.
- Merger parties seeking clearance under the Formal Merger Review process are required to provide information with their application as prescribed by the CCA.
-
- M4.2** During 2016-17, information requests were made pursuant to a scaled approach, as set out in the [Informal Merger Review Process Guidelines](#).
-
- M4.3** During 2016-16, 17 out of 33 public reviews (52%) had a section 155 notice issued.
-
- M4.4** During 2016–17, of the 27 determinations made (which excludes minor variations), one included conditions (4%)
-

KPI 5 - Regulators are open and transparent in their dealings with regulated entities

- M5.1** All performance measurement information committed to in the [ACCC and AER Corporate Plan](#) for this function was published in the 2016-17 [ACCC and AER Annual Report](#).
-
- M5.2** The ACCC conducted further stakeholder meetings to discuss improvements to the merger review process including in relation to engagement with merger parties regarding section 155 notices.
-
- M5.3** During 2016-17, all informal public merger reviews were published on the ACCC online public register including details such as timeline, decisions, market definitions, statements of issues and summaries of decisions.
-
- M5.4** During 2016-17, all non-confidential section 87B undertakings were published after being accepted.
-

M5.5 The ACCC consulted with relevant stakeholders on the development of guidelines.

KPI 6 - Regulators actively contribute to the continuous improvement of regulatory frameworks

M6.1 Participation in the ICN and OECD has contributed to the improvement of the regulatory framework by ensuring that Australia benchmarks itself against international best practice in merger control, especially amongst OECD jurisdictions.

In addition the ACCC is able to benefit from the experience of other jurisdictions by drawing on their analytical techniques and process improvements.

M6.2 The ACCC attended the annual Law Council competition and consumer meeting. The ACCC also convened two ad hoc meetings with representatives of the Law Council to discuss process issues.

M6.3 MARD senior staff attended a range of fora including:

- the International Competition Network (ICN)
- the Organisation for Economic Co-operation and Development (OECD)
- RBB Economics Australian Conference
- 14th Annual Competition Law and Economics Workshop

These fora offer an opportunity to learn best practice from overseas counterparts, explain ACCC approaches and to enhance and develop working relationships with other regulators.

Small Business and Product Safety evidence

KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

C1.1 The ACCC reviews its compliance and enforcement priorities annually, while retaining the purpose in the Act 'to enhance the welfare of Australians by promoting competition and fair trading'. These priorities are the result of changing circumstances in the marketplace.

When we review the policy each year, we have traditionally sought input from consumer groups, industry ombudsmen, other regulators and other interested stakeholders.

For further detail, see the explanation under the Enforcement KPI, E1.1.

C1.2 In 2016-17 the ACCC identified a number of emerging market issues affecting consumers and small businesses, which we responded to by developing and publishing advice. In addition to the two reports detailed at C1.4, the ACCC developed guidance in relation to four emerging market issues, these were:

- Consumers with a disability. This included guidance for [consumers](#) on purchasing products or services as a National Disability Insurance Scheme participant or through state and territory disability support systems; and a guide to competition and consumer law: for [businesses](#) selling to and supplying consumers with disability
 - The sharing economy. This included guidance for [consumers](#), [platforms](#) and [traders](#) to understand their rights and obligations when participating in the sharing economy
 - Emerging scams. Including updated advice and information for consumers and businesses on [emerging scams](#)
 - New motor vehicles. This included guidance to assist consumers to understand fuel [consumption](#) labels on new motor vehicles.
-

C1.3 The ACCC has a documented program of review of business compliance resources, which was adopted in February 2016. Some resources are scheduled to be reviewed periodically. Other resources are to be reviewed as a result of legislative changes, or as a result of relevant enforcement or other legal outcomes.

In 2016-17 the program of review was revised to include new guidance (Country of origin labelling and the Horticulture Code) and updated to reflect the reviews conducted during the year (Online education programs, Oil Code of Conduct and Country of Origin claims and the ACL).

C1.4 In 2016-17 the ACCC published two reports on priority sectors about emerging issues affecting consumers in relation to [private health insurance](#) and [new car retailing](#) (issues paper).

C1.5 In the 2016–17 ACCC and AER Corporate Plan we set ourselves a target to review six mandatory product safety standards. We reviewed six safety standards (babies' dummies, basketball rings and backboards, children's nightwear, elastic luggage straps, moveable soccer goals, and sunglasses), and completed two multi-staged reviews that resulted in the ACCC recommending a mandatory standard for self-balancing scooters, and an interim ban on certain decorative alcohol fuelled burners.

C1.6 In 2016-17 we set ourselves a target to respond to 80% of routine product safety business queries within 7 days. This was an ambitious target given the ACCC's service charter ordinarily provides 15 business days to respond to queries.

In the second year of reporting against this target, the ACCC responded to 65% of routine product safety business queries within 7 days. While we did not achieve the target, it is an improvement on last year's result (43%).

C1.7 We resolved 78% of moderately complex product safety queries within 10 days (where ACCC view required) or 15 days (where it was necessary to confer with other regulators).

This exceeded the Corporate Plan target of 60%.

KPI 2- Communication with regulated entities is clear, targeted and effective

C2.1 The ACCC publishes a number of [consumer, small business and product safety guides and processes](#), including diagrams where appropriate. These are updated periodically. In 2016-17 the ACCC developed a series of operational process maps to show how we undertake consumer product safety work such as:

- responding to business enquiries on consumer product safety
- managing consumer product safety recalls
- developing and reviewing regulations (bans and mandatory safety standards)
- assessing and responding to reports about unsafe consumer products.

The process maps will be published on the Product Safety Australia website in early 2017–18.

C2.2 The ACCC published its 2017 [Compliance and Enforcement Policy](#) on 24 February 2017.

C2.3 In 2016-17 the ACCC tested 76.9% of its business guidance resources with businesses before publication. This is an increase on last year's result (53%). Testing involves sharing a draft copy of the resource with businesses. We test our guidance to ensure that it is clear and easy for businesses to understand, which in turn will improve compliance.

C2.4 In 2016-17 the ACCC produced 26 resources to help small businesses understand their rights and obligations under the Act. This is an increase on last year's results (8 resources).

C2.5 The ACCC's Infocentre conducts a customer satisfaction survey every two years. It was not conducted during 2016-17, but will be in 2017-18.

C2.6 The combined quality assurance results for Infocentre written responses and telephone calls was 76% of evaluations meeting or exceeding quality assurance methodology criteria, against the goal of 80%.

C2.7 In 2016-17, the ACCC served 13 372 small business contacts, exceeding the target of 12 000.

The Infocentre serves the Small Business telephone line (1300 302 021) as well as a dedicated web form for small business.

C2.8 The ACCC Infocentre documents briefing and training materials as a key business as usual function.

C2.9 In 2016-17 the ACCC gathered feedback from businesses via two surveys about ACCC compliance guidance. The average level of positive responses was approximately 77%, compared to the target of at least 75%.

C2.10 The ACCC offers a [free online education program](#) designed to help small businesses learn more about their rights and obligations under the Act. The small business education program contains 10 modules providing a broad overview of the key provisions of the Act.

During 2016-17 additional modules were added to the program about business-to-business unfair contract terms and country of origin labelling.

C2.11 In 2016-17 the ACCC published two [Small Business in Focus](#) reports on 26 July 2016 and 25 January 2017.

Small Business in Focus is a twice-yearly report providing a summary of the ACCC's work and activities amongst the small business and franchising sectors and updates on industry codes.

KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed

- C3.1** The ACCC's product safety risk management policies and procedures are accessible to businesses on [ACCC FOI website](#). The ACCC makes this information available in order to provide transparent guidance on the way we assess consumer product safety related risks.
-
- C3.2** The ACCC committed to publishing risk-based monitoring and surveillance priorities, including for product safety regulations. The [Product Safety Surveillance](#) page was uploaded to the Product Safety Australia website in January 2017. The Product Safety Surveillance page provides information in relation to current surveillance targets and results of recent surveillance activities. The 2017-18 Consumer Product Surveillance Plan will be published by September 2017.
-
- C3.3** In October 2014 the ACCC adopted an exception reporting model, where businesses are only required to notify the ACCC of any 'material failure' identified by an independent reviewer in a compliance program. This model is documented in the ACCC's [compliance program templates](#).
-
- C3.4** In the 2016-17 ACCC and AER Corporate Plan we set ourselves a target of at least 60% of business compliance projects being in priority areas identified in the Compliance and Enforcement Policy.
- In 2016-17 100% of business compliance projects were in priority areas identified in the Compliance and Enforcement Policy, including all business compliance projects aimed at ensuring the safety of products.
-
- C3.5** A review of matters referred to the ACCC's Under Assessment process revealed that 85% of matters referred related to at least one of the ACCC's current priority areas or factors. This demonstrates an appropriate level of consideration for the priorities while maintaining flexibility to escalate matters that may warrant consideration despite not being a current priority.
- During the year the Infocentre trialled a risk assessment methodology for the Under Assessment process. Consideration is being given to the merits of implementing this for the triage of all reports received.
-

KPI 4 - Compliance and monitoring approaches are streamlined and coordinated

- C4.1** In 2016-17 the ACCC coordinated or participated in the following surveillance and monitoring activities that involved the states and territories:
- household cots
 - toppling furniture
 - self-balancing scooters (hoverboards)
 - button batteries
 - ethanol burners
 - mini motor bikes (monkey bikes).
- Joint activities with the states and territories accounted for approximately 40% of surveillance and monitoring activities.
- C4.2** The ACCC signed a Memorandum of Understanding (MOU) with Health Canada in April 2017. The purpose of this MOU is to strengthen communication between the participants to enhance their ability to protect and promote human health and safety in relation to consumer products of the populations of their respective countries in carrying out their respective mandates.
-

KPI 5 - Regulators are open and transparent in their dealings with regulated entities

- C5.1** All performance measurement information committed to in the [ACCC and AER Corporate Plan](#) for this function was published in the 2016-17 [ACCC and AER Annual Report](#).
- C5.2** The ACCC held meetings of the Small Business and Franchising Consultative Committee on 14 October 2016 and 5 May 2017. Topics discussed in detail with committee members included current enforcement and compliance work of the ACCC, business-to-business unfair contract terms, excessive payment surcharges, country of origin labelling and the ACL review.
- C5.3** The ACCC conducted public consultation on the review of 24 mandatory product safety standards. We consult whenever we propose or review a product safety regulation to consider the impact on business and consumers and improve our policy formulation and decision-making. When conducting consultation for reviews of mandatory product safety standards the ACCC communicates with stakeholders via the ACCC's online Consultation Hub (<https://consultation.accc.gov.au/>).
- C5.4** In 2016-17 the ACCC developed 81% of business compliance resources in consultation with business, stakeholder groups and peak bodies, including our guidance for Country of Origin Labelling, business to business unfair contract terms and the horticulture code. This exceeded the target of 80% set out in the ACCC and AER Corporate Plan.
-

KPI 6 - Regulators actively contribute to the continuous improvement of regulatory frameworks

- C6.1** In February 2017 the ACCC approach to engaging with small businesses across Australia was revised to foster a greater understanding of the issues facing small businesses and the avenues the ACCC can utilise to communicate our messages with small businesses.
- The strategy outlines the key roles of ACCC personnel in implementing the national agenda, including the Deputy Chair (Small Business), Small Business and Industry Codes team, Consumer and Small Business Strategies general manager, Enforcement general managers and regional directors, as well as supportive roles played by Strategic Communications, the Infocentre, Library and Competition and Consumer Law Unit.
- This approach has been documented and is available internally for use by ACCC employees.
- C6.2** The ACCC undertakes its consultations pursuant to the published [ACCC Information Policy](#).
- In relation to market studies, the consultations are adapted according to the industry, issues and best practice approaches. In general, the consultation process for these studies is made available on the ACCC's website via its consultation hub and/or dedicated website pages.
- Our consumer product safety consultations for reviews about mandatory product safety standards included questions about costs to business and about our consultation strategy.
- All new regulations or changes to existing regulations must quantify the regulatory costs imposed on businesses, community organisations and individuals.
- In August 2016 we published a Consumer Product Safety Consultation Protocol, [How we consult on product safety regulation](#), based on a review of consultations for effectiveness and against the practices employed in other areas of the ACCC.
- C6.3** The ACCC chairs the Australasian Consumer Fraud Taskforce (ACFT), which formed in March 2005. The ACFT comprises over 20 government regulatory agencies and departments with responsibility for consumer protection against frauds and scams. The taskforce also partners with a range of community, non-government and private sector organisations in the effort to increase the level of scam awareness in the community. This
-

partnership allows us to improve our effectiveness in protecting consumers from harm.

The ACCC hosted ACFT members meetings on 21 October 2016, 24 February 2017 and 28 April 2017. These meetings focused on preparations for National Consumer Fraud Week 2017, which ran from 15 to 19 May 2017. The focus of this year's campaign was on social media scams and encouraged users of social media to be particularly alert for dating and romance scams and fake trader scams.

As part of this year's National Consumer Fraud Week, the taskforce promoted the annual Targeting Scams report: [Targeting scams: Report of the ACCC on scams activity 2016](#).

C6.4 As at 30 June 2017 the ACCC had 6643 subscribers to the Small Business Information Network and 2513 subscribers to the Franchising Information Network. This represented a 9.4% increase in Small Business subscribers from 30 June 2016, and a 16.7% increase in Franchising subscribers. The ACCC website provides a description of the type of communications sent to [the ACCC Small Business Information Network](#) and [ACCC Franchising Information Network](#).

C6.5 From 19 to 23 September 2016 the ACCC participated in two Buyer Training Events in China, organised by the US CPSC. The CPSC has conducted similar events in both China and Vietnam, partnering with Health Canada and European Commission. This was the first time the ACCC was invited to attend a buyer training event. There was significant attendee interest in Australian requirements for the supply of safe products, with a number of attendees saying they appreciated the ACCC attending. Greater understanding of Australian product safety requirements should improve the safety of products supplied in Australia.

In November 2016 a representative from the ACCC attended the OECD Working Party meeting in Paris, France, and the International Consumer Product Health and Safety Organisation (ICPHSO) in Brussels, Belgium.

In April 2017 the ACCC participated in the OECD Product Safety Bureau Meeting in Paris, France. The OECD Consumer Product Safety Bureau meeting is the only global forum for regulators on consumer product safety.

This meeting and the Working Party pre-meeting enables the ACCC to keep abreast of current product safety issues and policy directions, develop and maintain networks with other regulators and liaise efficiently with counterpart regulators in overseas jurisdictions to ensure the proper functioning of Australia's regulatory framework.

Infrastructure Regulation evidence

KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

I1.1 The ACCC maintains a [two-year planning document](#) that details planned activities and important milestones to assist business in their own planning. This document was revised and re-published on 25 July 2017.

I1.2 The ACCC has published a [document](#) on the ACCC website that notes how many infrastructure regulation matters were open at the beginning of the financial year and were initiated over the course of the year. The document also lists the distribution of ages of matters left 'open' at the end of the year. The latest version of this document was published on 25 July 2017.

I1.3 The ACCC oversees a number of stakeholder forums which contribute to the ACCC's understanding of the operating environment of the businesses it regulates and emerging issues that affect the sector.

Utility Regulators Forum

The Utility Regulators Forum (URF) brings together Commonwealth, state and territory economic regulators, and the New Zealand Commerce Commission, to facilitate information exchange, consistency in the application of regulatory functions, and the review of new ideas about regulatory practices.

