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Competition &  
Consumer  
Commission



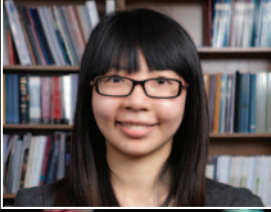
AUSTRALIAN  
ENERGY  
REGULATOR

# Australian Competition and Consumer Commission and the Australian Energy Regulator

## Annual Report 2010–11



Fostering  
competitive,  
efficient, fair  
and informed  
markets





Australian  
Competition &  
Consumer  
Commission



Australian Competition and Consumer Commission  
and the Australian Energy Regulator

Annual Report 2010–11

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25 August 2011

The Honourable David Bradbury MP  
Parliamentary Secretary to the Treasurer  
Parliament House  
CANBERRA ACT 2600

Dear Parliamentary Secretary,

We are pleased to present to you the Annual Report of the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) in accordance with subsection 63(1) of the *Public Service Act 1999*.

This report, covering the operations for the year ended 30 June 2011, is in accordance with subsections 44AAJ and 171(1) of the *Competition and Consumer Act 2010*.

We certify that the ACCC and the AER has prepared fraud risk assessments and fraud control plans and has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the specific needs of the agency and comply with the Commonwealth Fraud Control Guidelines.

Handwritten signature of Rod Sims in black ink.

Rod Sims  
Chairman, ACCC

Handwritten signature of Andrew Reeves in black ink.

Andrew Reeves  
Chairman, AER



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Part 01  
Year in review

# 2010–11 Review

## ACCC and AER Chairmen

In 2010–11 the cornerstone of competition and consumer law in Australia, the *Trade Practices Act 1974*, became the *Competition and Consumer Act 2010 (CCA)*. The renamed Act incorporates the Australian Consumer Law—a single law for consumer protection enacted in all state, territory and Commonwealth jurisdictions.

Most of the provisions of the Trade Practices Act continue in the CCA, and while it gives the ACCC an enhanced regulatory toolkit, our core legislative responsibilities remain broadly the same. However, under other legislation and government direction, our scope of work continues to grow.

2010–11 was the ACCC's last of eight years under the chairmanship of Graeme Samuel. During his tenure the ACCC has grown substantially in size and stature, from 490 staff and a budget of \$62.5 million in 2002–03 to 833 staff and \$147.8 million for 2010–11. The ACCC's many achievements outlined in this report are those of the Commission and the staff of the ACCC, and Graeme Samuel was rightly proud of both.

As we move into 2011–12 the ACCC and the AER will continue to enforce the CCA and the other laws we administer, responding proactively to the expectations of consumers, businesses and governments for effective competition, fair trading and consumer welfare, as well as well-regulated markets that support the nation's wellbeing and prosperity.

## Implementing the Australian Consumer Law

On 1 January 2011 the new Australian Consumer Law came into force. As a harmonised set of legislation applying across Australia to promote fair trading and protect consumers, the Australian Consumer Law gives all consumers the same rights—and imposes the same rules on businesses—wherever they are in Australia.

The Australian Consumer Law is being implemented through the single-law/multi-regulator model as agreed by the Council of Australian Governments, under which the ACCC will have a key role championing the Australian Consumer Law nationally.

The new law also provides for a cooperative and collaborative approach to the compliance and enforcement functions of the ACCC and the state and territory consumer regulators. Enhanced enforcement cooperation and information-sharing mechanisms will benefit consumers and business, and facilitate more consistent consumer protection.

The Australian Consumer Law gives the ACCC—and our counterpart state and territory fair trading agencies—a range of new tools to respond to breaches of consumer protection and fair trading provisions. As this report shows, the ACCC has been vigorous in its use of them.

New powers include the capacity to require traders to substantiate their claims. The ACCC now has the power to obtain redress on behalf of consumers, and issue infringement and public warning notices. These powers give us greater capacity to respond swiftly and decisively to breaches of fair trading and consumer protection laws.

Since these new powers came into force in April 2010, the ACCC has issued 56 infringement notices and received infringement notice penalties of almost \$300 000 under the CCA.

Where court action is required there are now strong penalties. The court can now order penalties of up to \$1.1m for corporations and \$220 000 for individuals for breaches of the Australian

Consumer Law. Penalties of \$4.7 million were imposed during the year for a range of conduct, including serious breaches of product safety labelling standards, and false, misleading and deceptive conduct in the marketing of mobile premium services.

In the first civil pecuniary penalty handed down for a breach of a product safety standard, the Federal Court imposed penalties of \$400 000 against Dimmeys Stores Pty Ltd for supplying children's dressing gowns that failed to comply with the mandatory consumer product safety standard for children's nightwear.

In another product safety matter, Fantastic Furniture was fined \$300 000 for selling bean bags that failed to display a warning about the severe danger presented to children if the filling is swallowed or inhaled.

Improvements in the systematic collection and analysis of information on product safety hazards helped trigger recall notifications, removing thousands of unsafe products from the marketplace and consumers' homes.

Penalties were imposed on the perpetrators of a small business scam involving misleading invoices for online business directories. Civil pecuniary penalties of \$2.7 million were awarded against Yellow Page Marketing BV and Yellow Publishing Limited (companies not associated with the Sensis Pty Ltd Yellow Pages® directories) for these actions, and the ACCC also sought and obtained successful non-party redress by having over 4000 contracts declared void and preventing the collection of over \$6 million from the scam.

Facing a penalty and the public exposure that comes with it represents a significant deterrent to breaching consumer protection laws, particularly for businesses with legitimate long-term business goals.

While these enforcement activities make the news and send a powerful deterrence message, much of our work has involved raising awareness of the new provisions and educating businesses and consumers about their rights and obligations.

The ACCC starts from the assumption that the vast majority of businesses want to do the right thing.

For example, in relation to new provisions to protect consumers from unfair contract terms, our initial focus was on educating businesses about their new obligations through seminars and guidelines. The ACCC's outreach team actively engaged with small and medium enterprises, particularly in rural areas, educating them about the Australian Consumer Law and a range of other rights and obligations under the CCA.

Together with other Australian Consumer Law regulators, the ACCC released consumer education material and achieved widespread media coverage of the new provisions. The aim was to achieve compliance by raising awareness and by directly engaging with key industries to achieve broad compliance rather than resolving isolated matters.

We have been reviewing standard contract terms in a number of industries in which there are high levels of consumer complaints, such as in domestic aviation, vehicle rental, telecommunications and fitness services. These reviews are aimed at, among other things, correcting the imbalance of rights and obligations in standard form consumer agreements. There was a high level of cooperation from some businesses, many of which readily made changes to their standard form agreements.

## Working with other regulators—domestically and internationally

Increasingly, the work of the ACCC requires cooperation and engagement with other regulatory agencies, domestically and internationally. For example, nine merger decisions taken by the ACCC during the year required cooperation with overseas counterparts. International collaboration has also been essential for the investigation and prosecution of cartel activity.

The ACCC's role in the International Consumer Protection and Enforcement Network has seen us play a leading role in the fight to disrupt scam activity.

In the product safety arena, we continue to work closely with our international counterparts to develop a consistent response to priority products including blind/curtain cords, baby slings and chair-top booster seats for children. The ACCC also took on the chairing role for a new OECD Product Safety Working Party that is implementing 10 key product safety recommendations, including the development of a global recalls database and an information sharing portal.

Additionally the ACCC worked with a range of regulators and other stakeholders, including road transport authorities, state government agencies, local councils and representatives from the aged care industry, to improve mobility scooter safety. At least 62 Australians have died and many hundreds have been injured in accidents involving mobility scooters, and—with the aging of the Australian population—mobility scooter usage is expected to increase.

The ACCC also signed a memorandum of understanding with the United States Consumer Product Safety Commission, enhancing the two agencies' ability to collaborate and share information.

Domestically, the ACCC chairs the Australasian Consumer Fraud Taskforce and has partnered with the Australian Transaction Reports and Analysis Centre in protecting consumers against financial loss from fraud and scams. The ACCC and the Australian Communications and Media Authority together have successfully tackled consumer risks with mobile premium services—a leading source of 'bill shock' in the past.

In enforcing the Australian Consumer Law, our relationship with the other Australian Consumer Law regulators (that is, ASIC and the eight state and territory consumer protection regulators) is critical. Consumers don't distinguish between the responsibilities of different agencies. We seek to work closely with our partner agencies on joint projects, sharing information and collaborating with them to deliver an enhanced compliance and enforcement program.

## Tackling cartels and other anti-competitive conduct

Tackling the most egregious forms of anti-competitive conduct—cartels and the misuse of market power—remains a priority for the ACCC.

In 2010–11 we achieved successful outcomes in prosecuting cartel activity in international air cargo and in the marketing of fine paper products.

Japan Airlines International Co Ltd was ordered to pay a \$5.5 million penalty for price fixing in respect of fuel, insurance and insurance surcharges on the international carriage of freight. This brings to more than \$46 million the total penalties imposed on cartel participants since the ACCC's investigation into alleged cartel activity in air cargo services began in 2008. Several matters in relation to this alleged cartel remain before the courts.

Singapore-based Asia Pulp & Paper Co Ltd and a related Indonesian company, PT Indah Kiat Pulp and Paper Tbk, were ordered to pay penalties totalling \$4.2 million for fixing the price of photocopy paper and uncoated woodfree folio paper supplied to Australian customers. This brings the total penalties for the fine paper matter to \$8.2 million. This case demonstrated to

companies and business people outside Australia that if they are doing business in Australia they must comply with Australian law, and that the ACCC can and will enforce their compliance.

In September 2010, the ACCC finalised proceedings instituted against Cabcharge Australia Limited (Cabcharge) in 2009 for contravening the misuse of market power provisions of the Trade Practices Act (now the CCA). The Federal Court imposed penalties and costs of \$15 million against Cabcharge, the highest penalty ever imposed in a misuse of market power case brought by the ACCC. The case also involved the first penalties calculated under provisions that provide for penalties of up to 10 per cent of the offender's financial turnover for the relevant year.

## Mergers—timely and transparent assessments

In assessing proposed mergers under section 50 of the CCA, the ACCC is committed to applying a timely and transparent process in the interests of fair competition.

Major merger matters the ACCC dealt with in 2010–11 included:

- > Metcash Trading Ltd's proposed acquisition of the Franklins Supermarkets Ltd supermarket business—opposed on the grounds that it would lead to a substantial lessening of competition in the wholesale grocery market. This matter is before the courts.
- > National Australia Bank Ltd's (NAB) proposed acquisition of AXA Asia Pacific Holdings Limited (AXA)—the ACCC rejected the proposed section 87B undertakings offered by NAB and AXA and maintained opposition to the proposed acquisition.
- > Asahi Holdings' proposed acquisition of P&N Beverages Australia Pty Ltd—opposed on the basis that it would result in the substantial lessening of competition in the markets for the supply of carbonated soft drinks and cordials.

In assessing merger matters in 2010–11, the ACCC completed 84 per cent of reviews of proposed acquisitions in 8 weeks or less. Another 236 mergers were pre-assessed as not requiring substantive review—most of these being completed in two weeks or less.

## Authorising anti-competitive agreements and allowing collective bargaining when in the public interest

The ACCC assessed 47 authorisation applications across 27 projects and received 650 exclusive dealing notifications in 2010–11.

We gave conditional authorisation to a code of conduct proposed by the Generic Medicines Industry Association—with conditions that strengthened the transparency of the code in order to improve consumer confidence in the industry.

We also granted conditional authorisation to an alliance between Virgin Blue Airlines Pty Ltd and Air New Zealand Ltd in relation to trans-Tasman flights, benefiting passengers through greater choice in routes and frequencies and potentially lower fares through cost savings and efficiency improvements.

The ACCC continues to support the ability of small businesses including farmers to trade with larger firms in a fair, yet competitive environment. In 2010–11 we allowed 10 collective bargaining proposals, spanning independent liquor businesses, lorry owner drivers and hoteliers.

## Preparing the ground for more competitive communications

The ACCC has a key role in delivering a competitive market environment for the communications sector, specifically in relation to reform of the sector and the regulation of access to the National Broadband Network (NBN).

Following amendments to the telecommunications access regime, we issued interim access determinations for a range of regulated telecommunications services and initiated inquiries to finalise price and non-price terms of access for regulated services in the 2011–12 period, helping promote competition during the transition to the NBN.

The ACCC has also provided advice to the government when requested. In particular, in late 2010 the government asked us to develop advice in conjunction with NBN Co on the number and location of initial points of interconnection (POIs) in the network. After a public consultation, we recommended 120 initial POIs. This has since been increased to 121 initial POIs following further discussion with industry and NBN Co.

Over coming months, the ACCC will be responsible for assessing key undertakings from both Telstra and NBN Co on the way forward.

## Energy role extends to retail regulation

The AER is part of the ACCC but operates with an independent three member Board. Its functions encompass the wholesale electricity and gas markets and network infrastructure.

In setting the prices charged for the use of energy networks, the AER tries to ensure that customers pay no more than needed for the safe and reliable supply of energy. In 2010–11, the AER released determinations for the electricity distribution networks in Victoria and gas distribution networks in Queensland and South Australia. The AER also participated in five merits review processes relating to previous determinations.

The AER will assume additional responsibilities in 2012 under the new National Energy Retail Law. These responsibilities will include approving retailers' policies for dealing with customers facing hardship, monitoring market activity and retailer behaviour and enforcing compliance with the Law. In 2010–11, it undertook detailed preparation for this role, including consulting on guidelines that set out its intended regulatory approach.

While the AER will not regulate retail energy prices, it will provide an online price comparison service to help consumers select a suitable energy supply contract.

## Keeping fuel prices under scrutiny

The ACCC continues to monitor the petrol industry. In December 2010 we provided the government with our third formal monitoring report on prices, costs and profits in the petrol industry. It found that: the major determinants of domestic retail petrol prices were the international price of refined petrol and the Australian/US dollar exchange rate; that Australia had the fourth lowest petrol prices in the OECD; and that rates of return in the industry were in line with the average of other Australian industry sectors. The established weekly retail price cycles in the largest capital cities—though less stable than in the previous year—indicates a degree of coordination that remains a concern for the ACCC.

The report also noted that sales of ethanol blended petrol continued to increase as a result of a mandate in New South Wales (and in anticipation of a mandate in Queensland). With limited domestic supplies of ethanol, we remain concerned about the supply and price of ethanol blended petrol in the short to medium term.

The fourth monitoring report will be submitted to the government by 17 December 2011. In May 2011 the government directed the ACCC to undertake formal monitoring for a further 12 months to December 2012.

## Water in the Murray-Darling Basin

The ACCC has played a significant role in the Murray-Darling Basin water reform program, under the National Water Initiative and the *Water Act 2007*, by developing and implementing water market and water charge rules. These rules aim to free up water markets by reducing barriers to trade faced by irrigators, and promote the economically efficient use of water resources and infrastructure assets.

In 2010–11, our focus shifted from providing policy advice to monitoring compliance with and enforcing the rules.

In 2011 the ACCC issued the first Water Monitoring Report, with data and analysis on regulated water charges, transformation and rule compliance. This showed a general fall in termination fees, significant transformation of irrigation rights and significant termination of water delivery rights. The report concluded that this indicated a reduction in the barriers to trade imposed by irrigation infrastructure operators and demonstrated that the rules had a positive effect in developing functioning water markets. The report also noted that while there was considerable transformation and termination, many irrigators who sold water maintained an involvement with their infrastructure operator and continued irrigated agricultural production.

The ACCC also completed two formal enforcement actions under the Water Charge Rules and resolved two further investigations administratively.

## Improving access to infrastructure

During 2010–11, the ACCC accepted two undertakings under Part IIIA of the CCA which aim to benefit Australia's economy into the future.

Ensuring access of wheat exporters under fair terms to grain handling facilities in ports owned by their competitors increases competition in this multi-billion dollar export market. Similarly the work with the Australian Rail Track Corporation, which saw the ACCC accept an access undertaking in June 2011, promotes efficiency and investment in rail infrastructure in the Hunter Valley—a network which transports billions of dollars of coal through the Port of Newcastle—and thereby enhances Australia's global competitive position.



# Outlook and challenges for 2011–12

## Passing the baton

The ACCC has jurisdiction over a wide breadth of consumer, competition and regulatory matters, across which we have an impressive record of promoting compliance and achieving strong enforcement outcomes. This is reflected in the way in which the ACCC has effectively taken on more responsibilities as requested by the government of the day.

1 August 2011 marked a change of leadership for the ACCC. Under the outgoing chairman, Graeme Samuel, the ACCC responded vigorously to its diverse and growing portfolio of responsibilities, often exercising its powers under intense public attention. While new leadership inevitably involves a degree of change in an organisation, the achievements and reputation of the ACCC are a product of the entire Commission. The ACCC is highly respected, in Australia and around the world, consistently ranking in the world's top five competition regulators. The high standing and increasing demands placed upon the ACCC are a tribute to the professionalism Graeme Samuel imbued in the ACCC during his tenure. We will build on this position while also increasing the ACCC's engagement with its stakeholders so they better understand who we are, what we do and how it benefits them.

## Outlook

In 2011–12 the ACCC will:

- > continue its national leadership role in relation to the Australian Consumer Law
- > provide high quality decisions and advice in mergers and market regulation, particularly in relation to the NBN
- > prepare for the expansion of the AER's functions, and
- > continue to review and improve the way we do business to stay at the forefront of international best practice.

In taking a lead role in the Australian Consumer Law, the ACCC will seek to efficiently coordinate enforcement activity across the many agencies involved. This cooperative approach will help deliver the enhanced competition outcomes envisaged under the Australian Consumer Law. We will also embark on a major campaign to inform the public of their consumer guarantee rights, and continue to implement programs to identify and remove unfair terms in standard form contracts.

The ACCC has been directed by the Government to make it a priority to investigate and, where appropriate, initiate proceedings against businesses who engage in practices concerning the impact of a carbon price that contravene the Australian Consumer Law, and to encourage compliance with the CCA by informing and educating businesses and raising awareness amongst consumers about their rights under the Australian Consumer Law.

During the initial stages of carbon pricing we expect to receive an increase in consumer and business inquiries in relation to market responses to the price implementation. We expect to be undertaking increased compliance and enforcement activities to deter and stop non-compliance with the Australian Consumer Law. An enforcement priority will be to investigate businesses that mislead consumers about the effect of carbon pricing on their price increases. We will also develop a compliance program aimed at businesses and an education program for consumers.

The ACCC will also continue to:

- > actively investigate anti-competitive conduct, including criminal cartel conduct and misuse of market power
- > apply consistency and rigour in the assessment of mergers, authorisations and notifications.

In addition, over the next 12 months the ACCC will:

- > oversee structural reform of the communications sector, including through the establishment of an access regime for the NBN
- > continue to develop and implement a more holistic approach to the regulation of transport and logistics-related infrastructure
- > monitor and advise government and the public on fuel prices and market conditions
- > prepare for the National Energy Customer Framework, including methods to communicate with retail consumers of energy and other utility services.

The ACCC will continue to balance the imperatives of business, the needs of consumers and its duty to enforce the law without fear or favour, recognising that its work may affect all Australians almost every day.

## Challenges

The challenges facing the ACCC in delivering its work program and meeting its commitment to enhancing the welfare of all Australians by fostering competitive, efficient, fair and informed markets, include:

- > the need to effectively regulate the NBN
- > reaching out to the Australian community to inform consumers and businesses of their rights and obligations under the enhanced consumer guarantee provisions of the Australian Consumer Law
- > effectively collaborating with other Australian Consumer Law regulators to promote the national reach of the Australian Consumer Law, and deliver consumer benefit through enforcing Australian Consumer Law provisions relating to unfair contract terms, consumer guarantees, unconscionable conduct and unsolicited selling
- > proactively identifying and rapidly responding to emerging product safety hazards, and actively managing product recalls
- > combat the growing incidence of scams and online fraud, with greater inter-agency and international cooperation for disruption and enforcement actions
- > assessing increasingly challenging mergers in an uncertain global financial environment
- > meeting the demands of government and the expectations of consumers, business and industry with finite resources
- > continuing to develop and harmonise annual reporting requirements for gas and electricity businesses to underpin the regulatory determination process
- > continuing to develop effective enforcement and regulatory capabilities to underpin competition and efficiency in the Murray-Darling Basin water sector
- > ensuring the continued confidence of consumers, business and industry in the professionalism of the agency to independently and rigorously undertake its functions.

The ACCC will focus on developing our people, tools and systems to better support our role in promoting competition, fair trading and consumer welfare, and regulating national infrastructure for the benefit of all Australians. This includes:

- > improving the delivery of high quality, strategic and timely legal advice and litigation services within an integrated national framework of internal and external lawyers
- > developing and implementing our information management framework
- > strengthening support for developing leadership and performance management
- > upgrading the ACCC's online communications to meet changing audience preferences and needs
- > continuing to develop effective, efficient and sound financial practices
- > continuing to bring the latest tools and thinking in regulatory economics into the organisation
- > reviewing the economic framework for assessing authorisation applications and notifications, to promote consistent, informed and efficient decisions that ensure competition laws do not prevent arrangements that are in the public interest.



Rod Sims  
Chairman  
Australian Competition and Consumer Commission



Andrew Reeves  
Chairman  
Australian Energy Regulator

## Finance and staffing snapshot

The ACCC received an unqualified audit report on the 2010–11 financial statements from the Australian National Audit Office. These statements can be found in Part 5 from pages 147 to 210.

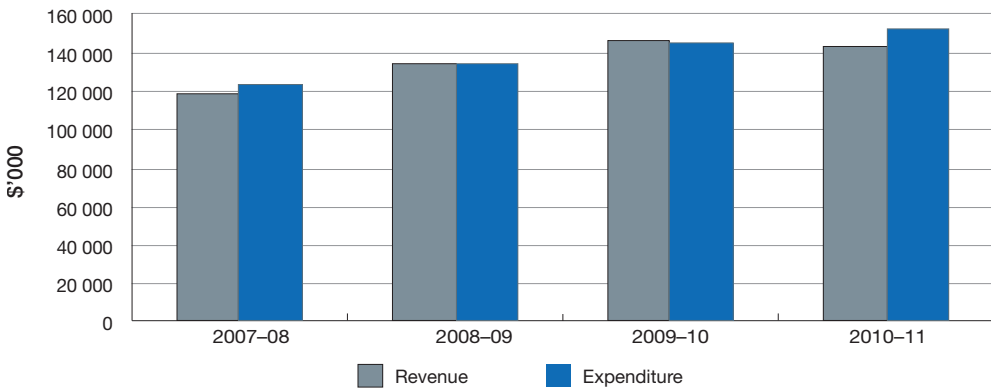
The ACCC’s net cost of services for 2010–11 was \$150.6 million, with revenue from Government of \$141.3 million, resulting in an operating loss of \$9.3 million. This result was impacted primarily by a change in the Australian Government funding framework whereby depreciation and amortisation expense is no longer funded through operating revenue. The depreciation and amortisation expense represented \$4.8 million of the deficit for 2010–11. In addition, higher than projected legal costs were recorded due to an increase in legal activity undertaken by the Commission.

Revenue from Government decreased by \$1.5 million in 2010–11, reflecting the net effect of (i) the cessation of operating funding for depreciation and amortisation expenditure, (ii) the cessation of prior year new policy funding, and (iii) additional funding by the Australian Government for activities associated with the establishment of the National Broadband Network (NBN) regulatory framework, implementation of unfair contract provisions, and continuation of formal monitoring of petrol prices.

Revenues from other sources decreased by \$3 million in 2010–11 due to financial gains associated with litigation provision write downs, recognized in 2009–10, not being repeated in 2010–11.

Expenditure on ACCC activities increased by \$6.1 million in 2010–11. A comparison of revenue and expenditure trends over the last four years is illustrated in Figure 1 below.

**Figure 1.1 ACCC Revenue and Expenditure**



The financial results demonstrate continued financial sustainability in 2010–11, notwithstanding the impact of the change in funding arrangements for depreciation and amortisation costs. The ACCC has sufficient cash reserves to fund liabilities as and when they fall due.

Key financial results for ACCC for the financial years 2009–10 and 2010–11 are shown in the following table.

**Table 1.1: ACCC comparative financial results, 2009–10 and 2010–11**

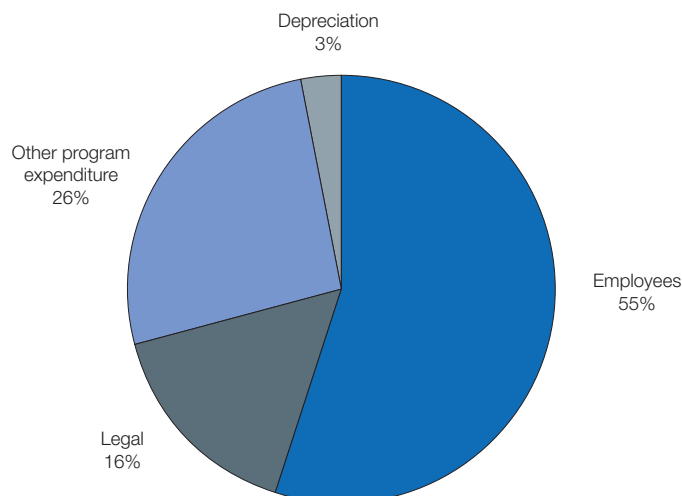
	2010–11 \$'000	2009–10 \$'000
Revenue from Government—appropriation receipts	141 342	142 892
Other revenues*	1 176	4 204
Total income	142 518	147 096
Operating expenses	151 858	145 664
Comprising expense major categories:		
Employee costs	81 586	79 009
Legal fees	25 348	20 890
Other expenses	44 924	45 765
Net cost of services (expenses less revenues)	150 682	141 460
Net operating surplus (deficit)	(9 340)	1 432
Operating cash balance	1 626	1 403
Receivables	51 867	53 908
Total assets	78 777	79 991
Total liabilities	40 522	34 936
Total equity	38 255	45 055
Revenues raised on behalf of the Commonwealth (administered fees and fines)	43 412	41 564

\* 2009–10 includes \$3 million in one off financial gains associated with litigation provision write downs.

## Expenditure

The ACCC is a knowledge-based organisation and as such spends approximately 54 per cent of total expenditure on employee costs. This is the same proportion as reported in the 2009–10 financial year. Legal expenditure is subject to volatility depending on the number of cases, timing and outcome of litigation proceedings. Legal expenditure increased by 21 per cent in 2010–11 to \$25.3 million when compared to the 2009–10 total of \$20.9 million. Depreciation and amortisation expenditure increased by 17 per cent in 2010–11 due to the impact of additional capital expenditure on office fitout and information technology.

Figure 1.2 ACCC expenditure, 2010–11



## Operating statement

The ACCC recorded an operating loss for 2010–11 of \$9.3 million. This compared to a surplus of \$1.4 million in 2009–10.

## Balance sheet

The ACCC's net assets as at 30 June 2011 were \$38.2 million (down from \$45.1 million in 2010).

### Assets

Total assets as at 30 June 2011 were \$78.7 million compared to \$79.9 million in 2009–10.

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

### Liabilities

Total liabilities increased from \$34.9 million in 2009–10 to \$40.5 million in 2010–11. The increase was largely due to an increase in other payables as a result of additional lease incentive arrangements.

## Administered revenue

Revenues administered on behalf of the government during 2010–11 amounted to \$43.4 million, which is an increase of \$1.8 million from the prior year (2009–10: \$41.6 million). This amount includes court-imposed fines and costs.

## Administered expenditure

Expenses administered on behalf of the government were \$0.68 million (2009–10 \$1.7 million). This expenditure includes bad and doubtful debt write-offs.

## Staffing summary

Table 1.2: Average staffing level

	Budgeted	Actual
2008–09	695	702
2009–10	756	732
2010–11	778	746
2011–12	812	*

\* Intentionally blank.



Part 02  
Overview of the  
ACCC and AER



# About the ACCC and the AER

The ACCC is an independent statutory authority formed in 1995 to administer the *Trade Practices Act 1974* (now the *Competition and Consumer Act 2010*) and other Acts. The commission has seven members, including the chair and two deputy chairs, all of whom are full-time. Members of the ACCC are appointed by the Governor-General for terms of up to five years. Appointments are made after the majority of state and territory jurisdictions support the selection.

The AER, also an independent statutory authority and part of the ACCC, regulates the national energy market. The AER has one Commonwealth member and two state/territory members, any one of whom may be appointed as the chair.

Both agencies are within the Treasury portfolio. The responsible minister is the Hon David Bradbury MP, Parliamentary Secretary to the Treasurer.

## Role and functions

### Background

Australia has promoted lawful competition as a means of securing a fair and competitive trading environment for consumers and businesses since the first anti-monopoly laws in 1906. Passed in 1974, the *Trade Practices Act 1974*, brought in new competition and consumer protection laws and created the ACCC's predecessor, the Trade Practices Commission. Following reforms agreed to by the Council of Australian Governments (COAG), the ACCC was established on 6 November 1995.

In 1997, telecommunications markets were opened to full competition and the ACCC became responsible for the competitiveness and economic regulation of communications markets. Further reforms by COAG resulted in the establishment under the Trade Practices Act of the AER on 1 July 2005.

With the passage of the *Water Act 2007* the ACCC has also been given price regulation, enforcement and rule making functions over water resources in the Murray-Darling Basin.

On 1 January 2011 the *Trade Practices Act 1974* became the *Competition and Consumer Act 2010* and now incorporates the new Australian Consumer Law (ACL).

### Legislative framework

In addition to administering the Competition and Consumer Act, the ACCC has responsibilities under the following legislation:

*Airports Act 1996*

*Australian Postal Corporation Act 1989 and Australian Postal Corporation Regulations 1996*

*Broadcasting Services Act 1992*

*Copyright Act 1968*

*Radiocommunications Act 1992*

*Telecommunications Act 1997*

*Telecommunications (Consumer Protection and Service Standards) Act 1999*

*National Broadband Network Companies Act 2011*

*Trade Marks Act 1995*

*Water Act 2007*

*Water Charge (Termination Fees) Rules 2009*

*Water Market Rules 2009*

*Water Charge (Infrastructure) Rules 2010*

*Water Charge (Planning and Management Information) Rules 2010*

*Wheat Export Marketing Act 2008.*

The AER has responsibilities under the:

*National Electricity Law*

*National Electricity Rules*

*National Electricity Regulations*

*National Gas Law*

*National Gas Rules*

*National Gas Regulations*

*National Energy Retail Law\**

*National Energy Retail Rules\**

*National Energy Retail Regulations\*.*

\* intended to take effect from 1 July 2012

## Purpose

The ACCC's purpose is to enhance the welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets. Its aim is to bring greater competitiveness and fair trading to the Australian economy, working on the fundamental principle that this benefits consumers, business and the wider community.

The AER works to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers. It does this through setting network prices that are efficient, ensuring wholesale energy markets operate competitively, and by educating and protecting consumers.

## Values

Taking pride in their people and the way they work, the ACCC and AER adhere to the Australian Public Service Values and Code of Conduct. The ACCC and AER produce results in the public interest by being accessible, transparent, independent and fair in their dealings with the community—including consumers, business and governments. The commission and AER Board perform their functions in a timely, effective, efficient and consistent manner that respects the confidentiality of information provided to them.

## Organisational model

The ACCC is a government organisation that enforces the Competition and Consumer Act and other legislation, but as an independent statutory authority it acts independently of government. The AER operates within the same business model.

The Competition and Consumer Act and other legislation require the ACCC and AER to protect consumers, encourage competition and regulate certain industries.

The ACCC and AER apply the law without fear or favour, to achieve universal compliance.

As well as enforcing the law, they provide information to educate businesses and consumers about the laws they administer to encourage more effective voluntary compliance.

## Investigating breaches of the law

Possible breaches of competition and consumer law come to the ACCC's attention through complaints and information from members of the public, the media, ACCC staff and other agencies.

The ACCC's Infocentre provides the initial response for all inquiries and complaints to the ACCC on competition and consumer issues.

If the matter is sufficiently serious, the case is investigated and may ultimately lead to the ACCC accepting a court enforceable undertaking from the company involved, or the issue of an infringement notice or the ACCC instigating civil or criminal court action. In doing this, the ACCC applies its compliance and enforcement policy, which is available on the ACCC's website.

The AER monitors compliance with the national energy market laws and undertakes investigations when possible breaches are identified. The AER has a range of enforcement options available if it is satisfied that a breach has occurred.

## Making decisions in the public interest

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

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

## Promoting a culture of compliance

The ACCC and AER foster a culture of compliance through an integrated approach to administering and enforcing the law.

Depending on the circumstances, the ACCC chooses from a range of compliance strategies—court action, court enforceable undertakings and administrative settlements, education and liaison programs, media communications, and working with business (both big and small) on specific programs to change conduct.

The ACCC contributes to the development of federal and state policies and procedures that promote compliance with competition, fair trading and consumer protection laws. It provides guidance to industry about trade practices compliance initiatives.

The AER works with energy market participants and other energy market bodies to promote compliance. Strategies range from court action, issuing infringement notices and reporting on conduct, through to industry workshops, compliance bulletins and other educative tools.

## Outcome and program structure

Under the outcome and program framework as presented in the government's budget, the ACCC has one outcome and one program:

- > Outcome: Lawful competition, consumer protection, and regulated infrastructure markets and services through regulation, including enforcement, education, price monitoring and determining the terms of access to infrastructure services.
- > Program: Australian Competition and Consumer Commission.

## Objectives

Promote vigorous, lawful competition and informed markets

- > Detect, pursue and stop anti-competitive conduct—including cartels—and misuse of market power.
- > Promptly deliver authorisation and notification decisions, particularly on small business collective bargaining arrangements.
- > Assess mergers promptly and efficiently across all industries, taking effective action to address substantial competition concerns arising from mergers.

Encourage fair trading, protection of consumers and product safety

- > Identify and focus effectively on national and cross-border (including international) consumer protection issues.
- > Pursue and achieve appropriate remedies for false and deceptive conduct, particularly conduct resulting in widespread detriment.
- > Ensure that trading conditions between big and small firms are fair.
- > Promote product safety through identification and regulation of emerging hazards, active engagement in recalls, and enforcement of standards and bans.

Regulate national infrastructure services and other markets where there is limited competition

- > Support and protect competition in markets that rely on networks with natural monopoly characteristics.
- > Provide consistent and independent regulation of the energy sector, encouraging competition within and between the gas and electricity markets to benefit industry and consumers.
- > Regulate and advise on industries where market structures are changing, including where the market structure impedes effective competition (for example, water, transport and communications).
- > Monitor prices to assess and advise on the effect of market conditions (including deregulation) on the price levels of specified goods and services, including petrol, and a range of airport prices including car parking.

# Organisational structure

## Commissioners

Chair	Graeme Samuel*
Deputy chairs	Michael Schaper
	Peter Kell
Members	Sarah Court
	Edward Willett
	Joe Dimasi
	Jill Walker
Associate members	Christopher Chapman
	Andrew Reeves
	Cristina Cifuentes
	Mark Berry

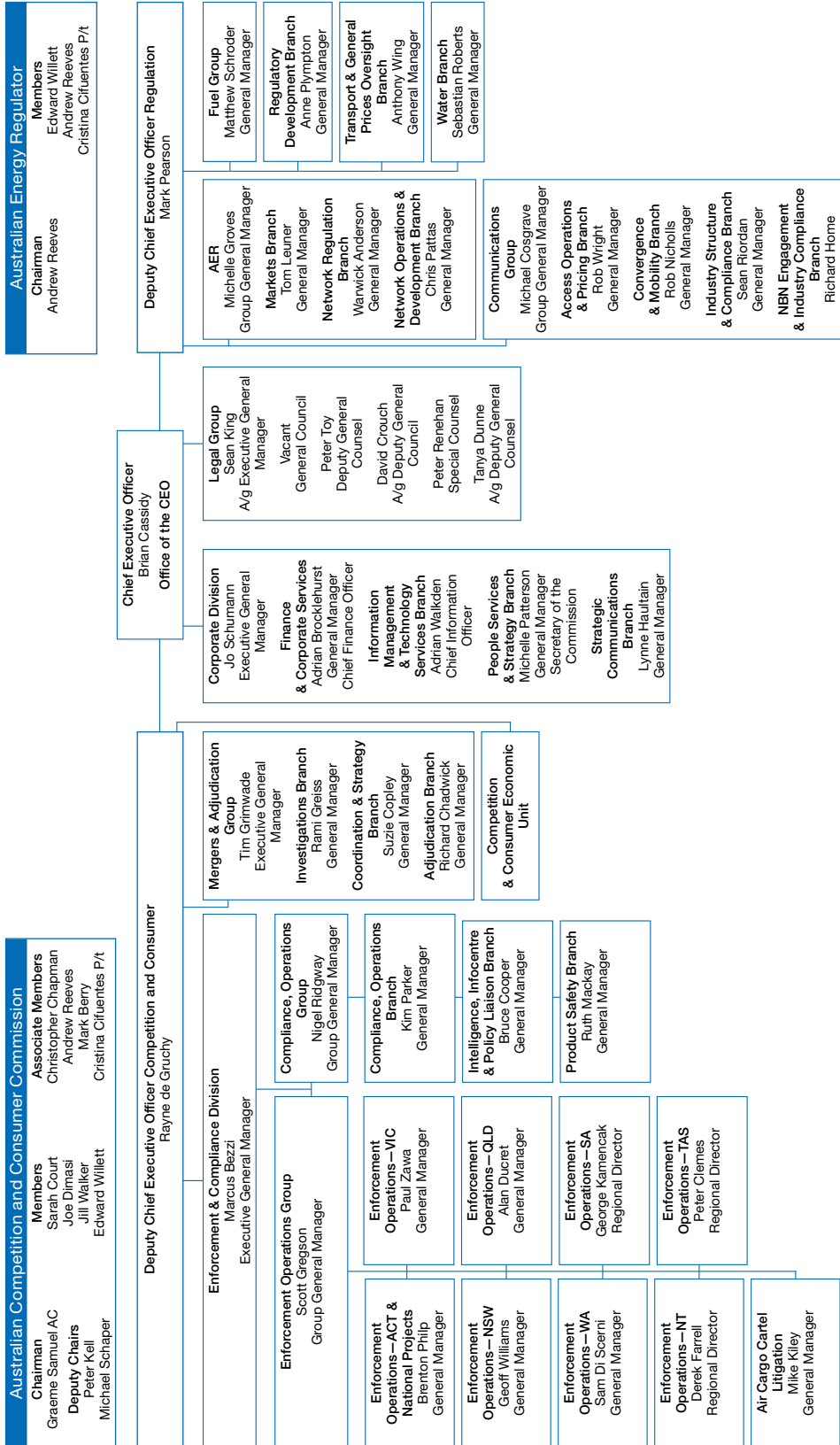
\* Note: Mr Samuel's term ended on 31 July 2011. The new Chair Mr Rod Sims began his five-year appointment on 1 August 2011.

## Australian Energy Regulator

Chair	Andrew Reeves
Members	Edward Willett
	Cristina Cifuentes (part time)

For more details, see Part 4 of this report.

Figure 2.1: Organisational structure of the ACCC/AER (at 30 June 2011)



## Offices and contact details

### ACCC national office

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Address	23 Marcus Clarke Street, Canberra ACT 2601 GPO Box 3131 Canberra ACT 2601 telephone: 02 6243 1111 facsimile: 02 6243 1199
ACCC Infocentre	business and consumer inquiries 1300 302 502
ACCC website	<a href="http://www.accc.gov.au">www.accc.gov.au</a>

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Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service, telephone 13 3677 or visit the website [www.nationalrelayservice.com.au](http://www.nationalrelayservice.com.au).

### AER

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Address	Level 35, The Tower 360 Elizabeth Street Melbourne Central, Melbourne VIC 3001 telephone: 03 9290 1444 facsimile: 03 9290 1457
AER email	<a href="mailto:AERinquiry@aer.gov.au">AERinquiry@aer.gov.au</a>
AER website	<a href="http://www.aer.gov.au">www.aer.gov.au</a>

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## ACCC regional offices (Enforcement and Compliance Division)

		Address	Telephone / Facsimile
New South Wales	Geoff Williams General Manager	Level 20, 175 Pitt Street Sydney NSW 2000 GPO Box 3648 Sydney NSW 2001	telephone: 02 9230 9133 facsimile: 02 9223 1092
Australian Capital Territory	Brenton Philp General Manager	23 Marcus Clarke Street Canberra ACT 2601 GPO Box 3131 Canberra ACT 2601	telephone: 02 6243 1111 facsimile: 02 6243 1047
Victoria	Paul Zawa General Manager	Level 35, The Tower 360 Elizabeth Street Melbourne Central Melbourne VIC 3001 GPO Box 520 Melbourne VIC 3001	telephone: 03 9290 1800 facsimile: 03 9663 3699
Queensland <i>Brisbane</i>	Alan Ducret General Manager	Level 24, 400 George Street Brisbane QLD 4003 PO Box 12241 George Street Post Shop Brisbane QLD 4000	telephone: 07 3835 4666 facsimile: 07 3835 4653
<i>Townsville</i>	Kim McBey Director	Level 6, Central Plaza 370 Flinders Mall Townsville QLD 4810 PO Box 2016 Townsville QLD 4810	telephone: 07 4729 2666 facsimile: 07 4721 1538
Western Australia	Sam Di Scerni General Manager	Third floor, East Point Plaza 233 Adelaide Terrace Perth WA 6000 PO Box 6381 East Perth WA 6892	telephone: 08 9325 0600 facsimile: 08 9325 5976
South Australia	George Kamencak Regional Director	Level 2, ANZ House 19 Grenfell Street Adelaide SA 5000 GPO Box 922 Adelaide SA 5001	telephone: 08 8213 3444 facsimile: 08 8410 4155
Northern Territory	Derek Farrell Regional Director	Level 8 National Mutual Centre 9–11 Cavenagh Street Darwin NT 0800 GPO Box 3056 Darwin NT 0800	telephone: 08 8946 9666 facsimile: 08 8946 9600
Tasmania	Peter Clemes Regional Director	Third floor, AMP Building 86 Collins Street Hobart TAS 7000 GPO Box 1210 Hobart TAS 7001	telephone: 03 6215 9333 facsimile: 03 6234 7796







Part 03  
Report on performance

# Performance reporting framework

This part reports on the ACCC's and the AER's performance for 2010–11, based on the performance reporting framework provided in the 2010–11 Treasury portfolio budget statements (PBS). The ACCC and the AER jointly report against one program and one outcome, as shown in Table 3.1.

Deliverables and key performance indicators are expressed as they appear in the Portfolio Budget Statements 2010–11, updating references to the *Trade Practices Act 1974* (TPA). On 1 January 2011 the *Trade Practices Act 1974* became the *Competition and Consumer Act 2010* (CCA), incorporating the Australian Consumer Law.

**Table 3.1: Performance reporting framework**

Drivers	<i>Competition and Consumer Act 2010</i> Portfolio budget statements ACCC and AER business plans	
Program 1	Australian Competition and Consumer Commission	
Outcome 1	Lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation, including enforcement, education, price monitoring and determining the terms of access to infrastructure services	
Strategies	<ul style="list-style-type: none"> <li>&gt; promote vigorous, lawful competition and informed markets</li> <li>&gt; encourage fair trading, protection of consumers and product safety</li> <li>&gt; regulate national infrastructure services (such as communications, bulk water, energy, rail, airports, post and wheat exports) and other markets where there is limited competition</li> </ul>	
Program deliverables		
Promoting vigorous, lawful competition and informed markets (CCA parts IV, VII, XI, XIA) and encouraging fair trading, protection of consumers and product safety (CCA part IVB, Australian Consumer Law Schedule 2 Chapter 2, 3, and 4, <i>Trade Marks Act 1995</i> and <i>Copyright Act 1968</i> )	Regulating national infrastructure services and other markets where there is limited competition (CCA parts IIIA, VIIA, X, XIB, XIC; National Gas Law 2008, National Gas Rules, National Electricity Law 2005; National Electricity Rules, <i>Airports Act 1996</i> , <i>Broadcasting Services Act 1992</i> , <i>Radiocommunications Act 1992</i> , <i>Telecommunications Act 1997</i> , <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> , <i>Water Act 2007</i> , <i>Wheat Export Marketing Act 2008</i> , <i>Australian Postal Corporation Act 1989</i> , <i>Copyright Act 1968</i> )	

## Objectives

The broad objective of the ACCC program is to administer the *Competition and Consumer Act 2010* and related legislation to bring greater competitiveness, fair trading, consumer protection and product safety to the Australian economy. This benefits consumers, business and the wider community.

For each of the following two specific objectives, the performance reporting framework identifies a set of deliverables, as well as a set of key performance indicators (KPIs), against which the ACCC reports on its performance:

- > The ACCC promotes compliance with federal competition, fair trading, consumer protection and product safety laws—see p. 42.
- > The ACCC and the AER regulate markets where competition is limited—for example, communications (ACCC), transport (ACCC) and energy markets (AER and ACCC)—see p. 73.

# Part 3A

## Promoting vigorous, lawful competition and informed markets

The key actions to achieve the intended results of the ACCC program of promoting vigorous, lawful competition and informed markets are:

1. detect, pursue and stop anti-competitive conduct, including cartels and misuse of market power
2. assess mergers promptly and efficiently, taking effective action to prevent substantial competition concerns arising from mergers across all industries
3. prompt and effective delivery of authorisation and notification decisions, particularly in the field of small business collective bargaining arrangements.

### 1. Stopping anti-competitive conduct

*Competitive markets lead to lower prices, greater efficiencies and more choice as market participants each try to win custom. Anti-competitive behaviour such as price fixing, misuse of market power and agreements that lessen competition can have significant impacts on consumers.*

#### Key performance indicator

- > Effective and appropriate actions (investigations, litigation, communication) are taken to prevent and stop anti-competitive conduct (see p. 28).

**Table 3.2: Anti-competitive conduct—deliverables and results**

Deliverables	Results
Actions against unlawful conduct.	See text below, pp. 29–41, and Appendix 11: Litigation matters, review proceedings and tribunal proceedings 2010–11.
Effective and appropriate remedies for unlawful conduct.	See text below, pp. 29–41, and Appendix 11: Litigation matters, review proceedings and tribunal proceedings 2010–11.
Outcomes from an expected 20 court cases (for competition, fair trading and consumer protection).	The ACCC concluded 28 first-instance litigation matters during the year, including six competition matters.
Outcomes from an expected 40 court enforceable undertakings (predominately for consumer protection conduct that has breached or is likely to breach the TPA).	The ACCC accepted 43 section 87B undertakings during the year, of which 20 were for consumer protection matters (refer Part 3B).

## Cartels

*Cartels threaten the effective operations of markets. They create an illusion of competition while actually inflating prices. By conspiring to control markets, cartels protect and reward their inefficient members while penalising honest, innovative and well run companies.*

The detection and prosecution of cartel activity (now subject to criminal sanctions) remains a priority for the ACCC, with the following cartel matters finalised in 2010–11:

- > Air cargo—Japan Airlines International Co Ltd was ordered to pay a \$5.5 million penalty for price fixing in respect of fuel and insurance surcharges on the international carriage of freight. This brings to more than \$46 million the total penalties imposed on cartel participants since the ACCC's investigation into alleged cartel activity in air cargo services began in 2006.
- > Fine paper—Singapore-based Asia Pulp & Paper Co Ltd and a related Indonesian company, PT Indah Kiat Pulp and Paper Tbk, were ordered to pay penalties totalling \$4.2 million for fixing the price of photocopy paper and uncoated woodfree folio paper supplied to Australian customers. This brings the total penalties for the fine paper matter to \$8.2 million.

At year's end, the ACCC had 11 cartel proceedings still before the courts—eight of them relating to the alleged air cargo cartel.

The ACCC relies heavily on players in the marketplace to alert it to cartel activity—including participants in cartel activity who can seek immunity from civil proceedings under the ACCC's immunity policy.

As well as taking direct enforcement action, the ACCC seeks to detect and deter cartel behaviour by working with businesses and government agencies to raise awareness of the threat posed by cartel activity and how it can be detected and stopped. For example, in late 2010 the ACCC gave a series of presentations to Queensland government procurement officers. The presentations were arranged by the Department of Public Works in Queensland following the trial in the matter of ACCC v TF Woollam & Son Pty Ltd & Ors in which the ACCC alleged that three construction companies engaged in price fixing and misleading or deceptive conduct in connection with certain state and local government projects. The ACCC is awaiting judgment in that matter.

## Misuse of market power

*Firms with a substantial degree of power in a market are prohibited from using it to eliminate or substantially damage a competitor, prevent the entry of a person into that or any other market, or deter or prevent a person from engaging in competitive conduct in any market.*

In September 2010, the ACCC finalised proceedings brought against Cabcharge Australia Limited in 2009 for alleged contraventions of sections 45 and 46 of the Trade Practices Act, with the Federal Court imposing penalties and costs of \$15 million on Cabcharge (see 'Cabcharge case puts the spotlight on misuse of market power', p. 31).

The ACCC's case against Cement Australia remains before the court. The ACCC has alleged that Cement Australia Pty Ltd and Pozzolanic Enterprises Pty Ltd had no commercial need for the contracted flyash, a by-product of burning black coal at power stations, from Millmerran Power Station. Further, by contracting for the flyash, the two companies are alleged to have taken advantage of their market power for the purpose of preventing market entry and competitive conduct.

## CASE STUDY

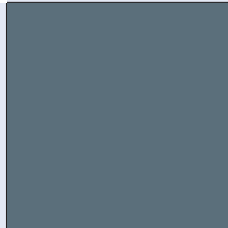
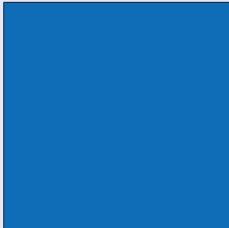
### Tackling international cartels

This year the ACCC continued to actively engage with its international counterpart agencies to detect, pursue and stop cartel conduct.

In 2010–11 the ACCC successfully concluded the long running international cartel enforcement action—ACCC v April International Marketing Services Australia Pty Ltd and others. The Federal Court ordered penalties totalling \$4.2 million against Singapore-based Asia Pulp & Paper Co Ltd (APP Singapore) and a related Indonesian company, PT Indah Kiat Pulp and Paper Tbk (Indah Kiat), for fixing the price of photocopy paper and uncoated woodfree folio paper supplied to Australian customers. In proceedings brought by the ACCC, the two companies admitted certain facts about their involvement in the price fixing arrangements. The Federal Court has now imposed total penalties of \$8.2 million on corporations involved in these arrangements.

The ACCC commenced proceedings against 15 international airlines between 2008 and 2010 for alleged collusion on fuel and other surcharges for air cargo services. To date, seven airlines have settled with the ACCC for a total of \$46.5 million. Proceedings against Malaysian Airline System Berhad, PT Garuda Indonesia Ltd, Singapore Airlines Cargo Pte, Cathay Pacific Airways Ltd, Emirates, Korean Air Lines Co Ltd, Air New Zealand Limited and Thai Airways International PCL remain before the courts.

These outcomes demonstrate the ACCC’s determination to pursue cartel arrangements made here or overseas by foreign corporations where they impact on Australian prices and consumers.



## CASE STUDY

### Cabcharge case puts the spotlight on misuse of market power

The risk of market power being misused to the detriment of consumers was illustrated by the Cabcharge case, which culminated in September 2010 with the company being ordered by the Federal Court to pay a total of \$15 million in penalties and costs, the highest penalty for misuse of market power imposed in Australia.

