



ACCC
AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

AER AUSTRALIAN
ENERGY
REGULATOR

Annual Report 2022–23

October 2023





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Acknowledgment of country

The ACCC acknowledges the traditional owners and custodians of Country throughout Australia and recognises their continuing connection to the land, sea and community. We pay our respects to them and their cultures; and to their Elders past, present and future.

About this report

This report describes the performance of the agency, including operational and financial management, for the year ending 30 June 2023. It addresses our annual reporting obligations under:

- the *Public Governance, Performance and Accountability Act 2013*
- the Public Governance, Performance and Accountability Rule 2014
- the performance measures set out in the outcome and programs framework in our Portfolio Budget Statement 2022–23 and Corporate Plan 2022–23
- other relevant legislation, including the *Competition and Consumer Act 2010*.

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ACCC 10/23_23-21

www.accc.gov.au



EXECUTIVE OFFICE

6 September 2023

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

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

Dear Treasurer and Minister Bowen

ACCC and AER Annual Report 2022–23

We are pleased to present to you the Annual Report of the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) for the year ended 30 June 2023. This report has been prepared in accordance with s 46 of the *Public Governance, Performance and Accountability Act 2013* and s 171 of the *Competition and Consumer Act 2010*.

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

Yours sincerely

Gina Cass-Gottlieb
Chair, ACCC

Clare Savage
Chair, AER

Contents

Year in review	1
Our year at a glance 2022–23	2
2022–23 review: ACCC Chair, Gina Cass-Gottlieb	4
2022–23 review: AER Chair, Clare Savage	10
Corporate snapshot	15
Agency overview	19
About the ACCC and AER	20
Performance measurement and reporting framework	30
Annual performance statement	37
Statement of preparation	39
Program 1.1 – ACCC	40
Strategic objective 1: Address anti-competitive conduct and promote competition	44
Strategic objective 2: Prevent anti-competitive mergers	66
Strategic objective 3: Improve competition and choice by facilitating safe and secure data sharing by consumers through the Consumer Data Right	72
Strategic objective 4: Protect consumers from misleading and deceptive conduct and promote fair trading	91
Strategic objective 5: Protect consumers from unsafe products	122
Strategic objective 6: Regulate monopoly infrastructure and monitor concentrated markets in the long-term interests of consumers	133
Program 1.2 – Australian Energy Regulator	144
Strategic objective 1: Protect vulnerable consumers while enabling consumers to participate in energy markets	146
Strategic objective 2: Effectively regulate competitive markets primarily through monitoring and reporting, and enforcement and compliance	155
Strategic objective 3: Deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services	163
Strategic objective 4: Use our expertise to inform debate about Australia’s energy future and support the energy transition	171
Regulatory practice	178

Management and accountability	183
Senior leadership	184
Managing the ACCC and AER	193
External scrutiny	202
Procurement	205
Environmental sustainability	208
Strategic objective 7: Improve our own systems, capabilities and ways of working	210
Financial statements	229
Appendixes	259
Appendix 1: Entity resource statement and expenses by outcome	260
Appendix 2: Staffing	262
Appendix 3: Mandatory executive remuneration reporting	276
Appendix 4: Work health and safety	280
Appendix 5: Advertising and market research	281
Appendix 6: Ecologically sustainable development	283
Appendix 7: Legislative framework	286
Appendix 8: Information required under the <i>Competition and Consumer Act 2010</i>	288
Appendix 9: Correction of material errors in previous annual reports	296
Glossary and abbreviations	297
Compliance index	302
Index	315

1

Year in review



Our year at a glance 2022–23

ACCC purpose

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



ENFORCEMENT

\$142.3m total penalties awarded by the court

- **\$136.5m** from consumer and fair trading matters **11** court cases commenced
- **\$5.78m** from competition matters **20** court cases concluded

\$757,459 paid from 22 consumer and fair trading infringement notices issued **14** court cases continuing

\$173,160 paid from CDR infringement notices



MERGERS AND EXEMPTIONS

305 mergers assessed

- **284** merger matters finalised by preassessment
- **21** subject to public review

8 investigations of completed acquisitions commenced

29 non-merger authorisation applications assessed

3 merger authorisation assessments commenced



CONSUMER DATA RIGHT

79 active data holders (entities) with 117 active brands in the banking and energy sectors

40 accredited data recipients including 39 at the unrestricted and 1 at the sponsored level (29 of which were active)

78 active data recipient representative arrangements notified to the ACCC



INFRASTRUCTURE

51 major regulatory decisions

31 monitoring reports

6 investigations into potential breaches of rules

668,349 views on the petrol price cycles webpage

26,008 page views of Measuring Broadband Australia consumer dashboard



CONSUMER PRODUCT SAFETY

2,586 mandatory injury reports assessed

263 voluntary recall notifications published

4.05m Product Safety Australia website page views

4 consultations on standards

3 consumer awareness campaigns

9 media releases and safety alerts



SCAMS

6.95m Scamwatch website page views

290,386 scam reports received by Scamwatch

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



INFOCENTRE

408,564

contacts, including scams

AER purpose

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



PROTECTING CONSUMERS AND ENABLING PARTICIPATION

\$271,400 total penalties from 4 infringement notices

1,192,000+ Energy Made Easy (EME) website energy plan searches, assisting energy consumers to find the best deal

62,478 people switched retailers after completing a search on EME website

1,000,000 AER website views

We set safety net prices for customers in NSW, SA and South East Qld to protect customers from unjustifiably high prices in an environment where costs are rising

25 industry education activities conducted (21 bulletins/guidance notes published and 4 workshops/forums)



REGULATING COMPETITIVE MARKETS

\$893,600 total penalties from 16 infringement notices

3 individual retail exemptions and approved 2 network conversions ensuring improved outcomes for customers in embedded networks

6 retailer hardship policies and proposed amendments assessed, ensuring protections for vulnerable consumers are available if they need it

7 Retailer of Last Resort events applied, ensuring continuity of energy supply for consumers



INFRASTRUCTURE REGULATION

\$13.2b worth of revenue determinations for the 7 completed revenue decisions, ensuring consumers pay no more than necessary for poles, wires and pipelines

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

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



INFORMING THE ENERGY DEBATE

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

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



2022–23 review: ACCC Chair, Gina Cass-Gottlieb

I am pleased to introduce the ACCC and AER Annual Report for 2022–23.

In the past year the ACCC has remained focused on the issues impacting consumers, businesses and the wider Australian economy, including rising inflation and higher cost of living, the growth of the digital economy, and the transition to a low emissions future.

During challenging times, the role of the ACCC remains critical. As the national regulator responsible for competition law, consumer protection, fair trading and economic regulation, the ACCC will continue to focus on actions that enhance the welfare of Australians now and into the future.

Strong compliance and enforcement outcomes

The ACCC is an active enforcer of the *Competition and Consumer Act 2010* (Cth) (Competition and Consumer Act) because we recognise that enforcement outcomes are essential in deterring conduct that harms consumers, small business and competition, and breaches the Act.

Last year we achieved just over \$142 million in penalties imposed by the Federal Court of Australia in a number of important civil and criminal enforcement outcomes across a wide range of sectors.

Following court proceedings, we secured a \$60 million penalty against Google for making misleading representations to consumers about the collection and use of their personal location data on Android phones between January 2017 and December 2018.

In December 2022 the Federal Court ordered ridesharing platform Uber to pay a penalty of \$21 million after Uber admitted it had engaged in misleading or deceptive conduct and made false or misleading representations to consumers in its app and on its website.

We also achieved more than \$12 million in penalties against Mercedes-Benz for noncompliance with its Takata airbag recall communication plan.

We secured an important outcome in the franchising sector that resulted in payments and waivers of debt totalling approximately \$10 million to impacted Retail Food Group franchisees.

More recently, Employsure was penalised \$3 million for making false and misleading representations to small businesses in online ads that it was affiliated with a government agency; and Booktopia was ordered to pay \$6 million in penalties for making false or misleading representations about its customers' consumer guarantees rights.

On 28 August 2023 the Federal Court ordered BlueScope Steel to pay a \$57.5 million penalty for attempted cartel conduct in relation to the supply of flat steel products in Australia. The Court also imposed a \$575,000 penalty on BlueScope's former general manager, which by Court order cannot be recovered from an insurance company. At time of writing, we are awaiting judgment on sentencing or relief in the Federal Court after a number of other important cartel cases. Waste companies Bingo Industries Limited and Aussie Skips (and each of their former Chief Executive Officers) have all entered guilty pleas for criminal cartel conduct in a prosecution taken by the Commonwealth Director of Public Prosecutions, with sentencing yet to occur.

We continued an active program of enforcement in the energy sector. Following an ACCC intervention, energy retailer Blue NRG undertook to compensate small business clients after it wrote to 543 customers on fixed-rate contracts claiming it had a legal right to raise electricity prices when it did not.

Retailers CovaU and ReAmped Energy each paid \$33,300 in penalties for allegedly sending communications to customers without certain information required under the Electricity Retail Code, intended to help customers compare different retailers' prices.

In January 2023 we conducted a sweep to identify misleading testimonials and endorsements by social media influencers. After receiving over 1,000 social media responses, including more than 150 tip-offs from consumers about potentially misleading posts, we examined the content of more than 100 influencers. The consumer feedback indicated significant community concern about the ever-increasing incidence of manipulative marketing techniques designed to exploit consumers shopping online. A number of influencers clarified sponsored content in response to our sweep action.

The survey and follow-up investigations also informed the sixth interim report for the Digital Platform Services Inquiry, which examined social media services, released in March 2023.

In March 2023 we conducted a national surveillance program with state and territory Australian Consumer Law regulators to identify potential noncompliance with the button battery safety and information standards, which informed further work. In April 2023 the ACCC published comprehensive recall guidelines for suppliers.

In November 2022 parliament passed important changes to the Competition and Consumer Act in which maximum penalties for companies that breach most competition law provisions, and for many consumer law provisions, increased to the greater of \$50 million or 3 times the value derived from the relevant breach. If the value derived from the breach cannot be determined, the penalty will be the greater of \$50 million or 30% of the company's turnover during the period it engaged in the conduct.

These increased penalties will serve as a strong deterrent message to companies to comply with their obligations to compete, trade fairly and not mislead or act unconscionably towards consumers.

Significantly, the legal changes also included new penalties for businesses that include unfair contract terms in their standard form contracts with consumers and small businesses. The changes come into effect in November 2023. The ACCC will ensure consumers and small businesses, including franchisees, receive the protection of these new strengthened laws, which the ACCC advocated for over some years.

Despite our successful compliance and enforcement actions during the year, the ACCC still considers there is a need for reform to the consumer guarantees under the Australian Consumer Law to make it illegal for businesses to fail to provide a remedy for consumer guarantee failures. The ACCC continues to support an economy-wide ban on unfair practices to address certain business practices that occur online and offline, including those that involve digital platforms.

Effective merger control and proposed merger reforms

Our role in ensuring effective merger control in Australia is a core part of our remit as the national competition and consumer law enforcement agency.

The past year was again notable for the number of significant merger proposals considered by the ACCC in sectors including financial services, energy, aviation and infrastructure and significant cross-border mergers. This year we also experienced a material increase in applications for merger authorisation, with 4 under consideration during the year.

In December 2022 we decided not to grant merger authorisation in relation to proposed regional mobile network arrangements between Telstra and TPG. Under the statutory test, the ACCC must not grant authorisation unless it is satisfied the proposed acquisition would not be likely to substantially lessen competition or that the likely public benefits from the acquisition would outweigh the likely public detriments.

Following a review of the ACCC's decision, in June 2023 the Australian Competition Tribunal reached its own decision not to grant authorisation to Telstra and TPG. This was the first review by the Tribunal of a merger authorisation under the new authorisation regime which came into effect in 2017. The Tribunal's decision and reasoning will assist the ACCC in considering future applications for merger authorisation.

Continuing with our merger reform advocacy, in April 2023 I outlined our revised reform proposals in an address to the National Press Club. This address emphasised the importance of the ACCC having the necessary tools to properly scrutinise and, if necessary, prevent mergers likely to substantially lessen competition. The ACCC's proposed reforms include changes to the test as well as the introduction of a mandatory notification requirement, with certain transactions suspended from completion until ACCC clearance is obtained. Moving to a formal merger regime would bring Australia into line with most other Organisation for Economic Co-operation and Development (OECD) jurisdictions.

We look forward to further engagement on our reform proposals.

Cost of living and essential services

A number of factors, including the war in Ukraine and supply chain issues, continued to drive inflation in Australia and globally, in turn impacting the cost of essential services and contributing to higher cost of living for Australian consumers.

The ACCC's role in monitoring sectors, including petrol, gas and retail electricity, ports and airports, provided essential transparency and analysis of the factors driving price rises in critical sectors in the Australian economy.

During 2022–23 the government sought the ACCC's further involvement in energy markets as energy costs continued to rise. In October 2022 the government extended our wholesale gas inquiry role through to 2030. The ACCC was also given the responsibility of monitoring and enforcing the Competition and Consumer (Gas Market Emergency Price) Order 2022 and responsibilities in respect of the mandatory Gas Market Code.

In June we published our ninth Electricity Market Monitoring Inquiry report, which found residential electricity bills were higher across most National Electricity Market states in the September quarter of 2022 compared with the equivalent quarter in 2021. It also flagged that electricity bills will increase

further this year as the high wholesale prices from mid-2022 continue to flow through to customers. As such, our continued focus on the electricity sector will be important in the coming year.

In 2022–23 we also commenced significant inquiries focusing on critical services for consumers including in childcare, retail deposits and regional mobile telecommunications.

Our Childcare Inquiry commenced on 1 January 2023. We have engaged closely with the sector, including through site visits to meet with stakeholders and small and medium childcare providers, as well as issuing information requests to providers and conducting a survey that attracted responses from more than 4,100 families. We provided an interim report to government on 30 June. This work will culminate in a final report in December 2023.

Our inquiry into the retail deposit market in Australia commenced in February and will report in December 2023. The inquiry is focused on how banks make decisions on interest rates; and barriers consumers face in getting a better deal. We are also considering how banks and other financial institutions compete with each other; and the potential for entry by new competitors. The report will be the last for our Financial Services Competition team, whose funding concluded at the end of the 2022–23 financial year. However, the ACCC will continue to look closely at competition issues arising in the sector.

In October 2022 the Australian Government accepted all 23 recommendations from the *Water market reform: final roadmap report* by the independent Principal Adviser, Mr Daryl Quinlivan AO, which provided his advice on implementation of the ACCC's recommendations on Murray–Darling Basin water market reform.

As part of this, the government announced its intention to legislate new functions for the ACCC as the water market conduct regulator in the Murray–Darling Basin. To progress this, we commenced working with relevant Australian Government agencies on the reforms intended to improve integrity and transparency in Murray–Darling Basin water markets.

In June 2023 we published our 12th and final report into airline competition in Australia after our 3-year direction came to an end.

The report found that a lack of effective competition in Australia's domestic airline industry, which has characterised the industry for decades, was resulting in higher airfares and poorer service for consumers.

The ACCC continues to advocate for reforming the legislative scheme that allocates take-off and landing slots at Sydney Airport as critical to promoting competition in the domestic airline industry.

Sustainability

Consumers are now, more than ever, consciously purchasing a product or service based on its sustainability or environmental credentials.

In October 2022 we conducted an internet sweep that found more than half of the businesses reviewed made vague or unclear environmental claims about their products or services. This has led to several active investigations of alleged misleading environmental claims or 'greenwashing' across several different sectors.

The results of the sweep have informed our draft guidance for businesses on steps to improve the integrity of environmental claims; and business obligations under the Australian Consumer Law to ensure those claims are accurate.

Where we have concerns, we will be asking businesses to back up any claims made.

In December 2022 we established the Sustainability Taskforce to build expertise and inform and coordinate whole-of-agency efforts across environmental and sustainability related work. This work

supports our focus on environmental claims as a compliance and enforcement priority, and broadens it to include our work in competition and product safety.

Scams

In the 2023 May Federal Budget the government allocated the ACCC approximately \$58 million to set up the National Anti-Scam Centre with the mission of making Australia the hardest target for scammers. Scams continue to take a significant financial and emotional toll on Australians, costing consumers more than \$3 billion in 2022.

The National Anti-Scam Centre was launched on 1 July 2023. It brings together government agencies, law enforcement and industry participants to disrupt scams, refer victims to support and raise awareness amongst consumers of the risks from different scams.

Scrutiny of digital platform services and needed reforms

In 2022–23 we continued our 5-year inquiry into markets for the supply of digital platform services in Australia.

The fifth report of the Digital Platform Services Inquiry (DPSI), published in November 2022, was a significant milestone and the culmination of years of work by the ACCC. The report included recommendations for regulatory reform to address the harms to competition and consumers that we have identified in our inquiries to date. Recommendations included an economy-wide prohibition against unfair trading practices; targeted consumer protections to address scams, fake reviews and dispute resolution; and service-specific codes of conduct that would apply to designated digital platforms to address anti-competitive conduct and barriers to entry and to ensure fair treatment of business users. These reforms if introduced would significantly reduce competition and consumer harms.

We look forward to further engagement on these crucial issues given the growing importance of digital platform services to consumers, businesses (including small businesses) and the broader economy.

Our 6-monthly reports under the DPSI continued to examine critical and diverse issues involving digital platforms and services. In March 2023 we published the sixth DPSI report, which examined social media services, and we have commenced work on the seventh report on expanding ecosystems of digital platform providers, including smart home devices and consumer cloud storage solutions, which is due to the government in September 2023.

International collaboration

The ACCC actively collaborates with international counterpart agencies to support global regulatory best practice and pursue competitive, fair, safe and productive outcomes for consumers in Australia and abroad. Involvement in international fora and relationships with other agencies are fundamental to addressing cross-border consumer and competition challenges.

This year we took on the presidency of the International Consumer Protection and Enforcement Network (ICPEN). Our presidency year culminated in hosting the ICPEN annual events in Sydney in May 2023. These events included discussion of misleading environmental claims and dark commercial patterns. The ACCC also hosted an Asia-Pacific regional networking event which included Association of Southeast Asian Nations (ASEAN) and Pacific Island ICPEN members and non-members, all coming together as an Oceania group for the first time.

We were delighted to have Australian aid funding for the ACCC's Competition Law Implementation Program and Consumer Affairs Program extended through to 2024. These important programs provide technical assistance to emerging competition and consumer protection agencies in the ASEAN region.

We remain committed to the exchange of intelligence and ideas with our fellow regulators around the globe as we deal with common issues that increasingly cross international boundaries.

Supporting diversity

I am pleased that we are on track to achieve the ACCC target from its Narrowing the pay gap Strategy of a gender pay gap of less than 5%. By the end of the year we also reached gender parity in our senior executive service leadership group, with equal representation at the general manager group from recent years now also matched with equal representation across the executive general manager cohort. We are also committed to meeting equitable briefing targets, and consistently exceed targets for the number and value of briefs to female barristers, both senior and junior. These are important achievements.

During the past year the ACCC finalised and published our latest Reconciliation Action Plan. The plan underlines our commitment to increase employment opportunities and support the development of our First Nations employees. Through our policies supported by our senior leaders, our diversity and inclusion employee networks and all our people, we seek to reflect the diversity of the Australian communities that we serve.

Acknowledgements

I would like to acknowledge the enormous contribution of Delia Rickard, who departed as Deputy Chair in January 2023 after more than a decade with the ACCC. Delia's passionate commitment to consumer protection, considerable legal experience and formidable intellect made her integral to the ACCC's work across a wide range of sectors – in particular, scam prevention and product safety.

The newly appointed Deputy Chair, Catriona Lowe, began her 5-year term as ACCC Deputy Chair in January 2023. Her background as a forthright consumer advocate and her extensive experience as a litigator and regulator significantly enhance the ACCC. She is leading a wide range of ACCC work critical to consumer protection, including, at Commissioner level, our work in relation to the National Anti-Scam Centre and chairing the Compliance and Product Safety Committee.

I am also delighted at the reappointment of Deputy Commissioner Mick Keogh for a further 5 years starting from 30 May 2023. Mick's deep knowledge of the agricultural and small business sector has been critical in the ACCC's work across a number of areas, including our Murray–Darling Basin Water Markets Inquiry, our agriculture-focused market studies and our enforcement of small business protections.

Looking ahead

We again have a significant program of work ahead for the 2023–24 financial year, including our important role as a regulator in the transforming economy going forward with our roles in digital identity, and upcoming role in arbitration under the competition in clearing and settlement reforms. As we continue our work we will remain focused on our key principles of legality, integrity, accountability, transparency, appropriate confidentiality, timeliness, proportionality and fairness.



2022–23 review: AER Chair, Clare Savage

The Australian Energy Regulator (AER) has continued to pursue its mission of ensuring energy consumers are better off, now and in the future. It has done so against a backdrop of rapid industry change and volatility.

As Australia's commitment to transition to net zero continues apace, the AER is pivoting where needed to help deliver a secure system and an efficient market for consumers.

Protecting consumers

Our focus for 2022–23 remained on protecting vulnerable consumers while enabling all consumers to participate in gas and electricity markets.

In October 2022 we launched our first ever consumer vulnerability strategy – *Towards Energy Equity: A Strategy for an Inclusive Energy Market*.

The strategy detailed 15 actions to tackle market complexity, remove barriers to participation, increase protections and improve affordability for all consumers by reducing retailers' cost to serve.

We developed the actions based on extensive consultation about the lived experience of vulnerability and research on key indicators of vulnerability, such as energy debt levels and the increasing number of consumers being offered payment plans.

In September 2022 we released our updated *Better Bills Guideline*, highlighting the AER's focus on ensuring customer bills are uncluttered and easy to understand. Retailers have until September 2023 to implement these changes.

In April 2023 we issued our interim guidance note to improve how energy retailers support consumers experiencing family violence. We are currently collecting feedback from energy retailers to inform our final guidance note for release in 2023–24.

In May 2023 we partnered with the ACCC to publish a compliance bulletin to remind retailers of their obligations when communicating pricing changes to consumers. Consumers need clear and accurate information on price changes so they can make informed choices about their energy costs.

Significant market volatility in 2022–23 emphasised the importance of consumer protections as more energy retailers exited the market. Our Retailer of Last Resort (RoLR) scheme ensures that consumers have continued access to electricity and gas if their retailer closes their doors.

Seven retailers exited the market in 2022–23, more than ever before in a single year. We initiated the RoLR process, minimised the impact to consumers and guaranteed continuity of their energy supply.

Another consumer safeguard is our Default Market Offer (DMO). The DMO is an electricity price safety net that protects consumers from unjustifiably high prices, while allowing retailers to recover their costs. It applies to household and small business consumers on standard retail plans in South Australia, New South Wales and south-east Queensland.

We released our final determination for the 2023–24 DMO in May 2023. The decision carefully balanced the cost of living pressures faced by households and businesses and the need for retailers to recover reasonable costs so they can continue to serve consumers.

Our price comparator website, Energy Made Easy (EME), is a key resource for consumers wanting to shop for a better deal. In 2022–23 nearly 1.2 million energy plan comparison searches were completed on the EME website. We enhanced the site to make comparing energy plans even easier and launched a public test version in June 2023. We will monitor feedback during the testing period and deliver the fully enhanced site by the end of 2023.

We also helped increase public awareness of EME through social media campaigns to promote energy literacy among vulnerable consumers, including a campaign for culturally and linguistically diverse communities. EME campaigns reached over 1.1 million people nationally.

Surveillance and reporting, compliance and enforcement

Our role in monitoring the wholesale and retail energy markets, and ensuring participants are complying with the law and rules, remains crucial.

In 2022–23 we produced 42 reports on wholesale and retail prices, trends and data. This included our 14th *State of the energy market* report, covering our wholesale electricity and gas markets, retail markets and transmission and distribution networks. We also released our biennial *Wholesale electricity market performance report*, which comprehensively analysed the events that shaped the National Electricity Market between 2020 and 2022.

We also welcomed new powers to keep watch on electricity and gas markets.

In July 2022 the AER was given new monitoring functions to ensure short-term gas markets operate competitively. We have been closely monitoring price and volume in the short-term market, including how gas is exported overseas and how it is traded in Australia.

In February 2023 we gained new monitoring, compliance and advisory powers under the government's Energy Price Relief Plan and New South Wales Government coal market directions. We have advised governments on how coal mines and power stations in New South Wales are complying with the directions and reported on the impacts of the market interventions.

In March 2023 energy ministers agreed to reforms to the National Gas Law and National Gas Rules to improve and simplify the gas pipeline regulatory framework. The AER was given responsibility to monitor gas service providers' behaviour and compliance with the reforms.

Our compliance and enforcement activities made active use of our new and pre-existing powers. Over \$1.1 million in infringement notices were paid in 2022–23.

In August 2022 we issued infringement notices to Aurora Energy for allegedly failing to comply with life support obligations for its customers who rely on life-saving health equipment.

Several enforcement actions concluded in June 2023. The AER issued infringement notices to:

- Stanwell Corporation Limited for allegedly applying an unapproved protection setting to 3 of its generating units at Stanwell Power Station and for failing to ensure those units met the required generator performance standard for voltage disturbances
- EnergyAustralia and Incitec Pivot Limited for alleged breaches of the National Gas Rules related to gas demand forecasting in short-term trading markets
- CovaU for allegedly failing to present the prices for its standing offers (also known as standard contracts) on its website for 19 months.

In 2022–23 we instituted court proceedings against:

- AGL for alleged breaches to overcharge rules relating to Centrepay payments deducted from customers receiving Centrelink payments
- Jemena subsidiaries for alleged large-scale breaches of their obligations surrounding the natural gas Day Ahead Auction of pipeline capacity
- AGL subsidiaries for alleged breaches of the National Electricity Laws by not providing back up electricity services as offered.

We will continue this momentum through our newly released compliance and enforcement priorities for 2023–24, which aim to:

- improve outcomes for consumers experiencing vulnerability
- make it easier for consumers to understand their energy plan and engage in the energy market
- support power system security and an efficient wholesale electricity market
- improve market participants' compliance with performance standards and standards for critical infrastructure
- support a more efficient and transparent gas market under the new Gas Market Transparency Measures.

These outcomes and priorities represent our ongoing commitment to act on breaches of our energy laws and send a strong message to energy businesses about their obligations.

Efficient and innovative regulation

We regulate \$115 billion of infrastructure assets and always seek to facilitate efficient investment in, and use of, gas and electricity services for the long-term interests of consumers.

In February 2023 we released our latest Rate of Return Instrument, which calculates a part of the revenue that network businesses can recover from consumers. The AER sets the rate of return, which can fluctuate with current interest rates.

In April 2023 we completed transmission determinations (or 'resets') for Transgrid, ElectraNet and Murraylink, outlining the total revenue they can recover from consumers in the 2023–28 regulatory period.

Following last year's release of the *Better resets handbook*, which incentivises network businesses to develop high-quality proposals driven by genuine consumer engagement, we successfully facilitated an early signal pathway process for Essential Energy and Endeavour Energy. This process encourages networks to engage with us early on their 'reset' proposals so we can provide early feedback to ensure they can be accepted.

We published our final decisions on the 2023–28 gas access arrangements for the 3 Victorian gas distribution networks – AusNet Gas Services, Australian Gas Networks and Multinet Gas Networks.

These decisions consider the accelerated depreciation for gas networks to address uncertainty about their future. They also support consumers to move safely to cleaner energy options by narrowing the price gap between temporary and permanent gas disconnection services.

We also completed our review of the incentive schemes we apply to network service providers. Australia’s incentive-based regulatory framework is an important part of ensuring better long-term outcomes for energy consumers. Our review found that incentive schemes improve network efficiency, reduce costs and, with some refinements, could benefit energy consumers even further.

Our Energy Innovation Toolkit, which supports energy innovators and start-ups to navigate complex regulatory frameworks and trial new products and services, received 45 enquiries through the Innovation Enquiry Service. We also received 3 trial waiver applications and have completed consultation on one of them.

Supporting the energy transition

The AER plays an important role in contributing to the debate about Australia’s energy future through:

- ongoing support to energy ministers and senior officials
- my involvement in the Energy Advisory Panel (formerly the Energy Security Board)
- using our expertise and knowledge to provide input into changes to energy laws and rules.

In 2022–23 we made 17 submissions to the Australian Energy Market Commission (AEMC) rule-making processes and 34 submissions to other jurisdictional or national policy and legislation-making process. These were across several areas, including transmission planning and investment review, changes in network infrastructure project costs and legislative changes to the National Energy Objectives.

We released our strategy-on-a-page for regulating and promoting positive market outcomes for consumer energy resources (CER) such as solar panels and batteries. Consumers being able to own energy resources and use them to consume, store and trade energy as they choose is becoming increasingly important as Australia progresses its energy transition.

We also participated in several domestic and international professional forums, including the Utility Regulators Forum and the International Regulatory Futures Forum, and continued our focus on meaningful engagement with governments and other industry stakeholders. Our stakeholders’ views on the effectiveness of our engagement increased by 8% (from 68% in 2021–22 to 76% in 2022–23), as did their views on how we are pursuing and promoting priority issues in the energy sector (from 65% in 2021–22 to 73% in 2022–23).

Building a stronger future

We have worked to ensure the AER is set up for a strong future.

In May and June 2023, Jarrod Ball and Lynne Gallagher joined the AER Board, bringing us back to our full complement of 5 Board members, and in January 2023 we welcomed Anthea Harris as our Chief Executive Officer (CEO).

Lynne’s and Jarrod’s arrivals followed the departure of former Board members Catriona Lowe, who moved into the ACCC Deputy Chair role, and Eric Groom, who retired. I would like to thank Catriona and Eric for their contribution to the AER and energy regulation.

In the lead-up to 2022–23, we worked with the ACCC to submit a proposal to the government for the AER to legally separate from the ACCC to become its own non-corporate Commonwealth entity.

We received approval in May 2023 and will continue to work towards this legislative change in the 2023–24 financial year.

In preparation for legal separation, we created the position of AER General Counsel and established the AER's Legal and Governance Branch. We will continue to grow our legal team in the coming year to ensure appropriate governance arrangements are in place to manage the legal separation from the ACCC.

We continued to invest in our workforce through knowledge-sharing initiatives, such as our Lunch and Learn program and Women in Energy Forum, and professional development opportunities, such as our Shadow a Leader program.

Looking ahead

Reflecting on our achievements is important because it helps to frame our future.

We recognise that this is a challenging time in Australia's energy sector and it will be another important year for the AER.

I acknowledge the dedication of our people, our leadership team and my Board colleagues. Their passion will drive us into another year of effective and efficient regulation to make energy consumers better off, now and in the future.

Corporate snapshot

Financial performance summary

- \$333.095 million total budget.
- \$27.161 million additional funding secured for our functions.

The ACCC received an unqualified audit report on the 2022–23 financial statements from the Australian National Audit Office. Key financial results for the ACCC for the current and comparative financial years are reported in the financial statements in Part 5.

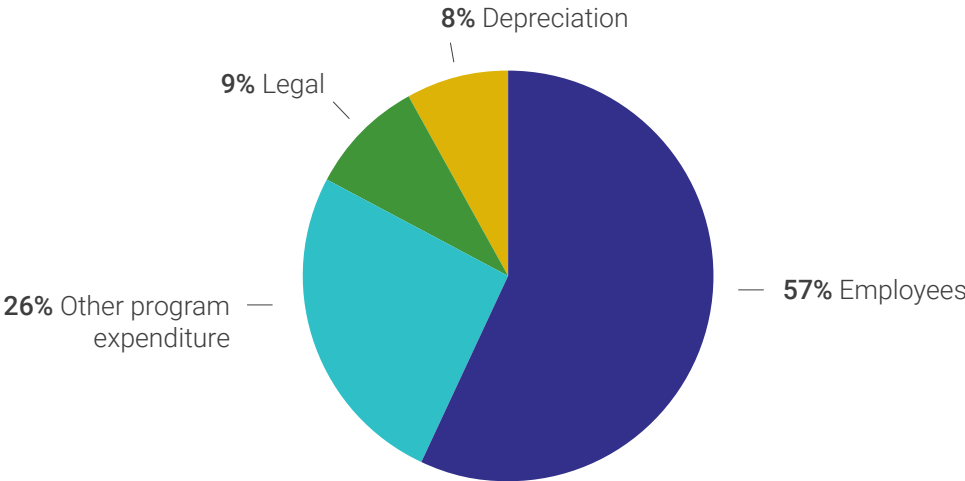
The ACCC incurred an operating deficit of \$44.6 million in 2022–23, including unfunded depreciation and amortisation expenses. After adjusting for depreciation and leasing arrangements, the ACCC incurred a deficit of \$23.2 million.

The ACCC received approval to incur a deficit (plus accounting adjustments) of \$6.7 million in 2022–23 to utilise specific surplus from previous years and to bring forward other budget allocation for immediate tasks. The remaining deficit was primarily attributable to litigation settlement costs of \$16.5 million that are funded separately through equity reserves.

In 2022–23 ACCC received approximately \$297.8 million in revenue from government, representing a \$9.0 million or 3.1% increase compared with 2021–22. The additional revenue was appropriated by government to fund new measures and initiatives. The increase in total expenses is consistent with the increase in revenue from government and the matters discussed above.

ACCC’s 2022–23 administered revenue was \$162.6 million and includes court-imposed fines, penalties and costs.¹

Figure 1.1: ACCC and AER expenditure 2022–23



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

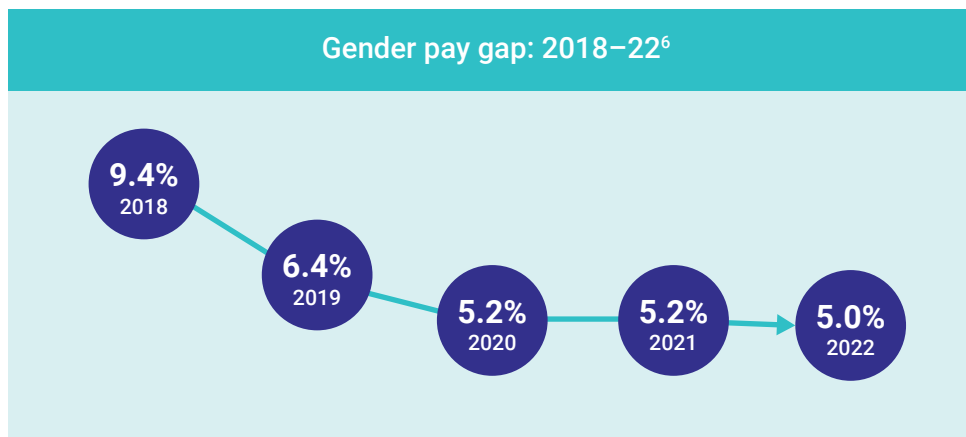
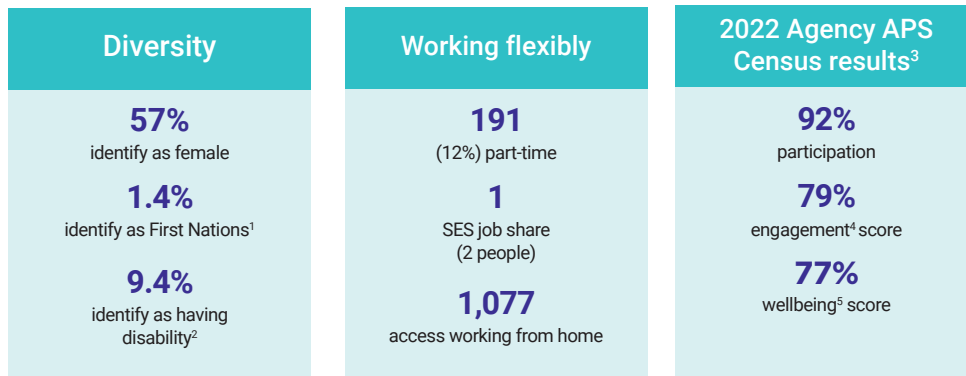
Employee summary

Our people



1,592

ACCC and AER employees



¹ Based on the 2022 Agency Australian Public Service (APS) Census results 1.4% identify as First Nations, and in our internal HR system 1.6% identify as First Nations.

² Based on the 2022 Agency APS Census results 9.4% identify as having disability, and in our internal HR system 4.9% identify as having disability.

³ The APS Census is an annual survey that collects confidential attitude and opinion information from APS employees on workplace issues.

⁴ The engagement index addresses 3 attributes ('say', 'stay' and 'strive') associated with employee engagement. It measures the emotional connection and commitment employees have to working for their organisation.

⁵ The wellbeing index included in the APS Employee Census measures both the practical and cultural elements that allow for a sustainable and healthy working environment.

⁶ In 2022 we updated our methodology for calculating the gender pay gap to adjust how we control for long periods of leave without pay. Therefore results reported prior to 2022 are not directly comparable as they were calculated differently. The 2020 and 2021 results were previously reported as 5.4% and 6.5%, respectively, however using the updated calculation method, they would have both been 5.2%.

Table 1.1: Average staffing level 2020–21 to 2022–23

	Budgeted	Actual
2020–21	1,184	1,172
2021–22	1,246	1,201
2022–23	1,341	1,346

The average staffing level shown in Table 1.1 represents the number of full-time equivalent Australian Public Service (APS) employees. The main reason for the difference between an average staffing level of 1,346 and 1,592 employees (headcount) noted above is that 12% of our employees work part-time.

2

Agency overview



About the ACCC and AER

Who we are

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

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

The ACCC and the AER are a single listed entity for the purpose of the finance law.²

Organisational structure

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

The AER has its own independent Board comprising 2 Commonwealth members and 3 state/territory members. One member is appointed as the Chair and another member is appointed as the Deputy Chair. The Board is supported by employees who work exclusively on energy matters. It has access to the ACCC's legal and economic specialists.

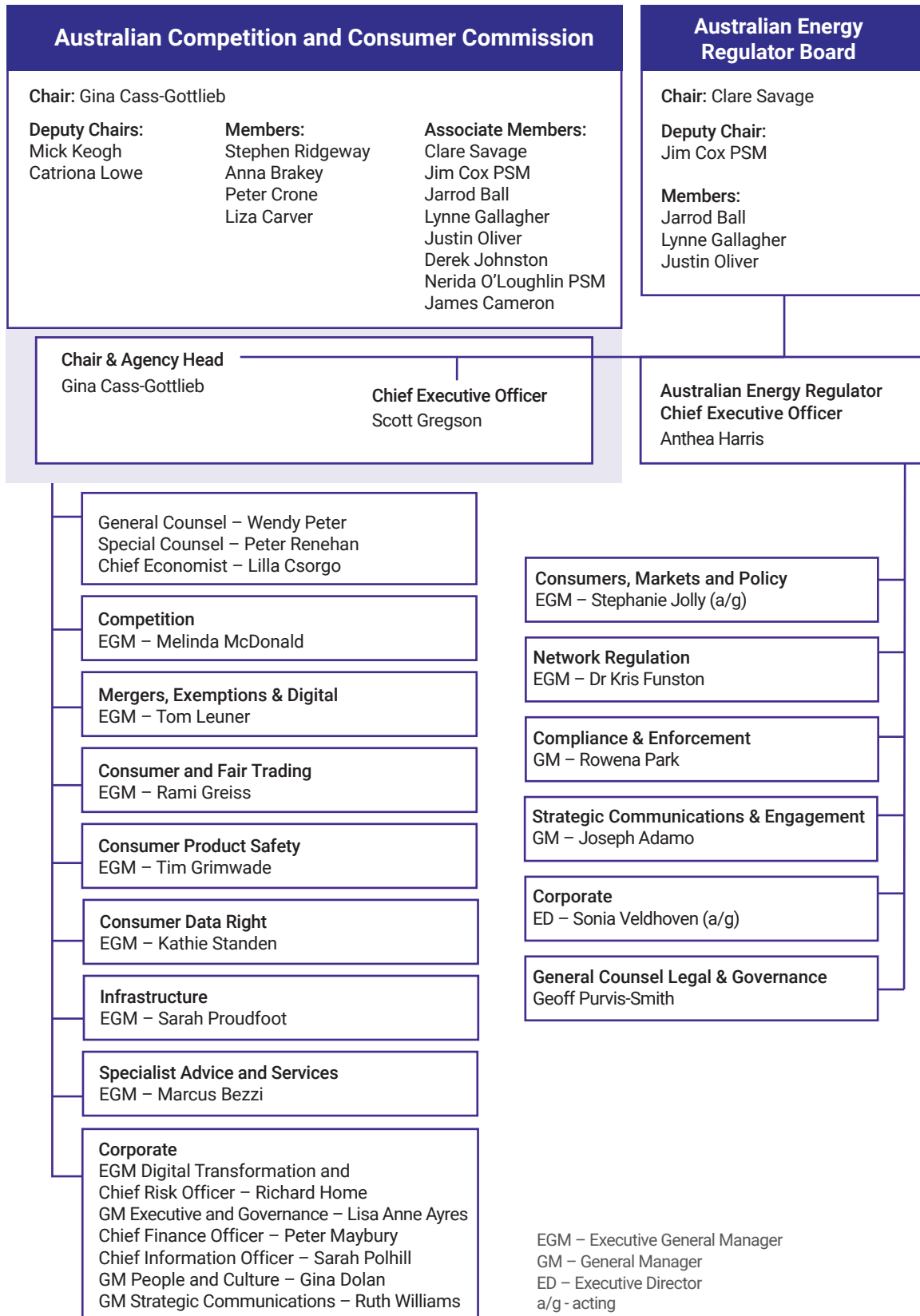
ACCC Commissioners and AER Board members are statutory officers. The people undertaking work for the ACCC and AER are Australian Public Service employees.

Gina Cass-Gottlieb was the ACCC Chair and Agency Head and therefore the Accountable Authority for the whole agency (both the ACCC and the AER) for the period 1 July 2022 to 30 June 2023.

Figure 2.1 provides an overview of the structure of the ACCC and AER as at 30 June 2023.

² Pursuant to s 44AAL of the Competition and Consumer Act.

Figure 2.1: Organisational structure of the ACCC and AER (at 30 June 2023)



The ACCC's purpose, vision and role

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

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

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

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

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

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

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

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

ACCC priorities

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

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

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

ACCC stakeholders

The ACCC is committed to being transparent and engaging with government departments and agencies, as well as consumer groups, industry associations and international partners.

Figure 2.2: Our stakeholders



Australian consumers

The interests of consumers are at the heart of all of our work. We use information provided by the public, and through our engagement with consumer advocacy groups (including via our Consumer Consultative Committee), to inform our work across our key activities. This information helps inform our decision making on what enforcement actions we may take, or what compliance activities we may undertake, ranging from education, to industry engagement, to product safety regulatory actions, to advocacy and research. We also use this information to help inform our market studies and inquiries, and relevant authorisation and other regulatory assessments. We also service Australian consumers by providing guidance and information through various mediums.

Australian businesses

The ACCC works with businesses and industry bodies and associations to help businesses understand their obligations to comply with the law. The ACCC’s aim is to promote a competitive and fair operating environment for small business and, importantly, ensure small businesses understand

how the legislation can help them. The ACCC engages with many businesses and industry bodies and associations through the consultative committees noted below.

Australian Government

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

The ACCC provides timely and accurate information on its activities and matters of significance to the government, including to the Treasurer; the Assistant Treasurer and Minister for Financial Services; the Assistant Minister for Competition, Charities and Treasury; the Minister for Communications; the Minister for Agriculture, Fisheries and Forestry; the Minister for Resources and Northern Australia; the Minister for the Environment and Water; the Minister for Early Childhood Education and other ministers as required.

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

To support a streamlined and cohesive approach to the regulation of digital platforms, the ACCC also participates in the Digital Platform Regulators Forum (DP-Reg), alongside the Australian Communications and Media Authority (ACMA), OAIC, and the Office of the eSafety Commissioner.

We also advise the Assistant Treasurer and Minister for Financial Services on the use of a range of powers for market intervention to protect consumers from unsafe products.

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

State and territory governments

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

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

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

The ACCC coordinates with the other state and territory Australian Consumer Law jurisdictions through regular meetings of the consumer ministers, the Consumer Senior Officials Network (CSON), and the networks under CSON's direction. The ACCC, ASIC, Treasury, each Australian state and territory, and New Zealand are represented across CSON and its sub-networks. Through these

mechanisms, the ACCC not only coordinates with each state and territory, ASIC and the New Zealand Commerce Commission (NZCC) on compliance and enforcement work, but also coordinates on broader policy considerations with all representatives.

International counterparts

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

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

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

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

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

Consultative committees

The ACCC hosts the following consultative committees and forums:

- Agriculture Consultative Committee
- Consumer Consultative Committee
- Fuel Consultative Committee
- Infrastructure Consultative Committee
- Product Safety Consultative Committee
- Small Business and Franchising Consultative Committee
- Utility Regulators Forum.³

We also participate in the Wholesale Telecommunications Consultative Forum.

Further information on our consultative committees is available on our website.

³ The ACCC co-hosts with the other members of this forum.

Government expectations – ACCC

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

The responsible ministers for the ACCC are the Treasurer, the Hon Jim Chalmers MP, Assistant Treasurer and Minister for Financial Services the Hon Stephen Jones MP and Assistant Minister for Competition, Charities and Treasury the Hon Dr Andrew Leigh MP.

Regulators are also expected to incorporate any Ministerial Statement of Expectations and Regulator Statement of Intent into performance reporting as part of their corporate plan and annual report, in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). A Regulator Statement of Intent will be prepared in response to any new Ministerial Statement of Expectations provided. These documents will be made publicly available on our [website](#).

The AER's purpose and vision

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

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

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

The AER's functions

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

Consumer protection

The AER has a key role in consumer protection. This includes enabling consumers to make informed choices about their energy supplier. Our role includes setting the Default Market Offer to protect consumers from high prices and encourage participation in the market; approving policies energy retailers must implement to assist consumers facing financial hardship and looking for help to manage their energy bills; administering a retailer of last resort scheme, which protects consumers and the market if an energy retailer fails; and encouraging innovation in energy technologies and new business models that benefit consumers. We also provide a price comparison website – Energy Made Easy – to help consumers find the best energy offers for their needs.

In October 2022 the AER published *Towards Energy Equity: A Strategy for an Inclusive Energy Market*. The strategy focuses on reducing barriers to participation, supporting consumers experiencing payment difficulty, ensuring the consumer voice is heard in sector reforms, and improving affordability by reducing the cost to serve energy consumers.

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

Retail energy market regulation

The AER regulates retail electricity and gas markets in jurisdictions that have commenced the Retail Law. The Retail Law commenced in Tasmania (for electricity consumers only) and the Australian Capital Territory on 1 July 2012, South Australia on 1 February 2013, New South Wales (NSW) on 1 July 2013 and Queensland on 1 July 2015.

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

Wholesale energy market regulation

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

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

Energy networks regulation

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

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

Policy and advocacy

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

AER strategic objectives and priorities

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

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

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

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

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

AER stakeholders

For our many and varied stakeholders we are committed to:

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

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

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

The AER Chair is also a member of the Energy Advisory Panel, and we work particularly closely with the other market bodies, the AEMC and the Australian Energy Market Operator, Energy Consumers Australia and the Australian and New Zealand Energy and Water Ombudsman Network.

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

AER consumer forums

Consumer engagement is a key part of the AER's stakeholder engagement work. We have 2 key forums:

- **Customer Consultative Group (CCG)** – the CCG has 13 members, each of whom has significant consumer expertise and knowledge and extensive experience in representing the views and perspectives of their constituents. The group's role is to provide advice to the AER on the issues facing residential and small business energy customers, particularly those related to our functions under the Retail Law and Retail Rules.
- **Consumer Challenge Panel (CCP)** – the CCP plays a key role in assisting the AER in ensuring the AER's regulatory determinations appropriately consider consumer perspectives. Members are individuals with significant local and international expertise, spanning fields including economic regulation, energy networks, behavioural economics and consumer engagement. A panel of experts was appointed in September 2021. It includes a mix of new and continuing members who will engage with network businesses and the AER until 2024.

Government expectations – AER

The AER is accountable to the Australian Government and state and territory energy ministers. The AER reports twice a year to the energy ministers with regard to its priorities, budget, achievements, governance and emerging risks.

The former COAG Energy Council and the Australian Government issued Statements of Expectations for the AER in 2014, 2017 and September 2022. At this time, the government's vision is for the AER to be a high-performing and consultative agency that administers a principles-based regulatory framework in a way that promotes the long-term interests of consumers and minimises compliance costs.

Performance measurement and reporting framework

How we measure our performance

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

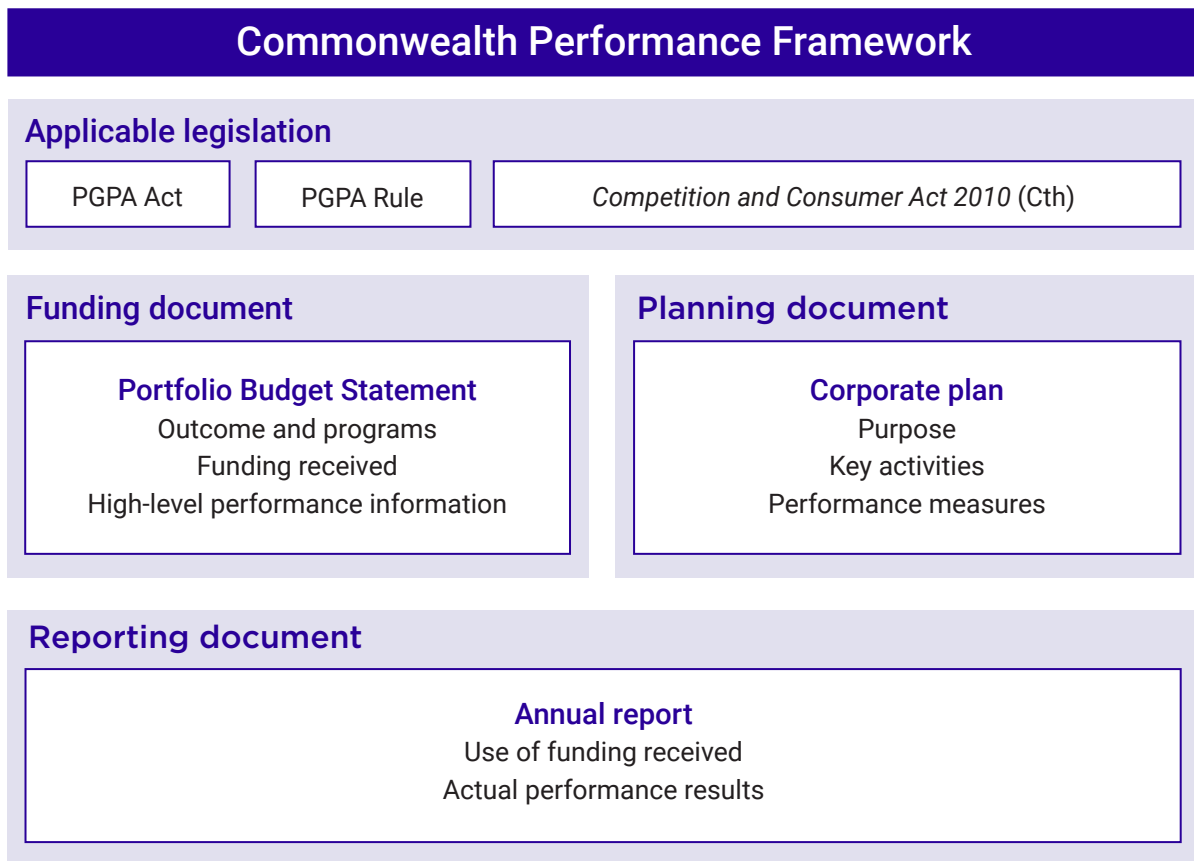
As shown in Figure 2.3, the elements of the Commonwealth Performance Framework are the:

- Portfolio Budget Statement
- corporate plan
- annual performance statement in the annual report.

These documents establish a clear 'line of sight' between:

- our funding and the high-level outcome that the ACCC and AER are to achieve (as set out in the Treasury Portfolio Budget Statement)
- for each of the ACCC and AER, our purpose, strategic objectives, key activities, priorities and performance measures as set out in the [ACCC and AER Corporate Plan 2022–23](#)
- the results for the performance measures, supplemented with additional information to provide context, as set out in this annual report, to demonstrate how we have achieved each of our purposes.

Figure 2.3: Performance reporting framework



Portfolio Budget Statement: Outcome and program structure

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

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

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

Program 1.2: Australian Energy Regulator – The AER exists so that energy consumers are better off, now and in the future. We focus on ensuring a secure, reliable and affordable energy future for Australia as it transitions to net zero emissions. We regulate wholesale and retail energy markets, and energy networks, under national energy legislation and rules. The AER has functions in all states and territories except Western Australia.

Accordingly, the annual performance statement in this annual report separately covers Program 1.1 the ACCC and Program 1.2 the AER.

Corporate plan: Our purposes and performance measures

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

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

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

The corporate plan also provides detail about our performance measurement and reporting framework. In summary, we use a suite of quantitative and qualitative performance measures⁴ (with specific targets where it is reasonably practical to set targets) that draw on data and other information from various sources, including surveys of key stakeholders.

Results are reported in the annual performance statement with comparative results for the previous 3 years (where available) to provide a view of our performance over time.

We also provide an assessment of whether we achieved each target, as shown in Table 2.1.

Table 2.1: Assessment of results for performance measures

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

While the results for our performance measures provide readers with a quantitative indication of the significant outputs, activities, outcomes and our effectiveness, the results should be read in conjunction with the additional information provided in the 'Outcomes achieved' sections of this report, which give context and detail about the work undertaken to achieve our purpose.

⁴ A subset of these measures is included in our Portfolio Budget Statement.

Principles of regulator best practice

Regulators are required to report against the 3 principles of regulator best practice under the regulator-specific performance reporting requirements, as part of their reporting processes in accordance with the PGPA Act and PGPA Rule. The principles primarily focus on how regulators undertake regulatory activities and minimise regulatory burden on businesses. The 3 principles are:

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

The ACCC applies these principles when delivering our functions for each of our key activities. Almost all performance measures link to one or more of these principles of regulator best practice to demonstrate how these principles relate to our everyday work. While not included in the Corporate Plan 2022–23, the ACCC developed performance measures for the 3 principles once Department of Finance guidance on regulator performance reporting was made available. The results are presented in Part 3 of this report.

The AER applies these principles when undertaking its work. Key actions that demonstrate the AER's commitment to the 3 principles are presented in Part 3 of this report.

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

As set out in our Corporate Plan 2022–23, the ACCC has 7 strategic objectives that guide the key activities we undertake to achieve our purpose and deliver the outcome set by the Australian Government.

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

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

Table 2.2: ACCC purpose, strategic objectives and key activities

Purpose: Making markets work for consumers, now and in the future
Strategic objective 1: Address anti-competitive conduct and promote competition <ul style="list-style-type: none">■ Key activity 1.1 – initiate enforcement and compliance actions to address harm to consumers and businesses resulting from anti-competitive conduct■ Key activity 1.2 – make decisions on authorisation, notification and certification trade mark applications in the public interest■ Key activity 1.3 – undertake market studies and inquiries to contribute to improved market outcomes
Strategic objective 2: Prevent anti-competitive mergers <ul style="list-style-type: none">■ Key activity 2.1 – assess mergers to prevent changes in market structures that substantially lessen competition
Strategic objective 3: Improve competition and choice by facilitating safe and secure data sharing by consumers through the Consumer Data Right <ul style="list-style-type: none">■ Key activity 3.1 – deliver the enabling technology solutions for Consumer Data Right■ Key activity 3.2 – support Consumer Data Right participants, including through assistance with testing and on-boarding■ Key activity 3.3 – accredit Consumer Data Right data recipients■ Key activity 3.4 – promote compliance with and enforce the Consumer Data Right rules and standards
Strategic objective 4: Protect consumers from misleading and deceptive conduct and promote fair trading <ul style="list-style-type: none">■ Key activity 4.1 – initiate compliance and enforcement actions to address harm to consumers and small businesses resulting from non-compliance with the Australian Consumer Law and industry codes■ Key activity 4.2 – empower small businesses by increasing awareness of their rights under the Australian Consumer Law and industry codes■ Key activity 4.3 – empower consumers by increasing awareness of their rights under the Australian Consumer Law and alerting them to the risk of scams
Strategic objective 5: Protect consumers from unsafe products <ul style="list-style-type: none">■ Key activity 5.1 – identify safety hazards in consumer products and prioritise the risks that may result in serious injury and death■ Key activity 5.2 – address the highest priority risks of serious injury and death arising from safety hazards in consumer products through regulation, education, compliance and enforcement actions
Strategic objective 6: Regulate monopoly infrastructure and monitor concentrated markets in the long-term interests of consumers <ul style="list-style-type: none">■ Key activity 6.1 – formulate regulatory decisions that promote the long-term interests of end users and consumers■ Key activity 6.2 – provide industry monitoring reports to government in relation to highly concentrated or emerging markets■ Key activity 6.3 – improve the efficient operation of markets by enforcing industry-specific competition and market rules
Strategic objective 7: Improve our own systems, capabilities and ways of working <ul style="list-style-type: none">■ Key activity 7.1 – support our people to develop and meet their full potential; and facilitate a diverse, respectful and inclusive culture■ Key activity 7.2 – modernise our ICT, improve the reliability, flexibility and security of our business and data systems, and enhance our data capabilities■ Key activity 7.3 – adapt our ways of working to allow resources to be used flexibly to meet changing priorities and to adopt innovative practices commensurate with the level of risk■ Key activity 7.4 – further develop our standing as a world-class independent regulator through external engagement and internal collaboration to support robust and transparent decision making that is responsive to complex challenges and demands

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

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

Table 2.3: AER purpose and strategic objectives

Purpose: Energy consumers are better off, now and in the future
Objective 1: Protect vulnerable consumers while enabling consumers to participate in energy markets
Objective 2: Effectively regulate competitive markets primarily through monitoring and reporting, and enforcement and compliance
Objective 3: Deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services
Objective 4: Use our expertise to inform debate about Australia's energy future and support the energy transition

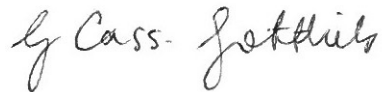
3

Annual performance statement



Statement of preparation

As the accountable authority of the ACCC and AER, I present the 2022–23 financial year annual performance statement of the ACCC and AER, prepared for paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In my opinion, this annual performance statement accurately presents the entity’s performance in the reporting period and complies with s 39(2) of the PGPA Act.



Gina Cass-Gottlieb
Chair, ACCC

Program 1.1 – ACCC

Analysis of performance

In 2022–23 the ACCC achieved a substantial suite of outcomes that supported the welfare of Australians by making markets work for consumers, now and in the future.

The ACCC continued to adjust priorities to focus our efforts to address various emerging competition, consumer protection, fair trading and regulatory issues throughout 2022–23 while also continuing our important ‘business-as-usual’ work. Our key priorities and achievements for the year are highlighted in the Chair’s message in Part 1.

The environment in which we operate influences our work, through both the shaping of our priorities for the year and the impact of environmental factors on the economy, consumers and the market more broadly. This is reflected in our work during 2022–23 on digital platforms issues, including the social media influencers sweep, and our work regarding sustainability issues and the greenwashing sweep. The higher cost of living and essential services was also a key driver for our work. This is shown in the government seeking the ACCC’s further involvement in energy markets, as well as in our work on inquiries regarding important consumer services of childcare, retail deposits and regional mobile infrastructure. The surge in the number of scams and the damage they cause to consumers and business has driven our work to establish a National Anti-Scam Centre. In this way we continue to prioritise the work the government asks us to undertake, and we conduct our work with regard to the broad policy aims of the government of the day.

We performed strongly against our performance measures as set out in our Corporate Plan 2022–23. Of the 55 performance measures with a specified target for 2022–23, we achieved or exceeded the target for 32 measures and partially met the target for another 15 measures. We did not meet the target for 8 measures. An analysis of the performance measure results, including where targets were not achieved, is located after each of the performance measure tables for each key activity in the strategic objective sections. Common themes identified in relation to targets not met include the complexity of matters being considered by the ACCC and the distribution of resourcing to address priorities and achieve outcomes with the most beneficial impact. Where we have exceeded our targets, this has been attributed to our proactive work in issuing or updating guidance and running campaigns or relevant environmental factors driving behaviour.

During 2022–23 we undertook our biennial ACCC Effectiveness Survey and ACCC Business Stakeholder Survey. The analysis of the results of our stakeholder surveys is provided below.

As detailed in Part 4, throughout the year we maintained our focus on fostering employee wellbeing and developing our people, who are integral to the ACCC being able to achieve outcomes. We continued our important diversity and inclusion work and continued to invest in supporting employees’ biopsychosocial health and wellbeing.

We also continued our investment in a number of agency change initiatives to improve our own systems, capabilities and ways of working. These initiatives include our Working Smarter Program to transform our information and communications technology (ICT) data technologies and business systems. The program has produced some important and tangible outputs to support the agency’s work.

Overall, in 2022–23 the ACCC was successful in achieving outcomes that enhanced the welfare of Australians by making markets work for consumers, now and in the future.

ACCC stakeholder surveys

In early 2023 the ACCC undertook 2 surveys: the ACCC Effectiveness Survey and the ACCC Business Stakeholder Survey. These surveys have been designed to obtain stakeholder views on the performance of the ACCC against our strategic objectives and key activities, as well as our performance against the 3 principles of regulator best practice.

The ACCC Effectiveness Survey gathers quantitative and qualitative data from key stakeholders primarily focusing on the ACCC's strategic objectives and key activities as identified in the corporate plan.

The ACCC Business Stakeholder Survey gathers quantitative and qualitative data from a broader range of stakeholders and focuses on the Regulator Performance Guide and the 3 principles of regulator best practice.

The methodology used for the 2 surveys was the same and largely followed the methodology used for the inaugural effectiveness survey conducted in 2019. Stakeholders were asked to rate to what extent they agree with statements relating to functions of the ACCC using a 5-point scale ranging from 'strongly disagree' to 'strongly agree'.

The results were transformed into a 0- to 100-point scale index. Index scores of 51 to 100 indicate that, on average, respondents have provided a favourable assessment. Index scores of 0 to 49 indicate that, on average, respondents have provided an unfavourable assessment. Therefore, the higher the index score, the more positive the participants' perceptions of the ACCC's performance.

ACCC Effectiveness Survey

The ACCC Effectiveness Survey results provide insight into whether key stakeholders consider the ACCC is effective in achieving its purpose. Additional questions are also asked about the effectiveness of the ACCC's engagement and observance of its core values. In 2023 the survey also included questions on the ACCC's effectiveness in demonstrating the 3 principles of regulator best practice.

In early 2023 the ACCC engaged ORIMA Research to undertake the survey.

ORIMA Research developed an [independent report](#) on findings from the 2023 survey, which is published on the ACCC's website. It concluded that the ACCC is performing well in achieving its purpose of making markets work for consumers, now and in the future.

Effectiveness survey performance measures are included under each key activity in Part 3 of this report. In addition, overarching perceptions of how well the agency is achieving its purpose through its strategic objectives are provided in Table 3.1.

Table 3.1: Purpose index score result and strategic objective composite⁵ index results

	2023 result
Purpose: Making markets work, now and in the future	74.3
Strategic objective 1: Address anti-competitive conduct and promote competition	72.6
Strategic objective 2: Prevent anti-competitive mergers	66.7
Strategic objective 3: Improve competition and choice by facilitating safe and secure data sharing by consumers through the Consumer Data Right	65.1
Strategic objective 4: Protect consumers from misleading and deceptive conduct and promote fair trading	72.7
Strategic objective 5: Protect consumers from unsafe products	74.3
Strategic objective 6: Regulate monopoly infrastructure and monitor concentrated markets in the long-term interests of consumers	66.4

Stakeholders rated the ACCC favourably on our effectiveness in achieving our purpose of making markets work for consumers, now and in the future (74.3). This was further supported by strong results on markets being more competitive (75.4) and consumers being better off (79.9) due to our work.

We note the 2023 survey differed slightly from the 2019 survey in that a broader range of stakeholders were invited to complete the survey. The report notes that this broader range of stakeholders may have had different interactions and priorities compared with the 2019 group. In particular, the 2019 report did not survey regulated businesses. ORIMA Research noted in its report that in the 2023 survey, regulated businesses ‘reported less positive perceptions across a range of ACCC-wide outputs and outcomes, particularly for the ACCC’s engagement, core values and principles of regulator best practice’.

The qualitative results as set out in the survey report indicate that the ACCC is a well-known and respected regulator. Employee expertise, professionalism and technical knowledge were identified as key strengths. Participants said that the ACCC is trustworthy, strategic and focused on topical and important issues. Most qualitative feedback showed favourable perceptions of the ACCC in meeting the principles of regulator best practice.

The ACCC is reviewing the quantitative and qualitative results of the *2023 Effectiveness Survey Report on Findings* to identify pragmatic opportunities for improvement.

ACCC Business Stakeholder Survey

The original focus of the ACCC Business Stakeholder Survey from 2016 to 2019 was on 6 key performance indicators (KPIs) within the government’s former Regulator Performance Framework. Since 2019 that framework has evolved into the Regulator Performance Guide and the KPIs have evolved into the 3 principles of regulator best practice (refer to Part 2 – Performance measurement and reporting framework).

In early 2023 the ACCC engaged ORIMA Research to undertake the survey focusing on the 3 principles of regulator best practice across the ACCC’s 7 core function areas. Additional questions are also asked about the effectiveness of the ACCC’s engagement and observance of its core values.

ORIMA Research developed an [independent report](#) on findings from the 2023 survey, which is published on the ACCC’s website. It concluded that the ACCC is performing well in adhering to the principles of regulator best practice, with positive ratings on balance recorded.

⁵ A composite index incorporates stakeholders’ views on multiple questions. For example, each reported index for a strategic objective is the average of the individual question indices for all questions within that strategic objective.

While positive on balance, across the 3 principles, perceptions of principle 1 (continuous improvement and building trust) and principle 3 (collaboration and engagement) were generally more positive compared with ratings recorded for principle 2 (risk based and data driven). The scores are reflected below.

Respondents across all function areas held favourable perceptions of the ACCC’s efforts in demonstrating its core values, particularly ‘Trustworthy’ and ‘Independent’. While still broadly positive, perceptions of the ACCC being ‘Informed’ were generally rated slightly lower.

Principles of regulator best practice

As noted above, through the ACCC Effectiveness Survey and ACCC Business Stakeholder Survey, the ACCC sought the views of a wide range of stakeholders to test how well we perform against the 3 principles of regulator best practice (the principles are outlined in Part 2 – Performance measurement and reporting framework).

The results from each survey relating to the principles are presented in Table 3.2. Overall, respondents have provided a favourable assessment of the ACCC’s performance in demonstrating the principles of regulator best practice, with more positive perceptions for principles 1 and 3.

Table 3.2: Composite⁶ survey results for the principles of regulator best practice

Principles	Result 2022–23	
	Effectiveness survey	Business stakeholder survey
Principle 1: Continuous improvement and building trust	71.2	58.7
Principle 2: Risk based and data driven	66.4	55.2
Principle 3: Collaboration and engagement	70.1	61.6

In the ACCC Business Stakeholder Survey, among respondents across most function areas, the proportion that felt the ACCC’s performance against the 3 principles was *better* than that of other Australian Government regulators was higher than the proportion who felt the ACCC’s performance was comparatively worse.

Reporting requirements for the 3 principles will commence for corporate plans and annual reports prepared for 2023–24 reporting period. At the time of publishing the Corporate Plan 2022–23 the ACCC had not developed a methodology to best measure its performance against each principle. Therefore, specific measures and targets are not reported in this annual report. However, the survey results presented in Table 3.2 above will be used as a baseline to set targets for 2024–25 (there is no target for 2023–24 because the surveys are conducted every 2 years).

⁶ A composite index incorporates stakeholders’ views in relation to multiple questions. For example, each reported index for a principle is the average of the individual question indices for all questions within that principle.

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

About this strategic objective

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

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

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

The ACCC does so by enforcing laws in Part IV of the *Competition and Consumer Act 2010* (Cth) (Competition and Consumer Act) that prohibit:

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

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

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

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

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

About this key activity

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

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

Our priorities

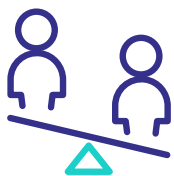
We prioritise our actions to address conduct that does the greatest harm to consumers and competitive processes. Our [Compliance and enforcement policy and priorities](#), which we publish annually, set out:

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

The ACCC has 2 enduring competition compliance and enforcement priorities:



cartel conduct



anti-competitive conduct.

Our competition compliance and enforcement priorities in 2022–23 included addressing competition issues relating to:



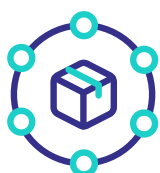
the pricing and selling of essential services, with a focus on energy and telecommunications



digital platforms



the financial services sector, with a focus on payment services



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



exclusive arrangements by firms with market power that impact competition.

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

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

Performance measures

Table 3.3: Performance measures for key activity 1.1

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
1.1.1 Number of in-depth competition investigations completed	28	18	20	18	19	✓
Methodology: <i>Manual count and cross-check of a range of records measuring how many matters reach each stage of investigation</i>						
Data source: <i>Internal records (Dynamics, intranet and iManage)</i>						
Related regulator best practice principles: 1 and 2						
1.1.2 Percentage of initial competition investigations completed within 3 months	33%	42%	56%	60%	34%	✗
Methodology: <i>Analysis and cross-check of a range of records measuring number of initial investigations completed within timeframe as a proportion of the overall number of initial investigations</i>						
Data source: <i>Internal records (Dynamics, intranet and iManage)</i>						
Related regulator best practice principles: 1 and 2						
1.1.3 Percentage of in-depth competition investigations completed within 12 months	71%	44%	45%	70%	42%	✗
Methodology: <i>Analysis and cross-check of a range of records measuring the number of in-depth investigations completed within timeframe as a proportion of the overall number of in-depth investigations</i>						
Data source: <i>Internal records (Dynamics, intranet and iManage)</i>						
Related regulator best practice principles: 1 and 2						
1.1.4 Number of competition enforcement interventions (court proceedings commenced, section 87B undertakings accepted, administrative resolutions)*	6	7	5	6+	7	✓
Methodology: <i>Manual count and cross-check of interventions</i>						
Data source: <i>Internal records (Dynamics, intranet and iManage)</i>						
Related regulator best practice principles: 1 and 2						
1.1.5 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC's compliance and enforcement actions are effective in addressing harm to consumers and businesses resulting from anti-competitive conduct	–	–	–	70+	69.5	○
Methodology: <i>The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2022–23 survey results</i>						
Data source: <i>ACCC Effectiveness Survey</i>						
Related regulator best practice principles: 1, 2 and 3						

Administrative resolutions are undertaken to effect some change to a trader's behaviour. They can range in the level of formality. For an administrative resolution to be included as an enforcement intervention for reporting purposes, it must be a formal resolution reached with a trader and noted publicly in an ACCC media release.