The URF convened on 10 June and 11 November 2016, and on 25 to 26 May 2017.

Infrastructure Consultative Committee

The Infrastructure Consultative Committee (ICC) facilitates discussions on broad issues of infrastructure policy and regulation. A total of 21 members represent a variety of infrastructure sectors.

The ICC is chaired by the ACCC Chairman, and me on 3 November 2016 and 29 May 2017.

Fuel Consultative Committee

The Fuel Consultative Committee (FCC) promotes constructive dialogue between the ACCC, the fuel industry and motoring organisations. FCC meetings are held twice a year and are chaired by the ACCC Chairman.

In November 2016 and May 2017 the ACCC hosted FCC meetings which covered a range of matters including developments in the Australian downstream fuel supply chain, views on ACCC fuel monitoring activities, the uptake of internet apps for fuel prices and the impact of government regulation.

Communications sector market study forum

The ACCC organised a two day forum for stakeholders to discuss a number of matters raised during the course of the communications sector market study. The forum was held on 3-4 July 2017.

The wholesale telecommunications consultative forum (WTCF) was not held during 2016-17. The WTCF was principally an initiative to address specific issues with Telstra's migration plan as they arise.

I1.4 The ACCC produces a number of monitoring reports that examine how specific sectors are operating. These reports are generally required under legislative directions.

Airport monitoring report

The [Airport monitoring report 2015-16](#) presents the results of the ACCC's monitoring of the quality, prices, costs and profits relating to the supply of aeronautical services and facilities and of car parking services supplied at Brisbane, Melbourne (Tullamarine), Perth and

Sydney (Kingsford Smith) airports. The 2015-16 report was published on 6 March 2017.

Container stevedoring monitoring report

The ACCC is required to monitor prices, costs and profits of the container stevedores at the ports in Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney. As part of this role, the ACCC releases an annual [Container stevedoring monitoring report](#). The eighteenth annual report covering the year 2015-16 was published on 7 November 2016.

Telecommunications reports

Each financial year, the ACCC is required to report to the Minister for Communications and the Arts on:

- competition in the Australian telecommunications sector, and
- price changes for telecommunications services in Australia

The 2015-16 [reports](#) were tabled in Parliament and published on the ACCC's website on 8 March 2017.

Reports on Telstra's compliance with its Structural Separation Undertaking

The ACCC is required to monitor and report each financial year on breaches by Telstra of its Structural Separation Undertaking. The 2015-16 [annual compliance report](#) was published on 27 April 2017.

Water monitoring report

The annual [water monitoring report](#) provides information on regulated water charges, transformation arrangements, termination of network access, compliance with the Commonwealth Water Market and Water Charge Rules, and related issues. The 2015-16 report was published on the ACCC's website on 21 June 2016.

Fuel reports

The ACCC [fuel reports](#) are released quarterly and outline fuel prices in all capital cities and around 190 regional locations across Australia. For this financial year reports were released in August and November 2016, February and June 2017. In addition, the ACCC has undertaken detailed market studies on selected regional markets. Reports on fuel markets in Launceston, Armidale and Cairns were released in July 2016, November 2016 and May 2017 respectively.

Bulk wheat ports monitoring report

The ACCC released the first [bulk wheat ports monitoring report](#) on 16 December 2016. The report examines the nature and concentration of export activity and capacity allocation in Australia's bulk wheat port terminals.

11.5 The ACCC/AER held its annual Regulatory Conference on 4-5 August 2016, with over 400 delegates attending from Australia and around the world. The theme of the event was *The future of economic regulation: does the conventional wisdom still apply?* Key sessions explored how regulators can adjust regulatory settings as technology and markets evolve, and how regulators themselves can learn from experience.

11.6 The ACCC made 6 regulatory decisions (which includes decisions subject to statutory timeframes). Of the 6 decisions:

- 5 were completed within standard statutory timeframes, and
- 1 was subject to 'stop the clock' or extension provisions.

The major reason for extending the timeframe was to align the access determinations of two similar telecommunications services.

KPI 2- Communication with regulated entities is clear, targeted and effective

- I2.1** Stakeholders can access diagrams on the ACCC's website outlining typical stages and indicative timeframes for the following regulatory processes:
- [Declaration under Part XIC](#)
 - [Anticompetitive conduct investigations under Part XIB](#)
 - [Access determinations under Part XIC](#)
 - [Record-keeping rules under Part XIB](#)
 - [Access undertaking assessments under Part IIIA](#)
 - [Price Notifications under Part VIIA](#)
-
- I2.2** All major regulatory determinations made during 2016-17 were accompanied by a decision document explaining the reasons for the decision.
- While the format of these documents varies depending on the nature of the matter, they typically include details of:
- the legal framework the ACCC must apply in reaching its decision
 - the views and submissions of stakeholders that have been gathered during public consultation
 - the ACCC's analysis of relevant issues, including consideration of stakeholder submissions, and
 - the ACCC's decisions and reasons for the conclusions reached.
-

KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed

- I3.1** In general, the ACCC does not have the ability to impose new regulation, and instead administers and enforces regulation that has been put in place by government.
- In some cases the ACCC does have the ability to 'declare' certain telecommunications services such that they become subject to regulation, and to make 'record-keeping rules' (RKR) that oblige entities to maintain certain records. Also, where governments have decided that regulation should be imposed and the ACCC is given the task of administering that regulation, the ACCC can have influence over the form it takes.
- The ACCC has guides (available on the website) that explain the conceptual framework it applies in these situations:
- [Guideline to the declaration provisions for telecommunications services under Part XIC of the CCA](#)
 - [Part IIIA access undertaking guidelines](#)
 - Guides on making RKR under Part XIB of the CCA
-
- I3.2** The ACCC maintains a [document](#) on the ACCC website that categorises regulations by those that have expiry dates or sunset clauses.
-
- I3.3** In 2016-17 all major regulatory decisions/determinations provided for a full consultation process, allowing businesses and the public an opportunity to make submissions regarding the appropriate level of regulation that reflects the regulatory risk being managed.
-
- I3.4** As outlined in response to I1.3 and I5.2, the ACCC extensively engages with stakeholders as part of regulatory decision-making. The following list provides some examples of the interactions the ACCC had with relevant industry sectors outside of formal decision-making processes during 2016-17 (in addition to the Consultative Committees identified in I1.3):
-

-
- fortnightly meetings/consultation with NBN Co
 - regular meetings with Telstra
 - regular meetings with the Telecommunications Industry Ombudsman and the Australian Communications and Media Authority (ACMA) to discuss consumer issues
 - engagement with individual operators of irrigation infrastructure where we have concerns about compliance with the water charge rules, or where the operator initiates contact with a query related to the ACCC
 - engagement with Commonwealth agencies regarding the water sector as part of the Water Market Information Contact Group
 - meetings with airport and container stevedoring industry stakeholders as part of preparations for annual monitoring reports
 - meetings with other stakeholders in the aviation, maritime, post and road sectors on an ad hoc basis as issues arise
 - regular liaison with Australian Rail Track Corporation, user groups and individual stakeholders in person and through teleconferences.
-

KPI 4 - Compliance and monitoring approaches are streamlined and coordinated

I4.1 Where appropriate to address particular market issues, the ACCC will consider implementing a RKR under section 151BU of the CCA. The CCA requires that in considering this course of action the ACCC must not exercise its powers unless the records contain, or will contain, information that is relevant to a number of listed purposes. The ACCC must have regard to the legitimate commercial interests of the carrier or carriage service provider concerned.

The ACCC periodically reviews information collected under the RKRs and where appropriate, makes changes to refine administrative process and ensure that the information collected continues to be relevant.

In recent years, the ACCC has reviewed information collected under a number of ACCC RKRs and has reduced or removed some reporting requirements. For example, the ACCC revoked bundled services RKR and accounting separation RKRs in recent years.