The ACCC took proceedings against Cabcharge for alleged contraventions of sections 45 and 46 of the Trade Practices Act. Cabcharge admitted to three contraventions of section 46 (misuse of market power), and with the ACCC jointly submitted agreed penalties and other orders to the court for consideration.

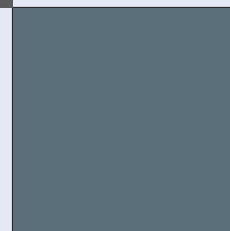
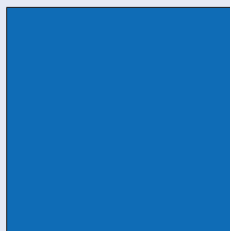
Two contraventions related to a refusal by Cabcharge to allow competing suppliers of taxi electronic payment processing services to process Cabcharge branded non-cash payment products. The third contravention related to supplying Cabcharge taxi meters and associated fare schedule updates at below cost for an anti-competitive purpose.

The court also ordered Cabcharge to implement a trade practices corporate compliance program.

Cabcharge took advantage of its market power to refuse competitor access to process Cabcharge branded non-cash payment products. Cabcharge also engaged in predatory pricing, by supplying taxi meters and associated fare schedule updates below cost for an anti-competitive purpose.

The Cabcharge outcome reflects the ACCC's determination to promote fair competition by pursuing cases where market power is misused.

The ACCC has observed that the number of companies offering taxi fare payment services has recently increased, suggesting a more dynamic marketplace with the potential for significant benefits for consumers. The ACCC will continue to monitor the market to ensure compliance with the law.





## 2. Assessing mergers promptly and effectively

*The impact on competition of proposed mergers and acquisitions is assessed by the ACCC under section 50 of the Competition and Consumer Act 2010, which prohibits mergers and acquisitions that would have the effect, or likely effect, of substantially lessening competition. The ACCC does this by providing the merger parties with its view on whether a particular proposal is likely to breach section 50 of the Act. This process is generally known as the informal clearance process. Businesses may also apply to the ACCC for formal clearance of mergers.*

**Table 3.3: Assessing mergers—deliverables and results**

Deliverables	Results
Assessment of mergers within statutory and organisational timelines and in accordance with published guidelines.	All mergers were assessed within organisational timelines and in accordance with published guidelines. See text below for further details of assessment timeframes.  No applications for formal merger clearance were received in 2010–11.
Publication on <a href="http://www.accc.gov.au">acc.gov.au</a> of all public merger decisions.	All public merger decisions were published on the mergers register on <a href="http://www.accc.gov.au">www.accc.gov.au</a> .

In assessing proposed mergers, the ACCC aims to deal with matters in a timely way, having regard to the commercial imperatives of the parties involved.

The ACCC reporting processes distinguish between those matters that require investigation and review and those that do not require review because the risk of competition concerns being raised is considered low (pre-assessed matters). The matters that are pre-assessed as not requiring review are often those that are:

- > referred to the ACCC by other parties, such as the Foreign Investment Review Board,
- > referred to the ACCC by the merger parties as a courtesy because clearance is not requested, or
- > identified by the ACCC's intelligence gathering activities.

The pre-assessment process enables the ACCC to respond quickly where there are no significant concerns.

The ACCC seeks to educate the public, businesses and their advisers on its merger review process, which is conducted as transparently as possible, with matters under public consideration placed on the ACCC's mergers online register. Companies may also request a confidential review, in which case they are not placed on the mergers register, nor are market inquiries conducted.

The ACCC considered 377 matters for compliance with section 50 of the Act in 2010–11.

- > 236 were assessed as not requiring a public review
- > 141 underwent a public or confidential review.

This year saw an increase in the number of matters that were pre-assessed, with 236 pre-assessments completed compared with 153 in 2009–10—partly due to an increase in notifications from the Foreign Investment Review Board from 85 to 133.

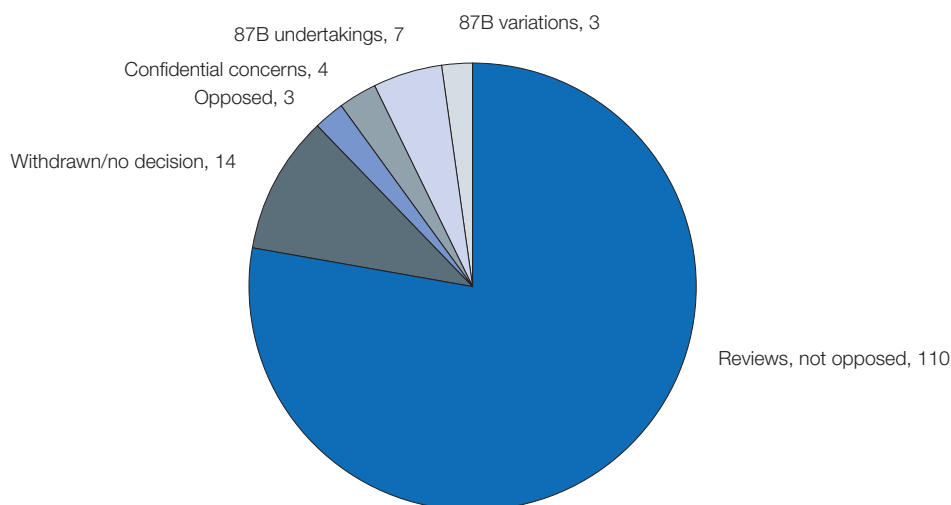
Of the 141 matters reviewed,

- > three were publicly opposed by the Commission
- > confidential opposition or concerns were expressed in four
- > seven were allowed to proceed after the ACCC accepted court enforceable undertakings under section 87B of the Competition and Consumer Act to address competition concerns

- > 14 matters were either withdrawn by the parties before a decision could be made, or were confidential matters where no view could be formed without market inquiries
- > variations to existing undertakings were accepted in relation to three matters
- > 110 matters were unconditionally cleared by the Commission.

Of the 141 matters reviewed, 33 reviews were conducted confidentially and 108 were public reviews of mergers. The ACCC unconditionally cleared 78 per cent of all mergers reviewed. In nine matters the ACCC used its formal information-gathering powers.

**Figure 3.1 Merger reviews assessed in 2010–11**



The ACCC concluded 84 per cent of reviews in less than eight weeks (not including matters where the ACCC was unable to reach a final decision, for instance, where the parties decided not to pursue the transaction before the ACCC concluded its review, completed acquisitions or variations to existing undertakings), and 65 per cent of reviews in less than six weeks. The majority of the 236 matters assessed as not requiring review were dealt with in less than two weeks.

The outcomes of all mergers publicly reviewed and decided on were published on the ACCC's website, as were 14 public competition assessments detailing the ACCC's decisions in relation to matters of public interest.

The ACCC accepted seven section 87B undertakings to address competition concerns identified by the Commission which allowed these seven mergers to proceed. These undertakings are carefully monitored by the ACCC to ensure compliance.

Significant merger matters assessed and reviewed in 2010–11 are listed in Appendix 12 on page 259 (and information about them can be found on the ACCC website).

## CASE STUDY

### Metcash's proposed acquisition of Franklins goes to court

The public focus on competition in the grocery industry is, not surprisingly, at the retail level.

Consumers are fully aware of the scale of the major grocery chains. But they are not always aware of the importance of competition at the wholesale and distribution level, and how this can affect the prices they pay when they choose to shop at independent grocers.

The ACCC decided in November 2010 to oppose the acquisition of the Franklins supermarket business by Metcash Trading, Australia's largest grocery wholesaling and distribution company, which supplies independent grocery retailers throughout the country, including those under the IGA and Supa IGA banners. The ACCC's position has not been accepted by the merger parties, and the matter is before the Federal Court.

Franklins operates 80 corporate owned and 10 franchised Franklins supermarkets in NSW, and is currently owned by Pick n Pay Retailers (Pty) Limited, South Africa's largest retailer.

In the statement of issues, released in September 2010, the ACCC outlined its preliminary concerns about the competitive impact of the proposed acquisition. In particular, the ACCC was concerned about the removal of Metcash's closest and only genuine competitor for the wholesale supply of packaged groceries in NSW.

After detailed investigation, including considering responses to the ACCC's statement of issues from the merger parties and other interested parties, the ACCC formed the view that the proposed acquisition was likely to result in a substantial lessening of competition.

The proposed acquisition would reduce the number of players competing to provide wholesaling services to medium sized and larger supermarkets from two to one, effectively giving Metcash a monopoly on grocery wholesaling to independent supermarkets in NSW. Furthermore, barriers to entry in this market are already high, making timely new entry of a competitor to Metcash unlikely if this transaction proceeds.

The ACCC also concluded that while the large supermarket chains pose a competitive constraint on IGA and Franklins stores at the retail level, this is only an indirect and imperfect constraint on Metcash at the wholesale level.

Following the ACCC's decision on 17 November 2010 to oppose the proposed acquisition, Metcash advised the ACCC that it intended to complete the transaction in not less than five business days. On 26 November 2010, Metcash and Pick n Pay agreed not to complete the proposed acquisition provided the ACCC filed an Originating Application and Statement of Claim in the Federal Court of Australia by 8 December 2010 and that all parties take all reasonable steps for securing an urgent final hearing on an expedited basis.

On 8 December 2010, the ACCC filed an application for injunctions and other orders under section 80 of the Trade Practices Act (now the Competition and Consumer Act) and Statement of Claim. As at 30 June 2011 the court had not handed down judgment in this matter.

## CASE STUDY

### ACCC opposes concentration in soft drink market

The ACCC decided to oppose the proposed acquisition of the business of P&N Beverages by Asahi Holdings following an extensive investigation in 2010–11.

Asahi owns Schweppes Australia Pty Ltd, the second largest manufacturer of carbonated soft drinks in Australia and the largest manufacturer of cordial. Its products include the Schweppes and Pepsi range, as well as the Cottee's range of cordial.

P&N is Australia's third largest manufacturer of both carbonated soft drinks and cordial, and is the country's largest supplier of private label soft drinks. P&N's carbonated soft drinks, sold under several different brands, play an important role as low-priced alternatives to those supplied by Asahi and Coca-Cola Amatil.

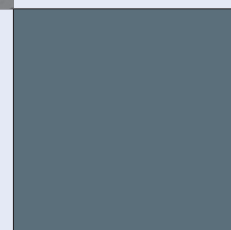
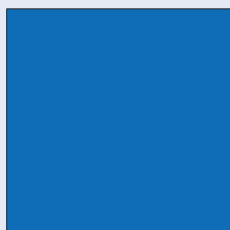
The ACCC's review of the proposed acquisition, which began in September 2010, involved several meetings with the merger parties and an examination of internal company documents. The ACCC also considered information from many other sources, including beverage manufacturers, supermarket retailers, input suppliers and industry groups.

The ACCC formed the view that the proposed acquisition was likely to result in a substantial lessening of competition in the markets for the supply of carbonated soft drinks and cordial.

The ACCC concluded that the proposed acquisition would remove P&N as a vigorous and effective competitor in the carbonated soft drink market, leaving it largely to Asahi and Coca-Cola Amatil. For the foreseeable future, no other carbonated soft drink supplier would be likely to expand sufficiently to replace the lost competitive constraint, as they lacked the necessary scale, infrastructure and brands. Furthermore, the ACCC considered that Asahi would lose the incentive to supply private label carbonated soft drinks in competition with P&N.

In the cordial market, the ACCC found that P&N has been successful in growing its market share through discounting and product innovation. The proposed acquisition would remove a strong competitive constraint, which would not be replaced by other sources of competition.

On 9 March 2011 the ACCC decided to oppose the proposed acquisition.



### 3. Promptly and effectively delivering authorisation and notification decisions

*The Competition and Consumer Act allows businesses to obtain protection from legal action for conduct that might otherwise raise concerns under the competition provisions of the Act, where there is sufficient public benefit from the conduct.*

One way businesses may obtain protection is to apply for what is known as an ‘authorisation’ from the ACCC. Broadly, the ACCC may authorise businesses to engage in such conduct where it is satisfied that the public benefit outweighs any public detriment.

In assessing the public benefits and detriments of an authorisation application, the ACCC undertakes a public consultation process, placing submissions on a public register subject to any claims of confidentiality. After considering submissions, the ACCC will issue a draft decision and provide an opportunity for a conference. The ACCC will then reconsider the application in light of any further submissions and release its final decision.

Exclusive dealing involves one business imposing restrictions on another business’ freedom to choose with whom, in what or where they deal. Exclusive dealing is prohibited under the Act in certain circumstances. Businesses may obtain immunity for conduct that might risk breaching the exclusive dealing provisions of the Act by lodging a notification with the ACCC. The ACCC may revoke the immunity afforded by a notification if it is satisfied that the likely public benefit from the conduct will not outweigh the likely detriment to the public. In some circumstances the ACCC must also be satisfied that the notified arrangement is likely to result in a substantial lessening of competition.

Further information about the authorisation and notification process is available on the ACCC’s website.

**Table 3.4: Authorisation and notification decisions—deliverables and results**

Deliverables	Results
Authorisation and notification decisions within statutory and organisational timeframes (assessment of validity within five days, authorisation within six months, majority of notifications within four weeks) and promptly communicated.	<p>100 per cent of applications for authorisation were assessed for validity within organisational timeframes.</p> <p>100 per cent of authorisations were assessed within statutory timeframes.</p> <p>99 per cent of notifications were assessed for validity within organisational timeframes.</p> <p>85 per cent of notifications were assessed within four weeks.</p> <p>All authorisation decisions were published on the ACCC website and communicated to applicants and interested parties in a timely manner.</p>
Collective bargaining notification decisions within statutory timeframes (assessment of validity within five days, initial assessment within 14 days) and communicated promptly.	<p>100 per cent of collective bargaining notifications were assessed for validity within five days.</p> <p>100 per cent of initial assessments of collective bargaining notifications were completed within 14 days.</p> <p>All collective bargaining notification decisions were published on the ACCC website and communicated to applicants and interested parties in a timely manner.</p>

Including eight authorisations for collective bargaining agreements (refer below), the ACCC granted 27 authorisations in 2010–11, covering agreements across a range of industries including paint manufacturing, aviation, agricultural and veterinary chemicals and joint marketing for natural gas.

**Table 3.5: Authorisations in 2010–11**

	Opening balance	New applications	Applications withdrawn	Applications decided	Balance
Authorisation applications	8 (15)	15 (21)	1 (1)	18 (29)	4 (6)
Minor variation applications	1 (1)	2 (4)	0 (0)	3 (5)	0 (0)
Revoke and substitute authorisation applications	3 (7)	4 (7)	0 (0)	6 (13)	1 (1)
Revocations	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
<b>Total</b>	<b>12 (23)</b>	<b>21 (32)</b>	<b>1 (1)</b>	<b>27 (47)</b>	<b>5 (7)</b>

Notes: Figures in brackets indicate total applications; figures without brackets indicate number of projects (i.e. some projects involve multiple applications).

The ACCC Annual Report 2009–10 incorrectly recorded a closing balance for applications for revoke and substitute authorisation of 3(4).

## CASE STUDY

### Strengthening self-regulation in supply of medicines to pharmacies

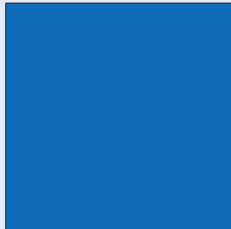
The ACCC gave conditional authorisation in November 2010 to the Generic Medicines Industry Association (GMiA) for its Code of Practice, which provides for, among other things, disciplinary action to be taken against GMiA members who breach the Code.

The code is a self-regulatory framework for suppliers of generic medicines, one of the aims of which is to maintain public confidence in the relationship between suppliers and pharmacists.

The ACCC authorisation includes conditions designed to provide greater transparency around the relationship between the manufacturers of generic medicines and pharmacists, particularly in relation to hospitality, gifts and other non-price benefits provided by suppliers to pharmacists.

For example, one condition requires the GMiA to report annually on the cost and nature of non-price benefits, other than more favourable trading terms, provided by each of its members to pharmacists.

This condition responds to concerns raised by interested parties that the offer of loyalty programs or other non-price incentives to pharmacists undermines public confidence in the generic medicines industry. The ACCC considers that making public the nature and size of such benefits imposes its own constraint, in that companies giving such benefits are likely to ensure they are able to publicly explain them. For drugs not subject to government price disclosure arrangements, the condition provides further transparency around the provision of non-price benefits to pharmacists, which are less likely to result in discounts to consumers.



## CASE STUDY

### Authorisation for industry self-regulation

ACCC authorisation of industry agreements that may involve anti-competitive arrangements often relate to industry self-regulation initiatives.

For example, an industry code of practice for door-to-door energy sales was authorised in June 2011.

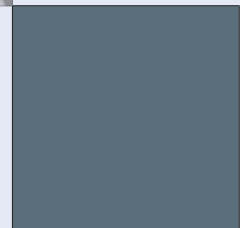
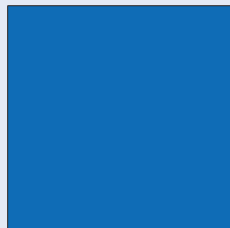
The authorisation was given to Energy Assured Limited (EAL), which was formed by electricity and gas retailers to develop a code for the conduct of sales agents when making house visits. The initiative follows concerns by industry ombudsmen and consumer organisations about door to door marketing in the energy sector.

The ACCC believes the code is likely to benefit consumers by improving standards for doorstep marketing of energy, and better informing consumers about their rights and sales agents' obligations.

Previously, the ACCC issued a draft determination proposing to deny authorisation of the code. For example, the ACCC considered that EAL's proposed sanctions process was not sufficiently rigorous to deter non-compliance, particularly in regard to members of the scheme, nor did the proposed code require door to door sales people to provide information to consumers about their rights consistent with the obligations under the Australian Consumer Law. EAL significantly revised the code to the extent that the ACCC considered it likely to generate a net public benefit.

The revised code is consistent with laws applying to the door to door selling of energy, provides for appropriate sanctions on members for breaches, and includes mechanisms for consultation with stakeholders and to promote awareness of the scheme.

The ACCC will look carefully at the effectiveness of the code if EAL seeks re-authorisation at the end of the three-year authorisation period.





## CASE STUDY

### Okay to trans-Tasman airline alliance

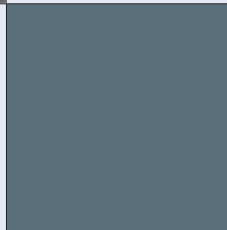
Volatility in the international airline industry, with airlines forming and reforming alliances in the face of see-sawing demand and costs, remains a continuing challenge for competition regulation.

Consistent with the Competition and Consumer Act, the ACCC seeks to maximise sustainable competition on individual routes for the benefit of the broader Australian community, with accessible and affordable international links essential to our social and economic wellbeing.

For the second year in a row the ACCC received an application from Virgin Blue to operate jointly with another carrier. While initially proposing to reject an alliance between Virgin Blue and Air New Zealand in relation to trans-Tasman flights, the ACCC gave conditional authorisation in December 2010 after receiving substantial further information from the applicants and other interested parties about the likely public benefits and detriments.

After further analysis, the ACCC was satisfied that the alliance would benefit passengers through greater choice in routes and frequencies, and potentially lower fares through cost savings and efficiency improvements.

However, the ACCC imposed conditions—to maintain and grow the number of seats on specific routes between Australia and New Zealand where it had identified competition concerns—aimed at restricting the operators’ ability to raise fares by limiting capacity. While the applicants had sought authorisation for five years, the ACCC saw the need for an earlier review, and limited the authorisation to three years.



## Exclusive dealing notifications

The ACCC received and assessed more than 650 exclusive dealing notifications in 2010–11.

The exclusive dealing notification process provides immunity for potential breaches of the exclusive dealing provisions of the Competition and Consumer Act where the ACCC assesses there is sufficient public benefit. Lodging a notification with the ACCC provides automatic exemption from the lodgement date (or soon after in the case of third line forcing conduct), which remains in force unless revoked by the ACCC. Notifications can be reviewed at any time.

## Collective bargaining arrangements

There are two ways by which businesses can seek immunity for collective bargaining arrangements:

- > A group of businesses can lodge a collective bargaining notification, in which case immunity for the collective bargaining activity is automatic after 14 days unless the ACCC moves to revoke the notification. Notifications can be reviewed at any time.
- > A group of businesses can seek authorisation from the ACCC for a collective bargaining agreement.

Businesses seeking to lodge a valid collective bargaining notification must satisfy a number of requirements—for example each member of the collective bargaining group must reasonably expect that they will make at least one contract with the target and that the value of each member's transactions with the target will not exceed \$3 million per year. These requirements do not apply to the authorisation process.

The ACCC authorised eight collective bargaining agreements and allowed the notification of another two agreements in 2010–11, covering a large number of small businesses including citrus growers, hoteliers and retailers in the telecommunications market. More information on collective bargaining outcomes is in part 3B 3. *Ensuring that trading conditions between big and small firms are fair* on page 61.

# Part 3B

## Encouraging fair trading, protection of consumers and product safety

*The key actions to achieve the intended results of the ACCC program of encouraging fair trading, protection of consumers and product safety are:*

1. pursue and achieve appropriate remedies for false, misleading and deceptive conduct, particularly conduct resulting in widespread detriment
2. identify and focus effectively on national and cross-border (including international) consumer protection issues
3. ensure that trading conditions between big and small firms are fair
4. promote product safety through identification and regulation of emerging hazards, active engagement in recalls, and the enforcement of standards and bans.

### 1. Pursuing remedies for false, misleading and deceptive conduct

*The Australian Consumer Law, part of the Competition and Consumer Act, gives the ACCC a range of remedies and powers to more effectively respond to breaches of fair trading and consumer protection laws.*

#### Key performance indicators

- > Effective and appropriate actions (investigations, litigation, communication) are taken to prevent and stop misleading, deceptive and unconscionable conduct, especially conduct that causes widespread consumer detriment.

**Table 3.6: Pursuing remedies—deliverables and results**

Deliverables	Results
Actions against unlawful conduct.	See text below, pp. 42–72, and Appendix 11: Litigation matters, review proceedings and tribunal proceedings 2010–11.
Effective and appropriate remedies for unlawful conduct.	See text below, pp. 42–72, and Appendix 11: Litigation matters, review proceedings and tribunal proceedings 2010–11.
Outcomes from an expected 20 court cases (for competition, fair trading and consumer protection).	The ACCC concluded 28 first-instance litigation matters during the year including 22 fair trading and consumer protection matters.
Outcomes from an expected 40 court enforceable undertakings (predominately for consumer protection conduct that has breached or is likely to breach the TPA).	The ACCC accepted 43 section 87B undertakings during the year, of which 20 were for consumer protection matters.

## Misleading, deceptive and unconscionable conduct

*The Australian Consumer Law, part of the Competition and Consumer Act gives the ACCC a range of remedies and powers to more effectively respond to breaches of fair trading and consumer protection laws. Section 18 of the Australian Consumer Law (formally section 52 of the Trade Practices Act) prohibits businesses from engaging in conduct that is misleading or deceptive. Business conduct is likely to breach the law if it creates a misleading overall impression among the intended audience about the price, value or quality of consumer goods or services.*

*Section 21 of the Australian Consumer Law (formally section 51AB of the Trade Practices Act) prohibits businesses from using harsh, oppressive or unconscionable sales tactics in their business dealings with consumers.*

Under provisions of the CCA that protect consumers from false, misleading and deceptive selling practices, the ACCC issued 48 infringement notices and received payment of infringement notice penalties of almost \$300 000 in 2010–11. Issuing an infringement notice signifies that the ACCC considers a contravention has occurred, however payment cannot be taken to be an admission of wrong-doing by the trader and involves no court finding of any contravention. Examples of infringement notices in 2010–11 include:

- > SingTel Optus Pty Ltd paid 27 infringement notices totalling \$178 200 in relation to representations it made in the promotion of mobile phone plans. The ACCC was concerned that Optus' advertisement for its 'Max Cap' plan suggested that the consumer would pay a maximum of \$49 per month, when in fact \$49 was the minimum the consumer would be required to pay each month.
- > Patterson Cheney Pty Ltd paid two infringement notices totalling \$13 200 relating to limitations that effectively negated a 'lifetime' vehicle warranty, ending the warranty when the vehicle's odometer reached 175 000 kilometres or the consumer made \$3000 worth of claims. The ACCC also accepted a court enforceable undertaking from Patterson Cheney to give affected customers the option of switching to its premium warranty product. The company undertook to implement and maintain a trade practices compliance program and publish corrective notices on its website and in newspapers.
- > The ACCC issued six infringement notices to Ellicom Pty Ltd and other Harvey Norman franchisees in Western Australia following ACCC concerns that advertising placed by these companies contravened the Trade Practices Act in that certain products advertised at particular prices were not offered for supply during the advertised promotion period. The notices have been paid.

### *Civil pecuniary penalties*

A new remedy available under the Australian Consumer Law is a civil pecuniary penalty, which the ACCC may seek in the Federal Court. Finalised matters since the provision came into force in April 2010 have included:

- > MSY Technology was penalised \$203 500 for supplying computers, electronics and software to retail stores while claiming that it only provided statutory warranties to consumers in limited circumstances and required consumers to pay a fee to obtain a warranty beyond that provided by the manufacturer.
- > Newlife Publishing and Marketing Pty Ltd and Renew You Centre for Wellbeing and Longevity Pty Ltd, and individuals Bojan Schianetz and Dzung Kieu Price were penalised a total of \$185 000 for making false claims and misleading consumers about their ability to test for and treat allergies. Each respondent claimed they could diagnose, treat and/or cure allergies using the 'BioFast allergy elimination program'. The court declared by consent that the companies and individuals engaged in false, misleading and deceptive conduct.
- > Global One Entertainment Limited and 6G Pty Limited were penalised \$375 000 in relation to four television campaigns for mobile premium services promoting a subscription service.

The court declared that the respondents engaged in false, misleading and deceptive conduct in their television advertisements for mobile premium services. The advertisements featured subscription services for the video games Space Invaders and Doodle Jump, the ringtone for Justin Bieber's 'One Time', and the MobileGold Superquiz. On 6 July 2011 Global One and 6G appealed this decision to the Full Federal Court.

- > In a small business scam, Yellow Page Marketing BV and Yellow Publishing Limited (companies not associated with the Sensis Pty Ltd Yellow Pages ® directories) were penalised \$2.7 million for sending thousands of Australian business consumers misleading faxes and invoices in an attempt to obtain subscriptions to their online business directories. The ACCC also sought and obtained successful non-party redress by having over 4000 contracts declared void and preventing the collection of over \$6 million from the scam.

### Did you know?

The Australian Consumer Law gives the ACCC new remedies and powers to more effectively respond to breaches of fair trading and consumer protection laws—including civil pecuniary penalties; infringement, public warning, and substantiation notices; and disqualification orders and non-party redress. The ACCC has used all of these in 2010–11.

### *Telecommunications enforcement activity*

A significant part of the ACCC's recent enforcement activity in relation to misleading, deceptive and unconscionable conduct has involved the telecommunications sector. And following this strong enforcement approach, particularly in relation to clarity in advertising generally and specifically for mobile premium services, there has been a significant decline in complaints of misleading and deceptive marketing practices.

The ACCC has continued to monitor advertising practices against court-enforceable undertakings in 2009 by Telstra Corporation Ltd, SingTel Optus Pty Ltd and Vodafone Hutchinson Australia Pty Ltd (representing Vodafone and 3 mobile brands) to change their advertising and marketing practices. Where matters could not be resolved administratively, the ACCC took enforcement action.

The ACCC sought civil pecuniary penalties against SingTel Optus Pty Ltd in relation to its 'Think Bigger' and 'Supersonic' broadband promotions. The ACCC was concerned that SingTel Optus engaged in misleading or deceptive conduct and made false representations in relation to the advertising of certain broadband plans, under which a customer pays a specified monthly sum and receives a specified data allowance for that month divided into peak and off-peak periods. However, once the customer exceeds the peak data allowance, the internet connection is limited to a speed of 64kbps.

The ACCC alleged that Optus did not sufficiently or clearly disclose, and in some cases did not disclose at all, these qualifications. In October 2010 the court determined that penalties are to be paid by Optus, and on 7 July 2011 the court ordered Optus to pay \$5.26 million in civil pecuniary penalties for these breaches, which Optus has advised it intends to appeal.

Successful enforcement outcomes in 2010–11 in relation to misleading and deceptive advertising in the telecommunications sector included:

- > SingTel Optus Pty Ltd paid 27 infringement notices totalling \$178 200 in relation to advertising for 'Max Cap' plans.
- > Advertisements promoting Optus' broadband plans as being 'unlimited' were declared by the court as misleading and deceptive.
- > Dodo Australia Pty Ltd paid four infringement notices totalling \$26 400 in relation to advertising for its Unlimited ADSL2+ broadband plan.

- > The ACCC instituted proceedings against TPG Internet Pty Ltd for alleged false and misleading broadband advertisements for its \$29.99 unlimited ADSL2+ broadband plan.

Complaints to the Telecommunications Industry Ombudsman (TIO) and the ACCC about misleading conduct in the promotion of premium mobile services have dropped dramatically following strong enforcement action, improvements to the Mobile Premium Services Industry Code (MPS Code) and the introduction of a call barring option. Before these initiatives, the ACCC received approximately 80 complaints a month relating to mobile premium services. This has now dropped to about 10 a month.

During 2010–11, the ACCC’s work in the mobile premium services area included:

- > successful litigation against two traders promoting mobile premium services in the media, complementing action taken against eight other industry participants since 2008
- > educating consumers and industry about the ACCC’s concerns
- > working with the Australian Communications and Media Authority and the TIO to address consumer complaints.

The ACCC also contributed to ongoing reviews of the MPS Code and related determinations that saw the introduction in 2010 of a call barring option to bar all such services from the user’s mobile phone.

## 2. Focusing on consumer protection issues

*The Australian Consumer Law provides enhanced consumer protection provisions, which the ACCC is actively using to protect consumers. The ACCC is also focused on encouraging voluntary compliance by informing and educating businesses about their obligations while also empowering consumers through information about their rights.*

### 2a Conducting education campaigns to promote compliance

#### Key performance indicators

- > Effective and appropriate education campaigns are conducted that target industries and sectors where the risk of failure to comply with the CCA is high.

**Table 3.7: Effective education campaigns—deliverables and results**

Deliverables	Results
Publicity, liaison and education activities that are timely and reach the target audiences—750 000 publications and 250 media releases.	278 ACCC news releases 18 AER news releases 174 speeches delivered 396 300 publications distributed, 820 448 visits to online publications

Support for the start of the Australian Consumer Law on 1 January 2011 was the highlight of the ACCC’s education and compliance campaigns in 2010–11.

The ACCC conducted campaigns on:

- > consumer guarantees, warranties and refunds
- > new unfair contract term laws
- > environmental claims
- > scams.

## *The Australian Consumer Law*

To support the introduction of sweeping changes to the Australian consumer law and policy framework, including the start of the Australian Consumer Law, the ACCC undertook a range of new education and awareness initiatives in 2010–11.

The Australian Consumer Law has provided an opportunity for Australia’s consumer protection agencies to work together to develop materials for consumers and businesses to promote awareness of, and compliance with, the new laws. The national effort was coordinated through the one of the committees of the group of national, state and territory consumer regulators, the Education and Information Advisory Committee, of which the ACCC is a member.

The co-operative effort has delivered wide-ranging outputs, including a single national online portal about the Australian Consumer Law ([www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)), a suite of plain English national guides for businesses and legal practitioners, and materials suitable for culturally and linguistically diverse audiences.

The ACCC has complemented the national education effort with an extensive range of targeted programs and resources to support business compliance and promote consumer empowerment. This effort has included an extensive program of consultation, direct education, and new print, online, video and audio material.

The ACCC continues its commitment to consult with and educate businesses and consumers about legislative changes and the rights and obligations the changes impose.

### Did you know?

The new Australian Consumer Law gives all Australian consumers the same rights—and imposes the same rules on businesses—wherever they are in Australia.

The ACCC’s engagement with business stakeholders across Australia has been extensive, including delivering training sessions, presentations, meetings, and written communications. The ACCC has formed a group of consumer rights and advocate organisations to consult on consumer issues called the Consumer Consultative Committee. This committee has been an effective conduit in reaching consumer stakeholders.

The Chairman, commissioners and staff have participated in over 40 Australian Consumer Law-themed speaking engagements at events around the country, with audiences ranging from national and local chambers of commerce to professional bodies for lawyers, accountants and marketing professionals. The Chairman and other commissioners have also spoken about the Australian Consumer Law at nearly 20 luncheons at law firms and other businesses.

In addition, innumerable articles, editorials and interviews have also reached extensive audiences. The ACCC’s education and engagement managers, located in each state, have travelled extensively, particularly through regional areas to give presentations to businesses and consumers across Australia.

The ACCC will continue to work closely with state and territory consumer protection agencies to ensure that all communication and educative activities undertaken by the ACCC are consistent with, and complementary to, any work being completed by other agencies.

## CASE STUDY

### Bringing the Australian Consumer Law to life

Until the new Australian Consumer Law was introduced, Australian consumers and businesses were subject to overlapping and at times differing national and state and territory consumer-protection laws. The Australian Consumer Law was introduced to harmonise key aspects of consumer-protection laws—and, perhaps most importantly, the work of the nation's various consumer-protection agencies.

Businesses operating across state borders now have only one general consumer law with which to comply and consumers have the same protections and expectations about business conduct wherever they are in Australia.

This is the biggest reform to consumer law since the Trade Practices Act was introduced 36 years ago.

Fully realising the benefits of a single national law requires close collaboration between all the Australian Consumer Law regulators—the ACCC and its counterpart consumer regulators in Australia and New Zealand.

These collaborative activities have included the creation of ACLink, a secure extranet that allows Australian Consumer Law regulators to share intelligence and information about complaints and investigations and discuss topics of interest.

With the Treasury and the ASIC, the Australian Consumer Law regulators have established a series of committees to facilitate a co-operative approach to compliance and dispute resolution, product safety, education and information, and policy and research.

The Australian Consumer Law regulators play distinct and complementary roles, with each exercising its compliance and enforcement powers independently. The focus of the ACCC is on addressing consumer detriment and competition in markets either through ACCC action, joint ACCC and state/territory action, or referral to another appropriate agency for dispute resolution or conciliation.

National projects initiated by the Australian Consumer Law regulators to promote compliance with the Australian Consumer Law include:

- Unfair contract terms—a proactive compliance review of standard form contracts and appropriate enforcement action for non-compliance
- Indigenous consumer issues—addressing issues identified in the National Indigenous Consumer Strategy for improving the trading practices of traders serving Indigenous consumers
- Environmental claims—tackling marketing of small scale renewable energy projects that may be misleading or deceptive
- Consumer guarantees—educating suppliers of goods about the Australian Consumer Law's consumer guarantee provisions.

To help industry, business and consumers understand the new law and its application, the ACCC delivered a range of communication and awareness raising initiatives, including:

- guidance materials—business snapshot, online education module, video and publications for consumers
- an online video and print training module for businesses on consumer guarantees, video for consumers on consumer guarantees with a companion print product, audio and CD products for consumers on unfair contract terms
- articles in industry newsletters, covering the optometry, security, motor vehicle, accounting, pharmacy and horticulture industries
- presentations and information products at industry events
- meetings to discuss compliance with key traders and industry associations.

The ACCC has worked closely with other Australian Consumer Law regulators to ensure that communications are complementary to and consistent with broader Australian Consumer Law messaging.



## Australian Consumer Law remedies and powers

The Australian Consumer Law provides the consumer regulators with a single set of consistent investigation and enforcement tools to respond to breaches of fair trading and consumer protection laws. These replace the range of powers under previous national, state and territory legislation.

In certain circumstances the ACCC may issue infringement notices to corporations and individuals where the ACCC has identified that a breach has occurred. This year the ACCC has issued 48 infringement notices and received payment of infringement notice penalties of almost \$300 000.

New remedies available under the Australian Consumer Law are civil pecuniary penalties. The court may also impose significant penalties against corporations and individuals for their involvement in contraventions certain Australian Consumer Law provisions. The ACCC has secured over \$4.7 million in penalties under the Australian Consumer Law this year.

### *Consumer guarantees, warranties and refunds*

The new consumer guarantee laws are part of the second tranche of Australian Consumer Law reforms that commenced on 1 January 2011. The consumer guarantees are a set of rights which all consumers are entitled to expect when they purchase goods or services anywhere in Australia. Among other rights, the consumer guarantees require that goods are of acceptable quality and that services are delivered with due care and skill.

The implementation of a clear and simple national law on consumer guarantees provides the ACCC with the opportunity to raise awareness among consumers and businesses of their rights and obligations in this area.

Complementing the extensive work program being undertaken with its state and territory counterparts through the Education and Advisory Committee (EIAC), the ACCC began education and awareness raising activities in early 2010–11, developing targeted publications and web materials.

Complementing a national guide on consumer guarantees developed by the ACCC through EIAC, the ACCC developed an overview publication primarily for small businesses and a new online training module to help business owners, managers and sales staff understand their obligations to consumers. It is available from the ACCC website and YouTube, or in hard copy for use in internal training for staff. With the assistance of industry and professional associations, ACCC guidance material was distributed to businesses around Australia.

The ACCC also liaised directly with businesses and industry groups, providing guidance on the consumer guarantees to ensure that businesses around Australia were aware of and were in a position to comply with the new law ahead of 1 January 2011.

In January 2011, the ACCC released *Consumer guarantees—a guide for consumers*, which provides answers to some of the questions most commonly asked by consumers about their shopping rights and provides tips for taking effective action. A short video was also developed for consumers, and is available from the ACCC website and YouTube.

ACCC education and awareness raising activities continued into 2011, with the ACCC and state and territory consumer protection agencies working together to produce a national point of sale sign, which outlines the circumstances in which consumers are entitled to a refund or replacement.

The ACCC will continue to work closely with business and consumers throughout 2011 to ensure they understand their rights and obligations under the consumer guarantees.

During 2010–11, the ACCC also took enforcement action against several traders on consumer warranty matters, including administrative resolutions, enforceable undertakings and litigation.

### *Unfair contract terms*

Under new national unfair contract term (UCT) laws, which came into force as part of the Australian Consumer Law on 1 July 2010, the ACCC works with the other Australian Consumer Law regulators to implement and enforce the unfair contract terms provisions.

The ACCC's approach to unfair contract terms incorporates a mix of proactive and reactive compliance work. The proactive work involves broad-ranging, cooperative compliance reviews of contracts in particular industries. The reactive work involves the investigation of individual allegations.

Initially the ACCC's focus was on educating businesses about their new obligations through seminars and guidelines. Consumer education material was also released. The aim was to achieve compliance by raising awareness about the new provisions and by directly engaging with key industries to achieve wider change and compliance rather than resolving isolated matters.

As part of the ACCC's direct engagement with business, proactive industry reviews have been undertaken of industries for which there are high levels of consumer complaints to the ACCC, including domestic aviation, vehicle rental, telecommunications and fitness. The ACCC worked directly with key businesses and industry associations.

The industry reviews have aimed at, among other things, correcting the imbalance of rights and obligations in standard form consumer agreements. There was a high level of cooperation from some businesses, many of which readily made changes to their standard form agreements.

Where other competition or consumer protection issues were identified by the reviews, an enforcement or compliance strategy was developed to ensure compliance with all provisions of the CCA.

Examples of changes to standard form agreements that have been achieved as a result of the ACCC's intervention include:

- > inserting terms and conditions that clearly set out the circumstances when a consumer can terminate an agreement when there is a breach of contract by the business
- > clarifying the extent to which the business is liable for the conduct of its agents (or other appropriate third parties)
- > clarifying the processes for consumers to make a claim for damage or loss as a result of the businesses conduct
- > inserting references in the agreements that clarify the consumer's rights under the recently introduced consumer guarantee provisions under the CCA
- > amending various terms and conditions by inserting references to 'reasonableness', which removes the imbalance between a consumer's rights and the business's obligations
- > amending various terms that seek to limit a business's liability in certain circumstances
- > amending terms and conditions to clarify the billing methods by which consumers are charged for services, and what happens when a consumer doesn't pay
- > clarifying the rights of a consumer when delivery of a product or service is delayed or is not provided as agreed.

While the ACCC has been providing comments and guidance on standard form contracts used by businesses, it does not clear or endorse contracts.

## Environmental claims

The ACCC is working with other Australian Consumer Law regulators on a national project targeting the solar power industry. One objective is to raise consumer and industry awareness of their rights and obligations under the Australian Consumer Law. In May 2011, the ACCC issued a warning to the solar retail and supply industry to comply with the Australian Consumer Law and ensure their claims are true.

The joint warning gave notice to the industry that Australian Consumer Law regulators would take swift action against solar power retailers who breach the law through misleading, deceptive or false claims about solar energy products.

The warning was issued to address recent advertising by solar retailers about financial assistance schemes coming to an end. This can give consumers the false impression they will miss out on savings if they don't act now, and pressure householders into rash decisions.

In addition, the industry was reminded that claims should be clear and unambiguous and should not include technical or scientific jargon that suggest capabilities that cannot be substantiated.

## Scams

The ACCC's response to scams involves:

- > awareness and education programs to help consumers avoid scams
- > an intelligence-led approach to disrupting scams, often cooperating with other agencies and private organisations to share intelligence and disrupt conduct
- > targeted enforcement action in cases where the conduct is egregious and the trader can be identified, as well as proactive investigations where required, such as during the Queensland floods.

Many consumers are becoming more alert to scams and are increasingly reporting them to the ACCC. This is demonstrated by the significant growth in visitors to the ACCC's SCAMwatch website ([www.scamwatch.gov.au](http://www.scamwatch.gov.au)) and subscribers to its radar alert service, and continued high demand for scam education resources, such as the ACCC's publication, *The Little Black Book of Scams*. In March 2011, on the eve of Fraud Week, the ACCC released the second annual scams activity report, *Targeting scams: Report of the ACCC on scam activity 2010*, highlighting successful responses to scams and the challenges they present to law enforcement.

SCAMwatch issued 32 'radar' alerts on the website and to subscribers in 2010–11, and by the end of June 2011 had over 15 000 subscribers. Radar alerts cover everything from pet scams and charity scams, to fake computer viruses and scam DNA test kits.

Another valuable new platform for the ACCC to provide real time scam alerts and tips is the SCAMwatch Twitter feed ([http://twitter.com/SCAMwatch\\_gov](http://twitter.com/SCAMwatch_gov)). Launched in March 2011, the Twitter feed gained valuable leverage from Fraud Awareness Week. In its first four months of activity, SCAMwatch Twitter attracted over 1250 followers and has issued nearly 500 tweets, or around 30 per week.

Enforcement action in 2010–11 included work with auDomain Administration Ltd (auDA) to identify potential online charity scams capitalising on public concern arising from the Queensland floods in January 2011. This resulted in five websites being identified that raised specific concerns. While most issues were resolved following contact by the ACCC, some matters were referred to other agencies. The ACCC also liaised with state agencies to verify the charity credentials of the entities operating the websites.

Analysis of ACCC contact data has identified significant losses to consumers arising out of advance fee fraud scams targeting dating and romance websites. Advanced fee fraud is where victims are asked to send money for goods or services or are promised wealth which never eventuates. Scammers target dating and romance sites preying upon the victim's emotions.

Scammers go to great lengths to secure the trust of a consumer by establishing a seemingly genuine relationship online. Within this state of emotional vulnerability, the victim is coaxed into providing small- then large- sums of money to their 'love interest'. As a result, the ACCC has allocated resources to work with industry on ways to disrupt and deter such fraudulent activity in 2011–12.

The ACCC continues to work closely with its government, non-government, business and consumer stakeholders, both in Australia and internationally, in an integrated and coordinated effort to address scams and limit detriment to consumers.

The ACCC continued to participate in both the International Consumer Protection and Enforcement Network (ICPEN) and the International Mass Marketing Fraud Working Group, and continues to chair the Australasian Consumer Fraud Taskforce, and coordinate National Consumer Fraud week. The ACCC is also a partner agency of the Australian Transaction Reports and Analysis Centre, Australia's anti-money laundering and counter-terrorism financing regulator.

In September 2010, the ACCC joined its counterparts in the ICPEN International Internet Sweep, which targeted online marketing and advertising to young people, such as for body enhancement products, clothing, cosmetics and entertainment. The Australian sweep looked at a broad spectrum of conduct including scam activity, exaggerated claims about warranties and refunds and consumer guarantee issues. Advertising practices on social networking websites were also included. Over 1300 websites were 'swept', resulting in 316 being identified as requiring further scrutiny. During the sweep's second phase, many of the websites were found to be no longer active, while others were sent warning letters that resulted in changes being made. Letters were also sent to a number of website operators regarding rights and obligations in dealing with warranty, refund and consumer guarantee issues.

## CASE STUDY

### Scams awareness focuses on the personal

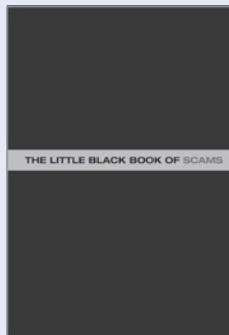
The spread of online retailing and social networking may be making people more vulnerable to scams, prompting a personal touch to National Consumer Fraud Week in March 2011.

A scam awareness campaign during the week had the theme of ‘Scams: It’s personal’, focusing on how people can fight fraud that trespasses on their personal lives. The campaign aimed to raise public awareness about scams, reflecting on their cost to individuals, businesses, government, and society more broadly.

Scammers will do anything to target victims, including adopting a personal touch. Increasingly scammers are finding ways to get personal information and use this to play on people’s relationships with those they trust, including organisations.

The effects of scams on victims can be devastating, potentially causing psychological, financial, familial and social harm. Scams can also have a considerable impact on business. Fraudsters often misuse people’s trust in reputable brands or companies, undermining consumer confidence.

As chair and secretariat of the Australasian Consumer Fraud Taskforce, the ACCC coordinated the campaign, involving the 22 government members of the taskforce, supported by over 100 government, business and community partners. Taskforces members disseminated scam awareness messages through media, website prominence, newsletters, postcards and other means.



## 2b Responding to inquiries and complaints and providing timely information

### Key performance indicators

- > Immediate information is provided to thousands of callers each week; publications are widely distributed through print and the web; and special information programs reach small, isolated or disadvantaged groups.

**Table 3.8: Immediate information provided—deliverables and results**

Deliverables	Results
Complaints and inquiries (telephone calls, correspondence and emails) responded to within organisational guidelines (7–28 days, depending on the nature of the complaint or inquiry).	<p>The Infocentre received 143 307 telephone calls; of which 114 066 were served by Infocentre staff, 27 816 were referred to the ACCC website or abandoned by the caller and 1425 were unanswered due to congested incoming lines or telephone system breakdown.</p> <p>The Infocentre responded to 41 219 emails, of which 21 546 were received via the SCAMwatch 'report a scam' online complaint form.</p> <p>124 301 matters were entered in the complaints and inquiries database, of which 82 954 were received via telephone (73 per cent of calls served).</p> <p>54 per cent of phone calls were answered within 20 seconds.</p> <p>96 per cent of emails were responded to within 7 days.</p> <p>88 per cent of letters were responded to within 28 days.</p> <p>The level of complaints about Infocentre staff was less than one for every 1000 contacts.</p>
Websites ( <a href="http://www.accc.gov.au">www.accc.gov.au</a> , <a href="http://www.recalls.gov.au">www.recalls.gov.au</a> , <a href="http://www.productsafety.gov.au">www.productsafety.gov.au</a> and <a href="http://www.scamwatch.gov.au">www.scamwatch.gov.au</a> ) that are accessible and a source of relevant and up-to-date information.	Websites are updated daily. See Part 4, Media and communication activities on pages 133–4 for details.

### An active Infocentre responding to inquiries and complaints

The ACCC Infocentre is the initial contact point for telephone, email and written inquiries and complaints to the ACCC on competition, consumer and fair trading issues.

Infocentre officers, who are required to have a good working knowledge of all ACCC functions and current issues, record information received from businesses and consumers in the ACCC complaints and inquiries database.

The overwhelming majority of contacts are by consumers seeking information or wishing to make a complaint. Where a caller has a complaint about circumstances for which the ACCC, or the Competition and Consumer Act, has no remedy, Infocentre staff identify another agency or organisation that may be able to help the caller.

Information in the complaints and inquiries database is available to all staff for the purpose of analysing complaint trends, identifying issues for further inquiry and developing compliance responses. Investigators can contact the Infocentre when they require specific information, such as calls about a particular product or supplier. Infocentre project officers are able to identify information of a valuable evidentiary nature for investigations by asking targeted questions.

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**ACCC contact details**


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ACCC Infocentre	1300 302 502
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Small business helpline	1300 302 021
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SCAMwatch complaint line	1300 795 995
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ACCC Indigenous Infoline	1300 303 143
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ACCC Unit Pricing Hotline	1300 746 245
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SCAMwatch website	<a href="http://scamwatch.gov.au">scamwatch.gov.au</a>
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ACCC website	<a href="http://acc.gov.au">acc.gov.au</a>
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AER website	<a href="http://aer.gov.au">aer.gov.au</a>
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Product Safety Australia website	<a href="http://productsafety.gov.au">productsafety.gov.au</a>
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Recalls website	<a href="http://recalls.gov.au">recalls.gov.au</a>
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ACCC Freedom of Information website	<a href="http://foi.acc.gov.au">foi.acc.gov.au</a>
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In 2010–11, the ACCC Infocentre:

- > responded to 157 539 contacts
- > trained operators to ensure they were able to manage the transition to the Australian Consumer Law, address issues arising from new functions, such as the AER and providing information about unfair contract terms and the national product safety regime.

The contacts figure above does not include 21 546 emails received by the ACCC and entered into the national database where no response was required.