Analysis of results

In 2022–23 we exceeded the target number of competition enforcement interventions, achieving 7 against the target of 6+ (measure 1.1.4); and the target number of 18 in-depth competition investigations, achieving 19 (measure 1.1.1). We achieved 47% of in-depth competition investigations completed within 12 months (measure 1.1.3), the target was 70%. We also focused resources on delivering high-value market study, analysis and advocacy work in the financial services sector.

Flow-on effects of the COVID-19 pandemic continued to impact the progress of our investigations (measure 1.1.2, and measure 1.1.3).

To assist us to meet our longer term targets effectively, we will continue to direct our resources to the highest priority investigations and matters in litigation while also maintaining a robust pipeline of matters. This distribution of resources will enable us to achieve the best possible outcomes. We will continue to improve these processes to maximise effectiveness and outcomes.

We partially met the target index score of 70+ for the effectiveness survey question (measure 1.1.5), achieving an index score of 69.5. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

Litigation

In 2022–23 our continued focus on anti-competitive conduct and cartel conduct as enduring priorities led to the following outcomes.

Proceedings against Mastercard

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

The alleged conduct is in contravention of sections 46, 47 and/or 45 of the Competition and Consumer Act and is in response to the Reserve Bank of Australia's least cost routing initiative.

The matter is set down for hearing in the Federal Court in 2024.

Alkaloids of Australia and Christopher Joyce sentenced in criminal price fixing, bid rigging, output restriction and market allocation cartel

In November 2022, following guilty pleas, the Federal Court sentenced Alkaloids of Australia Pty Ltd, an Australian pharmaceutical company, and its former export manager Christopher Kenneth Joyce for engaging in criminal cartel conduct in respect of making, attempting to make, and giving effect to arrangements with overseas pharmaceutical ingredient suppliers involving price fixing, bid rigging, output restriction and market allocation related to the supply of scopolamine N-butylbromide (SNBB) – the active pharmaceutical ingredient used in common anti-spasmodic medications.

Alkaloids of Australia was convicted and fined \$1,987,500.

Mr Joyce was also convicted and was sentenced to 2 years and 8 months' imprisonment to be served as an intensive corrections order, including 400 hours of community service. Mr Joyce was also disqualified from managing corporations for 5 years and fined \$50,000.

Bingo Industries, Aussie Skips and their executives plead guilty to criminal price fixing conduct

On 16 August 2022 waste company Bingo Industries Limited entered pleas of guilty to criminal cartel offences relating to price fixing for demolition waste services in Sydney. Bingo was charged with these offences after an investigation by the ACCC and referral to the CDPP.

Bingo's former managing director and Chief Executive Office (CEO) Daniel Tartak was also charged with 2 criminal cartel offences for aiding and abetting Bingo's alleged cartel conduct. On 20 October 2022 Mr Tartak entered pleas of guilty in relation to those offences.

On 19 December 2022 waste companies Aussie Skips Recycling and Aussie Skips Bin Services (together Aussie Skips) were each charged with a criminal cartel offence. Aussie Skips former chief executive Emmanuel Roussakis has also been charged with one criminal cartel offence for his involvement in the alleged conduct. Aussie Skips and Mr Roussakis have since pleaded guilty.

The parties admitted that in mid-2019 Bingo agreed with its competitor Aussie Skips to fix and increase prices for the supply of skip bins and the provision of waste processing services for building and demolition waste in Sydney.

Sentencing hearings have taken place in the Federal Court for all parties and judgment was reserved.

BlueScope and its former general manager Jason Ellis attempted to induce steel price fixing agreements

On 9 December 2022 the Federal Court found that BlueScope Steel Limited and its former general manager of sales and marketing Mr Jason Ellis engaged in cartel conduct in relation to the supply of flat steel products in Australia.

The Court found that, between September 2013 and June 2014, BlueScope and Mr Ellis attempted to induce 8 steel distributors in Australia, and overseas manufacturer Yieh Phui, to enter agreements to fix and/or raise the level of pricing for flat steel products supplied in Australia.

A hearing on penalties and other orders occurred on 12 April 2023. In addition to seeking penalties against both BlueScope and Mr Ellis, the ACCC is seeking an order disqualifying Mr Ellis from managing corporations for a period to be determined by the Court.

ARM Architecture and its former managing director ordered to pay penalties for attempted rigging of university tender

On 13 April 2023 the Federal Court found that architecture firm Ashton Raggatt McDougall Pty Ltd (ARM Architecture) and its former managing director Anthony John Allen had attempted to rig bids for a tender relating to a \$250 million building project at Darwin's Charles Darwin University.

The Court ordered ARM Architecture to pay a penalty of \$900,000 and Mr Allen to pay a penalty of \$75,000.

ARM Architecture admitted it had attempted to engage in cartel conduct when Mr Allen sent emails to 8 other architecture firms in September 2020 asking the firms not to bid for the second phase of the university project.

Mr Allen admitted he had attempted to induce the other architecture firms to make an arrangement or arrive at an understanding with ARM Architecture containing a cartel provision.

Court action against Swift Networks for alleged tendering cartel at WA mining camps

On 17 February 2023 the ACCC launched Federal Court proceedings against technology company Swift Networks Pty Ltd (Swift) for alleged bid rigging and price fixing when tendering to supply equipment and services to 5 Pilbara mining village sites.

The ACCC alleges that, on 5 occasions in 2019, Swift made an agreement with a competitor, DXC Connect Pty Ltd and DXC Technology Australia Pty Ltd (together DXC), to rig bids and fix prices for the supply of technology infrastructure at mining camps in Western Australia's Pilbara region.

Oil and gas services company Qteq in court for alleged cartel conduct

On 8 December 2022 the ACCC filed civil cartel proceedings in the Federal Court against mining equipment and technology services company Qteq Pty Ltd (Qteq) and its executive chairman, Simon Ashton.

It is alleged that, on 7 instances between 2017 and 2019, Qteq contacted competing businesses working in the supply of services to the oil and gas service industry, in attempts to induce them to enter into cartel arrangements with them.

The ACCC also alleges that Mr Ashton was involved in attempting to induce competitors to enter into these cartel arrangements on 6 occasions.

The matter is listed for hearing in March 2024.

NQ Cranes to pay \$1 million for cartel agreement with competitor

On 23 November 2022, in proceedings brought by the ACCC, the Federal Court ordered overhead crane company NQ Cranes Pty Ltd to pay a \$1 million penalty after NQ Cranes admitted that it had entered into an anti-competitive cartel agreement with a competitor.

NQ Cranes admitted contravening the Competition and Consumer Act by entering into a cartel agreement with a competitor that had the purpose of allocating overhead crane service customers in parts of Queensland and the Newcastle region.

In a 'distributorship agreement', signed in August 2016, the competitors agreed to cooperate in the market for servicing overhead cranes by not targeting each other's current customers in parts of Queensland and in Newcastle. The agreement also stated the companies would instead focus on competing against other companies in the industry instead of each other.

Enforcement of concerted practices law – Lawn Solutions Australia

In November 2022 the ACCC accepted a court enforceable undertaking from Lawn Solutions Australia (LSA) to address the ACCC's concerns that it may have engaged in a concerted practice with regard to the prices of instant turf. LSA is one of Australia's largest networks of Australian instant turf specialists.

The ACCC was concerned that LSA's exchange of price information with its network of turf growers and resellers could have facilitated cooperation between competitors on price competition in the greater Sydney area. Among other commitments, LSA undertook to stop circulating information to its growers and resellers which could be used to coordinate prices.

Gas price cap and code

In December 2022 the Australian Government introduced an emergency price cap on the sale of wholesale gas by producers and tasked the ACCC with enforcing the cap. In January 2023 the ACCC published interim compliance and enforcement guidelines for the price cap and began consultation with industry to clarify areas of uncertainty. These guidelines were updated in March 2023. We also worked with government in the development of a mandatory code of conduct for gas producers. In the coming year we will prioritise compliance with the price cap and, the code. We expect this important work to account for a substantial share of our compliance and enforcement effort in the energy sector.

► Highlight

Telstra – Undertaking to preserve 5G competition

In August 2022 the ACCC accepted a court enforceable undertaking from Telstra to address concerns that it had registered certain radiocommunications sites to block a competitor's 5G rollout.

Spectrum is a critical input for mobile phone networks and wireless broadband services. Low-band spectrum such as 900 MHz has the ability to transmit over long distances and is important for the development of 5G mobile networks.

In December 2021 Optus had acquired 900 MHz spectrum at an auction held by the Australian Communications and Media Authority (ACMA). Telstra was the incumbent licensee for that spectrum at the time of the auction. The new licence would become effective from 2024, but there was an opportunity for Optus to obtain early access to it as long as radiocommunication sites under the spectrum band were not already being used. Telstra was aware of this and, the month after the auction, it registered a large number of sites in the 900 MHz band for potential future use. The ACCC alleged that, in doing so, Telstra acted to delay Optus's access to the spectrum licence and interfere with Optus's plans to roll out its 5G network nationally.

The ACCC was concerned that Telstra's actions had the purpose or likely effect of substantially lessening competition in the retail mobile market, in contravention of section 46 of the Competition and Consumer Act. The ACCC considered Telstra's conduct was very serious and contemplated stronger enforcement action. However, the undertaking offered by Telstra could restore competition promptly in the emerging 5G market. The undertaking was signed within 8 months of Telstra's conduct.

Under the undertaking, Telstra committed to deregister relevant sites. This ensured that Optus would not be hindered from expanding its 5G rollout, giving more consumers access to a choice of 5G services in regional and metropolitan Australia.

Telstra also undertook to ensure that its board of directors, CEO and other senior staff were given competition law compliance training.

Cartel immunity applications

Table 3.4: Cartel immunity applications 2022–23

	Number
Approaches	16
Immunity application proffers	7
Proffers not resulting in conditional immunity	1
Civil conditional immunity granted	0
Criminal conditional immunity granted by CDPP upon ACCC recommendation	0

International engagement

The ACCC continued to advocate for improved international cooperation on competition compliance and enforcement. Highlights for the year include:

- engaged with other countries' competition agencies on cartel assessments, including where investigations identify international cartel conduct
- participated in an international working group with partner competition authorities, the United States Department of Justice and Federal Bureau of Investigation, Canadian Competition Bureau, New Zealand Commerce Commission, and United Kingdom Competition and Markets Authority. The working group focuses on illegal anti-competitive conduct impacting global supply chains, including cartel activity and any other activities that materially impact competition, such as exclusionary arrangements by firms with market power
- participated in the International Competition Network (ICN), including leading project groups, contributing to webinars and developing guidance documents and reference materials. We attended and presented at:
 - the ICN Cartels Workshop hosted by the New Zealand Commerce Commission in Auckland in December 2022
 - the ICN Unilateral Conduct Workshop hosted by the Japan Fair Trade Commission in March 2023
- entered into a memorandum of understanding (MOU) with Italy's competition and consumer authority, the Autorità Garante della Concorrenza e del Mercato (AGCM) to enhance cooperation and collaboration between our 2 agencies. The MOU provides for the sharing of information on issues of common interest, and exchanges of employees
- contributed to discussions and negotiations for free trade agreement chapters on competition, such as the Australia – European Union Free Trade Agreement and the Australia – India Comprehensive Economic Cooperation Agreement
- participated in meetings of the Organisation for Economic Co-operation and Development (OECD) Competition Committee. For example, ACCC Chair Gina Cass-Gottlieb participated in a panel discussion exploring global enforcement trends at the OECD's Competition Open Day in February 2023
- attended the 17th East Asia Top Officials Meeting and 14th East Asia Conference on Competition Law and Policy in Manila, Philippines. ACCC CEO Scott Gregson presented in a panel session, The Interface Between Competition Policy and Privacy Laws.

► Highlight

Competition Law Implementation Program – Reconnecting in the region

Since its inception in 2014, the ACCC's Competition Law Implementation Program (CLIP) has been delivering competition law enhancement programs to competition regulators in South-East Asia.

The 2022–23 financial year concludes the fifth program phase (Phase V), during which over 17 online and in-person activities were delivered to competition officials from all Association of Southeast Asian Nations (ASEAN) Member States.

At the beginning of CLIP Phase I, only 5 of the 10 ASEAN Member States had passed competition laws and only 4 competition authorities had been established. Now, all ASEAN Member States have implemented competition laws and established competition authorities.

The COVID-19 pandemic presented new challenges and delivery of CLIP activities transitioned online. This move provided new opportunities for CLIP to develop better online capabilities and resources for the ASEAN Member States. The end of 2022 provided scope for the return of in-person activities with international travel recommencing. CLIP supported 4 in-person, in-country activities in the region during the last half of Phase V, including a merger hypothetical workshop; a workshop on regional cooperation; a cartels workshop; and a workshop on distribution agreements. Other in-person activities included a 6-week placement of an ACCC staff member to the Cambodian Competition Commission and welcoming 12 ASEAN competition officials to the University of Queensland in Brisbane to complete a week-long intensive introduction to competition law and economics course.

The highlight of the CLIP Phase V calendar was a 2-day Heads of Agency meeting in Brisbane on 6 and 7 June. The meeting brought together Chairs and Commissioners and supporting senior officials from Australia, New Zealand and 9 of the 10 ASEAN Member States' competition agencies. This is the second of these Heads of Agency meetings, the first being held in 2019.

Many new Commissioners have been appointed in the region in the last 12 months and there have also been significant changes since 2019, including the establishment of competition agencies in Brunei Darussalam, Cambodia and Lao PDR and the re-establishment of competition agencies in Thailand and Vietnam.

The meeting facilitated high-level dialogue on current strategic issues facing competition agencies. Representatives shared their experiences and provided insight into challenges on the structural and organisational aspects of running an effective competition agency. Topics of common interest across the region included digital markets, sustainability, cost of living and advocating the benefits of competition law and policy.

As the region's competition agencies continue to develop, our relationships and the cooperation that we extend to each other will support and build an even stronger regional competition culture.

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

About this key activity

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

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

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

Performance measures

Table 3.5: Performance measures for key activity 1.2

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
1.2.1 Percentage of authorisation matters where a draft determination is released within 4 months [#]	–	72%	95%	80%	71%	○
<p>Methodology: Number of authorisations in which a draft determination is released in 4 calendar months divided by number of authorisations in which a draft determination is released, expressed as a percentage</p> <p>Data source: Internal records (Dynamics)</p> <p>Related regulator best practice principles: 1, 2 and 3</p>						
1.2.2 Percentage of authorisation applications assessed within statutory timeframe(s) (excluding time periods where information is outstanding)*	100%	100%	100%	100%	100%	✓
<p>Methodology: Number of new authorisations applications for which a final determination has not been issued within 6 months or a timeframe extended by agreement</p> <p>Data source: Internal records (Dynamics)</p> <p>Related regulator best practice principles: 1, 2 and 3</p>						
1.2.3 Percentage of CTM final assessments completed within 12 months [#]	–	60%	64%	80%	55%	✗
<p>Methodology: Number of CTM final assessments completed within 12 months divided by the total number of CTM final assessments completed</p> <p>Data source: Internal records (Dynamics)</p> <p>Related regulator best practice principles: 1, 2 and 3</p>						

1.2.4 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC is effective in making decisions on authorisation, notification and certification trade mark applications in the public interest	-	-	-	70+	75	✓
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Methodology: *The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2022–23 survey results*

Data source: ACCC Effectiveness Survey

Related regulator best practice principles: 1, 2 and 3

Not reported prior to 2020–21.

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

Analysis of results

The ACCC assessed all authorisation applications within the statutory timeframe (measure 1.2.2). We did not meet the target of releasing 80% of draft determinations within 4 months of lodgement – 71% of draft determinations were issued within 4 months, 9% less than the target of 80% (measure 1.2.1). A number of assessments required further information from the applicants or interested parties before a draft decision was possible. Some of the delayed decisions were in the aviation industry. These were considered in the context of uncertain market conditions due to COVID-19 impacts, which added additional complexity. We did not meet the target of completing 80% of CTM applications within 12 months (measure 1.2.3). This was primarily due to resources being directed to merger authorisation applications during this period.

We exceeded the target index score of 70 for the effectiveness survey question (measure 1.2.4), achieving an index score of 75. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

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

Authorisation decisions included:

- authorisation with conditions to enable the Australian Energy Market Operator (AEMO) and energy industry participants to engage in certain coordination, input sharing and information sharing activities for the purpose of ensuring the reliable operation of energy systems. The ACCC authorised conduct different from that sought by AEMO in its application. We were concerned that, without appropriate clarity and oversight, the conduct had the potential to result in significant public detriment as a result of a lessening of competition in wholesale energy markets and for maintenance services and other inputs
- a decision denying authorisation to Virgin Australia Regional Airlines and Alliance Airlines to give effect to an extension of the Charter Alliance Agreement which provided for the joint tender and supply of services to corporate customers, principally for fly-in fly-out employees. The ACCC was concerned that continuing the Charter Alliance Agreement was likely to reduce the number of bidders in tender processes for charter services, particularly when there would only be one other larger provider of these services. The ACCC was not satisfied that the claimed public benefits would outweigh the likely public detriment
- authorisation to 1Circle Pty Ltd on behalf of the Business Renewables Buying Group to pool their electricity demand and conduct a joint procurement process for renewable energy
- a draft decision proposing to deny authorisation to Juno Pharmaceuticals Pty Ltd, Natco Pharma Ltd, Celgene Corporation and Celgene Pty Ltd for certain provisions of a settlement and licence agreement in relation to the pharmaceutical products Revlimid® and Pomalyst®. Based on information available at the time, the ACCC was not satisfied that the likely public benefit would outweigh the likely public detriment and therefore proposed to deny authorisation. We did not proceed to a final determination, as the companies withdrew the application
- authorisation of a product stewardship scheme to recycle mattresses (see the highlight section below).

There was a significant surge in the number of applications for authorisation of collaboration between industry participants during the COVID-19 pandemic. These authorisations have now largely expired.

All notifications and applications for authorisation are published on the [ACCC's authorisations and notifications registers](#). More information about the collective bargaining class exemption is available on the [ACCC's website](#). Authorisation decisions which were before the Australian Competition Tribunal during the year are discussed in Part 4.

► Highlight

Authorisation of product stewardship scheme Recycle My Mattress

On 26 October 2022 the ACCC issued a final determination allowing the Australian Bedding Stewardship Council to establish and operate a voluntary, industry-led product stewardship scheme in Australia, Recycle My Mattress. Authorisation was granted for 5 years, with conditions concerning reporting and review.

The Recycle My Mattress scheme aims to increase resource recovery, divert waste from landfill and minimise the environmental and health and safety impacts of end-of-life mattresses.

This matter is one of a number of similar applications that the ACCC has considered likely to result in environmental benefits, particularly from encouraging changes in consumer behaviour. In particular, the ACCC considered that, by increasing the value of recovered materials from end-of-life mattresses and pricing mattresses to better reflect the costs of supply and disposal, it is likely that fewer mattresses will end up in landfill.

The Australian Bedding Stewardship Council also committed to seeking to support employment opportunities in the scheme's recycling services for people who experience social disadvantage. The ACCC considered this would result in more employment opportunities for those people.

The ACCC considered that the level of public benefits realised would ultimately depend on the level of industry participation and the effectiveness of the Australian Bedding Stewardship Council's administration of the Recycle My Mattress scheme. Therefore, the ACCC decided to grant authorisation with conditions requiring annual reporting and independent review of the scheme's operation against its objectives and targets. This will ensure that the scheme is effectively administered and provide greater transparency.

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

About this key activity

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

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

Focus areas for 2022–23 included progressing the 5-year Digital Platform Services Inquiry with 2 further biannual reports, including recommendations for regulatory reform; commencing the Childcare Inquiry and the Retail Deposits Inquiry; and completing the Regional Mobile Infrastructure Inquiry 2022–23.

The Electricity Market Monitoring Inquiry, which runs until 2025, and the Gas Inquiry, which has been extended to 2030, are covered in Part 3, strategic objective 6.

Inquiry reports are available in full on our [website](#).

Performance measures

Table 3.6: Performance measures for key activity 1.3

Performance indicator	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
1.3.1 Effectiveness survey ‘index score’ (out of 100) that key stakeholders agree the ACCC’s market studies and inquiries are effective in contributing to improved market outcomes	-	-	-	70+	64	○
<p>Methodology: <i>The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale</i></p> <p>Data source: ACCC Effectiveness Survey</p> <p>Related regulator best practice principles: 1, 2 and 3</p>						

Analysis of results

We partially met the target index score of 70 for the effectiveness survey question (measure 1.3.1) achieving an index score of 64. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

ACCC market studies and inquiries have wide-ranging impacts in terms of scope and through time. These activities contribute to policy debates, compliance and enforcement work and internal expertise that helps to improve the ACCC's other functions (such as merger assessments and competition exemption assessments). A range of quantitative and qualitative performance measures are therefore appropriate to fully capture the value of these activities.

Other qualitative measures show that market studies and inquiries work continued to be effective over 2022–23.

For example, on the policy front, the government's October 2022 'roadmap' on water market reforms continued to build on the recommendations of the ACCC's 2019–2021 Murray–Darling Basin Water Markets Inquiry. This led to the government legislating new functions for the ACCC as the water market conduct regulator in the Murray–Darling Basin. This is discussed further below. Reforms to the unfair contract terms framework in the Australian Consumer Law (discussed in key activity 4.1) commence in November 2023. The reforms will provide a far stronger incentive for business compliance. The ACCC has long advocated for these changes, including through our 2017–2019 Digital Platforms Inquiry and 2020 Perishable Agricultural Goods Inquiry. A final example on the policy front is the impact of the August 2022 interim report from the ACCC's Gas Inquiry. This is dealt with in Part 3, strategic objective 6 of this report.

On the enforcement and compliance front, the litigation outcome against Google LLC for misleading data use and collection representations (discussed in key activity 4.1) is an example of the ACCC taking action on conduct highlighted as a concern in the Digital Platforms Inquiry. As another example, the Lactalis Australia litigation outcome (discussed in key activity 4.1) relates to breaches of the Dairy Code of Conduct. The code was introduced following a recommendation in the ACCC's 2016–2018 Dairy Inquiry, showing how ACCC market studies and inquiries work can contribute to improved market outcomes through time.

As a key part of its knowledge management, the ACCC continues to promote best practice across its market studies portfolio of work, ensuring that lessons learned in one study or inquiry help to improve other studies or inquiries and the ACCC's approach to these activities continues to improve in effectiveness.

In addition to the analysis of results, the below outcomes achieved provide further details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

Digital platforms

Digital Platform Services Inquiry Interim Report No. 5 – Regulatory Reform

In November 2022 the ACCC released the fifth interim report of the Digital Platform Services Inquiry. The report considers competition and consumer issues identified during the Digital Platform Services Inquiry and the original Digital Platforms Inquiry. The report recommends a range of new measures to address harms from digital platforms to Australian consumers, small businesses and competition.

Consumer issues and recommendations

The report notes a significant and sustained increase in the number of scams on digital platforms targeting consumers. Also, consumers have experienced harms from inappropriate and fraudulent apps made available on app stores, as well as from fake reviews and review manipulation. These problems have been exacerbated by a lack of avenues for dispute resolution for consumers and small businesses. The report recommends new laws requiring digital platforms to:

- provide user-friendly processes for reporting scams, harmful apps and fake reviews, and respond to such reports
- reduce the risk of scams by verifying certain business users such as advertisers, app developers and merchants
- publish review verification processes to provide important information to readers of online reviews to help them assess the reliability of reviews on the platform
- report on scams, harmful apps and fake reviews of their services and the measures taken to address them
- ensure consumers and small businesses can access appropriate and timely dispute resolution, supported by the establishment of a new digital platform ombuds scheme.

Competition issues and recommendations

Without effective regulation, large digital platforms have the ability and incentive to engage in conduct that is harmful to competition. For example, they can preference their own services or impose tying arrangements where users of a digital platform product or service are pushed or compelled to use another service or product – this could involve smartphones being exclusively pre-loaded with a certain bundle of apps. These poor competition outcomes harm consumers and business users.

The report recommends a new regulatory regime, to work alongside Australia’s existing competition laws, that would address anti-competitive conduct, unfair treatment of business users, and barriers to entry and expansion by actual or potential rivals. For example, service-specific codes of conduct could be developed for designated digital platforms. These codes could include targeted obligations to:

- prevent anti-competitive self-preferencing, tying and exclusive pre-installation arrangements
- address data advantages
- ensure fair treatment of business users
- improve switching, interoperability and transparency.

Public consultation ended on 15 February 2023. The government is currently considering the ACCC’s recommendations.

► Highlight

Domestic and international engagement

The ACCC works extensively with other Australian regulators and international counterparts in relation to developments in digital platform markets and regulation.

Domestically, the ACCC is a member of Australia's Digital Platform Regulators Forum (DP-REG), along with the Office of the Australian Information Commissioner (OAIC), the Australian Communications and Media Authority (ACMA) and eSafety.

The DP-REG was formed in 2022 to support a streamlined and cohesive approach to the regulation of digital platforms. DP-REG member regulators face many of the same challenges – addressing emerging consumer harms; encouraging innovation while balancing protections; and countering the market power of these large, complex and diverse multinational entities.

Through DP-REG, we share information about, and collaborate on, cross-cutting issues and activities on the regulation of digital platforms. This includes an overarching focus on how competition, consumer protection, privacy, online safety and data issues intersect. DP-REG also provides members with an opportunity to promote proportionate, cohesive, well-designed and efficiently implemented digital platform regulation.

Internationally, we maintain and develop strong relationships with our counterpart regulators, particularly the United Kingdom Consumer and Markets Authority and European Commission, who are at the forefront of digital platform regulation. We also frequently contribute to the international debate through engagement with the Organisation for Economic Co-operation and Development (OECD), the International Competition Network and the International Consumer Protection and Enforcement Network. Regular international engagement facilitates information sharing and discussion of common issues; and provides insight into approaches to enforcement and regulatory reform, which is highly relevant to the ACCC's enforcement work and advocacy for our recommendations for regulatory reform.

Digital Platform Services Inquiry Interim Report No. 6 – Social Media Services

In April 2023 the ACCC released the sixth interim report of the Digital Platform Services Inquiry. The report considers potential competition and consumer issues in the provision of social media services to consumers and businesses in Australia by social media platforms. It highlights a range of competition and consumer harms occurring across social media services, such as:

- excessive data collection practices
- lack of effective dispute resolution options
- prevalence of scams
- lack of transparency for advertisers
- inadequate disclosure of sponsored content by influencers.

The report's findings reinforce the need for reform and provide further support for the ACCC's recommendations made in the fifth interim report, released in November 2022.

The sixth interim report acknowledges social media services are an essential part of our daily lives and have provided many benefits to society. However, it notes the ACCC is concerned about the levels of concentration and considers that Meta holds significant market power. Barriers to entry remain high. Meta's users face high switching costs, because Meta's platforms (particularly Facebook) have attracted and retained many users for a significant period of time. This means those users have invested in uploading material and building a large network of social contacts. While younger Australians are more likely to use multiple social media services, including newer platforms like TikTok and BeReal, older Australians use fewer platforms and still rely heavily on Facebook and Instagram.

Australian businesses rely on social media platforms to advertise their products and engage with consumers. Small and medium-sized businesses are increasingly reliant on platforms like Facebook and Instagram for targeted, easy to use and cost-effective advertising solutions. However, advertisers have raised concerns about the lack of transparent and accurate data provided to them.

The report also highlights the growth of the influencer marketing industry and raises concerns about inadequate disclosure of sponsored posts by influencers.

Financial services

On 14 February 2023 the Treasurer directed the ACCC to conduct an inquiry into the market for retail deposit products supplied by authorised deposit-taking institutions. The inquiry includes how banks set interest rates, as well as other terms and conditions.

We have commenced work on this inquiry, with a focus on:

- how banks and other authorised deposit-taking institutions set their rates on retail deposit products
- how their approaches differ from rate setting for credit products
- the role of deposits in their overall funding mix
- how consumers search for and choose retail deposit products
- the nature and extent of competition for retail deposits.

On 21 April 2023 we published an issues paper calling for submissions. We are required to report to the Treasurer by 1 December 2023.

We have continued to take an advocacy role on significant competition issues affecting financial services. In particular, we have engaged with the government's comprehensive reform of payments system regulation and contributed to the development of the government's overarching strategic plan for the payments system. We have also engaged on discrete policy workstreams to ensure that the regulatory framework for payments is designed to facilitate competition, innovation and good consumer outcomes.

We have continued work following from our 2019 Foreign Currency Conversion Services Inquiry. For example, we have monitored the take-up of the best practice guidance for money remitters from the 2019 final report and assessed the effect of that guidance.

Childcare Inquiry

Examining the factors that drive childcare prices

The ACCC is currently inquiring into the market for the supply of childcare services. We are drawing on wide-ranging consultation and information gathering activities to analyse the factors that drive prices in the childcare sector.

On 28 June 2023 we provided the Treasurer with the first interim report of the inquiry into the market for the supply of childcare services.

In the interim report we observed that:

- Fees increased for all services by between 20% and 32% from 2018 to 2022.
- Out-of-pocket expenses for households grew at a slower rate than fees, and the Child Care Subsidy covered more than half of the daily fees in December 2022.
- Approved childcare places have increased by 17% for 2018 to 2022, but this increase has not been consistent across all services and all geographic regions in Australia.
- Once households have decided how much childcare they can afford to use, parents and guardians have appeared to focus on considerations other than price when choosing a specific service.
- Households on higher incomes and in greater socio-economic advantage areas have access to more services, but this comes with higher prices.
- Households with the lowest incomes spent a greater share of their disposable income on childcare than other Australian households.
- While there has been an increasing number of charged hours per child enrolled in childcare, actual hours attended have remained stable or fallen.
- The number of centre-based day care and family day care services charging average fees above the hourly rate cap has almost doubled since 2018.
- The analysis in the interim report is based on a large volume of Department of Education administrative data; preliminary results of the ACCC's survey of parents and guardians; and information provided directly to the ACCC by childcare providers.

In September 2023 we will publish a consultation paper that includes an analysis of cost information obtained from providers as well as identifying potential draft recommendations/findings and seeking submissions in response.

Our Childcare Inquiry is being informed by an extensive amount of data regarding the costs of providing childcare services from large, medium and small providers. We are currently collating, checking and analysing this database of childcare costs. The cost information is a vital input to better understand the drivers behind price increases and the childcare market.

A final report will be provided to the Treasurer by 31 December 2023.

Regional Mobile Infrastructure Inquiry

In March 2022 the ACCC was directed to conduct a public inquiry in relation to:

- access to mobile towers and associated infrastructure provided by telecommunications and other infrastructure providers in regional, rural, remote and peri-urban Australia that can be used in the supply of mobile telecommunications and radiocommunications services
- the feasibility of providing temporary mobile roaming services during natural disasters and other emergencies.

The ACCC was asked to provide findings that could form an evidence base to inform future government policy decisions on regional mobile telecommunications provision.

The Regional Mobile Infrastructure Inquiry commenced on 1 July 2022 with a consultation paper outlining the inquiry scope and purpose. The ACCC consulted widely with industry, consumers and other stakeholders who may be interested in matters considered by the inquiry.

On 18 April 2023 we published our report on preliminary findings. A final report was provided to the Minister for Communications on 30 June 2023 as required under the direction.

Murray–Darling Basin Water Markets Inquiry

On 11 October 2022, the Hon Tanya Plibersek MP, the Minister for the Environment and Water, accepted all 23 recommendations in the *Water market reform: final roadmap report*. The roadmap recommendations built on the recommendations from the ACCC's inquiry into Murray–Darling Basin Water Markets final report (March 2021) to develop necessary, practical and cost-effective measures for implementation over the short to medium term. On 12 October the Murray–Darling Basin Ministerial Council also provided in-principle support for the roadmap recommendations.

The ACCC has since worked with the Department of Climate Change, Energy, the Environment and Water (DCCEEW) and other relevant Commonwealth agencies to implement specific roadmap recommendations intended to improve integrity and transparency in Murray–Darling Basin water markets that give new roles and functions to the ACCC.

The ACCC continues to assist DCCEEW with the development of the market integrity legislation, including amended water announcement rules and the proposed intermediaries code. The ACCC will be the agency responsible for undertaking compliance and enforcement activity under the integrity legislation and intermediaries code.

Other studies and research

Private health insurance reporting

Each year, the ACCC is required by the Senate to produce a report on key competition and consumer developments and trends impacting on people's health cover. The ACCC's [December 2022 report for the 2021–22 financial year](#) was the ACCC's 24th under this direction.

The report found that insurers' estimated permanent savings due to claims not made during the COVID-19 pandemic were about \$2.25 billion as at 30 June 2022. The report shows that COVID-19 restrictions continued to limit policyholders' access to non-urgent elective surgery and non-urgent extras treatments, such as dental and optical services, in 2021–22. This was particularly so in Victoria and New South Wales during the extended lockdowns in the second half of 2021 but also more broadly during the Omicron wave in early 2022. This in turn led to significant declines in benefits that insurers paid out to policyholders. Insurers paid 4.5% less on average in hospital benefits per policyholder in 2021–22 compared with the year before. The average amount paid out for extras benefits decreased by 5.4% per policyholder.

The report shows that health insurers have handed back to policyholders about \$2.1 billion of the profits they gained from a reduction in claims between the start of the pandemic and 30 June 2022. Most funds have been returned through premium relief (about \$1.08 billion), especially deferral of premium increases. This is closely followed by direct payments to policyholders (about \$847 million). A smaller amount has been allocated to other measures, such as hardship support and coverage extensions (about \$160 million). Some insurers have also reported additional measures they will take to return the remaining savings to policyholders in 2022–23.

Water Monitoring Report

The ACCC has continued to monitor specified matters under the *Water Act 2007* (Cth). In December 2022 we published the [12th annual Water monitoring report](#), reflecting on the 2020–21 financial year.

It noted that:

- Improved rainfall across most parts of the Murray–Darling Basin in 2020–21 led to widespread increases in water storage volumes and allocations. These conditions, combined with large volumes of carryover water from the previous season, led to irrigation infrastructure operators delivering 120% more water to irrigators than in 2019–2020.
- The number of transformations (referring to a process that allows irrigators to convert an irrigation right within an irrigation corporation’s network into a standalone water access entitlement, held by the irrigator or traded to another person) fell to 96, which was the lowest level reported since the ACCC commenced monitoring 12 years ago.
- The number of terminations (referring to where an irrigator partly or fully reduces their right to access a water infrastructure operator’s network) declined to 11 in 2020–21 – also an historic low.
- Most bulk water operator typical bills showed only moderate increases of 2% or less from the previous year. Irrigation infrastructure operator typical bill results were more variable, with average aggregate bills for pressurised networks increasing by less than 1% and average aggregate bills for gravity-fed networks decreasing by around 2%.
- Complaints and enquiries to the ACCC related to the water rules decreased for the second consecutive year in 2020–21. The decline may in part be attributed to the rules having been in effect for 11 years, meaning they are now mostly working as intended.
- Trade of water allocation into, out of and within irrigation infrastructure operators’ networks increased by 16% in 2020–21. Over the past 8 years, allocation trade volumes reported by irrigation infrastructure operators have grown by at least 10% per year, apart from in 2017–18. Trading of water delivery rights also grew in 2020–21, increasing by 121%.

Strategic objective 2: Prevent anti-competitive mergers

About this strategic objective

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

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

Our priorities

To prevent permanent structural changes that are likely to substantially lessen competition, the ACCC has continued to assess and review mergers through both the informal clearance process and merger authorisation process. The acquisition activity in 2022–23 has eased from a peak during the COVID-19 pandemic to more long-term average levels. However, there has not been a corresponding reduction in the number of contentious and complex mergers the ACCC considered this year. The ACCC carefully scrutinises contentious acquisitions of assets or businesses to ensure they will not result in a likely substantial lessening of competition. At the same time, we make decisions on non-contentious proposals expeditiously so legitimate business activity is not unduly delayed.

Key activity 2.1: Assess mergers to prevent changes in market structures that substantially lessen competition

About this key activity

This key activity is underpinned by section 50 of the Competition and Consumer Act, which prohibits acquisitions that substantially lessen competition in any market in Australia or are likely to do so.

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

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

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

Performance measures

Table 3.7: Performance measures for key activity 2.1

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
2.1.1 Percentage of merger matters considered (under the informal merger review process) that were finalised by pre-assessment	89%	95%	94%	80–95%	93%	✓
Methodology: <i>Number of pre-assessed mergers divided by total number of assessed mergers, expressed as a percentage</i>						
Data source: <i>Internal records (Dynamics)</i>						
Related regulator best practice principles: 1, 2 and 3						
2.1.2 Percentage of merger matters subject to Phase 1 only of public review that were finalised within 12 weeks (excluding time periods where information is outstanding)#	67%	67%	84%	80%	100%	✓
Methodology: <i>For mergers that have not involved the issuance of a statement of issues or the acceptance of a section 87B undertaking, excluding assessments where no decision was made, where the number of business days less timeline suspensions divided by 5 is less than or equal to 12, expressed as a percentage</i>						
Data source: <i>Internal records (Dynamics)</i>						
Related regulator best practice principles: 1, 2 and 3						
2.1.3 Percentage of merger matters subject to Phase 2* of public review that were finalised within 24 weeks (excluding time periods where information is outstanding)^	40%	50%	75%	80%	56%	✗
Methodology: <i>For mergers that have involved the issuance of a statement of issues or the acceptance of a section 87B undertaking, excluding assessments where no decision was made, where the number of business days less timeline suspensions divided by 5 is less than or equal to 24, expressed as a percentage</i>						
Data source: <i>Internal records (Dynamics)</i>						
Related regulator best practice principles: 1, 2 and 3						

2.1.4 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC's assessment of mergers is effective in preventing changes in market structures that substantially lessen competition

– – – 70+ 66.7 

Methodology: *The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale*

Data source: ACCC Effectiveness Survey

Related regulator best practice principles: 1, 2 and 3

- # Prior to 2020–21 the criterion for this measure was 8 weeks.
- * Phase 2 involves release of a statement of issues and/or acceptance of a court enforceable undertaking to remedy competition concerns.
- ^ Prior to 2020–21 the criterion for this measure was 20 weeks.

Analysis of results

For mergers considered under the informal merger regime, we aim to consider non-contentious mergers expeditiously, with a target to pre-assess 80–95% of transactions. This year we pre-assessed 93% of transactions because of the low risk that competition concerns would be raised (measure 2.1.1). The vast majority of these assessments were completed within 4 weeks, excluding time taken for merger parties to respond to information requests.

The remaining 7% of mergers that underwent a public informal review were the more complex and potentially contentious matters. The ACCC completed 100% of Phase 1 reviews within 12 weeks, exceeding our target of 80% (measure 2.1.2). However, we completed 56% of Phase 2 public merger investigations within 24 weeks, less than our target of 80% (measure 2.1.3).

Phase 2 reviews are those that involve serious competition concerns and require extensive consultation with stakeholders. In 2022–23, 6 Phase 2 reviews were resolved through court enforceable undertakings and the remaining 2 were withdrawn. Two of the reviews resolved through undertakings involved 3 rounds of consultation with a wide range of stakeholders and negotiations.

While the ACCC aims to complete merger reviews as quickly as possible, the focus is on achieving the right decision. The public expects the ACCC to closely scrutinise mergers involving concentrated markets and complex transactions. The ACCC has signalled that it will use its compulsory information gathering powers increasingly in merger investigations where concerns warrant increased evidence gathering. We exercised these powers in 11 merger assessments this year.

Merger authorisations are subject to statutory review periods which can only be adjusted with the agreement of the applicant.

We partially met the target index score of 70 for the effectiveness survey question (measure 2.1.4), achieving an index score of 66.7. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

Informal merger reviews

The informal review process allows merger parties to seek the ACCC's views on a merger before they proceed with it. By ascertaining our views beforehand, they can manage the risk of regulatory intervention at a later time. In 2022–23 we assessed 305 mergers that were notified to the ACCC under the informal review regime or that were referred to the ACCC by other regulatory agencies or identified through monitoring and intelligence gathering.

Of the 305 mergers that were assessed:

- 284 were pre-assessed and
- 21 were subject to a public review
- 10 were not opposed
- 2 were opposed outright
- 6 were not opposed after acceptance of a remedy
- 3 were withdrawn, 2 of which were withdrawn after a statement of issues was released.

Significant public merger reviews in 2022–23 included:

- Qantas's proposed acquisition of Alliance Airlines. The ACCC decided to oppose this merger on 20 April 2023 after a detailed investigation. Qantas and Alliance are key suppliers of air transport services to mining and resource companies that need to transport fly-in fly-out workers in Western Australia and Queensland. The ACCC considers that Alliance is an important competitor to Qantas, and the proposed acquisition would be likely to substantially lessen competition.
- Woolworths's proposed acquisition of the SUPA IGA in Karabar, New South Wales (NSW), and its co-located Liquor Boss store. We decided to oppose this merger on 26 May 2023. The ACCC considered that the proposed acquisition would be likely to substantially lessen competition in the supply of groceries in the local area. The proposed acquisition would increase concentration in an already concentrated market and remove the only independent supermarket in the local area. The ACCC found that the SUPA IGA Karabar offers a different shopping experience from Woolworths, Coles and ALDI and competes on factors such as product range, level of service and promotional cycles.
- Aurizon Holdings's acquisition of One Rail Australia Holdings. We did not oppose this after accepting a court enforceable undertaking from Aurizon to divest One Rail's east coast business. The divestiture ensured that there will remain 3 main suppliers of coal haulage in New South Wales and Queensland.
- Dye & Durham Corporation's proposed acquisition of Link Administration Holdings. We did not oppose this after accepting a court enforceable undertaking from Dye & Durham to divest its existing Australian business. This acquisition ultimately did not proceed. Through the acquisition of Link, Dye & Durham would have acquired the 42.77% shareholding in PEXA Group Ltd that Link owned. The vertical integration of Dye & Durham's information broking services, conveyancing and legal practice management software with PEXA's electronic lodgement network raised significant competition concerns. This alignment raised concerns that Dye & Durham and PEXA would have allowed for mutual preferential dealing that would have hindered competition or raised barriers to entry in one or more markets in the conveyancing workflow.
- The Forestry Corporation of NSW's proposed acquisition of the assets of Hume Forests Ltd from an investment fund advised by Global Forest Partners LP (see the highlight section below).

Merger authorisations

The ACCC may receive applications for merger authorisation. We grant merger authorisation if we are satisfied that the proposed merger would not be likely to substantially lessen competition or, alternatively, that the likely public benefit from the proposed merger outweighs the likely public detriment.

The ACCC has historically received only a very small number of merger authorisation applications since the legislation was changed in 2017. However, in 2022–23 we received 3 new applications.

The ACCC completed its assessment of an application from Telstra and TPG for authorisation of proposed spectrum sharing (which is deemed to constitute an acquisition) in certain regional and urban fringe areas of Australia, as part of a broader mobile infrastructure sharing arrangement. The ACCC denied authorisation because it formed the view that the proposed acquisition was likely to reduce competition in the longer term and leave Australian mobile users worse off over time. The applicants applied to the Australian Competition Tribunal on 23 December 2022 for review of the ACCC's decision. On 21 June 2023 the Tribunal reached its own decision not to grant authorisation, noting that 'the Spectrum Authorisation Agreement provides Telstra with substantial commercial and competitive benefits and would further increase Telstra's position of market strength in mobile telecommunications markets'. The Tribunal's decision provided clarification regarding the approach to the assessment in an authorisation context of the likely effects on competition and public benefits which are likely to result from the proposed acquisition. This was the first review by the Tribunal of a merger authorisation under the new authorisation regime which came into effect in 2017.

The ACCC granted merger authorisation to Linfox Armaguard and Prosegur Australia to combine their cash distribution and management and other businesses in Australia. The ACCC accepted that, without the proposed merger, it was highly probable that one of the parties would withdraw from the market and this exit could occur very quickly, leading to significant disruption. Authorisation was granted subject to a condition in the form of an undertaking which imposes obligations on the merged entity for the next 3 years, allowing time to consider whether any government responses are needed to further regulate the industry.

All publicly reviewed informal merger decisions and merger authorisation decisions for 2022–23 are published on the [ACCC's mergers public registers](#).

The ACCC also investigates certain mergers and acquisitions that have been completed without informal clearance. In 2022–23 we commenced the investigation of 8 completed acquisitions.

► Highlight

Forestry Corporation of NSW – Proposed acquisition of Hume Forests Ltd

On 14 December 2022 the ACCC discontinued its public review of the proposed acquisition by the Forestry Corporation of NSW (FCNSW) of Hume Forests Ltd (Hume), following FCNSW's withdrawal of its application for informal merger clearance. The ACCC commenced the public review on 3 August 2022 and had published a statement of issues on 20 October 2022.

FCNSW is a state-owned corporation and, amongst other things, is appointed to manage land and renewable timber production on behalf of the New South Wales Government. It is the state's largest producer of softwood logs, owning and managing softwood plantations across New South Wales. Hume owns softwood plantation estates in the Tumut/Tumbarumba and Bathurst/Oberon regions of New South Wales.

In its statement of issues, the ACCC raised preliminary concerns that the acquisition would increase FCNSW's already significant market share in the management of softwood plantations in the Tumut/Tumbarumba and Bathurst/Oberon regions. Before FCNSW withdrew its request for informal merger clearance, the ACCC was considering a range of factors, including FCNSW's dominant position in the supply of softwood logs; price and non-price competition between plantations; and the competitive constraint Hume would provide over the coming decades as its timber reached maturity. We were also considering potentially mitigating factors including large customers having buyer power, downstream import competition and possible restraints on FCNSW exercising market power as a consequence of its statutory obligations. Given the long period between planting and harvest for softwood timber production, the ACCC's assessment took into account longer term impacts.

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

About this strategic objective

The Consumer Data Right (CDR) provisions of Part IVD of the Competition and Consumer Act aim to create more choice and competition by:

- Allowing consumers to request businesses to disclose the consumer's own data to an accredited person who can use that data to provide services to the consumer.
- Requiring businesses to make product information available to any person.

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

- Deliver the enabling technology solutions for the Consumer Data Right.
- Support Consumer Data Right participants, including through assistance with testing and on-boarding.
- Accredite Consumer Data Right data recipients.
- Promote compliance with and enforce the Consumer Data Right rules and standards.

Our priorities

The ACCC continued to support the operation of CDR in the banking sector for an increased number of participants, along with the expansion of CDR to the energy sector. We also continued to promote compliance with the CDR legislation, rules and standards to ensure that the benefits of CDR flow to consumers. Where appropriate, we have taken enforcement action.

Consumers access CDR through products and services offered to them by accredited data recipients and their authorised representatives. We have encouraged greater participation in CDR by providing information to prospective participants about the accreditation process and other CDR participation models. We have also continued to undertake robust assessment of prospective accredited persons to ensure they are capable of meeting requirements for participating in the CDR, including by appropriately protecting consumer data.

While businesses can choose whether to become accredited as data recipients, participation in CDR by designated data holders is mandatory. We continued to both support and regulate designated data holders and accredited data recipients, providing them with guidance about their obligations and support for testing and on-boarding.

During 2022–23 we planned, designed, built, tested and deployed further changes to the Register and Accreditation Application Platform (RAAP). The RAAP provides the technical infrastructure for data holders and accredited data recipients to securely exchange data. The changes to the RAAP supported the implementation of new CDR rules and standards, including to enable the commencement of CDR in the energy sector. We continued to manage and support our technology solutions, including ensuring that the RAAP was maintained and accessible and relevant incidents were responded to and resolved within agreed timeframes.

We continued to work closely with Treasury on future legislative and policy issues and the Data Standards Body (DSB) on future CDR standards requirements.

Enhancements to the process for on-boarding energy data holders to the Register of Accredited Persons (Register), which prepares new participants to start sharing data were completed in November 2022. Over the year we also released new and enhanced tools to support participants to test their own technology solutions.

Protecting the integrity of the CDR technology infrastructure and systems from cybersecurity threats is an important priority. We continued to strengthen our cybersecurity controls and work with other CDR entities to support a whole-of-program approach to cybersecurity.

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

About this key activity

The ACCC has responsibility to plan, design, build, test, run and ensure the security of the RAAP. The RAAP underpins the Register, which provides a record of accredited persons as required by the Competition and Consumer Act and includes an associated database of data holders. The RAAP helps facilitate the processing of consumer data requests that accredited persons make to data holders. The RAAP also provides the gateway for applying for accreditation.

We also provide a Conformance Test Suite and a range of participant testing tools. These allow data holders and accredited data recipients to test the technical conformance of specific areas of their production-ready software against regulatory requirements. This kind of testing helps protect the Register and the integrity of the CDR ecosystem.

As CDR grows and evolves, the ACCC will continue to support and maintain the RAAP and various participant tools, and introduce enhancements to facilitate the implementation of any new CDR sectors and rules.

Performance measures

Table 3.8: Performance measures for key activity 3.1

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
3.1.1 Fit-for-purpose technology solutions are available when required by the legislation and CDR rules and standards	-	-	Achieved for all	The requirement for new technology solutions and the dates by which those are required will be driven by the CDR rules made by the Minister and by the data standards made by the Chair of the DSB	Achieved for all (see Analysis of results below)	✓

Methodology: Dates by which the enabling technology solutions are required under the CDR rules and standards are assessed against date of delivery by ACCC

Data source: CDR rules and standards, Internal records

Related regulator best practice principles: N/A

3.1.2 Percentage availability of the Register of Accredited Persons (live or cached version)	-	-	99.99%	99.9%	99.99%	✓
Methodology: <i>Scheduled uptime minus downtime of the register, divided by scheduled up time, expressed as a percentage</i>						
Data source: <i>Reports from the Managed Services Provider</i>						
Related regulator best practice principles: <i>N/A</i>						
3.1.3 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC effectively facilitates the enabling technology solutions for the Consumer Data Right	-	-	-	70+	59.4	○
Methodology: <i>The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2023 survey results</i>						
Data source: <i>ACCC Effectiveness Survey</i>						
Related regulator best practice principles: <i>3</i>						

Analysis of results

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

In 2022–23 the CDR rules and CDR standards required the ACCC to provide new or updated technology solutions for:

- the rollout of CDR to the energy sector:
 - sharing of product reference data – by 1 October 2022
 - sharing of consumer data by initial retailers (AGL, Origin and EnergyAustralia) and the Australian Energy Market Operator (AEMO) for simple requests – by 15 November 2022
 - enabling retailer reporting on performance metrics – by 5 December 2022
- the implementation of version 1.0 of Financial-grade Application Program Interface (FAPI) – an industry-led specification that defines additional technical requirements for high security:⁷
 - Phase 1 – by 4 July 2022
 - Phase 2 – by 16 September 2022
 - Phase 3 – by 14 April 2023
 - Phase 4 – by 10 July 2023.

All 7 of these solutions were implemented in 2022–23 on or ahead of the required dates (measure 3.1.1). We also ensured that a live or cached version of the Register was available 99.99% of the time (measure 3.1.2). This assisted participants to authenticate each other and determine entitlement to share data in real time, thus helping to facilitate the secure sharing of data.

⁷ The Data Standards Body mandated adoption of FAPI version 1.0 to replace the existing version 0.6.

We partially met the target index score of 70 for the effectiveness survey question (measure 3.1.3), achieving an index score of 59.4. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

In 2022–23 we made changes to the RAAP, Conformance Test Suite and participant tools to support the commencement of CDR in energy.

The Conformance Test Suite was also enhanced to prepare for the introduction of a new version of the FAPI. This is an industry-led specification that defines additional technical requirements for the financial industry and other industries that require higher security. The Data Standards Chair mandated adoption of FAPI version 1.0 to replace the existing version 0.6.

When incidents arise in our CDR technology systems, we resolve them quickly and effectively. We actively monitor incidents that arise between participants to encourage prompt resolution of those by the relevant participants (recognising that it is not the ACCC's role to directly resolve these incidents). Between 1 July 2022 and 30 June 2023 we:

- monitored 743 CDR external incidents within the CDR ecosystem⁸
- resolved 46 CDR internal RAAP incidents logged by participants about issues with the RAAP or Register
- resolved 59 Conformance Test Suite incidents raised by participants about issues in the conformance test environment
- completed 609 service requests from users for information, advice, standard changes or access to a service⁹
- managed 10 problems where there were multiple incidents that related to the same issue.

Cybersecurity is a fundamental element of CDR operations. We continued to ensure the integrity of the CDR's technology systems and strengthen our cybersecurity protections. We adhere to the Australian Government's Information Security Manual (ISM) and have implemented improvements in aspects of cybersecurity practices, with a particular focus on improving our maturity of the Australian Cyber Security Centre's Essential 8 controls.

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

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

► Highlight

CDR technology solutions

Product	Purpose
Register and Accreditation Application Platform (RAAP)	<p>The non-public facing (backend) part of the RAAP enables data holders and accredited data recipients to authenticate each other and confirm each other's entitlements to share data in real time, thus helping to facilitate the secure sharing of data.</p> <p>The live version of the RAAP backend includes a cached version that can be used by participants when there is an IT outage.</p> <p>The public-facing (frontend) version of the RAAP contains a database that allows consumers to check that they are dealing with an accredited data recipient. It also provides an online portal for prospective data recipients to apply to become accredited.</p> <p>The public-facing version of the RAAP is accessed through the CDR website: www.cdr.gov.au.</p>
CDR Service Management Tool (Jira)	The CDR Service Management Portal is provided by the ACCC for CDR participants to communicate about technical incidents with each other or the CDR Technical Operations team.
Conformance Test Suite (CTS)	The CTS ensures that participants can validate that their CDR solutions meet the critical requirements defined by the CDR standards.
CTS For data recipients	All data holders and accredited data recipients must pass CTS before they are allowed to become active.
CTS For data holders	<p>Testing takes place in a secure environment without exposing consumer data or interfering with live software products and brands.</p> <p>Processes tested include Dynamic Client Registration, consent establishment and verification, information security fundamentals and general connectivity.</p>
Mock Register and Participants	The mock tools support CDR participants to undertake end-to-end testing of their CDR solutions before they commence the CTS.
Mock Register	The tools have been designed to operate and integrate with participants' own technology environments.
Mock Data Recipient	These tools are shared under an 'open source' contract, which also allows participants to share their own enhancements.
Mock Data Holder (Banking)	
Mock Data Holder (energy)	
Mock Authorisation Server	
Testing sandbox	<p>The testing sandbox also helps data holders, and accredited and prospective data recipients, to test and improve their CDR solutions.</p> <p>It provides a hosted environment for participants and their vendors to interact with the mock solutions and/or other sandbox participants.</p>

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

About this key activity

The ACCC provides a variety of support for accredited persons and data holders (participants). For example, we assist businesses to register their organisations through our participant portal and to apply for accreditation as data recipients.

Once a business is accredited or has registered as a data holder, it completes an on-boarding process to enable its activation on the Register.

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

An open-source CDR testing sandbox was developed and released in July 2022. Data holders and accredited data recipients can use the sandbox to test their solutions in complex scenarios and with third parties, accelerating participant readiness and enabling better quality CDR solutions.

We also manage the CDR website in close consultation with Treasury.¹⁰ This website and other channels, such as the Treasury CDR newsletter, the CDR Support Portal and a CDR Service Management Portal for active participants provide a range of useful information and updates for participants.

Performance measures

Table 3.9: Performance measures for key activity 3.2

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
3.2.1 Number of designated data holders and accredited data recipients on-boarded to the Register of Accredited Persons during the year	-	-	63 designated data holders 14 accredited data recipients	No target for 2022–23 (The number is primarily driven by demand)	5 designated data holders 10 accredited data recipients (9 unrestricted and 1 sponsored)	●
Methodology: <i>Count of designated data holders and accredited data recipients which were made active on the Register of Accredited Persons during the year</i>						
Data source: <i>Internal records</i>						
Related regulator best practice principles: <i>N/A</i>						

¹⁰ Treasury owns the website and has overall responsibility for education and engagement with consumers.

3.2.2 Effectiveness survey
'index score' (out of 100) that
key stakeholders agree the
ACCC effectively supports
CDR participants, including
testing and on-boarding

- - - 70+

65.3



Methodology: *The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2023 survey results*

Data source: ACCC Effectiveness Survey

Related regulator best practice principles: 1 and 3

Analysis of results

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

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

The phased rollout to the banking sector concluded in 2021–22 and the rollout to energy is just beginning. Therefore, the number of data holders eligible to be on-boarded to the Register in 2022–23 was much lower than last year.

In 2022–23 the ACCC on-boarded 5 data holders, including the 3 initial energy retailers that were required to be on-boarded under CDR legislation and rules (measure 3.2.1). This brings participation in the banking sector to 76 designated data holders and an additional 38 brands, representing an estimated combined market share of over 99% of Australian household deposits.¹¹ There are 3 data holders in the energy sector, representing an estimated combined market share of more than 61% of residential and small business customers in the National Electricity Market.¹² As at 30 June 2023 the total number of active data holders in both sectors was 79.¹³

New active data holders in 2022–23 included:

- one banking data holder that was required to commence data sharing when its CDR exemption expired
- one banking data holder that should have commenced data sharing during the 2021–22 financial year but was noncompliant
- 3 energy data holders that were required to commence consumer data sharing in 2022–23.¹⁴

In 2022–23 the number of active accredited data recipients increased from 20 to 29 (including one sponsored accredited data recipient). This reflects a growing interest by businesses to participate in

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

12 We estimate market share based on number of customers (residential and small businesses) in the National Electricity Market, as published by the AER and the Essential Services Commission.

13 Two data holders, Volt Bank Limited and Heritage Bank Limited, left CDR in 2022–23 when they ceased to be ADI's and/or merged or transferred their businesses. While Citigroup Pty Limited ceased to be an ADI on 30 June 2022, their removal from the Register was not processed until early July 2022.

14 Initial consumer data sharing obligations for the 3 largest energy retailers (AGL, Origin and EnergyAustralia) started on 15 November 2022. Consumer data sharing obligations for all other energy retailers subject to CDR will commence on 1 November 2023.

CDR. In the same timeframe, one active accredited data recipient surrendered its accreditation after its product was withdrawn from the market.

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

We partially met the target index score of 70 for the effectiveness survey question (measure 3.2.2), achieving an index score of 65.3. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

In 2022–23 we created a new mock energy data holder tool to assist energy participants to develop and test their CDR solutions.

We also updated our other mock tools to help both banking and energy participants implement updated FAPI standards prescribed by the Data Standards Chair. These new standards will help improve the security of the system and create greater interoperability with other regimes. Our authorisation server tool was certified by the OpenID Foundation – a non-profit organisation that develops open standards for identity and authentication on the internet. It was also the first tool of its kind to be made available as free open-source software.

In July 2022 we launched the CDR testing sandbox. The sandbox provides participants in all sectors with a means of supporting the design, build and testing of their CDR solutions. It allows participants to interact with one another and work on identifying and resolving issues before conformance testing begins or live data sharing commences.

We also led a project to develop a cross-agency guidance strategy to ensure guidance is coordinated and consistent across CDR agencies. One of the outcomes of this project was the publication of a [quick reference guide to CDR materials](#) on the [CDR website](#).

We published other new and updated guidance to help participants comply with their CDR obligations. For example, we published:

- revised compliance guides for both banking and energy data holders
- guidance on the de-identification of CDR data
- guidance for data holders when managing implementation changes for their CDR systems
- guidance for accredited data recipients on what happens to consents when there is a change to a participation model
- guidance for data holders clarifying specific data quality obligations.

Key activity 3.3: Accredited Consumer Data Right data recipients

About this key activity

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

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

The CDR rules set out the criteria that the ACCC will apply when considering whether to grant an application for accreditation. Applicants must demonstrate that they have satisfied the requirements of accreditation under the CDR rules, including:



- having information security safeguards in place to protect consumer data
- being a fit and proper person to manage CDR data
- having internal and external dispute resolution processes
- maintaining adequate insurance.

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

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

Performance measures

Table 3.10: Performance measures for key activity 3.3

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
3.3.1 Number of data recipients accredited	-	-	32	No target for 2022–23 (the number of accreditation applications is driven by demand)	40 (39 unrestricted and 1 sponsored)	
<p>Methodology: <i>Count of the number of accreditation applications which have been granted since CDR began less any accreditations which have been surrendered or revoked</i></p> <p>Data source: <i>Internal records</i></p> <p>Related regulator best practice principles: 1 and 3</p>						
3.3.2 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC effectively accredits CDR data recipients	-	-	-	70+	72.1	
<p>Methodology: <i>The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2023 survey results</i></p> <p>Data source: <i>ACCC Effectiveness Survey</i></p> <p>Related regulator best practice principles: 1, 2 and 3</p>						

Analysis of results

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

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

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

- the number of accredited data recipients increased from 32 to 40
- the number of active accredited data recipients increased from 20 to 29
- the number of active representative arrangements notified to the ACCC increased from 27 to 78.¹⁵

In 2022–23, 3 accredited data recipients surrendered their accreditation (measure 3.3.1). Reasons included that their product was withdrawn from the market or they had decided to participate in CDR as a representative of another accredited data recipient.

¹⁵ Sixty representative arrangements were notified in 2022–23. However, as at 30 June 2023, 3 of these arrangements had ended. Since the first representative arrangement was notified to us in December 2021, 87 arrangements have been notified in total. However, 2 of these have progressed to obtaining their own accreditations and another 7 have now ended.

As in the banking sector, CDR is being rolled out to the energy sector in phases. As CDR is implemented across this sector and continues to mature, the expectation is that more businesses will see the value in becoming accredited, and consumers will benefit from a greater range of products and services available.

We exceeded the target index score of 70 for the effectiveness survey question (measure 3.3.2), achieving an index score of 72.1. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

Ensuring that the accreditation regime is applied in a rigorous manner helps consumers and participants have confidence in the integrity of CDR. In 2022–23, for the first time, we denied accreditation to a company, iSignthis Australia Pty Ltd. We denied accreditation because we were not satisfied of its ability to comply with certain obligations under the CDR rules.

The number of active accredited data recipients continues to increase. This has led to more use cases being developed for CDR consumers. Current use cases include loan affordability assessments, personal finance management, and identity and account verification.

The number of active CDR representative arrangements notified to the ACCC also increased, from 27 to 78 by 30 June 2023. CDR representative use cases included personal finance management; and production verification testing of CDR data.

We granted the first accreditation at the sponsored level in November 2022. As at 30 June 2023, no other sponsored accreditations have been granted.

The ACCC's *Accreditation guidelines* for applicants wishing to become CDR data recipients were also updated to improve their readability and accessibility.

► Highlight

Information security requirements for accredited data recipients

Under the CDR rules and standards, applicants that want to participate in CDR and accredited persons that are already participating must satisfy stringent information security obligations. These obligations protect CDR data from misuse, interference and loss as well as unauthorised access, modification or disclosure. If accredited persons breach these obligations, there are a range of enforcement options available, including court proceedings that can lead to significant penalties.

When an applicant submits its application, it must provide evidence that it meets the CDR information security obligations. Once it is accredited, it must provide regular reports and attestation statements to show that it continues to comply.

The minimum information security requirements are outlined in Schedule 2 of the CDR rules and summarised in Table 3.11 below. An accredited person may choose to put in place security greater than minimum requirements or they may be required to do so, depending on the risks to information security their organisation faces and the level of security that will be appropriate to mitigate those risks.

The ACCC has published *Supplementary accreditation guidelines: Information security* to assist applicants for accreditation and accredited persons to meet the CDR rules information security obligations.

Table 3.11: Schedule 2 of the CDR rules: Steps to meeting information security obligation

Application to CDR data environment	
Part 1	Part 2
Governance requirements for data security	Overview of minimum information security controls to be maintained
Step 1: Define and implement security governance in relation to CDR data	Limit the risk of inappropriate or unauthorised access to the CDR data environment.
Step 2: Define the boundaries of the CDR data environment	Secure network and systems within the CDR data environment.
Step 3: Have and maintain an information security capability	Securely manage information assets over their life cycle.
Step 4: Implement a formal controls assessment program	Implement formal vulnerability management program to identify, track and remediate vulnerabilities within the CDR data environment.
Step 5: Manage and support security incidents	Limit, prevent, detect, and remove malware. Implement formal security training and awareness program for all personnel interacting with CDR data.

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

About this key activity

CDR enforcement is a co-regulatory effort between the ACCC and the Office of the Australian Information Commissioner (OAIC).

The ACCC is responsible for enforcing compliance with Part IVD of the Competition and Consumer Act, the CDR rules and the CDR standards. We have responsibility for taking strategic enforcement action to address conduct causing systemic detriment to the CDR program; and enforcing accredited data recipients' and data holders' compliance with their continuing obligations. The OAIC has responsibility for privacy aspects of CDR.

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

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

Performance measures

Table 3.12: Performance measures for key activity 3.4

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
3.4.1 Number of CDR investigations completed	-	-	5	No target for 2022–23 [#]	3	●

Methodology: Count and cross-check of the total number of CDR initial investigations and in-depth investigations completed during the financial year

Data source: Internal records (Dynamics and iManage)

Related regulator best practice principles: 1, 2 and 3

3.4.2 Number of CDR compliance and enforcement interventions (non-enforcement compliance initiatives, court proceedings commenced, section 87B undertakings accepted, administrative resolutions)	-	-	214 administrative resolutions 1 infringement notice	No target for 2022–23*	15 non-enforcement compliance initiatives^ 1 infringement notice	●
Methodology: <i>Count of the total number of proceedings commenced, infringement notices issued, non-enforcement compliance initiatives, section 87B undertakings accepted and administrative resolutions issued during the year</i>						
Data source: <i>Internal records (Dynamics and iManage)</i>						
Related regulator best practice principles: 1, 2 and 3						

3.4.3 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC effectively promotes compliance with and enforces the Consumer Data Right rules and standards			N/A	70+	66.1	○
Methodology: <i>The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2023 survey results</i>						
Data source: <i>ACCC Effectiveness Survey</i>						
Related regulator best practice principles: 1, 2 and 3						

- # The number of investigations is driven by the degree of compliance by designated data holders and accredited data recipients.
- * The number of interventions is driven by the degree of compliance by designated data holders and accredited data recipients.
- ^ This year we have taken a different approach to this measure. This measure captures compliance interventions, audits, and targeted compliance reviews. It does not include noncompliance reported and assessed as part of the ACCC's ongoing activities to promote compliance and enforcement of the Consumer Data Right.

Analysis of results

Our compliance and enforcement approach aims to ensure that consumers can trust the security and integrity of the CDR regime.

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

The phased rollout to banking, the first sector subject to CDR, finished in 2021–22. CDR is now being rolled out to energy. Tranche 1 consumer data sharing obligations for the 3 largest energy retailers commenced on 15 November 2022.

As the CDR system matures, we are putting a greater focus on compliance and enforcement activities to ensure that CDR participants comply with their obligations under the CDR legislation and rules. This is reflected in our results.

We completed 3 investigations in 2022–23 (measure 3.4.1). One was an in-depth investigation that concerned the failure to provide a consumer data sharing service. We issued infringement notices related to this investigation¹⁶ (measure 3.4.2). One initial investigation concerned data quality issues

¹⁶ We issued one infringement notice in relation to breaches of the CDR rules, and one in relation to a breach of the Australian Consumer Law.

for product reference data, and one initial investigation concerned delays in enabling consumer data sharing functionality for certain products. Further investigations are currently in progress.

Our non-enforcement compliance interventions for 2022–23 included targeted compliance reviews, relating to authorisation processes and nominated representative processes. These resulted in changes to the relevant data holders' processes and updated nominated representative guidance (measure 3.4.2). We selected 6 data holders for the authorisation processes review and 4 data holders for the nominated representative processes review.

In addition, we managed 5 compliance interventions with data holders to address identified noncompliance with the CDR rules (measure 3.4.2), including:

- the absence of consumer data sharing for joint account holders
- issues relating to data quality
- failure to make all eligible products available for data requests
- failure to implement all elements of the accredited person request service.

The compliance interventions involved engaging with active data holders regarding self-reported noncompliance on a rectification schedule and assessing, escalating and monitoring these compliance gaps.

We partially met the target index score of 70 for the effectiveness survey question (measure 3.4.3), achieving an index score of 66.1. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

Our compliance and enforcement activities included:

- monitoring and investigating compliance with the Competition and Consumer Act, CDR rules and CDR standards
- providing guidance on compliance
- taking enforcement action where needed in line with the priorities in the ACCC/OAIC Compliance and Enforcement Policy for CDR.

When appropriate, we worked with data holders that were not meeting their consumer data sharing obligations to significantly improve compliance. To provide ongoing transparency for accredited data recipients and consumers, we published the names of the data holders in rectification schedules on the CDR website. We escalated matters for further compliance or enforcement action where issues were identified as having a medium or high impact on consumers and the CDR ecosystem. For example, we have required more detailed remediation plans and prompted data holders to publish further information about their noncompliance on their websites.

As at 30 June 2023:

- 4 data holders were not active on the Register (and did not have exemptions in place)
- 73 data holders had self-reported potential implementation gaps in their consumer data sharing systems – up from 32 active data holders with self-reported potential implementation gaps as at 30 June 2022. This largely reflects the greater number of data holders now active, and in some cases data holders indicated the complexity of their CDR build and a shortage of skilled resources contributed to their failure to meet statutory compliance date obligations.

These gaps are generally considered low impact, although further compliance action is taken where data quality issues may materially impact data recipients' or consumers' CDR experience.

As at 30 June 2023 we are conducting one in-depth investigation related to more serious or systemic issues.