During the year the ACCC initiated reviews of the Telstra Exchange Facilities RKR and the NBN Services in Operation RKR. The reviews will examine the ongoing requirement for the scope of the information collected under the RKRs.

The ACCC also revised the Australia Post RKR in July 2016 to remove certain reporting obligations from Australia Post.

I4.2 The ACCC and the ACMA collaborate on a range of activities from specific, mandatory legislative requirements to voluntary consultation. Examples from 2016-17, include:

- Quarterly Regulators Roundtable meetings (staff level) and quarterly Consumer Roundtable meetings (Senior Executive Service and Commissioner level) on telecommunications consumer issues
- Australasian Consumer Fraud Taskforce: Voluntary consultation and collaboration (together with a number of other agencies) on joint and coordinated activities addressing consumer fraud issues, especially scams
- Engagement through the ACMA's Consumer Consultative Forum
- Sharing of information for the purposes of the ACCC's annual reports on competition in the telecommunications market and changes in prices for telecommunications services.

In December 2016 the ACCC and ACMA also signed a revised memorandum of

understanding.

14.3 When preparing monitoring reports, the ACCC's normal practice is to use existing available information before requiring industry to report additional data.

In addition to information collected from RKR's, the ACCC's annual telecommunications reports under Division 11 and Division 12 of Part XIB of the CCA are compiled using a range of existing information and data sources, including from:

- the Australian Bureau of Statistics
- the Australian Communications and Media Authority, and
- data plans and other consumer information from telecommunications providers' websites, and physical shopfronts.

In performing its water monitoring role, the ACCC gathers information through both formal and informal processes. Informal information gathering activities include:

- examination of information provided by infrastructure operators on their websites, such as schedules of charges and transformation policies
- data collection and compilation from direct liaison with irrigators, infrastructure operators and industry specialists, such as water brokers and lawyers, and
- examination of information published or provided to the ACCC by other government agencies, such as the Bureau of Meteorology.

Formal information gathering involves annual data collection in the form of requests for information (RFIs) from infrastructure operators, Basin State Government departments and water authorities.

The ACCC has a range of standing or directed formal prices surveillance and monitoring roles, given to the ACCC under Part VIIA of the CCA. The ACCC seeks to ensure that information or documents sought from external parties is targeted and relates directly to the performance of these roles.

The ACCC also has monitoring oversight under other legislation. The ACCC monitors airport quality-of-service under the *Airports Act 1996* and Australia Post's reserved letter services under the *Australian Postal Corporation Act 1989*. The information obtained in each of these cases is limited to that necessary and based on previously established record keeping precedence.

During the year the ACCC began an internal review into the scope and content of the annual report on price changes for telecommunications services. The review has considered how data collection processes can be streamlined and how to incorporate greater use of publicly available information.

KPI 5 - Regulators are open and transparent in their dealings with regulated entities

15.1 All performance measurement information committed to in the [ACCC and AER Corporate Plan](#) for this function was published in the 2016-17 [ACCC and AER Annual Report](#).

15.2 As outlined under I2.2, the ACCC ensures that all major regulatory inquiries provide stakeholders an opportunity to make written submissions. In 2016-17 all major regulatory inquiries provided an opportunity to make written submissions.

15.3 In 2016-17 all public submissions were published on the ACCC website and the views raised in those submissions were addressed in the relevant decision documents.

The ACCC is committed to transparent and accountable administration in order to enhance the confidence of stakeholders in the effectiveness of the ACCC's regulatory decision making processes. The ACCC recognises the importance of addressing the views of stakeholders in its decision documents, and seeks to ensure that all parties are treated

openly, consistently and fairly.

- 15.4** As part of developing the following guidelines (which were published during 2016-17), the ACCC consulted with industry stakeholders:
- [Guideline to the declaration provisions for telecommunications services under Part XIC of the CCA](#)
 - [Part IIIA access undertaking guidelines](#)
-

KPI 6 - Regulators actively contribute to the continuous improvement of regulatory frameworks

- 16.1** In addition to the consultative committees described under 11.3, the ACCC engages with various Communications Alliance working groups and forums to assist regulated businesses on a range of matters, such as:
- Copper Migration Process and Solutions
 - NBN FTTB/N and HFC Migration Processes
 - Review of future number portability requirements
 - 'Internet of Things' Workshops.

The ACCC held a forum on 3-4 July 2017 to further explore specific matters raised during the communications sector market study with a broad range of stakeholders.

- 16.2** The ACCC actively participates at the Organisation for Economic Co-operation and Development (OECD), including through the Network of Economic Regulators (NER). Our engagement on regulatory policy is intended to contribute to the design and delivery of effective, efficient and equitable regulatory frameworks. In November 2016 the ACCC attended a NER Forum in Paris, France. The key topic of the forum was regulating disruptive business models and specifically new entrants in network infrastructure.

During the year, the ACCC has also engaged with national regulatory authorities overseas to share experiences and information regarding best practice approaches to infrastructure regulation. Key engagements have included:

- regular liaison meetings with the New Zealand Commerce Commission on regulatory issues
 - meeting representatives from Changi Airport in Singapore to discuss airport regulation
 - hosting a delegation from the Vietnam telecommunications regulator seeking to understand Australia's approach to telecommunications regulation
 - discussions with various international regulators with experience in similar programs while developing the Broadband Performance Monitoring and Reporting Program
 - discussing our petrol monitoring and market studies functions with the New Zealand Ministry of Business, Innovation and Employment
 - participating in the international regulators forum conducted by International Institute of Communications (IIC Regulators Forum) in October 2017 in Bangkok, Thailand
 - discussions with the Brazilian competition authority on competition in cash equities.
-

Enforcement evidence

KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

E1.1 Each year, we conduct a strategic review of the ACCC's compliance and enforcement priorities. As part of the annual review, an environmental scan is conducted to identify any new or emerging issues that require ACCC intervention for the following year. The scan involves gathering and reviewing information from a wide variety of sources including: ACCC staff and Commissioners, external stakeholders (by survey and direct interview) such as businesses, government departments, consumer groups and industry associations, Infocentre contacts, and international counterparts. Additionally, relevant market studies are reviewed, media coverage is examined and the parliamentary landscape is taken into consideration.

The outcomes of the strategic review are reflected in the updated ACCC Compliance and Enforcement Policy which was released on 24 February 2017.

E1.2 In 2016-17 75% of initial competition investigations were completed within 3 months, exceeding the performance target of 60%.

E1.3 In 2016-17 65% of in-depth competition investigations were completed within 12 months, exceeding the performance target of 60%.

E1.4 In 2016-17 88% of initial ACL investigations were completed within 3 months, exceeding the performance target of 80%.

E1.5 In 2016-17 81% of in-depth ACL investigations were completed within 12 months, exceeding the performance target of 80%.

KPI 2- Communication with regulated entities is clear, targeted and effective

E2.1 The ACCC committed to reviewing its protocol for engagement with businesses (both complainants and those subject to investigation) regarding the status of investigations. This review is not yet complete, but will be finalised in 2017. The ACCC conducted high level audits in 2016. These audits revealed appropriate engagement with the complainant and subject business, particularly in the period prior to commencing any enforcement action. However, there continues to be scope for a more consistent approach to communication in investigations, while recognising that each investigation and the parties involved will have different requirements.

With the completion of the review in 2017, more detailed audits will be conducted.

E2.2 A diagram is in the process of being published on the ACCC website outlining the typical stage of competition and consumer investigations and indicative timeframes for these stages.

E2.3 In 2016-17 guidance for small to medium sized businesses on understanding and responding to ACCC compulsory notices was published. This guidance includes [Section 155 notices - A Basic Guide for Individuals and Small Business](#) and [ACCC Guidelines - Use of Section 155 Powers](#). This guidance was prepared in consultation with the business community, including the Law Council of Australia's Small to Medium Enterprise Committee and the Small Business and Franchising Consultative Committee.