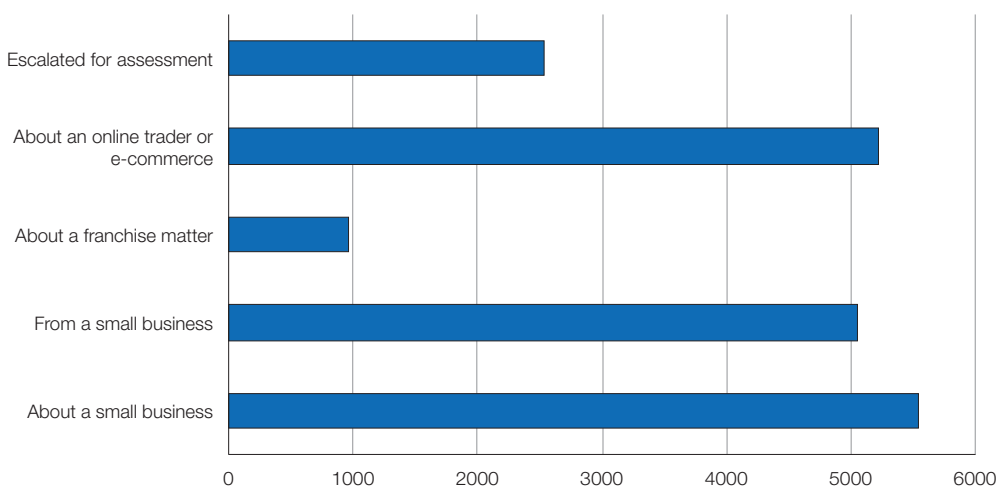
Table 3.9: Complaints and inquiries, 2009–10 compared to 2010–11

Telephone calls	2009–10	2010–11
Received	105 438	143 307
Served	82 556	114 066
Abandoned	19 252	27 816
Unanswered/Engaged/Emergency message/Answered at other office due to Planning Day	2 408	1 425
Voicemail	1 222	198*
Email contacts		
Number of emails received	31 645	41 219
Answered by telephone response	8 304	2 576
Answered by return email	11 732	14 657
Sent elsewhere for response	1 054	688
No response required	10 555	23 297**
Written correspondence		
Number of letters received	2 098	2 263
Sent elsewhere for response	413	433
No response required	215	288

\* Voicemail ceased as a service in October 2010

\*\* Reports of scams via the online form no longer received an individually drafted response from July 2010

Figure 3.2 Business information complaints or inquiries 2010–11

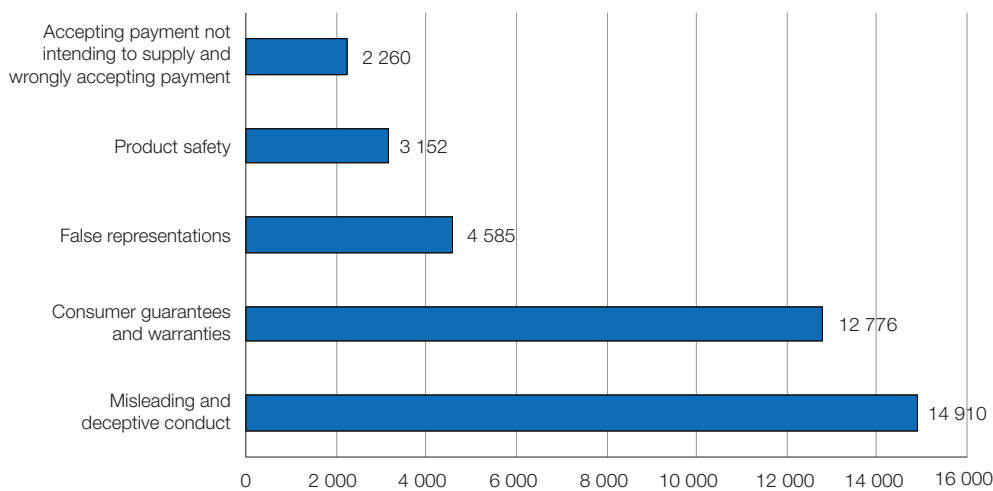




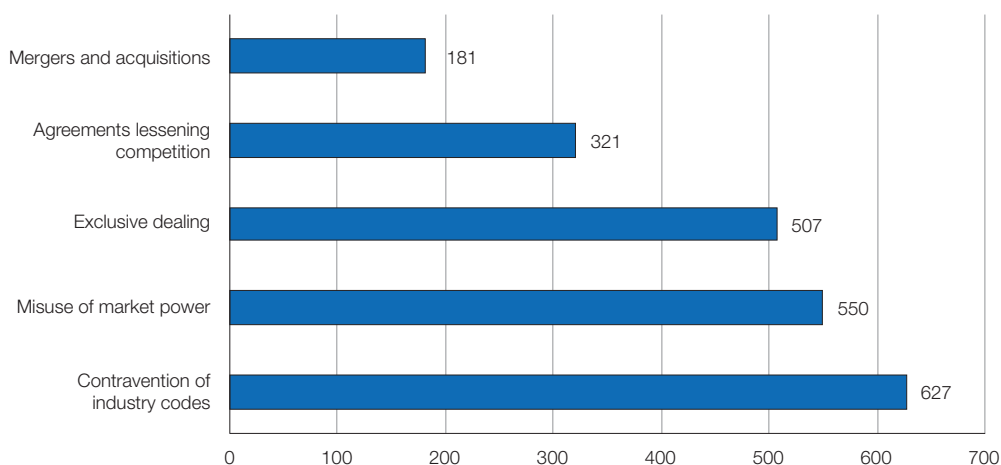
**Table 3.10: Top 10 industries for complaints and inquiries**

Industry	2010–11 complaints and inquiries
Electrical, Electronic and Gas Appliance Retailing	3069
Non-Store Retailing	2340
Other Store-Based Retailing n.e.c.	2289
Car Retailing	1909
Air and Space Transport	1429
Computer and Computer Peripheral Retailing	1413
Wired Telecommunications Network Operation	1151
Fuel Retailing	1079
Credit Reporting and Debt Collection Services	1032
Other Telecommunications Network Operation	1027

**Figure 3.3 Top five possible non-scam contraventions of the Trade Practices Act and Competition and Consumer Act—Consumer protection 2010–11 contacts**



**Figure 3.4 Top five possible non-scam contraventions of the Trade Practices Act and Competition and Consumer Act—competition and informed markets 2010–11 contacts**



**Table 3.11: Top 10 scam-related matters**

Scam type	Total 2010–11 contacts
Advanced fee/up-front payment (Nigerian style)	22 016
Modem-jacking/key-logging (including computer hacking)	13 782
Lottery and sweepstakes	5 598
Online auction and shopping	5 121
Unexpected 'prizes'	3 958
Banking and online account (including Phishing)	3 428
False billing (advertising, directories, domain names, office supplies)	3 073
Job and employment (including business opportunity)	1 670
Dating and romance (including adult services)	1 479
Other	1 101

**Table 3.12: Top 10 publications sent to callers**

Publication	2010–11 distribution
Help cut mobility scooter accidents	20 645
The little black book of scams	20 376
Blind/curtain cords (Safety alert)	16 433
Hot water bottles (Safety alert)	11 251
Babies dummies (Safety alert)	2 892
Household furniture hazards for kids (Safety alert)	2 587
Cots (Safety alert)	2 398
Franchisee Manual, The	2 183
Warranties and Refunds—a guide for consumers and businesses	2 159
Consumer guarantees—a guide for consumers	1 730

**Table 3.13: Geographic location of inquirers and complainants recorded in the national database**

Where consumers allege more than one contravention of the legislation, each contravention is counted separately.

	Part V		ACL		Scams		Total Consumer Protection		Part IV		Part IVA/B		Other		Total	
	Last year	This year	This year	This year	This year	This year	Last year	This year	Last year	This year	Last year	This year	Last year	This year	Last year	This year
New South Wales	20 257	14 640	7 743	10 347	32 730	866	795	244	208	3 834	3 786	25 201	37 519			
Queensland	15 165	12 226	6 180	8 504	26 910	543	569	256	218	2 460	2 717	18 424	30 414			
Victoria	15 651	11 160	7 120	6 243	24 523	655	612	216	199	2 914	3 269	19 436	28 603			
South Australia	4 692	4 509	1 982	3 898	10 389	201	182	138	62	832	871	5 863	11 504			
Western Australia	5 738	4 421	2 561	2 960	9 942	225	267	102	110	927	1 057	6 992	11 376			
Australian Capital Territory	2 534	1 997	1 210	1 131	4 338	99	106	27	18	532	587	3 192	5 049			
Other	1 367	1 235	417	2 617	4 269	20	22	9	4	324	314	1 720	4 609			
Tasmania	1 468	1 316	470	1 138	2 924	51	60	17	9	229	262	1 765	3 255			
Northern Territory	610	531	264	338	1 133	27	20	17	9	117	138	771	1 300			
Grand Total	67 482	52 035	27 947	37 176*	117 158	2 687	2 633	1 026	837	12 169	13 001	83 364	133 629			

\* The ACCC received a total of 64 684 scam conduct reports during 2010–11. Reporting of scams changed during the financial year with the Competition and Consumer Act replacing the Trade Practices Act (TPA) mid way through the reporting period. As such, recording of scam conduct changed on 1 January 2011. The column for Part V of the TPA (52 035) includes 27 508 scam conduct reports received from 1 July to 31 December 2010. The 64 684 total scams includes the 37 176 scams reported from 1 January to 30 June 2011 and 27 508 scam matters included in the Part V totals.

## Reaching out to small, isolated or disadvantaged groups

The ACCC works to apply tailored information and communication strategies that meet the wide range of needs of its diverse audiences, including those groups who might experience a disadvantage or vulnerability in the marketplace.

Information is made available in the full range of media, and in languages other than English. Information is tailored for specific groups. For example, the ACCC held workshops on scams for people who have hearing impairments.

The ACCC supports its published material with a range of other targeted initiatives which enable it to have a strong and engaging presence within the community. The ACCC's Chairman, commissioners and staff are regularly attending and participating in training, presentations, and conferences.

The ACCC's education and engagement managers support its outreach efforts at the grassroots level in regional and isolated communities, schools and at exhibitions, fairs and shows. Education and engagement managers also work closely with other government agencies to deliver messages to the community.

### *Consumer protection issues in indigenous communities*

The ACCC's Indigenous Consumer Protection Strategy identifies and addresses consumer protection issues of concern to Indigenous consumers. The ACCC is consulting with the appropriate agencies to facilitate more effective information and communication exchanges. The ACCC is also contributing to the work undertaken with the National Indigenous Consumer Strategy to address specific areas of concern of Indigenous consumers, in particular:

- > trading practices, specifically in relation to door-to-door sales, general marketing, and debt collection
- > consumer literacy, specifically in relation to consumer rights, contracts, complaints processes, and knowledge of consumer agencies and services.

The ACCC has continued work with its national, state and territory counterparts through the Compliance and Dispute Resolution Advisory Committee and the Education and Information Advisory Committee to identify and address unfair high pressure sales and trading practices in a number of Indigenous communities.

### 3. Ensuring that trading conditions between big and small firms are fair

*The ACCC aims to promote a competitive and fair operating environment for small business and to help raise small businesses' awareness of the Competition and Consumer Act.*

*The ACCC plays a key role in educating businesses about their rights and obligations under the Competition and Consumer Act through its education and outreach activities. The ACCC also impacts broadly on small businesses through other aspects of its work: for example, in assessing authorisation applications and notifications and in carrying out its enforcement activities. In this way the ACCC can help 'level the playing field' for small businesses by regulating or redressing unreasonable commercial behaviour.*

Deliverables	Results
Support is provided to increase the ability of small business to trade with larger firms in a fair, yet competitive environment.	See text below.
Effective and appropriate education campaigns are conducted that target industries and sectors where the risk of failure to comply with the CCA is high.	See text below under Small business education and outreach.
Collective bargaining notification decisions within statutory timeframes and communicated promptly.	See results under Promptly delivering authorisation and notification decisions on page 41 and text on page 64 under ACCC authorisations and notifications relevant to small business.
Enforcement of mandatory codes of conduct.	See text under Compliance with mandatory codes of conduct on page 66.

#### *Small business education and outreach*

As small businesses are limited by time and financial constraints in learning about their rights and obligations, the ACCC has produced a number of publications specifically for small businesses, and worked with industry associations and key bodies to disseminate information to members about the Competition and Consumer Act, particularly the Australian Consumer Law amendments. In 2010–11 the ACCC developed three overview publications to help businesses understand the amendments: *ACL: What you need to know*, *Fair sales practices and consumer guarantees*.

To help business owners, managers and sales staff understand their obligations under the new consumer guarantees regime, the ACCC developed an online video training module, which is available on the ACCC website and YouTube and also in hard copy for businesses to use in training staff.

The ACCC also produced an overview version of its small business publication, *Competition and consumer law, a small business overview*. This short guide gives a summary of the key aspects of the Competition and Consumer Act relevant to the small business sector.

The ACCC also participated in a range of conferences and events organised by industry associations representing a broad range of sectors, including motor vehicles, electrical goods, pharmacy, franchising and accounting, to provide their members with information about competition and consumer law issues.

### *ACCC enforcement activity encouraging fair trading for small business*

The ACCC seeks to enforce fair trading conditions in a variety of forms, including infringement notices, enforceable undertakings, and litigation. In 2010–11 the ACCC achieved a number of successful outcomes in relation to small business and franchising.

In particular, the ACCC achieved positive outcomes against a number of businesses for engaging in misleading or deceptive conduct to secure an unfair advantage over competitors. For example, ACA Constructions Pty Ltd represented that it was something that it was not by falsely claiming that it was a member of the Master Builders Association and the Housing Industry Association. The ACCC issued an infringement notice to ACA Constructions for misrepresentation.

In other examples during 2010–11, the ACCC:

- > accepted court enforceable undertakings from Ray White (Real Estate) Pty Ltd relating to ACCC concerns that it may have breached the Franchising Code in its attempts to terminate a franchise agreement. After the ACCC raised its concerns, Ray White began negotiations with the franchisee to settle the dispute. Ray White also agreed to implement a trade practices compliance program and that senior staff would undertake training on the Franchising Code
- > took legal proceedings against Yellow Page Marketing BV and Yellow Publishing Limited for misleading businesses into believing they were dealing with Sensis Pty Ltd Yellow Pages® directories. The Federal Court ordered penalties totalling \$2.7 million against the two companies. Importantly, the Court also declared some 4000 contracts void and prevented the collection of over \$6 million from the scam
- > accepted court enforceable undertakings from Dragon Alliance South Pacific Pty Ltd after it admitted to engaging in resale price maintenance by restricting online retailers from selling Dragon's ski goggles, motocross goggles and sunglasses below specified prices. As part of the undertaking Dragon will not restrict any Australian retailer of Dragon products from setting its own prices and will implement trade practices compliance training for its staff.

## CASE STUDY

### Bundled telecommunications deals aimed at small businesses

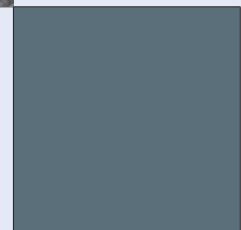
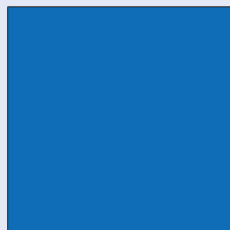
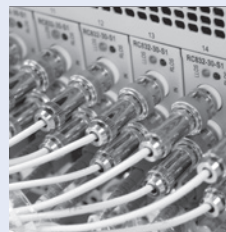
The ACCC commenced legal proceedings, the Link Solutions proceedings, on 2 October 2008 against multiple respondents, including telecommunications and finance companies and their directors and key employees. The ACCC has alleged that telecommunications companies misled small businesses into entering into contracts for telecommunications products and services coupled with the supply of equipment offered to them as 'free' but which in reality was subject to an equipment rental agreement with an unrelated finance company. The ACCC also alleges that these bundled agreements are a form of third line forcing—a specific form of exclusive dealing prohibited outright by the Competition and Consumer Act.

- In addition to helping prevent a recurrence of the type of conduct alleged in this case, the legal proceedings are intended to put the telecommunications and finance industries on notice that the ACCC will investigate bundled services deals promoted in a way that misleads purchasers as to the nature of and obligations attached to the different elements that make up a bundled transaction. The ACCC is also using the proceedings to raise public awareness about these types of deals.

This matter is set down for hearing in the Federal Court on 5 March 2012.

The ACCC has also employed a range of other strategies—in addition to litigation—to help the small businesses caught in these bundled deals:

- negotiating with a number of finance providers holding rental agreements, resulting in their providing a greater range of options and alternatives to equipment renters to settle outstanding obligations rather than battling court proceedings
- outreach to industry groups and small business and consumer education
- liaison with other enforcement agencies.





### *ACCC authorisations and notifications relevant to small business*

Under the authorisation (ss. 88–91C) and notifications (ss. 93–93A) provisions of the Competition and Consumer Act, the ACCC can grant protection from legal proceedings for some arrangements or conduct, on public benefit grounds, that might otherwise breach the Act's competition provisions.

Allowing collective bargaining in certain circumstances supports the capacity of small business to trade with larger firms in a fair, yet competitive environment. Small businesses often lodge applications for authorisation or notifications with the ACCC. The conduct covered by the applications includes price agreements, collective bargaining and exclusive dealing.

In 2010–11 the ACCC received 21 new proposals for authorisation, approximately half of which involved small business. The ACCC also received and assessed more than 650 exclusive dealing notifications, a significant number of which include small businesses. Some examples include:

- > an exclusive dealing notification by Queensland Newsagents Federation proposing to offer membership services to newsagents on condition the newsagent also acquires the services of the Australian Newsagents' Federation: the notification was allowed to stand
- > authorisation was granted to the Australian Hotels Association's Divisions to collectively bargain on behalf of current and future members with providers of a range of services including wagering services, subscription broadcasting services and accommodation booking services
- > authorisation was granted to the Homeworkers Code Committee which sought re-authorisation for the Homeworkers Code of Practice. The Code provides a tool for businesses in the textile, clothing and footwear industry to ensure compliance with legislative requirements which apply to homeworkers or outworkers.

## CASE STUDY

### Owner drivers win right to bargain collectively

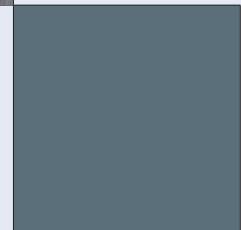
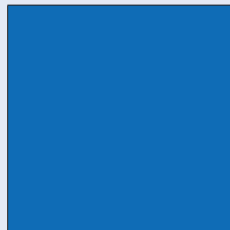
Q-crete is a Brisbane based concrete supplier that employs the services of 10 owner drivers to deliver concrete. The drivers were seeking to negotiate collectively with Q-crete over terms and conditions such as annual rate increases, penalty provisions and the badging of equipment.

The commercial relationship between a group of micro-businesses and a larger firm raises particular issues that need to be considered when assessing the public benefits and detriments of collective agreements that limit competition.

On the face of it, any collective agreement by a group of businesses has the potential to limit competition and therefore detract from the public interest. However, in the case of very small businesses, the individual businesses on their own may have limited capacity to engage on a fair basis with a much larger firm that constitutes the group's key supplier or customer.

In assessing the Transport Workers Union's application to authorise its owner-driver members to collectively bargain with Q-crete Premix over the cartage of concrete, the ACCC concluded that such arrangements were likely to result in transaction cost savings and provide the opportunity for increased owner driver input into contracts.

In its March 2011 decision to authorise the arrangements, the ACCC found that they were unlikely to restrict competition as they covered just the 10 owner drivers, and participation was voluntary for both drivers and Q-crete.



## Compliance with mandatory codes of conduct

The ACCC is responsible for promoting compliance with four mandatory industry codes: the Franchising Code, the Oilcode, the Horticulture Code and the Unit Pricing Code. In 2010–11, the ACCC continued to work with industry associations and conducted education campaigns to promote voluntary compliance with these codes.

The ACCC updated its franchising publications to reflect the 2010 amendments to the Franchising Code and some of the new Competition and Consumer Act provisions, and also provided editorial content for franchising magazines.

An ACCC-funded pre-entry education program for prospective franchisees was launched on 1 July 2010. The five-module program, administered by Griffith University, is intended to help people make an informed decision when looking to buy a franchise. More than 1500 people have already undertaken the free course.

After the first year of operation of the Unit Pricing Code, the ACCC commissioned a national survey of supermarkets and online grocery traders regulated by the code. This survey found that supermarkets as a whole had achieved a 98 per cent level of compliance, although the level of compliance among small and independent supermarkets and online traders was below expectations. The ACCC is currently working with these traders to address non-compliance.

### *Section 51ADD audit power*

The Competition and Consumer Act was amended to give the ACCC the power to conduct audits to help monitor compliance with prescribed industry codes. Section 51ADD was introduced on 1 January 2011 and allows the ACCC to obtain from a corporation any information or documents it is required to keep, to generate or to publish under a prescribed industry code. The corporation has 21 days to comply. Such audits are intended to be used as part of a wider strategy to ensure trade compliance with the various industry codes.

The ACCC has developed a set of criteria for selecting traders to audit, and will initially focus on traders covered by the Horticulture Code and the Franchising Code. The first tranche of audits will commence in July 2011.

## 4. Promoting product safety

*Consumers have a right to expect that products they buy work properly without unreasonable risk of causing illness or injury. Businesses must use quality control measures to ensure that products they supply meet acceptable levels of safety. Suppliers also have to ensure products meet requirements of relevant mandatory standards and bans.*

### Key performance indicator

- > Effective and appropriate actions are taken to promote product safety, including responding to emerging hazards, managing product recalls, and enforcing standards and bans.

The ACCC worked with state and territory fair trading agencies to harmonise the standards in force around Australia, replacing 177 bans and mandatory standards with a single set of 59 regulations. On 1 January 2011 the new harmonised system came into effect with the new Australian Consumer Law. This national system is easier for both consumers and suppliers to navigate.

Research was also conducted into several possible new national safety standards to address preventable injuries, covering portable swimming pools, trampolines and domestic furniture. This work will continue in 2011–12. A full list of all current mandatory standards and bans is available at [www.productsafety.gov.au](http://www.productsafety.gov.au).

### Did you know?

There are currently 59 mandatory standards and bans in place, including three mandatory information standards, 37 mandatory safety standards and 19 permanent bans.

On the national front, the Product Safety Consultative Committee (PSCC) continues to meet regularly to progress a range of national product safety matters, including the biannual national product safety surveillance program and nationally coordinated consumer and supplier education campaigns. Chaired by the ACCC, the PSCC represents product safety regulators across Australian states and territories, as well as New Zealand.

On the international front, the ACCC continues to work closely with its international counterparts, including through alignment of projects designed to develop a consistent international response to priority products including blind/curtain cords, baby slings and chair-top booster seats for children.

The ACCC took on the chairing role for a new Organisation for Economic Cooperation and Development (OECD) Product Safety Working Party set up to implement 10 key product safety recommendations including the development of a global recalls database, and an information sharing portal.

The ACCC also signed a Memorandum of Understanding with the United States Consumer Product Safety Commission, which has increased the ability to share information, and collaborate, between the two agencies.

## Identifying emerging hazards

Early identification of product hazards was identified by the Productivity Commission in 2006 as crucial to improving consumer safety.

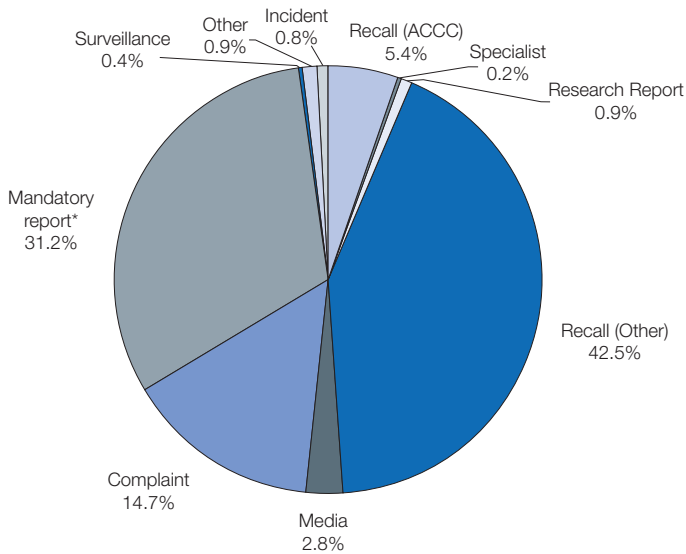
Actions the ACCC has undertaken to achieve this include the development of a sophisticated product safety hazard identification function (the ACCC's Clearinghouse system), which incorporates the new mandatory requirement for businesses to report serious product safety incidents.

The mandatory reporting requirement was introduced on 1 January 2011 and requires businesses to notify the Commonwealth within two days of becoming aware that a product (or product-related service) they have supplied has caused, or may have caused, serious injury, illness or death. In the first six months the ACCC has received a total of 911 such reports. Of these 911 reports, 430 were referred to other regulators such as Food Standards Australia New Zealand, and 481 were assessed or are currently under assessment by the ACCC.

The intelligence provided by these reports has strengthened the ACCC's Clearinghouse data collection and analysis system, which systematically analyses a wide range of national and international injury and hazard data sources to more quickly identify and respond to emerging issues.

During the year, a total of 2918 Clearinghouse records were created, including the 911 mandatory reports mentioned above. Clearinghouse activity, including mandatory reports, resulted in a number of recalls throughout the year.

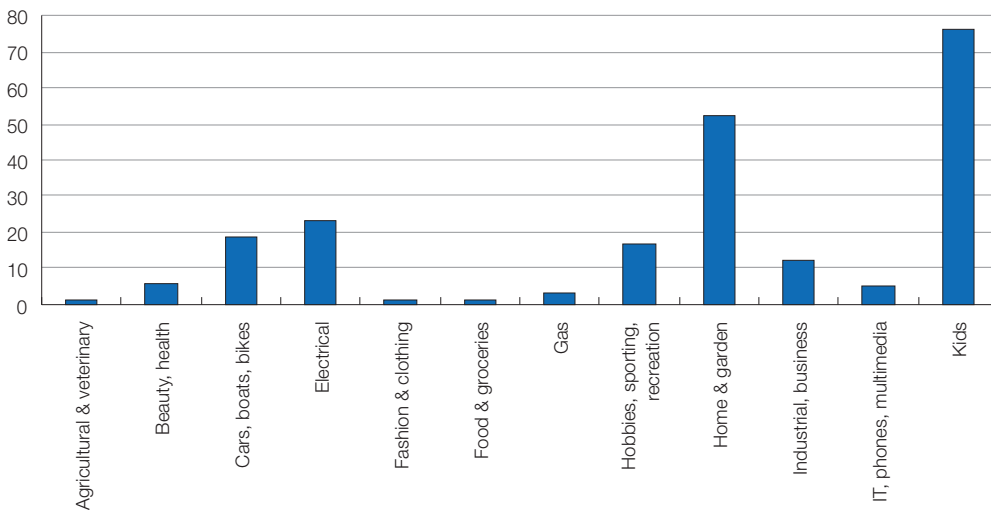
**Figure 3.5 Sources for Product Safety Clearinghouse records from 1 January 2011**



## Product recalls

To improve the effectiveness of product recalls, the ACCC has revised its guidelines for suppliers on product recalls, which provide evidence-based advice on how to conduct best practice recalls, including communication strategies to ensure consumers are aware of recalls.


**Figure 3.6 Consumer product recalls by category**



During 2010–11, there were six high profile recalls of hair straightening treatments containing unsafe levels of formaldehyde, including one product with levels 50 times the maximum safe limit. In June 2010, ACCC officers attended one of the hair industry’s biggest annual events, HairExpo 2011, and noticed a significant increase in industry awareness of product safety. Many suppliers had on hand test certificates indicating compliance, and including individual batch numbers. This is an example of how an industry can move from significant non-compliance to a much higher level of compliance in a relatively short space of time.

In recognition of the growing concern about the use of chemicals in consumer products generally, the ACCC has established a dedicated chemicals unit to identify and address hazards.

The recall of 15 000 Wiggles Clocks by Nextmedia illustrates the success of the ACCC's collaborative approach to achieving product safety compliance. The clock, a free gift with the monthly Wiggles magazine, was subject to a complaint about small parts, reported to the ACCC by the South Australian Office of Consumer and Business Affairs. Although the clock had been labelled as not suitable for children under 36 months, it was assessed by the ACCC as a product that was likely to be purchased for use by this age group. The ACCC successfully negotiated with Nextmedia to recall the clock and provided them with information to help ensure future compliance.



**Did you know?**

In 2010–11, the most prominent category of consumer goods recalls managed by the ACCC was children's products. A total of 76 recalls from this category were initiated.

More general guidance for the promotional products industry on the need for compliance with relevant mandatory product safety standards is now being developed.

## Product safety compliance and enforcement

The ACCC continued to apply a risk-based strategic approach to maximise compliance with the growing suite of product safety regulations. In 2010–11 this included implementing a program of preventative compliance strategies through supplier education and stakeholder partnerships, and strengthening market surveillance and laboratory testing programs.

In partnership with the state and territory regulators, the ACCC conducted two national product safety surveillance operations, removing more than 150 000 unsafe toys and other items from retail stores in the lead up to Christmas. Other notable results include:

- > removing from sale 4500 children's nightwear items with wrongly labelled fire warnings (see page 71)
- > recalling four hydraulic trolley jack models affecting over 5000 units.

Product safety surveillance also detected and addressed breaches of mandatory standards for bicycles, bean bags, children's toys and treadmills, resulting in a consumer recall or removal from sale.

Three successful legal proceedings and one criminal prosecution by the ACCC against suppliers of non-compliant baby rattles, infant sleep bags, children's nightwear and bean bags were concluded during year. Fantastic Furniture was penalised \$300 000 for selling bean bags that failed to display a warning about the severe danger presented to children if the filling is swallowed or inhaled. Additionally, two section 87B undertakings were provided to the ACCC by suppliers of chewing tobacco (a banned product) and bunk beds that failed to comply with the mandatory standard.

The ACCC also conducted an extensive assessment of the safety of babies' dummies following several reports of teat separation with Happy Baby brand latex dummies—despite being tested and meeting the requirements of the mandatory standard. In assessing this product, the ACCC's product safety area used the section 65Q information gathering powers. A public warning by the Minister under section 65B led the supplier to withdraw the products from sale and conduct a recall. The ACCC will be reviewing the mandatory standard covering babies' dummies.

## CASE STUDY

### Product safety surveillance casts a wide net

Twice a year the ACCC cooperates with state and territory fair trading agencies to conduct a national product safety surveillance program. The agencies agree on which products to target and when (who will survey which product when). Results are collated by the ACCC from all jurisdictions to provide a clear national picture.

The surveillance program in 2010–11 ran across the summer and incorporated the pre-Christmas toy survey. The program specifically examined magnets in toys and lead in toys and finger paints, and checked toys for small parts. It also looked at treadmills, bean bags, aquatic toys, flotation aids and pedal bicycles.

By coordinating targeted surveillance operations, the program casts a net over a wide range of potential safety issues. Over 2000 retail outlets (including on-line suppliers) offering over 600 000 products were surveyed, and 348 breaches identified. Breaches have been or are being dealt with under the ACCC's Compliance and Enforcement Policy.

For example of the 377 bicycle products surveyed, 41 were identified as being non-compliant. While most cases of non-compliance related to labelling issues, eight bicycles were recalled due to safety hazards (no chain guard), and several suppliers were required to rectify breaches to ensure their bikes were compliant.

The outcome indicates that bicycle suppliers and their employees must do more to familiarise themselves with the mandatory safety standard, which covers compulsory safety features, labelling and instructions.

Under Australian law, bicycle suppliers—whether they are manufacturers, importers, wholesalers, or retailers—can only sell bicycles in Australia if they comply with the mandatory standard. The mandatory standard also applies to unassembled or partially assembled bicycles.

Bicycle suppliers who fail to comply with the mandatory standard not only put consumers at risk of serious injury or death, but they also risk the expense of product recalls and legal action by the ACCC, including hefty penalties.



## CASE STUDY

### Removing unsafe children's nightwear from the market

In July and August 2010, almost 1200 children's dressing gowns and polar fleece cardigans were recalled after an ACCC-led surveillance operation targeting the sale of non-compliant children's nightwear.

In the first civil penalty handed down for a breach of a product safety standard, the Federal Court imposed penalties of \$400 000 against Dimmeys Stores for supplying children's dressing gowns that failed to comply with the mandatory consumer product safety standard for children's nightwear.

The mandatory standard for the labelling of children's nightwear is designed to reduce the risk of burns injuries by providing specific information on the fire hazard of the garments. As a priority mandatory standard for the ACCC, it has been the focus of marketplace surveillance operations. In the Dimmeys case, the breach of the mandatory standard was assessed as significant enough to warrant further enforcement investigation and possible action.

In recent years, the ACCC has accepted several undertakings from suppliers in relation to breaches of the mandatory standard for children's nightwear. To improve compliance, the ACCC held a forum with key industry stakeholders including Standards Australia.





## Communication and education

The ACCC continues to explore new ways to communicate directly with consumers and suppliers about product safety, including new media technologies and social media. The @ProductSafetyAU Twitter account now has over 1000 followers, many of whom regularly retweet product safety recalls, tips and alerts. The Twitter feed click-through and retweet rates are regularly above 90 per cent.

### Did you know?

The @ProductSafetyAU Twitter account sent out 620 tweets during 2010–11.

The ACCC undertook two seasonal online safety campaigns for consumers for the first time in 2010–11. The SafeSummer and EasterSafe campaigns used social media and other online platforms to engage consumers in a two-way conversation on topics such as safe use of aquatic toys in summer. This online activity was complemented by an expansion of the ACCC's range of more traditional communication resources for consumers, including Safety Alert brochures and an updated version of the popular *Keeping Baby Safe* publication.

Two product safety webinars, including one for suppliers on the new mandatory injury reporting requirement, provided forums for suppliers to directly engage with the ACCC about product safety. The ACCC also published or updated a number of publications for suppliers including product safety bulletins and suppliers' guides. An ACCC–Monash University report into mobility scooter injuries, *Targeted study of injury data involving motorised mobility scooters*, was released in March 2011 and is available at [productsafety.gov.au](http://productsafety.gov.au).

# Part 3C

## Regulating national infrastructure services and other markets where there is limited competition

The ACCC regulates national infrastructure services and other markets where competition is limited, under the *Competition and Consumer Act 2010* and various industry-specific Acts and rules.

### Key actions to achieve results

The key actions to achieve the intended results of the ACCC program of regulating markets where competition is limited are:

1. support and protect competition in markets that rely on networks with natural monopoly characteristics
2. provide consistent and independent regulation of the energy sector, encouraging competition within and between the gas and electricity markets to benefit industry and consumers
3. regulate and advise on industries where market structures are changing, including where the market structure impedes effective competition (for example, water, transport and communications)
4. monitor prices to assess and advise on the effect of market conditions (including deregulation) on the price levels of specified goods and services, including petrol, and a range of airport prices, including car parking.

### Key performance indicators

- > The ACCC's and AER's performance in regulating national infrastructure services and other markets where there is limited competition is assessed against the following key performance indicators (KPIs):
  - access terms, conditions and prices balance the interests of infrastructure owners and users and the broader public
  - incentives are provided that stimulate efficient investment in and use of services with natural monopoly characteristics
  - regulatory processes that support efficient resource allocation, including investment in the regulated businesses, are predictable and consistent
  - prices of specified goods and services are monitored to assess the effect of market conditions on price levels, and the government and public are advised accordingly
  - all the outcomes of access arbitrations, arrangements and undertakings, monitoring activities and inquiry findings are publicised.

The ACCC's performance against these KPIs is described on a sector-by-sector basis in the following sections.

## Telecommunications, broadcasting and content

**Table 3.14: Telecommunications—deliverables and results**

Deliverables	Results
Compliance with statutory reporting requirements to the Minister for Broadband, Communications and the Digital Economy.	The ACCC has complied with all statutory reporting requirements (see 'Publicising outcomes').
Implementation of reasonable terms and conditions of access in arbitral determinations under the telecommunications access regime.	The ACCC has implemented reasonable terms and conditions of access in arbitral determinations by making six final determinations in two ULLS disputes, two wholesale line rental (WLR) disputes and two local carriage service (LCS) disputes under the telecommunications access regime.
Review of declarations of declared services under the telecommunications access regime within statutory timeframes.	As no declarations expired during the relevant period, it was not necessary for the ACCC to undertake declaration reviews.
Assistance to the Australian Competition Tribunal and courts in review of any appealed ACCC regulatory decisions under the telecommunications access regime.	No ACCC regulatory decisions under the telecommunications access regime were reviewed in 2010–11.
Effective access regimes (evidenced by price levels and service delivery standards).	See 'Access and incentives', p. 75.
Improvement (to more closely reflect efficient costs) in prices paid by businesses using monopoly services.	The ACCC has implemented measures to more closely reflect efficient costs in prices paid for monopoly services (see 'Monitoring prices', p. 78).
Timely and accessible regulatory reports, determinations, and issues papers.	The ACCC's regulatory reports, determinations and issues papers were accessible in a timely fashion on the ACCC's website.
Robust and accurate regulatory methodology (evidenced by industry acceptance).	<p>The ACCC's change in approach to pricing of regulated fixed line services from a total service long run incremental cost (TSLRIC) pricing approach to a building block methodology approach has been consulted on and broadly supported by industry.</p> <p>The ACCC is also consulting on the pricing approach for setting prices in final access determinations for regulated transmission services and regulated mobile services.</p>
Websites ( <a href="http://www.accc.gov.au">www.accc.gov.au</a> and <a href="http://www.aer.gov.au">www.aer.gov.au</a> ) that are accessible and a source of relevant and up-to-date information.	The ACCC's regulatory reports, determinations and issues papers are accessible in a timely fashion on the ACCC's website (see 'Publicising outcomes', p. 79).

The ACCC is responsible for the economic regulation of the telecommunications, broadcasting and content sector under the Competition and Consumer Act, via the sector-specific access and competition regimes, and the following Acts:

- > *Broadcasting Services Act 1992*
- > *National Broadband Network Companies Act 2011*
- > *Radiocommunications Act 1992*
- > *Telecommunications Act 1997*
- > *Telecommunications (Consumer Protection and Service Standards) Act 1999.*

## Compliance and enforcement

On 28 July 2010 the Federal Court imposed a penalty of \$18.55 million on Telstra for denying its competitors access to its facilities for the connection of their broadband equipment in seven key metropolitan areas. The ACCC had initiated action against Telstra in 2009 for failing to meet its access obligations under the then Trade Practices Act and Telecommunications Act in contravention of Telstra's carrier license conditions. Telstra had admitted contravening the law.

During 2010–11, the ACCC investigated complaints in relation to alleged anti-competitive conduct in the communications sector. This included allegations of vertical price squeeze conduct by Telstra in relation to wholesale ADSL services. The ACCC wrote to industry raising the potential for an inquiry into declaration of a wholesale ADSL service, but after extensive consultation decided in April 2011 that an inquiry was not appropriate at that time.

The ACCC developed and published an industry information paper on the marketing of HFC and FTTP broadband internet service performance. With high-speed broadband services becoming more widely available (including via the NBN), the ACCC was concerned that misleading representations regarding service performance could lead to significant consumer detriment. Industry and consumer engagement on this issue is ongoing.

- > The ACCC continued monitoring:
- > Telstra's compliance with its Operational Separation Plan and
- > compliance with the FOXTEL Special Access Undertaking for the Digital Set Top Unit Service.

## Access and incentives

The ACCC aims to put in place:

- > access terms, conditions and prices that balance the interests of infrastructure owners and users and the broader public
- > incentives that stimulate efficient investment in and use of services, and
- > measures that more closely reflect efficient costs in prices paid for monopoly services.

To achieve this, the ACCC undertook the following activities in 2010–11:

Regulated transmission services

- > Release of position paper for public consultation on the proposed pricing approach for regulated transmission services.
- > Implementation of interim access determinations that set out price and non-price terms of access for regulated transmission services.
- > Initial work, including consultation, to develop final access determinations that will set out price and non-price terms of access for regulated transmission services (including approaches to setting prices that will more closely reflect efficient costs).

- > Finalisation of a review of the domestic transmission capacity service (DTCS) declaration to vary the service description in the declaration to include all network interfaces used on transmission networks.

#### Regulated fixed line services

- > Release of draft report for consultation on the approach to pricing regulated fixed line services.
- > Release of interim access determinations setting out price and non-price terms of access for regulated fixed line services.
- > Initial work to develop final access determinations that will set out price and non-price terms of access for regulated fixed line services.
- > Implementation of final determinations for access pricing in six access disputes (two ULLS disputes, two WLR disputes and two LCS disputes) that more closely reflect efficient costs.
- > Implementation of exemption orders to determine the specific areas in which certain regulated fixed line services will no longer be subject to regulation.
- > Implementation of a building block methodology for pricing regulated fixed line services in place of the TSLRIC pricing approach to more closely reflect actual efficient costs, and refining a fixed line services cost model used for calculating prices to more closely reflect actual efficient costs.

#### Regulated mobile services

- > Initial work, including consultation, to develop final access determinations that will set out price and non-price terms of access for regulated mobile services (including approaches to setting prices that will more closely reflect efficient costs).

#### NBN

- > Pre-lodgement discussions with NBN Co regarding the Special Access Undertaking that will set out the terms and conditions of access to its services.
- > Public consultation process undertaken in relation to the number and location of initial Points of Interconnection (POIs) to the NBN.

## CASE STUDY

### Developing an effective regulatory regime for the NBN

The ACCC has a key role in delivering a competitive market environment for the National Broadband Network, to be built and operated as a wholesale network by the government-owned NBN Co.

The NBN venture provides the opportunity to put in place the lasting foundations for a more competitive telecommunications environment, by ensuring that the operator of the fixed access network will not also supply in downstream markets. At the same time, the ACCC must also ensure that the regulatory settings in the transition to the NBN deliver improved competition in the short term.

Over coming months, the ACCC will be responsible for assessing key proposed undertakings from both Telstra and NBN Co that are central to the transition to the new industry environment.

The ACCC has two interrelated roles in relation to the reform of the sector and the regulation of access to the National Broadband Network (NBN):

- > assessing any structural separation undertaking or migration plan submitted by Telstra
- > establishing the terms and conditions under which retail service providers can gain access to the NBN.

The ACCC has also provided advice to the Government when requested.

In October 2010, the Government asked the ACCC to provide advice (in conjunction with NBN Co) on the number and location of initial points of interconnect (POIs) to the NBN. POIs are geographic locations where access seekers connect to the NBN and exchange data traffic from their own networks. The number and location of POIs has significant implications for competition in transmission markets.

After a public consultation process, the ACCC recommended, in November 2010, that the location of POIs be based on specified criteria that would allow existing competition in transmission markets to continue. Based on these criteria, the ACCC and NBN Co identified an initial 120 POI locations. The location and number of POIs has since been subject to further confirmation and refinement processes with industry and NBN Co.

Under the NBN legislation, NBN Co may lodge a special access undertaking, setting out the terms of access (including pricing) for the NBN, which the ACCC will assess.

Under the legislation, the ACCC will also be developing non-discrimination guidelines in relation to retail service providers accessing the NBN.

The ACCC also has other work in relation to the NBN, including specifying the description of the regulated service that will be supplied by NBN Co to retail service providers.

## Regulatory processes

- > Regulatory processes have been predictable and consistent in the following way:
- > The prices set in the six final determinations made by the ACCC were consistent with previously published indicative prices for the relevant regulated services.

Following changes to the access regime in Part XIC of the TPA (now the CCA) the ACCC set prices in interim access determinations for certain regulated services. The ACCC was consistent with previous processes as:

- > The prices set in the interim access determinations for regulated fixed line services in March 2011 were based on a building block methodology (BBM) approach to pricing. The BBM was proposed as a pricing approach in the ACCC's review of access pricing principles that underpin regulated pricing for fixed line services (APP review). The BBM approach had been proposed in the APP review's discussion paper released in December 2009 and the APP review's draft report, released in September 2010.
- > The prices set in the interim access determinations for regulated transmission services (DTCS) in April 2011 were determined consistent with a pricing approach proposed in a position paper on a DTCS pricing review, released in November 2010.

In addition, the ACCC has initiated inquiries for final access determinations for regulated fixed line services and regulated transmission services. The proposed pricing approaches set out in the discussion papers for each inquiry is consistent with the pricing approaches used in setting the interim access determinations.

The ACCC has also engaged in pre-lodgement discussions with NBN Co regarding the special access undertaking that will set out the terms and conditions of access to its services.

### Did you know?

In the six months since amendments to the telecommunications access regime took effect, the ACCC has:

- > made interim access determinations for seven regulated telecommunications services
- > initiated inquiries for final access determinations for eight regulated telecommunications services.

## Prices

The ACCC monitors changes in the prices paid by consumers for telecommunications services and competitive safeguards in the industry and reports to the Minister. The ACCC's reports on *Telecommunications competitive safeguards for 2008–09* and *Changes in prices paid for telecommunications services in Australia, 2008–09* were tabled by the Minister in Parliament on 15 November 2010.

The ACCC also monitors Telstra's compliance with the retail price control arrangements, releasing the report for 2009–10 in March 2011.

## Reporting and publicising outcomes

In complying with statutory reporting requirements to the Minister for Broadband, Communications and the Digital Economy, the ACCC has published the following:

- > Telstra's compliance with the price control arrangements 1 July 2009 to 30 June 2010 report
- > Telecommunications competitive safeguards for 2008–09 and changes in prices paid for telecommunications services in Australia, 2008–09 reports.

The ACCC has completed the reports on telecommunications competitive safeguards and changes in prices paid for telecommunications services for 2009–10 and has provided a copy of the reports to the Minister.

The ACCC published the following outcomes of access arbitrations, arrangements and undertakings, monitoring activities and inquiry findings:

- > Final determinations and statements of reasons for one ULLS dispute, one WLR and one LCS dispute.
- > Final report reviewing the declaration of the domestic transmission capacity service (DTCS), September 2010.
- > Interim access determinations and statement of reasons for regulated transmission services.
- > Interim access determinations and statement of reasons for regulated fixed line services.
- > Telecommunications competitive safeguards for 2008–09 and changes in prices paid for telecommunications services in Australia, 2008–09 reports.
- > Telstra's compliance with the price control arrangements 1 July 2009 to 30 June 2010 report.
- > Imputation and Non-price Terms and Conditions Report June Quarter 2010.
- > Imputation and Non-price Terms and Conditions Report September Quarter 2010.
- > Imputation and Non-price Terms and Conditions Report December Quarter 2010.
- > Current Cost Accounting Report relating to the Accounting Separation of Telstra for second-half and full year 2009-2010.
- > Current Cost Accounting Report relating to Accounting Separation of Telstra for July–December 2010.
- > Methodology for the administration of the Telstra carrier charges price control arrangements.

The ACCC's regulatory reports, determinations and issues papers are accessible in a timely fashion on the ACCC's website.

The ACCC also publishes on its website summaries of data obtained under some of the record keeping rules it has issued to telecommunications companies. This includes data about:

- > telecommunications infrastructure
- > access services provided by Telstra to other companies over its customer access network (CAN)
- > access to Telstra's exchange buildings.

The ACCC publishes up-to-date information on ongoing processes, such as:

- > the points of interconnect (POI) confirmation process and refinement of the list of POIs process
- > extending the operation of the access to Telstra exchange facilities record keeping rule
- > consideration of access issues (such as the possible declaration inquiry for Telstra's wholesale DSL services in certain areas).



# Energy

**Table 3.15: Energy—deliverables and results**

Deliverables	Results
Effective access regimes (evidenced by price levels and service delivery standards).	The AER approved pricing proposals for 12 electricity network service providers and approved annual tariff variations for 12 gas service providers during the reporting period (see 'Access terms, conditions and prices', p. 81). The AER also implements incentive regimes specified in the National Electricity Rules and National Gas Rules (see 'Incentives' p. 86).
Improvement (to more closely reflect efficient costs) in prices paid by businesses using monopoly services.	The AER made electricity determinations and gas decisions in accordance with the National Electricity Rules and National Gas Rules. The objective of these decisions is to promote efficient investment in energy services for the long term interests of consumers (see 'Access terms, conditions and prices', p. 81).
Timely and accessible regulatory reports, determinations, and issues papers.	The AER's regulatory reports, determinations and issues papers were issued in accordance with the regulatory frameworks and promptly published on its website.
Robust and accurate regulatory methodology (evidenced by industry acceptance).	The AER partially met this deliverable. A number of determinations were appealed by business to the Australian Competition Tribunal and Federal Court (see 'Access terms, conditions and prices', p. 81)
Websites ( <a href="http://www.accc.gov.au">www.accc.gov.au</a> and <a href="http://www.aer.gov.au">www.aer.gov.au</a> ) that are accessible and a source of relevant and up-to-date information.	The AER's regulatory reports, determinations and issues papers are accessible in a timely fashion on its website (see 'Publicising outcomes', p. 90).

The AER, an independent statutory authority and part of the ACCC, regulates the national energy markets under the following laws and rules:

- > National Gas Law
  - > National Gas Rules
  - > National Gas Regulations
  - > National Electricity Law
  - > National Electricity Rules
  - > National Electricity Regulations
  - > National Energy Retail Law\*
  - > National Energy Retail Rules\*
  - > National Energy Retail Regulations\*.
- \* Intended to take effect from 1 July 2012
- > In Victoria the AER also regulates cost recovery for mandated smart metering infrastructure under the *Victorian Electricity Act 2000*.

The national energy laws aim to encourage competition in upstream and downstream markets by ensuring access to monopoly infrastructure and by providing the frameworks for contestable and competitive energy markets.

## Access terms, conditions and prices

The AER makes electricity determinations and gas decisions for transmission and distribution networks in accordance with the National Electricity Rules and National Gas Rules. The AER's determinations and decisions balance the interests of infrastructure owners, users and the broader public by promoting the national energy market objective set out in the National Electricity Law and National Gas Law—that is, to promote efficient investment in energy services for the interests of consumers with respect to price, quality, reliability, safety and security.

### *Electricity transmission and distribution determinations*

The AER did not make any electricity transmission determinations in 2010–11.

For electricity distribution, the AER made:

- > Final determinations in October 2010 for the five Victorian distributors—CitiPower, Powercor, Jemena, SP AusNet and United Energy—for the 2011–15 period. The AER made the determinations in accordance with the National Electricity Rules, which allow distributors to recover their efficient costs, balancing the interests of the distributors and the broader public. The determinations have been appealed in the Australian Competition Tribunal by the distributors.
- > A decision, in November 2010, on the final framework and approach for the Tasmanian distributor Aurora to assist in preparing its regulatory proposal to the AER.

In March 2011 the AER also released its determination on how Endeavour Energy (formerly Integral Energy) and Ergon Energy should report on their recovery of Solar Bonus Scheme payments for each year of the regulatory control period, and on adjustments for over and under recovery of such payments. The AER determined that Endeavour Energy and Ergon Energy now have the option to elect to recover the costs of Solar Bonus Scheme rebates through their pricing proposals in the current regulatory period.

During the reporting period, the following AER electricity determinations were subject to review:

- > Energex, Ergon Energy, and ETSA Utilities 2010–11 to 2014–15 distribution determinations: The Australian Competition Tribunal decided that the AER erred in not revaluing ETSA Utilities' easements. It also decided that the AER erred in some aspects of the labour escalation rates and non-system capital expenditure (capex) allowance provided for Ergon Energy. The Tribunal agreed with the AER in relation to the service standards target and customer services operating expenditure (opex) allowance set out in the final decision. The Tribunal also agreed with the AER's classification of street lighting services as regulated services.
- > ActewAGL judicial review of the AER's 2009 distribution determination: ActewAGL claimed that the rejection of its proposed risk free rate averaging period and the use of another averaging period had had a material adverse impact upon it. This matter was heard by the Federal Court in March 2011. In its judgement on 8 June 2011, the Federal Court upheld the AER's distribution determination, noting that the determination was based on reasonable grounds and was justified with reference to its reasons.
- > Victorian distributors 2011–15 distribution determinations: The distribution businesses applied for review by the Australian Competition Tribunal of the AER's Victorian electricity distribution determinations for 2011–15 in relation to a number of matters, including aspects of the cost of capital, the application of previous regulatory arrangements, expenditure related matters and the pass through of costs.

### *Other matters*

Under the new chapter 5A of the National Electricity Rules, the AER is responsible for developing national connection guidelines that set out the principles distributors must adhere to when charging new customers for connection to the electricity distribution network. In June 2011 the AER released a consultation paper on the design of the guideline.

The Victorian Government has given the AER responsibility for assessing the costs associated with the transition to smart meters for Victorian electricity consumers. In this role, the AER made its final determination in April 2011 on SP AusNet's smart meter revised budget application for 2009–11, reducing SP AusNet's previously approved budget for 2009–11.

The Victorian distributors submitted their smart meter budget and charges applications for 2012–15. These applications set out the distributors' forecast costs for the final years of the smart meter rollout in Victoria, as well as charges for these years to cover their forecast costs. The AER has begun assessing the applications by applying the tests set out in the Victorian Government's Order in Council made under Sections 15A and 46D of the Electricity Industry Act 2000 on 28 August 2007, and as amended thereafter. The AER intends to release a draft determination on the distributors' budget and charges applications in July 2011, and must make its final determination by 31 October 2011.