Compliance with consumer data sharing obligations

In 2022–23 we concluded enforcement actions against 2 companies for breaches of the CDR rules:

- Bank of Queensland Ltd paid a penalty of \$133,200 after the ACCC issued it with an infringement notice for allegedly breaching the CDR rules by failing to provide a service enabling consumers' data to be shared.¹⁷
- ING Bank (Australia) Limited paid penalties totalling \$53,280 after the ACCC issued it with infringement notices for allegedly failing to share data for certain financial products by specific deadlines and allegedly making a misleading statement to consumers on its website about the reliability and security of its CDR service.

Following an investigation and report on CDR data quality, we began implementing a multifaceted approach for addressing our findings and improving the quality of data provided by data holders. More information about this is in the highlight below.

We also concluded other investigations into issues such as the impact of a platform migration on consumer consents.

We conducted targeted compliance reviews of data holder authorisation processes, and processes to nominate individuals to manage data sharing on behalf of business customers (nominated representative processes); published our findings; and updated our nominated representative guidance to reflect what we observed as best practice.

Compliance with product reference data sharing obligations

We undertook a series of activities to improve data holder compliance with product reference data sharing obligations. For example, we monitored obligations to make product reference data available, investigated complaints about product reference data quality and published guidance to assist participants to comply with their product reference data quality obligations.

As noted in the highlight below, our data quality consultation looked closely at the quality of product reference data being shared in CDR and identified future actions and areas of focus for the ACCC in its compliance and enforcement activities.

Compliance with performance data obligations

The ACCC receives daily performance data from data holders about the availability, speed and level of activity of their CDR systems.

We monitor this data to ensure that data holders comply with the non-functional requirements in the CDR standards. Issues we have observed include incorrect data, missing data, and incorrect technical configurations. We have addressed this by seeking commitments from data holders regarding the performance of their systems or the quality of the data they report.

¹⁷ The Bank of Queensland infringement notice was issued in 2021–22 and reported in the annual report for that year. It was paid on 11 July 2022.

Updates to our compliance and enforcement processes and policies

To improve the quality of mandatory data holder and accredited data recipient reports (required under rule 9.4), we published guidance on reporting obligations, included additional guidance in the reporting forms on how to respond to specific questions, and engaged with participants who had queries on their reporting obligations.

We improved the way data holders provide rectification schedule updates. This enables up-to-date information to be shared more efficiently.

Exemptions

In 2022–23 the ACCC granted 30 individual exemptions. Of those, as at 30 June 2023, 25 were still in force and 5 had expired, lapsed or been revoked. Reasons for granting exemptions included off-sale or discontinued products; and avoiding unnecessary duplication of work due to significant platform migrations or core systems changes.

We also updated our guidance on the general approach we will take in deciding whether to grant an exemption and under what circumstances an exemption may be subject to conditions. Details of all exemptions granted can be found in the CDR exemptions register on the ACCC website.

► Highlight

ACCC data quality project

For CDR to provide benefits to consumers, the data shared must be of ‘good quality’ – that is, accurate, complete and in the required format.

Since CDR commenced, the ACCC has focused on data holders’ compliance with their data sharing obligations, including the quality of CDR data. Our actions have included publishing guidance, monitoring obligations to make product reference data available, managing technical incidents between participants, and investigating complaints about data quality. The ACCC cannot view consumer data directly, so concerns about consumer data quality are typically brought to our attention through reports from participants.

In September 2022 the *Statutory review of the Consumer Data Right – Report* recommended taking further measures to enhance data quality, including enforcement action where necessary. In response we conducted research to identify and address the extent and impact of data quality issues in CDR. We published a discussion paper on CDR data quality compliance and held meetings with various stakeholders. We also undertook a holistic review of CDR guidance relating to data quality and made changes to procedures surrounding the management of technical incidents raised to the ACCC.

Our final report was published on 5 April 2023. We found that, while the quality of data shared under CDR was generally acceptable, there are instances of poor-quality data, including missing or incorrect data, especially in product reference data. As CDR uptake grows, the impact of poor data quality will increase.

Our proposed actions to address this, all of which are now underway, are to:

- increase our enforcement activities to address data quality noncompliance. We will focus on specific issues such as incorrect interest rates in product reference data; missing or incomplete data; and instances where there are slow or insufficient responses to data quality issues
- work with the other CDR entities (Treasury, the OAIC and the Data Standards Body) to provide further clarification and guidance on obligations relating to data quality
- engage further with stakeholders to improve our processes around data quality. This will include improving the Service Management Portal through which stakeholders can raise data quality issues; and consulting with stakeholders on existing and new transparency measures to improve data quality compliance.

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

About this strategic objective

The key activities¹⁸ we undertake to achieve this strategic objective are:

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

The Australian Consumer Law gives the ACCC and state and territory consumer regulators a single set of provisions to respond to fair trading and consumer protection issues. The Australian Consumer Law also allows regulators to collectively work on broader issues and take coordinated, effective and timely compliance and enforcement action. The key mechanisms for coordinating with state and territory Australian Consumer Law regulators are discussed in Part 2 – Agency overview.

The ACCC also works with businesses, industry associations and consumer groups to inform businesses and consumers of their rights and obligations under the Competition and Consumer Act. It carries out this work through engagement, education and the provision of specialised information. We alert consumers and businesses to the risk of scams and assist them to spot and avoid scams to reduce the overall harm they cause.

The ACCC's aim is to promote a competitive and fair operating environment for small business and, importantly, ensure small businesses understand how the legislation can help them.

¹⁸ The references to the Australian Consumer Law in the key activities and performance measures under strategic objective exclude the product safety provisions of the Australian Consumer Law, which are dealt with under our strategic objective 5.

Our priorities

Each year we review the economic and business environment, feedback from stakeholders and our intelligence sources to determine where to focus our compliance and enforcement efforts. From this review, we develop our [compliance and enforcement priorities](#). The ACCC's consumer and fair trading compliance and enforcement priorities in 2022–23 included:



consumer and fair trading issues in relation to environmental claims and sustainability



consumer and fair trading issues relating to manipulative or deceptive advertising and marketing practices in the digital economy



consumer issues arising from the pricing and selling of essential services, with a focus on energy and telecommunications



empowering consumers and improving industry compliance with consumer guarantees, with a focus on high-value goods such as motor vehicles and caravans



ensuring that small businesses receive the protections of the competition and consumer laws and industry codes of conduct, including in agriculture and franchising.

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

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



Consumers experiencing vulnerability or disadvantage

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



Conduct impacting First Nations Australians

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

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

About this key activity

This key activity is about enforcement and compliance action we undertake to protect consumers and small businesses from harmful conduct. We may also undertake research or advocacy projects to help improve compliance with the Australian Consumer Law (ACL) and industry codes. As a strategic regulator, we look to intervention that can influence behaviour across industries and the economy.

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

Performance measures

Table 3.13: Performance measures for key activity 4.1

Performance measure [#]	2019–20	2020–21	2021–22	2022–23		Met
	Result	Result	Result	Target	Result	
4.1.1 Number of in-depth ACL and industry codes investigations completed	66	50	56	70	48	✗
Methodology: Count of matters reaching each stage of investigation, with cross-check of stage and outcome						
Data source: <i>Internal records (Dynamics)</i>						
Related regulator best practice principles: 1 and 2						
4.1.2 Percentage of in-depth ACL and industry codes investigations that are in the priority areas outlined in the Compliance and Enforcement Policy	64%	82%	79%	60%	79%	✓
Methodology: <i>Count of completed investigations at each stage, with cross-check of priority areas</i>						
Data source: <i>Internal records (Dynamics)</i>						
Related regulator best practice principles: 1 and 2						

4.1.3 Percentage of initial ACL and industry codes investigations completed within 3 months	59%	57%	70%	70%	62%	○
Methodology: <i>Count of matters reaching each stage of investigation, with cross-check of stage and outcome</i>						
Data source: <i>Internal records (Dynamics)</i>						
Related regulator best practice principles: 1 and 2						
4.1.4 Percentage of in-depth ACL and industry codes investigations completed within 12 months	76%	70%	64%	80%	75%	○
Methodology: <i>Count of matters reaching each stage of investigation, with cross-check of stage and outcome</i>						
Data source: <i>Internal records (Dynamics)</i>						
Related regulator best practice principles: 1 and 2						
4.1.5 Number of ACL and industry codes enforcement interventions (court proceedings commenced, section 87B undertakings accepted, infringement notices issued, administrative resolutions)*	50	37	40	40+	25	✗
Methodology: <i>Count and cross-check of public outcomes within the reporting period</i>						
Data source: <i>Internal records (Dynamics), ACCC media releases, public registers, undertakings register</i>						
Related regulator best practice principles: 1 and 2						
4.1.6 Number of ACL and industry codes compliance initiatives	-	-	9	7+	23	✓
Methodology: <i>Count and cross-check of significant initiatives within the reporting period</i>						
Data source: <i>Internal records (Dynamics, committee papers), relevant ACCC website pages (last updated date), relevant publications (release date)</i>						
Related regulator best practice principles: 1, 2 and 3						
4.1.7 Percentage of ACL and industry codes compliance and enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy	66%	84%	70%	60%	88%	✓
Methodology: <i>Count of public outcomes and initiatives within the reporting period with cross-check of priority areas</i>						
Data source: <i>Internal records (Dynamics), ACCC media releases, public registers, undertakings register</i>						
Related regulator best practice principles: 1 and 2						
4.1.8 Number of surveys and audits for industry codes compliance	-	-	12	10	10	✓
Methodology: <i>Count and cross-check of surveys and audits within the reporting period</i>						
Data source: <i>Internal records (Dynamics and registers)</i>						
Related regulator best practice principles: 1 and 2						

<p>4.1.9 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC's compliance and enforcement actions are effective in addressing harm to consumers and small businesses resulting from non-compliance with the Australian Consumer Law and industry codes</p>	-	-	-	70+	74.5	
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Methodology: *The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2023 survey results*

Data source: ACCC Effectiveness Survey

Related regulator best practice principles: 1 and 3

- # Performance measures were updated in the Corporate Plan 2021–22 to explicitly include actions to address potential breaches of industry codes as well as the ACL. As such, results for years prior to 2021–22 may under-report the actual result.
- * Depending on the circumstances, administrative resolutions can range from a commitment by the trader in correspondence with the ACCC to a signed agreement between the ACCC and the trader setting out detailed terms and conditions of the resolution. For an administrative resolution to be included as an enforcement intervention for reporting purposes, it must be a formal resolution reached with a trader and noted publicly by way of an ACCC media release.

Analysis of results

While we have not met our targets for the number of enforcement interventions achieved (measure 4.1.5), we have exceeded our target for the number of compliance initiatives in 2022–23, with a total of 23 (measure 4.1.7). This new performance measure was introduced in 2021–22 to ensure we provide public information on, and are held accountable for, the delivery of projects utilising non-enforcement actions aimed at achieving behavioural change in industry sectors or by specific businesses. We will review our targets each year to ensure we are appropriately reflecting our commitment to these often more resource-intensive programs that can sometimes be delivered over longer periods. We use these approaches in conjunction with our enforcement tools, reflecting our holistic and integrated compliance and enforcement approach.

Failure to achieve the target of the number of enforcement interventions in the period is partially attributable to the complexity of many matters being investigated. In particular, the issues arising in matters under our environmental claims and sustainability priority area can be incredibly involved, and they can be intertwined with many policy issues and technical complexities.

Considerable resourcing was also directed towards establishing the National Anti-Scam Centre over the period.

We also did not meet our targets for the number of investigations completed (measure 4.1.1) and partially met the targets relating to the timing of completing initial or in-depth investigations (measures 4.1.3 and 4.1.4).

In response to these outcomes, we are giving careful consideration to internal strategies, such as implementing more active review points in investigations by senior managers and internal experts. However, where there are complex and difficult matters causing widespread consumer detriment and impacting fair trading, we will continue to take these matters on, with more active internal discussion about the resourcing trade-off. Enforcement actions remain an important tool in the strategies we take to achieve compliance with the law, whether or not the matter is complex.

We exceeded the target index score of 70 for the effectiveness survey question (measure 4.1.9), achieving an index score of 74.5. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

Manipulative or deceptive marketing practices across the digital economy

Well-functioning online markets are key to a modern economy. To realise their full benefit, consumers must be confident that they will not be deceived or have their behavioural biases exploited when engaging with online businesses. Equally, businesses doing the right thing should not be disadvantaged by deceptive practices.

Consumers have long been subjected to advertising and marketing techniques in both online and in-store retail environments. In this sense, many of the deceptive techniques that businesses in online markets use are not new practices. Where online markets differ, however, is in the use of technology to distort or disregard consumer choice. For example, they may use manipulative 'dark pattern'¹⁹ techniques.

There are also many more information sources available to consumers online in making purchasing decisions compared with in-store retail environments. This can be beneficial for consumers, but it can also lead to information overload and the use of mental shortcuts. This can be exploited by businesses.

Existing prohibitions in the Australian Consumer Law may cover some types of dark patterns (and similar offline practices). However, throughout our work in considering these issues (including in our digital platforms work), as well as in our broader compliance, enforcement, engagement and market studies work, we have seen many examples of conduct that causes harm to consumers and small business that fall outside the existing provisions of the Australian Consumer Law. These are particularly pronounced and prevalent in the digital economy. However, the examples we have seen span both online and offline conduct, and sometimes they span both. The conduct we are concerned about is unlikely to breach the Australian Consumer Law because it is:

- harmful but not sufficiently severe to constitute unconscionable conduct
- not misleading or deceptive but distorts consumer choice by creating confusion or hiding or omitting relevant information
- not captured by the unfair contract term (UCT) provisions.

The ACCC has been advocating for an unfair trading practices prohibition to be introduced into the Australian Consumer Law to address such conduct. Having an unfair practices prohibition would set a normative standard for business behaviour that would guide and promote better behaviour by businesses.

Commonwealth, state and territory ministers for consumer affairs have agreed to consult on proposed reforms to address unfair trading practices. We will further advocate our views as part of that process in due course.

In 2022–23 we took compliance and enforcement actions to address manipulative and deceptive marketing practices across the economy. For example, we conducted 'sweeps' of internet and social media content to identify issues of concern:

- In October 2023 we conducted an [internet sweep](#) to identify possible false or misleading online business reviews.

¹⁹ In the ACCC's [2021 Digital Platform Services Inquiry Discussion Paper for Interim Report No. 5](#), the ACCC defined 'dark patterns' as 'The design of user interfaces intended to confuse users, make it difficult for users to express their actual preferences, or manipulate users into taking certain actions'.

- In January 2023 we conducted a [social media sweep](#) to identify possible misleading testimonials and endorsements by influencers.

In our last annual report we discussed the work we had done on issues in the online florist aggregator industry. In 2022–23 our work in this area and investigations resulted in:

- the commencement of Federal Court proceedings against [Bloomex](#) for allegedly publishing misleading online star ratings and price representations
- the commencement of Federal Court proceedings against [Meg's Flowers Pty Ltd](#) for allegedly misleading consumers that it was a local florist when, in fact, Meg's Flowers is a national online business which distributes flowers through its corporate warehouses and subcontractors and does not operate local florist stores. The ACCC alleges that Meg's Flowers misled consumers by, among other things, generating 7,462 Google Ads which referred to suburbs and towns across Australia. These ads included a URL which referred to the location which a consumer had searched for and the headlines 'Meg's Florist [suburb or town]' or 'Meg's [suburb or town]', and the phrase 'Same Day Local Flower Delivery'
- United Florists Pty Ltd (trading as Lily's Florist) and Elysium Marketing Pty Ltd (a related body corporate) providing [court enforceable undertakings](#) in relation to misleading representations that Lily's Florist was a local florist. In fact, it employed an outsourcing business model, fulfilling orders via an Australia-wide network of third-party florists
- [Fig & Bloom Pty Ltd](#) removing potentially misleading representations from 940 webpages that may have given the impression that it was a local business in a specific suburb. In fact, flower orders from Fig & Bloom were assembled and delivered from one of 3 warehouses, often located some distance from the suburb.

Environmental claims and sustainability

In Australia and internationally, policies and regulations focusing on sustainability have been implemented or are under active consideration. As this occurs, there is an increased need to monitor and act on competition and consumer protection issues in the sustainability context. Misleading claims about environmental or sustainability credentials have an impact right across the economy. Consumers, shareholders and governments are looking for legitimate change when it comes to environmental initiatives.

Given the depth and breadth of work involved in this area, it will continue to be a priority for the ACCC in 2023–24. However, ACCC action in this area during 2022–23 included our compliance and guidance work in our [Greenwashing by businesses in Australia](#) report in March 2023. The report, which followed our internet sweep in late 2022, identified possible misleading environmental and sustainability marketing claims. The report noted that:

- of the 247 businesses reviewed during the sweep, 57% were identified as having made concerning claims about their environmental credentials
- the cosmetic, clothing and footwear and food and drink sectors were found to have the highest proportion of concerning claims among the industries of focus. However, other sectors examined also had a significant proportion of concerning claims.

We also [announced](#) further consideration of concerning claims as a result, with several investigations of a number of businesses already underway. We also encouraged businesses to review the claims they were making to ensure better compliance.

On 10 May 2023 the ACCC also delivered an environmental and sustainability workshop as part of the International Consumer Protection and Enforcement Network (ICPEN) presidency events (see the highlight section below). The workshop specifically focused on consumer trust in environmental and sustainability claims; and different methods of reducing information asymmetry in the market.

In 2022–23 the ACCC also engaged with manufacturers, retailers and related industry groups to provide guidance to ensure clarity and transparency for consumers, in light of the collapse of the REDcycle soft plastics recycling program. Alongside the ACCC's work in considering the [authorisation application](#) for the Soft Plastics Taskforce, we have been engaging with industry stakeholders and representative bodies to ensure clarity and transparency in communications so as to minimise the risk that consumers will be misled by representations on packaging about the recycling of soft plastics.

Consumer guarantees

Noncompliance with the consumer guarantee provisions remains a major concern for the ACCC. This is despite it being a compliance and enforcement priority area for 7 of the past 8 years. Issues remain with the motor vehicle, caravan and other high-value goods sectors, where consumer detriment is high and contacts to the ACCC remain high. Given the high cost of these goods, consumers can experience significant harm if denied their consumer guarantee rights.

As discussed in our Annual Report 2021–22, the ACCC continues to advocate for reform to the consumer guarantees provisions of the Australian Consumer Law. We consider it should be a contravention of the Australian Consumer Law for businesses to fail to provide consumers with remedies for consumer guarantee failures if those businesses are legally required to do so. This would dramatically change business incentives to comply with their consumer guarantee obligations and more effectively support consumers to secure their statutory consumer guarantee rights.

While we advocate for this necessary reform, we continue to take enforcement actions for consumer guarantee related matters, such as alleged misrepresentations about consumers' rights. We are also engaging with key industry stakeholders and collaborating with other regulators to achieve behavioural change and better compliance. For example, in 2022–23 we have been involved in the following activities in this area:

- We [released](#) the [New caravan retailing: Ensuring industry compliance with the Australian Consumer Law](#) report. The report highlights areas of concern the ACCC identified with the conduct of some suppliers and manufacturers in the new caravan retailing market, following consumer and supplier surveys and industry engagement we conducted the previous year. The report also provides guidance to ensure businesses in this market comply with the Australian Consumer Law. We also conducted further engagement with caravan businesses and industry groups, including at industry forums, about these areas of concern, and the guidance provided in the report. We put the industry on notice that we would investigate and take compliance or enforcement action where warranted if we believe businesses have misled consumers.
- We instituted Federal Court proceedings against [Fitbit](#) on 24 October 2022 for allegedly making false or misleading representations to consumers about their consumer guarantee rights after their Fitbit wearable devices malfunctioned.
- In March 2023 the Federal Court ordered [Booktopia Pty Ltd](#) to pay penalties of \$6 million for making false or misleading representations about consumers' rights to refunds and other remedies for faulty or damaged goods.
- We pursued an appeal against Mazda Australia Pty Ltd, following an earlier Federal Court decision to dismiss the ACCC's allegations that Mazda engaged in unconscionable conduct in its dealings with consumers who had attempted to exercise their consumer guarantee rights regarding faults with their Mazda vehicles. The Full Federal Court [dismissed our appeal](#), but we pursued it because we believe that it is not acceptable business practice for businesses to give consumers the 'run-around' and discourage consumers from pursuing their rights for a refund or replacement vehicle. Mazda had also appealed against the earlier Federal Court finding that Mazda made 49 false representations to consumers about their consumer rights. The Full Federal Court dismissed Mazda's appeal.

Our work in this area shows that consumers continue to struggle in exercising their statutory rights to remedies for faulty products under the Australian Consumer Law. Reforms are needed to better protect consumers and adequately incentivise suppliers to comply with their existing consumer guarantee obligations.

Essential services

Issues around the pricing and supply of essential services remains a critical area for consumer welfare. Misleading representations about the price, features or benefits of essential services prevent consumers making informed purchasing decisions. This has the potential for significant impact when consumers are struggling with shrinking household budgets. In 2022–23 the ACCC undertook the following key actions in this area:

- We instituted Federal Court proceedings against [Telstra](#) for allegedly making false or misleading representations about upload speeds to residential broadband customers of its cheaper brand, Belong.
- Following intervention by the ACCC, energy retailer [Blue NRG](#) agreed to compensate several small business clients after it admitted to representations the ACCC considered to be false or misleading, telling customers on fixed-rate contracts that it had a legal right to raise electricity prices when it did not. Blue NRG has provided a [court enforceable undertaking](#) to the ACCC that it will not increase electricity rates for the term of the fixed-rate contracts or make any representations that it has a legal right or power to do so.
- The Federal Court ordered Australia’s 3 largest internet services providers, [Telstra](#), [Optus](#) and [TPG](#), to pay penalties totalling \$33.5 million after they each admitted making false or misleading representations to consumers when promoting certain NBN internet plans.

First Nations Australians

The ACCC prioritises work that impacts on First Nations Australians. We use key education, compliance and advocacy strategies in this area – for example, our ongoing work in and leadership of the [National Indigenous Consumer Strategy](#) and its action plans; maintenance of the [Your Rights Mob](#) Facebook page and engagement tools; and the integration of First Nations interests in key consumer activities.

Another key event, the [2023 Ruby Hutchison Memorial Lecture](#), co-hosted with CHOICE, centred on the First Nations voice in subject matter and delivery. Our speaker, Lynda Edwards, is a proud Wangkumara and Barkandji woman. She was the recipient of both the 2023 NSW Aboriginal Woman of the Year and 2023 NSW Premier’s Woman of the Year awards. Lynda has worked for almost 17 years in the financial sector, championing financial literacy in the First Nations community. She spoke about the challenges facing First Nations people as a result of their exclusion from the economy for so long. She issued a call to action and provided guidance on how individuals, organisations and government agencies can work together with First Nations people to improve outcomes.

We continue to provide input to the work currently being done across the government on ways to address issues associated with inauthentic Aboriginal and Torres Strait Islander style arts and crafts; and the potential for new standalone legislation to improve Aboriginal and Torres Strait Islander cultural protections. For example, we have:

- advocated for new standalone cultural protection legislation in our [submission](#) in response to the Productivity Commission’s draft Aboriginal and Torres Strait Islander visual arts and crafts study report; and engaged with the Office for the Arts in relation to the Productivity Commission’s recommendations

- taken part in a cross-departmental working group led by IP Australia to undertake a [scoping study](#) for a potential framework for new standalone cultural protection legislation. The final report from the study was released in July 2023.

In 2022–23 we engaged with major stock image and print-on-demand services about their Australian Consumer Law obligations and what measures they have in place, or will implement, to remove and prevent inauthentic First Nations style art from their platforms. We continue to monitor the sector. We conducted this work in light of the Productivity Commission’s finding in its *Aboriginal and Torres Strait Islander visual arts and crafts study report* that inauthentic product appeared prevalent in this sector. We recommended businesses in this sector implement best practice measures such as:

- conducting regular sweeps of content on their platforms to identify, investigate and remove problematic content
- providing their content teams and platform users with guidance on recognition of cultural intellectual property and the harms of cultural misappropriation
- liaising with First Nations representatives in respect of their platform’s content.

In late 2022, alongside the Australian Securities and Investments Commission (ASIC), we provided input to Treasury as it set up the government program to pay grants to families of deceased Youpla Group policyholders. The grants are in place of funeral benefit payments that would have been paid to policyholders following the collapse of the funeral benefits group previously known as the Aboriginal Community Benefit Fund. We also [warned the funeral industry](#) (through a media release and in direct engagement) that it should not take advantage of the fact that these consumers have received these grants by raising prices for funeral services.

Conduct impacting consumers experiencing vulnerability and disadvantage, including unconscionable conduct

The ACCC continues to employ a variety of compliance and enforcement tools to address issues impacting consumers experiencing vulnerability and disadvantage, including direct enforcement action and broader compliance initiatives. Key actions in this area in 2022–23 included:

- Optus and Medibank data breaches – the ACCC worked closely with other agencies and stakeholders to ensure prompt action was taken to support consumers impacted by these breaches. More detail is available under key activity 4.3.
- The ACCC accepted a court enforceable undertaking from Clews Holdings Pty Ltd, trading as [Revitalife](#), after the ACCC raised concerns about the sales practices Revitalife used when selling therapeutic adjustable beds and recliner lift chairs. Revitalife’s customers are predominantly elderly Australians. Revitalife engaged with them through unsolicited calls and arranged home visits for a ‘Sleep Assessment’ survey, when its purpose was to try to sell them its beds and chairs.
- We opposed Captain Cook College’s appeal against a previous Federal Court decision that it had engaged in various breaches of the Australian Consumer Law, including a system of unconscionable conduct to secure additional government funding for online diploma courses under the former VET FEE-HELP loan program. The [Full Federal Court](#) allowed Captain Cook College’s appeal in respect of findings of unconscionable conduct involving 4 individual consumers. However, it upheld the previous finding of systemic unconscionable conduct. We consider there was clear evidence that Captain Cook College enrolled vulnerable and disadvantaged consumers in courses they were unlikely to ever complete or receive any vocational benefit from despite incurring a large VET FEE-HELP debt.

Fair trading

The ACCC continues to take action to promote fair trading, including in the agriculture and franchising sectors. We take actions that create fairer trading between businesses and help empower small businesses (including educative activities outlined in key activity 4.2), given they often have less bargaining power than the larger businesses they need to engage with. The industry codes of conduct in the franchising, dairy and horticulture sectors play a role in providing protection for small businesses with limited bargaining power in their dealings with larger businesses. We take actions in this area to reinforce the role that these codes play.

In 2022–23 we undertook the following key actions and outcomes to support fair trading:

- The Federal Court declared that [38 contract terms in 11 standard form contracts](#) entered into by Fujifilm Business Innovation Australia or Fujifilm Leasing Australia (together, Fuji) were unfair. The UCTs included terms providing for automatic renewal, excessive exit fees and unilateral price increases. Fuji had used these terms in contracts with many thousands of small businesses. The Court declared the terms void and unenforceable. It ordered Fuji to stop enforcing these in current contracts and to cease using them in standard form small business contracts for the next 5 years.
- Following an ACCC investigation, gaming services provider [Maxgaming Qld Pty Ltd](#) (Maxgaming), a wholly owned subsidiary of Tabcorp Holdings, provided a court enforceable undertaking to amend potential UCTs. The terms were contained in Maxgaming’s standard form contracts with small business gaming venues. They included terms that rolled over the contract without notice to the customer, allowed Maxgaming to increase the fees payable if equipment required upgrading without the customer’s consent, and excluded Maxgaming from liability for negligent or wilful acts.
- [Jim’s Group Pty Ltd paid \\$24,420](#) in penalties in its capacity as franchisor of the Jim’s Dog Wash franchise for 2 infringement notices issued by the ACCC. One infringement notice related to an alleged failure by Jim’s Group to disclose certain information to a prospective franchisee, as required by the Franchising Code. The other infringement notice related to an alleged misrepresentation to a franchisee that their cooling-off rights under the Franchise Code ended 14 days after entering into the franchise agreement or the making of a payment to the franchisor, whichever was earlier. In fact, under the Franchising Code, a franchisee can terminate the agreement and receive a refund within 14 days of signing the agreement, even if they had previously paid a deposit.
- The ACCC accepted a court enforceable undertaking from [Retail Food Group Ltd](#) (RFG) in which RFG agreed to make payments to and waive historical debts of a number of affected current and former franchisees in relation to the purchase of certain corporate stores by these franchisees. The ACCC had alleged that RFG knew that these stores had been operated at a loss but did not disclose this to the franchisees before selling them. RFG will also pay \$5 million to franchisees of Michel’s Patisserie stores who paid levies into that franchise’s marketing fund between 1 July 2012 and 30 June 2017. The ACCC had alleged certain payments had been made from the Michel’s Patisserie marketing fund for expenses which were not legitimate marketing expenses and had not been adequately disclosed to franchisees or agreed to by a majority of franchisees. As a consequence of RFG’s actions, the parties agreed to settle the court proceedings that the ACCC commenced against RFG in December 2020 in relation to alleged unconscionable conduct and false and misleading representations made in its dealings with franchisees. RFG operates many well-known franchising brands, including Michel’s Patisserie, Brumby’s, Donut King and Gloria Jean’s.
- We accepted a court enforceable undertaking from [hipages Group Pty Ltd](#) (hipages) under which it committed to clearly disclose its subscription renewal and cancellation policies in its telephone scripts and email communications. hipages admitted it likely engaged in misleading or deceptive conduct in breach of the Australian Consumer Law by failing to adequately disclose contract

terms that allowed it to automatically renew subscriptions and charge an early termination fee when subscribers tried to cancel their auto-renewed contracts.

Agriculture

We conducted a [program of compliance checks](#) under the **Horticulture Code of Conduct**. These compliance checks found that some horticulture traders are not making their terms of trade publicly available and are incorrectly reporting prices in grower statements. This conduct puts growers at a disadvantage in an asymmetrical relationship. We updated our guidance material on these issues (discussed in key activity 4.2) and will continue our education and engagement with industry on them.

However, the ACCC will continue to conduct further audits in 2023 and strongly consider enforcement action where any noncompliance is identified. Fruit and vegetable wholesaler [Green Endeavour Pty Ltd](#) paid a penalty of \$13,750 after the ACCC issued it with an infringement notice for failing to prepare, publish and make publicly available its terms of trade, as required by the Horticulture Code.

On 16 September 2022, in proceedings commenced by the ACCC, the Federal Court declared that [Lactalis Australia](#) breached the **Dairy Code of Conduct** during the 2020–21 dairy season when it:²⁰

- failed to publish its milk supply agreements on its website by the Dairy Code of Conduct deadline of 2 pm on 1 June 2020 and instead required dairy farmers to sign up through a web portal which emailed the documents to them
- entered into milk supply agreements that allowed Lactalis to unilaterally terminate the agreements where there had been no material breach by a farmer. This included when, in Lactalis's opinion, the farmer had engaged in 'public denigration of processors, key customers or other stakeholders'.

However, the Court dismissed 2 of the ACCC's allegations. The Court found that Lactalis' milk supply agreements, which required farmers to supply at least 90% of their monthly milk production to Lactalis, were not exclusive agreements and did not legally prohibit farmers from supplying a second processor. The ACCC had argued the practical effect of the agreements was that farmers would be 'prohibited' from supplying to another processor. The Court also dismissed the ACCC's allegation that the agreements Lactalis entered into did not consist of a single document because Lactalis had not sent all 3 components of its milk supply agreements to farmers at the time it entered into the agreement. This was the first court proceeding commenced under the Dairy Code of Conduct.

20 On 25 July 2023 the Federal Court ordered Lactalis Australia Pty Ltd (Lactalis) to pay \$950,000 in penalties for this conduct that was found in September 2022 to be in contravention of the Dairy Code of Conduct.

ACCC advocacy for law reform to better address small business harm

The prohibition on UCTs in standard form consumer and small business contracts will come into force on 10 November 2023. Therefore, the ACCC has announced that UCTs in consumer and small business contracts will be one of its [compliance and enforcement priorities for 2023–24](#).

[The UCT changes](#) will allow the courts to impose penalties on businesses that include or rely on UCTs in standard form contracts. Now that UCTs will attract penalties, we expect to see businesses complying with their obligations. We will consider enforcement where appropriate. The UCT changes will also expand the coverage of the protections to more small business contracts as the contract value threshold is removed. The small business threshold test will now be satisfied where the business employs fewer than 100 people or their turnover for the previous income year is less than \$10 million.

We continue to advocate for a stronger consumer guarantees regime so that businesses are better incentivised to provide remedies to consumers that they are legally required to. In conjunction with this, we continue our advocacy for amendments to the supplier indemnification provisions. We consider an important aspect of strengthening the consumer guarantees regime is in strengthening the supplier indemnification provisions. The supplier indemnification provisions allow suppliers, many of which are small businesses, to take action against a manufacturer to recoup the costs of them providing a remedy to a consumer for noncompliance with the consumer guarantees where manufacture is at fault for the noncompliance. We consider there should be a prohibition on manufacturers not indemnifying suppliers where they are legally required to do so; and a prohibition against manufacturers retaliating against suppliers that request indemnification.

As noted above, we have been advocating for an unfair trading practices prohibition to be introduced into the Australian Consumer Law to address conduct not currently covered by the Australian Consumer Law. Both consumers and small business are subject to these unfair trading practices. We consider this reform is necessary to assist consumers and small businesses that face manipulative practices designed to get them to agree to unfair or unfavourable contract terms.

The government is currently reviewing the dispute resolution provisions of the Food and Grocery Code. The ACCC made a submission to this review. We are advocating for the Food and Grocery Code to be significantly strengthened. We consider that the Code Arbiter model should be removed and replaced with a genuinely independent process. Further, we consider that the weaknesses in the dispute resolution provisions are inextricably linked to the broader weaknesses in the code and therefore:

- the code should be remade as a mandatory code
- the ability for suppliers to opt out of protections should be removed from the code
- the code should be amended to include more effective enforcement and compliance tools, including civil pecuniary penalties and infringement notices.

Misleading conduct and other prohibited practices

In 2022–23 the ACCC took other actions to address misleading conduct and other prohibited practices that cause, or have the potential to cause, significant consumer or small business harm. For example, we took action on matters outside the annual compliance and enforcement priorities. We achieved the following outcomes:

- As a result of court action by the ACCC, the Federal Court ordered SmileDirectClub Aus Pty Ltd and its United States parent company, SmileDirectClub LLC (together [SmileDirectClub](#)), to pay penalties totalling \$3.5 million and to compensate customers. SmileDirectClub admitted that it made false or misleading statements to consumers about their entitlement to reimbursement from their private health fund for part of the cost of the company's teeth aligners and related treatment.
- Health insurance comparison business [Health Insurance Comparison Choosewell Pty Ltd](#) (HICC) admitted breaching the Australian Consumer Law by failing to inform consumers of their termination rights, including a 10 business day cooling-off period, when entering into unsolicited consumer agreements for private health insurance. The ACCC accepted a 3-year court enforceable undertaking from HICC in which HICC commits to not entering into unsolicited sales contracts without giving consumers verbal and written information about their termination rights and notifying the relevant health insurance provider that the contract resulted from an unsolicited consumer agreement.
- We commenced court proceedings against [Master Wealth Control Pty Limited](#), trading as DG Institute, for allegedly making false or misleading representations about its Real Estate Rescue and Master Wealth Control investment or asset protection programs. We also allege that Dominique Grubisa, the director and chief executive officer (CEO) of DG Institute, was involved in this conduct.
- Residential home building company [Fowler Homes Pty Ltd](#) admitted that its standard home building contract contained UCTs. It has given the ACCC an undertaking not to enforce the terms of concern. The term we considered likely to be a UCT was a non-disparagement clause that prohibited clients of Fowler Homes from publishing or sharing negative reviews or any other feedback, including online or on social media, about Fowler Homes without prior permission. The clause also required clients to indemnify Fowler Homes against any losses suffered from enforcing those terms.
- As a result of court action by the ACCC, the Federal Court ordered [Google LLC](#) to pay \$60 million in penalties for making misleading representations to consumers about the collection and use of their personal location data through the account settings on Android phones. The data was collected and used between January 2017 and December 2018. Personal location data is sensitive and important to some consumers. Some consumers may have made different choices about the collection, storage and use of their location data if the misleading representations had not been made.
- Our work on a separate court case against [Google LLC](#) was dismissed by the Federal Court. The ACCC had alleged that Google's notification to consumers about changes to its use of their data was misleading because it did not adequately inform consumers about these changes. The ACCC also argued that changes to the privacy policy reduced account holders' rights without obtaining their explicit consent. The Court dismissed the ACCC's allegations.
- We engaged with some supermarkets to achieve better outcomes for consumers on the prominence and legibility of unit pricing (under the mandatory Unit Pricing Code). The Unit Pricing Code requires supermarkets to display unit prices for certain products. This allows consumers to more easily compare similar products in store and on the supermarkets' websites. The supermarkets we engaged with were responsive to our concerns, in some cases redesigning their paper labels and electronic labels. While the rising cost of living has prompted increased consumer concern about grocery pricing, in general the ACCC has seen relatively high levels of compliance with the Unit Pricing Code.

International collaboration

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

We provided input to the Organisation for Economic Co-operation and Development (OECD) through a variety of forums – for example, we attended the Committee on Consumer Policy meetings which discussed issues such as empowering consumers in the green transition and applying behavioural insights to competition and consumer policy and enforcement.

The ACCC welcomed several visiting delegations from our international counterparts to discuss emerging issues of common interest. For example:

- In October 2022 we hosted a delegation from Papua New Guinea’s Independent Competition and Consumer Commission in Brisbane to discuss consumer protection and product safety issues, as well as an initiative to improve engagement in the Pacific region as part of our 2022–23 International Consumer Protection and Enforcement Network (ICPEN) presidency role.
- In November 2022 we hosted a delegation from the Office of Competition and Consumer Protection, Poland, to discuss a range of consumer protection issues with ACCC staff. The delegation also shared their experiences on the development of an AI tool to detect unfair terms in consumer contracts.

International Consumer Protection and Enforcement Network presidency

The ACCC was among the original group of consumer protection agencies that created what is now [ICPEN](#). We are pleased to currently be the 30-year anniversary president. This is the third time the ACCC has taken on leadership of the network as president. We have continued to actively participate in ICPEN’s work through activities such as the annual leadership of advisory groups; co-chairing the Intelligence Steering Group; and administering the ICPEN digital communication channels of its website, member extranet, social media account and video streaming account.

When the ACCC nominated for the current presidency, one of our key objectives was to revive interest and activity in the network. We also observed that, in taking on the presidency, there would be opportunities to increase membership and engagement in the Asia-Pacific region.

The ACCC’s aims for undertaking the presidency were:

- an increased focus on agency effectiveness, with ICPEN members benefiting from sharing strategic and operational expertise
- improved compliance and enforcement approaches, including through sharing lessons learned
- working toward collective compliance, enabling consumer protection agencies to reach consensus on common issues, and creating a stronger voice to advocate for consumers
- increased ICPEN profile and engagement and creation of opportunities for networking and cooperation.

Australian ICPEN presidency events, designed to align with and support the strategic program of work, were held in Sydney from 8 to 12 May 2023. The events had virtual and in-person participation options to engage ICPEN members, domestic stakeholders and a range of ACCC staff. Given that the event was Asia-Pacific regional focused, the ACCC was able to invite a number of non-ICPEN members to the Sydney conference to enhance capacity building in the region.

► Highlight

ICPEN events – Environmental workshop – 10 May 2023

In 2022–23 the ACCC held the presidency of the International Consumer Protection and Enforcement Network (ICPEN). The presidency also covered the 30th anniversary year for the network. Our tagline ‘Global Consumers; Global Enforcement’ set the theme for the presidency, with key objectives including greater collaboration across the network and engaging directly with high-level officials from consumer protection authorities around the globe.

In addition to leading and participating in several ICPEN projects, we hosted hybrid events across 5 days in May. We were pleased to be able to support colleagues from our regional partners and authorities in the Asia-Pacific in attending and engaging with ICPEN members. We discussed issues of global and local importance, including how agencies can innovate and improve their effectiveness, dark patterns and sustainability.

Of particular importance in the program of events was our half-day environmental workshop to discuss consumer trust in environmental and sustainability claims. This provided an important forum for international and domestic regulators, industry representatives and experts to discuss issues impacting consumers across the jurisdictions.

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

About this key activity

This key activity relates to the work we do to assist the small business sector to understand and comply with their obligations and exercise their rights under the Competition and Consumer Act as the customers of – or suppliers to – larger businesses.

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

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

Performance measures

Table 3.14: Performance measures for key activity 4.2

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
4.2.1 Number of small business Infocentre contacts served (Small business contacts are contacts through separate small business phone line and web forms)	12,143	10,615	8,843	7,000	10,183	✓
<p>Methodology: Number of calls answered from the small business line and number of Infoforms from written contacts (including webform, email or letter) marked as small business, franchising or submitted using the small business form</p> <p>Data source: Internal records (Dynamics and telephony system)</p> <p>Related regulator best practice principles: 1 and 3</p>						
4.2.2 Number of new or revised business compliance and education resources (published guidance)	7	9	12	10	26	✓
<p>Methodology: Count and cross-check of substantive updates to existing resources and new resources released within the reporting period</p> <p>Data source: Internal records (Dynamics), publication releases and relevant ACCC website pages (last updated date)</p> <p>Related regulator best practice principles: 1, 2 and 3</p>						

4.2.3 Number of times online business compliance and education resources have been accessed	1.5 million	1.63 million	1.32 million	1.25 million	1,272,475	✓
Methodology: <i>Count of page views</i>						
Data source: <i>Internal records</i>						
Related regulator best practice principles: <i>1, 2 and 3</i>						
4.2.4 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC effectively empowers small businesses by increasing awareness of their rights under the Australian Consumer Law and industry codes	-	-	-	70+	63.5	○
Methodology: <i>The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2023 survey results</i>						
Data source: <i>ACCC Effectiveness Survey</i>						
Related regulator best practice principles: <i>1 and 3</i>						

Analysis of results

The ACCC continues to prioritise providing up-to-date and useful information to small businesses, producing 26 new or substantively updated resources during this period (measure 4.2.2). This included significant updates and revisions to our webpages that provide general guidance to consumers across a broad range of topics, as part of the whole-of-agency project to update the ACCC website. This contributed to exceeding the target for this measure, in conjunction with creating or updating resources, as part of our broader work under our compliance and enforcement priorities. It is clear that the information on our website is valued, with our business pages being accessed 1.27 million times in 2022–23 (measure 4.2.3).

We exceeded our target for the number of small business Infocentre contacts served (measure 4.2.1). A range of factors are likely to have contributed to this, including the current economic situation which has given rise to more urgent contact regarding concerns where businesses may not be able to sustain in this environment, as well as an increase in small business enquiries about greenwashing, and about unfair contract terms in light of the upcoming changes to the unfair contract terms law.

We partially met the target index score of 70 for the effectiveness survey question (measure 4.2.4), achieving an index score of 63.5. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

The ACCC continues to work on educating small businesses about their rights and obligations under the Competition and Consumer Act, Australian Consumer Law and relevant industry-specific codes of conduct. The ACCC has been focusing, and will continue to focus, on agriculture, dairy and horticulture, as well as franchising issues. However, it is also necessary to deliver an engagement strategy to work with the broader small business sector on issues that have a direct impact on their ability to compete, particularly in the post-pandemic environment.

In 2022–23 the ACCC also focused on clear guidance on the water rules and the Motor Vehicle Service and Repair Information Scheme. Given the complexities involved in these areas, it is important to provide businesses, particularly small businesses, with easy to understand information to help them to comply with the law as well as understand their rights.

Australian Consumer Law and other guidance

In 2022–23 we updated various website guidance material on aspects of the Australian Consumer Law to help businesses improve compliance. A key area of updates related to the consumer guarantees provisions. We updated key basic information on:

- how the consumer guarantees operate and businesses obligations in complying with the law when dealing with consumers
- businesses' rights when their purchase of a product or service is considered a consumer transaction and therefore captured by the consumer guarantees
- businesses' rights in seeking reimbursement from manufacturers for consumer guarantees remedies provided to consumers where the failure to meet the relevant consumer guarantees was the fault of the manufacturer.

We also published or updated information on the application of the consumer guarantees provisions in some key sectors:

- the travel sector in relation to [delays and cancellations](#)
- the events and ticketing sector in relation to [event changes and cancellations](#)
- the caravan sector (discussed further in key activity 4.1).

Our guidance on [telemarketing and door-to-door sales](#) was also significantly updated and simplified to better help businesses comply with the Australian Consumer Law when selling in this way.

We also updated our website guidance on [unfair contract terms](#). The changes clarify the information and make it easier for all businesses to understand, including small and micro businesses. They also highlight the changes to the laws that will come into effect in November 2023 (discussed further in key activity 4.1). We continue to consider ways we can improve guidance to business in this area.

Water rules guidance

In 2022–23, as part of our functions under the *Water Act 2007* (Cth), which applies across the Murray–Darling Basin, we monitored regulated water charges and enforced compliance with the rules (this work is discussed further in key activity 1.3).

We recognise that compliance can effectively and efficiently be achieved by ensuring the requirements of operators are expressed clearly and as simply as possible. Therefore, we published the following revised information throughout the year to assist the sector to comply, and so that users can better understand their protections:

- [Compliance and enforcement guide for infrastructure operators on the water rules](#)
- [Guidance for infrastructure operators about capital contributions on schedule charges](#)
- [Guidance for infrastructure operators about additional termination fees](#)
- [Guidance for applicants seeking an exemption from disclosing certain charges in a schedule of charges.](#)

Industry codes of conduct

Horticulture Code of Conduct

Following compliance audits in March 2022 (discussed in key activity 4.1), we [updated](#) our web guidance for growers and wholesalers. The updated information provides further detail on the code's key elements, including requirements for traders to publish their terms of trade and for merchants to report the gross sales price when paying a grower an amount calculated by a method or formula. These requirements help provide greater price transparency for growers about what traders pay for their produce.

Guidance will continue to be updated as necessary when the ACCC conducts further audits. However, we will also look to compliance and enforcement actions where warranted.

Dairy Code of Conduct

In April 2023, after considering the Federal Court's judgment in our proceedings against Lactalis alleging several breaches of the Dairy Code (discussed in key activity 4.1), we reviewed and published updated guidance ahead of the commencement of the next dairy season. Our updated guidance provides further detail on how processors need to publish their milk supply agreements, when they can terminate an agreement with a farmer, how they can comply with the 'single document' requirement, and the meaning of a non-exclusive agreement under the code. The updates also simplified some aspects so that dairy farmers and processors can better understand their rights and obligations under the code.

In general, we have seen improving compliance with the code. However, processors should still ensure they review our updated guidance to be completely clear on their obligations. We will be conducting future compliance checks given our continued priority of ensuring compliance with industry codes of conduct in the agricultural sector.

► Highlight

Franchising Code of Conduct compliance and educative activities

The ACCC has a [free online education course](#) for people thinking about buying a franchise. The course aims to help prospective franchisees to better understand their rights and responsibilities. This year, over 1,200 prospective franchisees registered for the course. In early 2023 we ran a proactive digital media campaign to make more people who are interested in franchising aware of the course. We also simplified the language in the most popular part of the course to improve its readability for culturally and linguistically diverse audiences.

Motor Vehicle Service and Repair Information Scheme

The Motor Vehicle Service and Repair Information Scheme (MVIS) came into effect on 1 July 2022. The purpose of the scheme is to promote competition between repairers and establish a fair playing field by requiring that all repairers have access to information used to diagnose, repair, service, modify or dismantle scheme vehicles. Consumers benefit by being able to choose which repairer can service and repair their vehicle.

The day-to-day operation of the scheme is the responsibility of an industry-led body – the Scheme Adviser. The government has appointed the Australian Automotive Service and Repair Authority ([AASRA](#)) as the Scheme Adviser. The ACCC works with AASRA and the Department of the Treasury and engages with key industry stakeholders to implement the scheme. Since July 2022 the ACCC has:

- published easy to understand website guidance about [the scheme in general](#) and also [specific information](#) for data providers, repairers and registered training organisations
- published a detailed [technical guidance document](#) to assist data providers to comply with the scheme
- engaged with data providers to educate them about the requirement to separate safety and security information from general scheme information (a key compliance obligation)
- prepared a draft memorandum of understanding for working with AASRA. The memorandum addresses a range of operational and administrative matters to ensure an effective ongoing relationship.

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

About this key activity

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

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

Historically in our scams work, we have engaged with other Australian and international government agencies (including 40 government organisations on the Scams Awareness Network) and law enforcement to share intelligence about scam issues and methods of alerting consumers. We also worked with these agencies and the private sector on scam prevention and disruption methods.

The [National Anti-Scam Centre](#) (NASC) launched on 1 July 2023. It was established to coordinate government, law enforcement and the private sector efforts to combat scams. It builds on the ACCC's existing scams work, including the Scamwatch service. The NASC helps people spot and avoid scams, collects and shares intelligence across government and the private sector, and coordinates across government and the private sector on various actions to combat scams.

Performance measures

Table 3.15: Performance measures for key activity 4.3

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
4.3.1 Number of new or revised consumer education resources (published guidance)#	21	29	13	12	21	✓
Methodology: Count and cross-check of substantive updates to existing resources and new resources released within the reporting period						
Data source: Internal records (Dynamics CRM 365), publication releases and relevant ACCC website pages (last updated date)						
Related regulator best practice principles: 1, 2 and 3						

4.3.2 Number of times online consumer education resources have been accessed	4.58 million	4.46 million	4.53 million	3 million	3.997 million	✓
Methodology: <i>Count of page views</i>						
Data source: <i>Internal records</i>						
Related regulator best practice principles: <i>1, 2 and 3</i>						
4.3.3 Number of Infocentre contacts served not related to scams* (includes Infocentre contacts served and webforms recieved)	-	-	-	100,000	118,192	✓
Methodology: <i>Dynamics report which calculates all written and phone contacts that have been served, with scam reports excluded</i>						
Data source: <i>Internal records (Dynamics and telephony system)</i>						
Related regulator best practice principles: <i>1 and 3</i>						
4.3.4 Number of visits to the Scamwatch website	3.84 million	3.99 million	7.31 million	5 million	6,947,948	✓
Methodology: <i>Count of number of times visitors entered the Scamwatch website through a specified page or set of pages</i>						
Data source: <i>Google analytics</i>						
Related regulator best practice principles: <i>1 and 3</i>						
4.3.5 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC effectively empowers consumers by increasing awareness of their rights under the Australian Consumer Law	-	-	-	70+	71.3	✓
Methodology: <i>The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2023 survey results</i>						
Data source: <i>ACCC Effectiveness Survey</i>						
Related regulator best practice principles: <i>1 and 3</i>						

- # The total number of new or revised consumer education resources (published guidance) counts a new or revised publication and its multiple translations as a single resource.
- * In previous reporting years the Infocentre contacts served measure included web chat and scams, in addition to phone contacts served and written contacts. Due to the variance in data parameters, previous year's results have been removed as they do not provide a fair comparison of performance over time.

Analysis of results

We continue to prioritise the provision of accurate and current guidance to consumers to inform them of their rights under the Australian Consumer Law. With the whole-of-agency project to update the ACCC website, in 2022–23 we made some significant updates and revisions to our webpages that provide general guidance to consumers across a broad range of topics, making the information current, easier to understand, and more useful for consumers (measure 4.3.1). The information we

provide to consumers continues to be valued as a resource, with nearly 4 million views of our online consumer education resources during 2022–23 (measure 4.3.2).

With increases in the number and types of scams experienced in Australia, consumers continue to use the ACCC and Scamwatch as a trusted source of guidance. The Scamwatch website saw 6.95 million visits over this period (measure 4.3.4), and we conducted a number of mini-campaigns around cultural or community events (such as Valentine's Day) and specific scam activity (including bank impersonation scams).

We exceeded the target index score of 70 for the effectiveness survey question (measure 4.3.5), achieving an index score of 71.3. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

Addressing scams

The ACCC protects the Australian community from scams through education, awareness raising and disruption initiatives.

The ACCC collates scams data, analyses it to identify trends, and monitors financial losses. We continue to maintain the Scamwatch website and reporting function, which also provides statistical information about scam activity in Australia. Scamwatch reports inform the way we educate and empower consumers as well as our scam prevention and disruption strategies.

Since most scams are criminal offences carried out by overseas-based scammers, the ACCC does not have jurisdiction to explore investigative or enforcement outcomes. Therefore, our focus continues to be on scam education, prevention and disruption. We share intelligence with law enforcement and telecommunications and financial entities to assist them to combat scams. The ACCC shares intelligence about scams on a regular basis with some private sector organisations, including digital platforms, financial institutions and telecommunications providers. Private sector organisations use this information to bolster their own scam disruption activities.

From 7 to 11 November 2022 we delivered the annual [Scams Awareness Week](#) with our partner organisations. The campaign was hosted by the [Scams Awareness Network](#). The theme for 2022 was 'How to Spot a Scam', and the campaign aimed to empower consumers to be alert and look for red flags.

Campaign resources included videos, posters and social media and web content that supported a consistent message across all participating organisations. Over 8 days, the Scams Awareness Week campaign had a potential audience reach of 82 million, with 2,586 mentions in print, online, TV and radio.

2022 Targeting Scams report and Scamwatch

The [Targeting scams: Report of the ACCC on scams activity 2022](#) was released in April 2023. It revealed that Australians lost a record \$3.1 billion to scams in 2022. This is an 80% increase on total losses recorded in 2021. The report shows that investment scams were the highest loss category (\$1.5 billion), followed by remote access scams (\$229 million) and payment redirection scams (\$224 million).

Scamwatch received 239,237 scam reports in 2022. This is a 16.5% drop on the number of reports received in 2021. Financial losses reported to Scamwatch in 2022 totalled more than \$569 million – a 76% increase compared with losses reported in the previous year.

The 2022 report also raised concerns about the financial losses suffered by people experiencing vulnerability. People with a disability reported financial losses of \$33.7 million – a 71% increase compared with 2021. First Nations Australians also reported losses of \$5.1 million (up 5% compared with 2021) to Scamwatch, while the median loss for First Nations Australian scam victims rose to \$754, from \$650 reported in 2021. People from culturally and linguistically diverse communities made 11,418 scam reports which resulted in losses of \$56 million (up 36% compared with 2021).

Optus and Medibank data breaches

In September and October 2022, 2 major Australian businesses (Optus and Medibank Private) announced that they had been subject to separate cyber attacks in which significant personal information of customers and former customers had been accessed.

These incidents impacted approximately 9 million current and former Optus customers and approximately 4 million current Medibank (and sub-brands OHSC and AHM); and possibly almost 4 million former Medibank, AHM and OHSC customers. Of the Optus customers, almost 2 million people had their driver licence numbers (and some card numbers) exposed and over 150,000 had passport numbers exposed. Others had Medicare cards or other government identifiers disclosed. Medibank indicated the criminal had accessed all OSHC, AHM and Medibank private customers' personal data and significant amounts of health claims data.

Government agencies, departments and regulators responded immediately to the data breaches and worked collaboratively on solutions. The ACCC's main roles in this critical time were:

- providing education and advice to Optus and Medibank customers on how to avoid scams
- ensuring banks seeking to access Optus breach data comply with specific data sharing regulatory requirements, in conjunction with APRA and the OAIC.

After the data breaches the ACCC also released awareness and educative material and has updated the Scamwatch website to include [specific information about avoiding scams](#).

National Anti-Scam Centre

On 15 May 2023 the government announced the establishment of the new NASC. The ACCC was allocated funding to complete the set-up of the NASC over the next 2 years. The ACCC consulted widely on the NASC set-up and opportunities to better protect consumers from scams.

NASC commenced on 1 July 2023. It will build technology needed to support high-frequency data sharing with a range of agencies, law enforcement and the private sector, with the mission to make Australia a harder target for scammers.

It will also bring together the expertise and resources to disrupt scammers making contact with Australians, raise consumer awareness about how to avoid scams, and link scam victims to services where they have lost money or had their identity compromised.

The key to this collaborative effort is the NASC fusion cells. NASC will coordinate a series of fusion cells with different participants to target particular scam types. Fusion cells are time-limited taskforces designed to bring together expertise from government and the private sector to take timely action to address specific, urgent problems.

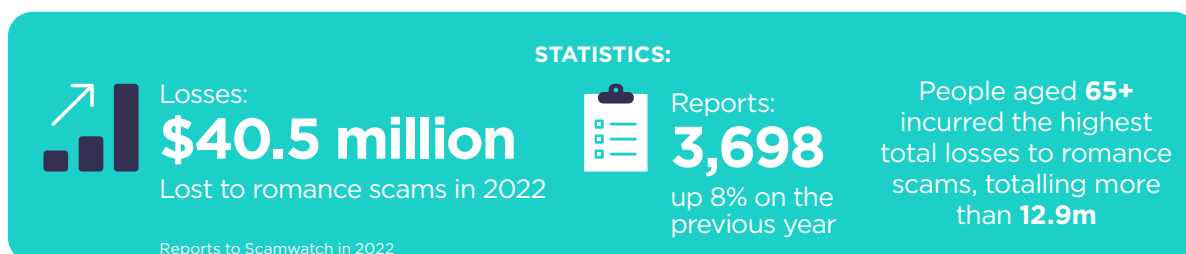
Other scams guidance and education work

We publish guidance and information on scams to raise awareness of scams and give consumers information on the action they can take to protect themselves and what they can do if they do experience loss. This information is developed and regularly analysed and reviewed using the data in Scamwatch reports. It ensures we are staying abreast of the rapid evolution of scam activity.

In 2022–23 we:

- presented at over 20 community events and forums to provide advice on how to avoid scams and what people can do if they suspect they have been a victim of a scam
- issued media releases on:
 - payment redirection scams
 - investment scams
 - the ‘Hi Mum’ scam
 - scam protection after data breaches
 - agriculture scams
 - employment scams
 - relationship scams
 - bank impersonation scams
- prepared and coordinated a Valentine’s Day dating and romance scam mini-campaign involving the issue of a toolkit for industry, organisations and consumers, with hints and tips for supporting people who have been scammed. The mini campaign included resources for media coverage, such as infographics on the impact of romance scams.

Figure 3.1: Statistics on romance scams in 2022



There were 115 items of media coverage over the 3 days of the campaign, with a potential reach of 4.27 million people over the period

- prepared and coordinated a mini campaign on bank impersonation scams that generated 1,259 media mentions across print, television, radio and online. There was significant support from the National Ethnic and Multicultural Broadcasters Council, delivering the message in 110 languages, and the National Indigenous Radio Service
- refreshed the Scamwatch website, updating content such as advice to consumers and the Scamwatch reporting form
- revised the online edition of the Little black book of scams, which is a valuable resource to inform consumers of the warning signs of scams and what to do if you encounter one.

Guidance for consumers

As part of the release of the updated ACCC website in early 2023, we reviewed our suite of consumer guidance to ensure we are providing the most useful information for consumers that we can. In this update work we revised this guidance to:

- ensure we continue to reflect common areas of concern for consumers
- make it easier to identify what the ACCC can and cannot do
- provide better links between related information
- present information in the ways that consumers are most likely to use
- make the information more accessible and easier to understand.

A key area of work is the updates made to the consumer guarantees content. We updated key basic information on how the consumer guarantees operate, and consumers' rights and businesses' obligations in complying with these laws, as well as information on consumers' rights under the consumer guarantees provisions in:

- the travel sector in relation to delays and cancellations
- the events and ticketing sector in relation to event changes and cancellations.

We also published new guidance for consumers on [caravans and consumer issues](#). This follows from our work on our *New caravan retailing report* (discussed further in key activity 4.1). The new guidance gives consumers information on the application of the consumer guarantees to caravan issues.

We also significantly updated our website guidance on [telemarketing and door-to-door sales](#). The new guidance gives better information to consumers about their rights in these situations. The guidance includes a simple to understand [brochure](#), which could also be produced as a magnet, to help consumers know what they can do when faced with a door-to-door salesperson. These brochures were also distributed through a number of consumer advocacy organisations.

Supporting First Nations Australians

The ACCC continues to take action to support First Nations consumers and small businesses. More detail of our compliance, enforcement and advocacy activity on consumer and fair trading issues impacting the welfare of First Nations Australians can be found in key activity 4.1.

The ACCC continues to chair the National Indigenous Consumer Strategy (NICS), which coordinates members' efforts in working together to improve outcomes for Indigenous consumers. NICS comprises the ACCC, ASIC, state and territory Australian Consumer Law regulators and the Indigenous Consumer Assistance Network (ICAN). It meets bi-monthly. In 2022–23 the ACCC contributed to the current NICS national project, led by ASIC, around updating guidance for government agencies on investigations involving issues impacting Indigenous consumers.

We have been working to expand the footprint of our existing outreach activities to help educate and empower First Nations communities and organisations about consumer and fair trading issues. We also obtain valuable insights from these communities and organisations that help us in our broader compliance, enforcement and policy work. Some key outreach activities have included:

- in-person engagement with community leaders and members, as well as other organisations in Broome, Derby and the community of Pandanus Park in the Kimberley region of Western Australia and the Katherine region of the Northern Territory
- continuing to broaden the outreach program through key stakeholder relationships with organisations including Legal Aid New South Wales, Anglicare NT, Financial Counsellors' Association of WA and Broome Circle

- engaging with First Nations representative organisations, such as the Northern Land Council, on issues that impact First Nations communities and small business
- participating in stakeholder forums focused on conduct impacting First Nations people, including the Miriwoong Forum held in Kununurra, the 'Help Us Understand Your Way' Banking Roundtable in Broome and the Anglicare NT Financial Inclusion Forum in Darwin.

Engagement activities

At the centre of our consumer engagement strategies are the relationships we have with our consumer advocacy organisations. These organisations provide invaluable information that is used in our compliance and enforcement work, and they are both a formal part of our consultation programs and an important partner in our efforts to raise awareness and educate consumers about their rights. We continue to prioritise our work with these groups.

In 2022–23 we held 4 Consumer Consultative Committee (CCC) meetings and numerous engagements with individual CCC members. Areas of focus for the formal CCC meetings have included First Nations consumer issues, consumer issues around the National Disability Insurance Scheme, scam awareness and financial vulnerability. We partner with ASIC to hold an annual joint meeting of the CCC and the ASIC Consumer Consultative Panel. This year the joint meeting considered environmental and sustainability related consumer issues.

Themes raised by these groups and in these meetings form part of our agenda setting for our annual consumer-focused public events, the Ruby Hutchison Memorial Lecture (jointly presented with CHOICE) and the National Consumer Congress.

► Highlight

2023 National Consumer Congress – Bringing the consumer voice to regulatory action

The ACCC's annual National Consumer Congress brings together consumer groups, community organisations and government to discuss key issues impacting consumers and develop strategies to improve consumer welfare.

In 2023 the event theme was 'Bringing the Consumer Voice to Regulatory Action'. Across multiple sessions we heard directly from consumers about their experiences. This focused discussions on the human impacts of different issues so that they remain front of mind in consumer policy and regulatory action considerations.

Topics of discussion included disrupting scams; environmental and sustainability consumer issues; consumer guarantees and finance issues in the motor vehicle sector; and dealing with consumer hardship in the energy and telco sectors.

Deputy Chair Catriona Lowe gave the keynote speech and announced the 2023–24 Product Safety Priorities (see strategic objective 5). The event also included the Consumers' Federation of Australia Showcase and award to celebrate the work of consumer advocates. The joint winners were the [Stop The Debt Trap Alliance](#) and the [Save Sorry Business Coalition](#), which exemplified the tenacity and persistence that is often required in advocacy campaigns.

International collaboration, capacity building and advocacy

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

In 2022–23 the ACCC assumed the role of [ICPEN](#) president. This role assisted us in continuing our active contribution to this network of consumer protection authorities from more than 70 countries, including through leadership of and participation in working, advisory and steering groups.

The ACCC is actively engaged in OECD consumer forums, including advisory and working groups. Details of our participation in the OECD Committee on Consumer Policy Working Party on Consumer Product Safety can be found in strategic objective 5.

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

The ASEAN-Australia and New Zealand Free Trade Area Consumer Affairs Program (AANZFTA CAP) regional cooperation program was launched in 2020. It complements cooperation on competition law that has been delivered under the Competition Law Implementation Program (CLIP) since 2014. Through AANZFTA CAP, the ACCC is working with Association of Southeast Asian Nations (ASEAN) Member States and New Zealand to strengthen implementation of national consumer laws and grow regional cooperation on issues including scams and consumer protection in ecommerce.

► Highlight

Building partnerships for protecting consumers in our region

In 2022–23, with thanks to support from the Department of Foreign Affairs and Trade Mekong Australia Partnership (MAP), the ACCC provided technical support on consumer law to counterparts in the Mekong subregion. This included supporting Cambodian and Vietnamese consumer law officials to undertake consultation, awareness raising and capability development in support of consumer law reform and implementation. Activities included virtual dialogue meetings between agency leaders, visiting delegations studying how Australia implements consumer law and the respective roles of the ACCC, state and territory regulators and consumer organisations like CHOICE, and peer-to-peer mentoring.

The ACCC provided support to deliver seminars held in Vietnam and provided technical assistance to officials involved in the revision of Vietnam's consumer law. On 20 June 2023 Vietnam's National Assembly passed an amended consumer protection law. The revised law includes provisions that draw on lessons learned from these cooperation activities. It will commence from 1 July 2024.

Contacts to the ACCC – the ACCC Infocentre

The ACCC Infocentre is the initial contact point for enquiries and reports about competition, consumer, product safety and fair trading issues. These contacts are received by telephone, letter, web chat and online forms. We triage contacts in line with the priorities and factors outlined in our Compliance and Enforcement Policy and Priorities. The contact data we collect helps us to identify new issues. It is also a valuable source of intelligence that helps us to identify trends and patterns, informs our priorities and assists with current enforcement and compliance activities.

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

Table 3.16: Contacts recorded in 2022–23

Category	2018–19	2019–20	2020–21	2021–22	2022–23
Contacts served by telephone and received in writing	315,491	312,773	396,190	379,902	408,563
Contacts recorded in the database	287,313	282,213	377,862	376,194	401,457
Scams contacts recorded in the database	189,006	160,538	259,655	267,440	290,371
Non-scam contacts recorded in the database	98,307	121,675	118,207	108,754	111,086

Detailed information about the ACCC’s scam complaints and enquiries can be found in [Targeting scams: Report of the ACCC on scams activity 2022](#).

Top 10 industries for complaints and enquiries (excluding scams)

Table 3.17: Top 10 industries for complaints and enquiries 2022–23

Industry	2022–23
Electronics & consumer whitegoods	11,761
Automotive industry	10,975
Energy & water	5,763
Passenger transport – air & sea	5,306
Clothing & personal goods	5,150
Construction services	4,869
Ticketing & administrative services	4,544
Homewares, furniture & manchester	4,424
Tourism & accommodation	4,161
Other store-based retailing	3,759

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

Table 3.18: Misleading and deceptive conduct and false representations 2022–23

Industry	2022–23	Percentage of total
Electronics & consumer whitegoods	3,929	11%
Automotive industry	2,818	8%
Tourism & accommodation	2,339	7%

Table 3.19: Guarantees and warranties 2022–23

Industry	2022–23	Percentage of total
Electronics & consumer whitegoods	7,805	26%
Automotive industry	6,932	23%
Homewares, furniture & manchester	2,639	9%

Strategic objective 5: Protect consumers from unsafe products

About this strategic objective

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

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

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

- supplier mandatory and voluntary reports and consumer complaints
- media reports and other publications
- regular meetings with stakeholders
- injury surveillance units
- recalls published internationally on the Organisation for Economic Co-operation and Development (OECD) Global Recalls Portal
- overseas regulators, such as the European Union SafetyGate, Health Canada and the United States Consumer Product Safety Commission National Electronic Injury Surveillance System (NEISS) Database.

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

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

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

Our priorities

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

Our consumer product safety priorities for 2022–23 were:



Scoping product safety issues and identifying potential hazard prevention strategies relating to **lithium-ion batteries**.



Consumer product safety issues for **young children**, with a focus on compliance, enforcement and education initiatives.



Improving the **mandatory standards regulatory framework** by implementing new policy initiatives.



Implementing strategies to prevent injuries and deaths to infants caused by **inclined products** that can be used for sleep.



Strengthening **product safety online**, with a focus on expanding participation in the Australian Product Safety Pledge, online surveillance and contributing to greater consistency of international practice.



Compliance with the **button battery safety standards**.



Implementing strategies to prevent injuries and deaths caused by **toppling furniture**.

Our [2023–24 product safety priorities](#) were announced by the ACCC Chair at the National Consumer Congress in June 2023.

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

About this key activity

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

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

We receive product safety reports in the form of complaints from consumers and mandatory and voluntary reports from suppliers. Mandatory reports include suppliers notifying recalls and submitting reports of serious injury, serious illness or death. Recall notifications are reviewed and published. Mandatory reports are assessed against our product safety priority areas and priority factors. We conduct further research and gather intelligence to determine the scope and severity of issues raised to inform our approach.

Performance measures

Table 3.20: Performance measures for key activity 5.1

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
5.1.1 Percentage of reports about unsafe products that fall within our product safety priorities (including enduring factors) that are assessed ('reports' are mandatory injury reports and complaints to the ACCC of a product safety hazard; 'assessed' means assessed for consideration as intelligence or for consideration of escalation and possible intervention, including compliance, regulatory or enforcement action.)	-	-	100%	100%	100%	✓
Methodology: Calculation based on consideration of reports received that meet a product safety priority and their assessment outcome						
Data source: Internal records (Dynamics)						
Related regulator best practice principles: 2						

5.1.2 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC is effective in identifying and prioritising safety hazards in consumer products	-	-	-	70+	76.7	✓
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Methodology: *The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2023 survey results*

Data source: ACCC Effectiveness Survey

Related regulator best practice principles: 2

Analysis of results

In 2022–23 we achieved our target of assessing 100% of reports received that related to our 7 product safety priorities (measure 5.1.1). Our continued investment in building our risk assessment tools and processes, as well as intelligence capability, are collectively improving our ability to effectively identify and triage reports concerning consumer product safety hazards.

We exceeded the target index score of 70 for the effectiveness survey question (measure 5.1.2), achieving an index score of 76.7. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC’s website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

Lithium-ion batteries

Lithium-ion batteries are generally rechargeable batteries used in a range of consumer goods, including portable electronics such as mobile phones, laptops, digital cameras, power tools, electric vehicles and residential solar energy systems. Over recent years there has been an increasing number of reports raising concerns that these batteries have caused fires and explosions that have resulted in significant injury, property damage and in some cases death.