E2.4 In 2016-17, the ACCC published the following guides to assist businesses in understanding and complying with their obligations under the CCA and the ACL:

- [Franchising – what you need to know, 21 June 2017](#)
 - [Payment surcharges – only charge what it costs you, 7 June 2017](#)
-

-
- [Unfair contract terms: New protection for small business, 1 June 2017](#)
 - [Enforcement of the Horticulture Code of Conduct, 24 April 2017](#)
 - [Country of Origin Food Labelling, 24 April 2017](#)
 - [Country of Origin Claims and the Australian Consumer Law, 24 April 2017](#)
 - [Country of Origin Food Labelling Factsheet, 18 April 2017](#)
 - [Free Online Education Programs, 6 April 2017](#)
 - [How the Horticulture Code helps you, 1 April 2017](#)
 - [Example Horticulture Produce Agreement – Merchant, 31 March 2017](#)
 - [Example Horticulture Produce Agreement – Agent, 31 March 2017](#)
 - [Compliance and Enforcement, 3 February 2017](#)
 - [Unfair terms in small business contracts, 10 November 2016](#)
 - [The sharing economy: a guide for private traders, 3 November 2016](#)
 - [Platform operators in the sharing economy, 3 November 2016](#)
 - [ACCC Guidelines – use of s.155 powers, 7 September 2016](#)
 - [Section 155 notices – a basic guide for individuals and small business, 7 September 2016](#)
 - [Small business self-assessment checklist, 2 August 2016](#)
 - [ACCC in Agriculture: what you need to know, 29 July 2016](#)
 - [ACCC in Agriculture: a snapshot, 29 July 2016.](#)
-

E2.5 In 2016-17 ACCC Commissioners and staff gave a number of speeches to assist businesses in complying with the CCA and the ACL. Transcripts of some of these speeches are published on the ACCC's website and include :

- [Welcome address, ACCC and AER Regulatory Conference, Rod Sims, 27 July 2017](#)
 - [Ceteris paribus, Competition is King, Rod Sims, 21 July 2017](#)
 - [Consolidation in agriculture: impacts to the farm, research and agribusiness, Commissioner Mick Keogh, 18 July 2017](#)
 - [The role of the ACCC in restoring faith in free markets, Rod Sims, 6 May 2017](#)
 - [CCA compliance in interesting times, Rod Sims, 24 February 2017](#)
 - [Grocery update: AFGS Leaders Forum, Rod Sims, 8 November 2016](#)
 - [Keynote Address: RBB Economics Conference, Rod Sims, 27 October 2016](#)
 - [Enhancing Competition in Retail, Rod Sims, 28 September 2016](#)
 - [Chairman's address to the Law Council Workshop, Rod Sims, 5 August 2016](#)
-

KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed

E3.1 After its annual strategic review process, the ACCC finalises its Compliance and Enforcement Policy and it is released in February each year. In 2017, it was released on 24 February 2017: [ACCC Compliance and Enforcement Policy](#).

E3.2 The [ACCC Accountability Framework for Investigations](#) outlines the governance and management structures, systems and processes that enable the ACCC to exercise its

powers as a competition and consumer agency in a transparent and accountable manner, to which all ACCC staff adhere.

- E3.3** The ACCC's approach to investigation of complaints, triage of matters and the compliance and enforcement priorities are published in the [ACCC Accountability Framework for Investigations, ACCC's Service Charter](#) and [ACCC Compliance and Enforcement Policy](#).
- E3.4** In 2016-17, 100% of competition enforcement interventions were in the priority areas outlined in the [ACCC Compliance and Enforcement Policy](#), exceeding the 80% performance target.
- E3.5** In 2016-17, 100% of competition enforcement interventions were in the priority areas or demonstrated priority factors outlined in the [ACCC Compliance and Enforcement Policy 2017](#), exceeding the 90% performance target.
- E3.6** In 2016-17, 65% of ACL enforcement interventions were in the priority areas outlined in the [ACCC Compliance and Enforcement Policy](#), exceeding the 60% performance target.
- E3.7** In 2016-17, 100% of ACL enforcement interventions were in the priority areas or demonstrated priority factors as outlined in the [ACCC Compliance and Enforcement Policy](#), exceeding the 90% performance target.
-

KPI 4 - Compliance and monitoring approaches are streamlined and coordinated

- E4.1** Section 155(1) of the CCA provides the ACCC with the power to obtain information, documents and evidence if the Commission, Chairperson or Deputy Chairperson has 'reason to believe' that a person is capable of furnishing information, producing documents or giving evidence relating to a matter that constitutes or may constitute a contravention of the CCA. Section 155 notices are prepared by ACCC officers for consideration by the Commission, Chairperson or Deputy Chairperson and ACCC officers articulate the relevant 'reason to believe' in a minute that accompanies the s.155 notice. The minute will address the following preconditions to the proper exercise of the s.155 power:
- the matter that constitutes, or may constitute, a contravention of the CCA
 - the facts and circumstances leading to the 'reason to believe' that a person is capable of providing information, documents or evidence, and
 - consideration of the burden imposed by the notice on the recipient. This includes facts establishing that the searches and enquiries required are not disproportionate to the value of the of the required material to the ACCC's investigation and that the return date allows a reasonable period of time for the recipient to undertake the necessary searches and enquiries.
- The 'reason to believe' minute is reviewed extensively within the ACCC including review by the Competition and Consumer Law Unit, General Managers and Executive General Managers, prior to being considered by the relevant signatory.
- E4.2** The ACCC has a large number of Memoranda Of Understanding with other enforcement and regulatory agencies including:
- Australian Consumer Law regulators (all states and territories)
 - Australian Securities and Investments Commission
 - Australian Prudential Regulation Authority
 - Commonwealth Director of Public Prosecutions
 - Heads of Commonwealth Operational Law Enforcement Agencies
 - Food Standards Australia New Zealand
-

-
- Australian Crime Commission
 - Energy and Water Ombudsman (various states)
 - The State and Territory Offices of the Health Consumer Complaints Commission
 - Australian Customs and Border Protection Service
 - Telecommunications Industry Ombudsman
 - The Department of Infrastructure and Regional Development
 - The Independent Pricing and Regulatory Tribunal
 - Australian Health Practitioner Regulator Agency

These memoranda identify some of the ongoing engagement between regulators. The ACCC is increasingly undertaking joint investigations and communications with other regulators. This is highlighted through media releases and joint publication. In particular, ACL regulators publish a large amount of joint information at: consumerlaw.gov.au

-
- E4.3** The ACCC has adopted an exception reporting approach to monitoring compliance with court enforceable s.87B undertakings. Businesses are required to:
- engage an independent reviewer to undertake an annual review of their compliance with the compliance program
 - ensure that the independent reviewer notifies the ACCC where they have identified a 'material failure' in the compliance program.

If the ACCC identifies a trend in consumer complaints in relation to the trader that has provided a s.87B undertaking to the ACCC, we are able to exercise our discretion to request copies of compliance program documents and review relevant reports.

KPI 5 - Regulators are open and transparent in their dealings with regulated entities

-
- E5.1** On 24 February 2017, the ACCC published the [ACCC Compliance and Enforcement Policy](#).

- E5.2** All performance measurement information committed to in the [ACCC and AER Corporate Plan](#) for this function was published in the 2016-17 [ACCC and AER Annual Report](#).

-
- E5.3** The section 155 guidance now published on the ACCC website titled [Section 155 notices - A Basic Guide for Individuals and Small Business](#) and [ACCC Guidelines - Use of Section 155 Powers](#) was prepared in consultation with the business community, including the Law Council of Australia's Small to Medium Enterprise Committee and the Small Business and Franchising Consultative Committee.