The regulatory regime for smart meters permits the Victorian distributors to lodge a charges revision application based on changes in actual and forecast expenditure and revenues since the AER's initial decision in October 2009. In October 2010 the AER published its decision on revised charges for advanced metering infrastructure in 2011, approving a reduction in charges for the distributors CitiPower and Powercor, and increased charges for Jemena, SP AusNet and United Energy.

## CASE STUDY

### Next step in harmonisation of energy market regulation

Under the next major stage of the national energy reform process, the AER will take on new roles in energy retail markets from 1 July 2012.

Implementation of the new National Energy Customer Framework (NECF) involves the harmonisation of state-based regulatory frameworks (excluding retail price regulation and community service obligations) into a single set of national rules.

The NECF will apply to the relationships between energy customers, retailers and distributors, particularly in relation to terms of engagement. It also covers small customer dispute resolution, credit support arrangements, and retailer of last resort arrangements. The NECF will not apply in Western Australia and the Northern Territory.

The AER's responsibilities under the NECF will include:

- > granting retailer authorisations and exemptions
- > approving retailers' customer hardship policies
- > compliance and performance monitoring and reporting
- > administering a retailer of last resort scheme.

In the lead up to implementation, the AER has been consulting widely on the development of guidelines and instruments to support the NECF.



### *Cost pass through applications*

Regulated businesses are able to recover additional costs that were not anticipated at the time their price determinations were made. During the reporting period, the AER assessed the following cost pass through applications received from electricity network service providers.

For transmission networks:

- > Transgrid, Powerlink, Electranet and Transend pass through amounts for network support costs in 2009–10: the AER approved in March 2011 negative pass through amounts for network support costs incurred during 2009–10 for each of the four service providers.
- > SP AusNet pass through of easement tax change event in 2010–11: The AER approved in February 2011 a negative pass through amount in relation to the difference between SP AusNet's 2010–11 easement land tax liability and the adjusted determination forecast amount.

For distribution networks:

- > ActewAGL 2009–10 utilities network facilities tax (UNFT) cost pass through: The AER rejected in August 2010 ActewAGL's application for a negative cost pass through to provide for a change in the UNFT rate.
- > ActewAGL 2009–10 feed-in-tariff (FiT) cost pass through: Following an application from ActewAGL for approval to pass through an underspend in its FiT direct payments for 2009–10, the AER approved in April 2011 a negative FiT amount at variance from the amount estimated by ActewAGL due to a change in the value and application of the CPI used and differences in incorporating the time cost of money.
- > Ausgrid (formerly Energy Australia) NSW solar bonus scheme cost pass through: The AER rejected in March 2011 Ausgrid's application to pass through the implementation and administration costs associated with the introduction of the NSW solar bonus (feed-in-tariff) scheme.
- > Powercor Victorian Bushfire Royal Commission (VBRC) cost pass through: The AER rejected in May 2011 Powercor's application to pass through costs resulting from the implementation of two VBRC recommendations on the grounds that the relevant trigger events had not eventuated as proposed by Powercor.

### *Gas transmission and distribution access arrangements*

The AER made one gas transmission decision in 2010–11:

- > Amadeus Gas Pipeline draft decision for 2011–16: Having received NT Gas's revised access arrangement proposal on 27 May 2011, the AER expects to release its final decision in July 2011.

In 2010–11 the AER also made six gas distribution decisions:


- > Envestra South Australia draft and final decisions for 2011–16.
- > Envestra Queensland draft and final decisions for 2011–16.
- > APT Allgas draft and final decisions for 2011–16.

Having been notified by Country Energy in August 2010 of an error in its access arrangement due to its taxation asset base being overestimated by the value of an intangible asset, the AER approved in September 2010 a variation to the access arrangement for the Wagga Wagga gas distribution network to correct for the error.

During the reporting period two of the AER's gas decisions were subject to review by the Australian Competition Tribunal:

- > ActewAGL sought review of the decision made by the AER in relation to the debt risk premium for the 2010–2015 access arrangement. The tribunal handed down its decision in September 2010 increasing ActewAGL's debt risk premium from 3.35 per cent to 3.89 per cent.
- > Jemena Gas Networks (NSW) appealed for a merits review of the AER's 2010 decision covering its NSW gas distribution network, on five grounds: debt risk premium, the appropriate tax allowance, capital expenditure on mine subsidence, removal of the weighted average cost of capital (WACC) on overestimate of capital expenditure and the reference services agreement.

The Tribunal found that the AER had erred in regard to the debt risk premium (noting its earlier decision for the ActewAGL network), the appropriate tax allowance (noting its earlier decision for the ETSA Utilities, Ergon Energy and Energex electricity networks), capital expenditure on mine subsidence and the reference services agreement. The Tribunal upheld the AER decision on removal of the WACC on overestimate of capital expenditure. On 30 June 2011 the Tribunal increased the total revenue for JGN by \$162 million to be recovered over the remainder of the access arrangement. The decision of the AER to disallow an amount of \$4.6 million in the opening capital base in respect of mine subsidence expenditure and to reallocate \$3.1 million forecast expenditure on mine subsidence to forecast operating expenditure was remitted to the AER to make the decision again in accordance with the Tribunal's final directions.



**Did you know?**

The AER made revenue price determinations for five electricity distribution businesses and access arrangement decisions for three gas distribution businesses during 2010–11.

### *Dispute resolution*

The AER assessed and resolved six connection dispute cases with the aim of facilitating trade in a fair and competitive environment.

### *Annual network pricing approval processes*

Under the National Electricity Rules and National Gas Rules, network businesses are required to submit their pricing proposals and tariff variations to the AER for approval.

The AER approved pricing proposals for 12 electricity network service providers during the reporting period:

- > Ausgrid, Essential Energy, and Endeavour Energy in New South Wales
- > ActewAGL in the Australian Capital Territory
- > Energex and Ergon Energy in Queensland
- > ETSA Utilities in South Australia
- > Citipower, Powercor, Jemena Electricity Networks, SP AusNet and United Energy Distribution in Victoria.

The pricing proposals for these electricity network service providers were assessed as compliant with the National Electricity Rules and the relevant distribution determination for each business.

For gas networks, the AER approved annual tariff variations for 12 service providers during the reporting period:

- > Roma to Brisbane and Dawson Valley pipelines in Queensland
- > Jemena Gas Networks (NSW), Wagga Wagga gas distribution network, and Central Ranges gas transmission and distribution pipelines in New South Wales

- > ActewAGL gas distribution network in the Australian Capital Territory
- > Envestra Victoria, Envestra Albury, SP AusNet, GasNet and Multinet in Victoria. The tariff variations for these gas service providers were assessed as compliant with the National Gas Rules and the relevant access arrangement for each business.

## Incentives

In applying revenue and price caps to electricity and gas transmission and distribution businesses, the AER implements the incentive regime specified in the National Electricity Law, the National Electricity Rules, the National Gas Law and the National Gas Rules. This regime provides specific incentives for improving or maintaining service standards, achieving operating cost efficiencies and implementing demand management schemes.

As part of its Victorian distribution determination, the AER implemented a service target performance incentive scheme (STPIS) that provides incentives for distributors to maintain and improve reliability of supply while balancing end users' willingness to pay. The AER placed 5–7 per cent of the Victorian distributors' revenue at risk under the scheme.

Since March 2008, the STPIS has included a market impact parameter (MIP), which aims to encourage transmission companies to reduce the impact of transmission outages on market outcomes.

The MIP provides financial rewards to transmission companies to improve their performance against a target.

All four transmission companies that are eligible to participate in the MIP component of the scheme have done so—either through the normal regulatory process or through an early implementation of the MIP outside of the normal regulatory process:

- > TransGrid's performance over an 18 month period (since the start of its last regulatory period) has resulted in \$11.62 million in MIP incentive payments.
- > Powerlink's performance over a five and a half month period (since its early take-up of the scheme) has resulted in \$6.83 million in MIP incentive payments.
- > ElectraNet's performance target was set in December 2010 (as part of the early take-up of the scheme) and its performance during 2011 will be assessed next year.
- > As at 30 June 2011, the AER was in the process of assessing SP AusNet's performance target (again as part of the early take up of the scheme).

Early indications are that the scheme is driving improved behaviour by the transmission companies.

In October 2010, the AER made a final decision on the demand management incentive scheme to apply to the Tasmanian distributor, Aurora Energy. The scheme will provide incentives for Aurora to implement efficient non-network alternatives to reduce peak demand and thereby defer capital expenditure. The scheme gives an incentive to Aurora to encourage the efficient use of its network.

In April 2011, the AER released its decision on CitiPower's and Powercor's proposed scheme for requiring security deposits from high insolvency risk customers under the Essential Services Commission of Victoria's Electricity Industry Guideline No.14. The AER approved the proposed interest rate on security deposits and published its preliminary views on whether the scheme's terms and conditions applying to disputes by customers are fair and reasonable.

In addition the AER published the Powerlink-specific portion of the transmission service target performance incentive scheme to improve the incentive for reliability of supply.

## Regulatory processes

All of the AER's regulatory decisions are made through open and transparent consultation processes that facilitate participation by regulated businesses, energy consumers and interested parties.

The AER continued consulting on the various instruments it is required to develop under the new National Energy Retail Law, issuing the following papers:

- > Final guidance on AER approval of customer hardship policies. The guidance paper outlines what information retailers should include in their customer hardship policies that are submitted to the AER for approval.
- > Draft retail pricing information guideline for energy retailers on the presentation of offer prices to allow small customers to compare prices.
- > Draft retailer authorisation guideline to assist applicants with the processes for obtaining, transferring, surrendering and revoking energy retailer authorisations.
- > Draft performance reporting procedures and guidelines on the manner and form in which regulated entities must submit information and data to the AER relating to their performance under the National Energy Retail Law.
- > Consultation papers on approach to retail exemptions, draft exempt selling guidelines and draft determination of class exemptions to help applicants assess eligibility for exemption. Although not under the National Energy Retail Law, the AER also commenced consultation on revising the Network Service Provider exemption guideline and released a revised guideline and accompanying consultation paper. The proposed revisions to the guideline reflect changes in the regulatory landscape and alignment with the AER's exempt selling guideline's classes of exemption.
- > Draft decision on the AER's proposed approach to compliance and enforcement under the National Energy Retail Law.
- > Retailer of last resort (RoLR) scheme and RoLR cost recovery scheme issues papers on arrangements to ensure that customers maintain continuity of supply in the event that their retailer fails, by being automatically transferred to another retailer, the RoLR.

The AER also began developing guidelines on new physical customer connections.

### *Gas transmission and distribution compliance*

The AER reviewed the 2009–10 annual compliance reports of 23 service providers (submitted under the annual compliance regulatory information order made under section 48 of the National Gas Law 2008). After asking two service providers for additional information to support their annual compliance reports, the AER was satisfied that all of the reports submitted were compliant with the Annual Compliance Order.

### *Improving the quality of electricity offer, bid and rebid information*

In response to ongoing problems with the quality of offer, bid and rebid information submitted by participants, the AER published *Compliance Bulletin No 3 Monitoring and enforcing compliance of electricity offer, bid and rebid information in the National Electricity Market* in December 2010. The bulletin outlines the AER's three stage process for enforcing compliance with the relevant provisions of the National Electricity Rules. Under the three stage process, which took effect on 1 March 2011, participants who submit offer, bid or rebid information that does not appear to meet the requirements of the Rules will receive two warnings before the AER considers issuing an infringement notice.



**Did you know?**

On average, around 4500 energy rebids are submitted by generators in the National Electricity Market each week. The AER uses sophisticated internal systems to check these rebids for compliance with the National Electricity Rules.

*Regulatory investment test for transmission*

Following the release of consultation papers, the AER published its regulatory investment test for transmission (to replace the existing regulatory test for electricity transmission investments). The new test commenced from 1 August 2010.

*Wholesale energy markets compliance work*

The AER has improved its compliance monitoring through establishing a new stream of compliance projects for 2011. Tailored metrics have been developed for each project to measure the AER and industry's success in dealing with the issue. Each project will also have a defined timeframe.

The projects for 2011 are:

- > data quality in the gas Short Term Trading Market (STTM)
- > incomplete electricity metering data
- > timeliness of de-energisation service orders
- > generator rebidding reasons.

The AER has also addressed many other compliance issues across the wholesale electricity and gas sectors, including complaints and issues arising from data trawling. The AER conducts regular reviews of the level of compliance with specific obligations.

**Did you know?**

The AER is currently responsible for monitoring and enforcing participants' compliance with over 1300 obligations under the National Electricity Law and Rules and over 700 obligations under the National Gas Law, Rules, and Bulletin Board procedures. When the AER assumes responsibility for the National Energy Retail Law and Rules from 1 July 2012, it will be responsible for monitoring and enforcing compliance with over 500 further obligations.

## Monitoring prices

The AER continuously monitors activity in the gas and electricity wholesale markets. The AER publishes weekly electricity market analysis reports which provide a range of information including weekly average spot prices, financial year-to-date spot prices, reasons for variations between forecast and actual prices, and electricity futures prices and volumes.

The AER also publishes reports into circumstances where the spot price of electricity exceeds \$5000/MWh. In 2010–11 the AER published seven such reports.

In mid-2009, the AER began publishing weekly gas market analysis reports, originally focusing on the Victorian declared wholesale market. These reports were extended to cover the Short Term Trading Market (STTM) for gas when it began on 1 September 2010.

## CASE STUDY

### Quality data critical for gas wholesale market

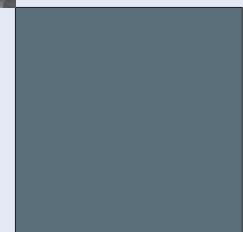
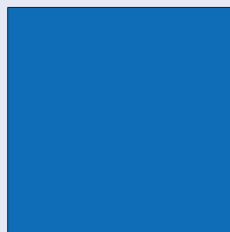
The gas Short Term Trading Market (STTM), which began on 1 September 2010, is a market for the wholesale trading of natural gas at defined hubs between pipelines and distribution systems. The AER regulates the STTM under the National Gas Rules, reporting on compliance in its quarterly compliance reports.

The AER has taken steps to address data quality in the STTM, following data errors or late supply of data by STTM pipeline facility operators in the first weeks of the STTM's operation in late 2010.

Errors in gas volume data resulted in prices near the price cap, \$400/GJ, at the Sydney hub.

Concerns over data quality led the AER to meet with the senior regulatory managers and chief executive officers of each major pipeline to discuss the importance of meeting data obligations.

The AER will continue to scrutinise pipeline operators to ensure the timely submission of accurate data, through a series of compliance audits with each business, starting in the second half of 2011.



## Publicising outcomes

The AER website provided up to date links to all of the AER's regulatory, monitoring, reporting and enforcement activities, including:

- > *State of the energy market 2010* report, the AER's flagship report, which provides a detailed analysis of energy market outcomes over the calendar year
- > the annual report for 2009 on the financial and service quality performance of Victoria's distribution network service providers
- > transmission network service providers electricity performance report for 2008–09
- > separate web pages for each electricity determination and gas arrangement, with access to all public information on these matters
- > quarterly compliance reports summarising the compliance and enforcement activities of the AER in the gas and electricity sectors
- > three draft and three final decisions on applications for exclusions from financial incentives for supply reliability under the Victorian service incentive scheme.

As well as publishing this information on its website, the AER notifies regulated businesses, energy consumers and interested parties of significant events including public forums and meetings; the publication of decisions, determinations and reports; and opportunities to participate in regulatory processes. Over 100 notices were emailed to energy market participants and interested parties in 2010–11.

## Water

**Table 3.16: Water—deliverables and results**

Deliverables	Results
Effective access regimes (evidenced by price levels and service delivery standards).	See 'Access terms and conditions', p. 92 and 'Incentives', pp. 94.
Improvement (to more closely reflect efficient costs) in prices paid by businesses using monopoly services.	The ACCC has implemented measures to more closely reflect efficient costs in prices paid for monopoly services (see 'Incentives', p. 94).
Timely and accessible regulatory reports, determinations, and issues papers.	The ACCC released its inaugural Water Monitoring Report in March 2011 (see 'Monitoring prices', p. 94 and 'Publishing outcomes', p. 95).
Robust and accurate regulatory methodology (evidenced by industry acceptance).	The ACCC conducted public consultation on the draft principles for price approvals and determinations under the Water Charge (Infrastructure) Rules (see 'Regulatory processes', p. 94).
Websites ( <a href="http://www.accc.gov.au">www.accc.gov.au</a> and <a href="http://www.aer.gov.au">www.aer.gov.au</a> ) that are accessible and a source of relevant and up-to-date information.	The ACCC's Water Monitoring Report, water rules guidelines and other discussion papers, as well as public submissions were made available in a timely fashion on the ACCC's website (see 'Publicising outcomes', p. 95).

The *Water Act 2007* provides for regulatory arrangements to address the sustainability and management of water resources in the Murray-Darling Basin. The ACCC is responsible for monitoring compliance with rules made under this Act, including:

- > Water Market Rules 2009
- > Water Charge (Termination Fees) Rules 2009
- > Water Charge (Infrastructure) Rules 2010
- > Water Charge (Planning and Management Information) Rules 2010.

These rules aim to free up water markets by reducing barriers to trade faced by irrigators, and promote the economically efficient use of water resources and infrastructure assets.

In 2010–11, the ACCC's focus shifted from providing policy advice to rule enforcement and monitoring.

The ACCC monitors and enforces four sets of water rules. The first two, the Water Market Rules and Water Charge (Termination Fees) Rules, took full effect during 2009–10, and were actively enforced by the ACCC during 2010–11. These rules aim to address barriers to trade by facilitating irrigators' ability to transform their irrigation right into a separately held water access entitlement, and by regulating the maximum termination fees that can be imposed on terminating irrigators. Investigations by the ACCC have resulted in the provision of undertakings and the issue of infringement notices in relation to alleged contraventions of the Water Charge (Termination Fees) Rules (see 'Enforcement', p. 92).

The effect of these rules and the wider reform package was assessed in the ACCC's first Water Monitoring report, released in March 2011, with data and analysis on regulated water charges, transformation and rule compliance. The ACCC observed a general fall in termination fees, significant transformation of irrigation rights and significant termination of water delivery rights, indicating a reduction in the barriers to trade imposed by irrigation infrastructure operators. While there was considerable transformation and termination, the report also noted that many irrigators who sold water maintained an involvement with their infrastructure operator and continued irrigated agricultural production. Expansion of water markets allows irrigators more flexibility in responding to varying water availability and encourages more efficient use of water.

### Did you know?

Data published by the ACCC in March 2011 shows that in 2009–10, trade in water access entitlements (an ongoing share of a water resource) and water allocations (the volume of water allocated to a water access entitlement in any given year) across the Murray-Darling Basin increased by 20 per cent and 22 per cent respectively.

Two further sets of rules were implemented during 2010–11:

- > The Water Charge (Infrastructure) Rules, effective from January 2011, which apply a tiered structure to regulation of rural water infrastructure charging across the Murray-Darling Basin, with the rules ranging from publication requirements for all infrastructure operators, to network service planning processes or price approvals or determinations for larger operators.
- > The Water Charge (Planning and Management Information) Rules, effective from July 2010, which require state governments to publish information on the water planning and management activities and costs that they fund through charges.

In October 2010, the ACCC's final advice to the Murray-Darling Basin Authority (MDBA) on the Basin Plan water trading rules was made public to coincide with the MDBA's release of the Guide to the proposed Basin Plan. The MDBA adopted the ACCC's advice with minor amendments. Throughout 2010–11, the ACCC has assisted the MDBA in drafting the water trading rules.

## Enforcement

Over 2010–11, the ACCC has, in respect of the Water Charge Rules, completed two formal enforcement actions and two more informal administrative resolutions. The ACCC continues to investigate complaints and to identify potential concerns through active compliance monitoring.

On 27 July 2010, the ACCC accepted an enforceable undertaking following an investigation into Murray Irrigation Limited's compliance with rule 5 of the Water Charge (Termination Fees) Rules. Murray Irrigation Limited admitted imposing a fee for surrendering delivery entitlements on 112 occasions and overcharging 64 irrigators for termination fees. It undertook to put procedures in place to avoid future contraventions and provided refunds in excess of \$140 000 to affected irrigators.

On 6 September 2010, the ACCC gave three infringement notices totalling \$66 000 to Murrumbidgee Irrigation Limited. The infringement notices, which were paid, related to alleged contraventions of rule 5 of the Water Charge (Termination Fees) Rules. On 13 September 2010 the ACCC also accepted an enforceable undertaking from Murrumbidgee Irrigation Limited in relation to this matter in which it admitted contravening rule 5 by overcharging 27 irrigators for termination fees. It undertook to put procedures in place to avoid future contraventions and provided refunds in excess of \$640 000 (including interest) to affected irrigators.

## Access terms, conditions and prices

The Water Charge (Infrastructure) Rules commenced on 12 January 2011 after being made by the Minister for Sustainability, Environment, Water, Population and Communities. The rules are based on the advice and draft rules provided to the Minister by the ACCC in June 2009 and February 2010, subject to a few minor amendments.

The rules create new regulation of charges for water storage, delivery and other infrastructure services provided by rural water infrastructure operators in the Murray-Darling Basin and will address the potential for monopolist behaviour by rural water infrastructure operators in the Basin. Through greater consistency in the regulation of charges, the rules will facilitate the efficient functioning of water markets.

## CASE STUDY

### Supporting efficient water trading in the Murray-Darling Basin

Reform of the water market in the Murray-Darling Basin represents the most critical and high profile challenge for the ACCC in its role to oversee competition in Australia's water sector.

The lifeblood of the region's environment, the Basin's water resources are an essential ingredient for much of Australia's food production, and support a significant urban population.

The ACCC has played a key role in Murray-Darling Basin water market reforms. The ACCC was asked to devise, and now to help enforce, rules encouraging the efficient trading of water in the basin, so this precious resource can flow more readily to its best uses.

These rules aim to free up water markets by reducing barriers to trade faced by irrigators, and promote the economically efficient use of water resources and infrastructure assets.

Before recent reforms in the National Water Initiative and the Water Act, development of water markets was particularly limited by barriers to trade imposed by water providers (known as irrigation infrastructure operators). In the face of concerns about their ongoing financial viability, irrigation infrastructure providers had an incentive to restrict customers from trading water out of their area. They could impose barriers to trade by restricting irrigators' ability to deal with their water or through setting high termination fees.

The Water Market Rules 2009 and Water Charge (Termination Fees) Rules 2009 aim to address these barriers by facilitating irrigators' ability to transform their irrigation right into a separately held water access entitlement, and by regulating the maximum termination fees that can be imposed on irrigators terminating their water rights.

In its first *Water Monitoring Report* on the Murray-Darling Basin, released in March 2011, the ACCC reported that the impact of the new rules was most clearly seen in the fall in termination fees, significant transformation of irrigation rights and significant termination of water delivery rights during the course of the year. These indicators suggest that the rules have reduced barriers to trade imposed by irrigation infrastructure operators.

While there was considerable transformation and termination, many irrigators who sold water maintained an involvement with their infrastructure operator and continued irrigated agricultural production. These irrigators were responding to price signals by using water more effectively, including trading water both permanently and on a temporary and as-needs basis.

Compliance with the new rules was generally good, although the ACCC has conducted investigations and taken enforcement action where necessary.



## Incentives

The ACCC's first *Water Monitoring Report*, released in March 2011, noted that following the introduction of the Water Charge (Termination Fees) Rules 2009, there has been a general reduction in the termination fees imposed by irrigation infrastructure operators (IIOs). The rules imposed a cap on the fees charged when an irrigator terminates part or all of their access to an irrigation network. The level of termination fees imposed needs to reflect a balance between ensuring IIOs can recover their ongoing costs and minimising barriers to trade.

The Water Charge (Infrastructure) Rules require several infrastructure operators in the Murray-Darling Basin to consult with their customers in developing a network service plan. The plan must include details of proposed projects, expenditure and charges over a five year period. This new form of regulation will increase transparency for customers of these operators and help to encourage efficient investment in and expenditure on rural water infrastructure.

## Regulatory processes

In October 2010, the ACCC's final advice to the MDBA about the Basin Plan water trading rules was made public to coincide with the MDBA's release of the Guide to the proposed Basin Plan. The MDBA adopted the ACCC's advice with minor amendments. Throughout 2010–11, the ACCC has provided assistance to the MDBA in drafting the water trading rules.

The ACCC also produced a report on *Water market intermediaries—industry developments and practices* in December 2010 to assist governments and industry participants in considering what, if any, further regulation and other measures should be applied to water market intermediaries. In preparing the report, the ACCC engaged the Australian Bureau of Agricultural and Resource Economics to conduct a survey of irrigators who had recently traded water, surveyed 39 stakeholders about complaints received about water market intermediaries, and undertook further consultation with industry and other stakeholders in relation to water market intermediaries.

The ACCC publicly released for comment draft pricing principles for price approvals and determinations under the Water Charge (Infrastructure) Rules. The pricing principles outline the approach that regulators will use when approving or determining regulated charges under the rules. The ACCC also released guidelines on network service planning requirements and non-discriminatory charging requirements under the Water Charge (Infrastructure) Rules.

In April 2011, the ACCC updated its enforcement guide following the making of the Water Charge (Infrastructure) Rules. The guideline explains the ACCC's approach to enforcement of these rules and the Water Market Rules and Water Charge (Termination Fees) Rules and the enforcement options available to the ACCC under the Water Act.

## Monitoring prices

Under the Water Act, the ACCC monitors regulated water charges, transformation arrangements and compliance with the Water Charge Rules and Water Market Rules across the Murray-Darling Basin.

The ACCC's first *Water Monitoring Report*, released publicly in March 2011, sets out the ACCC's findings on regulated water charges, transformation arrangements and rule compliance for 2009–10, and examines the impact of the recent reform program on water markets and infrastructure more generally. The ACCC collected data through the use of formal monitoring requests issued to key reporting entities across the Basin, as well as informal information gathering.

Under the Water Charge (Planning and Management Information) Rules, entities determining a charge for water planning and water management activities are required to publish information on the charge, including details of and processes for determining the charge.

The rules require the publication of information on the costs of the activities recovered by charges, details of cost allocation principles applied, and information on whether charges have been subject to consultation, review or audit.

The Water Charge (Infrastructure) Rules require infrastructure operators managing over 10GL of water to make a schedule of their regulated water charges publicly accessible. The ACCC reviews compliance with this obligation.

## Publicising outcomes

During 2010–11 the ACCC released new guides, pricing principles and a fact sheet on the Water Charge (Infrastructure) Rules and a guide to the Water Charge (Planning and Management Information) Rules. The ACCC also released an updated version of its enforcement guide for these rules.

The ACCC also implemented public registers for infringement notices issued under section 156 and undertakings accepted under section 163 of the Water Act.

Following the start of its monitoring function under the Water Act, the ACCC issued a monitoring update in September 2010 that provided a snapshot of the early impact of the water market and water charge rules on the industry. In March 2011, the ACCC published its first *Water Monitoring Report*, which presents comprehensive data on regulated water charges, transformation arrangements and rule compliance for the 2009–10 year.

Following the introduction of the Australian Consumer Law on 1 January 2011, the ACCC updated its publication informing water market intermediaries and their customers about their rights and obligations under the Competition and Consumer Act.

The ACCC's website provides access to rules made by the Minister under the Water Act, advice, guides and brochures prepared by the ACCC to help stakeholders understand and comply with the rules, and other reports and updates.

The ACCC has also undertaken outreach activities to help irrigation infrastructure operators and other interested parties understand the rules, including:

- > liaising directly with NSW trusts and districts after amendments were made in December 2010 to the *Water Management Act 2000 (NSW)* to address issues regarding their ability to comply with the water market and water charge rules
- > running information sessions for professionals that operate in the water industry (legal, banking and finance)
- > meeting with infrastructure operators following the introduction of the Water Charge (Infrastructure) Rules.



# Fuel

**Table 3.17: Fuel—deliverables and results**

Deliverables	Results
Timely and accessible regulatory reports, determinations, and issues papers.	The ACCC's 2010 petrol monitoring report was provided to the Minister on time.
Robust and accurate regulatory methodology (evidenced by industry acceptance).	The methodology used in the 2010 petrol monitoring report was developed with extensive industry consultation and external expert advice and is widely accepted by industry stakeholders.
Websites ( <a href="http://www.accc.gov.au">www.accc.gov.au</a> and <a href="http://www.aer.gov.au">www.aer.gov.au</a> ) that are accessible and a source of relevant and up-to-date information.	The ACCC's website publishes a range of fuel price data which is updated on a regular basis. The ACCC's petrol monitoring reports and other fuel related publications are available on the website (see 'Publicising outcomes', p. 100).

The ACCC formally monitors the petrol industry under the Part VIIA provisions of the *Competition and Consumer Act 2010*.

## Monitoring prices


Monitoring fuel prices covers:

- > retail prices of unleaded petrol (including regular and premium unleaded petrol and E10 petrol), diesel and automotive liquefied petroleum gas (LPG) in all capital cities and 150 regional centres and country towns
- > movements in the international benchmark prices for the above fuels, international crude oil prices, published wholesale prices, the price differential between E10 petrol and regular unleaded petrol, and the price differential between capital cities and regional centres and country towns
- > ethanol supply and pricing.

The ACCC continued its formal monitoring of the petroleum industry under continuing directions from the Minister to monitor the prices, costs and profits of unleaded petrol products.

A report provided to the Minister in December 2010 included new chapters on biofuels, the potential for independent imports and premium unleaded petrol. In May 2010 the Minister directed the ACCC to undertake formal monitoring for a further 12 months and report by no later than 17 December 2011. In May 2011 the government directed the ACCC to undertake formal monitoring for a further 12 months.

These monitoring activities enable the ACCC to keep abreast of developments in the market and provide briefings and advice to the government and the public. Monitoring reports are available on the ACCC's website.



**Did you know?**  
The ACCC has estimated that in 2009–10 the amount that motorists paid as profits to the petrol companies was 2.9 cents per litre (cpl) sold.

## Petrol Prices

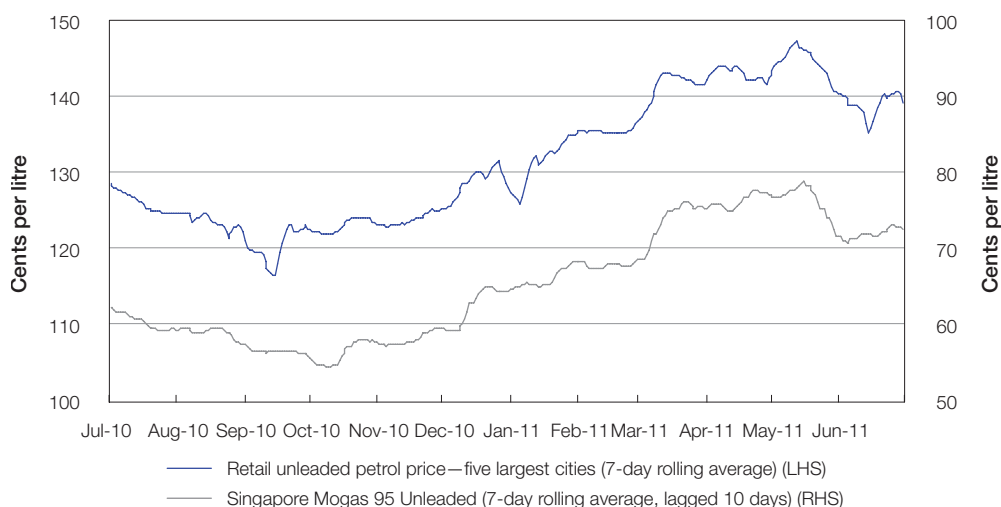
ACCC monitoring of regular unleaded petrol prices across the five largest cities (Sydney, Melbourne, Brisbane, Adelaide and Perth) indicated that average retail prices fell from July to September 2010, before increasing steadily to a high of 147.1 cpl in May 2011 (see Figure 3.7). Prices at this level were last experienced in October 2008.

On a monthly basis, retail prices ranged from a low of around 120 cpl in September 2010 to a high of around 144 cpl in May 2011. The average price in 2010–11 was 131.7 cpl, compared with 124.2 cpl in 2009–10.

Movements in domestic retail petrol prices in 2010–11 were primarily influenced by movements in international refined petrol prices (Singapore Mogas 95 Unleaded) and the Australian/US dollar exchange rate.

International petrol prices increased for much of the year, influenced by higher global demand, depreciation of the US dollar against major currencies, and geopolitical unrest in the Middle East. In May and June 2011 international prices fell following economic uncertainty in Europe.

**Figure 3.7 Regular unleaded petrol price movements, 2010–11**

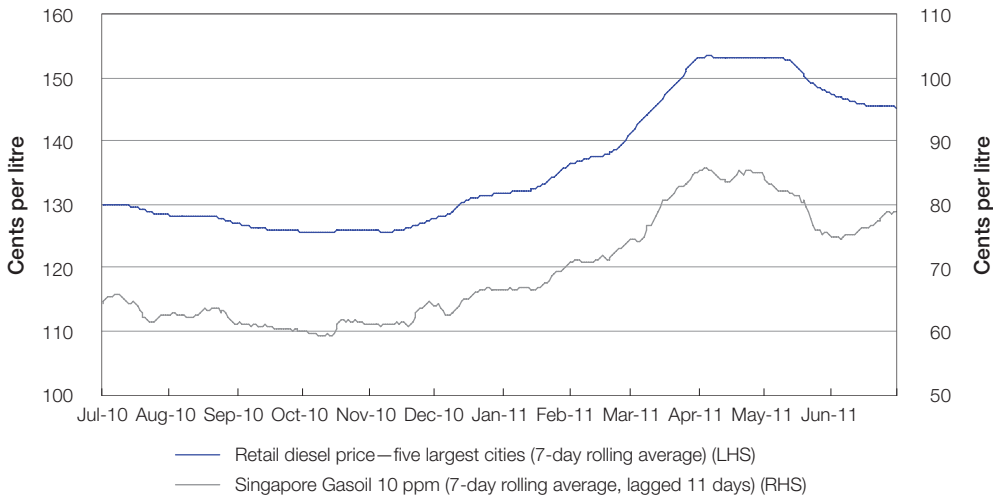


## Diesel prices

Average retail diesel prices across the five largest cities were broadly stable in the first half of 2010–11 and reached a low of 125.4 cpl in October 2010. Diesel prices subsequently increased to a peak of 153.3 cpl in April 2011, before easing by around 8 cpl to around 145 cpl at the end of July 2011 (see Figure 3.8). Diesel prices in Australia followed movements in the relevant international refined diesel price (Singapore Gasoil 10 ppm sulphur content).

The average retail diesel price in the five largest cities in 2010–11 was 136.3 cpl, which was 11.8 cpl higher than the average price of diesel in 2009–10.

**Figure 3.8 Diesel price movements, 2010–11**

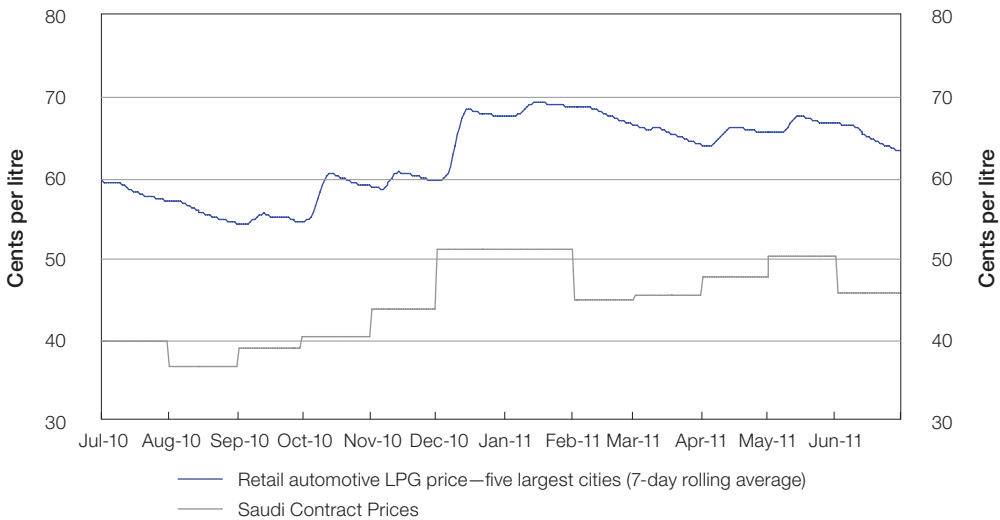


### Automotive LPG prices

The average retail automotive LPG price across the five largest cities in 2010–11 was 62.6 cpl, compared with 59.3 cpl in 2009–10. Monthly average retail prices ranged from a low of around 55 cpl in September 2010 to a high of around 69 cpl in January 2011 (see Figure 3.9).

The appropriate international benchmarks for automotive LPG in Australia are the Saudi Aramco contract prices for propane and butane, which are issued on the first day of each month. The Saudi international benchmark prices reached 51.1 cpl in December 2010 and January 2011, their highest level since October 2008.

**Figure 3.9 Automotive LPG price movements, 2010–11**



## CASE STUDY

### Keeping watch on the petroleum industry

The latest ACCC report on monitoring of the Australian petroleum industry, released in December 2010, found that for 2009–10:

- > Retail petrol prices were relatively stable.
- > Retail petrol prices continue to closely follow international benchmark prices, with the high Australian dollar keeping prices lower than they would have otherwise been.
- > The established weekly retail price cycles in the largest capital cities—though less stable than in the previous year—indicates a degree of coordination that remains a concern for the ACCC.
- > Together, the international benchmark price for refined fuel and the tax component—factors outside the control of the local petrol companies—accounted for approximately 88 per cent of the price of petrol.
- > Australia had the fourth lowest retail petrol prices in the OECD.
- > In 2009–10, the industry made a net profit of approximately \$1.2 billion, which is below the \$1.5 billion average net profit over the past eight years. Other profitability measures such as return on assets were in line with the average of other Australian industry sectors.
- > Following the departure of Mobil from the retail market, specialist retailers including supermarkets continued to increase their involvement in fuel retailing.
- > Independent imports of total petroleum products increased substantially, with the proportion of independent imports to total imports more than doubling to over 10 per cent in the past two years.
- > The ACCC received less than half the number of complaints and inquiries about the petrol industry in 2009–10 than in the previous year. The number of complaints shot up when petrol prices increased sharply in 2008, but has since declined.


The methodology used in the 2010 petrol monitoring report was developed following extensive industry consultation and external expert advice and is widely accepted by industry stakeholders.

The ACCC's formal monitoring program is undertaken under Ministerial direction. The Minister has also asked the ACCC to monitor the prices of diesel and automotive LPG. The ACCC's fuel price monitoring enables it to alert the government and community where there are factors impairing competition in fuel markets. For example, moves by state governments to mandate the use of ethanol in petrol have the potential to affect the supply and therefore the price of petrol in general. Given this, the ACCC is closely monitoring the ethanol industry and the ethanol blended petrol market.

Information collected from the ACCC's monitoring activities assists the ACCC's broader role under the Competition and Consumer Act (CCA) to promote competition and fair trading and protect consumers. The ACCC's decision in December 2009 to oppose the proposed acquisition of Mobil Oil Australia's retail assets by Caltex Australia Ltd is an example of the ACCC's use of its powers under the CCA to promote competition in the petrol industry.

## Publicising outcomes

The 2010 *Monitoring of the Australian petroleum industry* report was released and distributed to key stakeholders and contributors. This was the third report into the industry and it is available from the ACCC website along with other ACCC fuel publications.



**Did you know?**

The major determinants of retail petrol prices are the international price of refined petrol and, the exchange rate of the Australian dollar against the US dollar.

The fuel pages on the ACCC website ([www.accc.gov.au](http://www.accc.gov.au)) were regularly updated and accessible. Pricing information on petrol was updated daily on the ACCC's web site. Further information on the effect of the value of the Australian dollar on fuel prices was added to the website and a redevelopment of information on the cheapest and most expensive day of the week for petrol for each of the major capital cities was undertaken.

During 2010–11 the ACCC received over 1000 inquiries and complaints about fuel from the public, many of which related to high prices.

## Transport

**Table 3.18: Transport—deliverables and results**

Deliverables	Results
Effective access regimes (evidenced by price levels and service delivery standards).	The ACCC accepted new access undertakings in rail (Australian Rail Track Corporation Hunter Valley Access Undertaking) and wheat export port terminal services (GrainCorp) designed to promote competitive outcomes. The ARTC undertaking contains regulated pricing and service delivery provisions and the GrainCorp undertaking contains a publish-negotiate-arbitrate approach to pricing and service delivery standards.
Improvement (to more closely reflect efficient costs) in prices paid by businesses using monopoly services.	The ACCC accepted a rail access undertaking (ARTC Hunter Valley Access Undertaking) containing measures to reflect efficient costs in prices paid for monopoly services.  Price notifications were accepted (Australia Post bulk letter services) where proposed increases were justifiable and reflected the efficient costs of providing a monopoly service.
Timely and accessible regulatory reports, determinations, and issues papers.	The ACCC's regulatory reports, determinations, issues papers and public registers were accessible in a timely fashion on the ACCC's website.
Robust and accurate regulatory methodology (evidenced by industry acceptance).	The ACCC made effective use of a 'building block' regulatory methodology in its approach to pricing of regulated services in the ARTC Hunter Valley Access Undertaking and GrainCorp's undertaking for wheat port terminal services. The ACCC consulted with and gained broad support from industry for this approach.  The Australia Post price notification for monopoly bulk letter services was approved by the ACCC only to the extent of recovery of efficient costs by Australia Post, and an expectation of continued restructuring accepted by the applicant.
Websites ( <a href="http://www.accc.gov.au">www.accc.gov.au</a> and <a href="http://www.aer.gov.au">www.aer.gov.au</a> ) that are accessible and a source of relevant and up-to-date information.	The ACCC's regulatory reports, determinations, issues papers and public registers were accessible in a timely fashion on the ACCC's website.

The ACCC regulates aspects of the transport sector under the *Competition and Consumer Act 2010* (CCA), regulating third party access to essential infrastructure services under Part IIIA and undertaking a prices oversight role under Part VIIA. The ACCC also has a role under Part X to investigate complaints from parties adversely affected by anti-competitive conduct arising from international liner cargo shipping conference agreements. In addition, the ACCC has responsibilities under the following industry-specific Acts:

- > *Airports Act 1996*
- > *Wheat Export Marketing Act 2008*
- > *Australian Postal Corporation Act 1989*
- > *Copyright Act 1968*

## Airport and air services

### *Airport services including parking*

The ACCC monitors the prices, costs and profits relating to the supply of aeronautical services and car parking at Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports at the direction of the Australian Government under Part VIIA of the CCA. The ACCC is also responsible for financial account reporting and quality of service monitoring in relation to those airports under parts 7 and 8 of the *Airports Act 1996*.

In its monitoring role, the ACCC seeks to increase the transparency of the airports' performance to discourage airport operators from increasing prices excessively and providing unsatisfactory standards. The ACCC's monitoring role does not extend to setting the airports' terms and conditions for the provision of services.

The *Airport monitoring report 2009–10*, released in February 2011, raised concerns about monopoly pricing for aeronautical services at Sydney Airport and car parking at Melbourne Airport.

At Sydney Airport, the airlines have identified unsatisfactory levels of service over several years, particularly at the international terminal. Despite Sydney Airport recently undertaking an upgrade of its international terminal, the results do not indicate a significant improvement in the service provided to airlines. This raises questions about whether or not Sydney Airport has undertaken sufficient investment in services provided to airlines.

The situation at Sydney Airport is in contrast to the other monitored airports, which appear to have been more responsive to the airlines' needs.

Sydney Airport's monopoly position, the airlines' ongoing dissatisfaction with services, as well as increasing prices and profits over time, all point to Sydney Airport earning monopoly profits from the services it provides to airlines.

Melbourne Airport appears to have reduced the ability of off-airport parking and private bus operators to compete with the airport's own car parking services. The information available suggests, for example, that Melbourne Airport imposes excessive access levies and controls the available space for those operators, affecting the prices, convenience and, therefore, the attractiveness of their services to consumers.

By reducing the ability of alternatives to compete, Melbourne Airport can increase demand for its own car parking services, charge higher prices to consumers and, therefore, earn monopoly profits.

### Productivity Commission inquiry into the economic regulation of airport services

In response to concerns raised in the ACCC's airport monitoring reports, the Australian Government brought forward the Productivity Commission's inquiry into the economic regulation of airport services, originally scheduled for 2012. The inquiry will examine the efficiency and effectiveness of the current regime, determine whether new arrangements are required, and make recommendations to the Government on these matters. In March 2011, the ACCC provided a submission to the inquiry, which is expected to be completed by the end of 2011.

### Sydney Airport price notification

Under Part VIIA of the CCA, Sydney Airport Corporation Limited (SACL) is required to notify the ACCC of proposed increases to charges for certain services it provides to regional air services (that is, regular public transport air services operating wholly within New South Wales). The ACCC must then assess the proposed increases and decide whether to object to the proposed charges.

On 17 September 2010, the ACCC issued a decision to object to a proposal by SACL to increase charges by 2.9 per cent for the provision of terminal, check-in, passenger security and bag screening, runway and apron parking services to regional air services. The ACCC considered that SACL did not demonstrate that a price increase was necessary to cover costs, particularly given that strong growth in demand had resulted in increased revenues to SACL. Further, the ACCC considered that SACL did not provide sufficient evidence that the proposed prices were required to signal more efficient use of scarce capacity.

While the assessment of SACL's proposal was under way, several parties raised concerns with the ACCC that SACL was proposing increases in regional aircraft parking charges in addition to those already notified. The ACCC reminded SACL that the CCA requires it to notify the ACCC of any proposed increases in charges to regional air services. SACL subsequently confirmed that it would not increase those charges unless they were first notified to the ACCC. SACL's statement was published on the ACCC's website.

### Airservices Australia price notification

The ACCC assesses Airservices Australia's price notifications under Part VIIA of the CCA, and decides whether to object to the proposed charges.

On 7 March 2011, Airservices submitted a draft price notification in accordance with the ACCC's informal pre-lodgement process. Airservices is proposing a five-year pricing agreement for each of its three regulated services: terminal navigation, en-route navigation and aviation rescue and fire fighting services.

In April 2011, the ACCC released an issues paper seeking submissions on Airservices' draft price notification, and expects to release a preliminary view on Airservices' proposal in July 2011, followed by a final decision in September 2011.

## Stevedoring and shipping

### *Container stevedoring monitoring*

The ACCC monitors container stevedoring at the direction of the Federal Treasurer under Part VIIA of the CCA. The ACCC is required to monitor prices, costs and profits of container terminal operator companies at the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney.

The ACCC's monitoring program provides information to the government and wider community that might not otherwise be available about the performance of Australia's container stevedoring industry.

The ACCC's container stevedoring monitoring report for the 2009–10 year was released in November 2010. The report shows that industry operating performance improved, largely as a result of increased demand for stevedoring services associated with improved economic conditions that followed the impact of global financial crisis in the previous year. Unit total costs decreased slightly as a result of growing volumes. Total industry revenues were higher, as a result of increased terminal activity. Stevedores' profits increased in 2009–10, following a large fall in 2008–09.

The report also shows that some measures of capital productivity have not increased since June 2001. Further incentives for the existing stevedores to offer a more productive service are needed.

Demand for stevedoring services is forecast to grow strongly over the next decade and beyond. Australia will require the most efficient use of its existing stevedoring capacity as well as efficient investment in new capacity to meet the challenges of future growth. Investment in port infrastructure and further improvements in stevedoring productivity will be needed.

Competition in container stevedoring is the most effective means of driving productivity in the operation of existing capacity, and the most effective way of driving investment in new capacity. The need for greater competition in Australian stevedoring has been recognised for several years. Plans for new entry are well advanced in Brisbane and Sydney, with Hutchison Port Holdings scheduled to commence operations in 2012. The Victorian Government is currently considering how the Port of Melbourne, Australia's largest container port, will cater for future increases in demand.

### *Wheat export port terminal services—access undertakings*

In September 2009 the ACCC accepted port terminal access undertakings from vertically integrated wheat export and bulk handling companies, Co-operative Bulk Handling (CBH), AusBulk (now Viterro) and GrainCorp Operations, enabling them to export bulk wheat.

Following acceptance of the undertakings (which is subject to passing an access test under the *Wheat Export Marketing Act 2008*), the ACCC has carried out a monitoring role and liaised with industry stakeholders.

The access undertakings provide standard access terms, conditions and prices (which are intended to balance the interests of infrastructure owners and users and the broader public), including:

- > obligations on port operators not to discriminate or hinder access in the provision of port services
- > clear and transparent port loading protocols for managing demand for port terminal services
- > obligations on port operators to negotiate in good faith with eligible wheat exporters on access to port terminal services
- > provision for wheat exporters to seek mediation or arbitration on terms of access in the event of a dispute.



The Productivity Commission in its report on wheat export marketing arrangements noted that ‘The port terminal access test has provided greater certainty for traders and made access easier, more timely and less costly than it could have been by relying on potential declarations under Part IIIA of the *Trade Practices Act 1974*’.

The undertakings accepted in 2009 are due to expire on 30 September 2011. The ACCC accepted a new undertaking from Graincorp on 22 June 2011 that will operate from 1 October 2011 to 30 September 2014. The ACCC is considering proposed undertakings from CBH and Viterra for 2011–14. Australian Bulk Alliance has also submitted a proposed access undertaking relating to the Port of Melbourne.

In assessing the wheat access undertakings, the ACCC has made its issues papers and draft decision papers available to the public and stakeholders on the ACCC website and through email alerts and media releases. Stakeholders have been engaged in the process, with 37 submissions received across the four proposed undertakings.

## CASE STUDY

### Maintaining open access to port facilities for wheat exporters

Under competitive wheat exporting arrangements that followed the end of single desk exporting through AWB, bulk wheat exporters must be accredited by Wheat Export Australia (WEA) under the *Wheat Export Marketing Act 2008*.

There are now 26 accredited exporters.

To retain their accreditation, wheat exporters who also own and operate port terminal facilities must pass an access test under the Act. This ensures that third party exporters are able to access the port terminals operated by vertically integrated port terminal operators, ensuring fair competition in the market for the export of bulk wheat.

The access test requires either:

- > that the vertically integrated port operator has in place a Part IIIA access undertaking accepted by the ACCC, or
- > a decision is in force that there is an effective access regime under Part IIIA Division 2A of the CCA.

The undertakings provide for access to the port terminal facilities for third party exporters. They require that access is provided on non-discriminatory terms, negotiations for access are conducted in good faith and there are clear rules for managing demand for port terminal services. The parties are able to seek arbitration by the ACCC if there is a dispute over access.

The ACCC accepted the first round of access undertakings in 2009 from CBH, ABB (now Vitorra) and GrainCorp. These undertakings will expire on 30 September 2011, and the operators have submitted new undertaking applications for the period 1 October 2011 to 30 September 2014. On 22 June 2011 the ACCC accepted a new undertaking from GrainCorp that will operate from 1 October 2011 to 30 September 2014.

The ACCC considered that the current arrangements had worked well and should largely continue, but that some improvements were needed. These included achieving more economically efficient use of port terminal facilities. To address this GrainCorp included measures to encourage return of unwanted capacity at peak times and to increase transparency regarding its system of capacity allocation.

One operator, ABA, has provided an undertaking to the ACCC for the first time, but proposes a shorter term.

The Productivity Commission's report into wheat export marketing arrangements, released in July 2010, recommended that the access test requirement be abolished as of 2014. The report recommended that assurance of continued open access to port terminal facilities owned and operated by wheat exporters should rely on Part IIIA, with continued mandatory disclosure, supplemented by a voluntary code of conduct by all port terminal services operators.