Since June 2022 we have been examining the safety hazards associated with these batteries to assess potential consumer product safety hazards and risk mitigation strategies. We released an [issues paper](#) for public consultation in December 2022, which closed in February 2023 with 73 submissions received. We will deliver a final report in late 2023 outlining recommendations to mitigate consumer safety risks associated with these batteries.

We also continue to identify opportunities to develop messaging to publicise warnings about lithium-ion battery risks and preventative measures.

Recall guidelines for suppliers

In April 2023 the ACCC released [Conducting a consumer product safety recall – A guideline for suppliers](#) as an online and hard copy resource. This comprehensive guide, which was developed with input from a range of stakeholders, aims to help suppliers move quickly to implement a consumer product safety recall.

The guideline covers what to do at each stage of a recall. It includes practical resources such as checklists, templates, a best practice strategy for communications aimed at disadvantaged or vulnerable consumer groups, and a risk assessment tool.

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

About this key activity

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

Performance measures

Table 3.21: Performance measures for key activity 5.2

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
5.2.1 Percentage of voluntary recall notifications to the ACCC where we respond to the notifier within 5 business days	-	-	-	80%	76%	○
<p>Methodology: Number of recall notifications responded to within 5 days divided by the total number of valid voluntary recall notifications received in the reporting period, expressed as a percentage</p> <p>Data source: Internal records (Dynamics)</p> <p>Related regulator best practice principles: 1</p>						
5.2.2 Number of product safety regulatory interventions#	-	-	-	5+	3	✗
<p>(Recommendations to the Minister to issue or substantially update a product safety standard, ban, compulsory recall or safety warning notice)</p> <p>Methodology: Count and cross-check of recommendations to the Minister to issue or substantially update a product safety standard, ban, compulsory recall or safety warning notice</p> <p>Data source: Internal records</p> <p>Related regulator best practice principles: 1 and 2</p>						
5.2.3 Number of product safety enforcement interventions#	-	-	-	3+	4	✓
<p>(Court proceedings commenced, section 87B undertakings accepted, infringement, substantiation or public warning notices issued, administrative resolutions)</p> <p>Methodology: Count and cross-check of product safety enforcement interventions</p> <p>Data source: Internal records</p> <p>Related regulator best practice principles: 1 and 2</p>						

5.2.4 Number of product safety education and compliance initiatives* (New or substantially updated guidance or education campaigns for businesses or consumers relating to the safety of consumer products and other non-enforcement initiatives)	-	-	-	20+	27	✓
Methodology: <i>Count and cross-check of product safety education and compliance initiatives</i>						
Data source: <i>Internal records</i>						
Related regulator best practice principles: 3						
5.2.5 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC is effective in communicating risks of serious injury and death arising from safety hazards in consumer products	-	-	-	70+	78.8	✓
Methodology: <i>The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2023 survey results</i>						
Data source: <i>ACCC Effectiveness Survey</i>						
Related regulator best practice principles: 3						
5.2.6 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC is effective in addressing the highest priority risks of serious injury and death arising from safety hazards in consumer products	-	-	-	70+	80.1	✓
Methodology: <i>The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2023 survey results</i>						
Data source: <i>ACCC Effectiveness Survey</i>						
Related regulator best practice principles: 1, 2 and 3						

Prior to 2022–23 'Regulatory intervention' and 'enforcement intervention' were combined as a single performance measure. The decision was made to separate them for transparency and ease of reporting.

* Prior to 2022–23 this performance measure only captured education and compliance resources. It now includes compliance and education initiatives broadly including other non-enforcement activity such as voluntary recalls that have been negotiated as a compliance outcome.

Analysis of results

In 2022–23 we met our target for enforcement intervention, with the majority of our action attributable to our prioritisation of enforcement activity in relation to the new button battery mandatory standards (measure 5.2.3). We also achieved penalties and an undertaking in court action against Mercedes-Benz for noncompliance with the Takata airbag compulsory recall, a previous priority area (see the highlight section below).

We exceeded our target for product safety education and compliance initiatives by one-third (measure 5.2.4). We continued to produce resources to increase consumer awareness and business compliance on our priority areas, including button batteries, infant sleep products and product safety for young children. We also undertook consultation and awareness raising of fire and safety risks associated with lithium-ion batteries. In addition we managed 8 voluntary recalls that were difficult and resource intensive to negotiate, nearly all of which were aimed at protecting young children from

unsafe products. Our supplier recall guidance launched in April is aimed at helping businesses more effectively conduct a recall (see key activity 5.1).

We fell slightly short of our target of 80% to respond to voluntary recall notifications within 5 business days, with a result of 76% (measure 5.2.1). This can be attributable to our recalls resourcing being redirected towards a priority project to improve the efficiency and effectiveness of our recalls process, which we anticipate being completed by the end of 2023. The efficiencies gained through this project should improve our capability to meet this target in the future.

We achieved just over half of our target for regulatory interventions, with 3 recommendations made to the Minister to issue or update mandatory standards (measure 5.2.2). Prioritisation was given to undertaking a stocktake of overseas standards that may be suitable for adoption in Australian standards (see the 'Outcomes achieved' section).

We exceeded both target index scores of 70 for the effectiveness survey questions, achieving index scores of 78.8 (measure 5.2.5) and 80.1 (measure 5.2.6). The independent report on findings for the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

In 2022–23 the ACCC undertook a range of regulatory, education and enforcement activities to protect the Australian community from unsafe consumer products.

Button batteries enforcement action

The button battery safety and information standards became mandatory in June 2022. The standards were introduced to protect young children from serious injury and death. If swallowed, a button battery can become stuck in a child's throat and result in catastrophic injuries and even death in as little as 2 hours. The standards aim to make button batteries less accessible to children and raise consumer awareness of the hazards.

In April 2023 the ACCC announced the first enforcement outcomes concerning 2 large retailers for supplying Halloween novelty items containing potentially lethal button batteries. National retailers Dusk and The Reject Shop paid a total of nearly \$240,000 in penalties for alleged noncompliance with the mandatory standards.

Dusk admitted that novelty Halloween-themed products it supplied were not tested to an applicable industry standard, as required by the mandatory safety standard, to ensure they were safe for consumers prior to supply. Dusk also failed to include the safety warnings and information required by the mandatory information standard. Dusk paid \$106,560 in penalties after the ACCC issued it with 8 infringement notices. Dusk also supplied the ACCC with a [court enforceable undertaking](#) including implementation of a compliance program for 3 years to ensure similar conduct is not repeated in the future.

The Reject Shop paid a penalty of \$133,200 for alleged noncompliance with the mandatory safety standard after the ACCC issued it with one infringement notice. The ACCC was concerned that The Reject Shop failed to test 2 models of one novelty Halloween-themed LED pumpkin product to confirm they were safe before selling them to consumers, even though subsequent testing found that the products complied with the relevant safety-related requirements in the mandatory safety standard.

‘Your First Steps’ baby safety resource

The ACCC prioritises product safety issues affecting babies and young children. Young children are among the most vulnerable to unsafe consumer products, and protecting their safety is paramount.

In August 2022 we launched the [Your First Steps](#) baby product safety initiative, including an external microsite, to help parents and carers better understand what steps they can take to protect babies from unsafe products. This educational initiative complements our other regulatory and enforcement activity to address unsafe products for babies and young children, such as infant inclined sleep products and toppling furniture.

In its first 6 months of operation, the website and associated media achieved a potential reach of more than 940,000 people.

Infant sleep products

Based on expert advice, the ACCC understands that certain design features of infant sleep products, such as the incline, curvature of the backrest, materials used and soft sleeping surface, pose a suffocation or asphyxiation risk to infants.

In August 2022 we released a consultation paper on [infant inclined products and infant sleep products](#). The paper will assist us to understand the likely effectiveness and cost of options to address the risks associated with these products.

In 2023 we continued to explore regulatory options, such as the effectiveness of a standards instrument, to make these products safer. In June we launched an education campaign, including social media, updated website content and a poster, aimed at raising awareness amongst parents and caregivers of product safety risks associated with inclined products and guidance to help protect vulnerable infants.

Mandatory standards

In 2022–23 the ACCC continued to review mandatory standards to ensure they remain up to date with best practice product safety approaches. This included recommending a standard for non-refillable helium cylinders to the Minister. In January 2023, the Minister introduced the [Consumer Goods \(Non-refillable Helium Cylinders\) Safety Standard 2022](#), which came into effect on 16 April 2023. All non-refillable helium cylinders supplied in Australia must comply with the new safety standard by having the correct mix of helium and oxygen, as well as the required warning information. The mandatory standard seeks to reduce the number of suicides by asphyxiation from helium inhalation using non-refillable cylinders supplied in Australia.

We are also in the final stages of developing recommendations to the Minister on toys for children up to and including 36 months of age; care labelling for clothing and textiles; and bicycle helmets.

Mandatory standards reform – standards stocktake

The ACCC continues to support Treasury as it considers amendments to the Australian Consumer Law. The proposed amendments have been designed to futureproof mandatory standards so they keep pace with industry developments in real time and no longer require regular updates by the ACCC. Once implemented across the suite of mandatory standards, this would mean suppliers will have the option to comply with a range of the latest and safest Australian or international standards.

In the first half of 2023 we undertook a rapid stocktake of the existing 48 mandatory standards to identify a list of overseas standards that may be suitable to reference in these mandatory standards.

Toppling furniture

The ACCC is implementing strategies to prevent injuries and deaths caused by toppling furniture. Since 2000 there have been 28 deaths in Australia involving toppling furniture. Children under the age of 5 are most at risk due to their physical vulnerability and tendency to climb furniture.

We are currently finalising a recommendation to the Minister on regulatory options aimed at reducing hazards associated with toppling furniture. In June 2023 we published a consumer-focused survey to gather insights on consumer understanding of toppling furniture risks. The insights from the survey will help us develop education and engagement activities to raise awareness of the risks of toppling furniture and how to prevent it.

► Highlight

ACCC action leads to \$12.5 million penalty against Mercedes-Benz for failing to comply with Takata recall

In September 2022 the Federal Court ordered Mercedes-Benz Australia/Pacific Pty Ltd (Mercedes-Benz) to pay a penalty of \$12.5 million for failing to use attention-capturing, high-impact language when communicating with consumers about the compulsory recall of potentially deadly Takata airbags.

Defective Takata airbags have been associated with about 33 deaths and over 350 injuries globally. In Australia, one person died and another was seriously injured in separate incidents caused by the misdeployment of a Takata airbag. The faulty Takata airbags were potentially deadly. It was vital that manufacturers took the risks seriously and clearly communicated the risks to consumers.

This was the first time a company had been penalised for failing to comply with a compulsory recall notice. This judgment sent a strong signal that companies must comply with their product safety obligations under the Australian Consumer Law.

Mercedes-Benz admitted that it had breached the Australian Consumer Law by failing to implement its communication and engagement plan for contacting consumers as required by the Takata Recall Notice.

Mercedes-Benz also provided a court enforceable undertaking to conduct a product safety compliance program about product safety obligations, including compulsory recalls.

International engagement

The ACCC works closely with international networks to achieve better product safety outcomes for consumers. International engagement is an essential element to understanding and responding to emerging issues in global markets for goods and services. Our work in this area is crucial to the ACCC's product safety regulatory function.

In this financial year we shared intelligence on potential hazards with international product safety regulators, including the United Kingdom Office for Product Safety and Standards, the United States Consumer Product Safety Commission, Health Canada, and the New Zealand Ministry of Business, Innovation and Employment. We shared intelligence on potential hazards and supported international compliance and enforcement efforts.

On behalf of Australia, the ACCC chaired the OECD Working Party on Consumer Product Safety. The working party is the only international forum for consumer product safety regulators to discuss strategic issues and plan coordinated initiatives. In 2022–23 we chaired 2 working party meetings and co-led with the Korea Consumer Agency an OECD global awareness campaign to alert online platforms, online sellers and consumers about the safety risks and issues associated with products sold online.

In May 2023 we won an International Consumer Protection and Enforcement Network (ICPEN) Consumer Education Award for the 'implementation of product recall alert systems' category. This achievement recognised our investment in communications activity to spread awareness and improve the effectiveness of recalls.

In February 2023 we participated in the International Consumer Product Health and Safety Organization Annual Meeting and Training Symposium. Attendees discussed product safety in the green transition, sustainability by design, and challenges that businesses face in managing safety and quality in fast-paced environments. That same month we helped deliver an ASEAN-Australia and New Zealand Free Trade Area (AANZFTA) Consumer Affairs Program workshop in Indonesia for the Association of Southeast Asian Nations (ASEAN). The workshop explored interagency coordination on product safety topics to achieve consumer product safety outcomes. In November 2022 we participated in International Product Safety Week – a biennial forum hosted by the European Commission that brings together product safety expertise from across government and industry worldwide.

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

About this strategic objective

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

- Formulate regulatory decisions that promote the long-term interests of end users and consumers.
- Provide industry monitoring reports to government in relation to highly concentrated or emerging markets.
- Improve the efficient operation of markets by enforcing industry-specific competition and market rules.

The ACCC is the national economic regulator of declared infrastructure services in communication, postal services and rail. We have specific regulatory roles in relation to bulk wheat port terminal facilities. Fostering efficient infrastructure services and investment through industry-specific regulation and access conditions, under the umbrella of the long-term interest of end users, is a major focus of our economic regulatory role. Access conditions that promote competition in upstream and downstream markets increase the efficiency and productivity of the overall economy.

To identify market failure, improve market efficiency and promote competition, the ACCC monitors and reports on the price and quality of goods and services available in some concentrated, deregulated, or emerging markets or markets of significant concern to consumers. This transparency helps make markets more competitive. It puts suppliers in those markets on notice that their conduct is under scrutiny and can inform any regulatory or policy responses if issues persist. The sectors we regulate include petrol, airports, airlines (ceased 30 June 2023), gas, electricity, insurance, telecommunications and stevedoring. At the beginning of 2023, the ACCC also commenced an inquiry into the market for the supply of childcare services. We also completed our inquiry into regional mobile infrastructure (see key activity 1.3 for further detail on inquiries) by 30 June 2023.

In addition, we have a role in enforcing industry-specific competition and market rules in some infrastructure-based markets.

The ACCC's regulatory role also supports our competition advice and advocacy efforts directed at ensuring Australian markets operate within a policy framework that facilitates competition and efficient investment in and use of key infrastructure networks and services.

Our priorities

The ACCC's infrastructure regulation and industry monitoring priorities for 2022–23 were:



Develop long-term regulatory arrangements to apply to all of the national broadband network and other superfast broadband networks.



Focus on regional mobile communication services, in particular, to conduct inquiries into regional mobile infrastructure and the feasibility of emergency roaming, consider measures to improve mobile network quality and coverage information, and also monitor the rapidly evolving mobile markets more generally.



Monitor and report on the state of competition and the potential for anti-competitive behaviour in industries impacted by current economic conditions, especially the aviation sector.



Promote affordability and consumer outcomes, competition and well-functioning markets, and energy security in the fuel, electricity and gas sectors through compliance and enforcement measures, regular reporting and appropriate advocacy.



Develop a robust framework for monitoring and reporting on the impact of the government's cyclone-related reinsurance pool.



Monitor and report on the performance of Australia's container stevedoring industry and major airports, given their important role in the supply chain.

Key activity 6.1: Formulate regulatory decisions that promote the long-term interests of end users and consumers

About this key activity

We use our regulatory decision making powers to facilitate access to certain infrastructure that is a source of market power and establish efficient pricing for that access. Efficient access creates conditions for competition to emerge in upstream and downstream markets and promotes efficient use of (and investment in) the infrastructure, with flow-on impacts for consumers in the form of lower prices, higher quality products, and innovation.

Performance measures

Table 3.22: Performance measures for key activity 6.1

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
6.1.1 Percentage of regulatory decisions completed within statutory timeframes (including 'stop the clock' and timeframe extension provisions in the CCA)	100%	100%	100%	100%	100%	✓
<p>Methodology: Number of regulatory decisions made within statutory timeframe divided by the total number of regulatory decisions with a statutory timeframe made, expressed as a percentage</p> <p>Data source: Internal records</p> <p>Related regulator best practice principles: 1</p>						
6.1.2 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC's regulatory decisions effectively promote the long-term interests of end users and consumers	-	-	-	70+	67.7	○
<p>Methodology: The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2023 survey results</p> <p>Data source: ACCC Effectiveness Survey</p> <p>Related regulator best practice principles: 1 and 2</p>						

Analysis of results

The ACCC made 15 regulatory decisions during the financial year. Two of these decisions (the Australia Post price notification and Extension of the Interstate Access Undertaking to 30 June 2024) had statutory timeframes, which were met (measure 6.1.1). We made 13 other regulatory decisions concerning the wheat and gas sectors, which did not have statutory timeframes.

We partially met our target index score of 70 for the effectiveness survey question (measure 6.1.2), achieving an index score of 67.7. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

► Highlight

Developing a long-term regulatory framework for the NBN

We continued our work to update NBN Co's Special Access Undertaking (SAU), which is the principal economic instrument that regulates access to the NBN until 2040. This work aims to promote efficient and competitive markets for NBN services and efficient use of and investment in the infrastructure, with the aim of maximising the economic and public benefits of the significant investment that has been made in the NBN.

Our role is to engage with stakeholders and consult on variation proposals that NBN Co makes and either accept or reject them. We cannot approve proposed variations to the NBN SAU on a conditional basis or alter the terms proposed to us.

As a result of our work, we received variation proposals in March and November 2022. The proposals are to expand the scope of the NBN SAU so that it applies to all the NBN access technologies that have been built since the SAU was accepted in 2013. The SAU variation proposals also seek to address other weaknesses that have since been identified.

NBN Co withdrew the first of these variation proposals in July 2022 and submitted a revised variation proposal in November 2022. We published a draft decision to reject the second proposal on 2 May 2023.

In June 2023 we consulted on further proposals NBN Co were considering as part of a future revised SAU variation proposal. These further proposals sought to address concerns raised by the ACCC in the draft decision and by stakeholders during consultation.

Enhancing consumer outcomes for non-NBN fixed-line customers

Outside of the NBN SAU, we continued to promote positive consumer outcomes in the broadband market. In October 2022 we released a draft decision on the price and non-price terms and conditions of access by retailers to the non-NBN superfast broadband networks. Under the draft decision, regulated access prices will continue to be benchmarked to NBN prices for equivalent residential broadband services. We also proposed to regulate certain non-recurring charges such as connection and transfer fees. We expect this will encourage retailers to use the wholesale services of non-NBN networks, which will promote competition through improved price and service offerings.

We also started developing a new record keeping rule (RKR) to collect service quality and network performance information from NBN Co and, in the future, other superfast broadband network providers. The performance information will assist the ACCC in identifying service issues affecting broadband customers. It will also provide greater transparency through public reporting of this information. A consultation paper was published in December 2022 and the ACCC is currently assessing submissions to develop the RKR.

We provided guidance to non-NBN network operators to help them understand the carrier separation rules and how to seek an exemption from the wholesale-only requirement through the ACCC's class exemption or model functional separation undertaking. These exemptions are intended to assist non-NBN network operators to expand and compete in wholesale and retail markets for the supply of superfast broadband services, providing more competition and choice for residential customers.

Key activity 6.2: Provide industry monitoring reports to government in relation to highly concentrated or emerging markets

About this key activity

We closely monitor the price and quality of goods and services available in markets at risk of being inefficient because they are emerging, highly concentrated or otherwise an area of high consumer concern. This transparency can help make markets more competitive. It also puts suppliers in those markets on notice that we are scrutinising their conduct to inform any regulatory or policy responses if issues persist.

Performance measures

Table 3.23: Performance measures for key activity 6.2

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
6.2.1 Number of monitoring reports (covering electricity, gas, communications, insurance [#] , rail, petrol, aviation, ports and stevedoring sectors)	-	-	28	31	31*	✓
Methodology: Count and cross-check of published monitoring reports (covering electricity, gas, communications, insurance, rail, petrol, aviation, ports and stevedoring sectors)						
Data source: Internal records						
Related regulator best practice principles: 1 and 3						
6.2.2 Number of visits to the ACCC's industry guidance webpages [^]	-	-	5,567	6,000	8,039	✓
Methodology: Count of page visits to the ACCC's industry guidance webpages						
Data source: Google Analytics						
Related regulator best practice principles: 1 and 3						
6.2.3 Number of visits to the ACCC Measuring Broadband Australia consumer dashboard	-	-	28,598	31,000	26,088	○
Methodology: Count of page visits to the ACCC's Measuring Broadband Australia consumer dashboard						
Data source: Google Analytics						
Related regulator best practice principles: 2						
6.2.4 Number of visits to the ACCC petrol price cycle website	-	-	666,720	520,000	668,349	✓
Methodology: Count of page visits to the ACCC's petrol price cycle website						
Data source: Google Analytics						
Related regulator best practice principles: 2						

6.2.5 Effectiveness survey 'index score' (out of 100) that key stakeholders agree the ACCC's Industry monitoring reports are effective in informing government and the public about highly concentrated or emerging markets	-	-	-	70+	66.3	○
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Methodology: *The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2023 survey results*

Data source: ACCC Effectiveness Survey

Related regulator best practice principles: 1, 2 and 3

- # The Corporate Plan 2022–23 omits 'insurance'. Added here for clarity as an insurance report was included in our target and result.
- * Two petrol industry reports formed part of this year's target. However, these were not published. Rather, we monitored and reported on the fuel excise reduction and restoration from March to September 2022 during the first half of the financial year. We also published the Mobile Infrastructure Report 2022 which was not included in the target and is therefore not included in our result.
- ^ The [Broadband speed claims: Industry guidance](#) webpage was included in the performance measure target and the result in last year's Annual Report but was not included in the target or result for 2022–23. The number of visits to the [Broadband speed claims: Industry guidance](#) webpage for 2022–23 was 2,544. The total number of visits to all ACCC industry guidance webpages was 11,216.

Analysis of results

We met our target for **industry monitoring reports**, releasing 31 reports in 2022–23 (measure 6.2.1). This result includes the separation of our bulk grain ports reporting into 2 publications: a data update with key findings and trends; and an industry update. We also shifted from biannual to quarterly reporting for the Gas Inquiry in March 2023, releasing a quarterly report in both March and June 2023.

Visits to our **industry guidance webpages** showed the industry continued to engage with our guidance materials (measure 6.2.2). One industry guidance webpage on the [Electricity Retail Code](#) and attracted a high number of visits, which was to be expected given the volatility in energy markets over the year.

The **Measuring Broadband Australia** (MBA) program successfully assisted in the delivery of improved market outcomes for consumers of high-speed broadband services (measure 6.2.3). For example, one improvement was higher speeds, which may have resulted in a reduction in the number of consumers comparing the performance of different retail service providers on the MBA consumer dashboard. We have worked with stakeholders to recruit more volunteers to expand the scope of the program, which drove increased interest in the second half of the year.

We exceeded the target for the **petrol price cycle website** (measure 6.2.4). Interest in the webpage was likely related to our close monitoring of fuel prices following the Federal Budget reduction in fuel excise from 30 March to 28 September 2022.

We partially met the target index score of 70 for the effectiveness survey question (measure 6.2.5), achieving an index score of 66.3. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

Highlighting concerns about competition and pricing in gas markets

Gas prices in the east coast gas market rose significantly in 2022, adding to cost of living pressures faced by consumers.

The increase in the level and range of prices offered in mid-2022 indicated a stark change in the pricing behaviour of producers and retailers compared with 2021, when prices offered were relatively stable and within a narrow range. The conflict in Ukraine contributed considerably to increases in international liquid natural gas (LNG) prices and resulting increases in domestic gas prices.

In July 2022 we issued an [interim report](#) that forecasted that gas supply would only be sufficient to meet demand if LNG producers commit at least 56 petajoules (PJ) to Australia's east coast gas market. We also found that LNG producers had enough uncontracted gas to prevent a domestic shortfall.

In response to a request from the Treasurer, in November 2022 we advised the Australian Government on options to improve the voluntary gas industry code of conduct and the functioning of the gas market. We recommended a targeted interim emergency price requirement and a strengthened and mandated code of conduct to help address bargaining power imbalances between producers and buyers.

In response to concerns about the impacts of the international energy crisis on Australia's gas markets, the government introduced reforms to ensure adequate domestic gas supply at reasonable prices on reasonable terms. The package of interventions included a consultation paper and amendments to the Competition and Consumer Act. On 9 December 2022 a consultation paper was released seeking stakeholder feedback on an emergency, temporary 12-month price cap and gas market code of conduct. On 17 December 2022 an amendment was made to the Competition and Consumer Act to enable the Governor-General to make regulations prescribing a mandatory Gas Market Code regarding the supply and acquisition of gas; and to enable the Minister to make a gas market emergency price order.

On 22 December 2022 the Minister made an order for an emergency 12-month price cap of \$12 per gigajoule (GJ) for uncontracted gas offered on the wholesale market. Our enforcement role in relation to this order is discussed under key activity 6.3.

On request of the government, the ACCC provided advice to inform the development of the proposed mandatory Gas Market Code, the final version of which was registered on 10 July 2023.

Monitoring prices at the fuel pump following the temporary cut and subsequent restoration in fuel excise

We scrutinised the impact of the temporary halving of fuel excise from 30 March 2022 and its subsequent restoration from 29 September 2022.

On 29 March 2022 the Australian Government announced a halving of the excise rate on petrol and diesel for 6 months from 30 March 2022. The Australian Government also announced that the ACCC would monitor the price behaviour of retailers to ensure that the lower excise rate was fully passed on.

The fuel excise cut ceased from 29 September 2022, restoring the rate of excise to 46.0 cents per litre. Including the associated GST increase, the impact on petrol and diesel prices was an additional 25.3 cents per litre.

Before the full excise was restored in September, we increased our activities to monitor the impact on wholesale and retail prices and communicated extensively with industry, state and territory

governments and consumers about our expectations about price increases. Our monitoring found that petrol prices in most locations did not increase by as much as the restored excise amount.

We identified a small number of regional locations that had petrol price increases larger than the restoration of excise and increases in wholesale prices due to international factors (that is, an overall increase of more than 35.0 cents per litre). After analysing retail site-specific price data in these locations and considering other factors (including the impact of floods), we concluded that no further action was required.

The results of this monitoring were described in our quarterly petrol monitoring reports.

On 14 December 2022 the Treasurer issued a new direction to the ACCC to monitor the prices, costs and profits relating to the supply of petroleum products in the petroleum industry in Australia and produce a report every quarter for a further 3 years. Our first report under this direction was released on 24 March 2023 and the second on 20 June 2023.

Highlighting the impacts of electricity pricing

Electricity prices increased in 2022–23 amid volatile energy market conditions. We examined the impact on competition and the consequent impacts on consumers and made recommendations to government.

Our [Inquiry into the National Electricity Market – November 2022 report](#), published in December, estimated that, between April and October 2022, market offers for a typical residential customer increased by around \$300 per year (23%). This meant that consumers seeking a new energy provider had a smaller range of more expensive market offers to choose from. We encouraged consumers to enter the electricity usage from their most recent bill into Energy Made Easy or Victorian Energy Compare to find the best available offer.

Our report also presented new analysis that drew attention to challenges facing smaller retailers, which were finding it harder to manage exposure to high and volatile wholesale electricity prices. Several retailers had left the market and others had urged their customers to switch retailers or were no longer seeking new customers. Our report warned that declining competition could further increase energy prices for consumers and businesses and noted it is critical for retailers to have continued access to hedging contracts.

Our report made 5 recommendations to address the impact of market conditions on competition in wholesale contract and retail electricity. These included that the AER receive market monitoring powers and that standing offer price caps be extended to embedded network offers. We welcome work underway to implement a number of these recommendations.

Our [Inquiry into the National Electricity Market – June 2023 report](#) highlighted the initial effects of these wholesale electricity market conditions on consumers' bills in 2022.

Our analysis shows the third quarter median electricity bills, across all regions combined, increased between 2021 and 2022 for residential and small business customers by 2.7% and 13.1% respectively. Government rebates, particularly in Queensland, reduced the median increase for residential consumers. Upward pressure on bills will continue as changes in wholesale cost take time to flow through to retail prices and customer bills, because customers are billed in arrears and retailers tend to lock in the price of procuring electricity in advance.

We encourage customers to review their energy plans regularly, compare energy plans against others using Energy Made Easy or Victorian Energy Compare, and check whether they are eligible for any concessions or rebates.

To further protect consumers, we also increased the scale of our compliance monitoring program for the Electricity Retail Code. This is discussed under key activity 6.3.

First insurance monitoring report finds affordability remains a significant issue

We issued our first [Insurance monitoring report](#) in 2022–23. It found that insurance affordability remains a significant issue in northern Australia and other high cyclone risk regions. Not only have premiums remained considerably higher compared with the rest of Australia but they have also increased much faster in the long term.

At the time of publishing our report in December 2022, no insurer was using the government’s cyclone and related flood damage reinsurance pool, which had commenced on 1 July 2022. Most insurers are on track to join the pool by legislated deadlines, but they identified a variety of challenges in implementing and operating under the pool.

Our monitoring, as set out in our report, established a baseline of prices and costs of insurance prior to insurers joining the pool in 2023 and 2024. The data will provide a benchmark for our future analysis in subsequent years as we continue to monitor the impact of the reinsurance pool.

Key activity 6.3: Improve the efficient operation of markets by enforcing industry-specific competition and market rules

About this key activity

We use our powers to enforce industry-specific rules that promote competitive, efficient markets. We seek to mitigate harm to competition or consumers by stopping harmful conduct or securing appropriate remedies. We exercise these powers, where appropriate, in response to anti-competitive conduct, abuse of market power and competitive or consumer harm.

Performance measures

Table 3.24: Performance measures for key activity 6.3

Performance measure	2019–20	2020–21	2021–22	2022–23		Met?
	Result	Result	Result	Target	Result	
6.3.1 Number of completed investigations into potential breaches of rules	12	14	8	10	6	✗
Methodology: <i>Count of completed investigations into potential breaches</i>						
Data source: <i>Internal records</i>						
Related regulator best practice principles: <i>1 and 2</i>						
6.3.2 Effectiveness survey ‘index score’ (out of 100) that key stakeholders agree the ACCC’s enforcement of industry-specific competition and market rules improves the efficient operation of markets	-	-	-	70+	65	○
Methodology: <i>The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2023 survey results</i>						
Data source: <i>ACCC Effectiveness Survey</i>						
Related regulator best practice principles: <i>1 and 2</i>						

Analysis of results

The number of completed investigations did not meet the target in this reporting period (measure 6.3.1). We finalised one telecommunications investigation. We finalised a further 5 investigations into energy retailers under the Electricity Retail Code and the energy market misconduct prohibitions in the Competition and Consumer Act. We undertook a range of other compliance activities in the period, including assessments resulting in warning letters.

In response to concerns about how retailers were communicating price changes to customers, we complemented our regular monitoring of retailers’ offers by compelling information about retailers’ price change notifications sent directly to existing customers using audit notices under section 51ADD of the Competition and Consumer Act.

We partially met the target index score of 70 for the effectiveness survey question (measure 6.3.2), achieving an index score of 65. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

In addition to the results for the performance measures, the below outcomes achieved provide details of the impact of our work and demonstrate how this contributes to achieving our purpose.

Outcomes achieved

Protecting consumers from high gas prices

On 22 December 2022 the Minister made a gas market emergency price order to temporarily cap the price of uncontracted gas offered on the wholesale market at \$12/GJ for 12 months.

The ACCC is responsible for enforcing compliance with and, by delegation from the Minister, granting exemptions to the order. On 17 January 2023 we published interim compliance and enforcement guidelines, which were updated on 3 March 2023 following engagement with industry. The guidelines support the gas industry with understanding its compliance obligations and explain our position on how we intend to exercise our enforcement role to ensure consumers are protected.

We provided advice to the Department of Climate Change, Energy, the Environment and Water (DCCEEW) and Treasury as government finalised the mandatory code of conduct (the Gas Market Code). The mandatory code includes a price cap initially set at \$12/GJ unless a producer qualifies for a conditional exemption on the basis of satisfactory voluntary enforceable supply commitments or being a small producer who exclusively supplies the domestic market. The ACCC will be responsible for monitoring and enforcing compliance with the code, including compliance with the full conditions of any supply commitments entered into by producers. We will be publishing guidelines to support the gas industry understanding its compliance obligations in relation to the code.

Increasing our electricity compliance monitoring as cost of living pressures grow

Electricity is an essential service. Competition and consumer issues arising from the pricing and selling of energy are a key enforcement priority for the ACCC.

This year we increased the scale of our compliance monitoring program for the Electricity Retail Code in recognition of the current challenges in the National Electricity Market and the growing cost of living pressures on consumers.

In response to consumer complaints about retailer pricing communications, we complemented our regular monitoring of retailers' offers by compelling information provision about retailers' price change notifications sent directly to existing customers. We audited 10 retailers and commenced investigations into several retailers for compliance with the code. In June, CovaU and ReAmped each paid \$33,300 in penalties for 3 infringement notices issued by the ACCC for the retailers' alleged failure to include required comparison information in price communications sent to customers in May and June 2022. The ACCC also accepted a court enforceable undertaking from CovaU in relation to its conduct.

Our work on retailer pricing communications aims to ensure that customers have the relevant information they need to make informed decisions about their energy plans, including whether to switch.

Program 1.2 – Australian Energy Regulator

Analysis of performance

The AER exists so that energy consumers are better off, now and in the future. We achieve this through the 4 objectives articulated in our [2020–2025 Strategic Plan](#):

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

Our performance against each of these objectives, including an analysis of performance measure results, our outcome highlights and outcomes achieved, is detailed below. Overall, the AER performed strongly against most of the performance measures identified in our Corporate Plan 2022–23.

We have also assessed our approach to providing regulatory services with reference to the Australian Government’s (new) principles of regulatory best practice.

Overall, in 2022–23 the AER was successful in achieving outcomes that will make energy consumers better off, now and in the future.

Validation of results

The AER Planning, Monitoring and Evaluation Framework (the Framework) details each of the performance measures reported in the following analysis of performance, including:

- targets
- methodology for the measurement of results
- assessment scales
- data sources
- the intent and limitations of each measure.

At the conclusion of each reporting period, performance measure owners use the Framework to evaluate performance and include results in the AER section of the annual performance statement. This input is then checked by areas including AER Corporate and AER Legal and Governance for accuracy and veracity. The draft report is then approved by the AER Board.

AER stakeholder performance surveys

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

Newgate Research was appointed to deliver the 2023 survey, including the validation of processes and the assessment of responses. Further information about the AER stakeholder performance surveys can be found further in Part 3.

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

About this strategic objective

Energy is an essential service, and consumers have diverse interests and varying levels of capacity to engage in the energy market. We need a sound understanding of these issues to play our part in delivering a secure, reliable and affordable energy future for Australia. This cuts across a number of our core functions as a regulator: making revenue determinations, taking enforcement action, undertaking compliance activities, sharing insights to shape future policy, working with our stakeholders, and engaging with consumers.

We want to remove barriers that prevent efficient and effective participation in the energy system. Consumers experiencing vulnerability and people seeking to overcome market-based problems (such as unclear or confusing retail information, the inability to easily compare offers or barriers to switching energy providers) should be able to access new opportunities and participate.

We also recognise that vulnerability is multifaceted. All consumers can move into and out of vulnerability at different points in life or as a result of various factors. In 2022–23 our annual compliance and enforcement priorities included a focus on protecting life support customers and ensuring those in financial difficulties are offered sustainable and affordable payment plans. When we see customers not receiving the required protections, we act decisively using all of our compliance and enforcement tools.

Our priorities

The AER's 2022–23 'Execute' priorities under strategic objective 1 were:

- Set the Default Market Offer (DMO) 2023–24 to protect consumers from high prices and encourage participation in the market.
- Process applications for retailer authorisation and manage retailer exits.
- Maintain an effective exemptions framework to protect consumers not serviced by authorised retailers.
- Deliver consumer-related compliance and enforcement priorities including relating to life support, hardship and payment plans, and embedded networks.
- Progress consumer-related litigations on foot to enforcement outcomes.
- Ensure that Energy Made Easy (AER's energy price comparison website) is the preferred tool for consumers.
- Support energy retailers' engagement with Energy Made Easy.
- Support regulatory sandboxing by responding to Innovation Enquiry Service requests and assessing waiver applications.

We also had 10 'Tilt' and 3 'Advocate' priorities under this strategic objective:

- Commence implementing the consumer vulnerability strategy.
- Improve consumer outcomes while reducing cost to serve by boosting the use of consumer and behavioural insights across the AER's work program.
- Implement the AER Better Billing Guideline.
- Launch a new version of Energy Made Easy that reflects consumer needs and continue work towards providing a switching service.
- Develop a consumer engagement plan that includes improved consumer engagement tools and capabilities for greater consistency across the AER.
- Publish the final AER Guideline for Regulatory Sandboxing Trial Projects.
- Develop and implement an industry education strategy, linked to enforcement outcomes.
- Enhance sources and uses of market intelligence in compliance and enforcement by continuing our collaboration with energy ombudsman schemes and consumer intermediaries.
- Deliver Consumer Data Right reference data services.
- Develop and implement policy options for simplification of the retail market regulatory framework to reduce the cost to serve.
- Support the market in addressing consumer preferences and needs by identifying and helping to address inconsistencies between outcomes and consumer expectations.
- Expand Consumer Data Right applications as required through the energy supply chain to increase consumers' choice.

Performance measures

Table 3.25: Performance measures for strategic objective 1

Performance measure	2020–21	2021–22	2022–23		Met?
	Result	Result	Target	Result	
1.1 AER stakeholders' agreement with the following statements:			Maintained or improved compared to previous year		
<ul style="list-style-type: none"> ▪ The AER supports and protects energy consumers, particularly those in vulnerable circumstances 	77%	78%		75%	○
<ul style="list-style-type: none"> ▪ The AER demonstrates a sound knowledge and understanding of energy consumers 	63%	55%		71%	✓
1.2 Customers experiencing payment difficulty are identified early and provided with appropriate supports	40.4%	39.5%	No target [#]	39.3%	●

1.3 Consumer (household and small business) confidence that the energy market is working in their long-term interests	44% (households) 52% (small business)	46% (households) 56% (small business)	Maintained or improved compared to previous year	35% (households) 46% (small business)	○ ○
1.4 a) Number of plan searches conducted on the Energy Made Easy website	729,000+	970,000+	Improved compared with previous year	1,192,000+	✓
b) Number of people who switched providers after completing a search on Energy Made Easy	25,000+	61,000+		62,000+	✓
1.5 New and amended retailer hardship policies assessed within 12 weeks of AER receiving all relevant information	100%	100%	100%	100%	✓
1.6 Retail authorisation and exemptions applications to sell energy assessed within 16 weeks of receiving all relevant information	100% (authorisations)	71% (authorisations)	100%	100% (authorisations)	✓
	78% (exemptions)	80% (exemptions)		100% (exemptions)	✓
1.7 Work delivered against AER consumer-related compliance and enforcement priorities	92% (all priorities)	67% (all priorities)	No target*	68% (all priorities)	●
	41% (consumer-related)	40% (consumer-related)		34% (consumer related)	●
1.8 Stakeholder awareness of the AER's current compliance and enforcement priorities	81%	90%	Maintained or improved compared with previous year	87%	○

The National Energy Retail Law requires retailers to offer residential customers experiencing payment difficulties a payment plan. The identification of payment difficulties can occur by a customer informing a retailer, or the retailer forming a view based on repeated difficulties in bill repayments. While this is an enforceable requirement, the AER does not fully control the outcome. Further, the measure is a partial/incomplete measure of the outcome sought because payment plans are not always the appropriate support, plus there are a variety of reasons for non-completion of payment plans that are not related to the adequacy of the support that customers have been provided. Monitoring trends enables the AER to understand whether additional action or reform is required. Setting targets is not appropriate and could drive perverse outcomes (for example, energy retailers persisting with payment plans that are not meeting customer's needs).

* The AER publishes compliance and enforcement priorities each year. In addition, we have enduring priorities that we will continue to act where there are serious issues impacting customers experiencing vulnerability and we will implement new guidance. While we monitor our focus on stated priorities, the AER must enforce all regulatory requirements. It would be inappropriate for the AER to maintain singular focus on our priority work areas. In addition to our stated priorities, we continue to act where there are serious issues impacting vulnerable consumers, or to help shape new or emerging markets. We also progress important ongoing work in areas that were identified as priority areas in the previous year(s). Annual targets are not appropriate and have the potential to drive perverse outcomes.

Analysis of results

The AER's stakeholder survey continues to present positive findings on our work protecting vulnerable consumers while enabling them to participate in the market. Performance scores in consumer protection increased overall including stakeholders' perceptions that the AER acts in the long-term interest of consumers, and our understanding of consumer needs. There was a slight downfall in ratings pertaining to the AER's perceived support and protection of vulnerable energy consumers, while remaining higher than the 2021 rating. Comments from consumer advocates noted areas for improvement including a need for stronger consumer representation in governance and advisory teams, and more effective communication with consumer groups – for example, through websites or short online videos.

Our Energy Made Easy website is a key tool to assist consumers to participate in energy markets. As a price comparator website, Energy Made Easy provides reliable and trusted information to support households and small businesses to make informed choices about their energy (electricity and gas) retailer. It also provides household electricity usage benchmarks, energy efficiency tips and information about consumer rights.

In 2022–23 the Energy Made Easy website was visited more than 4.48 million times by more than 1.9 million users, reflecting a decrease of 9% on the previous year. In June 2023 we launched the Energy Made Easy BETA site, which included new features such as tailored search options to help consumers decide which energy plan best suits their needs; green power and the cost impact of selecting this on consumer bills; and instructions and aids relating to consumer's National Meter Identifier (NMI) which will provide better suited plan comparison.

We continue to actively promote Energy Made Easy through Facebook and Instagram pages (@energymadeeasy) to better connect and reach household and small business consumers as effective channels to share our content.

An independent consumer sentiment survey conducted by Energy Consumers Australia (ECA) in June 2023 showed a decrease in levels of confidence among consumers that the energy market is working in their long-term interests, with consumers expressing concerns about both affordability and reliability. This decrease in confidence highlights the importance of key AER projects such as the improvements to the Energy Made Easy website to support consumers in selecting electricity and gas retailers, and the release of the AER's fourth DMO to protect consumers from unjustifiably high prices while allowing retailers to recover costs.

The AER has a responsibility to protect customers under the National Energy Retail Law (Retail Law) and requires any entity selling energy to customers to hold a retailer authorisation or have an exemption. Meeting our targets for timely retailer authorisations and exemptions also supports competition in, and new entrants to, energy retail markets as well as minimising disruptions for consumers. In 2022–23 the AER also oversaw the exit of 7 retailers from the market in accordance with the Retailer of Last Resort (RoLR) function.

We prioritise our compliance and enforcement work to ensure that our effort and resources are focused on areas of greatest importance and impact. Since 2019–20 we have published annual compliance and enforcement priorities. In 2022–23, 33% of our compliance and enforcement outcomes related to our consumer protection (hardship and embedded networks) priorities, comprising:

- 25% of litigation on foot (AGL Centrepay)
- 20% of infringement notices (\$271,200)
- 50% of enforceable undertakings
- 43% of publications, workshops and presentations.

Taken alongside our result for market-related compliance and enforcement priorities (reported under strategic objective 2), we succeeded in maintaining our focus, with 68% of all compliance and enforcement work delivered against our stated priorities. We note that enforcement action, particularly litigation, can take a number of years to be finalised. This means that at times an enforcement outcome may relate to an area arising from previous priorities. We also take enforcement action and compliance activities in non-priority areas where there are serious issues impacting vulnerable consumers or to help shape new or emerging markets.

Outcomes achieved

Setting the electricity price safety net

In 2022–23 the AER's fourth DMO determination was in effect. From late 2022 the AER commenced engagement and development on the fifth DMO determination, which will be in effect for 2023–24.

The DMO is the maximum price (or 'price cap') that a retailer can charge a standing offer customer in New South Wales (NSW), South Australia (SA) and south-east Queensland (SE Qld) each year. It protects consumers from unjustifiably high prices, while allowing retailers to recover costs. A customer might be on a standing offer for a range of reasons, including if they have never switched to a retailer's market offer or if they have defaulted to a standing offer at the end of their market offer benefit period.

The objectives of the DMO price are to:

- reduce unjustifiably high standing offer prices and continue to protect consumers from unreasonable prices
- allow retailers to recover the efficient costs of providing services, including a reasonable retail margin and costs associated with customer acquisition and retention
- maintain incentives for competition, innovation and investment by retailers and incentives for consumers to engage in the market.

The AER must balance these objectives when setting the annual DMO price.

In the AER's fourth DMO determination, the wholesale cost of electricity accounted for around 30–40% of the total price. Since we set the AER's fourth DMO determination prices, the wholesale market faced unprecedented supply challenges and volatility. Following the release of the Federal Budget on 25 October 2022, the Australian Government announced its intention to develop a plan to apply downward pressure on energy market prices. In December 2022, the Prime Minister announced that the National Cabinet had agreed an Energy Price Relief Plan, which included a number of measures designed to assist the wholesale market. One of the measures provided temporary caps on the contract price for gas and coal used by generators in Queensland (Qld) and NSW.

The measures were implemented on 23 December 2022. The forward contract prices for the 2023–24 financial year began to fall in SE Qld and NSW as soon as the intervention was publicly mooted. These contract prices are an important input to our wholesale forecasts for the DMO because they represent market expectations about prices for the coming year and directly influence the costs to retailers in purchasing wholesale energy for their customers. Contract prices fell by approximately 50% between the end of October and early 2023. However, despite the significant decline, the trade-weighted average prices for 2023–24 contracts are around \$40 per megawatt-hour (MWh) higher than they were at the start of 2022 in all regions.

The AER published its fifth DMO determination on 25 May 2023. Under the determination, from 1 July 2023, the following changes apply to customers on standing offers:

- Prices for residential customers in SE Qld without controlled load will increase by around 21.5% (15.3% above forecast inflation). Those with controlled load face increases of around 20.5% (14.2% above forecast inflation).
- Prices for residential customers in NSW without controlled load will increase by 20.8% to 21.4% (14.6% to 15.1% above forecast inflation, respectively), depending on their network distribution region. Customers with controlled load will see price increases of 19.6% to 24.9% (13.3% to 18.7% above forecast inflation, respectively).
- Prices for residential customers in SA without controlled load will increase by around 23.9% (17.6% above forecast inflation). Those with controlled load face increases of around 22.5% (16.3% above forecast inflation).
- Prices for small business customers will increase between 14.7% and 28.9%, depending on network distribution region (8.4% to 22.6% above forecast inflation, respectively).

Ensuring continuity of energy supply when retailers failed

The Retail Law contains provisions for a national RoLR scheme. The RoLR scheme is designed to ensure that, if a retailer fails (a RoLR event), customers continue to receive electricity and/or gas supply.

The east coast gas and electricity markets experienced unprecedented conditions in June 2022, with surges in wholesale electricity and gas prices. This put immediate upward pressure on retail prices available to consumers. These surges contributed to 7 RoLR events in 2022–23 and the AER utilising the RoLR scheme to ensure continuity of supply for approximately 416,000 customers.

The RoLR events managed during this time were unique by virtue of their number and due to the emergence of novel issues. The AER has collaborated with the Australian Energy Market Commission (AEMC) and government stakeholders in the development and implementation of a number of subsequent policy reforms and activities to improve the functioning of the RoLR mechanism for the benefit of consumers. This work is ongoing. It includes a review of the issuance of gas directions, which was a legislative mechanism first used during these RoLR events. These market conditions flowed through to applications for retailer authorisation. The AER sought additional information from all applicants and released an associated guidance note in November 2022. We also set out on our website how, in some circumstances, retailers can seek to voluntarily exit the market.

Facilitating the sharing of energy product reference data

The AER is a designated data holder under the Competition and Consumer (Consumer Data Right) Rules 2020. It provides energy product reference data (PRD) for application programming interfaces (APIs). 'Product data' refers to information on all the products that are provided by a data holder and does not include any consumer data.

In October 2022 the AER fulfilled its obligations and released the PRD to the public. In 2023 Consumer Data Right (CDR) will expand across the energy sector, with the inclusion of consumer data mandated across all retailers. CDR is now in a business-as-usual state and will remain responsive to any changes under the rules.

Protecting consumers experiencing vulnerability

In 2022–23 one of our compliance and enforcement priorities was to ensure that energy retailers are effectively identifying residential consumers who are in financial difficulty and offering them payment plans that take into account the consumer's capacity to pay. The AER has undertaken a range of compliance activities to support this priority. For example:

- The AER has continued to work with community sector participants to establish a compliance reporting framework to support more proactive identification of hardship trends. We have engaged with consumer intermediaries and community sector participants to assist them to understand hardship, payment plan and related provisions that have led to referrals to the AER on unique issues facing customers experiencing vulnerability. These include potential harms from customers' use of third-party payment services, such as AfterPay, to pay their energy bills.
- The AER conducted spot checks of 4 retailers to test compliance with the hardship obligations under the Retail Law and Rules. These retailers were selected based on the AER's intelligence gathering and an assessment of retailer performance data.

The AER has an enduring compliance and enforcement priority to act where there are serious issues impacting vulnerable consumers, including life support consumers. The AER has undertaken a range of compliance and enforcement activities in this area. For example:

- We instituted proceedings in the Federal Court against AGL Retail Energy Limited and 3 other subsidiaries of AGL Energy Limited concerning alleged conduct in relation to Centrepay payments deducted from customers receiving Centrelink payments. The AER alleges that, between May 2020 and December 2021, AGL failed to notify the affected customers that they had been overcharged when AGL made deductions through Centrepay payments. We also allege that AGL had failed to use best endeavours to refund the overcharges within the required time periods. It is alleged 629 customers were affected by this conduct. Most if not all of those customers are likely to have been vulnerable and experiencing financial disadvantage.
- Energy retailer Aurora Energy paid penalties totalling \$203,400 following the AER issuing 3 infringement notices. The AER issued the infringement notices because it had reasonable grounds to believe that Aurora Energy had breached the Retail Rules by failing to:
 - send customers information packs within 5 business days of the customer advising of the life support equipment requirement
 - send reminder notices to customers who had not returned a medical confirmation form
 - send a deregistration notice to customers prior to deregistering their life support registration.

Supporting customers in embedded networks

We have published a number of translated and easy English factsheets for small businesses and consumers on their rights and protections if they buy energy from an exempt seller, which generally occurs through an embedded network. We have also published factsheets for exempt sellers, explaining their key obligations to their customers.

Supporting consumers to understand and engage in the market

In June 2023 energy retailer CovaU paid a \$67,800 infringement notice after it allegedly failed to present its standing offer prices on its website between July 2021 and January 2023. The AER also accepted a court enforceable undertaking from CovaU which requires CovaU to appoint a third-party compliance expert to undertake a review to identify improvements to CovaU's Retail Law and Rules compliance systems, and for a separate independent expert to complete a post-implementation review of the effectiveness of those improvements. The AER considered that by not presenting these

prices on its website CovaU undermined its customers' ability to access and compare the energy offers available to them.

In May 2023 the AER worked with the ACCC to issue a joint compliance bulletin to remind retailers of their obligations around communicating pricing changes to their customers. It is essential that energy consumers are provided with clear and accurate information when being advised of price changes to enable them to make informed choices about their energy costs.

Ahead of the Better Bills Guideline commencing in September 2023 the AER is engaging with retailers to ensure they are well placed to comply. We published the amended Better Bills Guideline in January 2023 and an additional factsheet for retailers in February 2023. We have also published a number of decisions following requests for additional information to be included at the front of their customer bills. These decisions will help to ensure customer bills are simple, uncluttered and easy to understand.

► Highlight

Towards Energy Equity

In October 2022 the AER published *Towards Energy Equity: A Strategy for an Inclusive Energy Market*, which explains the AER's approach to addressing consumer vulnerability in the energy sector.

The strategy is built on years of research and consultation. It defines a clear approach to consumer vulnerability in the energy sector and paves the way for meaningful action to improve the experience and outcomes of energy consumers experiencing vulnerability.

The strategy sets out 5 objectives to improve outcomes for energy consumers experiencing vulnerability:

1. Improve identification of vulnerability.
2. Reduce complexity and enhance accessibility for energy consumers.
3. Strengthen protections for consumers facing payment difficulty.
4. Use the consumer voice and lived experience to inform regulatory design and change.
5. Balance affordability and consumer protections by minimising the overall cost to serve.

The strategy identifies 15 actions to help drive change and achieve these objectives. For example, the first action in the strategy is to improve protections for consumers affected by family violence. In April 2023 the AER published an interim guidance note to help retailers better respond to customers experiencing family violence, in line with new obligations under the Retail Rules.

We continue to advocate for extending Default Market Offer protections to consumers living in embedded networks. This will ensure that as many consumers as possible are protected by this important safety net. The Better Bills Guideline is also due for implementation by the end of September. At that point, all retailers will be required to let their customers know if they think they could be on a better plan. In addition, we are developing a toolkit to help retailers identify and support consumers who are experiencing vulnerability as early as possible. We aim to deliver the toolkit later this year.

One of the most ambitious actions in the strategy is to develop proposed game changer reforms. These reforms aim to better balance cost and risk across the energy sector to sustainably improve outcomes for consumers experiencing vulnerability. Given the potentially wide-reaching scope of the change, we have been working closely with a broad group of stakeholders to design the proposed reforms using human-centred and co-design principles. Through this process, we have narrowed down a set of potential solution spaces to a list of promising ideas that could be combined into a proposed game changer reform package. The aim is to have a proposed package endorsed by senior sector stakeholders and ready for consideration by ministers later in 2023.

The strategy marks a significant step forward for the AER in protecting consumers experiencing vulnerability while enabling all consumers to participate in energy markets. We will continue to implement, monitor and report on the strategy over the coming years. We will use all learnings to continue to improve outcomes for energy consumers.

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

About this strategic objective

The rules underpinning Australia's energy markets rely on market participants having the discretion to decide how to meet their customer's needs, undertake day-to-day operations and make investment decisions based on the risks and opportunities they face. This is premised on the principle that competitive market-based arrangements can be adaptive and provide an opportunity to achieve market efficiency, compared with alternatives, and therefore best serve the long-term interests of consumers.

Within this competitive framework, if businesses do not comply with the rules, harm can occur not only directly to consumers but also indirectly through reduced effective competition. The AER continues to strengthen its compliance and enforcement program, supported by well-targeted intelligence systems to address conduct that undermines market operations and erodes consumer confidence in energy markets.

We play a pivotal role by independently reporting on the outcomes across the supply chain, and our surveillance activities examine transactions and behaviour to identify design anomalies and ensure all market participants meet their obligations. Our market surveillance expertise makes us well placed to assist policymakers with ongoing reforms in both the electricity and gas sectors.

Our priorities

The AER's 2022–23 'Execute' priorities under strategic objective 2 were:

- Provide effective guidance and oversight of the Retailer Reliability Obligation (RRO) including monitoring and enforcing the Market Liquidity Obligation.
- Produce insightful market reports on:
 - Wholesale markets
 - Retail & wholesale market performance
 - Annual retail performance
 - State of the energy market
 - High price events.
- Manage disputes through the Wholesale Energy Market Dispute Resolution Advisor (WEMDRA).
- Manage disputes relating to electricity and gas network connections.

- Undertake retail, gas business and generator performance compliance audits to improve compliance, systems, and processes.
- Monitor compliance with generator notice of closure obligations and process applications for exemptions.
- Progress market-related litigations on foot to enforcement outcomes.
- Better coordinate reporting with other government bodies.²¹

We also had 7 'Tilt' and 2 'Advocate' priorities under this strategic objective:

- Improve market surveillance capability by developing staff capability relating to financial markets, conduct and competition.
- Improve market surveillance capability by refining our compliance monitoring systems for businesses not following dispatch instructions and in relation to rebidding.
- Expand understanding of the interplay between physical and financial markets by:
 - reviewing the limitations in contract market data to understand competition outcomes
 - considering how wholesale and other costs flow through to, and impact, retailers in the Default Market Offer wholesale methodology review.
- Improve transparency of the gas markets by reporting on over-the-counter trades questions; and reserve price assumptions for the East Coast Gas Industry.
- Further develop our information management framework for compliance intelligence.
- Further refine the AER's risk-based approach to regulation, incorporating the revised information management framework.
- Develop regular compliance reporting guidelines across market participants by:
 - developing 2 new ways to test for market compliance
 - reviewing AER Day Ahead Auction guidelines.
- Publish guidance to support high price events rule changes.
- Advocate for legislative reform for an increased role for the AER in reporting on contract markets.

²¹ For example, regular engagement with the Department of Industry, Science, Energy and Resources on Gas and Electricity information; and work with the Australian Energy Market Commission and Australian Energy Market Operator on the proposed Energy Security Board Data Strategy.

Performance measures

Table 3.26: Performance measures for strategic objective 2

Performance measure	2020–21	2021–22	2022–23		Met?
	Result	Result	Target	Result	
2.1 Extent to which performance of retail and wholesale energy markets is identified as an issue	Slight decline in structural ownership concentration	Considerable affordability issues have emerged, leading to increased scrutiny of market performance		Our 2022 report identified that competition at certain times of the day aided by large-scale solar and wind generation. However, the ownership of dispatchable generation remains concentrated, leaving the market vulnerable to exercise of market power at other times	●
2.2 Proportion of all market reports published within agreed/statutory timeframes	89%	76%	100%	98%	○
2.3 Work delivered against AER effective regulation of market related compliance and enforcement priorities	92% (all priorities) 59% (market related)	67% (all priorities) 27% (market related)	No target*	68% (all priorities) 34% (market related)	●
2.4 The AER's market performance reports are useful to stakeholders	77%	71%	Maintained or improved compared to previous year	81%	✓

Due to the qualitative nature of this measure, an annual target cannot be set.

* While we monitor our focus on stated priorities, the AER must enforce all regulatory requirements. It would be inappropriate for the AER to maintain singular focus on our priority work areas. In addition to our stated priorities, we continue to act where there are serious issues impacting vulnerable consumers, or to help shape new or emerging markets. We also progress important ongoing work in areas that were identified as priority areas in the previous year(s). Annual targets are not appropriate and have the potential to drive perverse outcomes.

Analysis of results

The AER has a range of obligations to monitor and report regularly on the performance of the national wholesale electricity and gas markets, assessing both short-term and long-term outcomes, as well as the retail markets. During 2022–23 we met the majority (98%) of the set timeframes for our statutory reporting obligations and the agreed timeframes for most other reports. These reports include:

- Wholesale markets
- Retail & wholesale market performance
- Annual retail performance
- State of the energy market
- High price events.

There were notable increases in stakeholder ratings of the usefulness and useability of our reports compared with last year and were higher than the 2021 results. An 8% increase applied to both the clarity and comprehensibility of our reports, and the usefulness of our wholesale market reporting.

The increase in these indicators reflects the AER's efforts to improve the usefulness and accessibility of our reports. For example we established a Significant Price Reporting Guideline (guideline) in response to a rule change by the Australian Energy Market Commission (AEMC) to move away from current prescriptive reporting requirements for high price events, to introduce a new 'principles-based' reporting framework. This means that, rather than producing a detailed report every time there is a market price interval above \$5000/MWh, we can more effectively target resources to deliver reporting that will be of higher value to stakeholders. The guideline gives the AER greater discretion and flexibility to tailor reports to the drivers of an event and the prevailing market conditions, which in turn will create more targeted and timely reporting, and better market transparency.

We also released the 13th edition of the *State of the energy market* report. The report provides an impartial and comprehensive view of Australia's east coast energy markets from all angles – wholesale electricity and gas markets, the transmission and distribution networks, energy retail markets, and consumer experience. This year's report was written in the context of recent major developments in the energy landscape, and for the first time we released it as a companion to the Energy Security Board's *Health of the National Electricity Market* report.

As discussed in relation to strategic objective 1, we prioritise our compliance and enforcement work to ensure that our effort and resources are focused on areas of greatest importance and impact. In 2022–23, 65% of our compliance and enforcement work was related to our current market regulation related priorities, including:

- 75% of litigation commenced (AGL Loy Yang frequency control ancillary services (FCAS), AGL Bayswater FCAS, Jemena Auction Quantity Limits)
- 80% of infringement notices (\$893,600)
- 50% of enforceable undertakings
- 57% of publications, workshops and presentations.

Outcomes achieved

Analysing events and trends that are shaping the national electricity markets

In December we released our *Wholesale electricity market performance report 2022*. The report provides a comprehensive picture of the state of wholesale competition and analysis on how the National Electricity Market's performance has changed over the past 5 years. It has a particular focus on outcomes since our last report released in 2020.

The report showed that large-scale solar and wind generation have helped bring competition to certain times of the day, helping to constrain prices. However, the ownership of dispatchable generation remains concentrated. This leaves the market vulnerable to exercise of market power or the business decisions of individual generators.

We found that supply-side factors were a major driver of higher generator offers in 2022. However, they may not explain all of the shifts we have observed. New analysis suggests that in some instances there may be evidence of sustained exercise of market power by offering capacity higher than cost with the intention to increase prices.

Through our assessment of competition and efficiency in the wholesale electricity market, we identified a set of recommendations to support policymakers to deliver an effective transition. These included enabling a contract market monitoring function for the AER, providing a clear and coordinated pathway to reduce uncertainty, and facilitating competition during and beyond the transition.

Enforcement activities

In 2022–23 the AER undertook a number of enforcement activities in line with our wholesale electricity and gas compliance and enforcement priorities:

- On 30 June 2023 the AER instituted proceedings in the Federal Court against 2 subsidiaries of AGL Energy Ltd, for alleged breaches of the National Electricity Rules. AGL cooperated with the AER in relation to these proceedings and admitted the contraventions. The AGL subsidiaries made offers to AEMO and were paid to be on standby to provide contingency FCAS in response to frequency disturbances between 2018 and 2020. AGL admitted that the subsidiaries did not comply with dispatch instructions given to them by Australian Energy Market Operator (AEMO) in relation to their FCAS offers and did not ensure their relevant generating units were at all times able to comply with those FCAS offers. The AER considers the conduct created a risk to power system security by undermining AEMO's ability to prepare for and respond to frequency disturbances.
- In June 2023 EnergyAustralia paid \$406,800 in penalties in relation to 6 infringement notices relating to alleged breaches of rule 410(1) of the National Gas Rules. The AER alleged that EnergyAustralia failed to submit bids to buy gas 2 and/or 3 days out from the relevant gas day in both the Adelaide and Sydney Short Term Trading Markets (STTMs), indicating that it didn't intend to withdraw any gas on those days. This indicated that it didn't intend to buy any gas on those days when in fact it did purchase gas on those days. As a result, the movement of gas between centres may have been impacted by poor price signals in Adelaide and Sydney. The AER was concerned that EnergyAustralia engaged in this conduct in respect of 376 bids between 1 July 2020 and 23 December 2021 and issued 6 infringement notices in respect of 6 of those days.
- In June 2023 Incitec Pivot Limited also paid \$223,400 in penalties in relation to 4 infringement notices relating to alleged breaches of rule 410(1) of the National Gas Rules. The AER was concerned that Incitec failed to submit in good faith bids to buy gas in the Brisbane STTM that

reflected its best estimate of gas that it intended to withdraw on 64 occasions between 1 January and 8 October 2021 and issued 4 infringement notices in respect of 4 of those days.

- On 1 June 2023 the AER instituted proceedings in the Federal Court against 4 Jemena subsidiaries relating to alleged large-scale failures to submit accurate auction quantity limits to AEMO for 4 pipelines and failure to ensure auction services were correctly scheduled for 3 pipelines over a nearly 3-year period. The AER alleges that, by failing to submit accurate auction quantity limits, the Jemena subsidiaries understated their available capacity on numerous occasions. In several instances, incorrect auction quantity limits resulted in 'lower tier' services, such as interruptible services, being scheduled ahead of services that could have been won through the auction.
- In May 2023 electricity generator Stanwell Corporation Limited paid 6 infringement notices totalling \$263,400. The infringement notices were issued in relation to Stanwell's alleged application of protection settings to 3 of its generating units at Stanwell Power Station since 2017 without prior written approval from AEMO and for failing to ensure those units met the required generator performance standard for voltage disturbances.

Implementing governments' market interventions

In December 2022 national Cabinet announced an agreement for significant interventions in wholesale gas, coal and electricity markets to 'shield Australian families from the worst impacts of predicted energy price spikes'. In NSW this agreement was enabled via amendments to the *Energy and Utilities Administration Act 1987* (NSW) and associated Coal Market Price Emergency Directions (NSW Directions) which gave effect to a cap on prices for coal sold by NSW coal suppliers to NSW coal-fired power stations. In February 2023 the NSW Government formally appointed the AER as the regulator of these requirements.

Since the market interventions were announced, the AER has been supporting all National Electricity Market (NEM) governments with implementation, including by:

- monitoring and analysing wholesale electricity and gas market trends which have been reported monthly to governments since February, to assist in understanding the factors driving market dynamics while the market interventions are in place
- designing and delivering a coal cap compliance program, including through the development and publication of guidance notes for NSW coal mines and coal-fired power stations and direct stakeholder engagement, to assist them to understand their obligations under the NSW Directions
- monitoring and analysing information provided to us by coal mines and power stations regarding the supply and use of thermal coal in NSW
- assessing applications by NSW coal mines for a revised price cap where their production costs plus a fair margin exceeds the directed price cap on coal of \$125/tonne. We published a guidance note to support mines to prepare their applications and finalised our assessment of one application.

New gas market monitoring

Legislation known as the Gas Market Transparency measures was enacted in the middle of 2022 giving the AER new market monitoring functions to ensure gas markets are operating competitively. First reporting under the measures commenced on 15 March 2023, prior to which the AER released 2 Compliance Bulletins to facilitate industry awareness, timely registration and understanding of the information to be reported.

Since 15 March we have been monitoring new requirements for gas reserves and resources, storage, large user, and trade reporting. We have been monitoring new information related to price and volume in the shorter-term gas markets, including overseas exports and domestic sales. The AER has been supporting the new policy measures:

- by ensuring registration of entities and implementing targeted compliance which has detected and led to the correction of incorrect reserves and trade information reported
- including this new information in monthly information provided to governments since February, to aid understanding of interventions in the market
- reporting quarterly on this data through expanding the coverage of our wholesale markets quarterly report.

Based on our monitoring of information over the first 3 months, we issued a further reserves and resources guidance note on 29 June 2023 to facilitate more robust information being submitted to AEMO.

Ensuring compliance with generator performance standards

In October 2022 the AER accepted a court enforceable undertaking from 5 AGL related entities in relation to the operation of the Broken Hill Solar Plant. The undertaking requires AGL to rectify the noncompliance.

This followed AGL self-reporting to AEMO that the plant was noncompliant with its generator performance standard. Modelling had been undertaken which showed that, under certain conditions, it was possible that the Broken Hill Solar Plant would not meet its generator performance standards concerning frequency control matters.

► Highlight

Investigation of generator behaviour during June 2022 wholesale market events

On 12 and 13 June 2022 administered price caps (APCs) were triggered in the Queensland, New South Wales, Victorian and South Australian regions of the National Electricity Market. On 15 June 2022 the Australian Energy Market Operator (AEMO) suspended the wholesale spot market in those regions. The APCs remained in force for South Australia until 22 June 2022 and for New South Wales, Victoria and Queensland until 23 June 2022. On 24 June 2022 AEMO declared the end of the suspension period and resumed the market.

On 16 June 2022 the AER began a formal investigation into the conduct of generators during the APC period, immediately before AEMO suspended the market in mid-June 2022.

Our investigation considered whether generators had intentionally or recklessly caused or significantly contributed to the circumstances causing AEMO to issue a direction of the National Electricity Rules. We had received reports from stakeholders, including AEMO, that generators were withdrawing capacity so that AEMO would issue a direction. This would then enable them to obtain compensation under the directions compensation scheme. The investigation also considered other potential breaches of the rules concerning false or misleading offers, bids or rebids; and conduct related to projected assessment of system adequacy submissions.

The AER released the findings of the investigation and resulting policy and compliance considerations on 15 December 2022. The report concluded that the evidence gathered demonstrated that generators' behaviour resulted in poor market outcomes. Further, we considered that a number of generators engaged in conduct that significantly contributed to the circumstances causing AEMO to issue a direction. Several generators appear to have had little to no regard for the effect of their actions on the broader system.

However, generators may have had a reasonable cause to withdraw capacity: they were facing limited fuel availability and wanted to conserve fuel for peak periods or preserve fuel stocks. Another cause may have been that they feared having to supply at a loss. This is less clear given there is a compensation regime designed to encourage supply during times of system stress. Currently, the National Electricity Rules do not oblige generators to offer available capacity, and they can decide not to do so for commercial reasons. However, if generators prioritise commercial freedom, it can be detrimental to power system security, particularly under times of system stress. The report raises a number of options for consideration that may tighten this aspect of the rules to ensure generators continue to offer capacity during times of system stress.

The AER's investigation also revealed that some generators had poor compliance practices concerning projected assessment of system adequacy submissions. We are continuing to investigate one generator for possible breaches in this regard.

Despite the unhelpful behaviour of generators in withdrawing capacity, the AER otherwise found that AEMO and generators worked closely together in difficult circumstances and that there was good transparency and communication by both AEMO and generators.

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

About this strategic objective

Australia's energy system is rapidly changing and affecting how energy networks are used. Technological developments and consumer preferences in the electricity sector are leading us away from a supply-side oriented system to one that needs to support 2-way flows of electricity; and away from centralised generation to distributed generation. If not managed carefully, these changes may add significantly to network costs and therefore consumer bills.

As the economic regulator of energy networks in all states and territories except Western Australia, we play an important role in the energy transition. We regulate 30 gas and electricity network businesses with a combined asset base of over \$120 billion. Our primary role is in setting the maximum revenue that network businesses can recover from users of their networks. Importantly, we aim to ensure consumers pay no more than necessary for safe and reliable energy.

The AER also develops key aspects of the regulatory framework (including schemes, guidelines and models) and reviews them regularly to keep them relevant. We ensure revenue determinations reflect consumer preferences while at the same time preparing the regulatory framework for new types of expenditures to manage the impact of the energy transition on networks.