The [ACCC Compliance and Enforcement Policy](#) was developed through the Strategic Review Process which included a public survey inviting input on emerging issues from consumers, businesses (including small businesses), business representatives and others.

In relation to the Competition Policy Review, the ACCC released two draft frameworks for public consultation inviting feedback from consumers, businesses and other stakeholders about issues and topics the ACCC can provide guidance on to assist them in understanding proposed legislative changes to the concerted practices and misuse of market power provisions of the CCA. These are the [Draft Framework for Concerted Practices Guidelines](#) and the [Draft Framework for Misuse of Market Power Guidelines](#). Guidance was also published in relation to revisions to the Horticulture Code of Conduct after consultation with industry.

KPI 6 - Regulators actively contribute to the continuous improvement of regulatory frameworks

- E6.1** The ACCC publishes a quarterly report titled [ACCCount](#) that provides an overview of the ACCC's activities for the quarter including its activities in the enforcement of the CCA, ACCC participation in policy forums, engagement with other regulators (international and domestic) on best practice competition and consumer protection enforcement; and engagement.
-

ACCC-wide evidence

KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

A1.1 The ACCC received a four star rating in the Global Competition Review's [2017 rankings](#) of the world's anti-trust authorities, which places the agency in the 'Very Good' category. Only seven agencies received a higher rating than the ACCC.

A1.2 The ACCC has five committees to help streamline the Commission's decision making:

- the Enforcement Committee, which meets weekly and oversees the enforcement program
- the Mergers Committee, which meets weekly and considers mergers matters
- the Communications Committee, which meets fortnightly and oversees functions on communications
- the Infrastructure Committee, which meets fortnightly and oversees access and price monitoring issues, and
- the Adjudication Committee, which meets weekly and considers authorisations and notifications.

These committees comprise a sub-set of Commissioners who have expertise on particular types of matters. Executive General Managers, General Managers and Senior ACCC Counsel also attend these meetings to provide expert advice. In most cases, recommendations from these committees are referred to the Commission for decision.

KPI 2- Communication with regulated entities is clear, targeted and effective

A2.1 The ACCC released its [Media Code of Conduct](#) in October 2016. The Code outlines the protocols for public comment about enforcement activities, balancing fairness to individuals, companies and businesses involved in ACCC investigation and enforcement action with informing the public about the ACCC's enforcement work and being transparent about what action the ACCC is taking and why.

The ACCC held a public consultation in developing the Code. This included input from business and consumer groups, the legal community and journalists.

A2.2 The ACCC issued four quarterly editions of *ACCCount* during 2016-17. *ACCCount* details the ACCC's activities in the enforcement of the Act, merger reviews, compliance actions, adjudication issues, economic regulation and international involvement. Each edition of *ACCCount* is available to the public on the [ACCC website](#). A copy is also sent directly to external stakeholders including businesses and government representatives. There are currently 447 recipients on this distribution list.

KPI 3 - Actions undertaken by regulators are proportionate to the regulatory risk being managed

A3.1 The ACCC has published the Government's Statement of expectations and our Statement of intent on the ACCC website.

The [Statement of expectations](#) outlines the Government's expectations about the role and responsibilities of the ACCC, its relationship with the Government, issues of transparency and accountability and operational matters.

The [Statement of intent](#) is the ACCC's response to the expectations outlined by the Government.

KPI 4 - Compliance and monitoring approaches are streamlined and coordinated

A4.1 Outlined at conclusion of this appendix – ACCC compulsory information gather powers 2012-13 to 2016-17.

KPI 5 - Regulators are open and transparent in their dealings with regulated entities

A5.1 The ACCC's dispute management policy was retired on 30 June 2016. The [ACCC Compliance and Enforcement Policy](#), which is updated annually, outlines the way in which the ACCC prioritises enforcement matters and exercises discretion. This policy also outlines the ACCC's compliance and enforcement strategy and the outcomes sought.

The [ACCC Service Charter](#) is also available to the public and sets out the role of the ACCC and standard of service stakeholders can expect to receive from us. Our service charter also sets out:

- what stakeholders should do if they wish to make a complaint about a business or market issue
 - what stakeholders should do if they wish to make a complaint about their dealings with the ACCC, and
 - what the ACCC asks of stakeholders.
-

KPI 6 - Regulators actively contribute to the continuous improvement of regulatory frameworks

A6.1 In accordance with the ACCC's commitments detailed in our 2014 Statement of intent, we are committed to working collaboratively with Treasury and to ensuring that the ACCC's responsible Minister is kept informed about major decisions and activities. We are also committed to providing Treasury and the responsible Minister with timely information that contributes to the continuous improvement of the regulatory framework.

The ACCC has a procedures protocol setting out the process for liaising with Ministers' offices. In accordance with the protocol, the ACCC notifies the office of the responsible Minister about key announcements and decisions, particularly those with the potential to have a significant impact on market participants. The ACCC Executive Office is responsible for ensuring that the responsible Minister's office is informed on key announcements and decisions in a timely and accurate manner. Where possible, the Executive Office will also provide the Minister's office with an advance copy of the media release that accompanies a significant matter.

Formal and informal briefing content provided to Ministers' offices is copied to the relevant areas at Treasury and relevant Commonwealth department to ensure they are aware of the matter and the information that is being provided to the Minister's office.

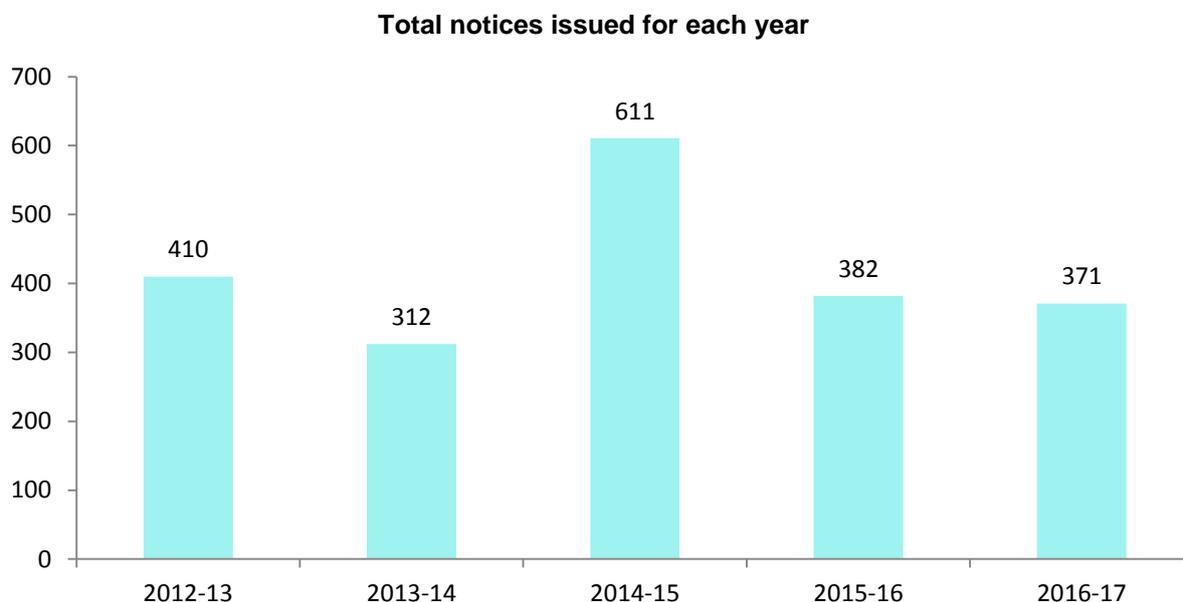
A4.1 Use of compulsory information gathering powers 2012-13 to 2016-17