The Government has not yet responded to the Productivity Commission's report.

## Shipping

Part X of the CCA deals with limited exemptions from certain provisions relating to anti-competitive agreements in Part IV of the Act for international liner cargo shipping conferences. The ACCC's role under Part X is to investigate complaints from parties adversely affected by shipping conference agreements and by the conduct of conference lines and non-conference lines with substantial market power. The ACCC can also initiate an investigation. During 2010–11, the ACCC responded to inquiries regarding the conduct of shipping conference agreements, but no formal investigations were undertaken.

## Rail

The ACCC accepted an access undertaking from Australian Rail Track Corporation (ARTC) on 29 June 2011.

The undertaking regulates access to ARTC's leased rail network in the Hunter Valley region of New South Wales. The network is predominantly used to transport export coal from the region's mines to the Port of Newcastle, but it is also used for non-coal freight and domestic coal.

The undertaking provides for:

- > Regulation of ARTC's prices consistent with efficiency-promoting pricing principles, incorporating a revenue cap and pricing methodologies for access charges.
- > A negotiate/arbitrate framework for negotiating access agreements, with the ACCC as arbitrator in the event of an access dispute between ARTC and access seekers.
- > An indicative access holder agreement, as well as an indicative operator sub-agreement, to set terms and conditions of access.
- > Protocols for the allocation and management of capacity on the network, with a particular emphasis on ensuring the efficient interaction between the rail network and other components of the Hunter Valley export coal chain.
- > A framework for the investment in and creation of additional capacity on the network.

ARTC initially submitted a proposed access undertaking in relation to the Hunter Valley network on in April 2009. After receiving complete information from ARTC, the ACCC issued a position paper on that undertaking in February 2010, followed by a draft decision in March 2010. The ACCC was of the preliminary view that it would reject that proposed undertaking as being unlikely to be appropriate under Part IIIA. ARTC withdrew the undertaking in April 2010.

After ARTC submitted a revised undertaking the ACCC released a position paper in December 2010, again taking the view that the undertaking was unlikely to be appropriate to accept. As it had done previously, the ACCC provided extensive recommendations on how ARTC could revise the undertaking to address the concerns of the ACCC and other stakeholders.

In response to the position paper, ARTC provided an informal revised version of the undertaking to the ACCC in April 2011. ARTC also requested a 'clock stopper' to the existing statutory timeframe until 9 June 2011 to allow for consideration of the new documents.

Following further discussion with industry stakeholders, ARTC ultimately withdrew its September 2010 undertaking and in June 2011 resubmitted a complete revised version that addressed the views of the ACCC. The ACCC accepted this undertaking, which took effect from 1 July 2011.

### Did you know?

The Hunter Valley rail network transports approximately \$9 billion of coal for export through the Port of Newcastle every year, as well as carrying other users such as passenger trains, container freight and bulk agricultural freight.

In assessing the various iterations of the undertaking, the ACCC consulted extensively with stakeholders, including ARTC, Hunter Valley coal producers, rail operators, industry bodies, owners of other infrastructure in the Hunter Valley (such as port terminals), and government departments.

The ACCC also continued to monitor and administer relevant provisions of the ARTC interstate access undertaking accepted in 2008, which facilitates competition by providing access to services on the interstate rail network.

## Post

### *Australia Post reserved letter services*

Under the prices surveillance provisions of the *Competition and Consumer Act 2010*, the ACCC has a role in assessing proposed price increases for Australia Post's monopoly letter services.

Australia Post provided the ACCC with a draft price notification on 25 January 2011, proposing the following price increases for several of its monopoly bulk letter services, effective from 4 July 2011:

**Table 3.19: Price increases in monopoly bulk letter services**

Australia Post Monopoly bulk letter services	Price increases (effective from 4 July 2011)
Regular PreSort letter prices	2.8 cents increase (on average, excl. GST)
Off Peak PreSort letter prices	1.3 cents increase (on average, excl. GST)
Clean Mail letter prices (Clean Mail is a discount bulk mail service used by businesses for letters that are not pre-sorted or barcoded)	2.3 cents increase (on average, excl. GST)
Reply Paid annual fee	Increase from \$65 to \$80

The PreSort services provide discounts to wholesale bulk mail customers who sort and barcode mail before lodging it. It includes Charity Mail, a discount letter service that can be used by registered charities.

The ACCC released an issues paper on in February 2011 seeking submissions from interested parties on Australia Post's proposal.

In May, Australia Post submitted a revised proposal, providing for smaller price increases of 0.9 cents (excluding GST) for certain Off Peak services.

The ACCC's preliminary view on the proposed price increases, released on 27 May 2011 (with a call for submissions on that view) was to not object to Australia Post's revised pricing proposal.

In June, Australia Post submitted a formal price notification informing the ACCC of its intention to increase the prices of its bulk mail reserved letter services as specified in its draft price notification.

On 24 June 2011, the ACCC released its final decision to not object to the price increases proposed by Australia Post. The ACCC's decision was within the timeframe proposed by Australia Post.

The ACCC's decision documents, including its preliminary view and the final decision, were made available to the public and stakeholders on the ACCC's website and through emails, letters and media releases.

The ACCC maintains a postal services page on its website, which provides up-to-date information about its ongoing role in the regulation of postal services and about specific postal regulatory activities.

### *Australia Post cross-subsidy assessment*

The ACCC scrutinises Australia Post's regulatory accounts and reports annually on whether or not the corporation is cross-subsidising its competitive services with revenue from its monopoly reserved services.

The ACCC issued cross subsidy reports for 2008–9 (on 23 July 2010) and 2009–10 (on 7 April 2011), both of which concluded that Australia Post's regulatory accounts did not provide evidence that it was cross-subsidising its competitive services with revenue from its monopoly services.

Australia Post's logistics services continue to be subsidised. However, the source of that subsidy appears to be Australia Post's other competitive services, rather than its monopoly services.

## Copyright

### Licence fees

Under the *Copyright Act 1968*, the ACCC may join matters as a party in the Copyright Tribunal relating to the price paid by businesses for intellectual property provided by copyright licensing societies.

In May 2007 the ACCC became a party to the Phonographic Performance Company of Australia's reference of its fitness class tariff to the tribunal, which handed down its decision in May 2010. The Tribunal decided that the licence fee payable by fitness centre operators for the use of protected PPCA sound recordings in fitness classes be increased from 96.8 cents per fitness class to \$15 per fitness class, or alternatively levied at \$1 per attendee per class.

One of the respondents, Fitness Australia, appealed the Copyright Tribunal's decision to the Full Court of the Federal Court, an appeal in which the ACCC decided not to participate. The court found that the tribunal's decision failed on natural justice grounds and sent the matter back to it.

### Guidelines

The ACCC may also produce guidelines that the Copyright Tribunal must take into account if requested to do so by a party to a Tribunal proceeding.

# Part 3D

## Assisting and engaging with stakeholders

Table 3.20: Assisting and engaging with stakeholders—Deiverables and results

Deliverable	Result
Assistance to parliamentary inquiries and government agencies to develop policies and processes.	Extensive assistance and advice provided. See text below for details.

### Assisting parliamentary inquiries and government agencies

In its role to provide advice and assistance to parliamentary inquiries and government agencies for the development of policy and legislation, the ACCC undertook the following activities during 2010–11:

#### Australian Consumer Law

- > Agreed on a memorandum of understanding (MOU) for the administration and enforcement of the Australian Consumer Law. In accordance with the Intergovernmental Agreement on the Australian Consumer Law, the MOU establishes a framework for communication, cooperation and coordination between the ACCC, ASIC and state and territory consumer regulators.

#### Consumer affairs

- > The ACCC gave evidence to the inquiry by the House of Representatives Standing Committee on Economics into the Government's price signalling legislation—the Competition and Consumer (Price Signalling) Amendment Bill 2010 and Competition and Consumer Amendment Bill (No. 1) 2011.
- > The ACCC gave evidence and provided further comment to the inquiry by the House of Representatives Standing Committee on Social Policy and Legal Affairs into the regulation of billboard and outdoor advertising.
- > Continued to actively support the Ministerial Council on Consumer Affairs (MCCA); and participated in the Standing Committee of Officials of Consumer Affairs and its advisory committees, the Education and Information Advisory Committee, the Compliance and Dispute Resolution Advisory Committee, the Policy and Research Advisory Committee and the Product Safety Consultative Committee (the last of which the ACCC chairs).
- > Gave evidence to the inquiry by the Western Australia Legislative Assembly Economics and Industry Standing Committee into domestic gas prices.

#### Indigenous consumer affairs

- > Continued work to meet its commitments under the National Indigenous Consumer Strategy (NICS) and participated in the National Indigenous Consumer Strategy working group. NICS is a commitment made by MCCA for all Commonwealth and state and territory consumer protection agencies to work together to improve outcomes for Indigenous consumers.

### Climate change

- > Continued active engagement with the Department of Climate Change and Energy Efficiency on a range of issues including the development of the greenhouse and energy minimum standards to replace the current energy efficiency labelling scheme, proposed amendments to the refrigerator and freezer standard, the national carbon offset standard and the transition from the greenhouse friendly program.

### Health and ageing

- > Continued active engagement with the Department of Health and Ageing and Food Standards Australia and New Zealand to discuss issues including the new 'grown in' defence to country of origin labelling under the Australian Consumer Law, nutrition and health related claims in food labelling, alcoholic energy drinks and labelling of aseptic juice.
- > Made a submission to the Australian Health Minister's Advisory Council on options to regulate unregistered health practitioners.
- > Provided the Senate with its 12th report on anti-competitive and other practices by health funds and providers in relation to private health insurance.

### Crime and law enforcement

- > Provided submissions to assist the preparation of the Government's response to the House of Representatives *Report of the Inquiry into cyber crime, hackers, fraudsters and botnets: Tackling the problem of cyber crime*, June 2010.
- > Contributed to the development of Australia's Organised Crime Compendium, which lists the range of tools available to law enforcement agencies. The ACCC's contribution recognises the linkages between organised crime groups and advance fee fraud scams.
- > Signed an MOU with the Australian Crime Commission (ACC) to enhance capabilities and cooperation with other law enforcement agencies. The ACCC also signed an MOU with the Australian Business Register that will facilitate business name and company searches and provide access to industry classification data.

### Product safety

- > Regularly advised government on the harmonisation of specific product safety standards and bans.
- > Participated in the interdepartmental committee preparing the Government's response to the Review of Food Labelling Law and Policy chaired by Dr Neal Blewett AC.

### Productivity Commission inquiry into the economic regulation of airport services

- > In response to concerns raised in the ACCC's airport monitoring reports, the Australian Government brought forward the Productivity Commission's inquiry into the economic regulation of airport services, originally scheduled for 2012. The inquiry will examine the efficiency and effectiveness of the current regime, determine whether new arrangements are required, and make recommendations to the Government on these matters. In March 2011, the ACCC provided a submission to the inquiry, which is expected to be completed by the end of 2011.

### Dairy industry

- > Gave evidence and provided further comment to the inquiry by the Senate Economics References Committee into the impacts of supermarket pricing decisions on the dairy industry.

### Banking

- > Gave evidence to the inquiry by the Senate Economics References Committee into competition within the Australian banking industry.

## Telecommunications

### *Consumer protection*

- > Participated in the Australian Communications and Media Authority's (ACMA) 'Reconnecting the Customer' Inquiry about industry complaints handling and customer service practices. The ACCC made a detailed submission to the ACMA in October 2010, recommending that the causes of underlying consumer problems in the telecommunications sector need to be addressed, and that more direct forms of regulation may be required deliver effective consumer protection safeguards.
- > Participated in the Communications Alliance's review of its Telecommunications Consumer Protection Code. As a member of the committee overseeing the review process, the ACCC made recommendations throughout the review, seeking improvements and strengthening the code's requirements, including suppliers' advertising and information provision obligations and compliance and enforcement arrangements.
- > Contributed to the Department of Broadband, Communications and the Digital Economy's review of the Telecommunications Industry Ombudsman Scheme. The scheme provides important consumer protection via the provision of an external dispute resolution mechanism for consumers.

### *National Broadband Network*

- > Developed advice on the number and location of initial points of interconnection for the National Broadband Network at the request of the Commonwealth Government.
- > Gave evidence to the Senate Standing Committee on Environment and Communications' inquiry in relation to the NBN Companies Bill 2010 and the Telecommunications Legislation Amendment (NBN Measures—Access Arrangements) Bill.
- > Gave evidence to a Joint Parliamentary Committee hearing on the NBN.
- > Provided ongoing advice to the Department of Broadband, Communications and Digital Economy on the regulatory framework for the NBN and the communications-specific regime in the Competition and Consumer Act.

### *Mobile services*

- > Participated in the Communications Alliance's review of its Mobile Premium Services Code, which requires providers to comply with obligations in relation to advertising, information provision, complaint handling and other matters. In its submission, the ACCC identified outstanding concerns about the operation of the current code in relation to particular advertising practices, information provision, and complaint handling.

### *Complaint handling*

- > Provided a submission and further advice to the Australian Communications and Media Authority's Reconnecting the Customer inquiry into industry complaints handling and customer service practices.

### *Universal Services Obligation*

- > Provided a submission to the Department of Broadband, Communications and the Digital Economy on the Universal Services Obligation.

### *Convergence Review*

- > Provided a submission to the Convergence Review Committee in response to the committee's discussion paper on principles that should underpin the new policy framework.



## Energy

The AER contributed submissions to a range of consultation processes, predominantly those run by the Australian Energy Market Commission (AEMC). Key consultation processes to which the AER made submissions during 2010–11 included:

### *Market power*

- > Provided a submission to the AEMC on a proposal to mitigate the use of generator market power in the National Energy Market.

### *Transmission framework*

- > Provided a submission to the AEMC on the transmission frameworks review.

### *Inter-regional transmission charging*

- > Provided a submission to the AEMC on inter-regional transmission charging.

### *Reliability settings*

- > Provided a submission to the AEMC's Reliability Panel on reliability settings in the national electricity market.

### *Scale-efficient network extensions*

- > Provided a submission to the AEMC on scale-efficient network extensions.

### *Administered price periods*

- > Provided a submission to the AEMC on the application and administration of administered price periods.

## Consulting with stakeholders

The ACCC and the AER continue to engage with stakeholders through regular meetings of their consultative committees.

### *Consumer Consultative Committee*

Membership of the ACCC's Consumer Consultative Committee is reviewed approximately every two years. As part of its third membership review undertaken in mid-2010, the ACCC also moved to appoint an external chair; Chris Connolly. With the ACCC maintaining close involvement including providing secretariat support, the new membership group was convened for the first time in September 2010. The final meeting of 2010 took place in December with major issues for discussion including energy marketing and new national sales practices laws. The March 2011 meeting reflected on the recent success of the National Consumer Fraud Week campaign 2011 and emerging trends in scams. Door to door sales and telecommunications advertising were also of interest. At its June meeting, the committee discussed the ACCC's role in price monitoring, as well as ongoing discussions around the implementation of the Australian Consumer Law.

### *Small Business Consultative Committee*

The Small Business Consultative Committee met in November 2010 and June 2011 to discuss small business trade practices concerns, including the ACCC's enforcement and compliance activities, particularly in relation to the Australian Consumer Law.

### *Franchising Consultative Committee*

The Franchising Consultative Committee met in October 2010 and June 2011 to consider issues including the 2010 amendments to the Franchising Code, the ACCC's franchising-related enforcement and education activities, and exclusive dealing notifications.

### *Health Sector Consultative Committee*

The Health Sector Consultative Committee met in August 2010 and considered issues including ACCC enforcement action, the new Australian Consumer Law and preferred provider schemes in the private health insurance sector. The ACCC is currently reviewing the operations of the committee following consultation with members.

### *Utility Regulators Forum*

The ACCC, with state and territory regulatory agencies, convenes a utility regulators forum to exchange information, encourage consistent application of regulatory functions, and review new ideas about regulatory practices. In 2010–11 forum meetings took place in Auckland and Adelaide. The forum's newsletter, *Network*, continued to be published quarterly.

### *Fuel Consultative Committee*

The Fuel Consultative Committee was established in early 2010 to provide an opportunity for dialogue between the ACCC, the fuel industry and motoring organisations. The committee was also formed to improve the ACCC's understanding of key issues in the fuel industry. At the November 2010 and April 2011 meetings, issues discussed included:

- > historical pricing trends
- > biofuels and ethanol mandates
- > petrol price cycles
- > the evolving structure of the petroleum industry
- > pricing differentials between different types of unleaded petrol
- > fuel industry and trade practice compliance
- > the findings of the ACCC's 2010 Monitoring of the Australian petroleum industry report.

### *Infrastructure Consultative Committee*

The Infrastructure Consultative Committee (with representatives from the energy, telecommunication, water, rail, port and airport sectors) discusses the broad issues of infrastructure and infrastructure regulation. The committee meets twice a year to discuss issues relating to the practise of regulation across jurisdictions, as well as proposed regulatory reforms announced by government.

### *AER Customer Consultative Group*

The Customer Consultative Group meets up to three times a year and has nine members. The group held its first meeting for 2011 in March, and discussed current challenges in energy markets, including the impact of network prices on retail bills, retail market customer information sheets, and retailers' customer hardship policies.

## International cooperation

The ACCC continued to engage closely with competition and consumer protection counterparts around the world. The need for international cooperation has grown as trading across jurisdictional borders has become more frequent and consumers have become exposed to more complex transactions occurring across multiple jurisdictions.

The ACCC undertakes a range of activities with its international counterparts, including cooperation on specific cases and discussions on international best practice and convergence facilitated by groups such as the International Competition Network (ICN) and International Consumer Protection Enforcement Network (ICPEN). The ACCC participates actively in both the ICN and ICPEN to help promote effective competition and consumer protection policies and their enforcement around the world.

The AER is a founding member of the Energy Intermarket Surveillance Group, an international group that provides for coordination between energy market surveillance and enforcement bodies. The AER participates in meetings every six months and undertakes the secretariat role.

The ACCC is active in the Utility Regulators Forum, which includes the New Zealand Commerce Commission (see page 113) and participates in the East Asia and Pacific Infrastructure Regulatory Forum which aims to enhance regulatory decision making in the East Asia and Pacific. Staff from the ACCC participate in exchanges with international regulators such as the Office of Gas and Electricity Markets in the UK and the Singapore Market Authority, enhancing the skills of staff involved and developing the relations between the agencies. The ACCC has liaised with the Competition Bureau of Canada, the competition authorities of New Zealand, United Kingdom, Germany and the United States on fuel pricing.



Part 04  
Management and  
accountability

## Corporate governance

This part reports on the ACCC and AER governance, financial, people and information management, and other administrative activities.

The ACCC's corporate governance framework equips the organisation with the necessary management processes to achieve its strategic goals, while complying with policies and legislation, maintaining performance standards and making the most cost-effective use of resources.

## Senior leadership

The ACCC's senior leadership comprises members of the commission (appointed by the Governor-General), and Senior Executive Service (SES) employees.

Senior leadership of the AER consists of the AER Board, and SES employees of the ACCC. Details of the leadership structure are in Figure 2.1 (p. 21).

## Australian Competition and Consumer Commission

The ACCC has a chair, two deputy chairs, four full-time members and two associate members (see Table 4.1).

The chair of the ACCC is Mr Graeme Samuel.\*

**Table 4.1: Terms of appointment—current ACCC members (at 30 June 2011)**

Position	Name	Appointed until
Chair	Graeme Samuel	31 July 2011
Deputy chairs	Michael Schaper	29 May 2013
	Peter Kell	31 July 2013
Members	Sarah Court	30 April 2013
	Edward Willett	29 May 2013
	Joe Dimasi	27 November 2013
	Jill Walker	11 August 2014
Associate members	Christopher Chapman	13 October 2015
	Andrew Reeves	18 July 2013
	Mark Berry	30 November 2013
	Cristina Cifuentes	27 October 2015

\* Note: Mr Samuel's term ends on 31 July 2011. The new Chair, Mr Rod Sims, begins his five-year appointment on 1 August 2011.

## Chair

### Mr Graeme Samuel AC



Graeme Samuel was Chairman of the ACCC for the whole financial year. He took up this position in July 2003, and his term ended on 31 July 2011. Before his appointment as Chairman, he was President of the National Competition Council, Chairman of the Melbourne & Olympic Parks Trust, a Commissioner of the Australian Football League, a member of the Board of the Docklands Authority, and a Director of Thakral Holdings Limited. He relinquished all these offices to assume his position with the ACCC.

Mr Samuel was also an Associate Member of the Australian Communications and Media Authority.

He is a past President of the Australian Chamber of Commerce and Industry, a past Chairman of Playbox Theatre Company and Opera Australia, a former Trustee of the Melbourne Cricket Ground Trust and former Chairman of the Inner & Eastern Health Care Network.

Until the early 1990s he pursued a professional career in law and investment banking, from which he retired to assume a number of roles in public service and company directorships.

Mr Samuel holds a Bachelor of Laws (Melbourne) and Master of Laws (Monash). In 1998 Mr Samuel was appointed an Officer in the General Division of the Order of Australia. In 2010 Mr Samuel was elevated to a Companion in the General Division of the Order of Australia.

## Mr Rod Sims



Rod Sims was appointed Chairman of the Australian Competition and Consumer Commission in August 2011 for a five year term.

Rod has extensive business and public sector experience. Immediately prior to his appointment to the ACCC, he was the Chairman of the Independent Pricing and Regulatory Tribunal of New South Wales, Commissioner on the National Competition Council, Chairman of InfraCo Asia, Director of Ingeus Limited, and member of the Research and Policy Council of the Committee for Economic Development of Australia. Rod was also a Director of Port Jackson's Partners Limited where he advised the CEOs and Boards of some of Australia's top 50 companies on commercial corporate strategy over many years. Rod relinquished all of these roles on becoming Chairman of the ACCC.

Rod is also a past Chairman of the NSW Rail Infrastructure Corporation and the State Rail Authority and has been a Director of a number of private sector companies. During the late 1980s and early 1990s, Rod worked as the Deputy Secretary in the Commonwealth Department of Prime Minister and Cabinet responsible for economic, infrastructure and social policy and the Cabinet Office. He also worked as Deputy Secretary in the Department of Transport and Communications.

Rod Sims holds a first class honours degree in Commerce from the University of Melbourne and a Master of Economics from the Australian National University.

## Deputy chairs

### Mr Peter Kell



Peter Kell was appointed a deputy chair of the ACCC in July 2008 for a five-year term. Mr Kell chairs the Adjudication Committee and is a member of the Enforcement Committee. He serves on the Consumer Policy Committee of the Organisation for Economic Cooperation and Development and the International Consumer Protection and Enforcement Network. He is also a member of the Advisory Board of the federal government's Financial Literacy Foundation.

Before joining the ACCC, Mr Kell was chief executive of CHOICE (the Australian Consumers Association) and a board member of the global consumer organisation Consumers International. He has extensive experience in advancing consumer and market reform issues in Australia and internationally.

Mr Kell previously worked at the Australian Securities and Investments Commission (ASIC), which he joined in 1998 when it took on a significantly expanded role in consumer and investor protection in financial services. He served as ASIC's executive director of consumer protection and as its New South Wales regional commissioner until 2004.

Earlier in his career Mr Kell was a policy adviser in the federal Department of Finance.

Mr Kell has a Bachelor of Arts (Hons) in Economics from the University of Sydney.



## Dr Michael Schaper



Michael Schaper was appointed to the ACCC in July 2008 for a period of five years as Deputy Chair with knowledge and experience of small business issues.

Dr Schaper brings extensive experience in the area of small business through his previous roles as ACT Small Business Commissioner, Dean of Murdoch University Business School in Western Australia and head of the School of Business at Bond University in Queensland.

A previous president of the Small Enterprise Association of Australia and New Zealand, he has been a member of the board of directors of the International Council for Small Business and has held the foundation professorial chair in Entrepreneurship and Small Business at the University of Newcastle. Prior to this, he was employed as a senior lecturer at Curtin University, responsible for the university's entrepreneurship degree programs.

Between 2001 and 2003 Dr Schaper held several posts as visiting Professor at the Ecole de Management Lyon, France, and the University of St Gallen in Switzerland. In Australia he has served as an Adjunct Professor at both Curtin University and the University of Canberra.

In addition to his extensive academic career, Dr Schaper has worked as a professional small business advisor and as the owner of a number of new business start-ups.

In 2009 he was recipient of the 'National Small Business Champion Award' by the Council of Small Business Organisations of Australia.

The author or co-author of eight business management books, he has been a regular columnist in a number of national magazines, newspapers and journals on business issues. He has also worked as a policy advisor to government at both the state and federal level.

Dr Schaper is a member of the ACCC's enforcement and adjudication committees.

He holds a PhD and a Master of Commerce degree from Curtin University, as well as a Bachelor of Arts from the University of Western Australia.

## Members

### Ms Sarah Court



Sarah Court was appointed a Commissioner of the ACCC in April 2008 for five years.

Ms Court is a full-time commissioner, and a former senior executive lawyer and Director with the Australian Government Solicitor. She brings to her role extensive experience in Commonwealth legal work, including restrictive trade practices, consumer protection and law enforcement litigation.

Ms Court oversees the ACCC's enforcement and litigation program and she is chair of the Commission's Enforcement Committee. Ms Court also sits on the Commission's Merger Review Committee and Adjudication Committee.

Ms Court holds a Bachelor of Arts (Jurisprudence) and a Bachelor of Laws (Honours) from the University of Adelaide as well as a Graduate Diploma in Legal Practice from the ANU.

### Mr Joe Dimasi



Joe Dimasi was appointed a commissioner of the ACCC in December 2008 for five years. Before his appointment, Mr Dimasi was the Executive General Manager of the Regulatory Affairs Division of the ACCC, a position he had occupied since 1996. Before that, he was an assistant commissioner of the Industry Commission (now the Productivity Commission).

Mr Dimasi has been a senior economist in a number of organisations, including the Victorian departments of the Treasury, Premier and Cabinet, and Business.

He has Bachelor and Masters degrees in Economics.

### Mr Edward Willett



Edward Willett was re-appointed in June 2008 for a five-year term. Before his appointment to the ACCC, he was the inaugural executive director of the National Competition Council for seven years.

Before that he worked as an assistant commissioner with the Industry Commission and helped develop the federal Department of Industry, Science and Technology's role in business law and regulation, spent three years as deputy head of the Commonwealth Office of Regulation Review and was involved in other Industry Commission inquiry work and research.

He also spent three years with the New Zealand Ministry of External Relations and Trade as an adviser on international economics and trade and eight years as an economist with the Department of Defence. Mr Willett has degrees in law and economics and a postgraduate diploma in international law.

## Dr Jill Walker



Jill Walker was appointed as a Commissioner of the ACCC in August 2009 for a five-year term.

Dr Walker is the Chair of the ACCC's Mergers Review Committee as well as a member of the Enforcement and Adjudication Committees. Dr Walker is also an Associate Member of the New Zealand Commerce Commission and Chair of the International Air Services Commission.

Dr Walker has extensive experience in the fields of trade practices and antitrust economics. Prior to joining the ACCC, Dr Walker was a member of the Australian Competition Tribunal and worked as an economic consultant for LECG Ltd. Dr Walker has also worked for the Network Economics Consulting Group (NECG) and CRA International. Dr Walker has also been a member of the South Australian Government's panel of expert assessors assisting the District Court in hearing appeals under the *Essential Services Commission Act 2002* and the *Gas Pipelines Access (South Australia) Act 1997*.

Dr Walker has previously been employed as an economic adviser by the ACCC and its predecessors, the Prices Surveillance Authority and the Trade Practices Commission. During this time Dr Walker provided advice on significant cases, investigations, and authorisations.

Dr Walker holds a Bachelor of Arts in Economics and a PhD in Land Economy from the University of Cambridge. She also holds a Master's degree in Economics from the University of Massachusetts.

## Australian Energy Regulator

The Chair of the AER is Mr Andrew Reeves. The AER has three members (see Table 4.2).

**Table 4.2: Terms of appointment—current AER members (at 30 June 2011)**

Position	Name	Appointed until
Chair	Mr Andrew Reeves	18 July 2013
Members	Mr Edward Willett	29 May 2013
	Ms Cristina Cifuentes	27 October 2015

## Chair

### Mr Andrew Reeves



Andrew Reeves was appointed as the part-time state/territory member of the AER for a five-year term from 17 July 2008. Before his appointment, he was commissioner of the Tasmanian Government Prices Oversight Commission and regulator of the Tasmanian electricity supply industry, responsible for technical and economic regulation (including performance standards and prices for distribution services and retail tariffs). In this capacity he was an associate member of the ACCC.

Mr Reeves is a qualified engineer, with postgraduate qualifications in economics.

## Members

### Mr Edward Willett



Edward Willett is a member of the ACCC. (See ACCC members' biographies (on p. 121) for more information.)

Part IIIAA of the *Trade Practices Act 1974* provides that one of the members of the AER must also be a member of the ACCC.

### Ms Cristina Cifuentes



Cristina Cifuentes was appointed as part-time member of the AER and Associate Commissioner of the ACCC for five years from 27 October 2010. Ms Cifuentes has formal qualifications in law and economics and holds a number of directorships and executive roles, including as director of the NSW Treasury Corporation, First State Super Trustee Corporation and Hunter Water Corporation. She has relevant market regulatory experience, including as a member of IPART between 1997 and 2006.

# Committees

## ACCC

The ACCC has two types of committees: subject matter committees, which help the commission in its decision making and other functions, and corporate governance committees.

**Table 4.3: Subject matter committees of the ACCC**

Adjudication Committee	Peter Kell (chair), Sarah Court, Michael Schaper, Jill Walker, Edward Willett—oversees and considers adjudication issues; meets weekly.
Communications Committee	Edward Willett (chair), Joe Dimasi, Peter Kell, Graeme Samuel—oversees telecommunications issues; meets fortnightly.
Enforcement Committee	Sarah Court (chair), Peter Kell, Graeme Samuel, Michael Schaper, Jill Walker—oversees enforcement program and refers recommendations to the full commission for decision; meets weekly.
Mergers Committee	Jill Walker (chair), Sarah Court, Joe Dimasi, Graeme Samuel—considers and makes decisions on most of the mergers reviewed and reports to the full commission; meets weekly.
Regulated Access and Price Monitoring Committee	Joe Dimasi (chair), Michael Schaper, Edward Willett, Andrew Reeves—oversees access, price monitoring, transport and water issues; meets fortnightly.

ACCC corporate governance is supported by six function committees:

- > Corporate Governance
- > Audit
- > Strategic Communications
- > Information Management and Technology Services
- > Health and Safety
- > Organisational Wellbeing.

The ACCC also has an employer–employee consultative committee—the Workplace Relations Committee—comprising representatives of staff, management and employee organisations.

Table 4.4 shows the roles and current membership of the function committees and the Workplace Relations Committee.

Table 4.4: ACCC functional committees—roles and membership

Corporate Governance Committee	ACCC and AER chairs and deputy chairs, commissioners, CEO, and senior staff who consider corporate governance issues; meets quarterly.
Audit Committee	CEO, independent external member and senior staff responsible for overseeing internal audit activities, fraud control, risk management and corporate governance; meets quarterly.
Strategic Communications Committee	CEO and senior staff with oversight of the ACCC's positioning and communication approaches; meets quarterly.
Information Management and Technology Services Committee	Senior staff; meets quarterly.
Health and Safety Committee	Representatives of the employer and staff representing the workplace; meets three times a year.
Organisational Wellbeing Committee	CEO and senior staff with oversight of the strategic decision making; meets quarterly.
Workplace Relations Committee	Representatives of the employer, employees and employee organisations; meets quarterly.

## Corporate and business plans

The ACCC corporate plan for 2010–11 focuses on the implementation of significant changes to the legislative framework for competition and consumer protection.

The adoption of the first tranche of the Australian Consumer Law (ACL), which came into effect on 1 July 2010, will enhance the ACCC's enforcement role by providing:

- > a single national consumer law, unifying legislation across all states and territories
- > protection for consumers from unfair contract terms
- > new remedies and powers for the ACCC.

In addition to the implementation of the ACL, the ACCC has identified challenges in each of its four main areas of activity:

- > promotion of vigorous, lawful competition and informed markets
- > promotion of fair trading and consumer protection
- > regulation of national infrastructure services and other markets where there is limited competition
- > capacity building in an expanding organisation.

The full corporate plan is available on the ACCC website.

## Risk management

Risk management is a key element of the ACCC's strategic planning, decision making and business operations.

As part of its efforts to integrate risk management into planning and operations across the organisation, the ACCC reviewed and updated its risk management framework in accordance

with the Australian National Audit Office/Comcover Better Practice Guide, including an updated Risk Management Policy and the development of a Strategic Risk Profile. The latter identifies risk exposures across all our activities and provides assurance that these exposures are adequately controlled and that any gaps are rectified.

The ACCC's aim is to achieve best practice in controlling all the risks to which the commission is exposed. It will achieve this by identifying priority exposures, addressing these with a combination of improvement strategies and contingency planning, and monitoring and reviewing ongoing risk to account for changes in operations to enable the ACCC to make well-informed decisions on risk controls.

## Business continuity

Business continuity management is intended to strengthen business resilience, with the aim of lessening the probability of incidents occurring that may adversely affect ACCC operations, and to minimise the impact should incidents occur.

Business continuity plans were successfully put into effect at the Canberra, Brisbane and Townsville offices in 2010–11, in response to the natural disasters in these regions. Business continuity scenario testing exercises were undertaken for all business continuity teams.

## Fraud control

The ACCC developed a Fraud Control Plan for 2010–12 and revised its Fraud Control Policy based on a fraud risk assessment undertaken during 2010. The policy and plan provide for fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the specific needs of the ACCC and comply with the Commonwealth Fraud Control Guidelines. The plan is reviewed by the ACCC Audit Committee.

## Ethical standards

### Conflicts of interest

Members and employees of the ACCC and AER are required to declare any actual or apparent conflicts of interest.

To maintain public confidence in its integrity, the ACCC has procedures in place to identify and properly manage any personal interests that may give rise to actual or perceived conflicts of interest.

ACCC members are required to provide the chair with an annual statement of personal interests. There is a specific protocol in place governing the participation of one ACCC/AER member in decision making, in recognition of his spouse's professional position.

As a general rule, gifts and hospitality may not be accepted, because they could compromise, or be seen to compromise, the integrity of the ACCC, its members and its employees. When accepted, gifts and hospitality must be declared.

Every employee is required to undertake an annual self-assessment of actual or potential conflicts of interest.

## APS Values and Code of Conduct

The ACCC is committed to a workplace culture that promotes and maintains the standard of behaviour specified in the APS Values and Code of Conduct. Human resources policies and guidelines are underpinned by these principles.

As part of their induction to the ACCC, employees are required to complete an e-learning module on ethics and conduct. Further information about the APS Values and Code of Conduct is provided during corporate induction sessions.

Misconduct is dealt with according to a procedure for managing alleged breaches of the APS Code of Conduct. In 2010–11, three allegations were investigated, with two concluded.

## Senior executive remuneration

Remuneration for ACCC and AER members is determined by the Remuneration Tribunal, in accordance with the *Remuneration Tribunal Act 1973* and Determination 2010/10 Remuneration and Allowances for Holders of Full-Time Public Office and Determination 2010/11 Remuneration and Allowances for Holders of Part-Time Public Office.

Tables 4.5 and 4.6 set out the nature and amount of remuneration for ACCC and AER members.

**Table 4.5: Remuneration of current members of the ACCC (as at 30 June 2011)**

Full-time	Position	Base salary	Total remuneration of office
1	Chair	\$390 620	\$568 110
2	Deputy chair	\$273 980	\$369 280
4	Member	\$260 350	\$340 870

**Table 4.6: Remuneration of current members of the AER (as at 30 June 2011)**

Full-time	Position	Base salary	Total remuneration of office
1	Chair	\$260 040	\$346 880
0	Member	\$223 300	\$292 380
Part-time	Position	Fees	
1	Member	\$1018 per day	



## External scrutiny

The ACCC and AER are accountable for their activities through the courts, tribunals, Parliament and certain agencies with responsibility for administrative oversight, including the Commonwealth Ombudsman.

## Judicial decisions

During the reporting period, United Energy, a Victorian electricity distributor, brought judicial review proceedings against the AER in relation to two matters:

- > the AER's legal authority to apply financial penalties or rewards, due to electricity supply reliability performance in the 2006–10 period, in the 2011–15 regulatory control period when closing out the Essential Services Commission's S factor scheme (which provided a financial incentive for distributors to maintain and improve their service supply reliability)
- > an allegation that there was a breach of natural justice in the AER's distribution determination related to setting United Energy's forecast operating expenditure for the 2011–15 regulatory control period.

During 2010–11 ActewAGL sought judicial review of the AER's 2009 distribution determination. This review is discussed on page 81.

## Administrative Appeals Tribunal

No applications for AAT review of an ACCC FOI decision were made in 2010–11.

## Australian Competition Tribunal

A number of the AER's decisions were appealed to the Australian Competition Tribunal. Details of these appeals are discussed on pages 81 to 85.

## Parliamentary scrutiny

The ACCC's 2009–10 annual report was tabled in the Senate in October 2010.

In 2010–11, one parliamentary committee reported on the operations of the ACCC, as follows:

Senate Economics Committee Inquiry into the Australian Competition and Consumer Commission Franklins decision.

On 23 November 2010 the Senate referred to the Senate Economics Committee for investigation the decision of the ACCC to oppose the proposed acquisition of the Franklins supermarket business by Metcash Trading Limited, with particular reference to:

- > the basis of the ACCC decision to oppose the proposed purchase
- > the competition impacts of the decision at the retail and wholesale levels
- > whether the Franklins' distribution warehouses, supplying eight franchised stores, could be regarded as an independently sustainable wholesale business, and
- > any other related matters.

On 28 February 2011 the committee tabled its report, noting that since the ACCC's decision to oppose Metcash's proposed acquisition of the Franklins supermarket business was referred to it for inquiry and report, proceedings related to the matter had commenced in the Federal Court of Australia. The committee recognised that the matter would be examined in detail through the judicial process and believed that this is an appropriate manner in which to test the arguments and resolve the matter.

## Commonwealth Ombudsman

In 2010–11, the ACCC was subject to one finding of administrative deficiency by the Commonwealth Ombudsman.

## Privacy Commissioner

The ACCC has not been approached by the Office of the Federal Privacy Commissioner in relation to any complaints in 2010–11.

## Australian Human Rights Commission

The ACCC has not been approached by the Human Rights Commission in relation to any complaints in 2010–11.

## Performance audits

In 2010–11 the ACCC was not subject to a report on its operations by the Auditor-General (other than the report on financial statements).

## Service charter

The ACCC has a service charter stating the values that guide its service, the standard of service individuals and businesses can expect and the steps they may take if these standards are not met. The service charter is available from the ACCC website and each ACCC office.

## Customer service standards

The ACCC is committed to:

- > providing courteous, professional, quality service
- > responding to the needs of all people regardless of their personal attributes or circumstances
- > being objective and adhering to guidelines on conflict of interest
- > answering questions promptly and explaining its decisions.

The ACCC undertakes to follow up telephone messages within two business days and to respond within 28 days to correspondence requiring a response. The Chief Executive Officer undertakes to respond within 14 days to written complaints about the standard of the ACCC's service.

The ACCC received complaints against the service charter from one complainant, to which the Chief Executive Officer responded and resolved.

## Support services

### Legal services

The legal service requirements of the ACCC and AER are provided by the in-house Legal Group, a panel of law firms and counsel.

The panel firms are currently AGS, Corrs Chambers Westgarth, DLA Piper and Thomsons Lawyers. They provide legal services to both the enforcement and non-enforcement operations of the ACCC and the AER. The current panel arrangements will remain in place until the end of 2011.

The in-house Legal Group consists of three units:

- > Trade Practices and Litigation Unit, which provides legal services to the ACCC's enforcement, compliance, mergers and adjudication branches
- > Regulatory Law Unit, which provides legal services to the ACCC and AER on regulatory matters
- > Corporate Law Unit, which deals with corporate in-house issues and freedom of information requests.

## Economic advice

In-house economics advice is provided by two groups:

- > Competition and Consumer Economic Unit, which provides economic advice to the ACCC's competition and consumer areas
- > Regulatory Development Branch, which provides economic (including finance advice) to the ACCC and AER on regulatory matters.

## Corporate services

The Corporate Division encompasses four branches: Finance and Corporate Services, Information Management and Technology Services, People Services and Strategy, and Strategic Communications. The division provides stewardship for governance and management issues across the ACCC.

The Corporate Division's strategic direction has three pillars: understanding the service delivery needs of its organisational clients; developing and delivering effective and efficient support services for the ACCC, AER and National Competition Council; and developing the capacity of corporate staff to deliver the range of services for which the division is responsible.

## Information management and information technology

In addition to its business as usual functions during 2010–11, the Information Management and Technology Services (IMTS) Branch:

- > continued implementation of a central repository for business records
- > undertook a review of the ACCC's IT environment
- > developed an IT technology roadmap to inform the development of the ICT Strategic Plan
- > undertook planning for an IT transformation program to deliver the outcomes of the ICT Strategic Plan
- > consolidated the ACCC's information management and technology platforms
- > developed a best practice service improvement program.

A new Chief Information Officer (CIO) was appointed to the ACCC in late March 2011.

The Library Services Team moved from the IMTS Branch to the newly established Corporate Services and Support section of the ACCC.

## Governance arrangements

With support from ACCC senior management, the IMTS Branch put in place a new governance model that will align it more efficiently with the strategic direction of the ACCC:

- > The Information Management Technology Steering Group (IMTSG) sets the strategic directions for the ACCC's information management and information technology operations

and determines the budget available annually for those activities. Given the significance of its role, it is chaired by the CEO and its membership comprises senior executives.

- > The Information Management Program Board operates within the strategic parameters set by the IMTSG. Its prime responsibility is to review the information management needs of the ACCC and make recommendations to the IMTSG on what is required to meet those needs.
- > The ICT Program Board operates within the strategic parameters set by the IMTSG. Its prime responsibility is to oversee implementation of the agreed ICT transformation and service improvement program and provide direction as required to the Executive General Manager Corporate, the CIO and individual project managers. It ensures that the program of work is carried forward efficiently and within agreed budgets and the agreed outcomes and benefits are delivered.

## Information and communications technology infrastructure

Several significant information and communications technology infrastructure projects were underway in 2010–11. The projects built on activity commenced in 2009–10 and, where possible, support the strategy of platform consolidation. These projects included:

- > providing a wide area network link to the new ACCC Sydney office to support an office move
- > remediation of the video conference functionality for all ACCC offices
- > preparing for the decommissioning of the Novell operating system
- > increasing the capacity of the ACCC's recruitment site, NGA.net
- > consolidating email server infrastructure
- > expanding and refining the storage area network infrastructure
- > establishing dedicated support for software delivering virtualised desktops
- > virtualisation of all website servers to achieve efficiency and support savings
- > transitioning mobile voice and data services under the Australian Government Telecommunications Agreement to achieve considerable cost savings
- > progressing data replication technologies to improve the ACCC's capability for disaster recovery.

## Business applications

During 2010–11 the ACCC business applications development team:

- > implemented an executive reporting module for the Enforcement and Compliance Division
- > undertook a modernisation of the ACCC website's technology base (using Sytadel 5)
- > developed business intelligence systems for the Product Safety Branch
- > developed and implemented an online mandatory reporting system for the Product Safety site
- > redesigned the product safety homepage, including fixes coming out of the Product Safety accessibility review
- > added Twitter integration and capacity for video content to the Product Safety website
- > developed new data feeds to support iPhone apps for the ACCC Recalls site
- > developed and implemented an online progress reporting system for Recalls
- > upgraded search functionality to improve results on the Product Safety and Recalls site
- > redesigned the ACCC homepage to improve access to information for external stakeholders
- > developed and launched the new FOI website, to meet the ACCC's obligations under the revised Freedom of Information Act
- > restructured the TRACKIT database to support new Australian Consumer Law and developed new reports

- > developed a new infringement notice register for infringement notices
- > developed and launched a staff corporate portal and new staff directory on the ACCC's intranet.

## Information management repository

A major focus of activity for the IMTS Branch was the continued development of a single central repository for all ACCC business records. In support of this strategic objective, the branch:

- > completed the rollout of an enhanced enterprise wide electronic document records management system (EDRMS) in June 2011 to the national workforce, with 8.7 million documents in EDRMS, an almost 10-fold increase in a year and a half
- > rolled out a mandated training program for all users to ensure that the efficiencies offered by the solution were understood and adopted by the staff
- > moved the ACCC from silo document storage sources to a central document management system built on a virtual desktop.

The enhanced solution allows staff to collaboratively share and search for information across a wider number of corporate records within a centralised storage repository with appropriate access controls.

The enhanced EDRMS allows the ACCC to manage information from 'cradle to grave' and provides a higher level of compliance with relevant legislation.

## Litigation technical services

The Litigation Technical Services function continued to support litigation across the ACCC, including provision of e-discovery services and Ringtail software to assist with case preparation and litigation and the coordination of digital forensic activities including:

- > searching various sources of information for relevant material
- > coordinating conversion of hard copy material into electronic format
- > assisting with implementing and enforcing document exchange protocols, in conjunction with internal/external lawyers
- > facilitating e-discovery through the panel of service providers
- > training Ringtail users
- > liaising with business areas to assist with obtaining digital forensic processing
- > compiling relevant material into Ringtail in compliance with document exchange protocols and court requirements
- > arranging access to the material for ACCC staff, legal panel firms and counsel
- > providing advice on workflows to increase efficiency and consistency with document review
- > preparing electronic exchange of discoverable material.

An upgrade to the Ringtail software was successfully undertaken in September 2010.

## Public registers

The IMTS Branch oversees the maintenance of the ACCC's 30 statutory and voluntary public registers for activities such as undertakings, mergers, authorisations, notifications and notices.

## Strategic communications

The work of the Strategic Communications Branch includes:

- > media liaison
- > provision of strategic media advice on issues and events
- > speech writing and management of attendance at public engagements for commissioners and senior staff
- > writing and placement of editorial in mainstream, journals and online
- > development and implementation of campaigns and collateral in conjunction with business areas
- > development of innovative approaches to communications both within the ACCC and to external audiences
- > establishment of internal networks to better coordinate ACCC communication activities
- > internal communications strategies and mechanisms
- > issues identification and management
- > management of the ACCC's web sites and intranet
- > internet content maintenance and improvement
- > provision of quality print editing and design services together with project management of publications.

### Communication to support the introduction of the Australian Consumer Law

The most significant change to consumer protection legislation since 1974 required a coordinated and well targeted communication strategy and involvement of all units of the branch.

#### *Media*

The introduction of a new framework for enforcement required for support for media management, such as coordinating messages, and determining which agency should take the lead in the public domain on emerging issues.

#### *Publishing*

The replacement of the Trade Practices Act by the Competition and Consumer Act involved new consumer protection provisions and extensive renumbering of existing provisions.

The ACCC used this opportunity to revise and republish all of its educational materials to reflect changes in the legislation. The legislative changes also provided the opportunity to comprehensively review publications, reduce current stock holdings to a minimum and move more information online.

The legislative changes required changes to several thousand website pages.

### Media and communication activities

#### *Publications*

The ACCC:

- > published 63 new publications in print and electronic version, compared to 88 in 2009–10
- > distributed 396 300 print items compared to 996 000 in 2009–10
- > recorded 820 448 visits to its online publications compared to 770 512 in 2009–10
- > issued *Update* in December 2010 and April 2011.

Due to the change from the Trade Practices Act to the Competition and Consumer Act, including the Australian Consumer Law updates, all ACCC publications required a review and amendment of content, resulting in reprinting of publications for ongoing distribution ceasing. As a consequence, the number of publications distributed in 2010–11 was greatly reduced.

Most revised publications were made available in electronic form on the ACCC website and the figure for recorded visits to the online publications shows a substantial increase.

### *News releases and speeches*

The ACCC issued 278 and the AER issued 18 news releases in 2010–11.

The Chair, commissioners and senior staff undertook more than 174 speaking engagements and extensive briefings, both private and public.

### *ACCC and AER websites*

Over the course of the year, the ACCC website had just over 3 million visits (similar to the previous year); the AER website, approximately 240 000 visits (similar to the previous year); the Recalls website, approximately 864 000 visits (approximately 847 000 last year); and the SCAMwatch website, approximately 820 000 visits (approximately 793 000 last year). The Product Safety website received approximately 223 000 visits (approximately 213 000 in its first complete year of operation).

## Strategic Communications Committee

The Strategic Communications Committee (SCC), consisting of senior staff from across the ACCC/AER, considers the broad positioning of the ACCC/AER, the appropriate level of engagement with web 2.0 and other platforms, and high level communications strategies.

The committee considers a range of input from across the organisation and from external sources to help it make informed decisions about the best ways to get the ACCC's messages through to the people who need to hear them.

## Human resources

The People Services and Strategies Branch (PSS) supports all areas of the ACCC in professional management and human resources development.

In 2010–11 the PSS Branch focused on:

- > developing leadership and managing performance across all levels
- > developing an enterprise agreement on the basis of good faith bargaining
- > upgrading payroll and recruitment systems
- > promoting employee wellbeing and the Employee Assistance Program.

## Workforce planning

The PSS Branch provides quarterly workforce reporting as well as ad hoc reports and staff budget modelling at the branch, group and divisional levels.

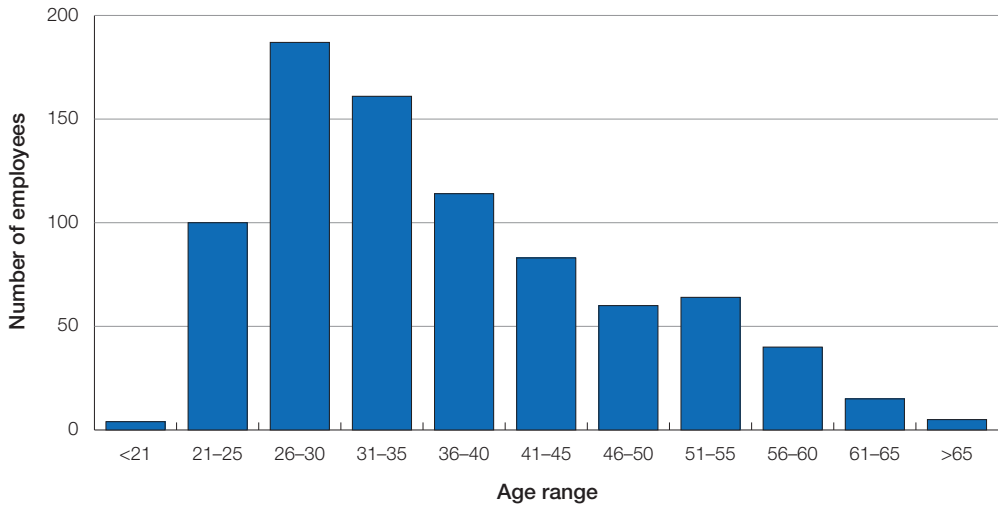
The number of staff at the ACCC increased in 2010–11 in response to an expansion of its functions and responsibilities. The ACCC's budgeted staff level for 2010–11 was 778 (average staffing level) full-time equivalents. This included seven full-time ACCC members, one full-time AER member and one part-time AER member. The total number of full-time equivalent staff, including ACCC and AER members, employed at 30 June 2011 was 798.98 (an increase of 24.97 on 2009–10).

The total number of staff employed (including ACCC and AER members, part-time employees and employees absent on leave and secondments) at 30 June 2011 was 842 (813 in June 2010).