Our priorities

The AER's 2022–23 priorities under strategic objective 3 were:

- Undertake revenue and price control processes that promote the National Electricity Objective/ National Gas Objective:
 - undertake pre-lodgement engagement including application of the early signal pathway process under the Better Resets Handbook – Towards Consumer-centric Network Proposals
 - make statutory revenue determinations (including consideration of distributed energy resources and resilience-related expenditure)
 - administer pricing proposal/tariff variations
 - process applications.
- Support appropriate conversions of entities to regulated assets and determine the opening asset valuation.
- Publish the Rate of Return Instrument.
- Prepare and consult on transmission and distribution network benchmarking reports.

- Undertake large Integrated System Plan project assessments to support efficient and timely investment.
- Oversee the Regulatory Investment Test-Transmission (RIT-T) process for actionable and non-actionable Integrated System Plan projects and monitor RIT-T processes to ensure they are in the best interests of consumers.
- Produce network performance reports and actively monitor regulatory asset base growth:
 - Electricity network performance report
 - Electricity distribution and transmission benchmarking report
 - Gas distribution network performance report.
- Deliver monopoly infrastructure-related compliance and enforcement priorities, including gas network compliance with Part 23 of the National Gas Rules.
- Manage disputes related to Regulatory Investment Tests and the Integrated System Plan.
- Monitor the effectiveness of electricity transmission and distribution ring-fencing guidelines and administer waiver applications.

We also had 5 'Tilt' and 1 'Advocate' priorities under this strategic objective:

- Be more efficient in our regulation by:
 - continuing a review of our annual data requirements for regulated electricity transmission and distribution businesses
 - completing a review of incentive schemes for networks
 - completing a review of the impact of capitalisation policies on economic benchmarking for electricity distribution networks
 - updating our method for benchmarking to incorporate the impact of consumer energy resources (such as household solar PV, batteries and electric vehicles) in our productivity measures.
- Ensure the regulatory regime and our network performance reporting evolves to support the energy transition by:
 - publishing a final paper on incentive arrangements for consumer energy resources
 - commence preparing the inaugural consumer energy resources export service performance report
 - publishing an updated AER connection charge guideline
 - publishing updated guidelines for the introduction of regulated Stand Alone Power Systems (SAPS)
 - publishing an updated AER electricity transmission ringfencing guideline.
- Evaluate the transparency review of the (Australian Energy Market Operator's) Integrated System Plan 2022 to inform future reviews.
- Deliver AER's regulatory role for the NSW Government – facilitating the development of Renewable Energy Zones, by:
 - making the annual contribution determination
 - publishing the final revenue determination guidelines for NSW contestable and non-contestable network projects
 - making revenue determinations for network infrastructure projects.

- Support energy affordability by communicating current controls, increasing the transparency of impacts to bills arising from Regulatory Investment Test-Transmission assessments; and ensuring cost-benefit analyses reflect the current economic environment (interest rates, inflation, rate of return).
- Advocate for network charging reform to deliver greater cost reflectivity in consumption and export tariffs for more efficient network investment and optimal consumer energy resources deployment.

Performance measures

Table 3.27: Performance measures for strategic objective 3

Performance measure	2020–21	2021–22	2022–23		Met?
	Result	Result	Target	Result	
3.1 The AER promotes efficient investment in, operation and use of energy services for the long-term interests of consumers	70%	66%	Maintained or improved compared to previous year	69%	✓
3.2 Revenue reset determinations for electricity networks and gas pipelines completed within statutory timeframes	100%	100%	100%	100%	✓
3.3 Customers with a retailer exposed to cost-reflective network tariff	11.1% [#]	16.6%	No target [*]	26% [^]	●
3.4 The AER undertakes efficient regulation of network businesses by focusing on high impact actions that matter to consumers	75%	60%	Maintained or improved compared to previous year	73%	✓
3.5 The AER encourages the evolution of the regulatory framework to provide network customers with the services that they value at efficient prices	60%	55%	Maintained or improved compared to previous year	61%	✓

[#] Estimated. At the time of publication of the Annual Report 2020–21, the AER did not have final, audit-assured data.

^{*} The National Electricity Rules require distributors to gradually make their tariffs more accurately reflect the cost to serve their customers – so that customers pay no more than necessary for safe and reliable electricity services. The pace of progress toward implementing cost-reflective tariffs is impacted by a variety of factors that are outside the AER’s control, including what customers want, what impacts they will face, and the rollout of smart meters which make it possible to record when energy is used at different times of day. Tariff reform strategies will evolve as stakeholder understanding develops and new technologies and service models emerge. Monitoring trends helps the AER to understand whether additional action or reform is required; setting annual targets is not meaningful.

[^] The result reported relates to the 2021–22 year. There is a one-year lag in the result for this performance measure; the relevant data is submitted to the AER by network businesses each November. The AER publishes actual financial year tariff results on its website after audit-assured data is received.

Table 3.28: AER energy network decisions completed 2022–23

Network	Region	Period covered	Revenue proposed by business (\$ nominal, million)	Revenue allowed by AER (\$ nominal, million)	Difference between allowed and proposed revenues (%)	Allowed revenue in previous determination (\$ nominal, million)	Difference between allowed revenue in current and previous determination (\$ nominal, million)
APA Victorian Transmission System	VIC	1 Jan 2023 – 31 Dec 2027	\$644.1	\$702.2	9.0	\$561.5	\$140.7
Transgrid	NSW	1 Jul 2023 – 30 Jun 2028	\$4,208.1	\$4,851.3	15.3	\$4,015.1	\$836.2
ElectraNet	SA	1 Jul 2023 – 30 Jun 2028	\$1,835.9	\$2,214.9	20.6	\$1,603.2	\$611.7
Murraylink	SA/VIC	1 Jul 2023 – 30 Jun 2028	\$75.7	\$90.9	20.1	\$81.4	\$9.5
Australian Gas Networks (Vic)	VIC	1 Jul 2023 – 30 Jun 2028	\$1,256.0	\$1,362.1	8.4	\$1,172.2	\$189.9
AusNet Services	VIC	1 Jul 2023 – 30 Jun 2028	\$1,260.7	\$1,270.3	0.8	\$1,025.1	\$245.2
Multinet	VIC	1 Jul 2023 – 30 Jun 2028	\$1,092.5	\$1,154.9	5.7	\$1,022.9	\$132.0

Analysis of results

The AER continued to deliver effective network regulation, completing 3 electricity transmission determinations, one gas transmission access arrangement, and 3 gas distribution access arrangements. All revenue reset determinations were made within statutory timeframes.

The 2023 AER stakeholder survey indicates that we have bounced back in our stakeholders' perceptions of our network regulation. All performance scores in regulatory function and market role showed improvements when compared to 2022 metrics. The biggest increase related to the AER's perceived contribution to the debate about the future of the energy sector and regulatory landscape, which leapt from 55% in 2022 to 72% this year. The AER was commended by stakeholders for its strong media presence over the last year around our work on energy prices, as well as our willingness to tackle complex issues within the sector.

We continued to make progress on increasing the number of customers with a retailer exposed to cost reflective network tariffs in an increasingly dynamic energy sector. The transition towards consumer focused energy resources is now advanced and the pace of change continues to accelerate while the electrification of Australia's road transport sector is also under way. In this dynamic context we are now assessing tariff structure proposals developed by distributors in NSW, the ACT, Tasmania and the Northern Territory.

In recognition of the pace of sectoral change we are facilitating greater flexibility within distributor tariff structure statements while continuing to maintain predictability and transparency. We are also seeing new tariffs designed specifically for batteries positioned on distribution networks to help balance energy flows over days and weeks and maximise the benefits of record-setting levels of renewable energy generation.

To help stakeholders understand and engage with our regulatory processes, over calendar year 2022 we held a series of workshops for consumer advocates, energy retailers and distributors to explain the objectives, processes, challenges and achievements of our reform program. This has been matched by renewed efforts on the part of electricity distributors to inform, engage and collaborate with customers and their representatives to develop network tariffs that help customers to embrace new technologies while not leaving disadvantaged customers behind.

Outcomes achieved

Ensuring consumers pay no more than necessary for poles, wires and pipelines

In April 2023 the AER reset the revenue Transgrid, Murraylink and Electranet are permitted to collect from consumers for transmission of electricity; and that Ausnet, Australian Gas Networks and Multinet are able to collect for gas distribution in Victoria.

The AER commenced revenue determination processes to assess the revenue that Essential Energy, Endeavour Energy, Ausgrid, EvoEnergy, NT Power and Water Corporation and TasNetworks may recover between 2024 and 2029. Endeavour Energy and Essential Energy were also part of the AER's new early signal pathway process, which motivated these businesses to listen to consumer preferences, resulting in high-quality, consumer-centric regulatory proposals. We have commenced a similar early signal pathway process for SA Power Networks and Jemena Gas Networks, which will both be providing proposals to the AER in 2024.

In March 2023, following the Australian Energy Market Commission's (AEMC's) rule change to allow businesses intending to develop electricity transmission infrastructure to apply to the AER to commence a process to make a determination of future revenue, Marinus Link Pty Limited and APA Group (Baslink) applied to have the AER regulate high-voltage direct current power lines connecting Tasmania and Victoria.

Incentivising and measuring export services performance

Export services are part of the core services provided by distribution network service providers. Electricity customers that invest in rooftop solar photovoltaic (PV) and batteries (also known as consumer energy resources) expect to be able to export the excess electricity that they generate to the grid. Following the AEMC's rule change relating to access, pricing and incentive arrangements for consumer energy resources, the AER consulted with stakeholders on the following issues related to export services:

- whether incentive arrangements for export services are fit for purpose
- performance metrics to include in our inaugural export service performance report
- how best to incorporate export services in our annual benchmarking report.

On 10 March 2023 we published our final report on these issues. Our report outlined plans to:

- collect new data from distribution network service providers related to export service performance and report this in our inaugural export service performance report (to be included in a version update of our 2023 electricity network performance report)
- introduce a new small-scale incentive scheme for export services (the export service incentive scheme). The new scheme will allow distribution network service providers to consult with customers and propose bespoke export service incentive arrangements. On 29 June 2023 the AER finalised the export service incentive scheme following a period of stakeholder consultation. The scheme provides distribution network service providers with the opportunity to earn financial rewards if they improve export service levels. It also requires them to pay financial penalties if export service levels decline.

Reporting on the performance of gas and electricity networks

In December 2022 the AER published its second annual performance report for gas networks, after having published its third report for electricity networks in July 2022. Both reports provide a check on how energy networks are performing under the regulatory regime, including by reporting on profitability. Both reports included data up to the end of the 2021 regulatory year. The reports found that network businesses continued to be profitable and generated returns above the AER's forecasts.

For the first time, the gas network performance report covered gas transmission and returns on regulated equity. The report also analysed changes in asset age profiles over time and the impact of COVID-19 on gas demand. The report found that total revenue recovered from gas customers decreased over 2021. This is because there are lower prices for gas transportation services. It also found that gas networks continued to exhibit a high level of reliability. Unaccounted for gas levels and distribution network outages decreased over the year.

The *Electricity network performance report 2022* covered similar core measures to the prior year. However, it also analysed the progress of tariff reform and the impact of extreme events. The report found that consumers paid less for electricity network services in 2021. Network revenue was 5.6% lower than 2020, continuing its downward trend since 2015. Network maintenance and service quality continued to be strong, with customers experiencing fewer and shorter outages on average than in 2020.

Regulating New South Wales' Renewable Energy Zones

The NSW Government has developed a plan to transform its electricity system. The plan, known as the Electricity Infrastructure Roadmap, is enabled by the *Electricity Infrastructure Investment Act 2020* (NSW) (EII Act). The EII Act creates several Renewable Energy Zones (REZ) in NSW so that new renewable generation can be coordinated with required transmission network capacity. The NSW Government appointed the AER as a regulator under the roadmap in November 2021.

A key function of the AER is to make revenue determinations on network infrastructure projects authorised by the NSW Consumer Trustee or directed by the NSW Energy Minister. In August 2022 we published a guideline on how we will assess costs and make revenue determinations for the network operators that are selected to undertake network projects through a contestable process. In November 2022 we published a draft guideline on how we will do this for non-contestable processes. The final guideline, *Transmission Efficiency Test and Revenue Determination Guideline: Non-contestable Network Infrastructure Projects*, was published in April 2023.

In December 2022 we made our first revenue determination under the EII Act, related to the battery component of the Waratah Super Battery priority transmission infrastructure project. Over the coming year, the guidelines we have published will inform our revenue determinations on contestable and non-contestable components of the Waratah Super Battery project and the competitively procured transmission network project for the Central-West Orana REZ.

The AER is also required to make an annual contribution determination setting out the annual costs of the Electricity Infrastructure Roadmap. NSW electricity distributors will recover these costs from NSW consumers via their retail electricity bills. In September 2022 we published a guideline and model that set out the process and method for our contribution determinations. In February 2023 we gazetted our first contribution determination under the EII Act to cover 2023–24, which amounted to \$138.14 million.

Another function the AER has under EII Act is to approve a risk management framework developed by the Consumer Trustee. The framework will ensure the underwriting contracts the Consumer Trustee enters into with generators (referred to as long-term energy service agreements) reflect the long-term financial interests of NSW electricity consumers. We approved the first risk management framework in July 2022.

Ensuring incentive schemes are appropriate

Incentive schemes form an important part of our regulatory toolkit. The schemes' financial rewards and penalties encourage network services providers to improve their business efficiency over time and provide levels of service performance that customers value.

In 2022–23 we continued work (started in 2021–22) on reviewing and refining the AER's approach to incentive schemes and guidelines that apply to regulated electricity and gas networks to ensure they remain relevant and fit-for-purpose.

In December 2022 we published a draft decision on our *Review of incentive schemes for regulated networks* and invited stakeholder feedback. In April 2023 we published our final decision of our review. Changes to our 2013 capital expenditure incentive guideline were required to implement our final decision.

Supporting the rollout of community batteries

Ring-fencing seeks to prevent harm to consumers when monopoly businesses also operate in contestable markets. AER has published guidelines that prevent electricity networks that provide contestable services from cross-subsidising those activities from customers of monopoly services and must not use their monopoly position to discriminate against other providers. As small-scale batteries become more common, the guidelines also prevent electricity distributors (Distributed Network Service Providers - DNSPs) from leasing those batteries to third parties to provide contestable services unless they first obtain a waiver from AER.

In 2022 the Australian Government announced its Community Batteries for Household Solar Program. The AER recognised that, to achieve full value for this program, DNSPs must participate and lease spare capacity from some of the expected 400 batteries to third parties so that the batteries can provide both network support and energy market services.

The AER granted a waiver from the leasing restriction for these batteries as a 'class' on 3 February 2023. This followed wide consultation with stakeholders, including in an open forum; 19 written submissions; and further meetings with key stakeholders, including the AER Customer Consultative Group. To guard against harms to consumers, the class waiver imposed additional, robust conditions on DNSPs for batteries funded under the program. These cover extra controls to avoid cross-subsidisation as well as additional reporting requirements around the operation of each battery.

Separately, the AER continued to assess applications for individual waivers from the guideline. These applications were made by individual DNSPs for trials of small numbers of batteries.

► Highlight

Setting the rate of return

On 24 February 2023 the AER published its final decision on its rate of return review. The final decision includes the Rate of Return Instrument and explanatory statement.

The rate of return is the return expected by investors to reward them for investing their capital in a business. The rate of return provides a business with the money to pay the interest on its loans and give a return on equity to shareholders. For investors in regulated energy network businesses, the AER determines an allowed rate of return and sets regulated revenues for an upcoming period (typically every 5 years).

The regulated rate of return we set is important because it materially affects the amount of money energy network companies we regulate can collect from consumers of electricity and gas in Australia. The rate of return is a significant driver of regulated revenue for the networks with a combined regulatory asset base of over \$100 billion. As an approximate indicator, a change in the rate of return of 10 basis points (one-tenth of one percentage point) results in regulated revenues – and therefore consumer bills – changing by approximately \$100 million annually, spread across users of the energy networks that we regulate.

Setting an appropriate rate of return requires the exercise of regulatory judgement. There are 2 main reasons for this. First, we are looking into the future. We are asking what rate of return is needed to attract an efficient level of investment in energy networks. We are looking for a rate of return that is neither too high nor too low. Second, the tools and data available to undertake this task are imperfect. There are high-level approaches and models available to assist, but experts, investment professionals and other regulators have different views about how they should be applied. Reasonable people can make different decisions when reviewing the same material.

In view of these uncertainties, we have undertaken extensive consultation to help us make the best judgements. We wanted to hear a full range of views on the methods and data available. We started in 2020 with a series of working papers that examined the fundamental components of the rate of return as well as some important topical issues. We held concurrent evidence sessions, where we heard directly from experts in the field. We published a draft instrument and explanatory statement, which was reviewed by an independent panel. After taking further advice and consulting on some of the independent panel's recommendations, we addressed them in our final decision. This resulted in our decision being delayed from the end of 2022 to February 2023.

The explanatory statement sets out our reasoning for the approach we specify in the instrument. The instrument is a separate document that specifies the methods, formulae and data to be used to calculate the rate of return. The instrument is binding on providers of network services and on us at the AER. It determines the rate of return that will be used in our forthcoming regulatory decisions over the next 4 years.

We are satisfied that the final instrument contributes to the achievement of the National Gas Objective and National Electricity Objective – that is, the rate of return is sufficient to attract an efficient level of investment in energy networks, which is neither too high nor too low.

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

About this strategic objective

The National Electricity Market (NEM) is transitioning toward a future with significant and rapid uptake of both grid-based and distributed renewable energy resources, the closure of ageing fossil fuel dependent generation plant, and technological change that will affect how consumers engage with their energy providers. During this transition the need to protect the long-term interests of consumers has never been greater. The AER, as the independent market monitoring and enforcement agency, provides strong, evidence-based analysis to inform policy proposals and help ensure those proposals are effective, holistic and fit for purpose while protecting the long-term interests of consumers.

The AER's extensive expertise on energy markets and regulation can inform and influence debate about Australia's energy future. We advocate for policy changes to improve the regulatory framework and enhance the interests of consumers. We do this through our relationships with all levels of government and the AER Chair's membership of the Energy Advisory Panel (formerly Energy Security Board). We also engage in Australian Energy Market Commission (AEMC) policy reviews and rule change processes.

A key focus for the AER is to evaluate the impact of different reform design solutions on consumers, competition and our role (specifically network regulation along with monitoring and enforcing compliance with the National Electricity Law and National Electricity Rules).

Our priorities

The AER's 2022–23 'Execute' priorities under strategic objective 4 were:

- Contribute to policy processes and reviews that impact on competition, consumers, and the role of the AER including Australian Energy Market Commission rule changes.
- Provide timely and insightful contributions to the Energy Security Board and energy ministers.
- Engage actively in external forums including:
 - Regulatory Conference
 - Utility Regulators Forum.

We also had 1 'Tilt' and 4 'Advocate' priorities under this strategic objective:

- Contribute to the implementation of the National Electricity Market 2025.
- Advocate for reforms or market designs that minimise the potential for the misuse of market power by generators and ensure participant margins are consistent with a competitive market.
- Contribute to the Australian Energy Market Commission's transmission planning and investment review.

- Advocate to ensure arrangements governing distributed energy resources standards are proportionate, align with the interests of consumers and do not lead to inefficient network investment.
- Engage with states and territories on jurisdictional energy regulatory frameworks.

Performance measures

Table 3.29: Performance measures for strategic objective 4

Performance measure	2020–21	2021–22	2022–23		Met?
	Result	Result	Target	Result	
4.1 The AER's reports inform debate about Australia's energy future and regulatory landscape	67%	55%	Maintained or improved compared to previous year	72%	✓
4.2 AER stakeholders' agreement with the following statements:			Maintained or improved compared to previous year		
The AER engages effectively with its stakeholders	71%	68%		76%	✓
The AER shows leadership in pursuing or promoting priority issues in the energy sector	77%	65%		73%	✓
4.3 Reach of AER communication activities	44,900	49,661	Maintained or improved compared to previous year	57,810	✓
4.4 Number of rule change proposals that the AER has successfully influenced	N/A	6	No target [#]	6	●

The AER has expertise in energy markets and regulation, which it can use to inform and influence policy. We seek to advocate for policy changes that protect and promote the interests of consumers via several avenues – including by making submissions to AEMC policy reviews and rule change processes. While a higher result/upward trend indicates better performance, it is not meaningful to set annual targets.

Analysis of results

The AER's 2023 stakeholder survey shows an upwards trend in stakeholders' perceptions of our engagement and leadership. Performance across all attributes in the people and leadership pillar has regained ground from 2022, with the highest rating in leadership and management overall at a very strong 84%, topping the 2021 79%. Stakeholders were especially positive in this area of the AER executive in terms of leadership, direction and willingness to engage deeply on difficult topics, as a driver of their strong endorsement. A similar improvement in stakeholder ratings of the AER's relationships and engagement was attributed to increased responsiveness, accessibility and proactivity.

There was, however, a decline in the attribute of demonstrating how stakeholder consultation has informed its decision making (from 75% in 2021 to 68% in 2023), reflecting stakeholder's desires for more openness. Stakeholders also offered a series of suggestions to improve consultation processes, including providing greater flexibility for consumer advocates in their response method options and a desire for interactions to be less rigid and formal with opportunities for more conversational collaborative approaches.

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

There are 3 examples where our impact on policy and rule-making processes was clear. The first of these is related to the AEMC's consultation on the Operational Security Mechanism. The AER's submission to the draft rule change raised significant concerns with the potential impacts of the Operational Security Mechanism on spot market performance and the potential for the abuse of market power under the proposed mechanism. This advocacy contributed to the AEMC discontinuing the development of the Operational Security Mechanism in favour of bolstering existing system security frameworks, which represents a much lower risk of inefficient costs being passed on to consumers.

The second example is the AEMC's consultation on recovering the cost of the Australian Energy Market Operator's (AEMO's) participant fees. The AER's submission on the AEMC's directions paper highlighted our view that the National Electricity Objective would best be achieved by Transmission Network Service Providers (TNSPs) recovering AEMO participant fees through existing regulatory mechanisms. This advocacy contributed to the AEMC making a more preferable final rule for TNSPs to recover AEMO participant fees through existing mechanisms under the incentive-based revenue determination framework after a transitional period.

The third example is the AEMC's consultation on the material change in network infrastructure project costs. The AER's submission to the AEMC draft determination made a number of suggestions to improve the draft rule. These recommendations influenced the AEMC's final determination to ensure that the changes to the rules were consistent with the original policy intent to balance the need for the timely delivery of network infrastructure with the need for consumers to have confidence that transmission investments deliver benefits which exceed their costs.

The AER uses a range of channels to reach our audiences, including traditional media, social media and our website. Overall, there was an increase in our reach across our platforms and activities:

- There was a 22.4% increase in followers to the AER LinkedIn (from 16,909 to 21,794) and a 23.4% increase in followers to the AER Twitter (from 1,159 to 1,430).
- We had a 418.7% increase in followers to the Energy Made Easy Facebook (from 96 to 498) and a 72.9% increase in followers to the Energy Made Easy Instagram (48 to 83).
- There were 25,675 media mentions of AER-related keywords, a 17% increase from the previous year. This content reached people approximately 327.5 million times across print, online, TV and radio.
- We had approximately 600,000 users to our corporate website and 1 million website sessions, which is an increase of 9% and 11% respectively. Our website subscriptions increased by an average of 7%.

In 2022–23 we made 17 submissions to the AEMC rule-making processes across a number of areas, including transmission planning and investment review, changes in network infrastructure project costs, protecting customers affected by family violence, regulatory framework for metering services, and revenue determinations for intending TNSPs. We also made 34 submissions to other jurisdictional or national policy and legislation-making processes:

- [DCCEEW consultation – implementation of 2022 Default Market Offer review outcomes – 20 April 2023](#)
- [AEMC consultation paper – 2023 Efficient provision of inertia – 11 April 2023](#)

- [AEMC consultation paper – Unlocking CER benefits through flexible trading – 16 February 2023](#)
- [AEMO discussion paper – Project Energy Connect Market Integration Paper – 10 February 2023](#)
- [DCCEEW consultation paper – Proposed legislative changes to incorporate an emissions reduction objective into the national energy objectives – 9 February 2023](#)
- [AEMC draft report – Review of the regulatory framework for metering services – 7 February 2023](#)
- [AEMO consultation paper – 2022 AEMO gas market parameter review – 24 January 2023](#)
- [DELWP consultation paper – Protections for consumers of DER – 22 November 2022](#)
- [AEMC draft determination – Operational security mechanism – 21 November 2022](#)
- [AEMC consultation paper – Review into the arrangements for failed retailers’ electricity and gas contracts – 18 November 2022](#)
- [AEMC consultation paper – Review into consumer energy resources technical standards – 17 November 2022](#)
- [Independent Pricing and Regulatory Tribunal of NSW \(IPART\) – Energy market monitoring review 2021–22 draft report – 9 November 2022](#)
- [NSW EnergyCo – Draft network infrastructure investment strategy for NSW – 3 November 2022](#)
- [AEMC stage 3 draft report – Transmission planning and investment review – 1 November 2022](#)
- [Energy ministers consultation – Proposed regulatory amendments to extend AEMO’s functions and powers to manage east coast gas supply adequacy – 21 October 2022](#)
- [AEMO consultation – Gas market parameter review – 7 October 2022](#)
- [AEMO approach paper – 2023 General power system risk review – 7 October 2022](#)
- [AEMC consultation paper – Victorian declared wholesale gas market \(DWGM\) interim LNG storage measures – 30 September 2022](#)
- [AEMC draft determination – Establishing revenue determinations for intending TNSPs – 22 September 2022](#)
- [AEMC consultation paper – Amending the administered price cap – 2 September 2022](#)
- [AEMC draft determination – Material change in network infrastructure project costs – 1 September 2022](#)
- [Energy ministers – Amending the Australian Energy Regulator Wholesale Market Monitoring and Reporting Framework – 25 August 2022](#)
- [AEMC consultation – Recovering the cost of AEMO’s participant fees – 22 August 2022](#)
- [AEMC contestability options paper – Transmission planning and investment review – 16 August 2022](#)
- [DELWP consultation paper – Victorian transmission investment framework preliminary design – 16 August 2022](#)
- [Reliability Panel draft report – Review of the guidelines for identifying reviewable operating incidents – 9 August 2022](#)
- [Department of Environment, Land, Water and Planning consultation paper – Voltage Management in Distribution Networks – 8 August 2022](#)
- [AEMC consultation – Delaying implementation of the AER Billing guideline – AER letter of support – 4 August 2022](#)
- [AEMC draft determination – Protecting customers affected by family violence – 4 August 2022](#)

- [AEMC directions paper – Review of the regulatory framework for metering services – 22 July 2022](#)
- [AEMC/AEMO joint consultation paper – Efficient provision of inertia – 21 July 2022](#)
- [NSW parliamentary inquiry – Embedded networks in NSW – 8 July 2022.](#)

Outcomes achieved

Companion State of the Energy Market and Health of the NEM reports

In December 2022 the AER released its *State of the energy market* report and contributed to development of the former Energy Security Board's *Health of the National Electricity Market* report. For the first time, the reports were developed and released together. *State of the energy market* is the AER's annual report covering Australia's wholesale electricity and gas markets, transmission and distribution networks, and energy retail markets. It provides an accessible review of energy market activity in eastern and southern Australia over 2021 and the first half of 2022. The *Health of the National Electricity Market* report included a forward-looking analysis of how the energy transition is proceeding against the strategic energy plan. The reports jointly highlighted emerging issues, notably including the increasing pressures on energy affordability.

Transmission

A number of reforms in the transmission regulatory frameworks are needed to support the energy transition to net zero in the NEM and ensure consumers pay no more than necessary. The AER has been contributing to the development, design and implementation of these key reforms. Two of the reforms the AER has been involved in are the Transmission Access Reform and the Transmission Planning and Investment Review. These are discussed below.

Transmission Access Reform

The AER is working with AEMO and AEMC to prepare advice for energy ministers on Transmission Access Reforms. These reforms aim to manage congestion on transmission networks and facilitate efficient use of transmission infrastructure. The reforms are necessary to deliver an orderly energy transition that supports the long-term interests of consumers.

In February 2023 energy ministers agreed to immediately implement 'enhanced information' reforms to provide NEM market participants with better information on the optimal location for new generation and storage. Energy ministers also endorsed development of a voluntary Congestion Relief Market (CRM) and priority access model. These reforms should incentivise generation investors to locate in parts of the network where transmission capacity is available. The CRM should also enable generators to secure access to the network to enable them to generate in the event of network congestion.

The AER has informed debate about the reforms by continuously advocating for consumer interests in the development of reform recommendations. The AER has used its expertise on market participant behaviour, congestion information resources and compliance and enforcement issues to inform the development of the detailed design of the reforms.

Transmission Planning and Investment Review

The Transmission Planning and Investment Review, led by the AEMC, sought to identify issues with the existing regulatory frameworks and recommend solutions to support the timely and efficient delivery of major transmission projects necessary to facilitate the transition to clean energy; and bring power from new renewable generation and storage to consumers. In October 2022 and

May 2023 the AEMC published the final reports for stage 2 and stage 3 of its Transmission Planning and Investment Review, respectively.

The AER has engaged deeply with this review through public submissions as well as directly with the AEMC and other stakeholders. This engagement continues as the review's recommendations are implemented through rule changes and updates to AER guidelines.

The review incorporated several workstreams:

- helping to address potential financing challenges that TNSPs may face in delivering the Integrated System Plan (ISP) projects by providing the AER discretion to vary the depreciation profile for such investments. Reforms are also underway to help ensure the benefits of concessional financing of ISP projects are passed on to consumers
- streamlining the options analysis and delivery of ISP transmission projects by allowing early works to be brought forward. This can improve the robustness of cost estimates and option selection in the Regulatory Investment Test-Transmission (RIT-T); and improve the timeliness of project delivery by allowing items with long lead times to be procured earlier. This is balanced by consumer protections to help ensure the options selection in the RIT-T is not unduly biased by these early works
- clarifying the ability of TNSPs to recover costs for activities necessary to obtain and maintain social licence. This complements ongoing work the AER has been contributing to with jurisdictions and industry stakeholders regarding community engagement and social licence for major transmission projects
- providing greater certainty about when and how the AER may review material capital expenditure overspends on ISP projects from an efficiency perspective (that is, conduct an ex-post review). The reforms also allow the AER to conduct such a review in a way that better suits ISP projects as opposed to how it is currently conducted for non-ISP projects. This should promote the interests of consumers by enabling the AER to focus on the specific costs of ISP projects.

Participating in professional forums

The AER actively participates in domestic and international professional forums. Domestically, the AER/ACCC Regulatory Conference was held in August 2022 in Brisbane. The AER Chair presented on the future regulation of the electricity sector. AER Board members and staff also participated in the conference along with other regulators and international guest speakers to discuss how best can we incorporate environmental objectives into economic regulation and how behavioural insights can contribute to positive regulatory outcomes for consumers.

The AER also continued to attend and present at the biannual Utility Regulators Forum (URF). The URF was established to encourage information exchange and cooperation between New Zealand, Commonwealth, state and territory-based utility regulators. At the 2022–23 URFs, the AER provided key updates on initiatives including our towards energy equity strategy.

The AER continued to engage with other international regulators at meetings of the International Regulatory Futures Forum. The AER also held bilateral meetings with regulators from New Zealand, the United Kingdom, Morocco, India, Laos, Singapore, Brunei and Vietnam to discuss key issues facing regulators during the energy transition. The AER is also a member of the steering group of the International Regulatory Accelerator Forum. This group aims to enhance the knowledge and capabilities of energy regulators to accelerate the decarbonisation of their energy systems. To achieve this it conducts bilateral and wider knowledge-sharing activities. This year it released a work program that includes a project looking at interconnectors. The project aims to provide examples and tools for regulators to ensure interconnectors increase flexibility in grids and the higher uptake of renewables.

► Highlight

Supporting energy innovators

In August 2022 the AER launched the Energy Innovation Toolkit (formerly referred to as the Regulatory Sandbox).

The Energy Innovation Toolkit is a joint service delivered in conjunction with the Australian Energy Market Operator, Australian Energy Market Commission (AEMC), Victorian Essential Services Commission and the Australian Renewable Energy Agency (ARENA). By working collaboratively with other market bodies, energy innovators receive a holistic understanding of the energy regulatory requirements associated with their query or potential project.

Since the launch of the Energy Innovation Toolkit, we have provided assistance to energy innovators and start-ups to navigate the complex energy regulatory frameworks. We are also working with a number of sector participants on potential trials of new products and services through the toolkit. The free tools available on the Energy Innovation Toolkit website – including detailed case studies and a ‘Regulation Navigator’ tool which in response to some simple questions generates a list of likely applicable regulatory requirements – also provide immediate assistance to innovators seeking on-the-spot answers.

The Energy Innovation Toolkit includes an Innovation Enquiry Service. The service provides guidance to innovators and other market participants about how the current regulatory framework might apply to their proposed product or service. It also includes 2 trial functions – a trial waiver function, which is the responsibility of the AER; and a trial rule change function, which is the responsibility of the AEMC. Both kinds of trial temporarily remove or amend an energy regulatory barrier, enabling an innovative business model to be tested that would normally be unable to proceed under current frameworks. In January 2022 the AER published a trial project guideline that explains how the AER will consider and assess trial waiver applications.

This year the Energy Innovation Toolkit has received 45 enquiries through the Innovation Enquiry Services and by the end of financial year had completed responses to 40 of them. The website has seen 7,210 unique hits since launch, and the regulation navigator tool has seen more than 431 individual users since launch. To further increase the regulatory knowledge of participants in the sector, 5 regulatory explainers and case studies have been published on the Energy Innovation Toolkit website since launch of the waiver functions in January 2023.

The Energy Innovation Toolkit also received 3 trial waiver applications to date and is conducting pre-trial discussions regarding an additional 2 trial waiver proposals. AER consultation on the first of these trial waiver applications has been completed and an AER decision on this application is anticipated early in the 2023–24 financial year.

The AER continues to work closely with other energy regulators, agencies and organisations in a number of different countries who have implemented or are currently implementing their own regulatory sandboxes to share experiences and learnings. Highlights include AER staff presenting to the International Smart Grid Action Network Sandbox Community of Practice, a Florence School of Regulation workshop on regulatory sandboxes and to sandboxing proponents from the Israeli Ministry of Energy.

Key learnings from the Energy Innovation Toolkit can be discovered at its website: energyinnovationtoolkit.gov.au.

Regulatory practice

About this section

The AER is committed to providing outcomes-focused regulatory services that emphasise a proportional approach to risk, genuine engagement with regulated entities and the broader community, and the importance of maintaining trust and confidence in regulatory settings. In Resource Management Guide – Regulator Performance (RMG128), the Australian Government identified 3 principles of regulatory best practice. The AER applies these principles in how we undertake our work.

Principle 1: Continuous improvement and building trust

Principle 1 asks regulators to adopt a whole-of-system perspective, continuously improving their performance, capability and culture, to build trust and confidence in Australia's regulatory settings.

Trust is an emotive outcome of reputation which we measure as trust in the AER to do the right thing by consumers via our survey of key stakeholders. Stakeholders have high levels of trust in the AER, with two-thirds giving a high rating of 7 or more out of 10, resulting in a trust score of 75%. Network stakeholders rated us highest, with a trust score of 83%, followed by government stakeholders at 82%. Governments' high levels of confidence in the AER were demonstrated throughout the year – for example, in supporting several new policy proposals that uplifted our resourcing to operationalise certain requirements arising from energy ministers' post-2025 reforms; improve the regulation of gas pipelines; and assist in the delivery of the government's community battery program and the Energy Price Relief Plan.

Key actions

In 2022–23 we demonstrated our commitment to continuous improvement and building trust by:

- implementing the Better resets handbook, including providing pre-lodgement guidance to Essential and Endeavour Energy by applying the early signals pathway. By providing feedback to these businesses earlier in the regulatory process, they were able to garner consumer insights that resulted in regulatory proposals that better reflected the long-term interests of consumers and required more efficient, targeted assessment
- introducing a formal pre-lodgement engagement process and a standardised pricing model to be used by all electricity distributors for submitting their annual pricing proposals. These innovations assist in facilitating the submission of higher quality pricing proposals, more timely AER approvals and improving the presentation of pricing outcomes for all stakeholders
- releasing our Towards Energy Equity – A Strategy for an Inclusive Energy Market. The strategy is focused on reducing barriers to participation, supporting consumers experiencing payment difficulty, ensuring the consumer voice is heard in sector reforms and improving affordability by reducing the cost to serve energy consumers. In May 2022 we formed a community of consumers with lived experience of vulnerability in the energy market. The research obtained from this community helped us deepen our understanding of consumers and support the towards energy equity strategy

- undertaking a mid-plan refresh of our Strategic Plan 2020–2025. The refresh will ensure our strategic objectives and priorities continue to be fit for purpose and appropriately reflect our progress against the plan as well as change in our operating environment and new functions conferred on us by governments. All AER employees had the opportunity to make input to the strategy refresh
- actively sharing learning and insights by participating in the biannual (Australian) Utility Regulators Forum (URF) as well as the global regulatory energy transition ‘Accelerator’ (an initiative to share capabilities and knowledge in regulation as governments around the world strive to decarbonise energy markets).

Principle 2: Risk based, and data driven

Principle 2 requires regulators to maintain essential safeguards, using data and digital technology to manage risks proportionately to minimise regulatory burden and to support those they regulate to comply and grow.

We use 2 questions in our stakeholder survey to provide headline measures of the AER’s performance as a risk-based and data-driven regulator. Overall, there are high levels of agreement among our stakeholders that the AER is data driven. Two-thirds gave a rating of 7 or more out of 10, resulting in a score for evidence-based working and decision making of 74%. Government stakeholders expressed the most positive view (86%). The score from retailers was weakest (52%). 62% of our key stakeholders agree that the AER manages risk proportionately by maintaining essential safeguards while minimising regulatory burden. Government stakeholders held the most positive view, with a score for risk-based working of 82%.

Key actions

Compliance and enforcement outcomes are key to achieving the AER’s objective of ensuring that energy consumers are better off, now and in the future. The AER’s approach to compliance and enforcement is outlined in our Compliance and Enforcement Policy.

Each year the AER articulates annual compliance and enforcement priorities that guide our enforcement work and proactive compliance efforts. The identification of these priorities is strongly informed by risk of harms which we monitor via various intelligence sources including our retail self-reporting regime, consumer complaints, ombudsman and consumer intermediary data and our various market monitoring roles across the energy sector.

The AER’s compliance and enforcement priorities for 2022–23 were as follows:

1. Effective identification of residential consumers in financial difficulty and offer of payment plans that have regard to the consumers capacity to pay.
2. Improve outcomes for consumers in embedded networks, including by enabling access to ombudsman schemes.
3. Focusing on registered generators’ compliance with offers, dispatch instructions, obligations relating to bidding behaviour and providing accurate and timely capability information to AEMO.
4. Ensure service providers meet information disclosure obligations under Part 23 of the National Gas Rules.
5. Ensure timely and accurate gas auction reporting and demand forecasting in downstream wholesale gas markets by registered participants.

Throughout 2022–23, in response to harms identified through our data-driven approach, the AER delivered appropriate and proportionate compliance and enforcement outcomes in line with our Compliance and Enforcement Policy and published compliance and enforcement priorities. In 2022–23 we were successful in maintaining our focus on these risk-based priorities, with 65% of all compliance and enforcement work delivered against our stated priorities.

The outcomes we achieved included audits, education initiatives, publishing 21 compliance bulletins and guidance notes, administrative outcomes, court enforceable undertakings, over \$1 million in infringement notice penalties and filing 3 legal proceedings in the Federal Court.

As noted elsewhere in this report, many outcomes focused on consumers experiencing vulnerability including an interim guidance note on new family violence protections, instituting proceedings against energy retailers for failing to comply with overcharging obligations, and the issuing of infringement notices for alleged breaches of consumer life support obligations.

The AER also remained focused on monitoring compliance to ensure a secure and reliable energy supply. Outcomes in this area included instituting proceedings against energy companies for alleged breaches of their obligations relating to providing contingency frequency control ancillary services and the release of the findings of the AER's investigation of market events that led to the suspension of the National Energy Market (NEM) last year.

The AER's compliance and enforcement functions were also integral to ensuring that gas markets operated efficiently and competitively across the financial year. These included instituting proceedings in relation to alleged breaches surrounding Day Ahead Auction pipeline capacity and issuing 10 infringement notices for alleged gas demand forecasting breaches in short-term trading markets.

We also continued to improve our reliance on data and digital technology with the delivery of a centralised case management system to support compliance and enforcement capability, with additional enhancements to come in 2023–24. This allows simplified investigation and case management, reduces duplication and automates some processes. The use of portals (for the collection of data from industry participants) will also reduce regulatory burden.

The AER has started implementing its data strategy through projects that include the development of foundational digital capabilities for data acquisition, data analytics and reporting. The AER has also established the framework for the ongoing assessment of our data maturity. We have received approval for a first pass business case for digital transformation. The AER has the authorisation to put forward a second pass business case in the budget for the 2024–25 financial year and got funding of \$1 million to develop the business case.

Principle 3: Collaboration and engagement

Principle 3 provides that regulators should be transparent and responsive, implementing regulation in a modern and collaborative way. This means that regulators will engage genuinely with stakeholders and listen to feedback; provide guidance and information to help regulated entities understand their obligations; and be transparent in their decision making.

Overall, stakeholders continue to rate the AER highly for the effectiveness of our stakeholder engagement. Two-thirds gave a high rating of 7 or more out of 10, resulting in a score of 68%.

Key actions

In 2022–23 we demonstrated our commitment to collaboration and engagement by:

- enhancing our Default Market Offer (DMO) education program. In March we published a DMO factsheet explaining the electricity price safety net. The factsheet outlined what a DMO is, who it applies to, what it means for the consumer and how it is determined. Alongside this we also held a public forum on 31 March to outline principles in price determination and explaining wholesale costs. The forum was well received with over 80 attendees
- consulting with the Customer Consultative Group (CCG). The CCG is a key source of consumer insights and intelligence for the AER and helps to ensure consumers' voices are heard and considered in our work and decisions. CCG membership provides participating organisations and individuals with the opportunity to inform the AER about issues that impact the groups they represent. It also provides members with the opportunity to meet with other consumer representatives to discuss key energy consumer issues
- seeking stakeholder feedback by publishing issues papers, draft guidelines and draft regulatory decisions. In all cases we invite, accept and consider feedback we receive in written submissions. In many instances we also run workshops to provide the opportunity for discussion and feedback. Examples where stakeholder feedback shaped the final product in 2022–23 include:
 - the fifth DMO determination
 - review of consumer protections for future energy services
 - AER's revised connection charge guideline for electricity retail customers
- publishing a range of guidelines and compliance bulletins designed to help energy businesses understand their obligations and responsibilities. In 2022–23 this included compliance bulletins on new obligations under gas pipeline reforms, retailers communicating pricing changes, gas transparency measures reform, and gas markets demand forecasting. We also published the:
 - Retail Exempt Selling Guideline
 - Reliability Compliance Procedures and Guidelines
 - Transmission Efficiency Test and Revenue Determination Guideline – Non-contestable Network Infrastructure Projects
 - Connection charge guideline
 - Electricity transmission ring-fencing guideline
 - Amended Better Bills Guideline
 - NSW Electricity Infrastructure Fund Contribution Determination Guideline
 - Expenditure forecast assessment guideline for electricity distribution.

4

Management and accountability



Senior leadership

The ACCC's senior leadership comprises members of the Commission (appointed by the Governor-General) and Senior Executive Service (SES) employees.

The AER's senior leadership comprises the AER Board (appointed by the Governor-General) and SES employees who are engaged exclusively on work carried out by the AER.

Details of the leadership structure are in Figure 2.1 in Part 2.

Australian Competition and Consumer Commission

During 2022–23 the ACCC had the following members:

Table 4.1: ACCC members during 2022–23

Position	Name	Appointed until
Chair	Gina Cass-Gottlieb	20 March 2027
Deputy Chairs	Mick Keogh	29 May 2028
	Catriona Lowe	27 January 2028 [#]
Commissioners [#]	Delia Rickard	26 January 2023
	Anna Brakey	9 December 2025
	Liza Carver	28 February 2027
	Peter Crone	9 December 2025
	Stephen Ridgeway	26 June 2024
Associate Members	Clare Savage	13 October 2024
	Jim Cox PSM	25 June 2024
	Catriona Lowe	2 February 2025 [*]
	Eric Groom PSM	2 February 2025 [^]
	Justin Oliver	2 February 2025
	Lynne Gallagher	5 June 2028
	Jarrod Ball	22 May 2028
	James Cameron	4 August 2023
	Nerida O'Loughlin PSM	13 October 2024
Derek Johnston	31 October 2024	

[#] Catriona Lowe commenced as Deputy Chair of the ACCC on 27 January 2023.

^{*} Catriona Lowe tendered her resignation from the AER Board on 25 January 2023, ending her associate membership of the ACCC Commission, and is now the Deputy Chair of the ACCC.

[^] Eric Groom PSM retired on 31 March 2023.

Biographies – ACCC

Chair



Gina Cass-Gottlieb

Gina Cass-Gottlieb commenced her 5-year appointment as Chair of the ACCC on 21 March 2022.

Before she joined the ACCC, Gina was a senior and founding partner of Gilbert and Tobin's competition and regulation team. Gina has over 25 years' experience advising on a large number of merger, competition and regulatory matters in Australia and New Zealand. She is widely recognised as one of Australia's leading competition and regulatory experts.

Gina was appointed by the Commonwealth Treasurer to the Reserve Bank of Australia's Payments System Board in 2013 and re-appointed in 2018 and 2023. The Payments System Board is the regulator of access to payment systems. Gina was appointed to the Financial Regulator Assessment Authority in September 2021.

Gina chairs the Digital Platforms and Financial Services Inquiry Boards, and is a member of the ACCC's Communications, Consumer Data Right, Enforcement, Infrastructure, and Mergers Review Committees and Childcare Inquiry, Electricity Markets Inquiry and East Coast Gas Market Boards.

Gina holds Bachelor of Economics and Laws degrees from the University of Sydney. Gina was a Fulbright Scholar at UC Berkeley from 1986 to 1987, obtaining a Master of Laws degree, majoring in US competition law, comparative constitutional law, financial institutions regulation and securities regulation.

Gina is the first female Chair of the ACCC, which was established as an independent statutory authority in 1995.

Deputy Chairs



Mick Keogh

Mick Keogh was appointed to the ACCC in February 2016, and then as Deputy Chair of the ACCC in 2018, with responsibility for small business and agriculture. He was reappointed in May 2023 for 5 years.

Mick has a long and diverse history of involvement with the small business and agriculture sector, including periods of employment as a business consultant, and in advocacy and advisory roles to policymakers and governments. He has also chaired a number of Australian Government inquiries and ministerial advisory boards. He is currently a member of the Australian Government's Emission Reduction Assurance Council, and a Board member of the Food Agility Co-operative Research Centre.

From 2003 to 2018, he was Executive Director of the Australian Farm Institute, an independent policy research institute that conducted research into strategic policy issues of importance to Australian agriculture and regional Australia. Mick continued in that role until his appointment as Deputy Chair of the ACCC in June 2018.

Mick chairs the Water and Agriculture Board and Competition Exemptions Committee, and is a member of the Enforcement, Compliance and Product Safety, and Mergers Review Committees, and Electricity Markets Inquiry and East Coast Gas Market Boards. Mick's role also includes oversight of the small business, franchising and agriculture units of the ACCC.

Mick was awarded the Order of Australia Medal in 2015. He holds bachelor's and master's degrees in science, both obtained at the University of New South Wales, and a Doctor of Applied Science (honoris causa) from Charles Sturt University.



Catriona Lowe

Catriona Lowe was appointed to the position of ACCC Deputy Chair for a 5-year term on 27 January 2023.

For over 20 years Catriona has had a strong commitment to consumer issues and protection of consumer rights in her varied roles as a regulator, litigator and consumer advocate.

Before joining the ACCC, Catriona was a Board Member of the AER from February 2020. She has also held a non-Executive director role on a range of boards, including the Australian Financial Complaints Authority, the Financial Adviser Standards and Ethics Authority and the Telecommunications Industry Ombudsman. Catriona was also principal of a consumer-focused consulting practice.

From 2006 to 2013 Catriona was Co-CEO of the Consumer Action Law Centre. She has also held senior roles with the Consumers' Federation of Australia and the ACCC.

Over the years Catriona has worked extensively on matters involving consumer focused regulation, behavioural economics and effective enforcement and compliance. She has advocated for consumers across a range of markets including financial services, telecommunications and energy.

Catriona chairs the ACCC's Compliance and Product Safety Committee and sits on numerous ACCC committees and boards, including the Competition Exemptions Committee, Consumer Data Right Committee, Enforcement Committee, Digital Platforms Board, Financial Services Inquiry Board, Childcare Inquiry Board, Electricity Markets Inquiry Board and East Coast Gas Market Board.

Catriona has a Bachelor of Laws from Northern Territory University (now Charles Darwin University).



Delia Rickard

Delia Rickard was appointed to the position of Deputy Chair of the ACCC in June 2012 for a period of 5 years and reappointed for a further 5 years in July 2017. Delia's appointment was extended until 26 January 2023, until the commencement of Catriona Lowe from 27 January 2023. Delia was also an Associate Member of the Australian Communications and Media Authority.

Delia has extensive public service experience. Her passion is for consumer protection and she has worked in a variety of senior roles primarily at the ACCC and the Australian Securities and Investments Commission.

Until her departure from the ACCC in January 2023, Delia chaired the ACCC's Compliance and Product Safety Committee. She also sat on the Competition Exemptions, Communications, Consumer Data Right, and Enforcement Committees, as well as the Digital Platforms, Electricity Markets Inquiry and Financial Services Inquiry Boards.

Delia was awarded the Public Service Medal in 2011 for her contribution to consumer protection and financial services. She has also been awarded the Society of Consumer Affairs Professionals Lifetime Achievement Award. She holds bachelor's degrees in law and arts from the University of New South Wales.

Commissioners



Anna Brakey

Anna Brakey was appointed a Commissioner of the ACCC in December 2020. She is also an Associate Member of the Australian Communications and Media Authority. On 1 March 2022 Anna commenced as an Associate Member of the New Zealand Commerce Commission.

Anna has extensive experience in regulatory economics and public policy with over 25 years of experience working with regulators, government and within the private sector. She has had broad exposure to a wide range of infrastructure industries, including energy, water and transport. Additionally, she has worked on economic reform to social policy.

Prior to starting at the ACCC, Anna worked as an economist at Frontier Economics and held a number of roles at the Independent Pricing and Regulatory Tribunal, including being a deputy Tribunal Member, the Executive Director of Strategy and Economic Analysis and the Chief Operating Officer. Anna's expertise includes the parliamentary committee process, the New South Wales Department of Transport, the Australian Productivity Commission, the Bureau of Industry Economics and the Australian Bureau of Statistics. Additionally, Anna has worked for the Australian Energy Market Commission on reforms to economic regulation and with the New South Wales Treasury on the sale of assets.

Anna chairs the ACCC's Infrastructure Committee, Communications Committee, Electricity Markets Inquiry Board and East Coast Gas Market Board and is a member of the ACCC's Competition Exemptions Committee and Water and Agriculture Board.

Anna holds a Bachelor of Economics from the Australian National University and a Graduate Diploma of Applied Finance and Investment from the Securities Institute of Australia. She is also a graduate of the Australian Institute of Company Directors.



Liza Carver

Liza Carver commenced her role as Commissioner on 1 March 2022.

Liza brings a wealth of experience from her career as a lawyer, including from her former role as Partner of Herbert Smith Freehills. Liza is widely recognised as one of Australia's leading competition law and regulatory specialists.

Liza was also a non-executive Director of the NSW Rail Access Corporation, RailCorp and AirServices Australia.

In addition to her experience in private practice, Liza was an Associate Commissioner with the Trade Practices Commission and the ACCC between 1993 and 1999. Liza was also a Commissioner with the Australian Energy Markets Commission between 2005 and 2008.

Liza's combined experience from her time in private practice and working at the ACCC and the Australian Energy Markets Commission has provided her with a strong insight into competition law.

Liza chairs the ACCC's Enforcement Committee and is a member of the Competition Exemptions, Communications, Mergers Review, Infrastructure, and Compliance and Product Safety Committees and the Digital Platforms, Electricity Markets Inquiry, East Coast Gas Market and Serious Cartels Program Boards.

Liza holds degrees in Economics and Law and a Master of Laws from the University of Sydney.



Peter Crone

Peter Crone was appointed a Commissioner of the ACCC in December 2020.

Peter has more than 30 years of experience in economic policy and commercial strategy at the highest levels of government and business in Australia. He has served as an adviser to state and federal governments, including as Senior Economic Advisor to Australia's Prime Minister from 1997 to 2006, and filled chief economist roles at the Business Council of Australia, Ernst and Young, and Coles Group.

Peter has also been a commercial adviser to a number of superannuation funds on infrastructure investments, and commenced his career at the Commonwealth Treasury as a policy adviser and research economist.

Peter brings deep experience in assessing and explaining economic and regulatory trends at play across markets and industries. His broad experience reflects the economy-wide remit of the ACCC.

Peter chairs the ACCC's Consumer Data Right Committee and Childcare Inquiry Board and is a member of the Mergers Review Committee, as well as the Digital Platforms, Financial Services Inquiry, Electricity Markets Inquiry and East Coast Gas Market Boards.

Peter holds a Master's Degree in Economics from the Australian National University and a Bachelor of Economics (Honours) from the University of Western Australia. He is also a graduate of the Australian Institute of Company Directors.



Stephen Ridgeway

Stephen Ridgeway was appointed a Commissioner of the ACCC in June 2019. On 1 March 2022 Stephen also commenced an appointment as an Associate Member of the New Zealand Commerce Commission.

Stephen brings a wealth of experience from his previous roles as a lawyer in the private and public sectors. He is widely recognised as one of Australia's leading competition and consumer lawyers and an expert in the field. In 2018 Stephen retired as a senior partner at King & Wood Mallesons.

Early in his career, Stephen acted for the ACCC and its predecessor, the Trade Practices Commission, in enforcement litigation as a senior lawyer with the Australian Government Solicitor. After joining private practice in 1998, Stephen had extensive involvement in merger clearance applications in a wide variety of industries. He also had extensive experience in regulatory enforcement actions, including a number of landmark ACCC enforcement matters.

During 2011 and 2012 Stephen was National Chairman of the Competition and Consumer Committee of the Law Council of Australia, and led consultations with the ACCC and Treasury about policy and enforcement matters. He was a member of the Executive Committee of the Business Law Section of the Law Council of Australia from 2016 to 2018.

Stephen chairs the ACCC's Mergers Review Committee, and is a member of the ACCC's Enforcement Committee and Water and Agriculture Board.

Stephen holds a Bachelor of Science (Honours) from the University of New South Wales and a Bachelor of Laws from the Australian National University.

Australian Energy Regulator

The AER Board has 5 members, including the Chair, Clare Savage, and the Deputy Chair, Jim Cox.

Table 4.2: AER Board members during 2022–23

Position	Name	Appointed until
Chair	Clare Savage	13 October 2024
Deputy Chair	Jim Cox PSM	25 June 2024
Members	Catriona Lowe	2 February 2025 [#]
	Eric Groom PSM	2 February 2025 [*]
	Justin Oliver	2 February 2025
	Lynne Gallagher	5 June 2028
	Jarrold Ball	22 May 2028

[#] Catriona Lowe tendered her resignation on 25 January 2023 and is now the Deputy Chair of the ACCC.

^{*} Eric Groom PSM retired on 31 March 2023.

Biographies – AER

Chair



Clare Savage

Clare Savage was appointed Chair of the AER in September 2019.

Over the last 20 years, Clare has acquired significant leadership experience in the Australian energy industry and has worked extensively on a range of energy-related matters.

Before joining the AER, Clare was Deputy Chair of the Energy Security Board.

Other previous roles include Executive Director, Policy, Energy and Climate Change, at the Business Council of Australia; senior executive positions within EnergyAustralia spanning corporate strategy, business development, policy, public and government affairs; and several roles at the Energy Supply Association of Australia, including Chief Executive Officer.

Clare began her career in the public service – initially in the United Kingdom and then at the Department of the Treasury.

Clare has a Bachelor of Commerce (Economics) and a Bachelor of Arts (Politics and History) from the University of Melbourne.

Deputy Chair



Jim Cox PSM

Jim Cox was re-appointed as the Deputy Chair of the AER Board on 5 April 2022 for a further 2-year term commencing 22 April 2022.

Jim has held positions with the Reserve Bank of Australia, the Department of the Prime Minister and Cabinet and the Social Welfare Policy Secretariat of the Department of Social Security. He was a principal economist at the Office of the Economic Planning Advisory Council between 1986 and 1989. Between 1989 and 1992 he was a consultant to the New South Wales Cabinet Office. Jim was Principal Adviser to the Government Pricing Tribunal of New South Wales from 1992 and was a member of the Independent Pricing and Regulatory Tribunal of NSW (IPART) from January 1996 to September 2013. He was Acting Chairman of IPART in 2004, 2009–10 and 2011 and a visiting fellow at Monash University in 1985.

Jim assisted the New Zealand Government with social policy changes during the early part of 1991.

Jim was awarded the Public Service Medal in the Australia Day honours list in 2011 for outstanding public service to IPART.

Members



Catriona Lowe

Catriona Lowe was appointed a member of the AER Board in February 2020, and resigned on 25 January 2023 to commence her role as Deputy Chair of the ACCC.

Before joining the AER she was a non-executive director on range of boards, including the Australian Financial Complaints Authority, the Financial Adviser Standards and Ethics Authority and the Telecommunications Industry Ombudsman. She was also principal of a consumer-focused consulting practice.

Catriona has over 20 years of experience in litigation and consumer advocacy. She was Co-CEO of the Consumer Action Law Centre from 2006 to 2013. She has also held senior roles with the Consumers' Federation of Australia and the ACCC.

Catriona has worked extensively on relevant matters, including consumer-focused regulation, behavioural economics and effective enforcement and compliance. She has advocated for consumers across a range of markets, including financial services, telecommunications and energy.

Catriona has a Bachelor of Laws from Northern Territory University (now Charles Darwin University).



Eric Groom PSM

Eric Groom was appointed a member of the AER Board in February 2020, and retired on 31 March 2023.

Before joining the AER Eric was a senior advisor at Cambridge Economic Policy Associates (CEPA) and consultant to the World Bank. He was also a member of the AER's Consumer Challenge Panel. He has over 35 years of experience as an economist with a focus on regulation, energy efficiency and greenhouse gas emission reduction.

Eric formerly held senior roles at IPART and the World Bank and has managed price reviews in electricity, gas and water.

Eric has worked extensively on a range of relevant energy matters and in 2015 was awarded the Public Service Medal for his contribution to the development of regulation and reduction in greenhouse gas emissions through the Greenhouse Gas Reduction Scheme and Energy Savings Scheme.

Eric has a Bachelor of Economics (Honours) from Sydney University and a Master of Economics from Macquarie University.



Justin Oliver

Justin Oliver was appointed a member of the AER Board in February 2020.

Justin was formerly a partner of MinterEllison, specialising in competition law and energy regulation. Before joining MinterEllison he was the head of the ACCC's regulatory law practice, advising on all aspects of energy, communications and transport regulation, and he became the head of legal for the AER upon its creation in 2005. Justin has also worked as a senior lawyer in the Victorian Department of Premier and Cabinet.

For 2 decades, Justin has acted for governments, regulators and industry participants involved in all parts of Australia's energy sector. He has worked extensively on a range of relevant issues, including gas pipeline access arrangements and electricity network determinations; energy policy reform; and a range of compliance and enforcement issues under laws governing the operation of wholesale energy markets, energy networks and energy retail businesses.

Justin holds a Bachelor of Economics and Bachelor of Laws (Honours) from Monash University.



Lynne Gallagher

Lynne Gallagher was appointed a member of the AER Board in June 2023. Lynne is the Chair of the AER Board's Network Committee and a member of the Enforcement and Compliance Committee.

For over 15 years, Lynne has championed major reforms and systems design change in Australia's energy sector, to achieve better outcomes for people and communities. Before working in the energy sector, Lynne held senior executive leadership roles in business, including in the finance, infrastructure and superannuation sectors, and in the public sector, including Prime Minister and Cabinet and the Treasury.

Prior to joining the AER, from March 2020 Lynne was the Chief Executive Officer of Energy Consumers Australia, the national voice for households and small business energy consumers.

Lynne is an advisory council member at the Monash Energy Institute and Western Sydney University's Urban Transformations Research Centre. She is also a member of Energy Safe Victoria's Future Trends Advisory Council and sits on the Advisory Board for the Pacific Energy Institute.

Lynne holds a Bachelor of Economics from the Australian National University and has completed Harvard University's Applied Behavioural Insights for Public Policy program and the Executive Leadership Program at Mt Eliza Business School.



Jarrod Ball

Jarrod Ball was appointed a member of the AER Board in May 2023.

Prior to joining the AER, Jarrod was Chief Economist at the Committee for Economic Development of Australia (CEDA) leading their economic research and advocacy. He has over 20 years' experience in public policy, government relations and economics, working across state and federal governments and major Australian companies such as EY and BHP. Jarrod has provided economic and policy advice to governments across the energy, transport and telecommunications sectors, including as a lead adviser on microeconomic reform in the Victorian Government.

Jarrod has also held several board and committee positions across government and business and until recently was an Adjunct Associate Professor at Deakin Business School.

Jarrod holds a Masters in Economics from Monash University, and a Bachelor of Business and Bachelor of Arts from the University of Southern Queensland.

Managing the ACCC and AER

Committees

The decision making functions of the ACCC and AER are supported by the agency's committee framework, which comprises statutory committees and corporate governance committees. The ACCC and AER governance structure is shown in Figure 4.1.

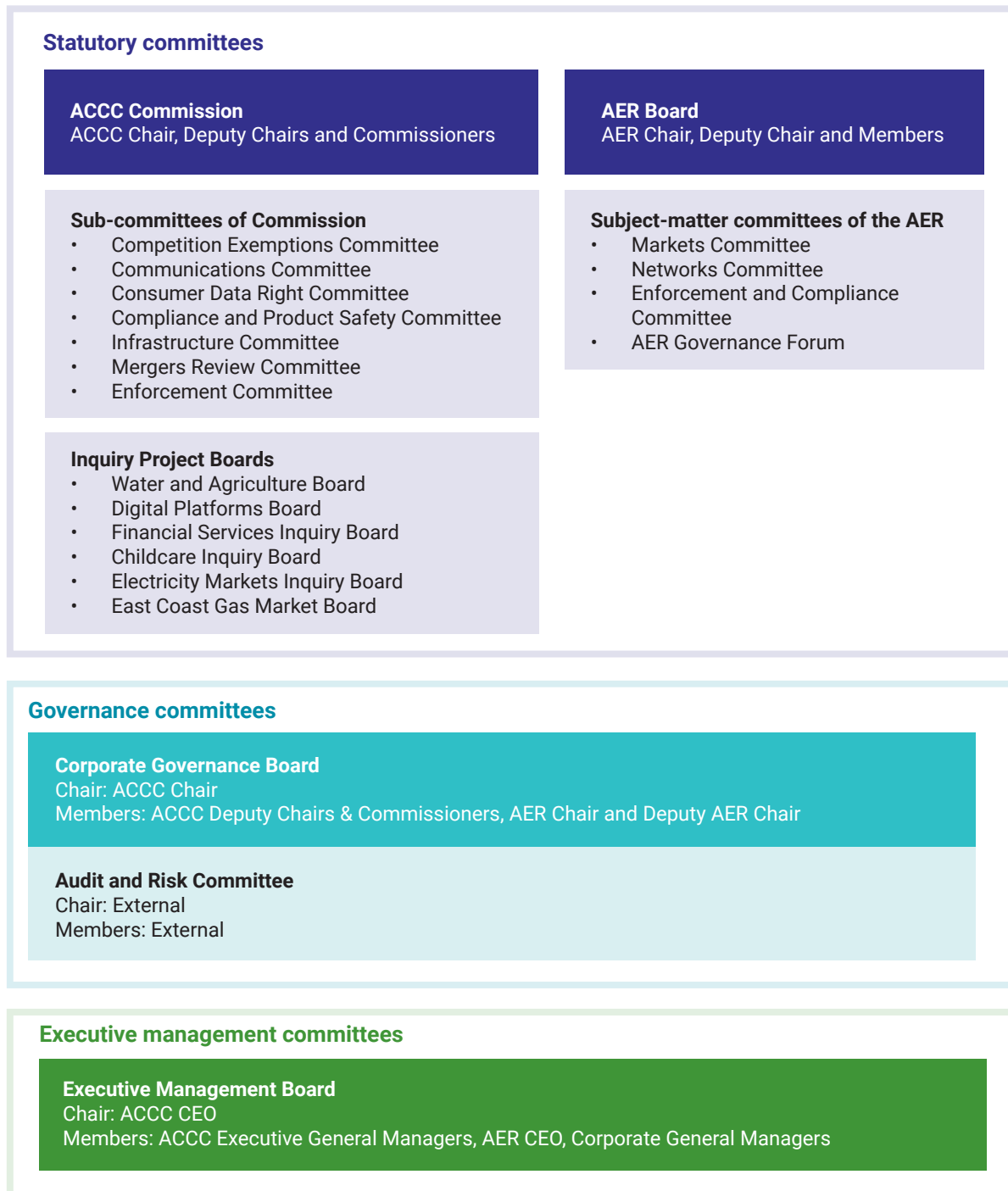
The ACCC makes statutory decisions through the Commission, aided by specialist subject-matter committees, called Commission sub-committees, comprising subgroups of Commissioners, and inquiry project boards.

The AER makes its decisions through its Board. The AER has 3 subject matter committees: the Markets Committee, the Networks Committee and the Enforcement and Compliance Committee. The committees do not make statutory decisions. They are designed to be less formal than the Board and provide the opportunity for early and open discussion of issues.

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

The agency is also governed and its administration is overseen by governance committees.

Figure 4.1: ACCC and AER governance structure



Statutory committees

Commission

The Commission meeting is the forum in which the ACCC exercises its decision making role under the *Competition and Consumer Act 2010* (Cth) (Competition and Consumer Act). Matters presented to the Commission for decision include mergers, authorisations and notifications; whether to begin court proceedings; whether to accept enforceable undertakings; and decisions about access to infrastructure facilities.

The requirements for Commission meetings are contained in section 18 of the Competition and Consumer Act.

The Commission is also discussed in Part 2.

Commission sub-committees

The Commission is supported by several subject-specific sub-committees, which help streamline the Commission's decision making. Each sub-committee comprises full-time members and associate members who have expertise on the particular subjects that the sub-committee considers. Table 4.3 provides a brief explanation of each sub-committee.

Table 4.3: Commission sub-committees – as at 30 June 2023

Committee	Members	Purpose
Competition Exemptions Committee	Mick Keogh (Chair), Liza Carver, Catriona Lowe, Anna Brakey	The committee considers authorisation applications, significant notifications of exclusive dealing and collective bargaining conduct, and significant certification trade mark applications. It subsequently refers all applications for authorisation to the Commission for decision. It sits as a division of the Commission under section 19 of the Competition and Consumer Act.
Communications Committee	Anna Brakey (Chair), Gina Cass-Gottlieb, Liza Carver Associate member: James Cameron	The committee considers regulatory and competition issues arising in the communications sector and refers major statutory matters to the Commission for decision. It sits as a division of the Commission under section 19 of the Competition and Consumer Act.
Consumer Data Right Committee	Peter Crone (Chair), Gina Cass-Gottlieb, Catriona Lowe	The committee oversees the ACCC's role in the implementation and enforcement of the government's Consumer Data Right, including the accreditation of participants and the granting of exemptions. It sits as a division of the Commission under section 19 of the Competition and Consumer Act.
Enforcement Committee	Liza Carver (Chair), Gina Cass-Gottlieb, Stephen Ridgeway, Mick Keogh, Catriona Lowe	The committee oversees the ACCC's enforcement program to ensure compliance with and enforcement of the Competition and Consumer Act. Its recommendations are referred to the Commission for decision.
Compliance and Product Safety Committee	Catriona Lowe (Chair), Mick Keogh, Liza Carver	The committee sets the policy and strategic direction for the ACCC's contacts (for example, through the Infocentre) and compliance and product safety functions; makes decisions about policy recommendations, law reform proposals and the exercise of relevant statutory powers and functions; and oversees the strategic compliance and education functions that relate to consumer, small business and product safety programs.

Infrastructure Committee	Anna Brakey (Chair), Gina Cass-Gottlieb, Liza Carver	The committee oversees access, price monitoring, transport and water regulatory issues.
Mergers Review Committee	Stephen Ridgeway (Chair), Gina Cass-Gottlieb, Mick Keogh, Peter Crone, Liza Carver	The committee considers whether proposed mergers and acquisitions are likely to substantially lessen competition. Decisions to oppose a merger are referred to the Commission for decision.

Inquiry project boards

Under the Competition and Consumer Act, the ACCC can be directed to undertake in-depth inquiries into certain matters and/or long-term monitoring activities into particular sectors. Inquiry project boards have been established to provide strategic guidance in relation to these inquiries.

AER Board

The AER has its own Board which is an independent statutory entity. Board members are appointed under Part IIIAA of the Competition and Consumer Act, following a process outlined in the Australian Energy Market Agreement. The Board comprises 2 Commonwealth members and 3 state/territory members. One member is appointed as the Chair and another member is appointed as the Deputy Chair.

The Board meeting is the forum in which the AER exercises its decision making role under its statutory powers. During these meetings, the Board also provides strategic guidance and direction and oversees the AER's performance.

The Board is supported by 3 subject-specific committees (Networks, Compliance and Enforcement, and Markets) to provide the opportunity for timely strategic direction and informal discussion between Board members and staff.

The Board is also supported by staff who are engaged exclusively on energy matters. It also has access to the ACCC's specialist legal and economic staff.

The Board is further discussed in Part 2.

AER subject-matter committees

The AER has 3 subject-matter committees and a governance forum. Each is chaired by a member of the Board and meets fortnightly.