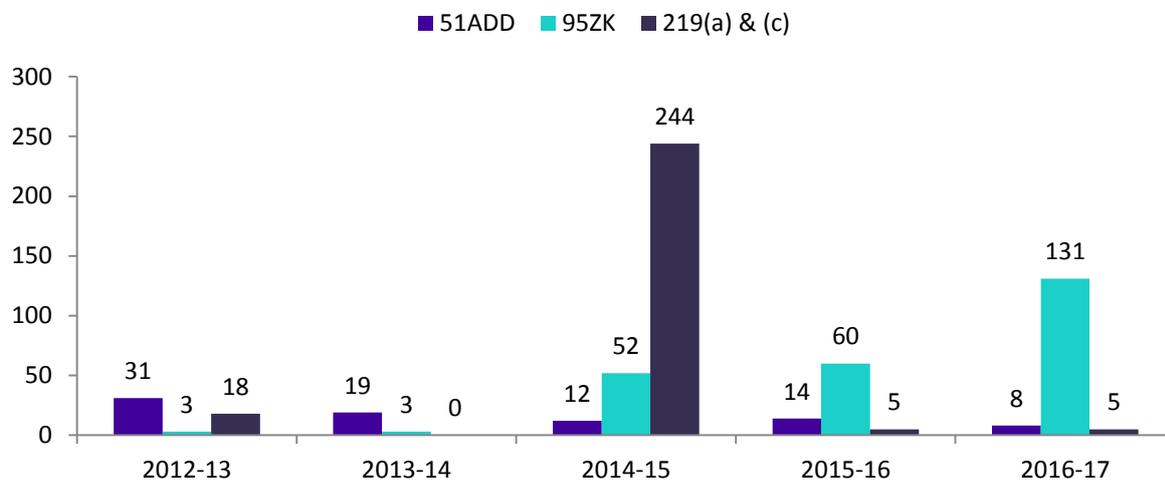
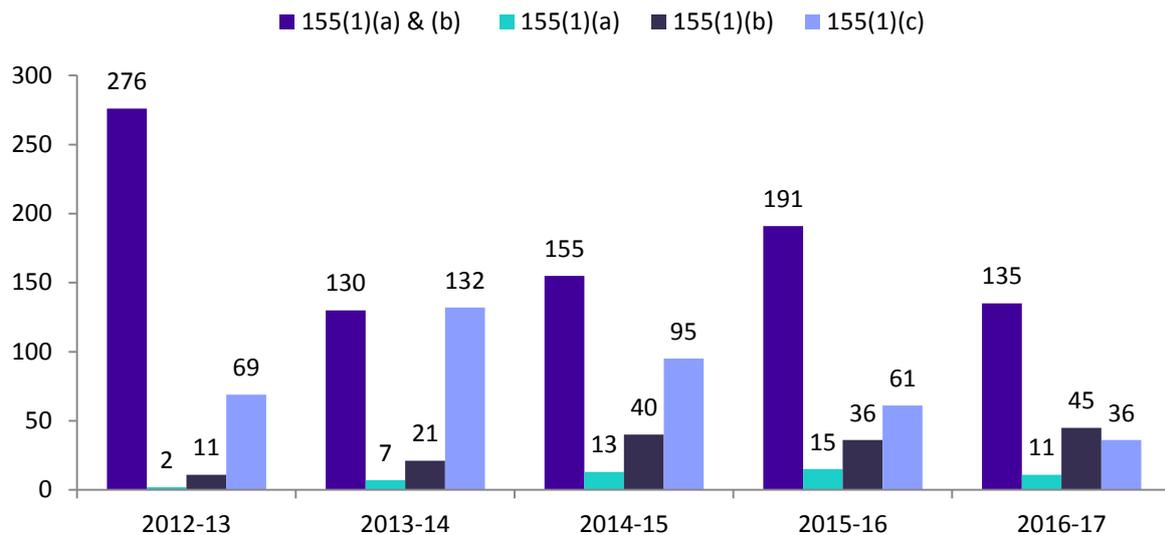
Notice	Description	12-13	13-14	14-15	15-16	16-17
155(1)(a) & (b)	Furnish information and documents	276	130	155	191	135
155(1)(a)	Furnish information	2	7	13	15	11
155(1)(b)	Furnish documents	11	21	40	36	45
155(1)(c)	Appear before Commission	69	132	95	61	36
51ADD	Provide info under industry code	31	19	12	14	8
95ZK	Furnish information and documents	3	3	52	60	131
219(a) & (c)	Substantiation notice	18	0	244*	5	5
Total notices issued each year		410	312	611	382	371

Notes: *All 244 notices related to the ACCC's work in relation to the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014*, which gave the ACCC powers to monitor prices and ensure cost savings attributable to the carbon tax repeal were passed on in the regulated industries.

Over the five years a total of 2086 compulsory information gathering notices were issued, which equates to an average of 417 notices per annum. The most common notice utilised is the 155(1)(a) and (b) request to furnish information and documents totalling 887, followed by a request to appear before the Commission under 155(1)(c) totalling 393.

Below is a pictorial representation of the total number of notices issued each year and types of 155 notices issued over the five years.





Overview of data

- **S 155(1)(a)(b)**– 887 in total
 - Average of 177 notices issued per year over the five years.
 - In 2012-13 there was a spike of 276 notices issued, an increase of 174 from 2011-12.
- **S 155(1)(a)** – 48 in total
 - Average of 10 notices issued per year over five years.
 - There was a steady increase in the issue of these notices between 2012-13 and 2015-16, but the number has decreased in 2016-17.
- **155(1)(b)** – 153 in total
 - Average of 31 notices issued per year over five years.
 - There was an increase from 2015-16 in the use of these notices, in line with a long-term increase.

- **S 155(1)(c)** – 393 in total
 - Average of 79 notices issued per year over five years.
 - There was a spike of 132 notices issued in 2013-14. This has steadily fallen since.

Changes in the amount of section 155 notices issued by the ACCC are linked in the most part to specific large in-depth investigations. The increase in section 155(1)(a)(b) notices in 2012-13 is linked to the ACCC's in-depth investigation of Coles relating to unconscionable conduct. Similarly, the increase in section 155(1)(c) notices in 2013-14 is connected to the ACCC's in-depth investigation into alleged secondary boycott and other contravening conduct by the CFMEU. The 2015-16 spike in section 155(1)(a)(b) notices is connected to the ACCC's private colleges investigation.

- **S 51ADD** – 84 in total
 - Average of 17 notices issued per year over five years.
 - In 2012-13, 31 notices were issued. This has steadily declined to 8 in 2016-17.
- **S 95ZK** – 249 in total
 - Average of 50 notices issued per year over five years.
 - Section 95ZK notices can be attributed to specific projects. The increase in notices issued from 2014-15 onwards reflects Government directions, including the market studies into gas, retail electricity, dairy and financial services.
- **S 219** – 272 in total
 - Average of 54 notices issued per year over five years.
 - In 2014-15 244 notices were issued relating to the ACCC's carbon work. However, these notices are not commonly issued, with an average of 7 issued in the other four years.

Appendix B APCC Feedback

The ACCC Performance Consultative Committee (APCC) met on 11 October 2017 to provide 'external validation' of the ACCC's self-assessment results against the Regulator Performance Framework. The APCC consists of the following members:

- Gerard Brody, Consumer Action Law Centre
- Elizabeth Bryan, Virgin Australia
- Gina Cass-Gottlieb, Gilbert + Tobin
- Kate Carnell, Australian Small Business and Family Enterprise Ombudsman
- Caroline Coops, King & Wood Mallesons
- Teresa Corbin, Australian Communications Consumer and Action Network
- Fiona Crosbie, Competition and Consumer Committee of the Law Council of Australia
- Jason Gehrke, Franchise Council of Australia
- Matt Healy, Competitive Carriers Coalition
- Robert Montgomery, Infrastructure Partnerships Australia
- James Pearson, Australian Chamber of Commerce and Industry
- Peter Strong, Council of Small Business of Australia
- Jennifer Westacott, Business Council of Australia
- Innes Willox, Australian Industry Group
- Russell Zimmerman, Australian Retailers Association

The meeting was chaired by Ms Carnell. Simon Pryor attended on behalf of Ms Westacott and Ms Corbin, Mr Gehrke, Mr Pearson, Mr Strong, Mr Willox and Mr Zimmerman were unable to attend.