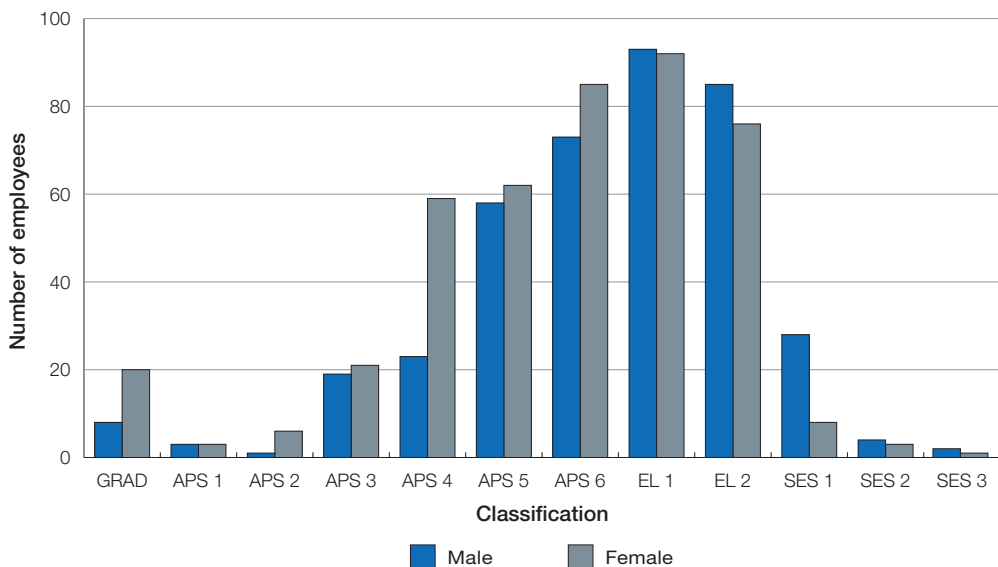
Appendix 2 shows the number of employees by gender, classification and location. Figure 4.1 illustrates the age profile of staff at the ACCC. Figure 4.2 shows the distribution of males and females at each classification level.

Staff budget modelling is undertaken before a change is made to a branch profile, enabling managers to make informed decisions about their workforce requirements while remaining within budget.

**Figure 4.1: Age profile of ACCC staff, 30 June 2011**



**Figure 4.2: Gender profile of ACCC staff, 30 June 2011**





## Attracting and retaining staff

The ACCC attracts and retains employees by providing engaging, rewarding and flexible working conditions and learning and development opportunities and competitive remuneration.


The ACCC conducted 166 individual recruitment processes. Vacant positions are advertised online and in the press. Most applicants found out about jobs through the *Public Service Gazette* (APS Jobs).

Average turnover of permanent staff during the year was 13.44 per cent (an increase from 10.39 per cent in 2009–10). Table 4.7 shows staff turnover by separation type.

The average length of tenure at the ACCC is 5.4 years.

The longest serving staff member has been with the ACCC for 37 years.

The ACCC recruited 23 graduates in February 2010, all of whom remained with the ACCC after the program finished in November 2010. The ACCC recruited 28 graduates for the 2011 program. Over the 10 months of the program, graduates undertake three rotations and participate in comprehensive development opportunities including on-the-job learning and formal training.



**Did you know?**  
The median age of ACCC staff in 2010–11 was 34, compared to the Australian Public Service median of 42 in 2009–10.

**Table 4.7: Staff turnover according to separation type, for 2010–11**

Separation	Classification	Number of staff
Transfer or Promotion	SES	0
	non-SES	31
Termination of Temporary Employment	SES	0
	non-SES	28
Resignations	SES	1
	non-SES	87
Retirements	SES	4
	non-SES	9
Other	SES	0
	non-SES	4
TOTAL		164

## Staff consultation

The ACCC's formal employee consultative body is the Workplace Relations Committee (see Table 4.4), which met three times during the year.

The Health and Safety Committee (see Table 4.4) met during the year to facilitate consultation with staff on ways of improving and maintaining the occupational health and safety of employees and their welfare at work.

Other staff consultation occurs through branch and divisional planning events.

## Employment agreements

### Enterprise agreement

The ACCC Enterprise Agreement 2010–11 sets out classification structures, the performance management framework, remuneration, flexible working conditions, leave, cooperative working relationships, workplace adjustments and other working conditions and allowances.

Under the Enterprise Agreement, employees received a 1.75 per cent salary increase in December 2010. The Enterprise Agreement nominally expired on 30 June 2011.

During 2010–11, the ACCC also negotiated a replacement Enterprise Agreement for 2011–14. This Agreement received staff endorsement on 14 July 2011 and was approved by Fair Work Australia with a commencement date of 27 July 2011.

In accordance with the *Public Service Act 1999*, the Enterprise Agreement allows employees to request a review of employment actions or decisions that affect them. No such requests were received during 2010–11.

### Determinations

The employment arrangements of 42 SES employees are set out in individual determinations made under section 24 of the Public Service Act. The main features of section 24 determinations include remuneration; leave; benefits such as vehicles, car parking and class of air travel; performance pay; review of actions; and dispute resolution procedures.

### Common law contracts and Australian Workplace Agreements

No employee is covered by a common law contract or an Australian Workplace Agreement.

**Table 4.8: Number of employees covered by each industrial instrument (at 30 June 2011)**

	ACCC Employee Collective Agreement 2009–10	Section 24 determinations
APS 1	6	0
APS 2	7	0
APS 3	47	0
APS 4	91	0
APS 5	126	0
APS 6	162	0
EL 1	172	0
EL 2	119	1
SES 1	0	33
SES 2	0	6
SES 3	0	3
L1	10	0
L2	22	0
GRAD	28	0

Table 4.9: Salary ranges for APS employees (at 30 June 2011)

	ACCC Employee Collective Agreement 2010–11	Section 24
APS 1	\$41 026–\$45 345	Not applicable
APS 2	\$46 428–\$51 483	Not applicable
APS 3	\$52 880–\$57 077	Not applicable
APS 4	\$58 942–\$63 996	Not applicable
APS 5	\$65 741–\$69 708	Not applicable
APS 6	\$72 769–\$81 562	Not applicable
EL 1	\$90 413–\$100 060	Not applicable
EL 2	\$104 819–\$122 839	\$104 819–\$146 000
SES 1	Not applicable	\$145 000–\$171 000
SES 2	Not applicable	\$186 000–\$225 000
SES 3	Not applicable	\$234 000–\$294 000
L1	\$55 638–\$112 472	Not applicable
L2	\$118 859–\$125 982	Not applicable
GRAD	\$51 483–\$58 942	Not applicable

## Performance pay

SES employees receive performance pay, while non-SES employees are eligible for the special salary review scheme in line with the enterprise agreement. At 30 June 2011, 37 employees received additional salary under this scheme. Performance pay was paid to SES Band 1, SES Band 2 and SES Band 3 employees as set out in Table 4.10.

Table 4.10: Performance pay

	SES B1	SES B2	SES B3	ACCC
Number who received bonus	28	6	2	36
Total bonus	\$318 930	\$134 434	*	\$491 738
Average bonus	\$11 390	\$22 406	*	\$13 659
Range	\$2 488–\$21 124	\$17 978–\$29 825	*	

\* As the ACCC has only three Senior Executive Service Band 3 employees, these details have been omitted to protect privacy.

## Staff development

The focus for staff development in 2010–11 was on reviewing leadership development at all levels, with the aim of:

- > building the ACCC's management and leadership capability
- > building and refining the core operational skills and knowledge of staff
- > supporting the implementation of organisational policies and practices for the management of staff and staff development.

There was a significant increase in resources in this area, with the ACCC placing a high priority on developing and enhancing capability in leadership and management throughout the organisation. To achieve these goals, the following actions were taken:

- > A Graduate Program Committee was established to formalise and ensure strategic input by senior managers in the graduate program. Issues considered by the Committee include setting guiding principles for the development of the program, providing input into the number and type of graduates recruited and the training provided to them, monitoring and mentoring graduates throughout the program, and providing support for the graduate program consistent with its strategic importance to the ACCC.
- > After reviewing past participation on leadership development programs, SES employees participated on a broader range of programs. Two one-day leadership events were conducted, which all SES officers attended, with leadership issues and styles discussed and key note speakers elaborating on their own experiences. One employee participated on the Australian Public Service Commission's (APSC) 'Leading Australia's future in the Asia-Pacific' program, while others attended other APSC programs.
- > The EL2 Leadership Development Program was conducted three times this year, with a total of 46 people participating. An EL2 Exchange Program was established to provide opportunities for employees to acquire knowledge and experience across a range of business areas. The program will develop their skills to ensure that the ACCC has the capacity to achieve sustained high-quality performance and responsiveness. Nine people participated in the APSC's Career Development Assessment Centres, where they were provided with the opportunity to evaluate and identify their core leadership capabilities through a series of challenging workplace scenarios.
- > The EL1 Leadership Development Program ran four times during the year, with 69 people participating.
- > A new program to develop leadership skills in APS4–6 employees was developed and two pilot programs conducted, with 24 people participating. The program will be reviewed to ensure that it is meeting the needs of participants before it is run more widely throughout the organisation.

Learning and Development employees have been actively involved in providing input into the APSC's *Blueprint for the Reform of Australian Government Administration* through attendance at workshops and providing feedback to the APSC.

The ACCC has continued to provide assistance to state and international agencies. The Basic Investigation Skills course was attended by two employees of the Hong Kong Customs and Excise Department, one from the Japan Fair Trade Commission and one from Northern Territory Consumer Affairs.

Training and development costs in 2010–11 totalled \$3 680 911. This comprised salaries of staff on development activities \$1 202 064; salaries of Learning and Development Unit employees \$547 176; course and conference fees and studies assistance \$1 464 292; cost of staff travel for training purposes \$352 449; and venue hire and various other costs \$114 930. This represents 4.5 per cent of the annual employee benefit.

Table 4.11: Courses, seminars and learning events 2009–10 and 2010–11

Type	Number of attendees	
	2009–10	2010–11
Operational skills and knowledge	1491	535
Legal skills and knowledge	511	232
Applying the Act	330	141
Economics and regulatory	539	314
Leadership, supervision and management	225	890

Employees are eligible for study assistance in the form of study leave and full or partial reimbursement of tuition fees for approved courses of study. The study leave policy and guideline emphasise postgraduate studies. In line with this principle, most assistance was provided for postgraduate studies in economics, law and business.

During the year, 85 employees participated in the study assistance scheme. The ACCC reimbursed \$167 172 in fees to ongoing employees and granted leave with pay for employees to attend lectures and tutorials for the equivalent of \$239 347 in paid time.

## Performance management

The ACCC's performance management framework—emphasising feedback, appraisal and development—provides for biannual professional development plans, a learning needs analysis tool, and performance appraisal criteria for specific appraisal events.

In 2010–11, sessions on performance management and workplace policies were attended by over 700 staff. Twelve workshops for SES and EL2 staff were conducted on 'having tough conversations'.

The PSS Branch assisted managers with 43 individual staff management cases.

## Occupational health and safety

The ACCC's health and safety management processes have been developed in consultation with employees. Designated work groups are established in each office, and a health and safety representative is assigned to each group. These representatives participate in the Health and Safety Committee. Appendix 3 provides information on occupational health and safety for the year.

## Workplace diversity

The ACCC continues to support workplace diversity through its diversity plan. Employment terms and conditions provide for flexible hours of work, a flex-time scheme, part-time work, home-based work, maternity leave, maternal leave, supporting partner's leave and adoption leave.

In addition, leave with or without pay is available for specific events. For example, leave for ceremonial purposes can be granted to employees of Aboriginal or Torres Strait Islander descent; leave for enlistment, peacetime training and deployment can be granted to defence reservists; and leave can be granted to employees for participation in community services and to attend days of cultural or religious significance.

The ACCC employs 12 staff who identify as having a disability, and two indigenous staff members.

**Table 4.12: Workplace diversity profile (as at 30 June 2011)**

	Total staff	Female	ATSI	CLDB	PWD
Senior Executive Service and ACCC/AER members	55	15	0	9	1
EL 2	161	76	0	37	3
EL 1	185	92	0	49	1
APS 6	158	85	2	56	2
APS 5	120	62	0	48	3
APS 4	82	59	0	25	1
APS 3	40	21	0	8	1
APS 2	7	6	0	2	0
APS 1	6	3	0	2	0
GRAD	28	20	0	13	0
Total	842	439	2	249	12
Proportion of total		52%	0.24%	29.6%	1.4%

ATSI = people from Aboriginal or Torres Strait Islander backgrounds; CLDB = self-identified people from culturally or linguistically diverse backgrounds; PWD = people with disabilities. A staff member could be classified under one, two or all three of these headings.

## Changes to disability reporting in annual reports

Since 1994, Commonwealth departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's State of the Service Report and the APS Statistical Bulletin. These reports are available at [www.apsc.gov.au](http://www.apsc.gov.au). From 2010, 11 departments and agencies are no longer required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by a new National Disability Strategy which sets out a ten year national policy framework for improving life for Australians with disability, their families and carers. A high level report to track progress for people with disability at a national level will be produced by the Standing Council on Community, Housing and Disability Services to the Council of Australian Governments and will be available at [www.fahcsia.gov.au](http://www.fahcsia.gov.au). The Social Inclusion Measurement and Reporting Strategy agreed by the government in December 2009 will also include some reporting on disability matters in its regular How Australia is Faring report and, if appropriate, in strategic change indicators in agency annual reports. More detail on social inclusion matters can be found at [www.socialinclusion.gov.au](http://www.socialinclusion.gov.au).

## Assets management

Assets managed by the ACCC include:

- > buildings, including fit-outs and leasehold improvements
- > infrastructure, plant and equipment, including office equipment, furniture and fittings and computer equipment
- > intangibles including computer software.

Activities undertaken in 2010–11 to provide assurance as to the validity and valuation of the assets held included:

- > a stocktake to confirm the location of assets
- > an assessment of impairment in accordance with AASB 136 Impairment of Assets to ensure that the ACCC only carries assets at a value above recoverable amount
- > a fair value assessment to ensure that the assets are recorded at their appropriate value in line with accounting standards.

## Purchasing

ACCC's use of Commonwealth resources and expenditure of public money is subject to the *Financial Management and Accountability Act 1997*.

Responsibility for procurement lies with the financial delegates within business units. They are supported by a central procurement team staffed by qualified procurement officers who provide advice 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 are managed by both the business unit and the central procurement team, ensuring that the ACCC complies with the Commonwealth Procurement Guidelines.

All major contracts entered into in 2010–11 contained provisions, as required, allowing the Auditor-General access to information held by contractors relating to contract performance.

## Tenders

ACCC advertises all tender opportunities through the AusTender website at [www.tenders.gov.au](http://www.tenders.gov.au).

Contracts of \$100 000 or more were reported on the ACCC's website, in line with the Senate Order on Departmental and Agency Contracts. Information on contracts and consultancies awarded by the ACCC is also available on the AusTender website. ACCC's annual procurement plan was published on AusTender by 1 July 2011. No contracts were exempted from the contract reporting requirements in 2010–11.



## Environmental guidelines

### Mandatory environmental reporting

The ACCC operates in line with the Energy Efficiency in Government Operations Policy, reporting annual levels of energy use and emissions, via the Online System for Comprehensive Activity Reporting, to the Department of the Environment, Water, Heritage and the Arts.

To meet the requirements of the National Packaging Covenant, the ACCC also reports on the volume of packaging and paper waste it produces.

### Environmental performance

The ACCC's environment policy reflects the changing attitude of the community towards buying 'green'. ACCC employees are strongly encouraged to consider good environmental performance when purchasing on behalf of the agency.

Environmentally friendly products can assist in the efficient and effective use of energy, water and materials, and therefore lower financial costs. The ACCC places significant emphasis on green products when determining value for money.

### Grant programs

Neither the ACCC nor the AER administers any grant programs.

# Consultants and contracts

## Consultancy contracts

During 2010–11, 99 new consultancy contracts were entered into, involving total actual expenditure of \$5.1 million. In addition, 21 ongoing consultancy contracts were active during the 2010–11 year, involving total actual expenditure of \$1.8 million.

The ACCC engages consultants to provide specialist advice and services to ensure effective program and policy delivery. All proposals to engage consultants required endorsement by the relevant delegate. In selecting consultants, delegates complied with the *Commonwealth Procurement Guidelines*. Consultants were engaged through open public tender, select tender, direct sourcing and a panel of potential suppliers.

**Table 4.13: Consultancy—trend data**

	2010–11 \$m	2009–10 \$m	2008–09 \$m
Number of new consultancies	99	129	127
Expenditure on new consultancies	5.1	8.1	8.9
Number of ongoing consultancies	21	5	20
Expenditure on ongoing consultancies	1.8	1.6	4.4

Note: The above figures are GST inclusive and include all consultancies over \$10 000 as indicated on AusTender.

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 at: [www.tenders.gov.au](http://www.tenders.gov.au).

## Exempt contracts

The ACCC had no exempt contracts for the financial year.

## Financial performance

The ACCC's financial statements, both administered and departmental, are in Part 5 of this report. A financial reporting summary, including information about revenue, expenditure, operating statement and a staffing summary is provided in Part 1. The ACCC's outcome summary in Appendix 1 contains a resource summary.

## Developments that have affected or may affect the ACCC's operations or financial results

No developments since the end of the financial year have affected, or may affect, Outcome 1 operations or financial results.



Part 05  
Financial statements





## INDEPENDENT AUDITOR'S REPORT

To the Treasurer

### Report on the Financial Statements

I have audited the accompanying financial statements of the Australian Competition and Consumer Commission for the year ended 30 June 2011, which comprise: a Statement by the Chairman, Chief Executive Officer and Chief Finance Officer; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Schedule of Asset Additions; Schedule of Administered Items; and Notes to and forming part of the Financial Statements, including a Summary of Significant Accounting Policies.

### *Chief Executive's Responsibility for the Financial Statements*

The Chief Executive of the Australian Competition and Consumer Commission is responsible for the preparation of financial statements that give a true and fair view in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards, and for such internal control as the Chief Executive determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

### *Auditor's Responsibility*

My responsibility is to express an opinion on the financial statements based on my audit. I have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Australian Competition and Consumer Commission's preparation of the financial statements that give a true and fair view 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 Australian Competition and Consumer Commission's internal control. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the Chief Executive of the Australian Competition and Consumer Commission, as well as evaluating the overall presentation of the financial statements.

GPO Box 707 CANBERRA ACT 2601  
19 National Circuit BARTON ACT  
Phone (02) 6203 7300 Fax (02) 6203  
7777

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

### ***Independence***

In conducting my audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

### ***Opinion***

In my opinion, the financial statements of the Australian Competition and Consumer Commission:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Australian Competition and Consumer Commission's financial position as at 30 June 2011 and of its financial performance and cash flows for the year then ended.

### **Report on Other Legal and Regulatory Requirements**

As described in note 22 to the financial statements, the Australian Competition and Consumer Commission has recently become aware there is an increased risk of a breach of section 83 of the Constitution where payments are made from special accounts in circumstances where the payments do not accord with conditions included in the relevant legislation, and has advised that these circumstances will be investigated.

Australian National Audit Office

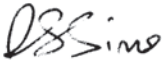


John Jones  
Executive Director  
Delegate of the Auditor-General  
Canberra  
25 August 2011

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**

**STATEMENT BY THE CHAIRMAN, CHIEF EXECUTIVE OFFICER AND CHIEF FINANCE OFFICER**

In our opinion, the attached Financial Statements for the year ended 30 June 2011 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Rod Sims  
Chairman

25 August 2011



Brian Cassidy  
Chief Executive Officer

25 August 2011



Adrian Brocklehurst  
Chief Finance Officer

25 August 2011



**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**STATEMENT OF COMPREHENSIVE INCOME**  
*for the period ended 30 June 2011*

	Notes	2011 \$'000	2010 \$'000
<b>EXPENSES</b>			
Employee benefits	3A	81,586	79,009
Supplier expenses	3B	64,563	62,372
Depreciation and amortisation	3C	4,836	4,145
Finance costs	3D	61	92
Write-down and impairment of assets	3E	23	46
Losses from asset sales	3F	-	-
Other expenses	3G	789	-
<b>Total expenses</b>		<b>151,858</b>	<b>145,664</b>
<b>LESS:</b>			
<b>OWN-SOURCE INCOME</b>			
<b>Own-source revenue</b>			
Sale of goods and rendering of services	4A	602	565
Other	4B	467	293
<b>Total own-source revenue</b>		<b>1,069</b>	<b>858</b>
<b>Gains</b>			
Sale of assets	4C	-	-
Other	4D	107	3,346
<b>Total gains</b>		<b>107</b>	<b>3,346</b>
<b>Total own-source income</b>		<b>1,176</b>	<b>4,204</b>
<b>Net cost of (contribution by) services</b>		<b>150,682</b>	<b>141,460</b>
Revenue from Government	4E	141,342	142,892
<b>Surplus (Deficit) on continuing operations</b>		<b>(9,340)</b>	<b>1,432</b>
<b>OTHER COMPREHENSIVE INCOME</b>			
Changes in asset revaluation reserves		-	-
<b>Total other comprehensive income</b>		<b>-</b>	<b>-</b>
<b>Total comprehensive income (loss) attributable to the Australian Government</b>		<b>(9,340)</b>	<b>1,432</b>

The above statement should be read in conjunction with the accompanying notes.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**BALANCE SHEET**  
*as at 30 June 2011*

	Notes	2011 \$'000	2010 \$'000
<b>ASSETS</b>			
<b>Financial assets</b>			
Cash and cash equivalents	5A	1,626	1,403
Trade and other receivables	5B	51,867	53,908
<b>Total financial assets</b>		<u>53,493</u>	<u>55,311</u>
<b>Non-financial assets</b>			
Leasehold improvements	6A,C	14,236	12,631
Property, plant and equipment	6B,C	7,678	7,722
Intangibles	6D	2,029	2,927
Inventories	6F	28	36
Other	6G	1,313	1,364
<b>Total non-financial assets</b>		<u>25,284</u>	<u>24,680</u>
<b>Total assets</b>		<u><u>78,777</u></u>	<u><u>79,991</u></u>
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	7A	7,236	5,606
Other	7B	11,816	6,505
<b>Total payables</b>		<u>19,052</u>	<u>12,111</u>
<b>Provisions</b>			
Employee provisions	8A	20,063	21,464
Other	8B	1,407	1,361
<b>Total provisions</b>		<u>21,470</u>	<u>22,825</u>
<b>Total Liabilities</b>		<u><u>40,522</u></u>	<u><u>34,936</u></u>
<b>Net assets</b>		<u><u>38,255</u></u>	<u><u>45,055</u></u>
<b>EQUITY</b>			
<b>Parent Entity Interest</b>			
Contributed equity		42,642	40,102
Reserves		3,538	3,538
Retained surplus (accumulated deficit)		(7,925)	1,415
<b>Total Parent Equity Interest</b>		<u>38,255</u>	<u>45,055</u>
<b>Total Equity</b>		<u><u>38,255</u></u>	<u><u>45,055</u></u>

The above statement should be read in conjunction with the accompanying notes.

## Part 05: Financial statements

AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
STATEMENT OF CHANGES IN EQUITY  
for the period ended 30 June 2011

	Retained Earnings		Asset Revaluation Reserves		Contributed Equity/Capital		Total Equity	
	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000
<b>Opening Balance</b>								
Balance carried forward from previous period	1,415	(17)	3,538	3,538	40,102	40,041	45,055	43,562
Adjustment for errors	-	-	-	-	-	-	-	-
Adjustment for changes in accounting policies	-	-	-	-	-	-	-	-
<b>Adjusted Opening Balance</b>	<b>1,415</b>	<b>(17)</b>	<b>3,538</b>	<b>3,538</b>	<b>40,102</b>	<b>40,041</b>	<b>45,055</b>	<b>43,562</b>
<b>Comprehensive income</b>								
Other comprehensive income	-	-	-	-	-	-	-	-
Surplus (Deficit) for the period	(9,340)	1,432	-	-	-	-	(9,340)	1,432
<b>Total comprehensive income</b>	<b>(9,340)</b>	<b>1,432</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(9,340)</b>	<b>1,432</b>
of which:								
Attributable to the Australian Government	(9,340)	1,432	-	-	-	-	(9,340)	1,432
<b>Transactions with Owners</b>								
<b>Distributions to owners</b>								
Appropriation return (FMA Act s32 transfer of appropriation)	-	-	-	-	-	-	-	-
<b>Contributions by Owners</b>								
Appropriation (equity injection)	-	-	-	-	40	61	40	61
Appropriation (Departmental Capital Budget)	-	-	-	-	2,500	-	2,500	-
<b>Sub-total Transactions with Owners</b>	<b>(7,925)</b>	<b>1,415</b>	<b>-</b>	<b>-</b>	<b>2,540</b>	<b>61</b>	<b>2,540</b>	<b>61</b>
<b>Closing Balance as at 30 June</b>	<b>(7,925)</b>	<b>1,415</b>	<b>3,538</b>	<b>3,538</b>	<b>42,642</b>	<b>40,102</b>	<b>38,255</b>	<b>45,055</b>
<b>Closing balance attributable to the Australian Government</b>	<b>(7,925)</b>	<b>1,415</b>	<b>3,538</b>	<b>3,538</b>	<b>42,642</b>	<b>40,102</b>	<b>38,255</b>	<b>45,055</b>

The above statement should be read in conjunction with the accompanying notes.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**CASH FLOW STATEMENT**  
*for the period ended 30 June 2011*

	Notes	2011 \$'000	2010 \$'000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations		146,411	146,287
Goods and services		741	637
Net GST received		6,156	5,709
Other		481	336
<b>Total cash received</b>		<b>153,789</b>	<b>152,969</b>
<b>Cash used</b>			
Employees		(82,862)	(75,503)
Suppliers		(66,548)	(67,281)
Other		(788)	(730)
<b>Total cash used</b>		<b>(150,198)</b>	<b>(143,514)</b>
<b>Net cash from operating activities</b>	9	<b>3,591</b>	<b>9,455</b>
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Proceeds from sales of property, plant and equipment		-	-
<b>Total cash received</b>		<b>-</b>	<b>-</b>
<b>Cash used</b>			
Purchase of property, plant and equipment		(3,846)	(3,503)
Purchase of leasehold improvements		(1,656)	(5,486)
Purchase of intangibles		(366)	(2,923)
<b>Total cash used</b>		<b>(5,868)</b>	<b>(11,912)</b>
<b>Net cash from (used by) investing activities</b>		<b>(5,868)</b>	<b>(11,912)</b>
<b>FINANCING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriation (Departmental Capital Budget)		2,500	2,077
<b>Total cash received</b>		<b>2,500</b>	<b>2,077</b>
<b>Cash used</b>			
Repayment of borrowings		-	-
Other		-	-
<b>Total cash used</b>		<b>-</b>	<b>-</b>
<b>Net cash from financing activities</b>		<b>2,500</b>	<b>2,077</b>
<b>Net increase (decrease) in cash held</b>		<b>223</b>	<b>(380)</b>
Cash and cash equivalents at the beginning of the reporting period		1,403	1,783
<b>Cash and cash equivalents at the end of the reporting period</b>	5A	<b>1,626</b>	<b>1,403</b>

The above statement should be read in conjunction with the accompanying notes.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**SCHEDULE OF COMMITMENTS**  
*as at 30 June 2011*

	2011 \$'000	2010 \$'000
<b>BY TYPE</b>		
<b>Commitments receivable</b>		
Other	685	214
Net GST recoverable on commitments	11,015	8,390
<b>Total commitments receivable</b>	<b>11,700</b>	<b>8,604</b>
<b>Commitments payable</b>		
<b>Other commitments</b>		
Operating leases <sup>1</sup>	(116,733)	(84,651)
Contract for IT services <sup>2</sup>	(480)	(3,872)
Other <sup>3</sup>	(3,956)	(3,766)
GST payable on Commitments	(62)	(19)
<b>Total other commitments</b>	<b>(121,231)</b>	<b>(92,308)</b>
<b>Net commitments by type</b>	<b>(109,531)</b>	<b>(83,704)</b>
<b>BY MATURITY</b>		
<b>Commitments receivable</b>		
One year or less	11,237	1,546
From one to five years	463	3,926
Over five years	-	3,132
<b>Total commitments receivable</b>	<b>11,700</b>	<b>8,604</b>
<b>Commitments payable</b>		
<b>Operating lease commitments</b>		
One year or less	(9,559)	(8,789)
From one to five years	(56,486)	(41,412)
Over five years	(50,688)	(34,450)
<b>Total operating lease commitments</b>	<b>(116,733)</b>	<b>(84,651)</b>
<b>Other commitments</b>		
One year or less	(3,847)	(5,877)
From one to five years	(651)	(1,780)
<b>Total other commitments</b>	<b>(4,498)</b>	<b>(7,657)</b>
<b>Net commitments by maturity</b>	<b>(109,531)</b>	<b>(83,704)</b>

NB: All commitments are GST inclusive where relevant.

<sup>1</sup> Operating leases included are effectively non-cancellable and comprise:

Leases for office accommodation

Lease payments are subject to annual increases of between 3% and 5% per annum. Lease terms are between two and fifteen years with the majority of leases containing an option to renew for a further term of up to ten years.

Agreement for the provision of motor vehicles to senior executive officers

No contingent rentals exist. There are no renewal or purchase options available to the Commission.

<sup>2</sup> Various contracts for Information Technology services

<sup>3</sup> Other commitments mainly include contracts for the provision of consultancy services

The above schedule should be read in conjunction with the accompanying notes.

AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
SCHEDULE OF CONTINGENCIES  
*as at 30 June 2011*

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	2011 \$'000	2010 \$'000
<b>Contingent liabilities</b>		
Claims for damages or costs	-	45
<b>Total contingent liabilities</b>	<u>-</u>	<u>45</u>

Details of each class of contingent liabilities above are disclosed in Note 10: Contingent Liabilities and Assets, along with information on significant remote contingencies and contingencies that cannot be quantified. The Commission has no departmental contingent assets.

The above schedule should be read in conjunction with the accompanying notes.

**Part 05: Financial statements**

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
SCHEDULE OF ASSET ADDITIONS  
for the period ended 30 June 2011**

The following non-financial non-current assets were added in 2010-11:

	Leasehold improvements	Property, plant and equipment	Intangibles	Total
	\$'000	\$'000	\$'000	\$'000
By purchase - appropriation ordinary annual services				
Departmental capital budget	2,500	-	-	2,500
Ordinary operating costs	807	1,661	365	2,833
By purchase - appropriation other services				
Equity Injections	-	-	-	-
By purchase - donated funds	-	-	-	-
By purchase - other	-	-	-	-
Assets received as gifts/donations	-	-	-	-
From acquisition of entities or operations (including restructuring)	-	-	-	-
<b>Total funded additions in the current year</b>	<b>3,307</b>	<b>1,661</b>	<b>365</b>	<b>5,333</b>
<b>Additions recognised in the 2010-11 - to be funded in future years</b>				
Makegood	189	-	-	189
Other	-	-	-	-
<b>Total future years/unfunded additions</b>	<b>189</b>	<b>-</b>	<b>-</b>	<b>189</b>
<b>Total additions</b>	<b>3,496</b>	<b>1,661</b>	<b>365</b>	<b>5,522</b>

The following non-financial non-current assets were added in 2009-10:

	Leasehold improvements	Property, plant and equipment	Intangibles	Total
	\$'000	\$'000	\$'000	\$'000
By purchase - appropriation ordinary annual services				
Ordinary operating costs	-	-	-	-
By purchase - appropriation other services				
Equity Injections	4,957	3,116	2,615	10,688
By purchase - donated funds	-	-	-	-
By purchase - other	-	-	-	-
Assets received as gifts/donations	-	-	-	-
From acquisition of entities or operations (including restructuring)	-	-	-	-
<b>Total funded additions in the current year</b>	<b>4,957</b>	<b>3,116</b>	<b>2,615</b>	<b>10,688</b>
<b>Additions recognised in the 2009-10 - to be funded in future years</b>				
Makegood	-	-	-	-
Other	-	-	-	-
<b>Total future years/unfunded additions</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Total additions</b>	<b>4,957</b>	<b>3,116</b>	<b>2,615</b>	<b>10,688</b>

The above schedule should be read in conjunction with the accompanying notes.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
SCHEDULE OF ADMINISTERED ITEMS**

	Notes	2011 \$'000	2010 \$'000
<b>Income administered on behalf of Government</b> <i>for the period ended 30 June 2011</i>			
<b>Revenue</b>			
<b>Non-taxation revenue</b>			
Fees and fines	14A	<u>43,412</u>	<u>41,564</u>
<b>Total non-taxation revenue</b>		<u>43,412</u>	<u>41,564</u>
<b>Total revenues administered on behalf of Government</b>		<u>43,412</u>	<u>41,564</u>
<b>Gains</b>			
Reversal of previous asset write-downs and impairments	14B	<u>-</u>	<u>19</u>
<b>Total gains administered on behalf of Government</b>		<u>-</u>	<u>19</u>
<b>Total income administered on behalf of Government</b>		<u>43,412</u>	<u>41,583</u>
<b>Expenses administered on behalf of Government</b> <i>for the period ended 30 June 2011</i>			
Write-down and impairment of assets	15	<u>68</u>	<u>1,745</u>
<b>Total expenses administered on behalf of Government</b>		<u>68</u>	<u>1,745</u>
<b>Assets administered on behalf of Government</b> <i>as at 30 June 2011</i>			
<b>Financial Assets</b>			
Cash and cash equivalents	16A	<u>18</u>	<u>61</u>
Receivables	16B	<u>8,943</u>	<u>22,774</u>
<b>Total financial assets</b>		<u>8,961</u>	<u>22,835</u>
<b>Total assets administered on behalf of Government</b>		<u>8,961</u>	<u>22,835</u>
<b>Liabilities administered on behalf of Government</b> <i>as at 30 June 2011</i>			
<b>Payables</b>			
Suppliers	17	<u>-</u>	<u>-</u>
<b>Total payables</b>		<u>-</u>	<u>-</u>
<b>Total liabilities administered on behalf of Government</b>		<u>-</u>	<u>-</u>

This schedule should be read in conjunction with the accompanying notes.



**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**SCHEDULE OF ADMINISTERED ITEMS (continued)**

	Notes	2011 \$'000	2010 \$'000
<b>Administered Cash Flows</b>			
<i>for the year ended 30 June 2011</i>			
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Fines and costs		56,943	21,120
Other fees		232	15
<b>Total cash received</b>		<u>57,175</u>	<u>21,135</u>
<b>Net cash flows from or (used by) operating activities</b>		<u>57,175</u>	<u>21,135</u>
<b>Net increase (decrease) in cash held</b>			
Cash and cash equivalents at the beginning of the reporting period		61	29
Cash to Official Public Account for:			
- Appropriations		(57,218)	(21,103)
<b>Cash and cash equivalents at the end of the reporting period</b>	16A	<u>18</u>	<u>61</u>

This schedule should be read in conjunction with the accompanying notes.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**SCHEDULE OF ADMINISTERED ITEMS (continued)**

	2011 \$'000	2010 \$'000
<b>Administered Contingencies</b> <i>as at 30 June 2011</i>		
<b>Administered contingent assets</b>		
Claims for damages or costs	<u>1,076</u>	<u>1,224</u>
<b>Total administered contingent assets</b>	<u>1,076</u>	<u>1,224</u>

Administered activities conducted by the Commission are limited to the collection of fines, costs and fees levied under the *Competition and Consumer Act*.

Details of each class of administered contingent liabilities and contingent assets above are disclosed in Note 19: Administered Contingent Assets and Liabilities, along with information on significant remote contingencies and contingencies that cannot be quantified. The Commission has no administered commitments or contingent liabilities.

The above schedule should be read in conjunction with the accompanying notes.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**INDEX TO THE NOTES OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2011*

**Note**

- Note 1: Summary of Significant Accounting Policies
- Note 2: Events After the Reporting Period
- Note 3: Expenses
- Note 4: Income
- Note 5: Financial Assets
- Note 6: Non-Financial Assets
- Note 7: Payables
- Note 8: Provisions
- Note 9: Cash Flow Reconciliation
- Note 10: Contingent Liabilities and Assets
- Note 11: Senior Executive Remuneration
- Note 12: Remuneration of Auditors
- Note 13: Financial Instruments
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- Note 20: Administered Financial Instruments
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- Note 24: Reporting of Outcomes
- Note 25: Comprehensive Income (Loss) Attributable to the entity

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2011*

**Note 1: Summary of Significant Accounting Policies**

**1.1 Objectives of the Australian Competition and Consumer Commission (the Commission)**

The Commission is an Australian Government controlled entity. The objectives of the Commission are to:

- promote vigorous, lawful competition and informed markets;
- encourage fair trading, protection of consumers and product safety; and
- regulate national infrastructure services (such as communications, bulk water, energy, rail, airports, post and wheat exports) and other markets where there is limited competition.

The Commission's outcome is lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation, including enforcement, education, price monitoring and determining the terms of access to infrastructure services.

The continued existence of the Commission in its present form and with its present programs is dependent on Government Policy and on continuing appropriations by funding for the Commission's administration and programs.

The Commission's activities contributing towards this outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Commission in its own right. Administered activities involve the management or oversight by the Commission, on behalf of the Government, of items controlled or incurred by the Government.

The Commission does not conduct administered activities, however, fines and penalties collected are returned to the Commonwealth as administered items. Contingent gains are recognised as administered items, and contingent losses are recognised as departmental items.

**1.2 Basis of Preparation of the Financial Statements**

The financial statements are general purpose financial statements and are required by section 49 of the *Financial Management and Accountability Act 1997*.

The financial statements and notes have been prepared in accordance with:

- Finance Minister's Orders (or FMOs) for reporting periods ending on or after 1 July 2010; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets 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 and values are rounded to the nearest thousand dollars unless otherwise specified.

Unless an alternative treatment is specifically required by an accounting standard or the FMOs, assets and liabilities are recognised in the balance sheet when and only when it is probable that future economic benefits will flow to the Commission and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under executor contracts are not recognised unless required by an accounting standard. Liabilities and assets that are unrealised are reported in the schedule of commitments and the schedule of contingencies (other than unquantifiable or remote contingencies, which are reported at Note 10).

Unless an alternative treatment is specifically required by an accounting standard, income and expenses are recognised in the statement of comprehensive income when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

*for the year ended 30 June 2011*

Administered revenues, expenses, assets and liabilities and cash flows reported in the Schedule of Administered Items and related notes are accounted for on the same basis and using the same policies as for departmental items, except where otherwise stated at Note 1.20.

**1.3 Significant Accounting Judgements and Estimates**

In the process of applying the accounting policies listed in this note, the Commission has made the following judgements that have the most significant impact on the amounts recorded in the financial statements:

- The fair value of leasehold improvements has been taken to be the market value of similar properties as determined by an independent valuer.
- The Australian Government shorthand method has been used to estimate the present value of long service leave liabilities.

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 accounting period.

**1.4 Changes in Australian Accounting Standards****Adoption of new Australian Accounting Standard requirements**

No accounting standard has been adopted earlier than the application date as stated in the standard.

No new standards, revised standards, interpretations and amending standards that were issued prior to the signing of the statement by the Chairman, Chief Executive Officer and the Chief Finance Officer and are applicable to the current reporting period had a material financial impact on the Commission and are not expected to have a future material financial impact on the Commission.

**Future Australian Accounting Standard Requirements**

New standards, revised standards, interpretations and amending standards that were issued prior to the signing of the statement by the Chairman, Chief Executive Officer and the Chief Finance Officer and are applicable to the future reporting period are not expected to have a future material financial impact on the Commission.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2011*

**1.5 Revenue**

**Revenue from Government**

Amounts appropriated for departmental outputs for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government, when the Commission gains control of the appropriation, except for certain amounts which relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

\$500,000 has been recognised as appropriation revenue in 2010-11 that was advanced in the 2011-12 Portfolio Budget Statements to cover expenses incurred for previous years' outputs.

Appropriations receivable are recognised at their nominal amounts.

**Resources Received Free of Charge**

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another government agency or authority as a consequence of restructuring of administrative arrangements (refer to Note 1.7).

Resources received free of charge are recorded as either revenue or gains depending on their nature.

**Other types of Revenue**

Revenue from the sale of goods is recognised when:

- The risks and rewards of ownership have been transferred to the buyer;
- The seller retains no managerial involvement nor effective control over the goods;
- The revenue and transaction costs incurred can be reliably measured; and
- It is probable that the economic benefits associated with the transaction will flow to the Commission.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- The probable economic benefits with the transaction will flow to the Commission.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at balance date. Allowances are made when collectability of the debt is no longer probable.

**Parental Leave Payments Scheme**

The entity offsets amounts received under Parental Leave Payments Scheme (for payment to employees) by amounts paid to employees under that scheme, because these transactions are only incidental to the main revenue-generating activities of the entity. Amount received by the entity not yet paid to employees would be presented gross as cash and a liability (payable). The total amount received under this scheme is disclosed as a footnote to the Note 4E: Revenue from Government.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2011*

**1.6 Gains**

**Other Resources Received Free of Charge**

Resources received free of charge are recognised as gains when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Resources received free of charge are recorded as either revenue or gains depending on their nature i.e. Whether they have been generated in the course of the ordinary activities of the Commission.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another government agency or authority as a consequence of a restructuring of administrative arrangements. (Refer to Note 1.7).

**Sale of assets**

Gains from disposal of non-current assets are recognised when control of the asset has passed to the buyer.

**1.7 Transactions with the Government as Owner**

**Equity Injections**

Amounts appropriated which are designated as ‘equity injections’ for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

**Restructuring of Administrative Arrangements**

Net assets received from or relinquished to another Government entity under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

**Other Distributions to Owners**

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2010-11, the Commission made no such distributions.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2011*

**1.8 Employee benefits**

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

**Leave**

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Commission is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, 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 liability for long service leave, as at 30 June 2011, have been calculated using the Australian Government short hand method. The estimate of present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

**Separation and Redundancy**

Provision is made for separation and redundancy benefit payments. The Commission recognises a provision for termination when it has developed a detailed formal plan for the termination and has informed those employees affected that it will carry out the terminations.

**Superannuation**

The Commission's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap) and 27 other superannuation plans.

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap and the other superannuation plans 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 by the Department of Finance and Deregulation as an administered item.

The Commission makes employer contributions to the employees' 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 2011 represents outstanding contributions for the final fortnight of the year.



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**1.9 Leases**

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where an asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

There are currently no finance leases within the Commission.

**1.10 Borrowing costs**

All borrowing costs are expensed as incurred.

**1.11 Cash**

Cash is recognised at its nominal amount. Cash and cash equivalents includes cash on hand, cash held with outsiders, demand deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash to insignificant risk of changes in value.

**1.12 Financial assets**

The Commission classifies its financial assets as loans and receivables.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition. Financial assets are recognised and derecognised upon trade date.

**Effective interest method**

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

Income is recognised on an effective interest rate basis except for financial assets that are recognised at fair value through profit or loss.

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**Loans and receivables**

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Interest is recognised by applying the effective interest rate.

**Impairment of financial assets**

Financial assets are assessed for impairment at the end of each reporting period.

· *Financial assets held at amortised cost* - if there is objective evidence that an impairment loss has been incurred for loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the statement of comprehensive income.

· *Financial assets (held at cost)* - If there is objective evidence that an impairment loss has been incurred the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

**1.13 Financial Liabilities**

Financial liabilities are classified as either financial liabilities at fair value through profit or loss or other financial liabilities.

Financial liabilities are recognised and derecognised upon trade date.

**Financial Liabilities at Fair Value Through Profit or Loss**

Financial liabilities at fair value through profit or loss are initially measured at fair value. Subsequent fair value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

**Other Financial Liabilities**

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs. These liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective yield basis.

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a shorter period.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

**1.14 Contingent Liabilities and Contingent Assets**

Contingent liabilities and contingent assets are not recognised in the balance sheet but are reported in the relevant schedules and 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.

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**1.15 Acquisition of Assets**

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. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor's accounts immediately prior to the restructuring.

**1.16 Property, Plant and Equipment**

**Asset Recognition Threshold**

Purchases of property, plant and equipment are recognised initially at cost in the balance sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by the Commission where there exists an obligation to restore the property to its original condition. These costs are included in the value of the Commission's leasehold improvements with a corresponding provision for the 'makegood' recognised.

**Revaluations**

Fair value of each class of asset are determined as shown below:

<i>Asset Class</i>	<i>Fair value measured at</i>
Leasehold improvements	Depreciated replacement cost
Property, plant and equipment	Market selling price

Following initial recognition at cost, property plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends 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 reverses 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 reverse 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.

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**Depreciation and Amortisation**

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. Leasehold improvements are amortised on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation/amortisation 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 and amortisation rates applying to each class of depreciable asset are based on the useful lives in the table below.

<b>Asset Class</b>	<b>2011</b>	<b>2010</b>
Leasehold improvements	Lesser of the term of the lease or 15 years	Lesser of the term of the lease or 15 years
Furniture and fittings	10 years	10 years
Office equipment	5 years	5 years
Computer hardware	3 to 5 years	3 to 5 years
Computer software	3 to 7 years	3 to 7 years

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 3C: Depreciation and Amortisation.

**Impairment**

All assets were assessed for impairment at 30 June 2011. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the Commission was deprived of the asset, its value in use is taken to be its depreciated replacement cost.

**Derecognition**

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

**1.17 Intangibles**

The Commission's intangibles comprise internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses. These assets are carried at cost above the capitalisation threshold of \$10,000, below this amount they are expensed in the year of purchase.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the Commission's software are 3 years to 7 years. (2009-10: 3 to 7 years).

All software assets were assessed for impairment as at 30 June 2011. There were no indicators of impairment.

**1.18 Inventories**

Inventories (publications) held for sale are valued at the lower of cost or net realisable value. Costs incurred in bringing inventory to its present location and condition relate solely to printing and delivery. These costs are assigned to inventory at purchase cost and recognised on a first-in-first-out basis.

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**1.19 Taxation/ Competitive Neutrality**

The Commission is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Revenues, expenses and assets are recognised net of GST except:

- where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- for receivables and payables.

**Competitive Neutrality**

The Commission provides services on a not-for-profit basis which are not subject to Competitive Neutrality arrangements.

**1.20 Reporting of Administered Activities**

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the schedule of administered items and related notes. There are no administered commitments as at 30 June 2011, nor were there any at 30 June 2010.

Except where otherwise stated below, 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.

**Administered Cash Transfers to and from 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 and Deregulation. 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 statement of cash flows in the schedule of administered items and in the administered reconciliation table in Note 18.

**Revenue**

All administered revenues are revenues relating to the core operating activities performed by the Commission on behalf of the Australian Government.

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 and other revenue are applied when required under the relevant legislation, and are recognised upon payment.

Administered fee revenue is recognised at its nominal amount due less any allowance for bad or doubtful debts. Collectability of debts is reviewed at balance date. Allowances are made when collection of the debt is judged to be less rather than more likely.

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**Note 2: Events After the Reporting Period**

During July and August 2011 Court ordered cost settlements were finalised to the value of \$6.8 million. The financial effect on the Commission's result is an addition to administered revenues and administered receivables of \$6.8 million.

**Note 3: Expenses**

	2011 \$'000	2010 \$'000
<b>Note 3A: Employee Benefits</b>		
Wages and salaries	64,478	59,889
Superannuation:		
Defined contribution plans	4,436	3,749
Defined benefit plans	6,565	6,466
Leave and other entitlements	5,490	8,272
Separation and redundancies	251	253
Other	366	380
<b>Total employee benefits</b>	<b>81,586</b>	<b>79,009</b>
<b>Note 3B: Supplier Expenses</b>		
<b>Goods and services</b>		
Legal expenses	25,348	20,890
Consultants and contracted services	9,491	13,257
Information technology and communications	6,615	6,402
Property operating expenses	3,902	3,922
Travel expenses	3,735	3,313
Employee related expenses	2,366	1,477
Information management expenses	2,323	2,535
Other administration expenses	1,409	1,301
<b>Total goods and services</b>	<b>55,189</b>	<b>53,097</b>
Goods and services are made up of:		
Provision of goods - related entities	-	7
Provision of goods - external parties	2,085	2,332
Rendering of services - related entities	18,234	11,639
Rendering of services - external parties	34,870	39,119
<b>Total goods and services</b>	<b>55,189</b>	<b>53,097</b>
<b>Other supplier expenses</b>		
Operating lease rentals – related entities:		
Minimum lease payments	-	-
Operating lease rentals – external parties:		
Minimum lease payments	9,057	9,053
Workers' compensation premiums	317	222
<b>Total other supplier expenses</b>	<b>9,374</b>	<b>9,275</b>
<b>Total supplier expenses</b>	<b>64,563</b>	<b>62,372</b>

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	2011 \$'000	2010 \$'000
<b>Note 3C: Depreciation and Amortisation</b>		
Depreciation		
Property, plant and equipment	1,688	1,467
<b>Total depreciation</b>	<b>1,688</b>	<b>1,467</b>
Amortisation		
Leasehold improvements	1,888	1,844
Intangibles	1,260	834
<b>Total amortisation</b>	<b>3,148</b>	<b>2,678</b>
<b>Total depreciation and amortisation</b>	<b>4,836</b>	<b>4,145</b>
<b>Note 3D: Finance Costs</b>		
Unwinding of discount	61	92
<b>Total finance costs expense</b>	<b>61</b>	<b>92</b>
<b>Note 3E: Write down and impairment of assets</b>		
Asset write-downs and impairment from:		
Property, plant & equipment	16	3
Leasehold improvements	4	43
Intangibles	3	-
<b>Total write-down and impairment of assets</b>	<b>23</b>	<b>46</b>
<b>Note 3F: Losses from asset sales</b>		
Property, plant and equipment:		
Proceeds from sale	-	-
Carrying value of assets sold	-	-
Leasehold improvements		
Proceeds from sale	-	-
Carrying value of assets sold	-	-
Intangibles		
Proceeds from sale	-	-
Carrying value of assets sold	-	-
<b>Total losses from asset sales</b>	<b>-</b>	<b>-</b>
<b>Note 3G: Other Expenses</b>		
Settlement of litigation	789	-
<b>Total other expense</b>	<b>789</b>	<b>-</b>

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**Note 4: Income**

	2011	2010
	\$'000	\$'000
<b>Note 4A: Sale of goods and rendering of services</b>		
Provision of goods - related entities	-	-
Provision of goods - external parties	2	11
Rendering of services - related entities	224	210
Rendering of services - external parties	376	344
<b>Total sale of goods and rendering of services</b>	<b>602</b>	<b>565</b>
<b>Note: 4B Other Revenue</b>		
Rebates and expense refunds	467	293
Other miscellaneous revenues	-	-
<b>Total other revenue</b>	<b>467</b>	<b>293</b>
<b>Note: 4C Sale of Assets</b>		
Property, plant and equipment:		
Proceeds from sale	-	-
Carrying value of assets sold	-	-
Selling expense	-	-
<b>Net Gains from sale of assets</b>	<b>-</b>	<b>-</b>
<b>Note: 4D Other Gains</b>		
Resources received free of charge	71	71
Gain on payout of make good provision	36	93
Writeback of litigation provision	-	3,182
<b>Total Other Gains</b>	<b>107</b>	<b>3,346</b>
<b>Note 4E: Revenues from Government *</b>		
Appropriations		
Departmental appropriation	141,342	142,892
<b>Total revenues from government</b>	<b>141,342</b>	<b>142,892</b>

\* The entity received \$0 (2010: \$0) under the Paid Parental Leave Scheme.