The committees are less formal than the AER Board and designed as forums for staff to seek early feedback and direction on work in progress prior to papers being submitted to the Board for formal decision.

Table 4.4: Subject-matter committees of the AER – as at 30 June 2023

Committee	Members	Purpose
Markets Committee	Justin Oliver (Chair), Clare Savage, Jarrod Ball	The committee is focused on market entry, exit and structure; wholesale and retail markets; and market performance, including reporting frameworks, publications and intelligence/surveillance.
Networks Committee	Jim Cox (Chair), Jarrod Ball, Lynne Gallagher	The committee is focused on the efficient regulation of monopoly infrastructure and incentivising networks to become platforms for energy services.
Enforcement and Compliance Committee	Justin Oliver (Chair) Jim Cox, Lynne Gallagher	The committee is focused on compliance with and enforcement of the Energy Laws and Rules.
AER Governance Forum	Jim Cox (Chair), Anthea Harris, Clare Savage, Justin Oliver, Lynne Gallagher, Jarrod Ball	The forum is focused on AER's operational performance, strategic risk management, and corporate planning.

Corporate governance

The ACCC and AER corporate governance framework provides oversight of the agency's planning, performance, financial management, resource management and accountability.

The corporate governance framework consists of 2 types of committees:

- governance committees
- executive management committees.

Governance committees

Corporate Governance Board

The Corporate Governance Board is at the apex of the agency's corporate governance structure. During 2022–23 the Board met 8 times. The Corporate Governance Board, advised by the Audit and Risk Committee and by executive management committees, is well equipped to oversee our strong corporate and financial performance.

The responsibilities of the Corporate Governance Board include:

- strategy setting and corporate planning
- internal budgets and resource management
- performance monitoring and reporting
- risk oversight and management
- agency accountability.

Members: Gina Cass-Gottlieb (Chair), AER Chair or nominated representative, ACCC Deputy Chairs, AER Deputy Chair, and all other ACCC Commissioners.

Audit and Risk Committee

The ACCC and AER Audit and Risk Committee provides independent advice to the Accountable Authority (the ACCC Chair) through the Corporate Governance Board. Its functions are to review, report on and provide advice on the agency's financial reporting, performance reporting, risk oversight and management, and systems of internal control. The committee provides an annual written statement to the Chair setting out its views about these 4 areas.

The committee meets at least 4 times per year, as well as holding an additional meeting in August each year focusing on the agency's financial statements and performance reporting. The committee also attends a meeting of the Corporate Governance Board at least once per year.

The Audit and Risk Committee's terms of reference are published on the [ACCC website](#).

Table 4.5: Audit and Risk Committee 2022–23

Member	Qualifications, knowledge, skills or experience	Number of meetings attended/ total number of meetings	Total remuneration (GST inc.)
<p>Don Cross (Chair)</p> <p>Appointed as a member for 2 years commencing 1 June 2020, and as Chair commencing 1 July 2021.</p> <p>Reappointed as Chair from 1 July 2022 to 11 November 2023.</p>	<p>Qualifications in accounting, business administration and fraud control, with strong risk management, audit and financial management expertise. Member of the Australian Institute of Company Directors and the Australian Society of Certified Practising Accountants and fellow of the Institute of Chartered Accountants Australia and New Zealand.</p> <p>Extensive experience delivering internal audit and assurance services to the public sector, including at partnership level. Currently a member or chair of a number of Australian Government department and agency audit committees.</p>	5/5	\$22,138
<p>Paula Goodwin</p> <p>Appointed as a member for 2 years, commencing 1 June 2021.</p> <p>Reappointed as a member from 1 June 2023 to 30 May 2026.</p>	<p>Masters level qualifications in National Security Policy Studies, Human Resources and Business Administration.</p> <p>Senior executive public sector experience includes First Assistant Secretary, People, at the Department of Immigration and Border Protection; Chief Operating Officer at the Department of Energy and Environment; and First Assistant Secretary at the Department of Agriculture, Water and Environment.</p> <p>Current role is Group Executive, Enterprise Services, at the Bureau of Meteorology.</p>	5/5	\$0 [#]
<p>Fiona Bennett</p> <p>Appointed as a member for 2 years, commencing 1 July 2022.</p>	<p>Qualified Chartered Accountant. Fellow of the Australian Institute of Company Directors and Fellow of the Institute of Chartered Accountants Australia and New Zealand.</p> <p>Senior executive positions in various entities, including as Chief Financial Officer. Extensive senior experience in risk management, internal audit, external audit and financial and business management. Experienced non-executive director across ASX-listed companies and government entities. Significant experience as a board chair and chair of audit, risk and compliance committees.</p>	5/5	\$14,700

[#] As an employee of the Australian Public Service (APS), Paula Goodwin does not receive additional remuneration for her role as a member of the ACCC and AER Audit and Risk Committee.

Executive management committees

The ACCC has a number of executive management committees that support the governance committees and help to ensure that the organisation is managed effectively.

Executive Management Board

The Executive Management Board manages the organisation in line with the expectations and limitations set by the Accountable Authority (the ACCC Chair) and the Corporate Governance Board.

Members: ACCC Chief Executive Officer (Chair), Executive General Manager Digital Transformation and Chief Risk Officer, Executive General Managers, AER Chief Executive Officer, Chief Information Officer, Chief Finance Officer, General Manager Executive and Governance, General Manager People and Culture, and General Manager Strategic Communications.

The Executive Management Board is supported by subcommittees, led by senior managers, that provide advice to it as required.

Corporate and business plans

The ACCC and AER Corporate Plan 2022–23 meets the requirements of the *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act) and Public Governance, Performance and Accountability Rule 2014.

Each ACCC division prepares an annual business plan that aligns operations and risk management with the strategic objectives and priorities set out in the [Corporate Plan](#) available on the ACCC website.

Internal audit and risk

Internal audit

The agency's internal audit program provides assurance that we are meeting our obligations and that our internal control environment adds value to the management and governance of our operations.

The ACCC and AER have engaged an internal audit partner (Bellchambers Barrett) for a 2-year period. In collaboration with the audit partner, the agency developed a revised Internal Audit Work Plan for 2022–2024, which was approved by the Chief Risk Officer and endorsed by the Audit and Risk Committee. The audit topics selected for 2022–2024 have been informed by an assurance mapping process. The Audit and Risk Committee oversee the work plan's implementation.

The following internal audits were conducted during 2022–23:

- emergency management and business continuity arrangements
- Energy Made Easy project management
- implementation of internal review recommendations
- complaints handling framework.

Risk management

Risk management is a key element of our strategic planning, decision making and business operations. The ACCC and AER aim for best practice in managing risk by identifying priority exposures, addressing them through improvement strategies and contingency planning, and monitoring and reviewing residual risk.

The ACCC and AER Risk Management Framework has been established to deliver on our obligations under the PGPA Act and was revised to align with the recently updated Commonwealth Risk Management Policy. This framework formalises our risk management practices, sets out our risk appetite and tolerance statements, and details governance structures, policies and strategies to strengthen risk culture and review risk management performance.

The agency has continued to implement its work program to uplift its risk maturity levels. This has included taking steps towards implementing a risk management and compliance Information Technology (IT) tool, and refining its approach to enterprise risk identification, risk assessments and risk reporting.

The agency also participated in the Comcover Risk Management Benchmarking Survey, the results of which positively reflected the agency's work to uplift risk maturity.

Business continuity

Business continuity management strengthens business resilience, lessening the likelihood of incidents that adversely affect ACCC and AER operations and minimising the impact if such incidents occur.

The ACCC and AER Business Continuity Plan was created in April 2017 following a substantial review of the business continuity framework. The plan is regularly reviewed, tested and updated to ensure it continues to meet the needs of the agency.

The agency conducted a business continuity exercise in October 2022 and an internal audit of its business continuity and emergency management arrangements was completed in February 2023. These activities tested whether current arrangements are fit for purpose, including following a shift to hybrid working. The exercise and audit made a number of recommendations to improve the agency's business continuity and emergency management arrangements and as at end of the financial year work was continuing to address these recommendations.

Fraud control

The ACCC and AER Fraud Control Plan 2019–24 directs the agency's approach to fraud prevention, detection, investigation, reporting and data collection procedures in a way that meets our specific needs and complies with the PGPA Act and the Commonwealth Fraud Control Framework.

Ethical standards

Conflicts of interest

The ACCC and AER take our ethical standards seriously in seeking to maintain the public's confidence in the integrity of the agency and our employees.

To maintain confidence in our integrity, the ACCC and AER have strict procedures to identify and manage any interests that may cause an actual, perceived or potential conflict of interest.

As statutory office holders, ACCC Commissioners and AER Board members are held to high standards of conduct. These standards arise from the high ethical standards we set ourselves and are backed by legislation, codes of conduct and the common law. The [Code of Conduct for Commission Members and Associate Members](#) is available on the ACCC website.

ACCC Commissioners and AER Board members must provide an annual statement of material personal interests and not participate in matters in which they, or a member of their immediate family, may have an actual or perceived conflict of interest. ACCC Commissioners and AER Board members are also required to disclose interests not previously declared.

The ACCC and AER employee conflict of interest policy provides for all real, perceived or potential conflicts of interest, and agreed actions to manage any conflicts, to be recorded in an online form for each employee. The policy also provides for reporting on completion of these conflict of interest forms to senior management.

The ACCC and AER employee Conflict of Interest Policy also prohibits share trading in circumstances where an employee may have a real or perceived conflict of interest, including while in possession of commercially sensitive information.

The agency has a Gifts, Hospitality and Benefits Policy for ACCC Commissioners, AER Board members and employees. The ACCC publishes a gifts, hospitality and benefits register, which is updated quarterly for Commissioners and AER Board members.

ACCC Commissioners, AER Board members and employees generally cannot accept gifts, hospitality or benefits because acceptance could compromise, or be seen to compromise, the organisation's integrity. In some limited circumstances, they are able to accept gifts, hospitality or benefits (for example, small gifts offered as thanks for delivering a speech at a conference). To ensure transparency, gifts, hospitality or benefits valued at \$50 or greater received by employees must be formally declared and approval must be obtained before the gift, hospitality or benefit can be retained.

External scrutiny

As an Australian Government agency, the ACCC and AER are held to account for their activities by a variety of external bodies, including:

- courts
- tribunals
- parliament
- agencies with administrative or regulatory oversight, including the Commonwealth Ombudsman and the Australian Commission for Law Enforcement Integrity.

Collectively, these bodies have the power to scrutinise and review our decisions and work, conduct inquiries, and either overturn or uphold decisions of the ACCC and AER or make orders or recommendations for change. Each year the ACCC/AER reports on its interaction with these bodies to ensure transparency on external scrutiny.

Judicial decisions

There were no judicial review decisions in respect of decisions made by the ACCC or AER in 2022–23.

Administrative Appeals Tribunal

There were no decisions by the Administrative Appeals Tribunal in respect of decisions made by the ACCC or AER in 2022–23.

Australian Competition Tribunal

Two ACCC authorisation decisions were before the Australian Competition Tribunal during the year:

- Applications by the Rehabilitation Medicine Society of Australia and New Zealand Ltd and the National Association of Practising Psychiatrists (together, the Review Applicants) for Tribunal review of the ACCC's determination that authorised Honeysuckle Health and nib, with a condition, to form and operate a buying group. The buying group was authorised for 5 years to collectively negotiate and administer contracts with healthcare providers (including hospitals and medical specialists) on behalf of private health insurers (PHIs), medical insurance providers, and other payers of health care. Under the condition, major PHIs, including Medibank, Bupa, HCF, and HBF in Western Australia cannot join the buying group. On 25 May 2022 the Tribunal granted Australian Medical Association Ltd (AMA) leave to intervene in the review proceedings. On 18 July 2022 the Review Applicants jointly filed an application with the Tribunal seeking leave to withdraw their respective applications for review. The application was supported by the Authorisation Applicants and the AMA and was not opposed by the ACCC. As part of their application, the Review Applicants disclosed to the Tribunal that a Deed of Settlement and Release dated 18 July 2022 had been entered into between the Authorisation Applicants, the Review Applicants and the AMA. On 29 July 2022, and on the basis of a Revised Deed, the Tribunal granted the Review Applicants leave to withdraw their applications for review. More information is available on the ACCC's authorisations public register.

- Applications by Telstra Corporation Ltd and TPG Telecom Limited for Tribunal review of the ACCC's decision dated 21 December 2022 not to authorise proposed regional mobile network arrangements between Telstra and TPG. On 21 June 2023 the Tribunal reached its own decision not to authorise the proposed arrangements. More information is available on the ACCC's merger authorisation public register.

There were no AER matters before the Australian Competition Tribunal during 2022–23.

Parliamentary scrutiny

The ACCC and AER are required to regularly attend hearings of the standing committees on economics of both the House of Representatives and the Senate as part of the annual governance, performance and accountability cycle. This provides the opportunity for parliament to examine the operations of the agency and plays a key role in parliamentary scrutiny of the executive.

There were no significant findings regarding the operations of the ACCC and AER in the committees' reports in 2022–23.

Agency capability reviews

There were no ACCC/AER agency capability reviews in 2022–23.

Australian National Audit Office

During the period, the AER continued to progress recommendations made by Auditor-General Report No. 5 of 2020–21, *Regulation of the National Energy Market*, and has finalised all recommendations.

In March 2022 the Australian National Audit Office (ANAO) commenced a performance audit of financial regulators, including the agency, to assess the effectiveness of probity management arrangements. The final audit report was tabled in parliament on 15 June 2023. The report made 5 recommendations, all of which were agreed to by the agency.

Office of the Merit Protection Commissioner

One application for review of an ACCC decision was made to the Office of the Merit Protection Commissioner in 2022–23. The review ceased when the employee was terminated.

Office of the Australian Information Commissioner

Privacy

In 2022–23 the Privacy Commissioner considered 2 ongoing privacy complaints in relation to the ACCC/AER.

Freedom of information

In 2022–23 the Australian Information Commissioner did not publish any decisions under the *Freedom of Information Act 1982* (Cth) (FOI Act) in relation to the ACCC or the AER.

Agencies operating under the FOI Act must publish information for the public as part of the Information Publication Scheme. This requirement has replaced the former requirement to publish a statement in the annual report. Each agency's website must include a plan that shows the information it publishes in accordance with the scheme's requirements. The ACCC and AER's Information Publication Scheme statement pursuant to Part II of the FOI Act can be found on the ACCC's website under [Freedom of information](#).

Commonwealth Ombudsman

The Commonwealth Ombudsman can investigate complaints made about our activities, including those made under the Service Charter of the [ACCC](#) or [AER](#). The Ombudsman's jurisdiction arises under the *Ombudsman Act 1976* (Cth). It can resolve disputes through consultation or negotiation or by making recommendations.

The Commonwealth Ombudsman did not issue any reports in relation to the operations of the ACCC/AER during the relevant period.

Australian Commission for Law Enforcement Integrity

From 1 January 2021 until 30 June 2023 the [Australian Commission for Law Enforcement Integrity](#) (ACLEI) was able to consider, and potentially investigate, alleged corruption issues that related to the performance of a law enforcement function of the ACCC or AER. ACLEI's jurisdiction arose under the *Law Enforcement Integrity Commission Act 2006* (Cth) (LEIC Act) and the Law Enforcement Integrity Commission Regulations 2017.

In 2022–23 the agency had no cause to notify ACLEI of any allegation, or information, raising a corruption issue in relation to the agency under section 19(1) of the LEIC Act. The agency was an active and engaged participant in ACLEI's Corruption Prevention Community of Practice as well as other cross-agency best practice integrity initiatives.

The agency will continue to review its integrity framework with a view to identifying opportunities to improve its systems and further embed an organisational culture that promotes integrity such that integrity-related matters are identified, reported and dealt with appropriately. The agency is implementing processes in accordance with the establishment of the National Anti-Corruption Commission from 1 July 2023 under the *National Anti-Corruption Commission Act 2022* (Cth).

Developments affecting our operations or financial results

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

Significant issues reported to the Minister

There were no significant issues reported to the Minister in 2022–23.

Procurement

The ACCC uses Australian Government resources and spends public money in accordance with the requirements of the PGPA Act and the Commonwealth Procurement Rules.

Responsibility for procurement lies with the financial delegates in each business unit, who have support from a central procurement team. The team advises on risk management, probity, specification development and contract management. Low-risk procurements (valued at less than \$80,000) are managed by business units. Procurements of \$80,000 or more and whole-of-government and panel arrangements are managed by both the business unit and the central procurement team, ensuring that we comply with the Commonwealth Procurement Rules.

Information on all ACCC contracts awarded with a value of \$10,000 (inclusive of GST) or more is available on the AusTender [website](#).

The ACCC had no exempt contracts for the financial year.

There were no contracts of \$100,000 or more (inclusive of GST) during 2022–23 that did not provide for the Auditor-General to have access to the contractor's premises.

The ACCC supports small business participation in the Australian Government procurement market through:

- the Small Business Engagement Principles (outlined in the government's Industry Innovation and Competitiveness Agenda), such as communicating in clear, simple language and presenting information in an accessible format
- the use of the Commonwealth Contracting Suite for low-risk procurements valued under \$200,000
- electronic systems or other processes used to facilitate on-time payment performance, including the use of payment cards.

Small and medium enterprise (SME) and small enterprise participation statistics are available on the Department of Finance [website](#).

Information on procurements expected to be undertaken in the coming year is included in the ACCC's annual procurement plan. This plan is updated as and when circumstances change.

Consultancy and non-consultancy contract expenditure reporting

Consultancy contracts

During 2022–23, 57 new reportable consultancy contracts were entered into involving total actual expenditure of \$4.3 million. In addition, 44 ongoing reportable consultancy contracts were active during the period, involving total actual expenditure of \$3.0 million.

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender [website](#).

Decisions to engage consultants during 2022–23 were made in accordance with the PGPA Act and related regulations, including the Commonwealth Procurement Rules and relevant internal policies.

The agency selects consultants through the use of panel arrangements or by making an open approach to market.

The ACCC and AER engage consultants where we lack specialist expertise or when independent research, review or assessment is required. Consultants typically investigate or diagnose a defined issue or problem; carry out reviews or evaluations; or provide independent advice, information or creative solutions to assist ACCC or AER decision making.

Table 4.6: Expenditure on reportable consultancy contracts 2022–23

	Number	Expenditure \$ (GST inc.)
New contracts entered into during the reporting period	57	4,326,086
Ongoing contracts entered into during a previous reporting period	44	3,022,531
Total	101	7,348,617

Table 4.7: Organisations receiving a share of reportable consultancy contract expenditure 2022–23

Name of organisation	Expenditure \$ (GST inc.)
Energy Market Consulting Associates Pty Ltd (ABN 75 102 418 020)	1,051,640
Ernst & Young (ABN 75 288 172 749)	456,303
FTI Consulting (Australia) Pty Ltd (ABN 49 160 397 811)	385,037
MCC Economics Ltd (ABN Exempt)	368,024
Bluebird Advisory Pty Ltd (ABN 80 651 930 693)	360,188

Non-consultancy contracts

During 2022–23, 739 new reportable non-consultancy contracts were entered into involving total actual expenditure of \$80.0 million. In addition, 532 ongoing reportable non-consultancy contracts were active during the period, involving total actual expenditure of \$70.4 million.

Annual reports contain information about actual expenditure on reportable non-consultancy contracts. Information on the value of reportable non-consultancy contracts is available on the AusTender [website](#).

Table 4.8: Expenditure on reportable non-consultancy contracts 2022–23

	Number	Expenditure \$ (GST inc.)
New contracts entered into during the reporting period	739	80,020,018
Ongoing contracts entered into during a previous reporting period	532	70,442,413
Total	1,271	150,462,431

Table 4.9: Organisations receiving a share of reportable non-consultancy contract expenditure 2022–23

Name of organisation	Expenditure \$ (GST inc.)
Ventia Property Pty Ltd (ABN 16 618 028 676)	17,483,805
Datacom Systems (AU) Pty Ltd (ABN 39 135 427 075)	13,484,333
DLA Piper Australia (ABN 83 508 451 308)	9,463,401
Australian Government Solicitor (ABN 69 405 937 639)	7,599,674
Johnson Winter & Slattery (ABN 70 843 523 318)	7,030,870

Grant programs

Neither the ACCC nor the AER administer any grant programs.

Asset management

The ACCC's asset management framework incorporates asset policies and procedures that enable the efficient acquisition and effective management of assets.

Assets managed by the ACCC include:

- buildings, including fit-outs and leasehold improvements
- infrastructure, plant and equipment, including office equipment, furniture and fittings and computer equipment
- intangibles, including computer software.

In 2022–23 we undertook an independent fair value assessment of our buildings, infrastructure, plant and equipment to confirm the validity and value of our asset portfolio.

Environmental sustainability

The ACCC and the AER remain committed to a workplace culture of environmentally sustainable work practices. We continue to support an internal Environment Network where employees from every level can contribute ideas to facilitate new initiatives and help raise awareness or take action on the environmental issues that are important to them. During 2022–23, the Environment Network:

- established container deposit schemes in a number of office locations
- celebrated World Environment Day with a guest speaker
- held a nation-wide Ride2Work event to encourage sustainable transport
- promoted reduced printing across the organisation
- held a lunchtime staff seminar on the *State of the Environment Report*.

Our environmental strategies to improve sustainability and performance are consistent with government sustainability policies. This includes the Department of Finance procurement guidelines to incorporate sustainability principles in promoting reduced energy consumption and minimising waste where possible. The ACCC has achieved the following environmentally sustainable outcomes:

- the Canberra office is now 100% green energy with the agency investigating the supply of other available green power options nationally
- the transition to a paperless workplace has been accomplished more quickly due to hybrid working arrangements with a substantive reduction of copy paper and stationery usage
- the agency has moved to the installation of LED lighting and motion sensors during fit-outs to reduce energy usage
- under the recent Canberra office fit-out, a number of sustainable initiatives were achieved, including:
 - the project mandated a reuse, repurpose, recycle mythology to reduce landfill waste with the use of existing furniture, stationery and IT resources
 - for each JAC chair purchased, a tree was planted under the onetreeplanted.org initiative to restore habitat and conserve biodiversity
 - the number of photocopiers was halved with each floor now having only 2 copiers instead of 4
 - the introduction of an organic waste stream to kitchen/breakout areas
 - a reduced office footprint from 7,000sqm to 3,500sqm, which was further reduced with a 830sqm sublease due to a decline in office attendance from hybrid working arrangements.

Mandatory environmental reporting

The agency is required to report annually on its environmental performance under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). This is covered in full in Appendix 6.

We adhere to the Energy Efficiency in Government Operations Policy, the Australian Government ICT Sustainability Plan 2010–2015, and the National Packaging Covenant, using recommended key performance indicators to meet requirements.

In line with APS Net Zero 2030, the government’s policy for the Australian Public Service to reduce its greenhouse gas emissions to net zero by 2030, greenhouse gas emissions reporting has been developed with methodology that is consistent with the Whole-of-Australian Government approach. The agency is required to publicly report on our operational emissions. Reporting of the ACCC and AER’s 2022–23 emissions is included below, with the Department of Finance publishing a consolidated whole-of-government report before the end of 2023.

Table 4.10: ACCC and AER’s 2022–23 emissions – location based

Emission Source	Scope 1 kg CO2-e	Scope 2 kg CO2-e	Scope 3 kg CO2-e	Total kg CO2-e
Electricity (Location Based Approach)	N/A	398,436	42,529	440,964
Natural Gas	1,848	N/A	470	2,318
Fleet Vehicles	1,902	N/A	467	2,370
Domestic Flights	N/A	N/A	825,867	825,867
Other Energy	-	N/A	-	-
Total kg CO2-e	3,750	398,436	869,333	1,271,519

The electricity emissions reported above are calculated using the location based approach. When applying the market based method, which accounts for activities such as Greenpower, purchased large-scale generation certificates and/or being located in the Australian Capital Territory, the total emissions for electricity, are below:

Table 4.11: ACCC and AER’s 2022–23 emissions – market based

Emission Source	Scope 1 kg CO2-e	Scope 2 kg CO2-e	Scope 3 kg CO2-e	Total kg CO2-e
Electricity (Market Based Approach)	N/A	321,511	42,553	364,064
Natural Gas	1,848	N/A	470	2,318
Fleet Vehicles	1,902	N/A	467	2,370
Domestic Flights	N/A	N/A	825,867	825,867
Other Energy	-	N/A	-	-
Total kg CO2-e	3,750	321,511	869,357	1,194,619

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

About this strategic objective

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

- Support our people to develop and meet their full potential; and facilitate a diverse, respectful and inclusive culture.
- Modernise our ICT and improve the reliability, flexibility and security of our business and data systems.
- Adapt our ways of working to allow resources to be used flexibly to meet changing priorities and to adopt innovative practices commensurate with the level of risk.
- Further develop our standing as a world-class independent regulator through external engagement and internal collaboration to support robust and transparent decision making that is responsive to complex challenges and demands.

Key activity 7.1: Support our people to develop and meet their full potential; and facilitate a diverse, respectful and inclusive culture

About this key activity

The ACCC's success is driven by our people, and our people are deeply connected to the agency's purpose. We have a values-driven culture that supports strong and productive working relationships and the opportunity to meaningfully apply professional skills. We support this by:

- evolving the frameworks for how we attract, recruit, induct and provide careers for talented people
- ensuring that our employee value proposition is relevant and fit for purpose and that our people bring it to life in everything that they do
- facilitating a safe, flexible workforce and workplace, adapting how we support people given the evolving, ever-changing requirements
- investing in leadership capability, supporting professional development and individual performance with ongoing feedback conversations
- partnering with managers to build their leadership capabilities and embed practical plans for their work areas
- delivering wellbeing and inclusion programs to support people to be their best

- developing and administering employment frameworks and terms and conditions of employment that drive organisational performance
- overseeing that employee-related expenses such as payroll are disbursed accurately and on time (\$196,915,267.12 for 2022–23).

Performance indicators

Table 4.12: Performance indicators for key activity 7.1

Performance indicator	2020–21	2021–22	2022–23	
	Result	Result	Target	Result
7.1.1 The percentage of positive responses to APS Census survey question about whether staff have the appropriate skills, capabilities and knowledge to perform well	ACCC: 89% (2021) Unchanged from 2020 AER: 83% (2021) Up 4% from 2020	ACCC: 86% (2022) Down 3% from 2021 AER: 81% (2022) Down 2% from 2021	Maintain or improve result from previous survey	ACCC: 85% (2023) Down 1% from 2022 AER: 79% (2023) Down 2% from 2022
Methodology: Positive percentages are calculated by adding together positive responses (e.g., strongly agree + agree, or always + often) and dividing by the number of respondents who answered the question				
Data source: APS Census survey				
Related regulator best practice principles: 1				
7.1.2 Agency APS census 'wellbeing' score	ACCC: 78% (2021) Down 3% from 2020 AER: 75% (2021) Up 1% from 2020	ACCC: 78% (2022) Unchanged from 2021 AER: 74% (2022) Down 1% from 2021	Maintain or improve result from previous survey	ACCC: 78% (2023) Unchanged from 2022 AER: 71% (2023) Down 3% from 2022
Methodology: Positive percentages are calculated by adding together positive responses (e.g., strongly agree + agree, or always + often) and dividing by the number of respondents who answered the question				
Data source: APS Census survey				
Related regulator best practice principles: 1				
7.1.3 Percentage of employee formal quarterly performance conversations with managers completed and recorded in people management system	N/A	Q1 ACCC 68% AER 64% Q2 ACCC 85% AER 80% Q3 ACCC 90% AER 88% Q4 ACCC 85% AER 85%	95% by 2 weeks after end of each quarter	Q1 ACCC 89% AER 82% Q2 ACCC 91% AER 92% Q3 ACCC 83% AER 90% Q4 ACCC 86% AER 77%
Methodology: 2 weeks after the end of each quarter, calculate the total number of completed performance plans divided by the total number of eligible performance plans, expressed as a percentage				
Data source: Aurion (Internal HR records management system)				
Related regulator best practice principles: n/a				

Performance indicator	2020–21	2021–22	2022–23	
	Result	Result	Target	Result
7.1.4 Percentage of employees that spent at least 2 days in formal/approved training/ development programs during the (financial) year [#]	N/A	ACCC: 51% [#]	90%	ACCC: 65% [*]
<p>Methodology: The number of ACCC employees who attended and recorded in Timekeeper – the ACCC’s time management system – at least 2 days (10 Timekeeper hours) of learning and development attendance during the period 1 July 2022 to 30 June 2023, divided by the number of ACCC employees who use Timekeeper, expressed as a percentage</p> <p>Data source: Internal records (Dynamics)</p> <p>Related regulator best practice principles: 1</p>				
7.1.5 Percentage of employees who have taken at least 10 days of annual leave during the (financial) year	N/A	ACCC 84% AER 83%	95%+	ACCC 81% AER 82%
<p>Methodology: As at 30 June 2023, each employee’s annual leave takings are totalled and multiplied against their FTE (full time equivalent ratio), the total number of eligible employees with 10+ days of leave is divided by the total number of eligible employees, expressed as a percentage</p> <p>Data source: Aurion (Internal HR records management system)</p> <p>Related regulator best practice principles: n/a</p>				
7.1.6 Continue to reduce the agency’s gender pay gap	5.4% (2020) [^]	6.5% (2021) [^]	Gender pay gap (mean) is less than 5% for at least 2 years by 2025, and less than 3% for 2 years by 2030	5.0% (2022) ^{##}
<p>Methodology: The percentage difference between the average annual, full-time equivalent earnings of male and female employee cohorts (male average minus female average, divided by male average). Consistent with methodology used by the Workplace Gender Equality Agency</p> <p>Data source: Aurion (Internal HR records management system)</p> <p>Related regulator best practice principles: 1</p>				

Performance indicator	2020–21	2021–22	2022–23	
	Result	Result	Target	Result
7.1.7 Percentage of employees who identify as Indigenous	1.6% (Internal HR records management system)	1.4% (Internal HR records management system)	3%	1.6% (Internal HR records management system)
	2.2% (APS census)	1.2% (APS census)		1.4% (APS census)

Methodology: As at 30 June of the reporting period, the total number of employees who identify as Indigenous in Aurion divided by the total number of employees, expressed as a percentage. APS Census – the total number of survey respondents who identify as Indigenous, divided by the total number of survey respondents who answered the question, expressed as a percentage

Data source: Aurion (Internal HR records management system) and APS Census results

Related regulator best practice principles: 1

7.1.8 Percentage of employees who identify as a person with disability	4.2% (Internal HR records management system)	4.4% (Internal HR records management system)	7% by 2025	4.9% (Internal HR records management system)
	8.8% (APS census)	7.4% (APS census)		9.4% (APS census)

Methodology: As at 30 June of the reporting period, the total number of employees who identify as a person with disability in Aurion divided by the total number of employees, expressed as a percentage. APS Census – the total number of survey respondents who identify as a person with a disability, divided by the total number of survey respondents who answered the question, expressed as a percentage

Data source: Aurion (Internal HR records management system) and APS Census results

Related regulator best practice principles: 1

- # Data not available for AER.
- * The result of 65% likely under-reports the actual result, as the data has not been adjusted to account for all employee movements and extended leave throughout the year. The 2021–22 result of 51% is also likely under-reported for the same reason and a second reason. The data is based on what was a new time management recording system introduced across the ACCC from 1 July 2021. Interrogation of the data in preparing end of year results for 2021–22 indicated that not all employees had captured all time appropriate for this performance indicator from the start of the financial year.
- ^ In 2022 we updated our methodology for calculating the gender pay gap to adjust how we control for long periods of Leave Without Pay. Therefore results reported prior to 2022 are not directly comparable as they were calculated differently. The 2020 and 2021 results were previously reported as 5.4% and 6.5%, respectively, however using the updated calculation method, they would have both been 5.2%.
- ## The Workplace Gender Equality Agency methodology is based on calendar year rather than financial year, which is why the result is for 2022 rather than 2023.

Capability building

There was a marginal decrease for the ACCC and AER in the percentage of positive responses to APS Census survey questions about whether staff have the appropriate skills, capabilities and knowledge to perform well (performance indicator 7.1.1). Both the ACCC and AER did achieve high scores of 85% and 79% respectively. This is a strong outcome relative to the APS response of 78%.

The ACCC did not meet the target of 90% of employees spending at least 2 days in formal/approved training/development programs during the financial year (performance measure 7.1.4). The result did improve from last year and continues to be a focus.

As discussed under key activity 7.3, the agency has introduced work area priority training and the Essentials program of training to support capability development.

Further, the introduction of new Power business intelligence (BI) dashboards for senior leaders (also discussed under key activity 7.3) will enable leaders to monitor future progress against the target in real-time.

Work is also underway to enable senior leaders to monitor completion of performance plan discussions in real time (performance indicator 7.1.3). In addition to quarterly performance meetings, managers are also encouraged to provide ongoing feedback to build trust and support capability development.

SES performance and behaviour expectations

Before 1 July 2021 performance pay was a component of agency senior executive remuneration. From 1 July 2021, performance pay was rolled into senior executives' base salary as per a directive from the Australian Public Service Commission (APSC).

Concurrently, senior executives' longstanding performance criteria were reviewed and updated. New key performance indicators and stretch targets were identified from recurrent trends in our APS census results and agency priorities to drive innovation, collaboration, engagement with risk, diversity, inclusion, wellbeing and professional development. Some of the performance indicators were included in the ACCC and AER Corporate Plan 2021–22 and Senior Executive Service (SES) scorecard, which is attached to the general 24.1 determination that details the terms and conditions of employment for all SES employees. The key performance indicators included specific and stretch targets that were monitored and reported to the ACCC CEO.

Wellbeing

We did not meet the target of 95% of employees taking at least 10 days of annual leave during the (financial) year (performance indicator 7.1.5). The new Power BI dashboards for senior leaders (see discussion under key activity 7.3) will also enable leaders to monitor future progress against this target in real-time. Further, strengthened prioritisation processes will support sustainable workload management and employee wellbeing.

The ACCC maintained its APS census 'wellbeing' score of 78% and the AER's APS census 'wellbeing' score marginally decreased to 71% compared to last year (performance indicator 7.1.2). This is a strong result relative to the overall APS score of 68%.

We continued to invest in supporting employee's biopsychosocial health and wellbeing in 2022–23. Central to this has been the continued alignment of our organisational wellbeing approach to the APS Mental Health Capability Framework and the 3-tiered model of workplace mental health detailed in the National Mental Health Commission's Blueprint for Mentally Healthy Workplaces. These tiers are:

- protecting against harm
- preventing injury or illness exacerbation
- promoting health and wellbeing.

This best practice model has informed our approach to addressing all domains of wellbeing, developing a 5-pillar ACCC/AER Employee Wellbeing approach and further enhancing and integrating our ACCC/AER Wellbeing Overview and ACCC/AER Approach to Managing Mental Health in the Workplace.

We provided a range of on-demand virtual training in 2022–23 from expert providers, including sessions focusing on psychological health presented by organisational psychologists. These sessions addressed topics including early intervention, psychological health and safety, managing emotionally charged interactions and maintaining balance and resilience. The mental health and wellbeing app Headspace continued to be popular, with approximately 650 employees using it on a

regular basis. These and other internal and external resources were curated in a new 'Wellbeing Hub' within our learning management system (LMS) for employees to access at times that suit them.

Throughout 2022–23 our Work Health and Safety Officers engaged across the agency to build skill in preventing and mitigating risks to psychological health and safety. The team's work has included:

- commencing a comprehensive psychosocial health and safety risk management process, including identifying hazards at agency and division levels using the People at Work survey tool and facilitating workshops with employees to understand what treatments are required
- conducting tailored educational sessions on topics such as burnout and psychosocial safety
- engaging a broader panel of wellbeing and psychological service providers
- consulting with business areas at high risk from hazards such as vicarious trauma, to develop comprehensive prevention strategies and interventions to minimise risk of injury.

Different avenues of support for wellbeing are actively promoted to employees through our internal communication channels. The agency continued to promote our Employee Assistance Program, tailored psychological support through targeted referrals to other psychological services partners for acute cases, and access to the Peer Support Adviser Network. All Peer Support Advisers are trained in mental health first aid as well as a number of Executive Level (EL) 2 people managers.

In addition to managing psychological matters, the team worked with employees experiencing physical discomfort or injury and exploring early medical, counselling or remedial support. Appendix 4 provides details of injuries, incidents and investigations.

Ergonomic awareness and education continued to be a focus in 2022–23. We provided additional educational materials to assist employees to set themselves up to work safely at home as part of our flexible work offerings. All employees' at-home workstations were reviewed for ergonomic safety and suitability in alignment with guidance from an external ergonomics provider. Comprehensive workstation assessments have also been conducted with employees who have special needs or have experienced pain and discomfort. Employees are also provided with regular communication regarding their personal responsibility to manage their health and wellbeing when working from home.

Employees experiencing injury or illness who required assistance to remain engaged in their work or to return to work were supported through comprehensive in-house case management. This included employees who were experiencing ongoing medical illness, recovery from acute medical conditions, and musculoskeletal injury. Where deemed necessary, these employees also received assistance from an external occupational rehabilitation consultant to promote optimal vocational rehabilitation outcomes.

Diversity and inclusion

Diversity and Inclusion Strategy

The ACCC/AER Diversity and Inclusion Strategy 2021–25 highlights 6 key focus areas; inclusive and safe workplace; increased cultural competence; improved data collection; and greater leadership accountability; greater community representation and reducing the gender pay gap. Our work is evidenced through external commitments made in [the Innovate Reconciliation Action Plan 2022–24](#), [Aboriginal and Torres Strait Islander Attraction, Retention & Development Strategy 2021–24](#), [Disability Action Plan 2022–24](#), [Gender Equity Action Plan 2025](#), [Pride Plan 2022–24](#) and [Cultural Diversity Plan 2022–25](#) and [Narrowing the Pay Gap Strategy](#).

In 2022 we further articulated the roles and responsibilities of diversity and inclusion for our employees, leaders and managers, Diversity Champions and People and Culture Branch.

Progress against the strategy and action plans is discussed quarterly at the agency's Inclusive Workplace Committee.

We are committed to our goal of at least 3% of our employees identifying as Indigenous (performance indicator 7.1.7).

We launched our 2022–24 Innovate Reconciliation Action Plan and refocused our efforts on improving First Nations people attraction, retention and development. We held an in-person conference for our First Nations Employee Network, Mipla Tunapri, that focused on connection to culture and each other as well as planning for the future. We refreshed our approach to our First Nations Employment Register, creating candidate profiles and promoting active use within the agency. This has been supported by SES from each division, actively sponsoring the attraction and retention of First Nations people.

Pay gap – measuring inclusion

We matured our approach to measuring our gender pay gap which allowed us to generate historical pay gap results from before this work commenced in 2018 and restate figures for 2018 to 2021.

As shown in Part 1, our gender pay gap (mean) decreased from 5.2% in 2021²² to 5% in 2022. With our 2022 result, we are on track to achieve the target from the [Narrowing the Pay Gap Strategy](#) of a gender pay gap that has been less than 5% for at least 2 years by 2025 (performance indicator 7.1.6).

Although we are incredibly proud of our results, we are striving to continue to improve by:

- a. looking at respect and gender-based roles in the workplace
- b. establishing a working group to review our pay gap strategy in Quarter 2 of the 2023–24 financial year
- c. considering broader elements of diversity and improved diversity data.

Gender equality and counsel fees

The ACCC and AER make a conscious effort to monitor and increase the number and value of briefs to female barristers, both senior and junior. As a result, since the Legal Services Directions (LSD) targets were introduced in 2018, we have consistently exceeded these targets for both senior and junior female counsel. The agency is committed to meeting equitable briefing targets, which also support the objectives of the Law Council of Australia's Equitable Briefing Policy.

Annual reports published by the Attorney-General's Department show that female barristers are starting to receive more briefs from the Commonwealth and Commonwealth agencies. This has been assisted by the LSD requirement introduced in 2018 that Commonwealth agencies use all reasonable endeavours to select female counsel with relevant seniority, expertise and experience in the relevant practice area, with a view to:

- senior female barristers accounting for at least 25% of all briefs, or 25% of the value of all brief fees paid to senior barristers
- junior female barristers accounting for at least 30% of all briefs, or 30% of the value of all brief fees paid to junior barristers.

The ACCC and AER have demonstrated significant improvement over the last decade. In 2010–11 the ACCC/AER briefed female counsel only 13% of the time, with a value that was only 9% of the overall

22 In 2022 we updated our methodology for calculating the gender pay gap to adjust how we control for long periods of Leave Without Pay. Therefore results reported prior to 2022 are not directly comparable as they were calculated differently. The 2020 and 2021 results were previously reported as 5.4% and 6.5%, respectively, however using the updated calculation method, they would have both been 5.2%.

value of briefs. By 2021–22 this had increased to 40% of briefs going to female counsel, representing 42% of value.

This progress has been achieved because the agency has adopted an equitable briefing practice where ACCC/AER employees and panel firms are encouraged to select female barristers with relevant seniority, expertise and experience in the relevant practice areas where possible. The agency also has a practice of reviewing and seeking to increase rates paid to female counsel where they do not match the rates paid to male counsel of similar seniority and experience.

Disability reporting

Australia's Disability Strategy 2021–2031 (the strategy) is the overarching framework for inclusive policies, programs and infrastructure that will support people with disability to participate in all areas of Australian life. The strategy sets out where practical changes will be made to improve the lives of people with disability in Australia. It acts to ensure the principles underpinning the United Nations Convention on the Rights of Persons with Disabilities are incorporated into Australia's policies and programs that affect people with disability, their families and carers. All levels of government have committed to deliver more comprehensive and visible reporting under the strategy. A range of reports on progress of the strategy's actions and outcome areas will be published and available at <https://www.disabilitygateway.gov.au/ads>.

Disability reporting is included in the Australian Public Service Commission's state of the service reports and the APS Statistical Bulletin. These reports are available at <http://www.apsc.gov.au>.

The ACCC and AER are committed to providing a safe and inclusive culture and work environment where all employees feel they can self-identify and report a disability.

Our target is that by 2025, 7% of our employees will identify as a person with disability (performance indicator 7.1.8). Based on our 2022 census results, 9.4% of our employees identify as a person with disability. Our internal HR records management system recorded a lower result of 4.9%.

We have commenced work to improve our reporting capability so we can gain a better understanding of our people's needs that goes beyond the state of the service report requirements.

APS Values and Code of Conduct

The ACCC and AER are committed to driving a respectful culture which upholds and promotes the behaviours specified in the APS Values and Code of Conduct.

Employees learn about the APS Values and Code of Conduct as part of corporate induction. Additional awareness training is offered through online courses, cultural awareness workshops and presentations, and leadership training.

The Appropriate Workplace Behaviour Policy and Guidelines provide a framework to ensure that all employees are aware of their obligations and avenues for reporting inappropriate behaviour.

Alleged misconduct by employees may be dealt with under the APS Code of Conduct. In 2022–23 the agency commenced investigating 2 potential breaches of the code. One resulted in termination of employment.

Our employee profile

More information on our employees and employee profile is in Part 1 and Appendix 2.

Figure 4.2: Age profile of ACCC employees at 30 June 2023

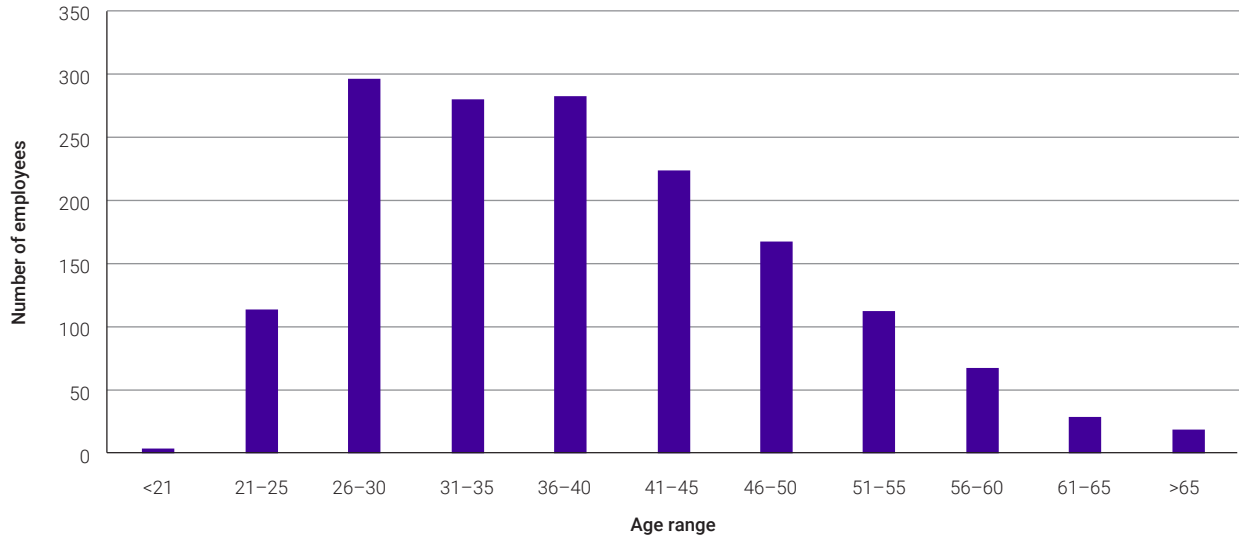
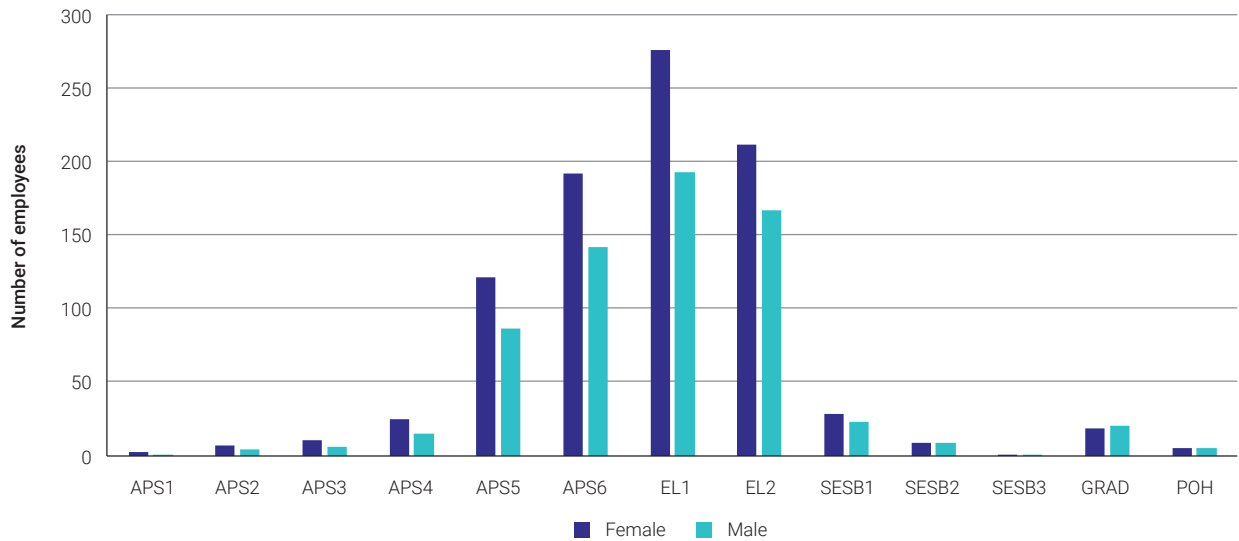


Figure 4.3: Gender profile of ACCC employees at 30 June 2023



Note: POH = public office holder.

Table 4.13: ACCC turnover according to separation type 2022–23

Separation	Classification	Number of employees
External transfer or promotion	Non-SES	49
	SES	1
Retirement	Non-SES	2
	SES	1
Contract expired	Non-SES	20
Resignation	Non-SES	82
	SES	2
Other	Non-SES	3
Total		160

Table 4.14: AER turnover according to separation type 2022–23

Separation	Classification	Number of employees
External transfer or promotion	Non-SES	13
Retirement	Non-SES	3
Contract expired	Non-SES	1
Resignation	Non-SES	42
	SES	1
Other	Non-SES	1
Total		61

Employment agreements and remuneration

Enterprise agreement

The ACCC Enterprise Agreement 2016–2019 (EA) came into effect in December 2016 and continues to operate in conjunction with a *Public Service Act 1999* (Cth) section 24.1 determination from August 2019 that supplements the agreement’s existing salary and allowance entitlements. The operation of the agreement was further extended via the APS interim arrangements.

The EA has a nominal expiry date of 21 December 2022. The [Public Sector Interim Workplace Arrangements 2022 \(Interim Arrangements\)](#) gave ACCC/AER employees a 3% pay rise on 22 December 2022 while the approach to service-wide bargaining was under development.

In March 2023 the government released a comprehensive approach to workplace relations in the Commonwealth – the Public Sector Workplace Relations Policy 2023. The policy sets out the approach to reducing fragmentation of pay and conditions across the APS over time. The APS policy enables agencies to continue negotiating for agency-level conditions, where necessary, to facilitate the agency’s operating model.

In accordance with section 174 of the *Fair Work Act 2009* (Cth), a [Notice of Employee Representational Rights \(NERR\)](#) was issued to all ACCC/AER APS employees who will be covered by the proposed enterprise agreement to be bargained.

The ACCC/AER is committed to ensuring bargaining occurs effectively and efficiently. We are actively engaging with the Australian Public Service Commission's Workplace Relations Taskforce to assist the APS Chief Negotiators in their role as the employer bargaining representative for APS-wide bargaining.

Key activities include:

- ensuring employee bargaining representatives are recognised and provided with support to engage with employees and attending the bi-weekly bargaining meetings
- facilitating consideration of proposals from employee bargaining representatives by the APS Commission Workplace Relations Taskforce
- providing relevant information to all ACCC/AER employees and employee bargaining representatives as appropriate
- bargaining for agency-specific terms and conditions on behalf of the ACCC/AER.

Senior executive remuneration

Remuneration for ACCC and AER members is determined by the Remuneration Tribunal in accordance with:

- the *Remuneration Tribunal Act 1973* (Cth)
- the [Remuneration Tribunal \(Remuneration and Allowances for Holders of Full-time Public Office\) Determination 2022](#).

Mandatory executive remuneration reporting is detailed in Appendix 2.

Determinations

SES employees are subject to individual determinations covering remuneration, leave and a range of other employment conditions. Determinations are made in accordance with the *Public Service Act 1999* (Cth) and the ACCC/AER SES remuneration policies, and approved by the Chief Executive Officer or Chair. Other benefits covered in SES determinations can include allowances, performance pay and superannuation.

Common law contracts and Australian Workplace Agreements

No employees were covered by common law contracts or Australian Workplace Agreements in 2022–23.

Non-salary benefits

Non-salary benefits provided to employees under the EA include:

- options for flexible work, including home based
- ability to work part-time
- flexible working arrangements
- access to different leave types
- influenza vaccinations
- access to a broad range of professional development that enables mobility across the agency and the broader APS
- access to the Employee Assistance Program.

Key activity 7.2 Modernise our ICT, improve the reliability, flexibility and security of our business and data systems, and enhance our data capabilities

About this key activity

The agency is transforming its information and communication technology (ICT), data technologies and business systems to deliver on our business objectives. In October 2020 the ACCC commenced a 4-year business transformation program – the Working Smarter Program. The Working Smarter Program embraces digital and emerging trends such as automation, builds on our data skills and technology and increases our resilience through improving our security posture.

The Working Smarter Program is aligned to the agency’s ICT Strategy 2021–24 and Data Strategy 2021–25, which underpin the objectives and key activities of the ACCC and AER. The Data Strategy focuses on strengthening our data infrastructure and solutions, maturing our data culture and literacy, and further investing in data governance and cutting-edge advanced analytics and visualisation tools.

Performance indicators

Table 4.15: Performance indicators for key activity 7.2

Performance indicator	2020–21	2021–22	2022–23	
	Result	Result	Target	Result
7.2.1 Percentage of positive responses about employee satisfaction with the agency’s ICT (Source: annual IMTS survey of employees)	-	86%	70+% of employees are satisfied with Information and Communication Technology	n/a The survey was not conducted, instead relying on ‘pulse surveys’ to gauge employee satisfaction
Methodology: <i>n/a</i>				
Data source: <i>n/a</i>				
Related regulator best practice principles: <i>n/a</i>				
7.2.2 Number of security awareness activities delivered to drive a security aware culture	-	18	12	18
Methodology: <i>Count of security awareness activities recorded</i>				
Data source: <i>Internal records</i>				
Related regulator best practice principles: <i>1 and 2</i>				
7.2.3 Overall ICT system availability	-	99.48%	99.9%	99.91%
Methodology: <i>Total number of minutes during the time period minus the number of minutes of outages divided by the total number of minutes during the time period, expressed as a percentage</i>				
Data source: <i>Audit logs from internal IT systems such as on-site servers and external IT systems such as those associated with telephony and cloud services</i>				
Related regulator best practice principles: <i>1</i>				

We exceeded the targets for number of security awareness activities (performance indicator 7.2.2) and overall ICT system availability (performance indicator 7.2.3).

The agency is significantly improving its ICT through implementation of a range of new and updated technologies to provide a stable ICT experience, reduce risk, enhance our data analysis capabilities, and lay the foundation for future efficiencies. Modernised ICT is also creating a better employee experience by enabling greater flexibility and stronger collaboration within teams as we embrace 'hybrid' ways of working.

In addition to the results for the performance indicators, the below achievements are examples of work undertaken to allow us to be more effective in achieving our purpose:

- the launch of a new Online Submission Portal to enable external parties to lodge non-merger authorisations, notifications and submissions
- implementation of new functionality to significantly improve how we search, monitor and report on undertakings
- the new acc.gov.au website, which went live on 31 March 2023. The new website is a bottom-up rebuild that includes the new visual identity and a more accessible and engaging design
- the Working Smarter Program continuing to support a range of market inquiries and monitoring functions that are assisting the agency's data transformation. Each will leverage new technology in how the agency receives, validates, stores and analyses data
- development of a new Investigation Case Management System to support the work of the cartels team. This will continue to be expanded upon to support the work of all enforcement teams
- continuation of the security uplift of our systems with the implementation of Multi-Factor Authentication for all staff. Less evident, though no less important, are changes to remove/update outdated technologies; patch our systems to protect them from security vulnerabilities; reduce the 'attack surface' by limiting what runs on our laptops; restrict the levels of access privileged users have to our system; and continually back up information in the event it needs to be recovered.

Key activity 7.3: Adapt our ways of working to allow resources to be used flexibly to meet changing priorities and to adopt innovative practices commensurate with the level of risk

About this key activity

In an environment of constrained resources and rapidly changing challenges, it will be increasingly crucial for the ACCC to work in a way that allows resources to be prioritised and allocated flexibly. We will do this by ensuring that:

- we allocate resources to priority areas by:
 - using data-driven intelligence to ensure that decisions are linked to impact and resources are linked to decisions
 - increasing sharing of resources across the agency
 - flexible budget allocation
- our organisational structure is adaptive and supports new ways of working and faster decision making by:
 - using agile purpose-based teams where appropriate
 - ensuring decision making structures and frameworks remain fit for purpose
 - devolved decision making where possible
- innovation and acceptable risk taking is part of our culture by:
 - dedicating resources to innovation and continuous improvement
 - trialling new ways of working through experimentation and iteration
 - developing and maintaining informal processes where appropriate.

Performance indicators

Table 4.16: Performance indicators for key activity 7.3

Performance indicator	2020–21	2021–22	2022–23	
	Result	Result	Target	Result
7.3.1 The percentage of positive responses to APS Census survey questions about whether staff consider that the agency provides opportunities for temporary moves within the agency	ACCC: 71% (2021) AER: 61% (2021)	ACCC: 83% (2022) Up 12% from 2021 AER: 67% (2022) Up 6% from 2021	Maintain or improve result from previous survey	n/a The question was not included in the 2023 APS Census survey
Methodology: <i>n/a</i>				
Data source: <i>n/a</i>				
Related regulator best practice principles: <i>n/a</i>				
7.3.2 The percentage of positive responses to APS Census survey question about whether staff consider that their workgroup can readily adapt to new priorities and tasks	ACCC: 91% AER: 86%	ACCC: 88% (2022) Down 3% from 2021 AER: 87% (2022) Up 1% from 2021	Maintain or improve result from previous survey	ACCC: 90% (2023) Up 2% from 2022 AER: 86% (2023) Down 1% from 2022
Methodology: <i>Positive percentages are calculated by adding together positive responses (e.g., strongly agree + agree, or always + often) and dividing by the number of respondents who answered the question</i>				
Data source: <i>APS Census survey</i>				
Related regulator best practice principles: <i>1</i>				
7.3.3 The percentage of positive responses to APS Census survey questions about whether staff consider that people are encouraged to come up with new and innovative ways of working	Innovation index score ACCC: 71% (2021) AER: 66% (2021)	Innovation index score ACCC: 69% (2022) Down 2% from 2021 AER: 69% (2022) Up 3% from 2021	Maintain or improve result from previous survey	Innovation index score ACCC: 69% (2023) Same as 2022 AER: 68% (2023) down 1% from 2022
Methodology: <i>Sum of the positive scores of all questions in the innovation index, divided by the number of questions in that index. Positive percentages are calculated by adding together positive responses (e.g., strongly agree + agree, or always + often) and dividing by the number of respondents who answered the question</i>				
Data source: <i>APS Census survey</i>				
Related regulator best practice principles: <i>1</i>				

Performance indicators based on the annual APS Census are important for the agency to track performance over time (that is, trend), as well as in comparison to the whole of the APS. In 2023 the ACCC's average percentage of positive results across all census questions was +0.04% higher than in 2022.

There was an increase for the ACCC in positive responses to the survey question about whether workgroups can readily adapt to new priorities and tasks; and a marginal decrease for the AER (performance indicator 7.3.2). The results for both the ACCC and the AER remained high at over 85%.

The agency has a focus on capability building. We developed work area specific training to support the technical knowledge requirements and priorities of work areas. Work area priority training builds on the Essentials program of training, which is a curated program of training for all ACCC and AER employees to support core capability development and the agency's values and objectives; and to help the agency meet its expectations and obligations as an APS agency.

Both the ACCC and AER remained relatively stable in relation to positive responses to survey questions about whether people are encouraged to come up with new and innovative ways of working (performance indicator 7.3.3).

The ACCC is committed to innovation and continuous improvement. In addition to innovation taking place across the agency, the ACCC's central Strategic Capability team provides dedicated resources to deliver a program of business improvement and capability building projects. The team partners with stakeholders across the agency to deliver sustainable improvements to the agency's ways of working and to support a culture of innovation and continuous business improvement.

Highlights for this year include the team partnering with other Corporate Division branches and our Strategic Data and Analysis Unit to deliver a series of automated Power BI dashboards to better equip our leaders to make data-driven decisions about our workforce. This work also supports the increased focus on prioritisation efforts across the ACCC.

In line with the APS Workforce Strategy 2025, we are committed to becoming a modern, data literate and data-driven agency. The dashboards provide access to real-time data which can be used to inform resourcing decisions and enable more effective forward planning in a manner that aligns with the agency's priorities. The automated dashboards and their purpose include:

- Workforce snapshot – an overview of our people and the makeup of our organisation
- Diversity and inclusion (D&I) – to track our agency's progress towards key D&I targets as outlined in our corporate plan and [Diversity and Inclusion Strategy 2021–25](#)
- Flex, time off in lieu (TOIL) and leave – to offer insight into increases in workload and to help monitor employee health and wellbeing
- Learning and development – to build and grow a skilled and capable workforce and to track ACCC's progress against the learning and development target outlined in our corporate plan.

Key activity 7.4: Further develop our standing as a world-class independent regulator through external engagement and internal collaboration to support robust and transparent decision making that is responsive to complex challenges and demands

About this key activity

The ACCC has been a successful regulator, but this is no guarantee of future effectiveness.

We will nurture our role as an independent regulator with robust and transparent decision making that is responsive to complex challenges and demands. We will do this by ensuring that:

- our role is clear in the face of expanding responsibilities
- our connections with external stakeholders provide opportunities for better outcomes for consumers
- our internal collaboration assists us to achieve better outcomes for consumers
- we remain objective by making decisions based on data and evidence
- change is managed successfully in the organisation.

As discussed in Part 4, the agency's corporate governance framework equips us to achieve our strategic objectives while complying with legislation and policies, maintaining performance standards and making the most cost-effective use of resources.

ACCC Commissioners are full-time statutory office holders and collectively have a clear view of the connection between their statutory decision making on particular matters and the overall staffing resources and legal expenditure implications of those decisions.

Performance indicators

Table 4.17: Performance indicators for key activity 7.4

Performance indicator	2020–21	2021–22	Target	2022–23
	Result	Result		Result
7.4.1 The percentage of positive responses to APS Census survey questions about whether staff consider that the agency actively creates links across the organisation to make sure knowledge and expertise is easily accessible	ACCC: 55% (2021) AER: 44% (2021)	ACCC: 62% (2022) Up 7% from 2021 AER: 52% (2022) Up 8% from 2021	Maintain or improve result from previous survey	ACCC: 63% (2023) Up 1% from 2022 AER: 53% (2023) Up 1% from 2022
Methodology: Positive percentages are calculated by adding together positive responses (e.g., strongly agree + agree, or always + often) and dividing by the number of respondents who answered the question				
Data source: APS Census survey				
Related regulator best practice principles: 1				
7.4.2 ACCC Effectiveness Survey 'index score' that the ACCC's engagement with key stakeholders is effective	-	-	80+	79.6
Methodology: The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2022–23 survey results				
Data source: ACCC Effectiveness Survey				
Related regulator best practice principles: 3				
7.4.3 ACCC Effectiveness Survey 'index score' that the ACCC is responsive to changes in its operating environment to meet complex challenges and demands	-	-	70+	69
Methodology: The index score is the mean (average) response for the question/s across respondents (using the numerical score from the 5-point response scale) transformed into a 0- to 100-point scale. Future targets are set based on 2022–23 survey results				
Data source: ACCC Effectiveness Survey				
Related regulator best practice principles: 1 and 2				

There was a marginal increase for both the ACCC and AER in the percentage of positive responses to APS Census survey questions about whether staff consider that the agency actively creates links across the organisation to make sure knowledge and expertise is easily accessible (performance indicator 7.4.1).

The ACCC is continuing to enhance its ways of working to allow resources to be prioritised and allocated flexibly, including through strengthened prioritisation processes and making better use of data. For example, most ACCC employees are required to record time spent on cases and projects, and we have developed better reporting for senior leaders regarding use of agency resources. This assists the agency to ensure our people can be optimally deployed across projects and divisions in a way that aligns with the agency's highest priorities.

As noted in Part 3, the ACCC undertook the ACCC Effectiveness Survey in 2023. While the main focus of the survey was on stakeholder perceptions of the effectiveness of the ACCC's performance against our strategic objectives and key activities, a series of ACCC-wide questions were asked of respondents.

For the effectiveness survey questions we partially met the target index score of 80 achieving an index score of 79.6 for indicator 7.4.2, we also partially met the target index score of 70 achieving an index score of 69 for indicator 7.4.3. The independent report on findings from the [2023 Effectiveness Survey](#) is published on the ACCC's website.

As outlined in Part 2, the ACCC hosts a wide range of consultative committees with external stakeholders that provide opportunities for sharing of information and ideas that contribute to achieving better outcomes for consumers, as does our international engagement detailed throughout Part 3 of this annual report.

5

Financial statements





INDEPENDENT AUDITOR'S REPORT

To the Treasurer

Opinion

In my opinion, the financial statements of the Australian Competition and Consumer Commission (the Entity) for the year ended 30 June 2023:

- (a) comply with Australian Accounting Standards – Simplified Disclosures and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Entity as at 30 June 2023 and its financial performance and cash flows for the year then ended.

The financial statements of the Entity, which I have audited, comprise the following as at 30 June 2023 and for the year then ended:

- Statement by the Accountable Authority and Chief Financial Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement;
- Administered Schedule of Comprehensive Income;
- Administered Schedule of Assets and Liabilities;
- Administered Reconciliation Schedule;
- Administered Cash Flow Statement; and
- Notes to the financial statements, comprising a summary of significant accounting policies and other explanatory information.

Basis for opinion

I conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. My responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of my report. I am independent of the Entity in accordance with the relevant ethical requirements for financial statement audits conducted by the Auditor-General and his delegates. These include the relevant independence requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)* (the Code) to the extent that they are not in conflict with the *Auditor-General Act 1997*. I have also fulfilled my other responsibilities in accordance with the Code. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Accountable Authority's responsibility for the financial statements

As the Accountable Authority of the Entity, the Chair is responsible under the *Public Governance, Performance and Accountability Act 2013* (the Act) for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards – Simplified Disclosures and the rules made under the Act. The Chair is also responsible for such internal control as the Chair determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Chair is responsible for assessing the ability of the Entity to continue as a going concern, taking into account whether the Entity's operations will cease as a result of an administrative restructure or for any other reason. The Chair is also responsible for disclosing, as applicable, matters related to

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going concern and using the going concern basis of accounting, unless the assessment indicates that it is not appropriate.

Auditor's responsibilities for the audit of the financial statements

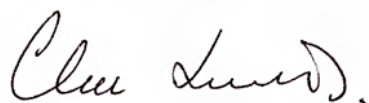
My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian National Audit Office Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

As part of an audit in accordance with the Australian National Audit Office Auditing Standards, I exercise professional judgement and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control;
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control;
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Accountable Authority;
- conclude on the appropriateness of the Accountable Authority's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Entity's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Entity to cease to continue as a going concern; and
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with the Accountable Authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

Australian National Audit Office



Clea Lewis
Executive Director

Delegate of the Auditor-General
Canberra

23 August 2023

CONTENTS

Certification

Primary financial statements

- Statement of Comprehensive Income
- Statement of Financial Position
- Statement of Changes in Equity
- Cash Flow Statement
- Administered Schedule of Comprehensive Income
- Administered Schedule of Assets and Liabilities
- Administered Reconciliation Schedule
- Administered Cash Flow Statement

Overview

Notes to the financial statements

1. Departmental Financial Performance

- 1.1 Expenses
- 1.2 Own-Source Revenue

2. Departmental Financial Position

- 2.1 Financial Assets
- 2.2 Non-Financial Assets
- 2.3 Payables
- 2.4 Leases
- 2.5 Other Provisions

3. Assets and Liabilities Administered on Behalf of Government

- 3.1 Administered - Financial Assets

4. Funding

- 4.1 Appropriations

5. People and Relationships

- 5.1 Employee Provisions
- 5.2 Key Management Personnel Remuneration

6. Managing Uncertainties

- 6.1 Contingent Assets and Liabilities

7. Other Information

- 7.1 Budgetary Reporting
- 7.2 Current / Non-current Classification of Assets and Liabilities
- 7.3 Net Cash Appropriation Arrangements

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2023 comply with subsection 42(2) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act) and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the Australian Competition and Consumer Commission will be able to pay its debts as and when they fall due.



Michael John Keogh
Acting Chair and Accountable Authority

23 August 2023



Peter Maybury
Chief Financial Officer

23 August 2023

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Statement of Comprehensive Income

for the year ended 30 June 2023

	Notes	2023 \$'000	2022 \$'000	Original Budget \$'000
NET COST OF SERVICES				
Expenses				
Employee benefits	1.1A	199,323	172,185	185,033
Suppliers	1.1B	103,836	99,679	102,729
Depreciation and amortisation	2.2A	29,971	29,729	31,599
Settlement of litigation		16,476	3,475	-
Finance costs		1,008	1,022	745
Impairment of non-financial assets	2.2A	-	97	-
Total expenses		350,614	306,187	320,106
Own-source income				
Own-source revenue	1.2	8,169	4,236	2,700
Total own-source income		8,169	4,236	2,700
Net (cost of) services		(342,445)	(301,951)	(317,406)
Departmental appropriations	4.1A	297,810	288,855	290,455
Surplus/(Deficit)		(44,635)	(13,096)	(26,951)
OTHER COMPREHENSIVE INCOME				
Items not subject to subsequent reclassification to net cost of services				
Changes in asset revaluation surplus		-	(823)	-
Total comprehensive income/(loss)		(44,635)	(13,919)	(26,951)

The above statement should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Statement of Financial Position

as at 30 June 2023

	Notes	2023 \$'000	2022 \$'000	Original Budget \$'000
ASSETS				
Financial assets				
Cash and cash equivalents		2,207	2,113	2,113
Trade and other receivables	2.1	103,738	105,792	112,256
Total financial assets		105,945	107,905	114,369
Non-financial assets				
Leasehold improvements	2.2	93,840	82,926	84,457
Plant and equipment	2.2	1,953	2,899	4,382
Computer software	2.2	50,233	42,408	53,872
Prepayments		3,835	2,452	2,452
Total non-financial assets		149,861	130,685	145,163
Total assets		255,806	238,590	259,532
LIABILITIES				
Payables				
Suppliers	2.3	14,055	18,153	13,216
Employee related payables		6,401	4,942	8,521
Total payables		20,456	23,095	21,737
Interest bearing liabilities				
Leases	2.4	84,558	78,673	82,111
Total interest bearing liabilities		84,558	78,673	82,111
Provisions				
Employee provisions	5.1	53,158	51,266	51,413
Other provisions	2.5	16,679	2,902	2,902
Total provisions		69,837	54,168	54,315
Total liabilities		174,851	155,936	158,163
Net assets		80,955	82,654	101,369
EQUITY				
Contributed equity		259,679	216,743	262,409
Reserves		3,738	3,738	3,738
Retained surplus/(Accumulated deficit)		(182,462)	(137,827)	(164,778)
Total equity		80,955	82,654	101,369

The above statement should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Cash Flow Statement

for the year ended 30 June 2023

	2023 \$'000	2022 \$'000	Original Budget \$'000
OPERATING ACTIVITIES			
Cash received			
Appropriations	341,151	294,651	314,973
Sale of goods and rendering of services	3,929	4,534	3,410
Interest	55	66	-
Net GST received	14,031	11,486	14,183
Other	2,153	2,008	-
Total cash received	361,319	312,745	332,566
Cash used			
Employees	195,343	171,820	185,033
Suppliers	123,616	108,705	104,450
Interest payments on lease liabilities	1,008	1,022	-
Section 74 receipts transferred to OPA	26,539	22,693	17,588
Net GST paid	-	-	14,437
Settlement of litigation	-	3,475	685
Total cash used	346,506	307,715	322,193
Net cash from/(used by) operating activities	14,813	5,030	10,373
INVESTING ACTIVITIES			
Cash used			
Purchase of non-financial assets	33,505	24,263	32,266
Total cash used	33,505	24,263	32,266
Net cash from/(used by) investing activities	(33,505)	(24,263)	(32,266)
FINANCING ACTIVITIES			
Cash received			
Principal receipts on sublease receivable	1,026	698	-
Contributed equity	27,283	33,272	32,266
Total cash received	28,309	33,970	32,266
Cash used			
Principal payments on lease liabilities	9,523	14,702	10,373
Total cash used	9,523	14,702	10,373
Net cash from/(used by) financing activities	18,786	19,268	21,893
Net increase/(decrease) in cash held	94	35	-
Cash and cash equivalents at the beginning of the reporting period	2,113	2,078	2,113
Cash and cash equivalents at the end of the reporting period	2,207	2,113	2,113

The above statement should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
Statement of Changes in Equity
for the year ended 30 June 2023

	Retained Surplus			Contributed Equity			Asset Revaluation Reserve			Total Equity		
	2023	2022	Original Budget	2023	2022	Original Budget	2023	2022	Original Budget	2023	2022	Original Budget
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
Opening balance at 1 July 2022	(137,827)	(124,731)	(137,827)	216,743	183,471	216,743	3,738	4,561	3,738	82,654	63,301	82,654
Adjusted opening balance at 1 July	(137,827)	(124,731)	(137,827)	216,743	183,471	216,743	3,738	4,561	3,738	82,654	63,301	82,654
Comprehensive Income												
Surplus/(Deficit) for the period	(44,635)	(13,096)	(26,951)	-	-	-	-	-	-	(44,635)	(13,096)	(26,951)
Other comprehensive income	-	-	-	-	-	-	-	(823)	-	-	(823)	-
Total comprehensive income	(44,635)	(13,096)	(26,951)	-	-	-	-	(823)	-	(44,635)	(13,919)	(26,951)
Transactions with owners												
Contributions by owners												
Equity injection	-	-	-	14,000	1,100	14,000	-	-	-	14,000	1,100	14,000
Departmental capital budget	-	-	-	28,936	32,172	31,666	-	-	-	28,936	32,172	31,666
Total transactions with owners	-	-	-	42,936	33,272	45,666	-	-	-	42,936	33,272	45,666
Closing balance as at 30 June	(182,462)	(137,827)	(164,778)	259,679	216,743	262,409	3,738	3,738	3,738	80,955	82,654	101,369

The above statement should be read in conjunction with the accompanying notes.