The committee provided comments on the ACCC's draft self-assessment report and the associated ORC International report on the findings of the ACCC business stakeholder survey.

Members provided general comments on the self-assessment and survey methodology as well as specific comments relating to the results for each function area. Feedback has been grouped by topic.

1. Clarity of report and ability to compare results with last year's self-assessment

Committee members appreciated that the format and clarity of the self-assessment report means that it is easy to read and to compare results to last year's baseline results. Members also noted that it identifies specific practical action items to further improve performance, which they believe is the key objective of the self-assessment and that these should be highlighted in the report. It was noted that the ACCC could also build on internal processes for identifying areas for improvement.

While members agreed there should be a clear link between the survey results and the final ratings, the ACCC should continue to reference additional evidence in the appendix as well as practical initiatives throughout the year in determining the final rating.

The Committee noted that the summary table of results on page 6 did not make clear the change in the survey sample group for the Enforcement function, which as the report notes elsewhere is likely to have contributed to the change in the final ratings for four of the KPIs for Enforcement.

ACCC Response

The summary table has been amended to include a preamble explicitly noting that the change in the survey methodology is likely to have affected the survey results. It now states:

It is important to note that the change in ratings for the Enforcement function is based in part on improved Business Stakeholder Survey scores. As discussed at page 29, these survey scores are likely to have been affected by a change in the criteria for survey participants. In 2016 the stakeholders chosen were all subject to ACCC enforcement action. In 2017 the sample was broadened to include businesses involved in investigations, but who did not necessarily have action taken against them. While this is likely to have had an impact on results, the ACCC considers that this sample reflects a more accurate cross section of business stakeholders who engage with the Enforcement function area. The initiatives and activities that the Enforcement function undertook to improve its performance also contributed to a higher rating are explained in the body of the report.

2. Final ratings for each KPI for each function area

In general, the members agreed that the proposed final ratings for each KPI are reflective of the ACCC's performance, with two exceptions. There was concern that the Small Business and Product Safety rating of 'Very Good' for KPI 2 – 'Communication with regulated entities is clear, targeted and effective' may be too high. This is because whilst members believed that the ACCC's communication with small businesses was generally very good, there is an ongoing challenge in effectively communicating the limitations of the ACCC's powers and roles to small businesses such that many still do not fully understanding the role of the ACCC or competition law in the marketplace. In particular there is a gap between the expectations of many small business stakeholders and the ACCC's ability to take action.

There was also concern that the Infrastructure Regulation rating of 'Very Good' for KPI 2 may be too generous based on the evidence presented. Members noted that while the rating may be justified, the survey results and other evidence referred to did not seem sufficient to justify the final rating of Very Good. The committee considered that the ACCC should review the evidence and rating, relevant to the other function areas.

ACCC Response

ACCC acknowledges that effectively communicating our role to small businesses is one of our biggest challenges and we are continuing our efforts to be more direct in telling businesses what the ACCC can and cannot do. We have added this to our actions for 2017-18. We also have added a section specifically addressing this challenge in the overview section (page 3). We nevertheless consider an overall rating of Very Good is appropriate for this KPI, which is the same result as last year. This is because KPI 2 focuses on communication with regulated entities rather than all stakeholders, be they consumers or small businesses, seeking redress under the CCA. In the context of the RPF the ACCC interprets KPI 2 to be primarily about our efforts to educate and inform all businesses, including small businesses, about their compliance obligations under the CCA so as to

minimise their regulatory burden. We consider the positive trend in the survey results that capture the views of regulated businesses supports this rating. Nonetheless, the ACCC accepts that communicating what it can and cannot do is an intrinsic part of its role and an agency wide challenge that should be noted as an area for improvement - for this reason, the challenge has been discussed on page 3.

In relation to the Infrastructure Regulation rating for the same KPI, the ACCC acknowledged the concerns. We have reviewed the evidence and final rating, and have included additional evidence regarding our communication with regulated entities. Given these additions, we remain of the view that this KPI should be rated Very Good. The additional evidence includes: detail regarding the guidelines that were reviewed in 2016-17, the role and importance of the Infrastructure Consultative Committee and the Fuel Consultative Committee, our regular informal stakeholder meetings, our engagement with external forums such as telecommunications and water industry bodies and ACCC led stakeholder forums as part of our communications market study.

3. Interpreting survey results for the Infrastructure Regulation Division

The Committee commented on the seemingly contradictory 2017 survey results for the Infrastructure Regulation Division compared to the 2016 results. In particular, some members were surprised that for the 2017 survey, there was a substantial increase in the proportion who disagreed that the ACCC does not unnecessarily impede the efficient operation of regulated entities (KPI1), whilst also recording a substantial increase in the proportion who agreed that the ACCC's actions are proportionate to the regulatory risk being managed (KPI3). It was noted that this could be capturing stakeholder concerns about ACCC processes (in KPI1) rather than concerns about the ACCC's decisions (in KPI3). It was also noted that infrastructure is a busy policy space, and the ACCC doesn't operate in a vacuum such that stakeholder views on policy changes and uncertainty are likely to be reflected in ACCC results. Other members thought that it was probably a survey sampling problem, and as the qualitative comments were largely positive it was not possible to drill down to reach a firm conclusion. It was also noted that the ACCC's Infrastructure Consultative Committee is always a forum in which members are comfortable raising any issues.

ACCC Response

This year's survey was a shorter version than 2016, limited to only asking respondents to rate the ACCC's performance against each of the six KPIs. The longer-form survey, which has more specific questions for each KPI that was used in 2016, and planned for 2018, may have assisted in understanding the change in results from 2016. Also, as discussed below, when developing the 2018 survey the ACCC will consider whether the survey results could be made more robust by increasing the sample size and/or response rate. We will also have three years of data available that may assist with analysing the results.

4. Other possible improvements to the survey

The Committee noted that although the number of responses and overall response rate had increased, it was still only 25% for Enforcement. More survey respondents would provide better quantitative data. This could be achieved by increasing the response rate of survey recipients or widening the group of stakeholders the survey is sent to. Members noted the challenge of widening the number of stakeholders that the survey is sent to while ensuring that all participants have an informed view based on meaningful engagement with the ACCC.

Whilst it was noted that some ideas may not be practical, the ACCC could consider:

- surveying all attendees at the ACCC&AER Regulatory Conference
- surveying those businesses whose complaints to the ACCC are not progressed for action
- approaching industry associations for details of stakeholders who may not have had direct engagement with the ACCC but have an interest in ACCC communications and actions.
- using speeches and other outreach opportunities to remind stakeholders to complete the survey
- surveying more regularly throughout the year
- tracking year-by-year response rates for various business sizes to ensure we are using appropriate means to increase response rates across all sized businesses.

Members also suggested including more qualitative questions to provide insights into the survey results.

ACCC Response

The ACCC will take into account the committee's suggestions in planning for next year's survey and self-assessment.

5. ACCC's new market studies function

The Committee noted the increased impact of the ACCC's market studies on businesses. Members' outlined broad support for this function among businesses, but highlighted concerns regarding the burden that these studies could bring, in particular the use of compulsory information gathering powers.

ACCC Response

The ACCC agrees that surveying businesses involved in market studies and assessing our performance in relation to this expanded function should be a focus when developing next year's self-assessment.