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**Note 5: Financial Assets**

	2011 \$'000	2010 \$'000
<b>Note 5A: Cash and cash equivalents</b>		
Cash on hand or on deposit	1,626	1,403
<b>Total cash and cash equivalents</b>	<b>1,626</b>	<b>1,403</b>
<b>Note 5B: Trade and other receivables</b>		
<b>Goods and Services:</b>		
Goods and services - related entities	31	307
Goods and services - external parties	4,691	1,372
<b>Total receivables for goods and services</b>	<b>4,722</b>	<b>1,679</b>
<b>Appropriations receivable:</b>		
For existing programs	45,168	50,197
For departmental supplementations	-	-
<b>Total appropriations receivable</b>	<b>45,168</b>	<b>50,197</b>
<b>Other receivables:</b>		
GST receivable from the Australian Taxation Office	1,977	2,032
<b>Total other receivables</b>	<b>1,977</b>	<b>2,032</b>
<b>Total trade and other receivables (gross)</b>	<b>51,867</b>	<b>53,908</b>
Less impairment allowance account:		
Goods and services	-	-
Other	-	-
<b>Total impairment allowance account</b>	<b>-</b>	<b>-</b>
<b>Total trade and other receivables (net)</b>	<b>51,867</b>	<b>53,908</b>
Receivables are expected to be recovered in:		
No more than 12 months	51,867	53,908
More than 12 months	-	-
<b>Total trade and other receivables (net)</b>	<b>51,867</b>	<b>53,908</b>
Receivables are aged as follows:		
Not overdue	51,853	53,837
Overdue by:		
Less than 30 days	9	58
31 to 60 days	3	13
61 to 90 days	-	-
More than 90 days	2	-
<b>Total receivables (gross)</b>	<b>51,867</b>	<b>53,908</b>

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	2011 \$'000	2010 \$'000
The impairment allowance account is aged as follows:		
Not overdue	-	-
Overdue by:		
Less than 30 days	-	-
31 to 60 days	-	-
61 to 90 days	-	-
More than 90 days	-	-
<b>Total impairment allowance account</b>	<b>-</b>	<b>-</b>

**Reconciliation of the impairment allowance account:**

**Movements in relation to 2011**

	Goods and services \$'000	Other receivables \$'000	Total \$'000
<b>Opening balance</b>	-	-	-
Amounts written off	-	-	-
Amounts recovered and reversed	-	-	-
Increase/decrease recognised in net surplus	-	-	-
<b>Closing balance</b>	<b>-</b>	<b>-</b>	<b>-</b>

**Movements in relation to 2010**

	Goods and services \$'000	Other receivables \$'000	Total \$'000
<b>Opening balance</b>	-	-	-
Amounts written off	-	-	-
Amounts recovered and reversed	-	-	-
Increase/decrease recognised in net surplus	-	-	-
<b>Closing balance</b>	<b>-</b>	<b>-</b>	<b>-</b>

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**Note 6: Non-Financial Assets**

	2011 \$'000	2010 \$'000
<b>Note 6A: Leasehold Improvements</b>		
<b>Leasehold improvements</b>		
Fair Value	17,134	14,234
Work in progress	12	-
Less: Accumulated amortisation	(2,910)	(1,603)
Less: Accumulated impairment losses	-	-
<b>Total leasehold improvements</b>	<b>14,236</b>	<b>12,631</b>

\$0 (2010: \$0) of total leasehold improvements refers to special purpose buildings, which may not be disposed of without prior ministerial approval.

No indicators of impairment were found for leasehold improvements.

**Note 6B: Property, Plant and Equipment**

<b>Property, plant and equipment</b>		
Fair Value	10,803	9,200
Less: Accumulated amortisation	(3,125)	(1,478)
Less: Accumulated impairment losses	-	-
<b>Total property, plant and equipment</b>	<b>7,678</b>	<b>7,722</b>

All revaluations are independent and are conducted in accordance with the revaluation policy stated at Note 1.

No indicators of impairment were found for property, plant and equipment. No property, plant and equipment is expected to be sold or disposed within the next 12 months.

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**Note 6C: Reconciliation of the Opening and Closing Balances of Property, Plant & Equipment (2010-11)**

	Leaschold improvements \$'000	Property, plant and equipment \$'000	Total \$'000
<b>As at 1 July 2010</b>			
Gross book value	14,234	9,200	23,434
Accumulated depreciation/amortisation & impairment	(1,603)	(1,478)	(3,081)
<b>Net book value 1 July 2010</b>	<b>12,631</b>	<b>7,722</b>	<b>20,353</b>
Additions *	3,496	1,661	5,157
Revaluations and impairment recognised in other comprehensive income	-	-	-
Impairments recognised in the operating result	-	-	-
Depreciation/amortisation expense	(1,888)	(1,688)	(3,576)
Disposals:			
From disposal of entities or operations (including restructuring)	-	-	-
Other disposals (gross book value)	(584)	(58)	(642)
Other disposals (accumulated depreciation)	581	42	623
<b>Net book value 30 June 2011</b>	<b>14,236</b>	<b>7,678</b>	<b>21,914</b>
<b>Net book value as at 30 June 2011 represented by:</b>			
Gross book value	17,146	10,803	27,949
Accumulated depreciation/amortisation & impairment	(2,910)	(3,125)	(6,035)
	<b>14,236</b>	<b>7,678</b>	<b>21,914</b>

\* Disaggregated additions information is disclosed in the Schedule of Assets Additions

**Part 05: Financial statements**

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**Note 6C (continued): Reconciliation of the Opening and Closing Balances of Property, Plant & Equipment (2009-10)**

	Leasehold improvements \$'000	Property, plant and equipment \$'000	Total \$'000
<b>As at 1 July 2009</b>			
Gross book value	9,561	6,091	15,652
Accumulated depreciation/amortisation and impairment	-	(16)	(16)
<b>Net book value 1 July 2009</b>	<b>9,561</b>	<b>6,075</b>	<b>15,636</b>
Additions *	4,957	3,116	8,073
Revaluations and impairment recognised in other comprehensive income	-	-	-
Impairments recognised in the operating result	-	-	-
Depreciation/amortisation expense	(1,844)	(1,467)	(3,311)
Disposals:			
From disposal of entities or operations (including restructuring)	-	-	-
Other disposals (gross book value)	(284)	(7)	(291)
Other disposals (accumulated depreciation)	241	5	246
<b>Net book value 30 June 2010</b>	<b>12,631</b>	<b>7,722</b>	<b>20,353</b>
<b>Net book value as at 30 June 2010 represented by:</b>			
Gross book value	14,234	9,200	23,434
Accumulated depreciation/amortisation & impairment	(1,603)	(1,478)	(3,081)
	<b>12,631</b>	<b>7,722</b>	<b>20,353</b>

\* Disaggregated additions information is disclosed in the Schedule of Assets Additions

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	2011 \$'000	2010 \$'000
<b>Note 6D: Intangibles</b>		
Computer software:		
Purchased software	5,702	5,397
Internally developed - in use	723	723
Internally developed - in progress	-	-
Accumulated amortisation	(4,396)	(3,193)
Accumulated impairment loss	-	-
<b>Total intangibles (non-current)</b>	<b>2,029</b>	<b>2,927</b>

No indicators of impairment were found for intangible assets.

No intangibles are expected to be sold or disposed within the next 12 months.

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**Note 6E: Reconciliation of the Opening and Closing Balances of Intangibles (2010-11)**

	Computer software internally developed \$'000	Computer software purchased \$'000	Total \$'000
<b>As at 1 July 2010</b>			
Gross book value	723	5,397	6,120
Accumulated amortisation & impairment	(256)	(2,937)	(3,193)
<b>Net book value 1 July 2010</b>	<b>467</b>	<b>2,460</b>	<b>2,927</b>
Additions *	-	365	365
Revaluations and impairment recognised in other comprehensive income	-	-	-
Impairments recognised in the operating result	-	-	-
Depreciation/amortisation expense	(212)	(1,048)	(1,260)
Disposals:			
From disposal of entities or operations (including restructuring)	-	-	-
Other disposals (gross book value)	-	(60)	(60)
Other disposals (accumulated depreciation)	-	57	57
<b>Net book value 30 June 2011</b>	<b>255</b>	<b>1,774</b>	<b>2,029</b>
<b>Net book value as at 30 June 2011 represented by:</b>			
Gross book value	723	5,702	6,425
Accumulated depreciation/amortisation & impairment	(468)	(3,928)	(4,396)
	<b>255</b>	<b>1,774</b>	<b>2,029</b>

\* Disaggregated additions information is disclosed in the Schedule of Assets Additions

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**Note 6E (continued): Reconciliation of the Opening and Closing Balances of Intangibles (2009-10)**

	Computer software internally developed \$'000	Computer software purchased \$'000	Total \$'000
<b>As at 1 July 2009</b>			
Gross book value	502	3,003	3,505
Accumulated depreciation/amortisation and impairment	(89)	(2,271)	(2,360)
<b>Net book value 1 July 2009</b>	<b>413</b>	<b>732</b>	<b>1,145</b>
Additions *	221	2,394	2,615
Revaluations and impairment recognised in other comprehensive income	-	-	-
Impairments recognised in the operating result	-	-	-
Depreciation/amortisation expense	(167)	(666)	(833)
Disposals:			
From disposal of entities or operations (including restructuring)	-	-	-
Other disposals (gross book value)	-	-	-
Other disposals (accumulated depreciation)	-	-	-
<b>Net book value 30 June 2010</b>	<b>467</b>	<b>2,460</b>	<b>2,927</b>
<b>Net book value as at 30 June 2010 represented by:</b>			
Gross book value	723	5,397	6,120
Accumulated depreciation/amortisation & impairment	(256)	(2,937)	(3,193)
	<u>467</u>	<u>2,460</u>	<u>2,927</u>

\* Disaggregated additions information is disclosed in the Schedule of Assets/Additions



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	2011 \$'000	2010 \$'000
<b>Note 6F: Inventories</b>		
Publications held for sale	<u>28</u>	<u>36</u>
<b>Total inventories</b>	<u><u>28</u></u>	<u><u>36</u></u>

No items of inventory were recognised at fair value less costs to sell.  
 All inventory is expected to be sold in the next 12 months.

<b>Note 6G: Other Non-Financial Assets</b>		
Prepayments	<u>1,313</u>	<u>1,364</u>
<b>Total other non-financial assets</b>	<u><u>1,313</u></u>	<u><u>1,364</u></u>

Total other non-financial assets - are expected to be recovered in:

No more than 12 months	<u>1,280</u>	<u>1,362</u>
More than 12 months	<u>33</u>	<u>2</u>
<b>Total other non-financial assets</b>	<u><u>1,313</u></u>	<u><u>1,364</u></u>

No indicators of impairment were found for other non-financial assets.

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**Note 7: Payables**

	2011 \$'000	2010 \$'000
<b>Note: 7A Supplier Payables</b>		
Trade creditors and accruals	7,236	5,606
<b>Total supplier payables</b>	<u>7,236</u>	<u>5,606</u>

Supplier payables are all expected to be settled within 12 months:

Related entities	2,739	1,111
External parties	4,497	4,495
<b>Total supplier payables</b>	<u>7,236</u>	<u>5,606</u>

Settlement is usually made net 30 days.

**Note 7B: Other Payables**

Lease incentives	6,944	2,510
Operating lease payment increases	2,690	2,190
Salaries and wages	1,508	1,214
Unearned revenue	398	333
Superannuation	256	205
Salary sacrifice payable	20	53
<b>Total other payables</b>	<u>11,816</u>	<u>6,505</u>

Total other payables are expected to be settled in:

No more than 12 months	3,094	2,115
More than 12 months	8,722	4,390
<b>Total other payables</b>	<u>11,816</u>	<u>6,505</u>

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**Note 8: Provisions**

	2011	2010
	\$'000	\$'000
<b>Note 8A: Employee Provisions</b>		
Leave	20,063	21,464
Separation and redundancies	-	-
Other	-	-
<b>Total Employee Provisions</b>	<b>20,063</b>	<b>21,464</b>

Employee provisions are expected to be settled in:

No more than 12 months	11,393	7,466
More than 12 months	8,670	13,998
<b>Total Employee Provisions</b>	<b>20,063</b>	<b>21,464</b>

The classification of current includes amounts for which there is not an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of reporting date. Employee provisions expected to be settled in twelve months from the reporting date \$11,393,000 (2010: \$7,466,000), in excess of one year \$8,670,000 (2010: \$13,998,000).

**Note 8B: Other Provisions**

Provision for 'Makegood' on leasehold improvements <sup>1</sup>	1,407	1,361
Provision for Litigation Settlement <sup>2</sup>	-	-
	<b>1,407</b>	<b>1,361</b>

Other provisions are expected to be settled in:

No more than 12 months	-	196
More than 12 months	1,407	1,165
<b>Total Other Provisions</b>	<b>1,407</b>	<b>1,361</b>

	Provision for restoration	Provision for Litigation Settlement	Total
	\$'000	\$'000	\$'000
<b>Carrying amount 1 July 2010</b>	<b>1,361</b>	<b>-</b>	<b>1,361</b>
Additional provisions made	188	-	188
Amounts used	(167)	-	(167)
Amounts reversed	(36)	-	(36)
Unwinding of discount or change in discount rate	61	-	61
<b>Closing balance 30 June 2011</b>	<b>1,407</b>	<b>-</b>	<b>1,407</b>

<sup>1</sup> The Commission has 11 agreements (2010: 12) for the leasing of premises which have provisions requiring it to restate the premises to their original condition at the conclusion of the lease. The Commission has made a provision to reflect the present value of this obligation.

<sup>2</sup> The Commission had provided \$3,913,000 for the future settlement of Litigation settlements, all of which have been settled or released in the 2009-10 period.

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**Note 9: Cash Flow Reconciliation**

	2011 \$'000	2010 \$'000
<b>Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement</b>		
<b>Report cash and cash equivalents as per:</b>		
Cash flow statement	1,626	1,403
Balance Sheet	<u>1,626</u>	<u>1,403</u>
<i>Difference</i>	<u>-</u>	<u>-</u>
<b>Reconciliation of operating result to net cash from operating activities:</b>		
Net cost of services	(150,682)	(141,460)
Add revenue from Government	141,342	142,892
<b>Adjustments for non-cash items</b>		
Depreciation and amortisation	4,836	4,145
Net write down of non-financial assets	23	46
Gain on disposal of assets	-	-
<b>Changes in assets/liabilities</b>		
(Increase) / decrease in appropriation receivable	5,069	3,394
(Increase) / decrease in GST receivable	587	101
(Increase) / decrease in other receivables	(3,043)	(1,309)
(Increase) / decrease in inventories	8	(9)
(Increase) / decrease in prepayments	51	(59)
(Increase) / decrease in other assets	-	-
Increase / (decrease) in employee provisions	(1,057)	2,938
Increase / (decrease) in supplier payables	1,410	328
Increase / (decrease) in prepayments received	66	(1)
Increase / (decrease) in other provisions	47	(3,719)
Increase / (decrease) in other payables	<u>4,934</u>	<u>2,168</u>
<i>Net cash from / (used by) operating activities</i>	<u>3,591</u>	<u>9,455</u>

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**Note 10: Contingent Liabilities and Assets**

	Claims for damages or costs		Total	
	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000
<b>Contingent liabilities</b>				
Balance from previous period	45	313	45	313
New	-	-	-	-
Re-measurement	-	25	-	25
Liabilities recognised	(45)	(144)	(45)	(144)
Obligations expired	-	(149)	-	(149)
<b>Total contingent liabilities</b>	-	45	-	45

**Quantifiable Contingencies**

The Schedule of Contingencies reports contingent liabilities in respect of claims for damages/costs of \$nil (2010: \$44,545). The Commission is expecting to be unsuccessful in 0 matters (2010: 1 matter) before the Courts alleging breaches of the Competition and Consumer Act, although the cases are continuing. The amount represents an estimate of the Commission's liability based on legal advice and the precedents in such cases. The Commission is defending the claims.

**Unquantifiable Contingencies**

As at 30 June 2011, the Commission has 1 matter (2010: 1 matter) before the Courts alleging breaches of the Competition and Consumer Act. In the event of an unfavourable judgment by the court in the other matter, the Commission stands to lose by way of penalties or costs awarded. It is not possible to determine the amount in relation to these matters.

**Remote Contingencies**

As at 30 June 2011, the Commission has 0 matters (2010: 0 matters) before the Courts alleging breaches of the Competition and Consumer Act in respect of which it has received legal advice that there is a remote chance of unfavourable judgments by the court.

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**Note 11: Senior Executive Remuneration**

**Note 11A: Senior Executive Remuneration Expense of the Reporting Period**

	2011	2010
	\$	\$
<b>Short-term employee benefits:</b>		
Salary	8,772,452	8,522,155
Annual leave accrued	569,980	91,218
Performance bonus	488,006	453,099
Other <sup>1</sup>	1,269,783	474,960
<b>Total short-term employee benefits</b>	<u>11,100,221</u>	<u>9,541,432</u>
<b>Post Employment benefits:</b>		
Superannuation (post-employment benefits)	1,471,270	1,283,270
Severance payments	81,052	-
<b>Total post-employment employee benefits</b>	<u>1,552,322</u>	<u>1,283,270</u>
<b>Other long-term benefits:</b>		
Long-service leave	120,373	530,262
<b>Total other long-term benefits</b>	<u>120,373</u>	<u>530,262</u>
<b>Total</b>	<u><u>12,772,916</u></u>	<u><u>11,354,964</u></u>

<sup>1</sup> Includes motor vehicle allowances and other allowances

Note 11A was prepared on an accruals basis so the performance bonus expense disclosed above differs from the cash 'Bonus paid' in Note 11B.

Note 11A excludes acting arrangements and part-year service where remuneration expensed was less than \$150,000.

**Part 05: Financial statements**

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**Note 11B: Average Annual Remuneration Packages and Bonus Paid for Substantive Senior Executives as at the end of the Reporting Period**

	as at 30 June 2011				as at 30 June 2010			
	Fixed Elements and Bonus Paid <sup>1</sup>	Fixed elements		Total	Senior Executives	Fixed elements		Total
		Salary	Allowances			Salary	Allowances	
Total remuneration (including part-time arrangements):								
\$150,000 to \$179,999	28	149,892	18,836	168,728	27	146,496	20,543	167,039
\$180,000 to \$209,999	6	177,617	14,167	191,784	7	177,187	21,190	198,377
\$210,000 to \$239,999	4	207,133	17,083	224,215	3	206,382	20,000	226,382
\$240,000 to \$269,999	2	236,968	10,000	246,968	1	220,783	20,000	240,783
\$270,000 to \$299,999	7	264,200	44,959	309,159	5	250,030	40,059	290,089
\$300,000 to \$329,999	1	293,762	53,121	346,883	2	263,180	51,020	314,200
\$330,000 to \$359,999	1	390,620	117,335	507,955	1	282,192	71,029	353,221
\$480,000 to \$509,999	49				47	375,230	112,715	487,945
<b>Total</b>								

**Notes:**

<sup>1</sup> This table reports on substantive senior executives who are employed by the entity as at the end of the reporting period. Fixed elements are based on the employment agreement of each individual - each row represents an average annualised figure (based on headcount) for the individuals in that remuneration package band (i.e. the 'Total' column).

<sup>2</sup> Represents average actual bonuses paid during the reporting period. The 'Bonus paid' is excluded from the 'Total' calculation, (for the purpose of determining remuneration package bands). The 'Bonus paid' within a particular band may vary between financial years due to factors such as individuals commencing with or leaving the entity during the financial year.

**Variable Elements:**

With the exception of performance bonuses, variable elements are not included in the 'Fixed Elements and Bonus Paid' table above. The following variable elements are available as part of senior executives' remuneration package:

- (a) Performance bonuses:
- Performance bonuses are based on the performance rating of each individual. The maximum bonus that an individual can receive is 10 per cent of his/her base salary;
- (b) On average senior executives are entitled to the following leave entitlements:
  - Annual Leave (AL): entitled to 20 days (2010: 20 days) each full year worked (pro-rata for part-time SES);
  - Personal Leave (PL): entitled to 20 days (2010: 20 days) or part-time equivalent;
  - Long Service Leave (LSL): in accordance with *Long Service Leave (Commonwealth Employees) Act 1976*.
- (c) Senior executives are members of one of the following superannuation funds:
  - Australian Government Employee Superannuation Trust (AGEST): this fund is for senior executives who are employed for a defined period. Employer contribution is set at 9 per cent (2010: 9 per cent). More information on AGEST can be found at <http://www.agesst.com.au>;
  - Commonwealth Superannuation Scheme (CSS): this scheme is closed to new members, and employer contributions currently average 28.3 per cent (2010: 24 per cent) (including productivity component). More information on CSS can be found at <http://www.css.gov.au>;
  - Public Sector Superannuation Scheme (PSS): this scheme is closed to new members, with current employer contributions set at 15.4 per cent (2010: 15.4 per cent) (including productivity component). More information on PSS can be found at <http://www.pss.gov.au>;
  - Public Sector Superannuation Accumulation Plan (PSSAP): employer contribution is set at 15.4 percent (2010: 15.4 per cent), and the fund has been in operation since July 2005. More information on PSSAP can be found at <http://www.pssap.gov.au>; and
  - Other: this is usually for senior executives who have made their own superannuation arrangements (employer contribution are set at 15.4 per cent (2010: 15.4 per cent) this group includes employees who self manage their superannuation.

(d) Variable allowances:

- Variable allowances paid include other travel related allowances

(e) Various salary sacrifice arrangements are available to senior executives including super, motor vehicle and expense payment fringe benefits.

**Note 11C: Other Highly paid Staff**

During the reporting period, there were 3 (2010: 2) employees whose salary plus performance bonus were \$150,000 or more. These employees did not have a role as senior executive and are therefore not disclosed as senior executive in Note 11A and Note 11B.



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**Note 12: Remuneration of Auditors**

Financial statement audit services are provided free of charge to the Commission by the Australian National Audit Office (ANAO).

	2011	2010
	\$	\$
The fair value of audit services provided by the ANAO	<u>71,000</u>	<u>70,740</u>

No other services were provided by the Auditor-General during the reporting period.

**Note 13: Financial Instruments**

	2011	2010
	\$'000	\$'000

**Note 13A: Categories of financial instruments**

**Financial Assets**

Loans and receivables:

Cash and cash equivalents	1,626	1,403
Goods and services receivables	<u>4,722</u>	<u>1,679</u>

<b>Carrying amount of financial assets</b>	<u>6,348</u>	<u>3,082</u>
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**Financial Liabilities**

Other Liabilities:

Payables - suppliers	7,236	5,606
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<b>Carrying amount of financial liabilities</b>	<u>7,236</u>	<u>5,606</u>
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**Note 13B: Net income and expense from financial assets and financial liabilities**

The Commission received \$36,000 (2010: \$0 ) in income and expenses from financial assets and financial liabilities.

**Note 13C: Fair value of financial instruments**

	Carrying amount 2011 \$'000	Fair value 2011 \$'000	Carrying amount 2010 \$'000	Fair value 2010 \$'000
<b>Financial Assets</b>				
Cash and cash equivalents	1,626	1,626	1,403	1,403
Goods and services receivables	4,722	4,722	1,679	1,679
<b>Total</b>	<u>6,348</u>	<u>6,348</u>	<u>3,082</u>	<u>3,082</u>
<b>Financial Liabilities</b>				
Payables - suppliers	7,236	7,236	5,606	5,606
<b>Total</b>	<u>7,236</u>	<u>7,236</u>	<u>5,606</u>	<u>5,606</u>

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**Note 13D: Credit risk**

The Commission is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This amount is equal to the total amount of trade receivables (2011: \$4,722,000 and 2010: \$1,679,000). The Commission has assessed the risk of the default on payment and has allocated \$Nil in 2011 (2010: \$Nil) to an impairment allowance account.

The Commission manages its credit risk by undertaking background and credit checks prior to allowing a debtor relationship. In addition, the Commission has policies and procedures that guide employees debt recovery techniques that are to be applied.

The Commission holds no collateral to mitigate against credit risk.

**Credit quality of financial instruments not past due or individually determined as impaired**

	<b>Not Past Due Nor Impaired 2011 \$'000</b>	<b>Not Past Due Nor Impaired 2010 \$'000</b>	<b>Past due or impaired 2011 \$'000</b>	<b>Past due or impaired 2010 \$'000</b>
<b>Loans and receivables</b>				
Cash and cash equivalents	1,626	1,403	-	-
Goods and services receivables	4,708	1,608	14	71
<b>Total</b>	<b>6,334</b>	<b>3,011</b>	<b>14</b>	<b>71</b>

**Ageing of financial assets that are past due but not impaired for 2011**

	<b>0 to 30 days \$'000</b>	<b>31 to 60 days \$'000</b>	<b>61 to 90 days \$'000</b>	<b>90+ days \$'000</b>	<b>Total \$'000</b>
<b>Loans and receivables</b>					
Goods and services receivables	9	3	-	2	14
<b>Total</b>	<b>9</b>	<b>3</b>	<b>-</b>	<b>2</b>	<b>14</b>

**Ageing of financial assets that are past due but not impaired for 2010**

	<b>0 to 30 days \$'000</b>	<b>31 to 60 days \$'000</b>	<b>61 to 90 days \$'000</b>	<b>90+ days \$'000</b>	<b>Total \$'000</b>
<b>Loans and receivables</b>					
Goods and services receivables	58	13	-	-	71
<b>Total</b>	<b>58</b>	<b>13</b>	<b>-</b>	<b>-</b>	<b>71</b>

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**Note 13E: Liquidity risk**

The Commission's financial liabilities are payables. The exposure to liquidity risk is based on the notion that the Commission will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the Entity (e.g. Advance to the Finance Minister) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

The Commission is appropriated funding from the Australian Government. The Commission manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the Commission has policies in place to ensure timely payment are made when due and has no past experience of default.

**Note 13F: Market risk**

The Commission holds basic financial instruments that do not expose the Commission to certain market risks. The Commission is not exposed to Currency risk, Interest rate risk or Other price risk.

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**Note 14: Income Administered on Behalf of Government**

	2011 \$'000	2010 \$'000
<b>REVENUE</b>		
<b>Non-taxation revenue</b>		
<b>Note 14A: Fees and Fines</b>		
Fines and costs	43,180	41,274
Authorisation fees	121	168
Notifications	79	107
Arbitration fees	32	15
Other	-	-
<b>Total fees and fines</b>	<u>43,412</u>	<u>41,564</u>
<b>GAINS</b>		
<b>Note 14B: Other Gains</b>		
Financial gains	-	19
<b>Total other gains</b>	<u>-</u>	<u>19</u>

**Note 15: Expenses Administered on Behalf of Government**

<b>EXPENSES</b>		
<b>Write-Down and Impairment of Assets</b>		
Asset write-downs and impairments from:		
Impairment of receivables	68	1,745
<b>Total write-down and impairment of assets</b>	<u>68</u>	<u>1,745</u>

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**Note 16: Assets Administered on Behalf of Government**

	2011 \$'000	2010 \$'000
<b>FINANCIAL ASSETS</b>		
<b>Note 16A: Cash and Cash Equivalents</b>		
Cash at bank	18	61
<b>Total cash and cash equivalents</b>	<b>18</b>	<b>61</b>
<b>Note 16B: Receivables</b>		
<b>Other Receivables:</b>		
Fines and costs	12,415	30,361
<b>Total other receivables</b>	<b>12,415</b>	<b>30,361</b>
<b>Total receivables (gross)</b>	<b>12,415</b>	<b>30,361</b>
Less: impairment allowance account		
Fines and costs	(3,472)	(7,587)
<b>Total impairment allowance account</b>	<b>(3,472)</b>	<b>(7,587)</b>
<b>Total receivables (net)</b>	<b>8,943</b>	<b>22,774</b>
Receivables are expected to be recovered in:		
No more than 12 months	8,943	22,774
More than 12 months	-	-
<b>Total receivables (net)</b>	<b>8,943</b>	<b>22,774</b>
Receivables (gross) are aged as follows:		
Current	8,037	21,790
Overdue by:		
Less than 30 days	3	-
31 to 60 days	403	21
61 to 90 days	9	1,970
More than 90 days	3,963	6,580
<b>Total receivables (gross)</b>	<b>12,415</b>	<b>30,361</b>

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	2011 \$'000	2010 \$'000
The impairment allowance account is aged as follows:		
Current	-	-
Overdue by:		
Less than 30 days	-	-
31 to 60 days	-	-
61 to 90 days	-	1,007
More than 90 days	3,472	6,580
<b>Total impairment allowance account</b>	<b>3,472</b>	<b>7,587</b>
<b>Total Assets Administered on Behalf of Government</b>	<b>8,961</b>	<b>22,835</b>

Fines and costs receivables are with entities external to the Australian Government. Usual payment terms are within 30 days.

**Reconciliation of the impairment allowance account:**

**Movements in relation to 2011**

	Goods & services 2011 \$'000	Other receivables 2011 \$'000	Total 2011 \$'000
<b>Opening balance</b>	-	7,587	7,587
Amounts written off	-	(68)	(68)
Amounts recovered and reversed	-	(4,047)	(4,047)
Increase (decrease) recognised in net surplus	-	-	-
<b>Closing balance</b>	-	3,472	3,472

**Movements in relation to 2010**

	Goods and services 2010 \$'000	Other receivables 2010 \$'000	Total 2010 \$'000
<b>Opening balance</b>	-	16,340	16,340
Amounts written off	-	(9,806)	(9,806)
Amounts recovered and reversed	-	(19)	(19)
Increase (decrease) recognised in net surplus	-	1,072	1,072
<b>Closing balance</b>	-	7,587	7,587

**Note 17: Liabilities Administered on Behalf of Government**

	2011 \$'000	2010 \$'000
<b>PAYABLES</b>		
<b>Note 17A: Suppliers</b>		
Trade creditors and accruals	-	-
<b>Total Liabilities Administered on Behalf of Government</b>	<b>-</b>	<b>-</b>

All liabilities are expected to be settled within 12 months of balance date.

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**Note 18: Administered Reconciliation Table**

	2011 \$'000	2010 \$'000
<b>Opening administered assets less administered liabilities as at 1 July</b>	<b>22,835</b>	4,100
<i>Add:</i> Administered income	43,412	41,583
<i>Less:</i> Administered expenses	(68)	(1,745)
Administered transfers to Australian Government	-	-
Transfers to OPA	(57,218)	(21,103)
<b>Closing administered assets less administered liabilities as at 30 June</b>	<b>8,961</b>	22,835

**Note 19: Administered Contingent Assets and Liabilities**

	Claims for damages or costs		Total	
	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000
<b>Contingent assets</b>				
Balance from previous period	1,224	16,711	1,224	16,711
New	66	224	66	224
Re-measurement	-	(8,150)	-	(8,150)
Assets recognised	(214)	(7,095)	(214)	(7,095)
Expired	-	(466)	-	(466)
<b>Total contingent assets</b>	<b>1,076</b>	1,224	<b>1,076</b>	1,224

**Quantifiable Administered Contingencies**

The Schedule of Administered Items reports contingent assets in respect of claims for damages/costs of \$1,076,000 (2010: \$1,224,153). The Commission is expecting to succeed in 4 alleged breaches (2010: 7 alleged breaches) of the Competition and Consumer Act, although the cases are continuing. The estimate is based on legal advice and the precedents in such cases.

**Unquantifiable Administered Contingencies**

As at 30 June 2011, the Commission has 32 matters (2010: 40 matters) considered unquantifiable. In the event of favourable judgment by the court, the Commission stands to gain by way of penalties or costs awarded. It is not possible to determine the amounts in relation to these matters.

**Remote Administered Contingencies**

As at 30 June 2011, the Commission has 0 matters (2010: 0 matters) before the Courts alleging breaches of the Competition and Consumer Act for which it has received legal advice that there is a remote chance of favourable judgment by the court.

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**Note 20: Administered Financial Instruments**

	2011 \$'000	2010 \$'000		
<b>Note 20A: Categories of financial instruments</b>				
<b>Loans and receivables</b>				
Loans and receivables				
Cash and cash equivalents	18	61		
Fines and costs receivable	8,943	22,774		
<b>Carrying amount of financial assets</b>	<b>8,961</b>	<b>22,835</b>		
<b>Financial Liabilities</b>	-	-		
<b>Carrying amount of financial liabilities</b>	-	-		
<b>Note 20B: Net income and expense from financial assets</b>				
<b>Loans and receivables</b>				
Interest revenue	-	-		
Exchange gains/(loss)	-	-		
Impairment	(68)	(1,745)		
Gain/loss on disposal	-	-		
<b>Net gain (loss) loans and receivables</b>	<b>(68)</b>	<b>(1,745)</b>		
<b>Note 20C: Fair value of financial instruments</b>				
	<b>Carrying amount 2011 \$'000</b>	<b>Fair value 2011 \$'000</b>	<b>Carrying amount 2010 \$'000</b>	<b>Fair value 2010 \$'000</b>
<b>Financial Assets</b>				
Cash & cash equivalents	18	18	61	61
Fines and costs receivable	8,943	8,943	22,774	22,774
<b>Total Financial Assets</b>	<b>8,961</b>	<b>8,961</b>	<b>22,835</b>	<b>22,835</b>
<b>Financial Liabilities</b>	-	-	-	-



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for the year ended 30 June 2011

**Note 20D: Credit risk**

The Commission is exposed to minimal credit risk as loans and receivables are cash and receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This amount is equal to the total amount of receivables (2011: \$12,415,000 and 2010: \$30,361,000). The Commission has assessed the risk of the default on payment and has allocated \$3,472,000 in 2011 (2010: \$7,587,000) to an allowance for doubtful debts account.

The Commission holds no collateral to mitigate against credit risk.

**Credit quality of financial instruments not past due or individually determined as impaired**

	Not Past Due Nor Impaired	Not Past Due Nor Impaired	Past due or impaired	Past due or impaired
	2011	2010	2011	2010
	\$'000	\$'000	\$'000	\$'000
<b>Loans and receivables</b>				
Cash and cash equivalents	18	61	-	-
Fines and costs receivable	8,037	21,790	906	984
<b>Total</b>	<b>8,055</b>	<b>21,851</b>	<b>906</b>	<b>984</b>

**Ageing of financial assets that are past due but not impaired for 2011**

	0 to 30 days	31 to 60 days	61 to 90 days	90+ days	Total
	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Loans and receivables</b>					
Fines and costs receivable	3	403	9	491	906
<b>Total</b>	<b>3</b>	<b>403</b>	<b>9</b>	<b>491</b>	<b>906</b>

**Ageing of financial assets that are past due but not impaired for 2010**

	0 to 30 days	31 to 60 days	61 to 90 days	90+ days	Total
	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Loans and receivables</b>					
Fines and costs receivable	-	21	963	-	984
<b>Total</b>	<b>-</b>	<b>21</b>	<b>963</b>	<b>-</b>	<b>984</b>

**Note 20F: Liquidity risk**

The Commission's has no administered financial liabilities are payables. Accordingly the Commission is not exposed to significant liquidity risk.

The Commission's administered activities relate to fines and costs awarded by courts or through agreements. The Commission manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the Commission has policies in place to ensure timely payment are made when due and has no past experience of default.

**Note 20G: Market risk**

The Commission holds basic financial instruments that do not expose the Commission to certain market risks. The Commission is not exposed to 'Currency risk' or 'Other price risk'.

AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
for the period ended 30 June 2011

Note 21: Appropriations

Table A: Annual Appropriations ('Recoverable GST exclusive') 2010-11

	2011 Appropriations							Appropriation applied in 2011 (current and prior years) \$'000	Variance <sup>(d)</sup> \$'000
	Appropriation Act		FMA Act			Total appropriation \$'000			
	Annual Appropriation \$'000	Appropriations reduced <sup>(a)</sup> \$'000	AFM <sup>(b)</sup> \$'000	Section 30 \$'000	Section 31 \$'000		Section 32 \$'000		
<b>DEPARTMENTAL</b>	147,304	-	-	985	2,838	-	151,127	152,454	(1,327)
Ordinary annual services									
Other services	40	-	-	-	-	-	40	-	40
Equity									
Loans	-	-	-	-	-	-	-	-	-
<b>Total departmental</b>	<b>147,344</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>151,167</b>	<b>152,454</b>	<b>(1,287)</b>
<b>ADMINISTERED</b>									
<b>Ordinary annual services</b>									
Administered items	-	-	-	-	-	-	-	-	-
Payments to CAC Act bodies	-	-	-	-	-	-	-	-	-
<b>Other services</b>									
States, ACT, NT and Local government	-	-	-	-	-	-	-	-	-
New administered outcomes	-	-	-	-	-	-	-	-	-
Administered assets and liabilities	-	-	-	-	-	-	-	-	-
Payments to CAC Act bodies	-	-	-	-	-	-	-	-	-
<b>Total administered</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

Notes:

- (a) Appropriations reduced under Appropriation Acts (No. 1.3.5) 2010-11: sections 10, 11, 12 and 15 and under Appropriation Acts (No. 2.4.6) 2010-11: sections 12, 13, 14 and 17. Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament. In 2011, there was no reduction in departmental and non-operating departmental appropriations.
- (b) Advance to the Finance Minister (AFM) - Appropriation Acts (No. 1.3.5) 2010-11: section 13 and Appropriation Acts (No. 2.4.6) 2010-11: section 15.
- (c) In 2010-11, there were no adjustments that met the recognition criteria of a formal addition or reduction in revenue (in accordance with FMO Div 101) but at law the appropriations had not been amended before the end of the reporting period.
- (d) The variance between total annual appropriation available and total appropriation applied in 2011 relates to payments funded from unspent prior year appropriation items.

AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
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Table A (continued): Annual Appropriations ((Recoverable GST exclusive) 2009-10

	2010 Appropriations										Appropriation applied in 2010 (current and prior years) \$'000	Variance (d) \$'000
	Appropriation Act			FMA Act			Total appropriation \$'000					
	Annual Appropriation \$'000	Appropriations reduced <sup>(a)</sup> \$'000	Section 14 (Act No. 1) \$'000	Section 30 \$'000	Section 31 \$'000	Section 32 \$'000						
	AFM <sup>(b)</sup> \$'000											
<b>DEPARTMENTAL</b>												
Ordinary annual services	138,930	-	-	1,153	973	-	141,056				147,384	(6,328)
Other services	61	-	-	-	-	-	61				61	-
Equity	-	-	-	-	-	-	-				-	-
Loans	-	-	-	-	-	-	-				-	-
Previous years' outputs	2,324	-	-	-	-	-	2,324				2,324	-
<b>Total departmental</b>	<b>141,315</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>143,441</b>				<b>149,769</b>	<b>(6,328)</b>
<b>ADMINISTERED</b>												
Ordinary annual services	-	-	-	-	-	-	-				-	-
Administered items	-	-	-	-	-	-	-				-	-
Payments to CAC Act bodies	-	-	-	-	-	-	-				-	-
Other services	-	-	-	-	-	-	-				-	-
States, ACT, NT and Local government	-	-	-	-	-	-	-				-	-
New administered outcomes	-	-	-	-	-	-	-				-	-
Administered assets and liabilities	-	-	-	-	-	-	-				-	-
Payments to CAC Act bodies	-	-	-	-	-	-	-				-	-
<b>Total administered</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>				<b>-</b>	<b>-</b>

Notes:

Appropriations reduced under Appropriation Acts (No. 1,3) 2009-10: sections 10, 11 and 12 and under Appropriation Acts (No. 2,4) 2009-10: sections 13 and 14. Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament. In 2010, there was no reduction in departmental and non-operating departmental appropriations.

(b) Advance to the Finance Minister (AFM) - Appropriation Acts (No. 1,3) 2009-10: section 13 and Appropriation Acts (No. 2,4) 2009-10: section 15.

(c) In 2009-10, there were no adjustments that met the recognition criteria of a formal addition or reduction in revenue (in accordance with FMO Div 10.1) but at law the appropriations had not been amended before the end of the reporting period.

(d) The variance between total annual appropriation available and total appropriation applied in 2011 relates to payments funded from unspent prior year appropriation items.

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**Table B: Unspent Departmental Annual Appropriations ('Recoverable GST exclusive')**

	<b>2011</b>	2010
<b>Authority</b>	<b>\$'000</b>	<b>\$'000</b>
2004/05 - Act 2 - Non Operating - Equity Injection	19,779	19,779
2005/06 - Appropriation Act 1	3,286	3,286
2005/06 - Appropriation Act 3	4,130	4,130
2006/07 - Appropriation Act 1	4,484	4,484
2006/07 - Appropriation Act 3	2,534	2,534
2007/08 - Appropriation Act 3	2,012	4,815
2008/09 - Appropriation Act 1	2,200	2,200
2008/09 - Act 4 - Non Operating - Equity Injection	5,000	5,000
2009/10 - Appropriation Act 3 - Section 31 Receipts	-	7
2010/11 - Appropriation Act 1 Section 31 Receipts	1,204	-
2010/11 - Act 2 - Non Operating - Equity Injection	40	-
<b>Total</b>	<b>44,668</b>	<b>46,235</b>

Note 5B trade and Other Receivables includes \$45,168,314 for Appropriation receivable. This balance includes \$500,000 included in the 2011-12 Budget for prior year 2010-11 outputs funding.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
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**Note 22: Special Accounts**

The Commission has recently become aware that there is an increased risk of non-compliance with Section 83 of the Constitution where payments are made from special appropriations and special accounts in circumstances where the payments do not accord with conditions included in the relevant legislation.

The Commission will investigate these circumstances and any impact on its Special Accounts shown below, seeking legal advice as appropriate.

As at 30 June 2010, the Commission had two special accounts; Other Trust Monies Special Account and Services for other Governments and Non-Agency Bodies Account. Both special accounts were abolished on 2nd June 2011.

The Services for other Governments and Non-Agency Bodies Account had a nil balance was inactive.

The new Special Account - Services for Other Entities and Trust Monies - Australian Competition and Consumer Commission was established on the 17 May 2011 under Section 20 of the FMA Act. The funds held in Other Trust Monies Special Account were transferred to this account.

<b>Other Trust Monies Special Account</b>	<b>2011</b>	<b>2010</b>
	<b>\$'000</b>	<b>\$'000</b>
Legal authority: <i>Financial Management and Accountability Act 1997; s20</i>		
<i>Purpose:</i> for the receipt of monies temporarily held on trust or otherwise for the benefit of another person other than the Australian Government.		
Balance carried forward from previous period	749	52
Other receipts	14	3,727
<b>Total increase</b>	<b>14</b>	<b>3,727</b>
<b>Available for payments</b>	<b>763</b>	<b>3,779</b>
Payments made	708	3,030
Transfer of funds to Services for Other Entities and Trust Monies Account	54	-
<b>Total decrease</b>	<b>763</b>	<b>3,030</b>
<b>Total balance to be carried to the next period</b>	<b>-</b>	<b>749</b>

<b>Services for Other Entities and Trust Monies</b>	<b>2011</b>	<b>2010</b>
	<b>\$'000</b>	<b>\$'000</b>
Legal authority: <i>Financial Management and Accountability Act 1997; s20</i>		
<i>Purpose:</i> The purpose of the account is (a) amounts to be held on trust or otherwise for the benefit of a person other than the Commonwealth; (b) amounts received in the course of the performance of functions that relate to the purposes of the Services for Other Entities and Trust Monies - Australian Competition and Consumer Commission Special Account; (c) amounts received from any person for the purposes of the Services for Other Entities and Trust Monies - Australian Competition and Consumer Commission Special Account; and (d) amounts to be held on trust or otherwise for the benefit of a person other than the Commonwealth.		
Balance carried forward from previous period	-	-
Other receipts	-	-
Transfer of funds from Other Trust Monies Special Account	54	-
<b>Total increase</b>	<b>54</b>	<b>-</b>
<b>Available for payments</b>	<b>54</b>	<b>-</b>
Payments made	-	-
<b>Total decrease</b>	<b>-</b>	<b>-</b>
<b>Total balance to be carried to the next period</b>	<b>54</b>	<b>-</b>

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**Note 23: Compensation and Debt Relief**

<b>Compensation and Debt Relief - Departmental</b>	<b>2011</b>	<b>2010</b>
	<b>\$</b>	<b>\$</b>
No 'Act of Grace' expenses were incurred during the reporting period. (2010: No expenses).	-	-
No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997.(2010: No waiver)	-	-
No payments were provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme during the reporting period. (2010: No payments)	-	-
No ex-gratia payments were provided for during the reporting period. (2010: No payments).	-	-
No payments were provided in special circumstances relating to APS employment pursuant to section 73 of the Public Service Act 1999 (PS Act) during the reporting period. (2010: No payments).	-	-
<b>Compensation and Debt Relief - Administered</b>		
No 'Act of Grace' expenses were incurred during the reporting period. (2010: No expenses).	-	-
No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997.(2010: No waiver)	-	-
No payments were provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme during the reporting period. (2010: No payments)	-	-
No ex-gratia payments were provided for during the reporting period. (2010: No payments).	-	-
No payments were provided in special circumstances relating to APS employment pursuant to section 73 of the Public Service Act 1999 (PS Act) during the reporting period. (2010: No payments).	-	-

**Part 05: Financial statements**

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
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**Note 24: Reporting of Outcomes**

The Commission attributes its outcome between its two output groups on the basis of identifiable actual costs. Shared costs incurred with respect to these output groups are apportioned according to these resulting actual costs. This basis of attribution is consistent with that used for the 2010-11 budget.

**Note 24A: Net Cost of Outcome Delivery**

	Outcome 1		Total	
	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000
<b>Expenses</b>				
Administered	68	1,745	68	1,745
Departmental	151,858	145,664	151,858	145,664
<b>Total expenses</b>	<b>151,926</b>	<b>147,409</b>	<b>151,926</b>	<b>147,409</b>
<b>Income from non-government sector</b>				
Administered	-	-	-	-
Activities subject to cost recoveries	-	-	-	-
Other	-	-	-	-
<b>Total administered</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
Departmental	378	355	378	355
Activities subject to cost recoveries	-	-	-	-
Other	-	-	-	-
<b>Total departmental</b>	<b>378</b>	<b>355</b>	<b>378</b>	<b>355</b>
<b>Total</b>	<b>378</b>	<b>355</b>	<b>378</b>	<b>355</b>
<b>Other own-source income</b>				
Administered	43,412	41,583	43,412	41,583
Departmental	798	3,849	798	3,849
<b>Total</b>	<b>44,210</b>	<b>45,432</b>	<b>44,210</b>	<b>45,432</b>
<b>Net cost/(contribution) of outcome</b>	<b>107,338</b>	<b>101,622</b>	<b>107,338</b>	<b>101,622</b>

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

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Note 24B: Major Classes of Departmental Expenses, Income, Assets and Liabilities by Outcomes

	Outcome 1		Total	
	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000
<b>Departmental expenses</b>				
Employees	81,586	79,009	81,586	79,009
Suppliers	64,563	62,372	64,563	62,372
Depreciation & amortisation	4,836	4,145	4,836	4,145
Finance costs	61	92	61	92
Losses from asset sales	-	-	-	-
Write-down and impairment of assets	23	46	23	46
Other expenses	789	-	789	-
<b>Total</b>	<b>151,858</b>	<b>145,664</b>	<b>151,858</b>	<b>145,664</b>
<b>Departmental income</b>				
Revenue from government	141,342	142,892	141,342	142,892
Sale of goods and services	602	565	602	565
Other income	467	293	467	293
Gains	107	3,346	107	3,346
<b>Total</b>	<b>142,518</b>	<b>147,096</b>	<b>142,518</b>	<b>147,096</b>
<b>Departmental assets</b>				
Cash and cash equivalents	1,626	1,403	1,626	1,403
Trade and other receivables	51,867	53,908	51,867	53,908
Leasehold improvements	14,236	12,631	14,236	12,631
Property, plant and equipment	7,678	7,722	7,678	7,722
Intangibles	2,029	2,927	2,029	2,927
Inventories	28	36	28	36
Other non-financial assets	1,313	1,364	1,313	1,364
<b>Total</b>	<b>78,777</b>	<b>79,991</b>	<b>78,777</b>	<b>79,991</b>
<b>Departmental liabilities</b>				
Suppliers	7,236	5,606	7,236	5,606
Other payables	11,816	6,505	11,816	6,505
Employee provisions	20,063	21,464	20,063	21,464
Other provisions	1,407	1,361	1,407	1,361
<b>Total</b>	<b>40,522</b>	<b>34,936</b>	<b>40,522</b>	<b>34,936</b>

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.



## Part 05: Financial statements

AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
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Note 24C: Major Classes of Administered Expenses, Income, Assets and Liabilities by Outcomes

	Outcome 1		Total
	2011 \$'000	2010 \$'000	
<b>Administered expenses</b>			
Write-down of assets	68	1,745	1,745
<b>Total</b>	<b>68</b>	<b>1,745</b>	<b>1,745</b>
<b>Administered Income</b>			
Fines and costs	43,180	41,274	41,274
Authorisation fees	121	168	168
Other	111	141	141
<b>Total</b>	<b>43,412</b>	<b>41,583</b>	<b>41,583</b>
<b>Administered Assets</b>			
Cash and cash equivalents	18	61	61
Receivables	8,943	22,774	22,774
<b>Total</b>	<b>8,961</b>	<b>22,835</b>	<b>22,835</b>
<b>Administered Liabilities</b>			
Supplier payables	-	-	-
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

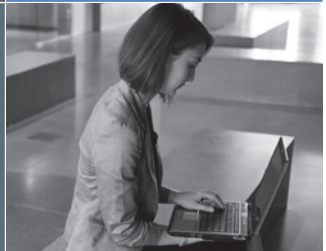
AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
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**Note 25: Comprehensive Income (Loss) Attributable to the entity**

	2011 \$'000	2010 \$'000
<b>Total Comprehensive Income (loss) Attributable to the entity</b>		
Total comprehensive income (loss) attributable to the Australian Government <sup>1</sup>	(9,340)	1,432
Plus: non-appropriated expenses		
Depreciation and amortisation expenses	4,836	-
<b>Total comprehensive income (loss) attributable to the entity</b>	<u>(4,504)</u>	<u>1,432</u>

<sup>1</sup> As per the Statement of Comprehensive Income.





Part 06  
Appendixes



# Appendix 1: Agency and outcome resource statements

This appendix provides details of the ACCC's and AER's resources and expenses in 2010–11, as required by the Joint Committee of Public Accounts and Audit *Requirements for annual reports for departments, executive agencies and FMA Act bodies*.

The tables in this appendix correspond to tables in the portfolio budget statement for 2010–11. They are:

- > the agency resource statement, which provides information about the various funding sources that the ACCC and AER were able to draw on during the year (Table A1.1)
- > a table showing the detail of Budget appropriations and total resourcing for the ACCC's and AER's single outcome (Table A1.2).