Accounting Policy

Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Administered Schedule of Comprehensive Income

for the year ended 30 June 2023

	2023 \$'000	2022 \$'000	Original Budget \$'000
NET COST OF SERVICES			
Expenses			
Impairment and repayment of fees and fines	217	159,243	-
Total expenses	217	159,243	-
Income			
Non-taxation revenue			
Fines, penalties and costs	160,287	259,331	120,724
Other fees and charges	2,288	1,218	-
Total income	162,575	260,549	120,724
Surplus	162,358	101,306	120,724
Total comprehensive income	162,358	101,306	120,724

Administered Schedule of Assets and Liabilities

as at 30 June 2023

	Notes	2023 \$'000	2022 \$'000	Original Budget \$'000
ASSETS				
Financial assets				
Cash and cash equivalents		577	-	-
Trade and other receivables	3.1	31,384	55,992	55,991
Total financial assets		31,961	55,992	55,991
Total assets administered on behalf of Government		31,961	55,992	55,991
Net assets/(liabilities)		31,961	55,992	55,991

The above schedules should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Administered Reconciliation Schedule

for the year ended 30 June 2023

	2023 \$'000	2022 \$'000
Opening assets less liabilities as at 1 July	55,992	46,014
Net (cost of)/contribution by services		
Income	162,575	260,549
Expenses	(217)	(159,243)
Transfers (to)/from the Australian Government		
Appropriation transfers to Official Public Account		
Transfers to Official Public Account	(186,389)	(91,328)
Closing assets less liabilities as at 30 June	31,961	55,992

Accounting Policy

Administered Cash Transfers to and from the Official Public Account

Revenue collected by the Commission for use by the Government rather than the Commission is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Commission on behalf of the Government and reported as such in the schedule of administered cash flows and in the administered reconciliation schedule.

Administered Cash Flow Statement

for the year ended 30 June 2023

	2023 \$'000	2022 \$'000
OPERATING ACTIVITIES		
Cash received		
Fines and costs	184,679	90,120
Other fees and charges	2,288	1,218
Total cash received	186,967	91,338
Cash used		
Refund of fees and fines	1	10
Total cash used	1	10
Net cash from operating activities	186,966	91,328
Cash to Official Public Account		
Appropriations	(186,389)	(91,328)
Total cash to Official Public Account	(186,389)	(91,328)
Cash and cash equivalents at the beginning of the reporting period	-	
Cash and cash equivalents at the end of the reporting period	577	-

This above schedules should be read in conjunction with the accompanying notes.

OVERVIEW

The Australian Competition and Consumer Commission (ACCC) is an Australian Government controlled not-for-profit entity domiciled in Australia, whose role is to enforce the *Competition and Consumer Act 2010* and a range of additional legislation, promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians. The ACCC includes the functions of the Australian Energy Regulator (AER). The AER regulates energy markets and networks under national legislation and rules.

The ACCC has a number of offices across Australia, with its registered office located at Marcus Clarke Street, Canberra.

The continued existence of the ACCC in its present form and with its present programs is dependent on Government policy and on continuing funding by Parliament for the ACCC's administration and programs.

The Basis of Preparation

The financial statements are required by section 42 of the *Public Governance, Performance and Accountability Act 2013*.

The financial statements have been prepared in accordance with:

- *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015 (FRR)*; and
- Australian Accounting Standards and Interpretations - including simplified disclosures for Tier 2 Entities under AASB 1060 issued by the Australian Accounting Standards Board (AASB).

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The financial statements are presented in Australian dollars.

Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in these statements the Commission has made assumptions or estimates in the following areas that have the most significant impact on the amounts recorded in the financial statements:

- With the exception of right-of-use assets that are carried at cost, the fair value of property, plant and equipment (PP&E) is assessed at market or depreciated replacement cost as determined by an independent valuer and is subject to ongoing assessment by the valuer and management between formal valuations.
- Lease liabilities are discounted using the interest rate implicit in the lease. Where the implicit rate cannot be readily determined the discount rate is based on zero coupon bond yields. The discount rate is established on lease commencement and is not changed during the lease term unless there has been a modification to the lease that impacts the remaining lease payments.
- Leave provisions involve assumptions based on the expected tenure of existing staff, patterns of leave claims and payout, future salary movements and future discount rates. Leave liabilities have been determined by reference to the work of an actuary as at 30 June 2021 and are subject to ongoing assessment by management.
- Litigation provisions have been determined by management based on its best estimate of the expenditure required to settle obligations at reporting date. In determining this amount management uses a combination of available information and past experience to identify a range of possible outcomes. Provisions are established at the highest potential cost outcome where there is a considerable chance that option could eventuate. Provisions are reviewed at the end of each reporting period and adjusted to reflect the current best estimate.

Significant Accounting Judgements and Estimates (continued)

Other than those matters discussed above, no accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next reporting period.

Reporting of Administered activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules and related notes.

Administered revenue is generated from fines and costs applied by the courts, or by agreement between the Commission and the defendant. It is recognised when awarded by the courts, or when agreement has been executed. The court costs awarded against the Commission are recorded as a departmental expense.

Authorisation and notification fees are applied when required under the relevant legislation, and are recognised upon receipt. Administered fee revenue is recognised at its nominal amount due less any allowance for bad or doubtful debts. Collectability of debts is reviewed at the end of the reporting period. Allowances are made when collection of the debt is judged to be less rather than more likely.

Except where otherwise stated, administered items are accounted for on the same basis and using the same policies as for departmental items, including the application of Australian Accounting Standards.

New Accounting Standards

AASB 2021-2 Amendments to Australian Accounting Standards – Disclosure of Accounting Policies and Definition of Accounting Estimates

AASB 2021-6 Amendments to Australian Accounting Standards - Disclosure of Accounting Policies: Tier 2 and Other Australian Accounting Standards

The ACCC has adopted two amending standards, AASB 2021-2 and 2021-6, earlier than the application date stated in the standards. These amending standards have been adopted in the 2022-23 financial year.

The amending standards require the disclosure of material, rather than significant, accounting policies. The amendments also clarify what is considered a change in accounting policy compared to a change in accounting estimate. These amending standards have not materially impacted the ACCC financial statements and all disclosures presented within the financial statements have been prepared in accordance with AASB 2021-2 and 2021-6 requirements.

Prior to the signing of the statements by the Accountable Authority and Chief Financial Officer, no other new, revised or amending standards or interpretations were issued that would have a material effect on the Commission's financial statements in the current reporting period.

Departmental Appropriations

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue when the Commission gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.

Related Parties

The Commission is an Australian Government controlled entity. Related parties to this entity are Key Management Personnel including the Portfolio Minister and other Australian Government entities.

Related Parties (continued)

Giving consideration to relationships with related entities, and transactions entered into during the reporting period by the Commission, it has been determined that there are no related party transactions to be separately disclosed.

Financial Instruments

The Commission's financial assets consist of cash and goods and services receivable. Financial assets are recognised when the Commission becomes party to the contract and has a legal right to receive cash. Financial assets are derecognised when the contractual rights to cash flows expire or are transferred. The Commission classifies its financial assets as 'financial assets at amortised cost' with income recognised using the effective interest rate method.

Financial liabilities, consisting of trade payables, are initially measured at fair value net of transaction costs. Trade payables are recognised to the extent the goods and services have been received. Financial liabilities are derecognised upon payment.

Regulatory Charging

Annual carrier licence charges are imposed under the *Telecommunications (Carrier Licence Charges) Act 1997* on participating telecommunication carriers under cost recovery arrangements to recover the costs incurred by the Commission, the Australian Communications and Media Authority (ACMA) and the Australian Government in regulating the telecommunications industry. ACMA undertakes the regulatory charging activity, recovering the Commission's costs on behalf of the Commonwealth. The Commission does not receive any monies direct from external parties.

The departmental costs incurred by the Commission are met out of appropriation funding. The Commission's costs being recovered by ACMA under the 2022-23 Cost Recovery Impact Statement (CRIS), subject to finalisation of the *Telecommunications (Carrier Licence Charges) Act 1997* Determination, is estimated to be \$12.0m (2022: \$11.2m). This cost includes components for the Measuring Broadband Australia program of \$1.8m (2022: \$1.6m) and depreciation expense of \$0.3m (2022: \$0.3m), the latter of which is not appropriation funded.

Once finalised, the 2022-23 CRIS will be available at:

<https://www.acma.gov.au/cost-recovery-implementation-statement-cris>

Events After the Reporting Period

Departmental

The Commission has no departmental events after the reporting date.

Administered

The Commission has favourable judgements by the Courts which have been disclosed in note 6.1.

1. Departmental Financial Performance

This section analyses the financial performance of the Commission for the year ended 30 June 2023

1.1 Expenses	2023	2022
	\$'000	\$'000
1.1A: Employee benefits		
Wages and salaries	153,212	135,659
Superannuation		
Defined contribution plans	19,968	16,808
Defined benefit plans	7,959	6,611
Leave and other entitlements	17,477	12,226
Separation and redundancies	115	333
Other employee benefits	592	548
Total employee benefits	199,323	172,185

Accounting Policy

Accounting policies for employee related expenses is included in the People and Relationships section.

1.1B: Suppliers	2023	2022
	\$'000	\$'000
Goods and services supplied or rendered		
Legal expenses	30,771	25,116
Consultants and contracted services	32,884	38,975
Information technology and communications	19,259	19,651
Property operating expenses	5,170	4,715
Travel expenses	4,869	1,625
Employee related expenses	3,635	4,288
Information management expenses	2,232	2,373
Other administration expenses	2,916	2,428
Total goods and services supplied or rendered	101,736	99,171
Other suppliers		
Short-term leases	1,533	7
Workers compensation premiums	567	501
Total other suppliers	2,100	508
Total suppliers	103,836	99,679

1.2 Own-Source Revenue

	2023 \$'000	2022 \$'000
Revenue from contracts with customers		
Secretariat Services - National Competition Council	850	850
Memorandums of Understanding	2,864	1,145
Seminars	397	47
Total revenue from contracts with customers	4,111	2,042
Other revenue sources		
International development funding	2,969	1,634
Finance income	55	66
Resources received free of charge (Remuneration of auditors)	100	115
Other revenue	934	379
Total other revenue sources	4,058	2,194
Total own-source revenue	8,169	4,236

Accounting Policy

Revenue from rendering of services is recognised progressively as the services are provided to the customer where it can be demonstrated that:

- the customer simultaneously receives and consumes the services as they are provided;
- the services create an asset that the customer controls as the asset is created; or
- the services have no alternative use to the ACCC and an enforceable right to payment exists for work completed to date.

The amount of revenue recognised is determined by reference to progress made in satisfying any obligations that exist.

Where the criteria is not met to recognise revenue over time, revenue is recognised at a point in time once any performance obligations are satisfied and control has transferred to the customer.

2. Departmental Financial Position

This section analyses the Commission's assets used to conduct its operations and the operating liabilities incurred as a result.

Employee related information is disclosed in the People and Relationships section.

2.1 Financial Assets

	2023 \$'000	2022 \$'000
Trade and other receivables		
Goods and services	2,549	1,433
Appropriation receivable	93,753	94,902
GST receivable	2,142	3,279
Net investment in sublease	4,811	5,837
Accrued revenue	483	341
Total trade and other receivables (net)	103,738	105,792

Sublease Arrangements

The Commission has a sublease in Canberra that meets the criteria for recognition as a finance lease. Maturity analysis of the remaining payments is outlined below.

	2023 \$'000	2022 \$'000
Maturity analysis of finance lease receivables		
Within 1 year	1,043	1,085
One to two years	1,080	1,040
Two to three years	1,122	1,080
Three to four years	1,165	1,122
Four to five years	503	1,165
More than 5 years	-	503
Total undiscounted lease payments receivable	4,913	5,995
Unearned finance income	(102)	(158)
Net investment in sublease	4,811	5,837

Accounting Policy

Trade receivables are recognised where the right to consideration from the customer is unconditional, with only the passage of time required before payment is due.

Trade and other receivables that are not provided at below market rates and held for:

- the purpose of collecting contractual cash flows; and
- receiving payments that are solely principal and interest

are subsequently measured at amortised cost using the effective interest rate method, adjusted for any impairment allowance.

Trade receivables are assessed for impairment at the end of each reporting period. The Commission applies the simplified approach for trade and other receivables by recognising impairment equal to the lifetime expected credit losses.

Credit terms for goods and services are 30 days (2022: 30 days)

Sublease receivables are recognised where the Commission has transferred substantially all the risks and rewards of the head lease to a sub lessee. Sublease receivables are recognised equal to the lease payments receivable under the sublease, discounted using the same rate applied when calculating the lease liability for the head lease.

2.2 Non-Financial Assets

Reconciliation of the opening and closing balances of property, plant and equipment and intangibles

	Leasehold improvements ¹	Plant and equipment	Computer software	Total
	\$'000	\$'000	\$'000	\$'000
As at 1 July 2022				
Gross book value	116,224	4,309	68,025	188,558
Accumulated depreciation, amortisation and impairment	(33,298)	(1,410)	(25,617)	(60,325)
Total as at 1 July 2022	82,926	2,899	42,408	128,233
Additions				
Purchased or internally developed	7,256	441	24,660	32,357
Right-of-use assets	15,372	-	-	15,372
Depreciation (right-of-use assets)	(9,143)	-	-	(9,143)
Depreciation and amortisation (other assets)	(2,606)	(1,387)	(16,835)	(20,828)
Other movements of right-of-use assets	35	-	-	35
Total as at 30 June 2023	93,840	1,953	50,233	146,026
Total as at 30 June 2023 represented by				
Gross book value	126,519	4,750	92,685	223,954
Accumulated depreciation, amortisation and impairment	(32,679)	(2,797)	(42,452)	(77,928)
Total as at 30 June 2023	93,840	1,953	50,233	146,026

1. Right-of-use assets are disclosed as part of leasehold improvements. Leasehold improvements, plant and equipment may be sold or disposed in 2023-24 coinciding with the termination of some lease arrangements.

2.2 Non-Financial Assets (continued)

Accounting Policy

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Assets are initially measured at their fair value plus appropriate transaction costs.

Asset recognition

Purchases of property, plant and equipment are recognised initially at cost in the statement of financial position. Right-of-use assets arising from leasing arrangements are capitalised on the commencement date based on the initial lease liability less any lease incentives received. These assets are accounted for as a separate asset class to corresponding assets owned outright, but are disclosed as part of leasehold improvements.

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make good' provisions in property leases taken up by the Commission where an obligation to restore the property to its original condition exists. These costs are included in the value of the Commission's leasehold improvements with a corresponding provision for restoration.

The Commission's intangibles comprise purchased and internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Revaluations

Right-of-use assets continue to be carried at cost after initial recognition. All other property, plant and equipment is carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Commission using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates for each class of depreciable assets are based on the following useful lives:

Asset class	2023 and 2022
Leasehold improvements	Lease term
Right-of-use assets	Lease term
Furniture and fittings	10 years
Office equipment	5 years
Computer hardware	3 to 5 years
Computer software	3 to 7 years

2.2 Non-Financial Assets (continued)

Accounting Policy (continued)

Fair Value Measurement

The ACCC engaged the valuation services of Jones Lang LaSalle (JLL) to conduct an independent valuation of the tangible non-financial asset classes. An annual assessment is undertaken to determine whether the carrying amount of the assets is materially different from the fair value. Comprehensive valuations are carried out at least once every three years with a valuation of all tangible property, plant and equipment conducted at 30 June 2021.

The methods utilised to determine and substantiate the unobservable inputs are derived and evaluated as follows:

Physical depreciation and obsolescence - assets that do not transact with enough frequency or transparency to develop objective opinions of value from observable market evidence have been measured utilising the Depreciated Replacement Cost approach. Under the Depreciated Replacement Cost approach the estimated cost to replace the asset is calculated and then adjusted to take into account physical depreciation and obsolescence. Physical depreciation and obsolescence has been determined based on professional judgement regarding physical, economic and external obsolescence factors relevant to the asset under consideration. For all leasehold improvement assets, the consumed economic benefit / asset obsolescence deduction is determined based on the term of the associated lease.

The ACCC's policy is to recognise transfers into and transfers out of fair value hierarchy levels as at the end of the reporting period. Assets with a carrying value of \$0.3m were transferred from level 2 to level 3 in the fair value hierarchy at the end of the current financial year (2022: nil).

Contractual commitments for the acquisition of property, plant and equipment and intangible assets

The Commission has contractual commitments for the acquisition of intangible assets of \$16.0m (2023: \$21.5m), property plant and equipment of \$1.2m (2022: \$0.03m) and leasehold improvements of nil (2022: \$8.0m).

2.3 Payables

	2023 \$'000	2022 \$'000
Suppliers		
Trade creditors and accruals	11,440	14,427
Unearned revenue	2,615	3,726
Total suppliers	14,055	18,153

2.4 Leases

	2023 \$'000	2022 \$'000
Interest Bearing Liabilities		
Leases	84,558	78,673
Total interest bearing liabilities	84,558	78,673

	2023 \$'000	2022 \$'000
Maturity analysis of contractual undiscounted lease cash flows		
Within 1 year	11,933	10,026
Between 1 to 5 years	49,607	42,765
More than 5 years	28,500	29,739
Total undiscounted lease cash flows	90,040	82,530

Accounting Policy

Liabilities arising from leasing arrangements are initially recognised at the present value of any fixed lease payments that are not paid at that date, discounted using either:

- the interest rate implicit in the lease; or
- zero coupon bond yields released quarterly by the Department of Finance (if the implicit rate cannot be readily determined).

Following initial recognition lease liabilities are increased for accrued interest and decreased for any lease payments made. Lease liabilities are also remeasured where there has been a change in the underlying lease payments or lease term. Any adjustment to the liability is first recognised as an adjustment to the corresponding right-of-use asset. If the adjustment would reduce the carrying value of the right-of-use asset below zero, the remaining adjustment is recognised in the Statement of Comprehensive Income.

2.5 Other Provisions

	Provision for settlements \$'000	Provision for makegood \$'000	Total \$'000
As at 1 July 2022	2,636	266	2,902
Additional provisions made	16,476	-	16,476
Amounts used	(1,182)	-	(1,182)
Amounts reversed	(1,454)	(63)	(1,517)
Total as at 30 June 2023	16,476	203	16,679

The Commission currently has 3 agreements (2022: 4) for the leasing of premises which have provisions requiring it to restore the premises to their original condition at the conclusion of the lease.

3. Assets and Liabilities Administered on Behalf of the Government

This section analyses the assets used to conduct operations and the operating liabilities the Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

3.1 Administered - Financial Assets

	2023 \$'000	2022 \$'000
Trade and other receivables		
Fines and costs	211,454	262,566
Total trade and other receivables (gross)	211,454	262,566
Less expected credit loss allowance	(180,070)	(206,574)
Total trade and other receivables (net)	31,384	55,992

Credit terms for fines and costs were within 30 days or as stipulated by court judgements (2022: 30 days).

4. Funding

This section identifies the Commission's funding structure.

4.1 Appropriations

	2023 \$'000	2022 \$'000
4.1A: Annual appropriations ('recoverable GST exclusive')		
Ordinary annual services	297,810	288,855
Capital Budget ¹	28,936	32,172
Equity Injections	14,000	1,100
Section 74 receipts	12,173	10,942
Total appropriation	352,919	333,069
Appropriation applied (current and prior years) ³	353,974	316,138
Variance	(1,055)	16,931

1. Departmental Capital Budgets are appropriated through Appropriation Acts (No.1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts. During 2022-23 the Commission reclassified a portion of capital funding to ordinary annual services funding. This resulted in \$3.000m of current year capital funding being withheld under section 51 of the *Public Governance, Performance and Accountability Act 2013*.

2. Appropriation applied includes use of both current and prior year appropriation funding. The variance in 2021-22 corresponds with a small underspend of cash from ordinary annual services appropriations.

4.1B: Unspent annual appropriations ('recoverable GST exclusive')

	2023 \$'000	2022 \$'000
Departmental		
Appropriation Act (No. 1) 2022-23	12,365	-
Appropriation Act (No. 3) 2022-23	7,625	-
Supply Act (No. 1) 2022-23	11,300	-
Supply Act (No. 2) 2022-23	5,833	-
Supply Act (No.3) 2022-23 ¹	43,120	-
Supply Act (No. 4) 2022-23	8,167	-
Appropriation Act (No. 1) 2021-22	4,952	89,481
Appropriation Act (No. 2) 2021-22	-	1,100
Appropriation Act (No. 3) 2021-22	3,391	4,321
Total departmental	96,753	94,902

1. Unspent balance includes \$3.000m withheld under section 51 of the *Public Governance, Performance and Accountability Act 2013*.

In addition to the unspent appropriations disclosed above, at 30 June 2023 the Commission had cash and cash equivalents of \$2.207m (2022: \$2.113m).

4.1C: Special appropriations - Administered ('recoverable GST exclusive')

	Appropriation applied	
	2023 \$'000	2022 \$'000
Authority: PGPA Act, 2013 s.77		
Type: Refund		
Purpose: To provide for an appropriation where an Act or other law permits repayment of an amount received by the Commonwealth and the Finance Minister is satisfied that, apart from this section, there is no specific appropriation for the repayment.	1	10

5. People and relationships

This section describes a range of employment and post employment benefits provided to our people and our relationships with other key people.

5.1 Employee Provisions

	2023 \$'000	2022 \$'000
Employee provisions		
Leave	53,158	51,072
Separations and redundancies	-	194
Total employee provisions	53,158	51,266

Accounting Policy

Liabilities for short-term employee benefits and termination benefits expected within twelve months of the end of the reporting period are measured at their nominal amounts. Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period.

Leave

The liability for employee benefits includes provision for annual leave and long service leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that will be applied at the time the leave is taken, including the Commission's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination. The leave liabilities have been determined by reference to the work of an actuary as at 30 June 2021. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Superannuation

The Commission's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), the PSS accumulation plan (PSSap), or other superannuation funds held outside the Australian Government. The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap and other superannuation funds are defined contribution schemes. The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in the Department of Finance's administered schedules and notes.

The Commission makes employer contributions to the employees' defined benefit superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The Commission accounts for the contributions as if they were contributions to defined contribution plans. The liability for superannuation recognised as at 30 June represents outstanding contributions.

5.2 Key Management Personnel Remuneration

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the Commission, directly or indirectly, including any director (whether executive or otherwise) of the Commission. The Commission assessed key management personnel to be the members of the Corporate Governance Board, Chief Executive Officer and Chief Financial Officer.

	2023 \$'000	2022 \$'000
Short-term employee benefits	5,379	5,027
Post-employment benefits	714	690
Other long-term employee benefits	130	4
Total key management personnel remuneration expenses	6,223	5,721

The total number of key management personnel that are included in the above table is 12 (2022:12).

The above key management personnel remuneration excludes the remuneration and other benefits of the Portfolio Minister. The Portfolio Minister's remuneration and other benefits are set by the Remuneration Tribunal and are not paid by the Commission.

6. Managing Uncertainties

This section analyses how the Commission manages financial risks within its operating environment.

6.1 Contingent Assets and Liabilities

As at 30 June 2023, the Commission has matters before the Courts alleging breaches of the *Competition and Consumer Act 2010*. These cases are at various stages of completion.

Departmental

In the event of an unfavourable judgement by the Courts, the Commission stands to be liable for court costs. If it had been possible to estimate the amounts of eventual payments these would have been reported as departmental liabilities. The Commission has no quantifiable contingent liabilities arising from court action to report.

Administered

In the event of a favourable judgement by the Courts, the Commission stands to gain by way of penalties or costs awarded. Due to the inherent uncertainty of litigation it was not possible to estimate the value of case outcomes at 30 June 2023.

However, prior to these statements being authorised court judgements have demonstrated that the Commission has quantifiable administered contingent assets totalling \$469.6m (2022: \$74.5m).

Accounting Policy

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

7. Other Information

7.1 Budgetary Reporting

Explanations of major variances between the actual amounts presented in the financial statements and the corresponding original budget amounts.

Departmental Activities

Operating Result

The Commission uses a mix of employees and third party experts to deliver on strategic priorities set out in the Commission's Strategic Direction Statement (Portfolio Budget Statements) and Corporate Plan. During the financial year the Commission continued its approach to increase staffing levels and reduce the use of external suppliers to deliver against its strategic priorities. This shift is reflected in higher employee expenditure and lower consultant and contractor expenditure compared to budgeted amounts.

Consistent with whole of government policy, the Commission is transitioning to a greater use of cloud computing arrangements. As the majority of these arrangements are expensed over the service period, this shift has resulted in higher supplier costs and lower capital costs compared to budget. During the year the Commission reclassified \$3 million of capital funding to operational funding to support the increased use of cloud computing arrangements. It is expected that lower capital expenditure and higher operating expenditure associated with software solutions will continue in future reporting periods.

As part of subsequent budget rounds, the Commission received \$297.8 million in operating appropriation funding compared to \$290.5m included in the original 2022-23 Budget. The additional resourcing has been used to deliver on the Commission's strategic priorities, as set out in Portfolio Budget Statements and the Commission's Corporate Plan.

During the financial year the Commission identified a number of short-term operational pressures being faced during the financial year that were not anticipated at the time of the original budget. The Commission received approval to incur an operating loss of \$6.7 million in 2022-23. The Commission's actual operating loss slightly exceeded this amount due to additional operating costs incurred through the adoption of cloud computing arrangements discussed above. The adjusted operating loss is disclosed in Note 7.3

- The net effect of the above changes have resulted in higher employee costs and similar levels of supplier expenses compared to original budget amounts. These impacts also resulted in an increase in cash used for employees and suppliers compared to the original budget amounts.

As part of normal operations an amount of \$14.0m of GST refunds has been recognised as Section 74 receipts transferred to the OPA and correspondingly drawn down as appropriation funding. Consistent with previous years, GST received from the Australian Taxation Office and swept to the OPA has not been reflected in the budgeted amounts due to its nil impact on total operating cash flows. The budgeted Cash Flow Statement also shows GST flows separately from other transactions, whereas the Cash Flow Statement presented in the financial statements has been grossed up for GST flows where applicable, in accordance with Australian Accounting Standards.

Affected line items: *Employee benefits, Supplier Expenses, Cash Used - Employees, Cash Used - Suppliers, Cash Used - Section 74 Receipts Transferred to the OPA, Total Expenses, Surplus / (Deficit), Total Comprehensive Income (Loss), Departmental Appropriations, Cash Received - Appropriations*

Litigation Contingency Funding

The Litigation Contingency Fund (LCF) is used to strengthen the Commission's capability to deal with major litigation and ensure sufficient reserves are available to fund legal settlements. Additional funding added to the LCF is recognised as contributed equity when received. Settlement of litigation is recognised as an expense in the Statement of Comprehensive Income once the settlement amount can be reliably estimated. Due to the complexity and uncertainty in predicting the future outcome of litigation it is not possible to accurately budget for litigation settlements.

Affected line items: *Other Provisions, Contributed Equity, Settlement of Litigation, Cash Used - Settlement of Litigation, Cash Received - Contributed Equity*

Leasehold Improvements

At the time of developing the original budget the Commission was in the process of negotiating the new Lease arrangement for Canberra. The uncertainties in scope and timing of these arrangements as well as the complexity of accounting for leases and associated right-of-use assets is the primary reason for leasehold improvements being higher than those budgeted.

Affected line items: *Leasehold Improvements*

Administered Activities

The Commission uses a historical average to budget for fees and fines revenue due to the complexity and uncertainty in predicting the future outcome of litigation. The resulting variance between budget and actual fees and fines is a favourable \$41.8m in 2022-23. However, the budget did not anticipate impairments for overdue debtor balances of \$0.2m resulting in a final administered outcome that is different to the budget by \$41.6m.

The final receivables balance is difficult to estimate as it is the balance as at the reporting date which is a factor of the penalties and court costs imposed as well as debtors' ability to pay and the timing of their payments.

Affected line items: *Fees and fines revenue, Impairment of fees and fines, Trade and other receivables.*

7.2 Current / Non-Current Classification of Assets and Liabilities

Departmental	2023 \$'000	2022 \$'000
Assets expected to be recovered in:		
No more than 12 months		
Cash and cash equivalents	2,207	2,113
Trade and other receivables	99,927	101,040
Prepayments	3,774	2,360
Total no more than 12 months	105,908	105,513
More than 12 months		
Trade and other receivables	3,811	4,752
Leasehold improvements	93,840	82,926
Plant and equipment	1,953	2,899
Computer software	50,233	42,408
Prepayments	61	92
Total more than 12 months	149,898	133,077
Total assets	255,806	238,590
Liabilities expected to be settled in:		
No more than 12 months		
Suppliers	14,055	18,153
Employee related payables	6,401	4,942
Leases	10,702	9,135
Employee provisions	12,225	12,058
Other provisions	16,476	2,699
Total no more than 12 months	59,859	46,987
More than 12 months		
Leases	73,856	69,538
Employee provisions	40,933	39,208
Other provisions	203	203
Total more than 12 months	114,992	108,949
Total liabilities	174,851	155,936

Administered	2023 \$'000	2022 \$'000
Assets expected to be recovered in:		
No more than 12 months		
Cash and cash equivalents	577	-
Trade and other receivables	11,478	22,237
Total no more than 12 months	12,055	22,237
More than 12 months		
Trade and other receivables	19,906	33,755
Total more than 12 months	19,906	33,755
Total assets	31,961	55,992

7.3 Net Cash Appropriations Arrangements

	2023 \$'000	2022 \$'000
Total comprehensive income/(loss) - as per the Statement of Comprehensive Income	(44,635)	(13,919)
<i>Plus:</i> Depreciation/Amortisation of assets funded through appropriations (DCB)	20,828	17,187
<i>Plus:</i> Depreciation on right-of-use assets	9,143	12,542
<i>Plus:</i> Principal receipts on sublease receivables	1,026	698
<i>Less:</i> Principal payments on lease liabilities	(9,523)	(14,702)
Net Cash Operating Surplus/(Deficit)	(23,161)	1,806

From 2010-11, the Government introduced net cash appropriation arrangements where revenue appropriations for depreciation/amortisation expenses of non-corporate Commonwealth entities and selected corporate Commonwealth entities were replaced with a separate capital budget provided through equity appropriations. Capital budgets are to be appropriated in the period when cash payment for capital expenditure is required.

The inclusion of depreciation/amortisation expenses related to ROU leased assets and the lease liability principal repayment amount reflects the impact of AASB 16 Leases, which does not directly reflect a change in appropriation arrangements.

The Commission maintains a Litigation Contingency Fund (LCF) to ensure adequate reserves exist to meet the cost of litigation settlements. Additional funding added to the LCF is recognised as contributed equity when received. Except for the first \$1m, the Commission is permitted to incur an operating loss where it is required to pay litigation settlement costs. During 2022-23 the Commission recognised \$16.5m of litigation settlement costs in the Statement of Comprehensive Income.

6

Appendixes



Appendix 1: Entity resource statement and expenses by outcome

Table A1.1: Entity resource statement 2022–23

	Actual available appropriation for 2022–23 \$'000	Payments made 2022–23 \$'000	Balance remaining 2022–23 \$'000
	(a)	(b)	(a) – (b)
Departmental			
Annual appropriations – ordinary annual services ^{**}	434,834	352,874	81,960
Annual appropriations – other services – non-operating [^]	15,100	1,100	14,000
Total departmental annual appropriations	449,934	353,974	95,960
Special accounts	-	-	-
Total special accounts	-	-	-
Total resourcing and payments for ACCC	449,934	353,974	95,960

Supply Act (No. 1) 2022–23, Appropriation Act (No. 1) 2022–23, Supply Act (No. 3) 2022–23, Appropriation Act (No. 3) 2022–23, prior year departmental appropriations and retained revenue receipts under s 74 of the Public Governance, Performance and Accountability Act 2013 (PGPA Act).

* Departmental capital budgets are not separately identified in Appropriation Bill (No.1, 3, 5) and form part of ordinary annual services items. For accounting purposes, this amount has been designated as a 'contribution by owner'.

^ Supply Act (No. 2) 2022–23, Supply Act (No. 4) 2022–23, and Appropriation Act (No. 2) 2021–22.

Table A1.2: Expenses for Outcome 1 2022–23

Outcome 1: Enhanced welfare of Australians through enforcing laws that promote competition and protect consumers, as well as taking other regulatory and related actions including monitoring and market analysis, public education, determining the terms of access to infrastructure services, and discharging regulatory responsibilities governing energy markets and networks	Budget# expenses 2022–23 \$'000	Actual expenses 2022–23 \$'000	Variation 2022–23 \$'000
	(a)	(b)	(a)–(b)
Program 1.1:			
Australian Competition and Consumer Commission			
Departmental expenses			
Departmental appropriation*	218,705	248,237	(29,532)
Expenses not requiring appropriation in the budget year^	27,066	20,928	6,138
Total for program 1.1	245,771	269,165	(23,394)
Program 1.2:			
Australian Energy Regulator (AER)			
Departmental expenses			
Departmental appropriation*	81,690	81,449	241
Total for program 1.2	81,690	81,449	241
Outcome 1 Total by appropriation type			
Departmental expenses			
Departmental appropriation*	300,395	329,686	(29,291)
Expenses not requiring appropriation in the budget year^	27,066	20,928	6,138
Total expenses for outcome 1	327,461	350,614	(23,153)
		2021–22	2022–23
Average staffing level (number)		1,201	1,346

Full-year budget, including any subsequent adjustment made to the 2022–23 Budget at Additional Estimates.

* Departmental appropriation combines ordinary annual services (Appropriation Acts Nos 1, 3 and 5) and retained revenue receipts under s 74 of the PGPA Act.

^ Expenses not requiring appropriation in the budget year are made up of depreciation expenses, amortisation expenses, and audit fees.

Appendix 2: Staffing

Tables A2.1 to A2.16 provide details of the ACCC and AER employees in 2022–23.

Ongoing and non-ongoing employees

Table A2.1: All ongoing employees, current report period (2022–23)

	Man/Male		Woman/Female		Non-binary		Prefers not to answer		Uses a different term		Total
	Full-time	Part-time	Full-time	Part-time	Full-time	Part-time	Full-time	Part-time	Full-time	Part-time	
NSW	90	4	125	17	0	0	0	0	0	0	236
Qld	65	3	122	22	0	0	0	0	0	0	212
SA	61	2	60	14	0	0	0	0	0	0	137
Tas	11	0	14	2	0	0	0	0	0	0	27
Vic	228	10	216	37	0	0	0	0	0	0	491
WA	22	1	22	12	0	0	0	0	0	0	57
ACT	128	10	156	22	0	0	0	0	0	0	316
NT	4	0	4	2	0	0	0	0	0	0	10
External Territories	0	0	0	0	0	0	0	0	0	0	0
Overseas	0	0	0	0	0	0	0	0	0	0	0
Total	609	30	719	128	0	0	0	0	0	0	1,486

Table A2.2: All non-ongoing employees, current report period (2022–23)

	Man/Male			Woman/Female			Non-binary			Prefers not to answer			Uses a different term			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	7	4	11	12	3	15	0	0	0	0	0	0	0	0	0	26
Qld	7	1	8	7	7	14	0	0	0	0	0	0	0	0	0	22
SA	2	0	2	5	2	7	0	0	0	0	0	0	0	0	0	9
Tas	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Vic	13	2	15	7	6	13	0	0	0	0	0	0	0	0	0	28
WA	1	0	1	3	2	5	0	0	0	0	0	0	0	0	0	6
ACT	1	2	3	8	4	12	0	0	0	0	0	0	0	0	0	15
NT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
External Territories	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Overseas	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	31	9	40	42	24	66	0	0	0	0	0	0	0	0	0	106

Table A2.3: All ongoing employees, previous report period (2021–22)

	Man/Male			Woman/Female			Non-binary			Prefers not to answer			Uses a different term			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	68	2	70	120	11	131	0	0	0	0	0	0	0	0	0	201
Qld	52	2	54	99	13	112	0	0	0	0	0	0	0	0	0	166
SA	43	3	46	44	10	54	0	0	0	0	0	0	0	0	0	100
Tas	6	1	7	12	2	14	0	0	0	0	0	0	0	0	0	21
Vic	219	9	228	214	28	242	0	0	0	0	0	0	0	0	0	470
WA	17	1	18	18	6	24	0	0	0	0	0	0	0	0	0	42
ACT	126	5	131	144	34	178	0	0	0	0	0	0	0	0	0	309
NT	3	0	3	6	1	7	0	0	0	0	0	0	0	0	0	10
External Territories	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Overseas	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	534	23	557	657	105	762	0	0	0	0	0	0	0	0	0	1,319

Table A2.4: All non-ongoing employees, previous report period (2021–22)

	Man/Male			Woman/Female			Non-binary			Prefers not to answer			Uses a different term			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
NSW	5	1	6	4	5	9	0	0	0	0	0	0	0	0	0	15
Qld	4	0	4	8	4	12	0	0	0	0	0	0	0	0	0	16
SA	3	0	3	6	1	7	0	0	0	0	0	0	0	0	0	10
Tas	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Vic	6	4	10	5	5	10	0	0	0	0	0	0	0	0	0	20
WA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ACT	5	4	9	8	8	16	0	0	0	0	0	0	0	0	0	25
NT	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
External Territories	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Overseas	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	24	9	33	31	23	54	0	0	0	0	0	0	0	0	0	87

Employees by Australian Public Sector (APS) classification and gender

Table A2.5: Australian Public Service Act ongoing employees, current report period (2022–23)

	Man/Male			Woman/Female			Non-binary			Prefers not to answer			Uses a different term			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES3	1	0	1	1	0	1	0	0	0	0	0	0	0	0	0	2
SES2	9	0	9	9	0	9	0	0	0	0	0	0	0	0	0	18
SES1	24	0	24	28	1	29	0	0	0	0	0	0	0	0	0	53
EL2	158	5	163	176	31	207	0	0	0	0	0	0	0	0	0	370
EL1	180	9	189	213	46	259	0	0	0	0	0	0	0	0	0	448
APS6	126	9	135	155	30	185	0	0	0	0	0	0	0	0	0	320
APS5	79	5	84	97	16	113	0	0	0	0	0	0	0	0	0	197
APS4	10	1	11	18	4	22	0	0	0	0	0	0	0	0	0	33
APS3	2	0	2	3	0	3	0	0	0	0	0	0	0	0	0	5
APS2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
APS1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Graduate	20	1	21	19	0	19	0	0	0	0	0	0	0	0	0	40
Total	609	30	639	719	128	847	0	0	0	0	0	0	0	0	0	1,486

Table A2.6: Australian Public Service Act non-ongoing employees, current report period (2022–23)

	Man/Male			Woman/Female			Non-binary			Prefers not to answer			Uses a different term			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SES2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SES1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
EL2	4	0	4	3	2	5	0	0	0	0	0	0	0	0	0	9
EL1	4	0	4	13	4	17	0	0	0	0	0	0	0	0	0	21
APS6	7	0	7	5	2	7	0	0	0	0	0	0	0	0	0	14
APS5	3	0	3	6	3	9	0	0	0	0	0	0	0	0	0	12
APS4	4	1	5	3	0	3	0	0	0	0	0	0	0	0	0	8
APS3	1	4	5	2	6	8	0	0	0	0	0	0	0	0	0	13
APS2	2	3	5	3	5	8	0	0	0	0	0	0	0	0	0	13
APS1	0	1	1	1	2	3	0	0	0	0	0	0	0	0	0	4
Public Office Holder	6	0	6	6	0	6	0	0	0	0	0	0	0	0	0	12
Total	31	9	40	42	24	66	0	0	0	0	0	0	0	0	0	106

Table A2.7: Australian Public Service Act ongoing employees, previous report period (2021–22)

	Man/Male			Woman/Female			Non-binary			Prefers not to answer			Uses a different term			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES3	1	0	1	1	0	1	0	0	0	0	0	0	0	0	0	2
SES2	10	0	10	6	0	6	0	0	0	0	0	0	0	0	0	16
SES1	22	0	22	22	1	23	0	0	0	0	0	0	0	0	0	45
EL2	133	6	139	134	34	168	0	0	0	0	0	0	0	0	0	307
EL1	158	7	165	194	33	227	0	0	0	0	0	0	0	0	0	392
APS6	114	5	119	155	20	175	0	0	0	0	0	0	0	0	0	294
APS5	71	3	74	111	10	121	0	0	0	0	0	0	0	0	0	195
APS4	16	0	16	20	5	25	0	0	0	0	0	0	0	0	0	41
APS3	1	0	1	2	0	2	0	0	0	0	0	0	0	0	0	3
APS2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
APS1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Graduate	8	2	10	12	2	14	0	0	0	0	0	0	0	0	0	24
Total	534	23	557	657	105	762	0	0	0	0	0	0	0	0	0	1,319

Table A2.8: Australian Public Service Act non-ongoing employees, previous report period (2021–22)

	Man/Male			Woman/Female			Non-binary			Prefers not to answer			Uses a different term			Total
	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	Full-time	Part-time	Total	
SES3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SES2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SES1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
EL2	2	1	3	4	1	5	0	0	0	0	0	0	0	0	0	8
EL1	6	1	7	7	5	12	0	0	0	0	0	0	0	0	0	19
APS6	6	0	6	6	1	7	0	0	0	0	0	0	0	0	0	13
APS5	2	1	3	7	4	11	0	0	0	0	0	0	0	0	0	14
APS4	4	1	5	3	2	5	0	0	0	0	0	0	0	0	0	10
APS3	2	3	5	2	7	9	0	0	0	0	0	0	0	0	0	14
APS2	0	2	2	1	2	3	0	0	0	0	0	0	0	0	0	5
APS1	2	0	2	1	1	2	0	0	0	0	0	0	0	0	0	4
Graduate	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	24	9	33	31	23	54	0	0	0	0	0	0	0	0	0	87

Employment type by full-time and part-time status

Table A2.9: Australian Public Service Act employees by full-time and part-time status, current report period (2022–23)

	Ongoing			Non-ongoing			Total
	Full-time	Part-time	Total ongoing	Full-time	Part-time	Total non-ongoing	Total
SES 3	2	0	2	0	0	0	2
SES 2	18	0	18	0	0	0	18
SES 1	52	1	53	0	0	0	53
EL 2	334	36	370	7	2	9	379
EL 1	393	55	448	17	4	21	469
APS 6	281	39	320	12	2	14	334
APS 5	176	21	197	9	3	12	209
APS 4	28	5	33	7	1	8	41
APS 3	5	0	5	3	10	13	18
APS 2	0	0	0	5	8	13	13
APS 1	0	0	0	1	3	4	4
Graduate	39	1	40	0	0	0	40
Public Office Holder	0	0	0	12	0	12	12
Total	1,328	158	1,486	73	33	106	1,592

Table A2.10: Australian Public Service Act employees by full-time and part-time status, previous report period (2021–22)

	Ongoing			Non-ongoing			Total
	Full-time	Part-time	Total ongoing	Full-time	Part-time	Total non-ongoing	Total
SES 3	2	0	2	0	0	0	2
SES 2	14	0	16	0	0	0	16
SES 1	44	1	45	0	0	0	45
EL 2	267	40	307	6	2	8	315
EL 1	352	40	392	13	6	19	411
APS 6	269	25	294	12	1	13	307
APS 5	182	13	195	9	5	14	209
APS 4	36	5	41	7	3	10	51
APS 3	3	0	3	4	10	14	17
APS 2	0	0	0	1	4	5	5
APS 1	0	0	0	3	1	4	4
Graduate	20	4	24	0	0	0	24
Total	1,191	128	1,319	55	32	87	1,406

Employment type by location

Table A2.11: Australian Public Service Act employment type by location, current report period (2022–23)

	Ongoing	Non-ongoing	Total
NSW	236	26	262
Qld	212	22	234
SA	137	9	146
Tas	27	0	27
Vic	491	28	519
WA	57	6	63
ACT	316	15	331
NT	10	0	10
Overseas	0	0	0
Total	1,486	106	1,592

Table A2.12: Australian Public Service Act employment type by location, previous report period (2021–22)

	Ongoing	Non-ongoing	Total
NSW	201	15	216
Qld	166	16	182
SA	100	10	110
Tas	21	0	21
Vic	470	20	490
WA	42	0	42
ACT	309	25	334
NT	10	1	11
Overseas	0	0	0
Total	1,319	87	1,406

Indigenous employment

Table A2.13: Australian Public Service Act Indigenous employment, current report period (2022–23)

	Total
Ongoing	17
Non-ongoing	9
Total	26

Table A2.14: Australian Public Service Act Indigenous employment, previous report period (2021–22)

	Total
Ongoing	16
Non-ongoing	4
Total	20

Employment arrangements of SES and non-SES employees

Table A2.15: Number of employees covered by each industrial instrument at 30 June 2023

	ACCC Enterprise Agreement 2016–2019	IFAs	Section 24 determinations
APS 1	4	0	0
APS 2	13	0	0
APS 3	18	0	0
APS 4	41	0	0
APS 5	209	0	0
APS 6	334	2	0
EL 1	469	14	0
EL 2	379	71	0
SES 1	0	0	36
SES 2	0	0	18
SES 3	0	0	2
Graduate	40	0	0

Note: IFA = individual flexibility arrangement.

Table A2.16: Salary ranges for APS employees at 30 June 2023

	ACCC Enterprise Agreement 2016–2019	Section 24 determinations
APS 1	\$51,996–\$57,471	
APS 2	\$58,842–\$65,250	
APS 3	\$67,018–\$72,339	
APS 4	\$74,703–\$81,109	
APS 5	\$83,320–\$88,348	
APS 6	\$92,228–\$103,370	
EL 1	\$114,589–\$126,815	
EL 2	\$132,847–\$155,684	
SES 1	-	\$222,888–\$263,396
SES 2	-	\$291,522–\$358,138
SES 3	-	\$387,220–\$406,132
L 1	\$114,589–\$142,545	
L 2	\$150,640–\$159,669	
Graduate	\$65,250–\$74,703	

Performance pay

It is noted that the ACCC and AER no longer pay performance pay at any level of the agency.

Appendix 3: Mandatory executive remuneration reporting

Executive remuneration policies and practices and governance arrangements are disclosed in the annual report in Part 4.

In 2022–23 key management personnel comprised members of the Corporate Governance Board, Chief Executive Officer and Chief Finance Officer as set out in the table below.

Table A3.1: Key management personnel

Name	Position	Term
Gina Cass-Gottlieb	Chair	Full year
Delia Rickard	Deputy Chair	Part year – ceased 27 January 2023
Mick Keogh	Deputy Chair	Full year
Catriona Lowe	Deputy Chair	Part year – appointed 27 January 2023
Stephen Ridgeway	Member	Full year
Anna Brakey	Member	Full year
Peter Crone	Member	Full year
Liza Carver	Member	Full year
Clare Savage	Associate Member	Full year
James (Jim) Cox PSM	Associate Member	Full year
Scott Gregson	Chief Executive Officer	Full year
Peter Maybury	Chief Finance Officer	Full year

The ACCC disclosed key management personnel remuneration in note 5.2 to the financial statements for the period ending 30 June 2023.

Table A3.2: Information about remuneration for key management personnel

Name	Position title	Short-term benefits			Post-employment benefits		Other long-term benefits			Termination benefits	Total remuneration (\$)
		Base salary# (\$)	Bonuses	Other benefits and allowances* (\$)	Superannuation contributions^ (\$)	Long service leave## (\$)	Other long-term benefits				
Gina Cass-Gottlieb	Chair	753,991	-	-	75,467	11,170	-	-	-	840,628	
Della Rickard	Deputy Chair	326,710	-	380	40,246	16,048	-	-	-	383,384	
Mick Keogh	Deputy Chair	519,806	-	-	80,083	14,050	-	-	-	613,939	
Catriona Lowe	Deputy Chair	248,192	-	-	25,026	8,818	-	-	-	282,036	
Stephen Ridgeway	Member	386,761	-	-	75,231	11,515	-	-	-	473,507	
Anna Brakey	Member	541,633	-	-	73,734	9,556	-	-	-	624,924	
Peter Crone	Member	515,484	-	-	73,965	9,556	-	-	-	599,005	
Liza Carver	Member	529,670	-	-	52,344	8,071	-	-	-	590,086	
Clare Savage	Associate Member	492,781	-	-	74,274	11,248	-	-	-	578,302	
James Cox PSM	Associate Member	402,449	-	-	25,390	12,579	-	-	-	440,418	
Scott Gregson	CEO	403,019	-	2,709	73,527	11,029	-	-	-	490,285	
Peter Maybury	CFO	255,271	-	-	44,422	6,420	-	-	-	306,113	

Notes

- # Base salary includes gross salary earned while working plus annual leave accrued.
- * Other benefits and allowances includes car parking benefits that form part of an individual's remuneration package.
- ^ For individuals in a defined contribution scheme, superannuation includes superannuation amounts. For individuals in a defined benefits scheme, superannuation includes the relevant notional employer contribution rate and employer productivity superannuation contribution.
- ## Long service leave includes leave accrued and long service leave.

Table A3.3: Information about remuneration for senior executives

Total remuneration bands	Short-term benefits			Post-employment benefits		Other long-term benefits		Termination benefits		Total remuneration
	Number of senior executives	Average base salary# (\$)	Average bonuses	Average other benefits and allowances*	Average long service leave##	Average other long-term benefits	Average long-term benefits	Average termination benefits	Average total remuneration (\$)	
\$0-\$240,000	19	121,870	-	246	23,970	2,894	-	-	148,980	
\$240,001-\$245,000	1	206,227	-	-	33,579	4,468	-	-	244,274	
\$245,001-\$270,000	5	218,722	-	-	34,611	5,824	-	-	259,157	
\$270,001-\$295,000	20	234,226	-	180	40,305	6,210	-	-	280,921	
\$295,001-\$320,000	4	256,426	-	164	41,452	6,997	-	-	305,040	
\$320,001-\$345,000	4	274,206	-	1,181	45,800	8,757	-	-	329,944	
\$345,001-\$370,000	3	295,786	-	486	55,851	7,425	-	-	359,548	
\$370,001-\$395,000	4	312,330	-	2,174	56,072	7,467	-	-	378,044	
\$395,001-\$420,000	1	349,618	-	-	56,365	5,922	-	-	411,904	
\$445,001-\$470,000	1	399,665	-	-	57,445	9,166	-	-	466,276	
\$495,001-\$520,000	1	336,124	-	-	38,220	8,144	-	123,249	505,737	

Notes

Base salary includes gross salary earned while working plus annual leave accrued.

* Other benefits and allowances includes car parking benefits that form part of an individual's remuneration package.

^ For individuals in a defined contribution scheme, superannuation includes superannuation amounts. For individuals in a defined benefits scheme, superannuation includes the relevant notional employer contribution rate and employer productivity superannuation contribution.

Long service leave includes leave accrued and long service leave taken.

Table A3.4: Information about remuneration for other highly paid staff

Total remuneration bands	Short-term benefits			Post-employment benefits		Other long-term benefits		Termination benefits		Total remuneration	
	Number of other highly paid staff	Average base salary# (\$)	Average bonuses	Average other benefits and allowances*	Average superannuation contributions^ (\$)	Average long service leave## (\$)	Average other long-term benefits	Average termination benefits	Average total remuneration (\$)		
\$245,001–\$270,000	6	215,738	-	-	35,456	6,401	-	-	257,596		
\$270,001–\$295,000	2	232,898	-	-	40,905	7,584	-	-	281,387		
\$320,001–\$345,000	1	292,936	-	-	21,577	15,585	-	-	330,098		
\$445,001–\$470,000	1	397,498	-	-	57,612	8,172	-	-	463,282		

Notes

Base salary includes gross salary earned while working plus annual leave accrued.

* Other benefits and allowances includes car parking benefits that form part of an individual's remuneration package.

^ For individuals in a defined contribution scheme, superannuation includes superannuation amounts. For individuals in a defined benefits scheme, superannuation includes the relevant notional employer contribution rate and employer productivity superannuation contribution.

Long service leave includes leave accrued and long service leave taken.

Appendix 4: Work health and safety

Work health and safety management

The ACCC and AER have continued to enhance policies, guidelines and practices to meet the requirements of the *Work Health and Safety Act 2011* (Cth) (WHS Act) and the *Work Health and Safety Regulations 2011* (Cth).

Health and safety outcomes

Comcare premiums

The ACCC's indicative Comcare premium for 2022–23 is 0.26% of payroll. This is the same as the final premium for the 2021–22 year.

Compensation claims

There were 5 new compensation claims lodged with Comcare from the ACCC and AER during 2022–23 – 4 of these claims were rejected by Comcare and 1 claim was withdrawn. The ACCC and AER had 3 open compensation claims at the end of 2022–23.

Early intervention

The ACCC and AER support employees suffering from work-related physical and psychological injuries or illnesses to maintain or resume attendance at work. During 2022–23 this assistance, including psychological support, was provided to 14 employees.

Incident statistics

There were 32 reports of incidents of an injury or a 'near miss' involving employees in 2022–23. None of these incidents required notification to Comcare.

Investigations, directions and notices

The agency received no notices under the WHS Act and did not conduct any investigations during 2022–23.

Appendix 5: Advertising and market research

During 2022–23 the ACCC conducted the following advertising campaigns:

- Lithium-ion battery safety survey
<https://consultation.accc.gov.au/accc/lithium-ion-battery-product-safety-survey>
- Scams Awareness Week
<https://www.scamwatch.gov.au/news-alerts/scams-awareness-week-2022>
- Measuring Broadband Australia program
<https://measuringbroadbandaustralia.com.au>
- Franchising course – Is franchising right for you
<https://www.accc.gov.au/by-industry/franchising/franchising-free-course>
- Motor Vehicle Information Scheme
<https://www.accc.gov.au/by-industry/cars-and-vehicles/motor-vehicle-information-scheme-mvis>
- Infant safe sleeping
<https://www.productsafety.gov.au/products/babies-kids/kids-equipment/infant-inclined-products-and-sudden-death-risks>

Further information on these campaigns is available at www.accc.gov.au and www.productsafety.gov.au. The ACCC did not undertake any advertising campaigns with expenditure in excess of \$250,000.

During 2022–23 the AER conducted the following advertising campaign:

- AER Energy Made Easy
<https://www.energymadeeasy.gov.au/>

Under s 311A of the *Commonwealth Electoral Act 1918* (Cth), the ACCC is required to provide details of payments over \$15,200 (GST inclusive) to advertising agencies, market research organisations, polling organisations, direct mail organisations and media advertising agencies.

Table A5.1 sets out expenditure incurred by the ACCC to external organisations for advertising and market research services in 2022–23.

Table A5.1: Advertising and market research payments of more than \$15,200 in 2022–23

Advertising and market research organisation	Description of advertising and market research services	Amount \$ inc. GST
Universal McCann	Recruitment advertising	\$53,665
Loneragan Research	Infocentre message testing	\$27,918
SEC Newgate Pty Limited	Market research on retail deposit products	\$49,995
Askable	Consumer research into international money transfer services	\$50,635.20
Bastion Amplify	Scams Awareness Week 2022 videos	\$39,600
Universal McCann	Infant safe sleeping advertising	\$19,999.94
Bastion Reputation	Social media intelligence gathering and analysis – childcare and cost of living issues	\$38,500
The LOTE Agency	CALD consumer audience research	\$142,692
Universal McCann	Media strategy to market the Energy Innovator Toolkit to energy innovators	\$24,457.93
Newgate Communications Pty Ltd	AER stakeholder research 2023	\$110,972.40
Department of the Prime Minister and Cabinet	Behavioural Insights research – consumer bills; Energy Made Easy (delivered by Behavioural Economics Team of the Australian Government)	\$75,000

Appendix 6: Ecologically sustainable development

How our activities and administration of legislation accord with principles of ecologically sustainable development

At all times the agency seeks to achieve outcomes and its objectives in a manner which minimises the impact on resources and the environment.

How our outcomes contribute to ecologically sustainable development

We make decisions that, in line with s 3A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), factor in short-term and long-term economic, environmental, social and equitable considerations.

Activities that affect the environment

To ensure we are able to effectively achieve our purpose, we have established offices at 9 locations around Australia. The ACCC/AER operates in line with the Energy Efficiency in Government Operations Policy and the APS Information and Communications Technology (ICT) Strategy and remains committed to environmental sustainability and performance.

Measures taken to minimise the effect of activities on the environment

We are committed to reducing the environmental impact of our activities in a range of areas.

Property

- Optimising environmental opportunities through refurbishment and new building projects.
- Exploring energy-efficient building options for new leases, reducing fit-out size, using sustainable materials where possible, and reusing or recycling office furniture.
- Using efficient, low-energy LED lighting when opportunities arise.
- Programming supplementary air conditioning to reduce energy and water consumption.
- Installing programmable and efficient office lighting, including motion sensors, in new fit-outs.
- For existing commercial offices over 2,000 m², maintaining a minimum energy performance standard of 4.5 stars from NABERS (National Australian Built Environment Rating System).

- Focusing on sustainable waste management practices and improving staff awareness through behaviour change programs.
- Continuing monitoring and reporting of the ACCC/AER's whole property portfolio energy consumption.

Information technology

- Retaining main servers in offsite locations, reducing onsite energy consumption.
- Using power-saving modes for ICT equipment when not in use.
- Increasing use of ISO 14001 accredited printers for external printing services where appropriate.
- Reducing printer numbers and improving printing efficiency in accordance with government requirements.
- Using follow-me printing, duplex printing and photocopying as a default setting on all printers and multi-function devices.

Travel

- Using ICT options as an alternative to physical travel.
- Reducing vehicle fleet and servicing vehicles in accordance with manufacturers' specifications.
- Using E10 fuels for lease vehicles where possible.

Workplace efficiencies

- Emphasising electronic records and electronic working arrangements.
- Promoting access to ACCC publications electronically rather than in print.

Purchasing and procurement

- Commitment to sustainable procurement practices, in line with the Commonwealth Procurement Rules that require entities to consider the Sustainable Procurement Guide where there is opportunity for sustainability or use of recycled content.
- Support the engagement of Product Stewardship accredited suppliers who voluntarily reduce the environmental, health and safety footprint of manufactured goods and materials across the life cycle of a product.
- Purchasing 100% post-consumer recycled content copy paper.
- Procuring office equipment with low energy consumption.

Waste management

- Improving waste segregation practices, including paper, commingled recycling, general waste, e-waste and, in some offices, organic waste.
- Recycling paper and cardboard products, including pulping classified waste and providing use-again office envelopes.
- Disposing of toner cartridges through a recycling outlet.

- Recycling all fluorescent tubes.
- Disposing of mobile phones and batteries through a recycling outlet.

Information and education

- Collaborating regularly with building management to identify initiatives and participate in local environmental activities.

Mechanisms for reviewing and increasing the effectiveness of measures

The ACCC environmental strategy focuses on better environmental and sustainability practices. The ACCC/AER utilises a process of informal continuous review of the various measures it employs to reduce the environmental impact of its activities.

Where further efficiencies are identified in the course of business, the agency endeavours to put in place the measures required to realise these efficiencies. All of the above is done in accordance with both the applicable funding and environmental guidelines available to the ACCC and AER.

Appendix 7: Legislative framework

This appendix outlines the legislation under which we operate.

Competition and Consumer Act and key legislation

Airports Act 1996 (Cth)

Australian Postal Corporation Act 1989 (Cth)

Competition and Consumer Act 2010 (Cth)

Competition and Consumer (Consumer Data Right) Rules 2020

National Electricity Law and Rules

National Gas Law and Rules

National Energy Retail Law and Rules

Radiocommunications Act 1992 (Cth)

Telecommunications Act 1997 (Cth)

Water Act 2007 (Cth)

Water Market Rules 2009 (Cth)

Water Charge Rules 2010 (Cth)

Lawful competition and informed markets

Table A7.1: Parts of the *Competition and Consumer Act 2010* dealing with competition

IV	Cartel conduct: price fixing; output restrictions; bid rigging; allocating customers, suppliers or territories Other anti-competitive conduct: boycotts; agreements substantially lessening competition; misuse of market power; exclusive dealing; resale price maintenance; mergers substantially lessening competition
IVD	Consumer Data Right
IVE	Motor vehicle service and repair information sharing scheme
VI	Enforcement and remedies
VII	Authorisations and notifications
XIA	The Competition Code

Fair trading and consumer protection

Table A7.2: Parts of the *Competition and Consumer Act 2010* (including the Australian Consumer Law) dealing with fair trading and consumer protection

<i>Competition and Consumer Act 2010</i>	
IVB	Industry codes of conduct: the franchising, horticulture, dairy, wheat, electricity retail, oil and unit pricing codes are mandatory codes prescribed under Part IVB
IVE	Motor vehicle service and repair information sharing scheme
VI	Enforcement and remedies
<i>Australian Consumer Law – Schedule 2 to the Competition and Consumer Act 2010</i>	
Chapter 2	General protections: misleading or deceptive conduct; unconscionable conduct; unfair contract terms
Chapter 3	Specific protections: false or misleading representations; unsolicited supplies; pyramid selling; pricing display; consumer guarantees; unsolicited consumer agreements; lay-by agreements; gift cards; product safety bans, recalls, and reporting; and safety and information standards
Chapter 4	Criminal conduct relating to fair trading and consumer protection
Chapter 5	Enforcement and remedies for contraventions of the Australian Consumer Law

Infrastructure services and markets where competition is limited

Table A7.3: Parts of the *Competition and Consumer Act 2010* dealing with regulated industries and prices surveillance

IIIAA	Regulatory and enforcement responsibilities under Commonwealth laws, the National Energy Laws and Rules
IIIA	Access to the services of essential national infrastructure facilities such as rail tracks and port terminals
IVB	Industry codes of conduct
IVBB	Gas market regulation
VIIA	Price inquiries and surveillance in relation to industries or businesses as directed by the Australian Government
X	Limited exemptions for anti-competitive conduct in relation to international liner cargo shipping
XIB	Anti-competitive conduct in telecommunications
XIC	Access to services for telecommunications
XICA	Prohibited conduct in relation to the electricity industry

Appendix 8: Information required under the *Competition and Consumer Act 2010*

This appendix contains certain disclosures required by the *Competition and Consumer Act 2010* (Cth) (Competition and Consumer Act).

Section 171(2) reporting requirements

Section 51(1) of the Competition and Consumer Act provides that conduct that would normally contravene the law may be permitted if it is specifically authorised under other Commonwealth, state or territory legislation. Section 171(2) of the Competition and Consumer Act requires our annual report to include a list of all Commonwealth, state and territory laws that the ACCC is aware of that rely on s 51(1) of the Competition and Consumer Act or s 51(1) of the Competition Code (as defined in s 150A).

Exceptions under Commonwealth, state and territory legislation

Below is a list of the legislation that allows such conduct or provides for regulations to be made authorising particular conduct. The list includes legislation of which the ACCC has been notified or has otherwise become aware.

Commonwealth

Australian Postal Corporation Act 1989

Banking Act 1959

Competition and Consumer Act 2010

Customs Act 1901

Financial Sector (Business Transfer and Group Restructure) Act 1999

Insurance Act 1973

Life Insurance Act 1995

Liquid Fuel Emergency Act 1984

Payment Systems (Regulation) Act 1998

Social Security (Administration) Act 1999

Stronger Futures in the Northern Territory Act 2012

Telecommunications Act 1997

Australian Capital Territory

Cemeteries and Crematoria Act 2020

Competition Policy Reform Act 1996

Financial Management Act 1996

Government Procurement Act 2001

Health Act 1993

Insurance Authority Act 2005

Racing Act 1999

Road Transport (Public Passenger Services) Act 2001

Territory Records Act 2002

Waste Management and Resource Recovery Act 2016

New South Wales

Australian Jockey and Sydney Turf Clubs Merger Act 2010

Betting and Racing Act 1998

Casino Control Regulation 2019

Coal Industry Act 2001

Competition Policy Reform (New South Wales) Act 1995

Electricity Generator Assets (Authorised Transactions) Act 2012

Gaming Machines Act 2001

Health Services Act 1997

Hunter Water Act 1991

Industrial Relations Act 1996

Industrial Relations (Ethical Clothing Trades) Act 2001

James Hardie Former Subsidiaries (Winding up and Administration) Act 2005

Land and Property Information NSW (Authorised Transaction) Act 2016

Liquor Act 2007

Major Events Act 2009

Passenger Transport Act 2014

Point to Point Transport (Taxis and Hire Vehicles) Act 2016

Rice Marketing Act 1983

Sporting Venues Authorities Act 2008

Thoroughbred Racing Act 1996

Totalizator Act 1997

Waste Avoidance and Resource Recovery Act 2001

Northern Territory

Competition Policy Reform (Northern Territory) Act 1996

Electricity Reform Act 2000

Environmental Protection (Beverage Containers and Plastic Bags) Act 2011

Liquor Act 2019

Water Supply and Sewerage Services Act 2000

Queensland

Brisbane Olympic and Paralympic Games Arrangements Act 2021

Gladstone Power Station Agreement Act 1993

Liquor Act 1992

Racing Act 2002

Sugar Industry Act 1999

Sugar Industry Regulation 2022

Transport Operations (Passenger Transport) Act 1994

Waste Reduction and Recycling Act 2011

South Australia

Authorised Betting Operations Act 2000

Competition Policy Reform (South Australia) Act 1996

Cooper Basin (Ratification) Act 1975

Roxby Downs (Indenture Ratification) Act 1982

Tasmania

Competition Policy Reform (Tasmania) Act 1996

Container Refund Scheme Act 2022

Biosecurity (Salmonid Biosecurity Zones) Regulations 2022

Electricity Reform Act 2012

Electricity Supply Industry Act 1995

Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995

Energy Coordination and Planning Act 1995

Gaming Control Act 1993

Rail Company Act 2009

TOTE Tasmania (Sale) Act 2009

Water and Sewerage Corporation Act 2012

Victoria

Circular Economy (Waste Reduction and Recycling) Act 2021

Gambling Regulation Act 2003

Health Services Act 1988

Legal Profession Uniform Law Application Act 2014

Liquor Control Reform Act 1998

Outworkers (Improved Protection) Act 2003

Owner Drivers and Forestry Contractors Act 2005

State Owned Enterprises Act 1992

Western Australia

Competition Policy Reform (Western Australia) Act 1996

Electricity Corporations Act 2005

Electricity Industry (Wholesale Electricity Market) Regulations 2004

Electricity Industry Act 2004

Energy Coordination Act 1994

Fair Trading Act 2010

Fair Trading (Fitness Industry Interim Code) Regulations 2019

Liquor Control Act 1988

North West Gas Development (Woodside) Agreement Act 1979

Owners-Drivers (Contracts and Disputes) Act 2007

Surveillance Devices Amendment Regulations 2020

TAB Disposal Act 2019

Waste Avoidance and Resource Recovery Act 2007

Section 171(3) reporting requirements

Time taken to make final determinations and decisions

Final determinations on access disputes under section 44V

No determinations were made under s 44V.

Decisions on access undertaking applications and access code applications

No decisions were made.

Decisions on applications under section 44PA(1)

No decisions were made on applications under s 44PA(1).

Notices under the Competition and Consumer Act

General description of matters for which notices were given

In 2022–23 the following notices were issued by the ACCC during market studies, inquiries and investigations of conduct potentially in contravention of the prohibition on anti-competitive mergers, restrictive trade practices provisions, industry codes and consumer and small business protection provisions in the Competition and Consumer Act.

Types of notices issued

- 22 total (including electricity market) notices under s 51ADD (requiring the provision of information or documents that the addressee is required to keep, generate or publish under an applicable industry code).
- 300 notices under s 95ZK (requiring the provision of information and/or documents relating to the affairs of the addressee which may be relevant to an ACCC inquiry or ACCC monitoring, as set out in the provision).
- nil notices under s 133D (requiring the provision of information and documentation relating to the safety of consumer goods).
- 167 notices under s 155(1)(a) and (b) (requiring the addressee to furnish information in writing and produce documents).
- 19 notices under s 155(1)(a) (requiring the addressee to furnish information).
- 49 notices under s 155(1)(b) (requiring the addressee to produce documents).
- 71 notices under s 155(1)(c) (requiring the addressee to appear in person and give evidence).
- 3 authorisation instruments were signed to facilitate the disclosure of protected information under s 155AAA(12) (where the Chair is satisfied that particular protected information will assist another agency, body or person).
- nil notices under s 155A (requiring the provision of information and documents relating to a matter that may constitute a misuse of market power in a trans-Tasman market).

Challenges to the validity of notices

No proceedings were instituted to challenge the validity of a notice.

Search warrants issued or signed

No search warrants were issued by a judge under s 135Z or signed by a judge under s 136.

There were 4 warrants issued by a magistrate under s 154X (Part XID). No search warrants were signed by a magistrate under s 154Y.

General description of matters for which search warrants were issued or signed

Four search warrants were issued pursuant to s 154X during 2022–23 in relation to one investigation. All of the warrants were in relation to alleged contravention of prohibitions on the making and giving effect to contracts, arrangements or understandings containing cartel provisions.

Challenges to the validity of search warrants

There were no challenges to the validity of the search warrants.

Entry to premises

There were no entries onto premises under s 133B, s 133C or Division 6 of Part XI.

There were no entries to premises with consent under s 154D (Part XID).

Inspectors appointed under s 133(1) of the Competition and Consumer Act may enter the premises from which a person in trade or commerce supplies consumer goods and service, if the public has access to the premises at the time of entry. While on the premises, the inspector may take photographs, inspect consumer goods and equipment or purchase consumer goods and services. During 2022–23 surveillance staff appointed as inspectors undertook nil entries to premises under s 133B or s 133C as part of the ACCC routine surveillance program.

Complaints received by the ACCC

Details of the number of complaints received by the ACCC in 2022–23 and a summary of the kinds of complaints received and how they were dealt with are in Part 3.

Matters investigated by the ACCC

Details of the major matters investigated by the ACCC in 2022–23 are in Part 3.

Substantiation notices issued

There was one substantiation notice issued pursuant to s 219(2)(a) and (c) of the Competition and Consumer Act in 2022–23.

Intervention in proceedings

Neither the ACCC nor the AER intervened in any proceedings during 2022–23.

Section 56CH(4) reporting requirements

Section 56CH(4) of the Competition and Consumer Act requires this report to include information about the performance of the Consumer Data Right (CDR) Data Recipient Accreditor's functions, and the exercise of the Data Recipient Accreditor's powers.

Entities that wish to collect consumer data under CDR must be accredited by the Data Recipient Accreditor. The Data Recipient Accreditor is provided with a number of functions and powers in Part IVD of the Competition and Consumer Act and the Competition and Consumer (Consumer Data Right) Rules 2020 (CDR rules). The Data Recipient Accreditor's functions and powers include to accredit an accreditation applicant if satisfied that the applicant meets the accreditation criteria specified in the CDR rules; impose, vary or remove conditions on an accreditation; and revoke or suspend an accreditation. The CDR rules also allow the Data Recipient Accreditor to accept the surrender of an accreditation, approve the form in which an accreditation application can be made, consult with other regulators, request further information from applicants and audit the compliance of an accredited data recipient.

The ACCC is the designated Data Recipient Accreditor under the Competition and Consumer Act.

During 2022–23 the Data Recipient Accreditor:

- accredited 10 persons at the unrestricted level and one person at the sponsored level
- decided not to accredit one person at the unrestricted level due to concerns about its ability to comply with obligations under the CDR rules
- received notification of 60 CDR representative arrangements²³
- accepted the surrender of 3 accreditations at the unrestricted level
- suspended one accredited person due to a significant change in their business model
- formally requested information from 2 applicants in relation to their applications to be accredited persons²⁴
- approved changes to the accreditation forms for persons to use when applying to be accredited at the unrestricted and sponsored levels, to reflect the introduction of CDR to the energy sector.

Section 56CL(4) reporting requirements

Section 56CL(4) of the Competition and Consumer Act requires this report to include information about the performance of the CDR Accreditation Registrar's functions and the exercise of the Accreditation Registrar's powers.

The Accreditation Registrar has a number of functions and powers under Part IVD of the Competition and Consumer Act and the CDR rules. The Accreditation Registrar must establish and maintain the Register of Accredited Persons. Information in the Register of Accredited Persons must be made publicly available by the Accreditation Registrar as required by the CDR rules. The CDR rules also require the Accreditation Registrar to create and maintain a database of data holders in association with the Register of Accredited Persons. This database contains a list of data holders and associated technical information. The Register of Accredited Persons and associated database are collectively referred to here as the 'Register'.

Other Accreditation Registrar functions are to:

²³ Sixty arrangements were notified in 2022–23. However, as at 30 June 2023, 3 of these had ended.

²⁴ The Data Recipient Accreditor also informally requests information from applicants in relation to their applications to be accredited persons.

- manage the process of on-boarding the accredited data recipients and data holders to the Register by requiring them to provide information to be stored in the Register that is necessary for the processing of requests for CDR data
- maintain the security, integrity and stability of the Register, including by undertaking and facilitating testing by accredited data recipients and data holders
- issue requests to data holders and accredited data recipients to do specified things where necessary or convenient in order for the Accreditation Registrar to exercise its powers or, where this is necessary, to ensure the security, integrity and stability of the Register
- inform the Data Recipient Accreditor of any failure of an accredited data recipient to comply with a condition of its accreditation or to do things requested by the Accreditation Registrar.

The ACCC is the designated Accreditation Registrar under the Competition and Consumer Act.

During 2022–23 the Accreditation Registrar:

- maintained the Register of Accredited Persons and associated database by:
 - publishing new entries on the Register for 5 data holders, 2 additional data holder brands, 11 accredited persons (including one at the sponsored level), 71 additional accredited data recipient products and 60 CDR representative arrangements
 - amending and correcting entries in the Register and associated database to reflect changes the Accreditation Registrar was informed of – for example, by removing data holders that surrendered their banking licences, updating the details of data holders that changed their names and removing persons who surrendered their accreditations
- maintained the security, integrity and stability of the Register and associated database by implementing steps for participant testing and issuing related guidance to manage on-boarding of data holders and accredited persons to the Register.

Appendix 9: Correction of material errors in previous annual reports

Nil.

Glossary and abbreviations

AANZFTA	ASEAN-Australia-New Zealand Free Trade Area
AASRA	Australian Automotive Service and Repair Authority
ABN	Australian Business Number
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ACLEI	Australian Commission for Law Enforcement Integrity
ACMA	Australian Communications and Media Authority
ACT	Australian Capital Territory
ADI	Authorised Deposit Taking Institution
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AGCM	Autorità Garante della Concorrenza e del Mercato
AI	Artificial intelligence
AMA	Australian Medical Association
ANAO	Australian National Audit Office
Anor	another
APC	administered price cap
APEC	Asia-Pacific Economic Cooperation
API	application programming interface
APRA	Australian Prudential Regulation Authority
APS	Australian Public Service
APSC	Australian Public Service Commission
ARENA	Australian Renewable Energy Agency
ASEAN	Association of Southeast Asian Nations
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
CALD	Culturally and linguistically diverse
CAP	Consumer Affairs Program
CCC	Consumer Consultative Committee

CCG	Customer Consultative Group
CCP	Consumer Challenge Panel
CDPP	Commonwealth Director of Public Prosecutions
CDR	Consumer Data Right
CDR rules	Competition and Consumer (Consumer Data Right) Rules 2020
CDR standards	Consumer Data Standards
CEDA	Committee for Economic Development of Australia
CEO	Chief Executive Officer
CEPA	Cambridge Economic Policy Associates
CER	consumer energy resources
CFO	Chief Finance Officer
CLIP	Competition Law Implementation Program
Co	company
COAG	Council of Australian Governments
CRM	Congestion Relief Market
CSO	Consumer Senior Officials Network
Cth	Commonwealth
CTM	certification trade mark
CTS	Conformance Test Suite
D&I	Diversity and Inclusion
DCCEE	Department of Climate Change, Energy, the Environment and Water
DER	distributed energy resources
DMO	Default Market Offer
DNSSP	Distributed Network Service Provider
DPSI	Digital Platform Services Inquiry
DSB	Data Standards Body
DWGM	Declared wholesale gas market
EA	ACCC Enterprise Agreement 2016–2019
ECA	Energy Consumers Australia
EII Act	<i>Electricity Infrastructure Investment Act 2020 (NSW)</i>
EL	Executive Level
EME	Energy Made Easy
FAPI	Financial-grade Application Program Interface

FCAS	Frequency control ancillary services
FCNSW	Forestry Corporation of NSW
FOI	Freedom of information
FOI Act	<i>Freedom of Information Act 1982 (Cth)</i>
FTE	Full-time equivalent
GJ	Gigajoule
GST	Goods and Services Tax
HICC	Health Insurance Comparison Choosewell Pty Ltd
Hon	honourable
HR	Human resources
ICAN	Indigenous Consumer Assistance Network
ICARE	Impartial, Committed to Service, Accountable, Respectful and Ethical
ICN	International Competition Network
ICPEN	International Consumer Protection and Enforcement Network
ICT	Information and communications technology
IP	intellectual property
IPART	Independent Pricing and Regulatory Tribunal of NSW
ISGAN	International Smart Grid Action Network
ISM	Information Security Manual
ISP	Integrated System Plan
IT	Information technology
KPI	Key performance indicators
LEIC Act	<i>Law Enforcement Integrity Commission Act 2006 (Cth)</i>
LMS	learning management system
LNG	liquid natural gas
LSD	Legal Services Directions
Ltd	Limited
MAP	Mekong Australia Partnership
MBA	Measuring Broadband Australia
MHz	megahertz
MOU	Memorandum of understanding
MP	Member of Parliament
MVIS	Motor Vehicle Service and Repair Information Scheme

N/A	not applicable
NABERS	National Australian Built Environment Rating System
NASC	National Anti-Scam Centre
NBN	National Broadband Network
NEM	National Electricity Market
NERR	Notice of Employee Representational Rights
NGO	National Gas Objective
NICS	National Indigenous Consumer Strategy
NMI	National Meter Identifier
NSW	New South Wales
NT	Northern Territory
NZCC	New Zealand Commerce Commission
OAIC	Office of the Australian Information Commissioner
OECD	Organisation for Economic Co-operation and Development
Ors	others
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013 (Cth)</i>
PGPA Rule	Public Governance, Performance and Accountability Rule 2014
PHI	Private health insurers
PJ	petajoules
PRD	Product reference data
PSM	Public Service Medal
Pty Ltd	Proprietary Limited
PV	photovoltaic
Qld	Queensland
RAAP	Register and Accreditation Application Platform
Register	CDR Register of Accredited Persons and associated database of data holders
REZ	Renewable Energy Zones
RFG	Retail Food Group
RKR	Record keeping rule
RoLR	Retailer of Last Resort
RRO	Retailer Reliability Obligation
SA	South Australia
SAPS	stand-alone power systems

SAU	Special Access Undertaking
SE	South-east
SES	Senior Executive Service
SME	small and medium enterprise
STTM	Short Term Trading Markets
t/a	trading as
Tas	Tasmania
TNSP	Transmission Network Service Providers
UCT	unfair contract term
UK	United Kingdom
UNCTAD	United Nations Conference on Trade and Development
URF	Utility Regulators Forum
US(A)	United States
Vic	Victoria
WA	Western Australia
WEMDRA	Wholesale Energy Market Dispute Resolution Advisor
WHS	Work health and safety

Compliance index

List of requirements

This schedule provides, for the purposes of paragraph 17AJ(d) of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule), the list of requirements to be included in a non-corporate Commonwealth entity's annual report for a reporting period. The schedule is prepared for subsection 46(3) of the *Public Governance, Performance and Accountability Act 2013* (Cth).

PGPA Rule Reference	Part of Report	Description	Requirement	Page number
17AD(g)	Letter of transmittal			
17AI		A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with section 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report.	Mandatory	iii
17AD(h)	Aids to access			
17AJ(a)		Table of contents.	Mandatory	iv
17AJ(b)		Alphabetical index.	Mandatory	315
17AJ(c)		Glossary of abbreviations and acronyms.	Mandatory	297
17AJ(d)		List of requirements.	Mandatory	302
17AJ(e)		Details of contact officer.	Mandatory	ii
17AJ(f)		Entity's website address.	Mandatory	ii
17AJ(g)		Electronic address of report.	Mandatory	ii
17AD(a)	Review by accountable authority			
17AD(a)		A review by the accountable authority of the entity.	Mandatory	4

17AD(b)		Overview of the entity		
17AE(1)(a)(i)	A description of the role and functions of the entity.	Mandatory		20
17AE(1)(a)(ii)	A description of the organisational structure of the entity.	Mandatory		20
17AE(1)(a)(iii)	A description of the outcomes and programmes administered by the entity.	Mandatory		30
17AE(1)(a)(iv)	A description of the purposes of the entity as included in corporate plan.	Mandatory		32
17AE(1)(aa)(i)	Name of the accountable authority or each member of the accountable authority.	Mandatory		20
17AE(1)(aa)(ii)	Position title of the accountable authority or each member of the accountable authority.	Mandatory		20
17AE(1)(aa)(iii)	Period as the accountable authority or member of the accountable authority within the reporting period.	Mandatory		20
17AE(1)(b)	An outline of the structure of the portfolio of the entity.	Portfolio departments—mandatory		N/A
17AE(2)	Where the outcomes and programs administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, include details of variation and reasons for change.	If applicable, Mandatory		N/A
17AD(c)		Report on the Performance of the entity		
<i>Annual performance statement</i>				
17AD(c)(i); 16F	Annual performance statement in accordance with paragraph 39(1)(b) of the Act and section 16F of the Rule.	Mandatory		37–181
<i>17AD(c)(ii)</i>		<i>Report on Financial Performance</i>		
17AF(1)(a)	A discussion and analysis of the entity's financial performance.	Mandatory		15

17AF(1)(b)	A table summarising the total resources and total payments of the entity.	Mandatory	260
17AF(2)	If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results.	N/A	204
17AD(d)	Management and Accountability		
	Corporate Governance		
17AG(2)(a)	Information on compliance with section 10 (fraud systems)	Mandatory	200
17AG(2)(b)(i)	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared.	Mandatory	iii
17AG(2)(b)(ii)	A certification by accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the entity are in place.	Mandatory	iii
17AG(2)(b)(iii)	A certification by accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity.	Mandatory	iii
17AG(2)(c)	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance.	Mandatory	197

17AG(2)(d) – (e)	A statement of significant issues reported to Minister under paragraph 19(1) (e) of the Act that relates to non-compliance with Finance law and action taken to remedy non-compliance.	N/A	204
Audit Committee			
17AG(2A)(a)	A direct electronic address of the charter determining the functions of the entity's audit committee.	Mandatory	198
17AG(2A)(b)	The name of each member of the entity's audit committee.	Mandatory	198
17AG(2A)(c)	The qualifications, knowledge, skills or experience of each member of the entity's audit committee.	Mandatory	198
17AG(2A)(d)	Information about the attendance of each member of the entity's audit committee at committee meetings.	Mandatory	198
17AG(2A)(e)	The remuneration of each member of the entity's audit committee.	Mandatory	198
External Scrutiny			
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny.	Mandatory	202
17AG(3)(a)	Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity.	If applicable, Mandatory	203
17AG(3)(b)	Information on any reports on operations of the entity by the Auditor-General (other than report under section 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman.	If applicable, Mandatory	203
17AG(3)(c)	Information on any capability reviews on the entity that were released during the period.	If applicable, Mandatory	203

Management of Human Resources			
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives.	Mandatory	213
17AG(4)(aa)	Statistics on the entity's employees on an ongoing and non-ongoing basis, including the following: (a) statistics on full-time employees (b) statistics on part-time employees (c) statistics on gender (d) statistics on staff location	Mandatory	262
17AG(4)(b)	Statistics on the entity's APS employees on an ongoing and non-ongoing basis; including the following: <ul style="list-style-type: none"> ■ Statistics on staffing classification level ■ Statistics on full-time employees ■ Statistics on part-time employees ■ Statistics on gender ■ Statistics on staff location ■ Statistics on employees who identify as Indigenous. 	Mandatory	262
17AG(4)(c)	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subsection 24(1) of the <i>Public Service Act 1999</i> .	Mandatory	219
17AG(4)(c)(i)	Information on the number of SES and non-SES employees covered by agreements etc identified in paragraph 17AG(4)(c).	Mandatory	274
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level.	Mandatory	274

17AG(4)(c)(iii)	A description of non-salary benefits provided to employees.	Mandatory	220
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay.	If applicable, Mandatory	273
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level.	If applicable, Mandatory	273
17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level.	If applicable, Mandatory	273
17AG(4)(d)(iv)	Information on aggregate amount of performance payments.	If applicable, Mandatory	273
Assets Management			
17AG(5)	An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities	If applicable, mandatory	207
Purchasing			
17AG(6)	An assessment of entity performance against the Commonwealth Procurement Rules.	Mandatory	205
Reportable consultancy contracts			
17AG(7)(a)	A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST).	Mandatory	205

17AG(7)(b)	A statement that <i>“During [reporting period], [specified number] new reportable consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing reportable consultancy contracts were active during the period, involving total actual expenditure of \$[specified million].”	Mandatory	205
17AG(7)(c)	A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged.	Mandatory	205
17AG(7)(d)	A statement that <i>“Annual reports contain information about actual expenditure on reportable consultancy contracts. Information on the value of reportable consultancy contracts is available on the AusTender website.”	Mandatory	205
Reportable non-consultancy contracts			
17AG(7A)(a)	A summary statement detailing the number of new reportable non-consultancy contracts entered into during the period; the total actual expenditure on such contracts (inclusive of GST); the number of ongoing reportable non-consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting period on those ongoing contracts (inclusive of GST).	Mandatory	206
17AG(7A)(b)	A statement that “Annual reports contain information about actual expenditure on reportable non-consultancy contracts. Information on the value of reportable non-consultancy contracts is available on the AusTender website.”	Mandatory	206

17AD(daa)	Additional information about organisations receiving amounts under reportable consultancy contracts or reportable non-consultancy contracts		
17AGA	Additional information, in accordance with section 17AGA, about organisations receiving amounts under reportable consultancy contracts or reportable non-consultancy contracts.	Mandatory	205
<i>Australian National Audit Office Access Clauses</i>			
17AG(8)	If an entity entered into a contract with a value of more than \$100 000 (inclusive of GST) and the contract did not provide the Auditor-General with access to the contractor's premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract.	If applicable, Mandatory	n/a
<i>Exempt contracts</i>			
17AG(9)	If an entity entered into a contract or there is a standing offer with a value greater than \$10 000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters.	If applicable, Mandatory	n/a

Small business			
17AG(10)(a)	A statement that “[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance’s website.”	Mandatory	205
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises.	Mandatory	205
17AG(10)(c)	If the entity is considered by the Department administered by the Finance Minister as material in nature—a statement that “[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury’s website.”	If applicable, Mandatory	n/a
Financial Statements			
17AD(e)	Inclusion of the annual financial statements in accordance with subsection 43(4) of the Act.	Mandatory	229
Executive Remuneration			
17AD(da)	Information about executive remuneration in accordance with Subdivision C of Division 3A of Part 2-3 of the Rule.	Mandatory	276

17AD(f)	Other Mandatory Information		
17AH(1)(a)(i)	If the entity conducted advertising campaigns, a statement that <i>"During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity's website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance's website."</i>	If applicable, Mandatory	281
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect.	If applicable, Mandatory	n/a
17AH(1)(b)	A statement that <i>"Information on grants awarded by [name of entity] during [reporting period] is available at [address of entity's website]."</i>	If applicable, Mandatory	207
17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information.	Mandatory	217
17AH(1)(d)	Website reference to where the entity's Information Publication Scheme statement pursuant to Part II of FOI Act can be found.	Mandatory	204
17AH(1)(e)	Correction of material errors in previous annual report.	If applicable, mandatory	296
17AH(2)	Information required by other legislation.	Mandatory	312

Information required by other legislation

Subsection 17AH(2) of the PGPA Rule provides for the inclusion of other mandatory information in annual reports as required by an act or instrument. The ACCC is required to include information in its annual report by the *Competition and Consumer Act 2010* (Cth), the *Work Health and Safety Act 2011* (Cth), the *Commonwealth Electoral Act 1918* (Cth) and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Competition and Consumer Act 2010 requirements

Under our enabling legislation, the Competition and Consumer Act, the ACCC is required to include the following matters in its annual report.

Section	Requirement	Page
56CH(4)	Information about the performance of the Data Recipient Accreditor's functions, and the exercise of the Data Recipient Accreditor's powers.	288
56CL(4)	Information about the performance of the Accreditation Registrar's functions, and the exercise of the Accreditation Registrar's powers.	288
171(2)	Cumulative list of all Commonwealth, state and territory laws that the Commission knows about that authorise things for the purposes of s. 51(1) of this Act or s. 51(1) of the Competition Code (as defined in s. 150A).	282
171(3)(aa)(i)	The time taken to make final determinations under s. 44V in relation to access disputes.	286
171(3)(aa)(ii)	The time taken to make decisions on access undertaking applications or access code applications (within the meaning of s. 44B).	286
171(3)(aa)(iii)	The time taken to make decisions on applications under s. 44PA(1).	286
171(3)(a)(i)	The number of notices given by the Commission under s. 155.	286
171(3)(a)(iii)	The number of notices given by the Commission under s. 155A.	286
171(3)(b)	A general description of the nature of the matters in respect of which the notices were given.	286
171(3)(c)	The number of proceedings brought to challenge the validity of the notices.	287
171(3)(ca)	The number of search warrants issued by a judge under s. 135Z or signed by a judge under s. 136.	287
171(3)(d)	The number of search warrants issued by a magistrate under s. 154X or signed by a magistrate under s. 154Y.	287
171(3)(da)	A general description of the nature of the matters in respect of which the search warrants referred to in paragraph (ca) or (d) were issued or signed.	287
171(3)(db)	The number of proceedings brought to challenge the validity of the search warrants referred to in paragraph (ca) or (d).	287

171(3)(dc)	The number of entries onto premises under s. 133B or 133C, Division 6 of Part XI or Part XIV.	287
171(3)(e)	The number of complaints received by the Commission.	118
171(3)(f)	A general summary of the kinds of complaints received by the Commission and how it dealt with them.	117
171(3)(g)	A general description of the major matters investigated by the Commission.	37–178
171(3)(h)	The number of times the Commission has intervened in proceedings and a general description of the reasons for doing so.	287

Commonwealth Electoral Act 1918 requirements

Under s 311A of the *Commonwealth Electoral Act 1918*, the ACCC is required to report on the following matters in its annual report.

Requirement	Page
A statement setting out particulars of all amounts more than \$14,300 paid by, or on behalf of, the Commonwealth Department during the financial year to: advertising agencies; market research organisations; polling organisations; direct mail organisations; and media advertising organisations; and the persons or organisations to whom those amounts were paid.	275

Work Health and Safety Act 2011 requirements

In accordance with Schedule 2, Part 4 of the *Work Health and Safety Act 2011*, the matters the ACCC must include in its annual report are as follows.

Section	Requirement	Page
4(2)(a)	Initiatives taken during the year to ensure the health, safety and welfare of workers who carry out work for the entity.	210
4(2)(b)	Health and safety outcomes (including the impact on injury rates of workers) achieved as a result of initiatives mentioned under paragraph (a) or previous initiatives.	274
4(2)(c)	Statistics of any notifiable incidents of which the entity becomes aware during the year that arose out of the conduct of businesses or undertakings by the entity.	274
4(2)(d)	Any investigations conducted during the year that relate to businesses or undertakings conducted by the entity, including details of all notices given to the entity during the year under Part 10 of the <i>Work Health and Safety Act 2011</i> .	274
4(2)(e)	Such other matters as are required by guidelines approved on behalf of the parliament by the Joint Committee of Public Accounts and Audit.	n/a

Environment Protection and Biodiversity Conservation Act 1999 requirements

Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999* requires Commonwealth entities and Commonwealth companies to report on the following matters.

Section	Requirement	Page
516A(6)(a)	How the activities of, and the administration (if any) of legislation by, the entity during the period accorded with the principles of ecologically sustainable development (ESD).	277
516A(6)(b)	How the outcomes (if any) specified for the entity in an Appropriations Act relating to the period contribute to ESD.	277
516A(6)(c)	The effect of the entity's activities on the environment.	277
516A(6)(d)	Any measures the reporter is taking to minimise the impact of activities by the entity on the environment.	277
516A(6)(e)	The mechanisms, if any, for reviewing and increasing the effectiveness of those measures.	277

Index

A

Aboriginal and Torres Strait Islander Recruitment, Retention and Professional Development Strategy, 215

Aboriginal and Torres Strait Islander visual arts and crafts study report, 101

Aboriginal Community Benefit Fund, 101

ACCC/AER Regulatory Conference, 171, 176

access code applications, 292

access disputes, final determinations on, 292

access undertaking applications, 292

Accountable Authority, 20, 39, 198, 199

accredited data recipients, CDR, 2, 79–80, 82–84, 295

accreditation, CDR

analysis of results, 82–83

highlight, 84

key activity, 81

outcomes achieved, 83

performance measures, 82

Accreditation Registrar, CDR, 294–295

active data holders, CDR, 2, 79, 87

administered revenue, 15

Administrative Appeals Tribunal, 202

administrative resolutions, 47, 85, 86, 95, 96, 125

advertising

digital economy, 97–98

market research and, 281–282

advocacy, international, 120

agency capability reviews, 203

AGL Retail Energy Limited, 12, 75, 149, 152, 159, 161

agriculture, 104

Agriculture Consultative Committee, 25

air travel see aviation sector

airports and airlines see aviation sector

Alkaloids of Australia Pty Ltd, 48

Allen, Anthony John, 49

Alliance Airlines, 69

Annual performance statement, 30, 32, 37

Statement of preparation, 39

Annual report, 31

Commonwealth Electoral Act 1918 requirements, 312

Competition and Consumer Act 2010 requirements, 311–312

compliance index, 301–310

Environment Protection and Biodiversity Conservation Act 1999 requirements, 313

Work Health and Safety Act 2011 requirements, 313

anti-competitive conduct, 45

analysis of results, 48

cartel immunity applications, 51

highlights, 51, 53

key activity, 45

litigation, 48–50

mergers see mergers and acquisitions

outcomes achieved, 48–50

performance measures, 47

priorities, 45–46

strategic objective, 44

APA Group (Basslink), 167

Appropriate Workplace Behaviour Policy and Guidelines, 217

APS Code of Conduct, 217

APS Employee Census, 16

APS Net Zero 2030, 209

APS Values, 217

ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)

- Consumer Affairs Program (CAP), 25, 120, 132

Ashton, Simon, 50

Ashton Raggatt McDougall Pty Ltd (ARM Architecture), 49

Asia-Pacific Economic Cooperation (APEC), 25

asset management, 207

Association of Southeast Asian Nations (ASEAN), 25, 53

Attorney-General's Department, 216

audit

- external, 16
- internal, 199

Audit and Risk Committee, 194, 197, 198, 199

Aurizon Holdings, 69

Aurora Energy, 12, 152

Ausgrid, 167

AusNet Gas Services, 13, 167

Aussie Skips, 5, 49

Australia – European Union Free Trade Agreement, 52

Australia – India Comprehensive Economic Cooperation Agreement, 52

Australian and New Zealand Energy and Water Ombudsman Network, 29

Australian Automotive Service and Repair Authority (AASRA), 112

Australian Bedding Stewardship Council, 57

Australian Commission for Law Enforcement Integrity (ACLEI), 24, 202, 204

Australian Communications and Media Authority (ACMA), 24, 51, 61

Australian Competition and Consumer Commission (ACCC) (Program 1,1)

- about, 20
- accountabilities, 24
- analysis of performance, 40–43
- Chair, 2–9, 20, 39
- committees, 193–196
- functions and powers, 24
- government expectations, 26
- members, 20, 184–189
- organisational structure, 20–21
- priorities, 22, 45–46
- purpose, vision and role, 2, 22, 32, 91
- responsibilities, 20
- strategic objectives and key activities, 33–34
- year at a glance 2022–23, 2

Australian Competition Tribunal, 70, 202–203

Australian Consumer Law (ACL), 5, 24, 91, 130

- analysis of results
 - consumers, 114–115
 - small business, 109
- guidance materials, 110
- key activity
 - consumers, 113
 - small business, 108
- outcomes achieved
 - consumers, 115–117
 - small business, 109–110
- performance measures

- consumers, 113–114
 - small business, 108–109
- product safety, 122
- unfair contract terms, 97, 105
- Australian Consumer Law compliance and enforcement
 - analysis of results, 96–97
 - key activity, 94
 - outcomes achieved, 97–101
 - performance measures, 94–96
- Australian Cyber Security Centre, 76
- Australian Energy Market Agreement, 196
- Australian Energy Market Commission (AEMC), 13, 28, 151, 158, 167, 171, 173, 177
 - AER submissions, 173–175
 - Transmission Planning and Investment Review, 175–176
- Australian Energy Market Operator (AEMO), 28–29, 56, 75, 159, 160, 161, 162, 173, 177
 - Integrated System Plan 2022, 164
- Australian Energy Regulator (AER) (Program 1.2)
 - analysis of performance, 144
 - Board, 20, 21, 144, 190–192, 194, 196
 - Chair, 10–14, 20, 28–29
 - committees, 193, 196–197
 - functions, 26–27, 31
 - government expectations, 29
 - key activities, 28
 - organisational structure, 20–21
 - purpose and vision, 3, 10, 26, 32
 - regulatory practice, 178–181
 - strategic objectives, 28, 35
 - submissions to AEMC, 173–175
 - validation of results, 144
- Australian Gas Networks, 13, 167
- Australian Government, 24
- Australian Government ICT Sustainability Plan 2010–2015, 209
- Australian National Audit Office (ANAO), 15, 203
- Australian Product Safety Pledge, 123
- Australian Prudential Regulation Authority (APRA), 24, 116
- Australian Public Service Values (ICARE), 22
- Australian Renewable Energy Agency (ARENA), 177
- Australian Securities and Investments Commission (ASIC), 24, 101, 118
- Australian Workplace Agreements, 220
- authorisations and notifications, ACCC, 44, 56, 195
- Autorità Garante della Concorrenza e del Mercato (AGCM, Italy), 52
- average staffing level, 17
- aviation sector
 - authorisations, 56
 - informal merger reviews, 69
 - report on competition, 7
- B**
- Ball, Jarrod, 13, 21, 184, 190, 192, 197
- Bank of Queensland Ltd, 89
- batteries
 - button, 5, 123, 128, 129
 - lithium-ion, 123, 125, 128, 281
 - rollout of community, 169, 178
- Bellchambers Barrett, 199
- benchmarking reports, electricity distribution and transmission network, AER, 163, 164
- Bennett, Fiona, 198

BeReal, 62
 Better Bills Guideline, 10, 147, 153, 154, 181
 Better Resets Handbook, 12, 163, 178
 Bingo Industries Limited, 5, 49
 Bloomex, 98
 Blue NRG, 5, 100
 BlueScope Steel Limited, 5, 49
 Board, AER, 20, 144, 194, 196
 members, 20, 21, 190
 Booktopia Pty Ltd, 5, 99
 Brakey, Anna, 21, 184, 187, 195, 196, 276
 broadband networks, non-NBN, 136
 Broken Hill Solar Plant, 161
 business continuity, 200
 Business Continuity Plan, 200
 business planning, 199
 Business Renewables Buying Group, 56
 Business Stakeholder Survey, ACCC, 40, 41, 42–43
 businesses, Australian, 23–24

C

Cameron, James, 21, 184, 195
 Canadian Competition Bureau, 52
 capacity building, 25, 120
 Capital Expenditure Incentive Guideline 2013, 169
 Captain Cook College, 101
 caravans, guidance on, 92, 99, 118
 carrier separation rules, 136
 cartel conduct, 5, 44, 45, 48–50, 52
 cartel immunity applications, 51
 Carver, Liza, 21, 184, 188, 195, 196, 276

Cass-Gottlieb, Gina (ACCC Chair), 2–9, 20, 52, 184, 185, 195–196, 197, 276, 277
 CDR Service Management Portal (Jira), 77, 78
 CDR Support Portal, 78
 Celgene Corporation, 56
 Celgene Pty Ltd, 56
 certification trade mark (CTM), 54
 Chair, ACCC, 20
 review 2022–23, 2–9
 Chair, AER, 28–29
 review 2022–23, 10–14
 Chalmers, the Hon Dr Jim (Treasurer), 26
 Chief Risk Officer, 199
 Childcare Inquiry, 7, 57, 63, 133
 Childcare Inquiry Board, ACCC, 194
 children, product safety and, 123, 128–129, 130
 CHOICE, 100, 119, 120
 Clews Holdings Pty Ltd, 101
 COAG Energy Council, 29
 COAG Strategic Energy Plan, 28
 Coal Market Price Emergency Directions, 160
 Code of Conduct for Commission Members and Associate Members, 201
 collaboration see partnerships, collaboration and engagement
 collective bargaining class exemption, 56
 Comcare premiums, 280
 Comcover Risk Management Benchmarking Survey, 200
 Committee on Consumer Policy, 106, 120
 common law contracts, 220
 Commonwealth Contracting Suite, 205
 Commonwealth Director of Public Prosecutions (CDPP), 5, 45
 Commonwealth Fraud Control Framework, 200

Commonwealth Ombudsman, 202, 204

Commonwealth Performance Framework, 30, 31

Commonwealth Procurement Rules, 205

Commonwealth Risk Management Policy, 200

Communications Committee, ACCC, 194, 195

Community Batteries for Household Solar Program, 169

compensation claims, 280

Competition and Consumer Act 2010, iv, 4, 5, 20, 22, 30, 286–287

- notices, 292–293
- Part IIIAA, 196
- Part IV, 44, 45, 66, 286
- Part IVD, 72, 85, 286, 294
- section 18, 195
- section 19, 195
- section 50, 66–67
- section 51ADD, 142
- section 56CH(4) reporting requirements, 294
- section 56CL(4) reporting requirements, 294–295
- section 56GD, 85
- section 171(2) reporting requirements, 288–291
- section 171(3) reporting requirements, 292–293

Competition and Consumer (Consumer Data Right) Rules 2020, 151

Competition and Consumer (Gas Market Emergency Price) Order 2022, 6

competition and informed markets, 286

competition and market rules, industry-specific

- key activity, 142–143
- key performance measures, 142
- outcomes achieved, 143

Competition and Markets Authority, UK, 52

Competition Commission, Cambodia, 53

Competition Exemptions Committee, ACCC, 194, 195

Competition Law Implementation Program (CLIP), 8, 25, 53, 120

Competition Policy and Law Group, 25

competitive market regulation, 3

complaints and enquiries, 121, 293

compliance and enforcement, CDR

- analysis of results, 86–87
- consumer data sharing obligations, 89
- exemptions, 90
- highlight, 90
- key activity, 85
- outcomes achieved, 87–88
- performance data obligations, 89
- performance measures, 85–86
- product reference data sharing obligations, 89
- updates to processes and policies, 89
- compliance and enforcement priorities, ACCC, 22
- consumer protection, 113
- misleading and deceptive conduct, 92–93, 97–98
- product safety, 123

compliance and enforcement priorities, AER, 12, 149, 179–180

Compliance and Enforcement Policy and Priorities, 45

Compliance and Product Safety Committee, ACCC, 194, 195

- Chair, 9

compulsory information gathering powers, 68

concentrated markets, 22, 68, 69, 133–134

- access conditions, 131
- priorities, 134
- strategic objectives, 133
- concerted practices, 50
- Conducting a consumer product safety recall – A guideline for suppliers, 126
- Conflict of Interest Policy, 201
- conflicts of interest, 201
- Conformance Test Suite (CTS), CDR, 74, 76, 77
- Congestion Relief Market (CRM), 175
- Connection Charge Guideline, 164, 181
- construction see commercial construction
- consultancy contracts, 205–206
- consultative committees, 25
- consumer advocacy organisations, 119
- Consumer Affairs Program, 8
- Consumer and Markets Authority, UK, 61
- Consumer Challenge Panel (CCP), 29
- Consumer Consultative Committee (CCC), 23, 25, 119
- Consumer Consultative Group (CCG), 29, 181
- Consumer Consultative Panel, ASIC, 119
- Consumer Data Right (CDR), 2, 22, 72
 - accountabilities, 24
 - expansion, 151
 - outcomes achieved, 76
 - priorities, 72–73
 - reference data services, 147
 - strategic objective, 72, 147
 - technology solutions, 77
 - see also accreditation, CDR; accredited data recipients, CDR;
- compliance and enforcement, CDR; enabling technology, CDR; Register and Accreditation Application Platform (RAAP), CDR; Register of Accredited Persons, CDR
- Consumer Data Right Committee, ACCC, 194, 195
- consumer energy resources (CER), 13
- consumer engagement and awareness
 - activities, 119
 - AER activities, 10–12, 152–153
 - analysis of results, 114–115
 - key activity, 114
 - outcomes achieved, 115–117
 - performance measures, 114–115
- consumer forums, AER, 29
- Consumer Goods (Non-refillable Helium Cylinders) Safety Standard 2022, 130
- consumer guarantees, 5, 6, 99–100
 - contacts, 121
 - guidance, 110, 118
- Consumer Product Safety Commission, US, 132
 - NEISS Database, 122
- consumer protection, legislative framework, 287
- Consumer Senior Officials Network (CSON), 24–25
- consumer sentiment survey, Energy Consumers Australia, 149
- Consumer Trustee (NSW), 168
- consumer vulnerability strategy, AER, 10, 147
- consumers, Australian, 23
- Consumers’ Federation of Australia Showcase, 119
- contacts to ACCC, 120–121
- contracts, consultancy and non-consultancy, 205–207
- corporate and business plans, 199
- corporate governance, 197–199

Corporate Governance Board, 197, 198, 276

Corporate plan 2021–22, iii, 28, 30, 31, 33, 40, 43, 144, 199, 214, 225

- purposes and performance measures, 32

corporate snapshot, ACCC, 15

cost of living

- electricity compliance monitoring, 143
- essential services and, 6–7, 40

cost pass-through applications, 3

cost-reflective network tariff, 3, 165, 166

counsel fees, 216–217

court cases, 2, 4–5, 12

- AER, 158
- anti-competitive conduct, 48–50
- cartels, 5, 49, 50
- Dairy Code of Conduct, 111
- fair trading, 102
- misleading representations, 4, 5, 98, 106
- vulnerable consumers, 101, 152

court enforceable undertakings, 45, 50, 51, 66, 68, 69, 85, 98, 100, 101, 102, 129, 131, 143, 152, 161, 180

CovaU, 5, 12, 143, 152–153

COVID-19 pandemic, 46, 48, 53, 55, 56, 64, 66, 168

Cox, James (Jim), 21, 184, 190, 191, 197, 276, 277

Crone, Peter, 21, 184, 188, 196, 276

Cross, Don, 198

Cultural Diversity Plan, 215

Customer Consultative Group, 169

D

Dairy Code of Conduct, 59, 104, 111

Dairy Inquiry, 59

data breaches, 101, 116

data holders, CDR, 2, 72–73, 74, 77–81, 87, 89, 90, 151, 294–295

data quality project, ACCC, 90

Data Recipient Accreditor, CDR, 81, 82, 294

data recipient representative arrangements, CDR, 2

Data Standards Body (DSB), 24, 73, 90

Data Standards Chair, 75, 76, 80

Data Strategy, AER, 180

Day Ahead Auction, 12, 180

decision making, robust and transparent

- key activity, 226
- performance indicators, 227–228

Default Market Offer (DMO), 11, 146, 149, 150, 151, 154, 181

Department of Climate Change, Energy, the Environment and Water (DCCEEW), 64, 143

Department of Finance, 208, 209

Department of Foreign Affairs and Trade

- Mekong Australia Partnership (MAP), 120

Department of Justice, US, 52

Department of the Treasury, 24, 26, 73, 78, 90, 101, 112, 130, 143

determinations, 220

developments affecting operations or financial results, 204

digital economy, 97–98

Digital Platform Regulators Forum (DP-Reg), 24, 61

Digital Platform Services Inquiry (DPSI), 5, 8, 58, 60

Interim Report No. 5, 60

Interim Report No. 6, 61–62

digital platforms, 8, 24, 40, 46, 60

Digital Platforms Board, ACCC, 194

Digital Platforms Inquiry, 59, 60

Disability Action Plan, 215

disability reporting, 217

Disability Strategy 2021–2031, 217

Diversity and Inclusion Strategy 2021–25, 215–216, 225

Diversity Champions, 215

door-to-door sales, 110, 118

Dusk, 129

Dye & Durham Corporation, 69

E

Early signal pathway process, 12, 163, 167, 178

East Asia Conference on Competition Law and Policy, 52

East Asia Top Officials Meeting, 52

east coast gas market, 139, 151

East Coast Gas Market Board, ACCC, 194

ecologically sustainable development, 283–285

education, information and awareness campaigns, 2, 281, 285

- product safety, 2, 128, 281
- scams, 117, 281
- see also published guidance and resources

Edwards, Lynda, 100

Effectiveness Survey, ACCC, 40, 41, 43, 48, 228

- Australian Consumer Law and industry codes enforcement, 96
- CDR accreditation, 83
- CDR compliance and enforcement, 87
- CDR enabling technology, 76
- CDR testing and on-boarding, 80
- consumer awareness and scams, 115
- industry codes, 109
- industry monitoring reports, 138
- industry-specific competition and market rules, 143
- infrastructure access, 135
- market outcomes, improved, 59
- mergers and acquisitions, 68
- product safety, 125
- small business, 109
- trade marks, 55

ElectraNet, 12, 167

electricity compliance monitoring, 143

electricity high price events, 155, 156, 158

Electricity Infrastructure Investment Act 2020 (NSW), 168

Electricity Infrastructure Roadmap, 27, 168

Electricity Market Monitoring Inquiry, 6, 57

electricity markets, wholesale and retail, 6–7

- analysing events and trends, 159
- implementing governments’ interventions, 160
- reporting on performance, 168

Electricity Markets Inquiry Board, ACCC, 194

electricity pricing, 140

- safety net, 150–151

Electricity Retail Code, 5, 138, 140, 142, 143

Electricity Transmission Ringfencing Guideline, 164, 181

Ellis, Jason, 49

Elysium Marketing Pty Ltd, 98

embedded network customers, 152–

emissions, 209

Employee Assistance Program, 215

employees

- Agency APS Census Results 2022, 16, 214
- agreements, 219–220
- APS classification and gender, 267–270
- arrangements of SES and non-SES, 274
- average staffing level, 17
- capability building, 213–214
- determinations, 220
- disability, 16, 217
- diversity and inclusion, 9, 16, 215–216
- early intervention, 280
- expenditure, 15
- First Nations, 9, 16, 216, 273
- full-time and part-time status, 271–272
- gender pay gap, 9, 16, 216–217
- hybrid working, 200, 208, 222
- key activity, 210–211
- learning and development, 225
- location, 272–273
- non-salary benefits, 220
- on-going and non-ongoing, 263–266
- performance indicators, 211–213
- performance pay, 275
- profile, 218–219
- remuneration, 198, 214, 220, 274, 278–279
- statistics, 262–275
- summary, 16
- turnover, 219
- wellbeing, 214–215
- working flexibly, 16
- workplace agreements, 220

Employsure, 5

enabling technology, CDR

- analysis of results, 75–76
- cybersecurity, 76
- highlight, 77
- incident monitoring and resolution, 76
- key activity, 74
- performance measures, 74–75

Endeavour Energy, 12, 167, 178

Energy Advisory Panel, 13, 27, 28, 171, 173

Energy and Utilities Administration Act (NSW) 1987, 160

energy bills, 6, 26, 65, 140, 152, 153, 168

Energy Consumers Australia, 29

energy debate, informing, 3

Energy Efficiency in Government Operations Policy, 209

Energy Innovation Toolkit, 13, 177

Energy Made Easy (EME), 3, 11, 140, 146, 147, 149, 173, 281

energy Ombudsman schemes, 179, 145, 147

Energy Price Relief Plan, 11, 150, 178

energy product reference data, sharing of, 151

Energy Security Board, 28, 171

Health of the National Electricity Market report, 158, 175

energy supply, ensuring continuity of, 151

energy technologies, 26

EnergyAustralia, 12, 75, 159

enforcement and compliance action, ACCC, 2, 5, 44, 59, 94

enforcement and compliance action, AER, 144, 159–160

- analysis of results, 158

- highlight, 162
- outcomes achieved, 159–161
- performance measures, 157
- priorities, 155–156
- strategic objective, 155

Enforcement and Compliance Committee, AER, 194, 197

Enforcement Committee, ACCC, 194, 195

engagement

- domestic, 61
- international see international engagement

engagement, consumer

- ACCC, 23, 119
- AER, 12, 29, 147, 152

Enterprise Agreement 2016–2019 (EA), 219

entity resource statement, 260

entry to premises, 293

Environment Network, 208

Environment Protection and Biodiversity Conservation Act 1999 (Cth), 209, 283

environmental performance reporting, 209

environmental sustainability, 208

- claims and, 98–99
- mandatory environmental reporting, 209

Essential Energy, 12, 167, 178

essential services, 46, 92, 100

Essentials Program, ACCC, 213, 225

ethical standards, 201

EU SafetyGate, 122

European Commission, 132

EvoEnergy, 167

exclusive arrangements, 46

Execute/Tilt/Advocate Framework, 28

Executive Management Board, 194, 199

executive management committees, 199

exempt contracts, 205

exemptions, competition see authorisations and notifications, ACCC

expenditure, 15

Expenditure Forecast Assessment Guideline for Electricity Distribution, 181

expenses for outcomes, 261

export services, incentivising and measuring, 167

external scrutiny, 202–204

F

Facebook, 62, 100, 149, 173

Fair Trade Commission, Japan, 52

fair trading, 102–103

- compliance and enforcement priorities, 92–93
- legislative framework, 287

false or misleading representations, 4, 5, 97, 99, 100, 105, 162

family violence interim guidance note, 10

Federal Bureau of Investigation, US, 52

Federal Court matters, 4–5

- AER, 159
- anti-competitive conduct, 48–50
- breaches of National Electricity legislation, 12
- cartels, 5, 49, 50
- consumer guarantees, 99
- Dairy Code of Conduct, 104, 111
- essential services, 100
- fair trading, 102–103
- misleading or deceptive conduct, 98
- misleading representations, 106

- recalls, 131
- vulnerable consumers, 101, 152
- female counsel, 216–217
- Fig & Bloom Pty Ltd, 98
- Financial-grade Application Program Interface (FAPI), 75, 76, 80
- financial hardship, energy customers in, 3, 26, 119, 146, 152
- financial performance, ACCC, 15
- financial services, 46, 62
- Financial Services Competition Team, 7
- Financial Services Inquiry Board, ACCC, 194
- financial statements, 229–258
- First Nations Australians
 - conduct impacting, 93, 100
 - consumer and small business support, 118–119
 - employees, 9, 16, 216, 273
 - scam victims, 116
- First Nations Employee Network (Mipla Tunapri), 216
- First Nations Employment Register, 216
- Fitbit, 99
- Flex, TOIL and leave, 225
- flexible work arrangements, 16
- Food and Grocery Code, 105
- Food Standards Australia New Zealand, 24
- Foreign Currency Conversion Services Inquiry, 62
- Forestry Corporation of NSW, 70, 71
- forums and groups, external, 176
- Franchise Code of Conduct, 102
 - compliance and educative activities, 111
- franchising, 102, 280
- fraud control, 200

- Fraud Control Plan 2019–24, 200
- free trade agreements, 52
- freedom of information, 203–204
- Freedom of Information Act 1982 (Cth)*, 203–204
- Fuel Consultative Committee, 25
- fuel excise cut, 139–140
- fuel sector see petrol prices
- Fuji, 102
- funeral services, 101

G

- Gallagher, Lynne, 13, 21, 184, 190, 192, 197
- gas auction reporting, 160, 179
- Gas code of conduct, 6, 50, 139, 143
- Gas Inquiry, 6, 58, 59, 138
- Gas Market Code, 6, 50, 139, 143
- gas market emergency price order, 143
- Gas Market Transparency Measures, 12, 161
- gas markets, 11, 12, 27, 139, 156, 158, 175, 180, 181
 - competition and pricing concerns, 139
 - monitoring prices following fuel excise cut and restoration, 139–140
 - new monitoring, 161
 - protecting consumers from high prices, 143
 - reporting on performance, 168
- gas price cap, 50, 139
- Gender Equality Action Plan, 215
- gender parity, 9
- gender pay gap, 9, 16, 216, 216–217
- General Counsel, AER, 14, 21
- generator performance standards, 161
- Gifts, Hospitality and Benefits Policy, 201

Global Forest Partners LP, 70
glossary and abbreviations, 297–300
Goodwin, Paula, 198
Google LLC, 4, 59, 106
governance committees, 194, 197
Governance Forum, AER, 194, 197
governance structure, ACCC and AER, 194
government
 Australian, 24
 state and territory, 24–25
grant programs, 207
Green Endeavour Pty Ltd, 104
Greenwashing by businesses in Australia, 98
Gregson, Scott, 21, 52, 276, 277
Groom, Eric, 13, 184, 190, 191
Guideline for Regulatory Sandboxing Trial Projects, AER, 147

H

hardship see retailer hardship policies
Harris, Anthea, 13, 21, 197
Health Canada, 122, 132
hipages Group Pty Ltd, 102–103
Horticulture Code of Conduct, 104, 111
Hume Forests Ltd, 70, 71

I

identity crime, 116
incentive schemes, 169
incident statistics, 280
Incitec Pivot Limited, 12, 159
Inclusive Workplace Committee, 215

Independent Competition and Consumer Commission, Papua New Guinea, 106
Indigenous Consumer Assistance Network (ICAN), 118
industry codes of conduct, 102–104, 111
 analysis of results
 consumers, 96–97
 small business, 109
 key activity
 consumers, 94
 small business, 108
 outcomes achieved, small business, 109–110
 performance measures
 consumers, 94–96
 small business, 108–109
industry guidance webpages, 138
industry monitoring reports, 133
 analysis of results, 138
 electricity market, 140
 insurance industry, 141
 key activity, 137
 outcomes achieved, 139–141
 performance measures, 137–138
industry-specific competition and market rules
 analysis of results, 142–143
 key activity, 142
 outcomes achieved, 143
 performance measures, 142
infant inclined sleeping products, 123, 130, 281
infant safe sleeping campaign, 281, 282
Infocentre, ACCC, 2, 109, 114, 120–121
information and communications technology (ICT), 40

environmental sustainability, 283, 284
 key activity, 221
 performance indicators, 221–222
 Information Publication Scheme, 204
 Information Security Manual (ISM), 76
 information security obligation, CDR, 84
 infrastructure access, decision making on
 analysis of results, 135–136
 highlight, 136
 key activity, 135
 outcomes achieved, 136
 performance measures, 135
 petrol prices and fuel excise, 139–140
 Infrastructure Committee, ACCC, 194, 196
 Infrastructure Consultative Committee, 25
 infrastructure services, legislative framework, 287
 infringement notices, 2, 3, 11–12, 86, 89, 95, 102, 104, 105, 129, 143, 149, 152, 158, 159–160, 180
 ING Bank (Australia) Limited, 89
 Innovate Reconciliation Action Plan 2022–24, 216
 Innovation Enquiry Service, AER, 13, 146, 177
Inquiry into the National Electricity Market Report
 June 2023, 140
 November 2022, 140
 Inquiry Project Boards, ACCC, 194, 196
 Instagram, 62
Insurance Monitoring Report, 141
 Integrated System Plan (ISP), 164, 176
 Intelligence Steering Group, 106
 internal audit, 199
 Internal Audit Work Plan 2022–2024, 199
 international collaboration, 8–9, 106–107, 120
 International Competition Network (ICN), 25, 52, 61
 Cartels Workshop, 52
 Steering Group, 25
 Unilateral Conduct Workshop, 52
 International Consumer Product Health and Safety Organization Annual Meeting and Training Symposium, 132
 International Consumer Protection and Enforcement Network (ICPEN), 8, 25, 61, 98, 106
 Consumer Education Award, 132
 presidency, 106–107, 120
 international counterparts, 25
 international engagement, 52–53, 61, 132
 International Product Safety Week, 132
 International Regulatory Futures Forum, 13
 International Smart Grid Action Network (ISGAN) Sandbox Community of Practice, 177
 intervention in proceedings, 293
 Investigation Case Management System, 222
 investigations, 280, 293
 iSignthis Australia Pty Ltd, 83

J

Jemena, 12, 160
 Jemena Gas Networks, 167
 Jim’s Group Pty Ltd, 102
 Johnston, Derek, 21, 184
 Jones, the Hon Stephen, 26
 Joyce, Christopher, 48
 judicial decisions, 202
 Juno Pharmaceuticals Pty Ltd, 56

K

Keogh, Mick, 9, 21, 184, 186, 195, 196, 276, 277

Korea Consumer Agency, 132

L

Lactalis Australia, 59, 104, 111

Lawn Solutions Australia, 50

Legal and Governance Branch, AER, 14, 144

Legal Services Directions (LSD), 216

legislative framework, 286–287

Leigh, the Hon Dr Andrew, 26

letter of transmittal, iv

life support, energy customers on, 12, 156, 152, 180

Linfox Armaguard, 70

Link Administration Holdings, 69

Liquor Boss, 69

Little black book of scams, 117

Lowe, Catriona, 9, 13, 21, 119, 184, 186, 190, 191, 195, 276, 277

Lunch and Learn program, AER, 14

M

mandatory standards, product safety, 123, 128, 129, 130

Marinus Link Pty Limited, 167

market reports, AER, 11, 155, 158, 175

market studies and inquiries, ACCC, 9, 23, 44, 46, 48, 97

- analysis of results, 59

- Childcare Inquiry, 63

- digital platforms, 60–62

- financial services, 62

- highlight, 61

- key activity, 58

- Murray–Darling Basin Water Markets Inquiry, 64

- outcomes achieved, 60–62

- performance measures, 58

- private health insurance reporting, 64

- Regional Mobile Infrastructure Inquiry, 63–64

- water monitoring report, 65

markets, limited competition, 287

Markets Committee, AER, 194, 197

Mastercard, 48

Maxgaming Qld Pty Ltd, 102

Maybury, Peter, 21, 276, 277

Mazda Australia Pty Ltd, 99

Measuring Broadband Australia consumer dashboard, 2, 137, 138

Measuring Broadband Australia (MBA) program, 138, 281

Medibank Private, 101, 116

Meg's Flowers Pty Ltd, 98

Mercedes-Benz, 4, 128, 131

mergers and acquisitions, 2

- analysis of results, 68

- authorisations, 70

- effective control, 6

- informal merger reviews, 69–70

- investigations, 2

- key activity, 66–67

- merger assessments, 2

- outcomes, 69–70

- performance measures, 67–68

- preventing anti-competitive, 66

- priorities, 66

proposed reforms, 6

Mergers Review Committee, ACCC, 194, 196

Meta, 62

Ministerial Statement of Expectations, 26

Ministry of Business, Innovation and Employment, NZ, 132

misleading and deceptive conduct, 4, 22, 44, 42

- contacts, 121
- enforcement actions, 105–106
- environmental claims and sustainability, 98–99
- essential services, 100
- outcomes achieved, 97–98
- priorities, 92
- strategic objective, 91

misuse of market power, 142, 173

Mock Data Holder and Mock Register, CDR, 77, 78, 80

monitoring and reporting, AER

- analysis of results, 158
- highlight, 162
- outcomes achieved, 159–161
- performance measures, 157
- priorities, 155–156
- strategic objective, 155

monopoly infrastructure regulation, ACCC, 22, 34, 42

- priorities, 134
- strategic objective, 133

monopoly infrastructure regulation, AER, 28, 35, 144, 197

- analysis of results, 166–167
- highlight, 170
- outcomes achieved, 167–169
- performance measures, 165–166

priorities, 134, 163–165

strategic objective, 133, 163

Motor Vehicle Service and Repair Information Scheme (MVIS), 110, 112, 281

Multinet Gas Networks, 13, 167

Murray–Darling Basin Ministerial Council, 64

Murray–Darling Basin water market reform, 7

Murray–Darling Basin Water Markets Inquiry, 9, 59, 64

Murraylink, 12, 167

N

Narrowing the Pay Gap Strategy, 9, 215, 216

Natco Pharma Ltd, 56

National Anti-Scam Centre (NASC), 8, 40, 113, 116

National Association of Practising Psychiatrists, 202

National Broadband Network (NBN), 131

- Special Access Undertaking (SAU), 136

National Consumer Congress, 119, 123

National Disability Insurance Agency, 24

National Disability Insurance Scheme, 119

National Electricity Laws, 12

National Electricity Market (NEM), 6, 11, 79, 143, 160, 162, 171

National Electricity Market Report, 175

National Electricity Market 2025 project, 171, 175

National Electricity Objective (NEO), 163, 170, 173

National Electricity Rules, 162, 171

National Energy Objectives, 13

National Ethnic and Multicultural Broadcasters Council, 117

National Gas Law, 11

National Gas Objective (NGO), 163, 170

National Gas Rules, 11, 12, 159, 164, 179
National Indigenous Consumer Strategy (NCIS), 100, 118
National Indigenous Radio Service, 117
National Packaging Covenant, 209
network performance reports, 164, 167, 168
Networks Committee, AER, 194, 197
New caravan retailing: Ensuring industry compliance with the Australian Consumer Law, 99
New Zealand Commerce Commission (NZCC), 25, 52
Newgate Research, 145
non-consultancy contracts, 206–207
non-salary benefits, employee, 220
Notice of Employee Representational Rights (NERR), 219
NQ Cranes Pty Ltd, 50
NSW Electricity Infrastructure Fund Contribution Determination Guideline, 181
NT Power and Water Corporation, 167

O

Office for Product Safety and Standards, UK, 132
office location, iii
Office of Competition and Consumer Protection, Poland, 106
Office of the Australian Information Commissioner (OAIC), 24, 61, 85, 90, 203–204
Office of the eSafety Commissioner, 24, 61
Office of the Merit Protection Commissioner, 203
Oliver, Justin, 21, 184, 190, 192, 197
O’Loughlin, Nerida, 21, 184
on-boarding, CDR see testing and on-boarding, CDR
One Rail Australia Holdings, 69

1Circle Pty Ltd, 56
online shopping, 5
Online Submissions Portal, 222
online sweeps, 5, 7, 40, 97–98, 101
OpenID Foundation, 80
operating deficit, 15
Operational Security Mechanism, 173
Optus, 51, 100, 101, 116
Orana REZ, 168
Organisation for Economic Co-operation and Development (OECD), 25, 61, 106, 120
 Committee on Consumer Policy, 106, 120
 Competition Committee, 52
 Competition Open Day, 52
 Global Recalls Portal, 122
 Working Party on Consumer Product Safety, 132
organisational structure, 20–21
Origin, 75
ORIMA Research, 41, 42

P

parliamentary scrutiny, 203
partnerships, collaboration and engagement, AER, 13, 180–181
Peer Support Adviser Network, 215
penalties, 2, 3, 4, 5, 15, 49, 50, 89, 99, 100, 102, 104, 105, 106, 128, 129, 131, 143, 152, 159
People and Culture Branch, 215
People at Work survey, 215
performance measurement and reporting framework, 30
performance pay, 275
Perishable Agricultural Goods Inquiry, 59
petrol monitoring reports, 140

petrol price cycle website, 138

Pilbersek, the Hon Tanya, 64

Planning, Monitoring and Evaluation Framework, 144

poles, wires and pipelines, revenue determination, 167

policy advocacy, AER, 27, 172

Portfolio Budget Statement 2022–23, iii, 30, 31–32

Power BI dashboards, 214, 225

price fixing, 49–50

Pride Plan, 215

principles of regulator best practice, 33, 41, 43, 178

- collaboration and engagement, 180–181
- continuous improvement and building trust, 178–179
- risk based, and data driven, 179–180

privacy, 203

private health insurance reporting, 64

procurement, 205–207, 284

product safety, 2

- international engagement, 132
- priority risks see product safety priorities
- strategic objective, 122
- see also safety hazards in consumer products

Product Safety Australia, 2

Product Safety Consultative Committee, 25

Product safety Pledge, 123

product safety priorities, 123

- analysis of results, 128–129
- highlights, 131
- key activity, 127
- outcomes achieved, 129–131
- performance measures, 127–128

Product Safety Priorities Policy, 123

product safety standards and information standards, 2

product stewardship scheme, 56, 57

property, 283–284

Prosegur Australia, 70

Public Governance, Performance and Accountability Act 2013 (PGPA Act), iv, 30, 31, 33, 39, 199, 200, 205, 301

Public Governance, Performance and Accountability Rule 2014 (PGPA Rule), 30, 31, 33, 199, 301

public reviews, merger, 2, 69

Public Sector Interim Workplace Arrangements 2022 (Interim Arrangements), 219

Public Sector Workplace Relations Policy 2023, 219

published guidance and resources, 80, 113, 122

- ACL, 110
- AER, 149, 181
- CDR materials quick reference guide, 80
- consumer guarantees, 110, 118
- consumer protection, 118
- industry codes of conduct, 111
- MVIS, 112
- product safety, 126, 129
- regulatory sandboxing, 147
- scams, 117

purchasing, 284

Q

Qantas, 69

Qteq Pty Ltd, 50

Quinlivan, Daryl, 7

R

Rate of Return Instrument 2023, 12, 163, 170

ReAmped Energy, 5, 143

recalls, 2, 4, 5, 122, 124, 126, 127, 128, 1323

Reconciliation Action Plan, 9, 215

Recycle My Mattress, 57

refunds, rights to, 99

Regional Mobile Infrastructure Inquiry, 58, 63–64

Register and Accreditation Application Platform (RAAP), CDR, 73, 74, 75, 76, 77

Register of Accredited Persons, CDR, 73, 74, 294, 295

Regulation of the National Energy Market, 203

Regulator Performance Guide, 41, 42

Regulator Statement of intent, 26

Regulatory Investment Test-Transmission (RIT-T), 164, 165, 176

regulatory sandboxing, 146, 147, 177

Rehabilitation Medicine Society of Australia and New Zealand Ltd, 202

The Reject Shop, 129

Reliability Compliance Procedures and Guidelines, 181

remote access scams, 115

renewable energy transition, 13, 28, 144, 163, 164, 166

analysis of results, 172

contributions to policy and reviews, 173–175

highlight, 177

outcomes achieved, 175–176

participation in professional forums, 176

performance measures, 172

priorities, 171–172

strategic objective, 171

Renewable Energy Zones (REZ) (NSW), 28, 164, 168

Resource Management Guide – Regulator Performance (RMG128), 178

resources prioritisation and allocation

key activity, 223

performance indicators, 224–225

responsible minister, 26

Retail Deposits Inquiry, 7, 57

Retail Exempt Selling Guideline, 181

Retail Food Group, 5, 102

retailer authorisations and exemptions, 3

retailer compliance audits, 3

retailer hardship policies, 3, 148

Retailer of Last Resort (RoLR) scheme, 3, 11, 149, 151

Retailer Reliability Obligation, 155

revenue, 16

revenue and price control processes, 163

revenue determination, AER, 3, 27, 146, 163, 164, 167, 18, 173

Revenue Determination Guidelines for NSW Contestable and Non-contestable Network Projects, 164

Revitalife, 101

Rickard, Delia, 9, 184, 187, 276, 277

Ride2Work, 208

Ridgeway, Stephen, 21, 184, 189, 195, 196, 276, 277

ring-fencing guidelines, 164, 181

risk management, 200
Risk Management Framework, 200
Roussakis, Emmanuel, 49
Ruby Hutchison Memorial Lecture, 2023, 100, 119
rule change proposals and submissions, 3, 27, 156, 158, 167, 171–173, 176, 177

S

SA Power Networks, 167
safety hazards in consumer products
 analysis of results, 125
 key activity, 124
 outcomes achieved, 125–126
 performance measures, 124–125
 see *also* product safety
Savage, Clare, 10–14, 21, 184, 190, 197, 276, 277
Save Sorry Business Coalition, 119
scams, 2, 8, 40
 addressing, 115
 analysis of results, 114–115
 First Nations Australians and, 116
 guidance and education work, 117
 key activity, 113
 number of incidents reported, 120
 performance measures, 113–114
 statistics, 117
 see *also* consumer awareness
Scams Awareness Network, 115
Scams Awareness Week, 115, 281, 282
Scamwatch, 2, 113, 114, 115–116, 117
search warrants, 293
section 87B undertakings, 47, 67, 86, 95, 127

senior executive remuneration, 198, 214, 220, 276–279
Senior Executive Service (SES) employees, 184
 performance and behaviour expectations, 214
senior leadership
 ACCC, 184
 AER, 184
Service Charter, 204
Shadow a Leader program, 14
significant issues reported to Minister, 204
Significant Price Reporting Guideline, 158
small business, 92
 advocacy, 104–105
 embedded network support, 152
 rights under ACL and industry codes, 108–112
 unfair contract terms, 104–105, 110
Small Business and Franchising Consultative Committee, 25
Small Business Engagement Principles, 205
social media, 5, 8, 11, 40, 97, 105, 106, 113, 115, 130
 AER, 173
 DPSI Interim Report No. 6, 61–62
 influencer sweep, 5, 40, 62, 98
 promotion of EME, 149, 173
Soft Plastics Taskforce, 99
stakeholder surveys
 ACCC, 41–43
 AER, 145, 149, 166, 172
stakeholders
 ACCC, 23–25
 AER, 28–29
Stand Alone Power Systems (SAPS), 164

Stanwell Corporation Limited, 12, 160

State of the energy market report, 11, 155, 158, 175

State of the Environment Report, 208

Statement of Expectations, government, 29

Statement of Intent, ACCC, 26

statutory committees, ACCC, 195–196

Stop The Debt Trap Alliance, 119

Strategic Capability team, 225

Strategic Data and Analysis Unit, 225

Strategic Plan 2020–2025, AER, 28, 144, 179

substantial lessening competition

- merger assessment see mergers and acquisitions substantiation notice, 293

SUPA IGA, Karabar, 69

superfast broadband market, 134, 136

supply chains, global and domestic, 46, 52

sustainability, 7–8

- consumer protection and, 98–99

Sustainability Taskforce, 7–8

Swift Networks Pty Ltd, 49–50

systems, capabilities and ways of working

- strategic objective, 210

T

Takata airbag recall, 4, 128, 131

Targeting scams: Report of the ACCC on scams activity, 115–116

Tartak, Daniel, 49

TasNetworks, 167

telemarketing, 110, 118

Telstra Corporation Ltd, 6, 51, 70, 100, 203

testing and on-boarding, CDR

- analysis of results, 79–80
- key activity, 78
- outcomes achieved, 80
- performance measures, 78–79
- sandbox, 77, 78, 80

Therapeutic Goods Administration, 24

TikTok, 62

toppling furniture, 123, 131

Towards Energy Equity: A Strategy for an Inclusive Energy Market, 10, 154, 178

TPG Telecom Limited, 6, 70, 100, 203

trade mark applications, authorisation, notification and certification of

- analysis of results, 55
- highlight, 57
- key activity, 54
- outcomes achieved, 56
- performance measures, 54–55

Transgrid, 12, 167

Transmission Access Reform, 175

transmission and distribution network benchmarking reports, 163, 164

transmission determinations, AER, 12, 166

Transmission Efficiency Test and Revenue determination guideline, 181

Transmission Network Service Providers (TNSPs), 173

Transmission Planning and Investment Review, 175–176

transmission regulatory frameworks, 175

transmission resets, electricity and gas, 12

transparency review reports, AER, 164

travel, 284

Treasurer, 24, 26, 62, 63, 139, 140

Treasury CDR newsletter, 78

U

Uber, 4

unfair contract terms, 97, 102

- guidance, 110
- reforms, 59, 104–105

Unit Pricing Code, 106

United Florists Pty Ltd, 98

United Nations Conference on Trade and Development (UNCTAD), 25

Utility Regulators Forum (URF), 13, 25, 171, 176, 179

V

Victorian Energy Compare, 140

Victorian Essential Services Commission, 177

Vietnam, 120

Virgin Australia Regional Airlines, 56

voluntary recalls, product safety, 127, 129

vulnerable consumers, 3, 10–11, 28, 93

vulnerable consumers, AER objective, 146, 152

- analysis of results, 149–150
- highlight, 10–11
- performance measures, 147–148
- priorities, 146–147

W

Waratah Super Battery project, 168

waste management, 284–285

water access entitlement applications, 65

Water Act 2007, 65, 110

Water and Agriculture Board, ACCC, 194

Water market reform: final roadmap report, 7, 59

Water monitoring report, 65

water rules guidance, 110

websites, iii, 3, 204

- ACCC, 25, 41, 42, 48, 109, 110, 114, 118, 222
- AER, 26, 173
- CDR, 77, 78, 80, 87
- consumer guidance, 114–115
- EME, 3, 11, 26, 140, 146, 147, 148, 149, 173, 281
- Energy Innovation Toolkit, 177
- industry guidance, 138
- petrol price cycle, 137, 138
- Product Safety Australia, 2
- telemarketing and door-to-door sales, 118
- Your First Steps, 130
- see also Scamwatch

Wholesale electricity market performance report, 11

Wholesale Energy Market Dispute Resolution Advisor, 155

Wholesale Telecommunications Consultative Forum, 25

Women in Energy Forum, 14

Woolworths, 69

work health and safety, 280

Work Health and Safety Officers, 215

Workforce Snapshot, 225

Workforce Strategy 2025, 225

Working Smarter Program, ACCC, 40, 221, 222

workplace efficiencies, 284

Workplace Relations Taskforce, 220

workshops and presentations, 3, 149, 167, 177, 181, 215

- Consumer Affairs Program, 132
- energy innovation, 177
- international, 52, 53, 98, 107

World Environment Day, 208

Y

year at a glance, 2022–23, 2–3

Youpla Group, 101

‘Your First Steps’ baby safety resource, 130

Your Rights Mob, 100