Table A1.1: Agency resource statement, 2010–11

		Actual available appropriations for 2010–11 (a) \$'000	Payments made in 2010–11 (b) \$'000	Balance remaining (a-b) \$'000
<b>Ordinary annual services</b>				
<b>Departmental</b>				
Prior year departmental carried forward		21 455	2 810	18 645
Departmental appropriation		147 304	147 304	0
Receipts from other sources (s31)		2 838	1 634	1 204
<b>Total ordinary annual services<sup>1,2</sup></b>	<b>A</b>	<b>171 597</b>	<b>151 748</b>	<b>19 849</b>
<b>Other services</b>				
<b>Departmental non–operating</b>				
Prior year non–operating carried forward		24 779	–	24 779
Equity injections		40	–	40
Previous years' outputs <sup>1</sup>				
<b>Total other services</b>	<b>B</b>	<b>24 819</b>	<b>0</b>	<b>24 819</b>
<b>Special accounts</b>				
Opening balance		749	697	52
Non–appropriation receipts to special accounts		14	12	2
<b>Total special account</b>	<b>C</b>	<b>763</b>	<b>709</b>	<b>54</b>
<b>Total net resourcing for ACCC (A+B+C)</b>		<b>197 179</b>	<b>152 457</b>	<b>44 722</b>

1 Prior years' outputs funding of \$3.962 million included in ordinary annual services

2 Departmental capital budget of \$2.5 million included in ordinary annual services

Table A1.2: Budget expenses and resources for Outcome 1, 2010–11

	Budget expenses 2010–11 \$'000 (a)	Actual expenses 2010–11 \$'000 (b)	Variation 2010–11 \$'000 (a–b)
Program 1.1: Other Departmental			
Departmental expenses			
Ordinary Annual Services (Appropriation Bill No. 1)	147 304	147 304	–
Revenues from independent sources (Section 31)	500	1 634	–1 134
Expenses not requiring Appropriation in the Budget year	–	2 810	–2 810
Previous years' outputs			
<b>Total Expenses for Outcome 1</b>	<b>147 804</b>	<b>151 748</b>	<b>–3 944</b>
Average staffing level (number)	778	746	32



# Appendix 2: Staffing

Table 2.1 and Table 2.2 provide details of the ACCC/AER staffing complement in 2010–11.

**Table A2.1: Ongoing staff employed, including staff on higher duties arrangements by classification and location, 30 June 2011**

Actual Classification	Adelaide	Brisbane	Canberra	Darwin	Hobart	Melbourne	Perth	Sydney	Townsville	TOTAL
SESB3	0	0	3	0	0	0	0	0	0	3
SESB2	0	0	3	0	0	3	0	1	0	7
SESB1	1	2	14	0	0	15	1	3	0	36
EL2	7	6	55	1	1	67	3	21	0	161
EL1	8	9	55	1	0	88	2	21	1	185
APS6	14	10	40	3	1	61	7	22	0	158
APS5	5	6	51	0	2	40	4	12	0	120
APS4	3	3	39	1	0	28	1	7	0	82
APS3	1	3	26	1	0	4	0	5	0	40
APS2	0	0	3	0	0	1	0	2	1	7
APS1	0	1	0	0	0	4	0	1	0	6
GRAD	1	0	5	1	1	13	1	5	1	28
<b>TOTAL</b>	<b>40</b>	<b>40</b>	<b>294</b>	<b>8</b>	<b>5</b>	<b>324</b>	<b>19</b>	<b>100</b>	<b>3</b>	<b>833</b>

Table A2.2: Ongoing and non-ongoing staff employed by gender and location, 30 June 2011

	Adelaide	Brisbane	Canberra	Darwin	Hobart	Melbourne	Perth	Sydney	Townsville	TOTAL
<b>ONGOING</b>										
Female										
Full time	13	15	111	4	1	128	8	40	2	322
Male										
Full time	25	14	99	3	4	152	10	44	1	352
Female										
Part time	1	8	31	0	0	24	0	10	0	74
Male										
Part time	0	0	1	0	0	8	0	2	0	11
<b>NON-ONGOING</b>										
Female										
Full time	0	1	23	1	0	3	1	1	0	30
Male										
Full time	0	0	18	0	0	4	0	1	0	23
Female										
Part time	1	1	4	0	0	2	0	2	0	10
Male										
Part time	0	1	7	0	0	3	0	0	0	11
<b>TOTAL</b>	<b>40</b>	<b>40</b>	<b>294</b>	<b>8</b>	<b>5</b>	<b>324</b>	<b>19</b>	<b>100</b>	<b>3</b>	<b>833</b>

# Appendix 3: Occupational health and safety

## Health and safety management arrangements

The ACCC established its health and safety management arrangements in 2008. These arrangements outline the consultation process, the constitution and operation of the Health and Safety Committee, the establishment of designated work groups, the role and appointment of health and safety representatives, and the workplace health and safety policy.

## Health and safety activities

The ACCC provided a wellbeing program in 2010–11 consisting of influenza vaccinations, the Employee Assistance Program, information seminars, and ergonomic assessments.

The Employee Assistance Program is available to all employees and their families. It includes face-to-face counselling, telephone counselling, online counselling, counselling by email, counselling in relation to mortgage/financial issues, online material and self delivered programs. From December 2010 to February 2011 the Employee Assistance Program was used by 10 new clients, including eight employees and two family members. It also provided mediation services to work groups and assistance to managers.

The ACCC moved premises in Sydney. Employees were provided with ergonomic workstation assessments by qualified occupational therapists following the move.

The ACCC's seasonal influenza vaccinations plan continued, with a total of 335 vaccinations provided to employees in April 2011.

## Health and safety outcomes

### Comcare premiums

The ACCC's Comcare premium for 2009–10 was set at 0.31 per cent of total salaries, compared with the all-agencies combined rate of 1.25 per cent. The premium for 2010–11 has been set at 0.48 per cent of total salaries, compared with the all-agencies combined rate of 1.2 per cent.

### Compensation claims

No new compensation claims were made to Comcare from the ACCC during 2010–11. The ACCC has four open compensation claims.

### Non-compensable cases

The ACCC provides ongoing support for employees suffering from physical and psychological injuries or illnesses, with assistance to ten employees with non-compensable physical injuries or illnesses during 2010–11.

### Incident statistics

Sixteen injuries or incidents were reported to the ACCC in 2010–11. None were considered to require Comcare's involvement, as they did not involve employees sustaining serious personal injuries arising from ACCC activities or from work performed by an employee in connection with those activities (section 68 of the *Occupational Health and Safety Act 1991*).

### Investigations, directions and notices

The ACCC received no notices under sections 29, 46 and 47 of the Occupational Health and Safety Act, and did not conduct any investigations during 2010–11.

# Appendix 4: Freedom of information

The information here meets the requirements of section 8 of the *Freedom of Information Act 1982* (FOI Act). Information previously required to be included in the annual report under section 8 and now required to be published as part of the Information Publication Scheme under Part II of the FOI Act is available on the ACCC's FOI website (<http://foi.accc.gov.au/>).

## Organisation, functions and decision making

The structure, functions, legal basis, organisation and detailed descriptions of the ACCC's exercise of powers are set out throughout this report.

## Categories of documents

The ACCC maintains the following categories of documents:

- > particulars of agreements furnished to the Commissioner of Trade Practices under previous Acts
- > court, adjudication and legal material
- > library material, organisation matters and operational guidelines
- > publications, speeches and media releases
- > personnel records
- > working documents, including staff investigations, reports, analyses, recommendations, correspondence and complaints, public registers and confidential material excluded from public registers
- > ACCC papers relating to parliamentary committees, and questions relating to meetings of the ACCC with government and non-government bodies about new and amending legislation
- > general correspondence with members of the public.

## Arrangements for outside participation

The ACCC's functions bring it into frequent contact with individuals, companies, industry and consumer groups and other government agencies. This allows interested bodies to express their opinions and have them taken into account by the ACCC when it establishes its policies and priorities.

## Arrangements for access to documents

The ACCC maintains 27 statutory and voluntary public registers, including registers of section 87B undertakings, authorisations, notifications, mergers and acquisitions, access to services, product safety conferences, and communications (such as competition notices and access undertakings).

## On the public registers

Most documents on ACCC public registers can be downloaded from the ACCC website at [www.accc.gov.au](http://www.accc.gov.au).

To discuss access or arrange inspection of a register, contact:

The Public Register Officer  
GPO Box 3131  
CANBERRA ACT 2601

Ph: 02 6243 1330

Email: [public.registers@acc.gov.au](mailto:public.registers@acc.gov.au)

## Under the Freedom of Information Act

Members of the public may apply to access ACCC documents that are not generally available by making a request under section 15 of the FOI Act.

For further information, contact:

The Freedom of Information Officer  
Australian Competition and Consumer Commission

GPO Box 3131  
CANBERRA ACT 2601

Ph: 02 6243 1244

Fax: 02 6243 1210

Email: [foi@acc.gov.au](mailto:foi@acc.gov.au)

## Fees and charges

There is no longer an application fee for FOI requests. Charges are generally payable in relation to time spent in searching for and retrieving documents, decision-making time, photocopying and postage. Charges are not payable for accessing your own personal information, and in all other cases the first five hours of decision making time is free. Charges may be remitted, reduced or waived, and are also not payable if the ACCC does not notify you of its access decision in accordance with the timeframes set out in, or as extended under, the FOI Act.

## Review of Freedom of Information decisions

An applicant may apply for internal review of a decision on their FOI request, and may also apply for a review of that decision by the Information Commissioner in addition to or instead of internal review. An applicant may then apply to the Administrative Appeals Tribunal to review certain decisions of the Information Commissioner.

During 2010–11 the ACCC was not:

- > the subject of any report to parliament or finding of administrative deficiency by the Commonwealth Ombudsman
- > approached by the Privacy Commissioner or Australian Human Rights Commission in respect of any complaints
- > subject to any finding of non-compliance with the Legal Services Directions by the Attorney-General.

## Freedom of Information requests and outcomes

In 2010–11, the ACCC received 47 new FOI requests (representing an increase of approx 34 per cent over 2009–10), and 21 FOI requests were carried over from 2009–10. Fees were waived for six requests. In seven cases, access to documents was granted in full. In 19 cases, access to documents was granted in part. In eight cases, access was refused. In 26 cases, the applicant did not proceed with the request. This unusually high level of applications that did not proceed results mainly from one applicant who made multiple applications that were duplicative and when advised of this, did not proceed with many of them. In one case, the request was transferred to another agency. Seven requests will be carried over to 2011–12.

Most often, FOI requests received by the ACCC seek access to documents in relation to complaints made to the ACCC, ACCC investigations, merger reviews and regulatory activities.

The ACCC received five new requests for internal review (no requests for internal review were carried over from 2009–10). In one case the internal review decision was to uphold the initial decision. In one case, the internal reviewer decided to vary the initial decision, to disclose more material. In one case the internal review decision was to grant access in full to the documents sought and in one internal review decision less access was granted. One internal review decision has been carried over to 2011–12.

The Information Commissioner did not notify the ACCC of any review requests received.

No applications for AAT review of an ACCC FOI decision were made in 2010–11.

One FOI application lodged by an applicant with the AAT during 2009–10 was not yet finalised by the AAT in 2010–11. The ACCC was also joined as a party to another FOI application before the AAT for review of a CDPP decision. The ACCC was joined as this application involved a challenge to legal professional privilege over certain documents, where the privilege holder is the ACCC. These two matters were heard concurrently by the AAT in April 2011. The ACCC currently awaits the AAT's decision in relation to both these applications.

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# Appendix 5: Advertising and market research

Under section 311A of the *Commonwealth Electoral Act 1918*, the ACCC must report annually on its use of advertising agencies, market research organisations, polling organisations, direct mail organisations and media advertising agencies.

The reporting requirement seeks information on payments of more than \$11 200, GST inclusive, that the ACCC made to such agencies in 2010–11. As payments were below this threshold, nil payments are reported.



# Appendix 6: Ecologically sustainable development

The ACCC provides an annual report on its environmental performance in accordance with section 516A of the *Environment Protection and Biodiversity Conservation Act 1999*.

The ACCC aims to identify, implement and promote best practice in environmental management and to operate in an ecologically sustainable manner according to the principles of ecologically sustainable development in section 3A of the *Environment Protection and Biodiversity Conservation Act*.

The ACCC has developed a register of potential actions that could help minimise the effect of the ACCC's activities on the environment. The register is regularly reviewed to identify any initiatives that could be implemented. Before implementation, all potential actions are reviewed against the environmental benefit, the cost or saving involved and any system or process that measures the benefit.

## How the ACCC's activities and administration of legislation accord with principles of ecologically sustainable development

The ACCC administers legislation that ensures lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation. At all times, the ACCC pursues its outcome and objectives in a manner that provides the maximum benefit to the maximum number of consumers with the minimum impact on resources and the environment.

## How the ACCC's outcome contributes to ecologically sustainable development

In achieving its outcome, the ACCC employs decision making which, in line with section 3A of the *Environment Protection and Biodiversity Conservation Act*, factors in the economic, environmental, social and equitable considerations over both the short and long term.

## ACCC activities that affect the environment

The ACCC administers legislation that ensures lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation. This brings greater competitiveness, which leads to a more efficient and sustainable market.

The ACCC operates nine offices around Australia.

## 'Green' claims and the Competition and Consumer Act

The ACCC has a strong focus on the widespread practice of 'green washing' – false, misleading or deceptive claims through advertising, marketing or branding whereby businesses misrepresent the environmental effects of their products or services. This type of conduct is illegal under the *Competition and Consumer Act 2010*, and the ACCC takes action in such cases to protect consumers and enforce the law. The Australian Consumer Law provides an incentive for businesses to be careful about making 'green' claims, as it empowers the ACCC to issue substantiation notices requiring them to supply evidence backing up such claims. Penalties under the relevant sections of the Competition and Consumer Act include:

- > injunctions, damages, corrective advertising and other ancillary orders
- > civil pecuniary penalties of up to \$1.1 million
- > non-party redress for consumers who have suffered loss resulting from a misleading environmental claim
- > disqualification of directors and managers for making misleading environmental claims
- > infringement notices and on-the-spot fines
- > public warning notices alerting consumers about misleading claims by specific businesses

See Part 3, page 50 for more information on action the ACCC has taken to ensure environmental claims are accurate.

## Measures taken to minimise the effect of activities on the environment

To reduce the environmental impact of its activities, the ACCC:

- > buys 10 per cent green electricity for the Canberra office
- > procures office equipment with low energy use and power-save modes
- > recycles paper and cardboard products, including pulping classified waste and providing use-again office envelopes
- > uses LCD computer screens
- > uses recycled toner cartridges where possible
- > disposes of toner cartridges through a recycling outlet
- > implements duplex printing and photocopying
- > disposes of mobile phones and batteries through a recycling outlet
- > services vehicles in accordance with manufacturers' specifications
- > uses E10 fuels for fleet vehicles where possible.

The ACCC buys goods and services in accordance with environmental purchasing guides promoted by the Department of Sustainability, Environment, Water, Population and Communities. This ensures that goods and services are:

- > environmentally sound in manufacture
- > reusable or recyclable
- > designed and made for reliability and long life
- > environmentally best practice in energy efficiency and/or energy consumption.

## Mechanisms for reviewing and increasing the effectiveness of measures

The ACCC utilises a process of informal, continuous review of the various measures it employs to reduce the environmental impact of its activities.

Where further efficiencies are identified in the course of business, the ACCC endeavours to put in place the measures required to realise these efficiencies. All of the above is done in accordance with both the applicable funding and environmental guidelines available to the ACCC.

# Appendix 7: Consultancies

The ACCC engages external consultants where specialised expertise is not available in house or where independent evaluation is needed.

The guiding principles applied to all purchasing are:

- > value for money
- > encouraging competition
- > efficient, effective and ethical use of resources
- > accountability and transparency.

This appendix lists all consultancy contracts begun in 2010–11 to the value of \$10 000 or more (including GST).

Supplier name	Contract description	Value	Selection process*	Consultancy reason
Economic Insights Variation	Developing Indicators for the Evaluation of Infrastructure Regulation.	\$13 012	Direct	Need for independent research or assessment
Regulatory Economics Ltd	Developing Indicators for the Evaluation of Infrastructure Regulation'	\$70 000	Direct	Need for independent research or assessment
WaccDorc Pty Ltd—Variation	Economic advice as requested particularly in the area of Finance theory	\$75 000	Direct	Need for independent research or assessment
McGrathNicol	Research into the presence of certain specified terms in standard-form consumer contracts	\$66 374	Panel	Need for independent research or assessment
Berkeley Research—Variation	BHP Billiton and Rio Tinto Ltd—joint venture in Western Australia iron ore production	\$25 000	Direct	Need for independent research or assessment
University of Melbourne—Variation	Finance Theory—Professor Kevin Davis	\$50 000	Direct	Need for independent research or assessment
CBDKM	Development of corporate division client service charter	\$45 000	Direct	Skills currently unavailable

Supplier name	Contract description	Value	Selection process*	Consultancy reason
ACIL Tasman—Variation	Market Analysis Investment Signals and General Equilibrium	\$17 250	Panel	Need for independent research or assessment
Tylogen Pty Ltd	Authorisation A91227 & A91228 lodged by Virgin Blue Airlines Pty Ltd and others.	\$30 000	Direct	Need for independent research or assessment
Frontier Economics—Variation	Swift Australia Pty Ltd's proposed acquisition of Rockdale Beef Pty Ltd	\$40 000	Panel	Need for independent research or assessment
Cordelta—Variation	ACCC Information Technology Security Advisory (ITSA)	\$29 040	Direct	Skills currently unavailable
Nuttall—Variation	Victorian electricity distribution businesses 1/1/ 2011 to 31/12/2015 regulatory control period	\$242 177	Panel	Need for independent research or assessment
Motorbis—Variation	Modelling services VIC electricity distribution network determinations	\$140 400	Panel	Need for independent research or assessment
Resolve Advisors—Variation	Dispute resolution adviser under Part 15C of the National Gas Rules	\$20 000	Direct	Need for independent research or assessment
ACIL Tasman—Variation	Forecast max demand, energy and customer numbers VIC electricity distribution businesses	\$15 000	Panel	Need for independent research or assessment
West Economics Consultants	Authorisation A91227 & A91228 lodged by Virgin Blue Airlines Pty Ltd and others	\$70 000	Direct	Need for independent research or assessment
Risk Management Partners	Risk management and governance advice	\$24 500	Direct	Skills currently unavailable
UoM Commercial Ltd	The AER electricity distribution determinations for Victoria for 2011–15	\$66 000	Direct	Need for independent research or assessment
Tylogen Pty Ltd	Air New Zealand Ltd—proposed acquisition of 14.9 per cent interest in Virgin Blue Holdings Ltd	\$10 000	Direct	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process*	Consultancy reason
Impaq Consulting—Variation	AER's Victorian electricity distribution determinations for the Victorian Network Distribution Service Providers	\$40 095	Panel	Need for independent research or assessment
ABARE	Survey of Irrigators in relation to Water Market Intermediaries	\$45 000	Direct	Skills currently unavailable
Wilson Cook & Co—Variation	AER's Queensland and South Australian gas distribution determinations (2011–16)	\$264 186	Panel	Need for independent research or assessment
Investment Trends	Report on the Wealth Management Industry	\$27 500	Direct	Skills currently unavailable
ACIL Tasman—Variation	Market Analysis Investment Signals and General Equilibrium	\$63 789	Panel	Need for independent research or assessment
Motorbis	Assistance in assessing the Victorian distribution network provider (DNSPs) revised budget and charges applications under the Advanced Metering Infrastructure (AMI) order in council (OIC).	\$26 400	Panel	Need for independent research or assessment
Parsons Brinckerhoff Australia Pty Ltd	Technical and commercial advice in relation to Ergon Energy's application to the Australian Competition Tribunal for a review of the AER's Queensland electricity distribution determination for 2010–15.	\$30 000	Panel	Need for independent research or assessment
ACIL Tasman Pty Ltd	Review of the access arrangement proposal for gas distribution networks in Qld and SA for the period 1/7/11 to 30/6/16	\$83 210	Panel	Need for independent research or assessment
David Mackrell	Scoping inquiry	\$15 000	Direct	Need for independent research or assessment
Energy & Management Services	Reviewing the AER's service target performance incentive scheme model	\$20 000	Direct	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process*	Consultancy reason
Wilson Cook & Co	Review of the AER's access arrangement decision for the JGN NSW Gas Distribution	\$34 463	Panel	Need for independent research or assessment
Parsons Brinckerhoff Australia Pty Ltd	Advice on the level of assurance to be provided on the NSW/ACT DNSPs service standards reporting scheme (STPIS) audit requirements for 2009–10	\$15 000	Panel	Need for independent research or assessment
Access Economics Pty Ltd—Variation	Labour Cost Growth Consultancy Services	\$117 040	Panel	Need for independent research or assessment
SKM	Murray Darling Basin Mapping	\$36 328	Panel	Need for independent research or assessment
ACIL Tasman	NSW Electricity modelling	\$35 750	Panel	Need for independent research or assessment
SIRCA	Engagement of consultants on the RDB dividend drop-off	\$19 964	Direct	Need for independent research or assessment
Monash University—Variation	The provision of scientific advice relating to the basis of claims made by a corporation regarding oxo-degradable plastics	\$21 862	Direct	Need for independent research or assessment
Allegany Consulting	Individual development planning	\$16 885	Direct	Need for independent research or assessment
NERA Australia Pty Ltd	Advice and peer review relating to the economic rationale for backhaul transmission bottlenecks and the number and location of initial points of interconnect to the National Broadband Network	\$65 208	Panel	Need for independent research or assessment
ACIL Tasman	Review of the Amadeus Pipeline	\$19 889	Panel	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process*	Consultancy reason
Wilson Cook & Co	Review of the Amadeus Pipeline	\$20 000	Panel	Need for independent research or assessment
Motorbis Pty Ltd	Review of the compliance work undertaken by AER staff, and advise staff of relevant issues pertaining to the DNSPs tariff submissions that require, if necessary, further investigation	\$35 200	Panel	Need for independent research or assessment
Motorbis Pty Ltd	Aurora Energy Electricity Distribution Determination	\$158 400	Panel	Need for independent research or assessment
McGrath Nicol	Technical advice in relation to the Jemena Gas Networks	\$10 000	Panel	Need for independent research or assessment
Nuttall Consulting	Determinations to be applied to direct control services provided by Aurora Energy in Tasmania 2012–17 regulatory control period	\$411 400	Panel	Need for independent research or assessment
Frontier Economics—Variation	Review and report on Diversified Specifics response to Frontier Economics comments on its demand forecasting model for Australia Posts mail volumes.	\$20 450	Panel	Need for independent research or assessment
Motorbis Pty Ltd	Development of financial templates and models for use by the Victorian DNSPs for their AMI budget and charges applications for the subsequent AMI budget period (2012–15)	\$17 600	Panel	Need for independent research or assessment
NERA Australia Pty Ltd—Variation	Preparation and completion of expert evidence and preparation for appearance at trial	\$193 168	Panel	Need for independent research or assessment
Ernst & Young	Review of AER's transmission roll forward model and post-tax revenue model	\$22 000	Panel	Need for independent research or assessment
University of Melbourne	The AER gas distribution access arrangement reviews for Queensland and South Australia for 2011–16	\$19 800	Direct	Need for independent research or assessment



Supplier name	Contract description	Value	Selection process*	Consultancy reason
Deloitte	Provision of water trading data analysis	\$10 000	Panel	Need for independent research or assessment
Oakvale Capital Limited	Review of DRP report by CEG in respect of JGN merits review	\$83 000	Direct	Need for independent research or assessment
UoM Commercial Ltd	Review of DRP report by CEG in respect of JGN merits review	\$33 000	Direct	Need for independent research or assessment
SIRCA	The appeal of the AER's electricity distribution determinations for Queensland and South Australia for 2010–2015.	\$30 000	Direct	Need for independent research or assessment
Energy & Management Services	Advice on Energy Australia's NSW Solar Bonus Scheme (SBS) cost pass through application	\$15 400	Direct	Need for independent research or assessment
Tanner James Management Consulting	Deliver a P3M3 maturity assessment and capability plan	\$32 670	Direct	Need for independent research or assessment
Nuttall Consulting	Assist the AER's assessment of the Electra Munno-Para contingent project	\$16 400	Panel	Need for independent research or assessment
Leadership Management Australia—Variation	Mentoring Program	\$19 800	Direct	Skills currently unavailable
Frontier Economics	Review of the 2009–10 Water Monitoring Report	\$24 750	Panel	Need for independent research or assessment
Synergy Group Australia Limited	Analysis of options in providing outsourced IT Helpdesk and BAU IT infrastructure support	\$60 192	Direct	Need for independent research or assessment
Motorbis	Modelling Services—review related matters for the Victorian Distribution Network Services Providers	\$26 400	Panel	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process*	Consultancy reason
CECG Pty Ltd	Advice in relation to Consolidated Press Holdings Limited and Illyria Nominees Television Pty Limited—acquisition of shares in Ten Network Holdings Limited	\$23 100	Panel	Need for independent research or assessment
Marsden Jacob Associates	Fixed Line Services Model (FLSM)	\$23 320	Panel	Need for independent research or assessment
Motorbis	Provide assistance to AER staff in reviewing AMI budget and charges template for the 2012–15 AMI budget period	\$35 200	Panel	Need for independent research or assessment
Impaq Consulting—Variation	Assist AER staff in determining if the proposed AMI expenditure for 2012–15 is inside scope	\$160 754	Panel	Need for independent research or assessment
Leadership Management Australia—Variation	Mentoring program for executive level staff	\$19 998	Direct	Need for independent research or assessment
Ernst & Young	Drafting of elements of the Australian Energy Regulator's (AER's) response to the revised access arrangement proposals submitted by the Queensland and South Australian gas Distribution Network Service Providers (DNSPs)	\$118 395	Panel	Need for independent research or assessment
McGrathNicol	Assessment of the appropriateness of forecast corporate income tax and amendments to cost allocation methodology for Aurora	\$35 000	Panel	Need for independent research or assessment
Cadency Consulting	Technical assistance to review Powercor's pass through application	\$45 980	Direct	Need for independent research or assessment
Buchan Consulting Pty Ltd	The provision of a stakeholder survey consultancy 2011	\$36 795	Direct	Need for independent research or assessment
University of Melbourne	AER gas distribution access arrangement reviews (final decision) for QLD and SA for 2011–16	\$33 000	Direct	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process*	Consultancy reason
NICNAS	Expert opinion regarding the Keratin Hair Smoothing treatment	\$10 000	Direct	Skills currently unavailable
Energy Market Consulting Associates	Powerlink transmission determination 2012–17	\$669 280	Panel	Need for independent research or assessment
SKM	Aurora distribution determination 2012–17	\$86 900	Panel	Need for independent research or assessment
Frontier Economics	RIT-T Issues	\$30 000	Panel	Need for independent research or assessment
Data Analysis Australia (DAA)	Advice and Peer review relating to modelling of prices for Domestic Transmission Capacity Service (DTCS)	\$10 120	Panel	Need for independent research or assessment
Clarus Consulting Pty Ltd	CRM and IVR tool selection project	\$38 475	Direct	Need for specialised or independent skills
John V Savage	Assisting the AER on wholesale gas market issues	\$20 000	Direct	Need for independent research or assessment
EcoAssist Pty Ltd	Expert economic advice in relation to the Air Cargo proceedings	\$20 000	Direct	Need for independent research or assessment
Fujitsu Australia Limited	The development of a technology roadmap for the ACCC	\$72 589	Direct	Need for independent research or assessment
Total Decision Support Pty Ltd	Review of Compliance with the <i>Financial Management and Accountability Act 1997</i>	\$11 088	Direct	Need for independent research or assessment
Deloitte	Powerlink and Aurora labour cost escalation services	\$111 320	Panel	Need for independent research or assessment
Frontier Economics	Advice in relation to price equivalence measures proposed by Telstra regarding its SSU	\$19 250	Panel	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process*	Consultancy reason
EMCa	Demand forecasting services for the 2012–17 Powerlink transmission determination	\$128 938	Panel	Need for independent research or assessment
Bruce Farquhar	Expert report on current practices in warning Labels in Product Safety Standards	\$15 000	Direct	Skills currently unavailable
Resolve Advisors	The role of Dispute Resolution Advisor under the National Electricity and Gas Rule	\$242 125	Open	Need specialised or professional skills
Informed Sources—Variation	The provision of retail fuel price data	\$228 012	Open	Need for specialised or independent skills
WaccDorc Pty Ltd	Economic advice as requested particularly in the area of Finance theory	\$37 000	Direct	Need for independent research or assessment

\* Explanation of selection process terms drawn from the *Commonwealth Procurement Guidelines* (December 2008):

**Open Tender:** A procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders. Public tenders are generally sought from the Australian Government AusTender internet site.

**Select tender:** A procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders (this includes tenders submitted through Multi Use Lists). This procurement process may only be used under certain defined circumstances.

**Direct sourcing:** A form of restricted tendering, available only under certain defined circumstances, with a single potential supplier or suppliers being invited to bid because of their unique expertise and/or their special ability to supply the goods and/or services sought.

**Panel:** An arrangement under which a number of suppliers, initially selected through an open tender process, may each supply property or services to an agency as specified in the panel arrangements. Quotes are sought from suppliers that have pre-qualified on the agency panels to supply to the government. This category includes standing offers and supplier panels where the supply of goods and services may be provided for a pre-determined length of time, usually at a pre-arranged price.

# Appendix 8: Competition and Consumer Act and other legislation

## Competition and Consumer Act

The *Competition and Consumer Act 2010* (prior to 1 January 2011 named the *Trade Practices Act 1974*) promotes competition and fair trading and provides for consumer protection to enhance the welfare of Australians.

## Lawful competition and informed markets

**Table A8.1: Parts of the Competition and Consumer Act 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
VII	Authorisations and notifications
XIA	The Competition Code

## Enforcement

The ACCC investigates cartel and other types of anti-competitive conduct—which are illegal for all businesses in Australia.

The ACCC will refer matters involving criminal cartel offences to the Commonwealth Director of Public Prosecutions for possible criminal prosecution.

For individuals, the cartel offence is punishable by imprisonment of up to 10 years and/or fines up to \$220 000 per contravention. Corporations found guilty of a cartel offence may be fined up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater).

In relation to civil cartel prohibitions and other forms of anti-competitive conduct, the ACCC may initiate court action for breaches of the Competition and Consumer Act.

To enforce the civil provisions of the Competition and Consumer Act relating to anti-competitive conduct, the ACCC can seek:

- > declarations of contraventions
- > findings of facts
- > injunctions
- > damages

- > community service orders
- > probation orders
- > disqualification of a person from managing corporations
- > adverse publicity orders
- > corrective advertising, public notices and disclosure
- > penalties of up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater) for companies; and \$500 000 for individuals.

## Fair trading and consumer protection

**Table A8.2: Parts of the Competition and Consumer Act (including the Australian Consumer Law) dealing with fair trading and consumer protection**

Competition and Consumer Act	
IVB	Industry codes of conduct—the franchising, horticulture and oil codes are mandatory codes prescribed under Part IVB
Australian Consumer Law—Schedule 2 to the Competition and Consumer Act	
Chapter 2	General protections: misleading or deceptive conduct; unconscionable conduct; unfair contract terms
Chapter 3	Specific protections: unfair practices: unsolicited supplies; pyramid selling; pricing; consumer guarantees; unsolicited consumer agreements; lay-by agreements; product safety and information
Chapter 4	Criminal conduct relating to fair trading and consumer protection

## Enforcement

To enforce the civil provisions of the Competition and Consumer Act (including the Australian Consumer Law) relating to fair trading and consumer protection, the ACCC can seek:

- > declarations of contraventions
- > findings of facts
- > injunctions
- > damages
- > community service orders
- > probation orders
- > adverse publicity orders
- > corrective advertising, public notices and disclosure
- > penalties of up to \$1.1 million for companies and \$220 000 for individuals.

## Infrastructure services and markets where competition is limited

**Table A8.3: Parts of the Competition and Consumer Act dealing with regulated industries and prices surveillance**

IIIA	Access to the services of essential national infrastructure facilities such as rail tracks and grain facilities
VIIA	Price monitoring and surveillance in relation to industries or businesses as directed by the Australian Government
X	Limited exemptions for anti-competitive conduct in relation to international liner cargo shipping
XIB	Anti-competitive conduct in telecommunications
XIC	Access to services for telecommunications

### Regulation

The ACCC and the AER are responsible for regulating the electricity, gas, telecommunications, and selected parts of the transport sectors and water in the Murray-Darling Basin to ensure efficiency of access to infrastructure and to monitor services and prices.

## Legislative amendments in 2010–11

### Amendments to the Trade Practices Act

*Trade Practices Amendment (Infrastructure Access) Act 2010*—commenced 13 July 2010

*Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*—commenced 13 July 2010

*Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*—commenced 15 December 2010

*Financial Framework Legislation Amendment Act 2010*—commenced 17 December 2010

### Amendments to the Competition and Consumer Act

*Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010*—commenced 15 December 2010

*Statute Law Revision Act 2011*—commenced 22 March 2011

*Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Act 2011*—commenced 12 April 2011

*Acts Interpretation Amendment Act 2011*—commenced 27 June 2011

## Amendments to the Trade Practices Regulations

Trade Practices Amendment Regulations 2010 (No. 3)—commenced 14 July 2010

Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No. 1)—commenced 1 January 2011

Trade Practices Amendment Regulations 2010 (No. 4)—commenced 14 December 2010

## Amendments to the Competition and Consumer Regulations

Competition and Consumer Amendment Regulations 2011 (No. 1)—commenced 12 June 2011

## Regulations introduced under the Trade Practices Act

Trade Practices (Consumer Product Safety Standard) (Motor Vehicle Recovery Straps) Regulations 2010—commenced 10 July 2010

Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No. 1)—commenced 1 January 2011

Trade Practices (Consumer Product Safety Standard—Corded Internal Window Coverings) Regulations 2010—commenced 30 November 2010

## Regulations introduced under the Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010

Trade Practices Amendment (Australian Consumer Law—Corded Internal Window Coverings) Transitional Regulations 2010—commenced 1 January 2011

## Rules registered under the Water Act

Water Charge (Planning and Management Information) Rules 2010—registered 23 July 2010

Water Charge (Infrastructure) Rules 2010—registered 11 January 2011

## Amendments to Rules under the Water Act

Water Charge (Termination Fees) Rules 2009—Amendments registered on 16 February 2011



## Other laws

*Airports Act 1996*—focusing on financial performance and the quality of service at Australia’s privatised airports

*Australian Postal Corporation Act 1989 and Australian Postal Corporation Regulations 1996*—investigation and arbitration of disputes regarding bulk mail services

*Broadcasting Services Act 1992*—covering the payment of television licences

*Copyright Act 1968*—provides for the ACCC to join as a party matters in the Copyright Tribunal relating to copyright licence schemes

*National Broadband Network Companies Act 2011*

National Electricity Law

National Electricity Rules

National Electricity Regulations

National Gas Law

National Gas Rules

National Gas Regulations

National Energy Retail Law\*

National Energy Retail Rules\*

National Energy Retail Regulations\*

*Radiocommunications Act 1992*—implementing a regulatory framework for the radiocommunications industry

*Telecommunications (Consumer Protection and Service Standards) Act 1999*—providing a range of safeguards to consumers of telecommunication services

*Telecommunications Act 1997*—implementing a regulatory framework for the telecommunications industry

*Trade Marks Act 1995*—governing the approval of a trademark that certifies that goods or services are of a particular standard of quality, origin, material or mode of manufacture

*Water Act 2007*—providing for the management of water resources within the Murray-Darling Basin

Water Charge (Termination Fees) Rules 2009

Water Market Rules 2009

Water Charge (Infrastructure) Rules 2010

Water Charge (Planning and Management Information) Rules 2010

*Wheat Export Marketing Act 2008*—provides for the ACCC to assess access undertakings from vertically integrated bulk wheat exporters under Part IIIA of the Competition and Consumer Act

\* intended to take effect from 1 July 2012

# Appendix 9: Information required under the Trade Practices and Competition and Consumer Acts

## 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 Law requires this report to list all such laws.

## Exceptions under Commonwealth, state and territory legislation

Some Commonwealth, state and territory Acts permit conduct that would normally contravene the Competition and Consumer Act. Section 51(1) of the Competition and Consumer Act provides that such conduct may be permitted if it is specifically authorised under those other Acts.

Below is a list of the legislation that allows such conduct or provides for regulations to be made authorising particular conduct. The list includes legislation which the ACCC has been notified of or has otherwise become aware of.

### Commonwealth

*Australian Postal Corporation Act 1989*

*Banking Act 1959*

*Customs Act 1901*

*Financial Sector (Business Transfer and Group Restructure) Act 1999*

*Insurance Act 1973*

*Life Insurance Act 1995*

*Liquid Fuel Emergency Act 1984*

*Northern Territory National Emergency Response Act 2007*

*Payment Systems (Regulation) Act 1998*

*Telecommunications Act 1997*

*Competition and Consumer Act 2010 (sections 173 and 151DA)*

## Australian Capital Territory

*Cemeteries and Crematoria Act 2003*

*Competition Policy Reform Act 1996*

*Financial Management Act 1996*

*Government Procurement Act 2001*

*Health Act 1993*

*Insurance Authority Act 2005*

*Road Transport (Public Passenger Services) Act 2001*

*Territory Records Act 2001*

*Racing Act 1999*

## New South Wales

*Australian Jockey and Sydney Turf Clubs Merger Act 2010*

*Australian Jockey Club Act 2008*

*Casino Control Regulation 2009*

*Coal Industry Act 2001*

*Competition Policy Review (New South Wales) Act 1995*

*Competition Policy Review (New South Wales) Regulation 2008*

*Competition Policy Review (New South Wales) Savings and Transitional Regulation 1996*

*Gaming Machines Act 2001*

*Health Services Act 1997*

*Hunter Water Act 1991*

*Industrial Relations (Ethical Clothing Trades) Act 2001*

*Industrial Relations Act 1996*

*James Hardie Former Subsidiaries (Winding up and Administration) Act 2005*

*Liquor Act 2007*

*Major Events Act 2009*

*National Broadband Network Co-ordinator Act 2010*

*NSW Self Insurance Corporation Act 2004*

*Poultry Meat Industry Act 1986*

*Protection of the Environment Operations Act 1997*

*Racing Administration Act 1998*

*Rice Marketing Act 1983*

*Thoroughbred Racing Act 1996*

*Totalizator Act 1997*

*Wine Grapes Marketing Board (Reconstitution) Act 2003*

## Northern Territory

*Competition Policy Reform (Northern Territory) Act 1996*

*Consumer Affairs and Fair Trading Act 1990*

*Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations 1996*

*Electricity Reform Act 2000*

*Liquor Act 1978*

*Water Supply and Sewerage Act 2000*

## Queensland

*Chicken Meat Industry Committee Act 1976*

*Competition Policy Reform (Queensland) Act 1996*

*Gladstone Power Station Agreement Act 1993*

*Sugar Industry Act 1999*

*Transport Operations (Passenger Transport) Act 1994*

## South Australia

*Authorised Betting Operations Act 2000*

*Authorised Betting Operations Regulations 2001*

*Cooper Basin (Ratification) Act 1975*

*Industries Development Act 1941*

*Competition Policy Reform Act*

*Roxby Downs (Indenture Ratification) Act 1982*

## Tasmania

*Competition Policy Reform (Tasmania) Act 1996*

*Electricity Supply Industry Act 1995*

*Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*

## Victoria

*Competition Policy Reform (Victoria) Act 1995*

*Electricity Industry (Residual Provisions) Act 1993*

*Gambling Regulation Act 2003*

*Gas Industry (Residual Provisions) Act 1994*

*Health Services Act 1988*

*Legal Profession Act 2004*

*Liquor Control Reform Act 1998*

*Outworkers (Improved Protection) Act 2003*

*Owner Drivers and Forestry Contractors Act 2005*

*State Owned Enterprises Act 1992*

*Water Industry Act 1994*

## Western Australia

*Competition Policy Reform (Western Australia) Act 1996*

*Electricity Corporations Act 2005*

Electricity Industry (Wholesale Electricity Market) Regulations 2004

*Electricity Industry Act 2004*

*Electricity Coordination Act 1994*

*North West Gas Development (Woodside) Agreement Act 1979*

*Owners-Drivers (Contracts and Disputes) Act 2007*

## Section 171(3) reporting requirements

### Time taken to make final determinations and decisions

#### Final determinations on access disputes under section 44V

The ACCC did not issue any final determinations on access disputes in 2010–11.

#### Decisions on access undertaking applications and access code applications

##### *Rail*

The ACCC accepted an access undertaking from ARTC in relation to the Hunter Valley rail network on 29 June 2011. ARTC formally lodged this version of the undertaking with the ACCC on 23 June 2011.

The ARTC had submitted a prior undertaking on 7 September 2010, which the ACCC had consulted on and issued a Position Paper, and on which the ARTC had requested two 'clock stoppers', or extensions of the statutory timeframe. That application was subsequently withdrawn and replaced by the 23 June version. See page 106 for further details.

##### *Wheat export marketing arrangements*

The ACCC accepted an access undertaking under section 44ZZA of the CCA from GrainCorp on 22 June 2011. GrainCorp formally lodged this version of the undertaking with the ACCC on 20 June 2011.

GrainCorp had submitted a prior undertaking on 22 September 2010 as amended on 31 January 2011, which the ACCC had consulted on and issued a draft amendment notice and explanatory statement, and on which GrainCorp had requested a 'clock stopper', or extension of the statutory timeframe. The undertaking lodged on 20 June 2011 was provided in response to an amendment notice given to GrainCorp by the ACCC pursuant to s. 44ZZAAA(1) of the CCA.

## The time taken to make decisions on applications under subsection 44PA(1)

Nil decisions in 2010–11.

## Notices under sections 155 and 155A

During 2010–11 the ACCC issued 268 notices under section 155.

The change on 1 January 2011 from the *Trade Practices Act 1974* to the *Competition and Consumer Act 2010* requires three categories of notices for consumer protection conduct:

- > Where the ACCC is investigating conduct before 1 January 2011 for possible breaches of provisions of the consumer protection provisions of the Trade Practices Act that were repealed on 1 January 2011, the section 155 notice must be issued under the Trade Practices Act pursuant to the transitional provision contained in item 6 Schedule 7 to the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010* (Cth).
- > Where the ACCC is investigating conduct after 1 January 2011 for possible breaches of the new Australian Consumer Law, the section 155 notice must be issued under the Competition and Consumer Act.
- > Where the ACCC is investigating conduct believed to have taken place both before and after 1 January 2011 for possible breaches of the consumer protection provisions of the Trade Practices Act that were repealed on 1 January 2011 and the new Australian Consumer Law, two section 155 notices are required, with one issued under the Trade Practices Act, pursuant to the transitional provision, and one issued under the Competition and Consumer Act, although the ACCC's practice is to combine both notices into the one document.

From 1 January 2011, all notices issued for restrictive trade practices conduct are issued under the Competition and Consumer Act.

The ACCC did not issue any notices under section 155A during 2010–11.

## General description of matters for which notices were given

During 2010–11 the ACCC issued 268 notices under section 155.

The notices issued in 2010–11 were as follows:

### *Notices issued under the Trade Practices Act 1974*

- > 83 notices under section 155(1)(a) and (b) (requiring the addressee to furnish information in writing and to produce documents)
- > 16 notices under section 155(1)(b) (requiring the addressee to produce documents)
- > 36 notices under section 155(1)(c) (requiring the addressee to appear in person and give evidence).

### *Notices issued under the Competition and Consumer Act 2010*

- > 55 notices under section 155(1)(a) and (b) (requiring the addressee to furnish information in writing and to produce documents)
- > 21 notices under section 155(1)(b) (requiring the addressee to produce documents)
- > Nine notices under section 155(1)(c) (requiring the addressee to appear in person and give evidence).

## Notices issued under both the Trade Practices Act 1974 and the Competition and Consumer Act 2010

- > 24 notices under section 155(1)(a) and (b) (requiring the addressee to furnish information in writing and to produce documents).
- > Seven notices under section 155(1)(b) (requiring the addressee to produce documents).
- > 17 notices under section 155(1)(c) (requiring the addressee to appear in person and give evidence).

Notices were issued in the course of investigations into conduct potentially in contravention of restrictive trade practices provisions, unconscionable conduct provisions, industry codes and consumer protection provisions of the *Trade Practices Act 1974* and/or the *Competition and Consumer Act 2010*.

## Challenges to the validity of notices

### *AGL Energy Limited v Samuel & ACCC*

Commenced: 9 December 2010

Ongoing

Federal Court, Adelaide

On 9 December 2010, AGL Energy Limited commenced proceedings seeking to set aside a section 155(1)(a) and (b) notice issued to AGL by the Chairman of the ACCC.

## Notices issued under section 155AAA of the Trade Practices Act

The ACCC issued two notices under section 155AAA of the *Trade Practices Act 1974* (authorising the addressee to disclose protected information) during 2010–11:

- > On 22 July 2010 the Chairman issued an Authorisation pursuant to section 155AAA of the Trade Practices Act allowing the disclosure of protected information to the Australian Securities and Investments Commission.
- > On 10 August 2010 the Chairman issued an Authorisation pursuant to section 155AAA of the Trade Practices Act allowing the disclosure of protected information to the New Zealand Commerce Commission.

## Search warrants issued or signed

No search warrants were issued by a judge under section 135Z or signed by a judge under section 136.

Four search warrants were issued by a magistrate under section 154X or signed by a magistrate under section 154Y.

## General description of the nature of the matters in respect of which the search warrants were issued or signed

The search warrants were issued in relation to alleged contraventions of the Act.

## Challenges to the validity of search warrants

No such proceedings have been brought.

## Entry to premises

There were no entries onto premises under section 133B or 133C, Division 6 of Part XI or Part XID.

## Intervention in proceedings

Under section 157B of the *Copyright Act 1968*, the ACCC may become a party to a reference or application before the Copyright Tribunal.

The ACCC became a party to the Phonographic Performance Company of Australia's (PPCA) reference of its fitness class tariff to the Tribunal in May 2007.

The Tribunal conducted hearings between March and July 2009 and handed down its decision on 17 May 2010, determining that an appropriate rate was \$15 per class (prior to which the rate had been 94.6 cents per class).

Following that decision one of the respondents, Fitness Australia, appealed the decision to the Full Court of the Federal Court. The ACCC elected not to participate in the appeal. The Full Court of the Federal Court later found, in its 13 December 2010 decision, that the original Copyright Tribunal decision failed on natural justice grounds and remitted the matter back to the Copyright Tribunal.



# Appendix 10: Undertakings accepted and infringement notices issued in 2010–11

## Competition and Consumer Act section 87B undertakings

### Fair trading and consumer protection

ANE Furniture Pty Ltd, Canberra 2 July 2010

Ray White (Real Estate) Pty Ltd, Brisbane 8 July 2010

State Solar Services Pty Ltd, Brisbane 27 July 2010

Queensland Solar Systems Pty Ltd, Brisbane 27 July 2010

Intervest Global Live Pty Ltd, Brisbane 27 July 2010

Fitness First Australia Pty Ltd, Sydney 5 August 2010

LG Electronics Australia Pty Ltd, Sydney 15 September 2010

Big City Promotions, Perth 16 September 2010

Bronze Swan Pty Ltd, Sydney 6 October 2010

Australian Health & Nutrition Association Ltd t/a Sanitarium, Perth 10 December 2010

M Webster Holdings Pty Ltd t/a David Lawrence, Jigsaw, Marcs, Brisbane 22 December 2010

National Foods Limited, Canberra 22 December 2010

Power Balance Australia Pty Ltd, Canberra 22 December 2010

Dell Australia Pty Ltd, Sydney 23 December 2010

Hamanth Ravi (Bajaria Global Pty Ltd), Perth 21 December 2010

Fantastic Holdings Limited, Melbourne 21 December 2010

Optus Mobile Pty Ltd, Sydney 6 January 2011

Global Enterprises (Qld) Pty Ltd, Melbourne 14 January 2011

Patterson Cheney Pty Ltd, Melbourne 10 March 2011

Prime Fuel Distributors, Brisbane 30 March 2011

## Lawful competition and informed markets

OzTAM Pty Ltd & Ors, Sydney 9 September 2010

Resmed Asia Pacific Limited, Brisbane 22 September 2010

SVPAD Services Limited, Sydney 18 October 2010

West Coast Liquor Merchants WA Pty Ltd, Perth 21 December 2010

Pinard Pty Ltd, Perth 21 December 2010

Cellsan Pty Ltd, Perth 21 December 2010

My Liquor Pty Ltd, Perth 21 December 2010

Catimist Pty Ltd, Perth 21 December 2010

Kalbarri Holdings Pty Ltd, Perth 21 December 2010

Raincroft Holdings Pty Ltd, Perth 21 December 2010

Breakspear Nominees Pty Ltd, Perth 21 December 2010

Warehouse Liquor WA Pty Ltd, Perth 21 Decemebr 2010

Kelly Bros Investments Pty Ltd, Perth 21 December 2010

Galdan Investments Pty Ltd, Brisbane 21 January 2011

Dragon Alliance South Pacific Pty Ltd, Melbourne 24 February 2011

Supabarn Supermarkets Pty Ltd, Canberra 2 May 2011

## Infringement notices paid

ACA Constructions Pty Ltd

Alex Naoumidis t/a Café Essen

M Webster Holdings Pty Ltd t/a Jigsaw

M Webster Holdings Pty Ltd t/a Marcs

M Webster Holdings Pty Ltd t/a David Lawrence

Bajaria Global Pty Ltd

Dodo Australia Pty Ltd (four notices issued)

Patterson Cheney Pty Ltd (two notices issued)

Prime Fuel Distributors Pty Ltd trading as Speedway Mt Pritchard

Prime Fuel Distributors Pty Ltd trading as Speedway Meadows

Singtel Optus Pty Ltd (West Australian Newspaper advertisement)

Singtel Optus Pty Ltd (OK Magazine advertisement)

Singtel Optus Pty Ltd (Good Weekend advertisement)

Singtel Optus Pty Ltd (New Weekly advertisement)

Singtel Optus Pty Ltd (Sunday Times advertisement 22–25 July)

Singtel Optus Pty Ltd (Sunday Times advertisement 4 July)

Singtel Optus Pty Ltd (Sunday Times 4 July \$450 advertisement)

Singtel Optus Pty Ltd (Optus “Yes” August Catalogue advertisement)  
Singtel Optus Pty Ltd (Optus “Yes” August Catalogue Max Cap advertisement)  
Singtel Optus Pty Ltd (Optus “Yes” August Catalogue \$19 Cap advertisement)  
Singtel Optus Pty Ltd (*Sunday Telegraph* 1–4 July \$59 Max cap advertisement)  
Singtel Optus Pty Ltd (*Sunday Telegraph* 2–4 July \$450 advertisement)  
Singtel Optus Pty Ltd (*Sunday Herald-Sun* 3–4 July \$59 Max Cap advertisement)  
Singtel Optus Pty Ltd (*Sunday Herald-Sun* 4 July \$450 advertisement)  
Singtel Optus Pty Ltd (17 July *Good Weekend* \$59 Max Cap ad)  
Singtel Optus Pty Ltd (17 July *Good Weekend* \$450 ad)  
Singtel Optus Pty Ltd (24 July 2010, *Advertiser*, \$49 MaxCap ad)  
Singtel Optus Pty Ltd (24 July 2010, *Courier Mail*, \$49 MaxCap ad)  
Singtel Optus Pty Ltd (28 July 2010, *Daily Telegraph*, \$49 MaxCap ad) Singtel Optus Pty Ltd (28 July 2010, *Herald Sun*, \$49 MaxCap ad)  
Singtel Optus Pty Ltd (9 July 2010, *Herald Sun* (Life Section), \$59 MaxCap)  
Singtel Optus Pty Ltd (9 July 2010, *Herald Sun* (Life Section), \$450 Optus2AnyOne calls)  
Singtel Optus Pty Ltd (23 July 2010, *Hobart Mercury*, \$49 MaxCap)  
Singtel Optus Pty Ltd (24 July 2010, *Illawarra Mercury*, \$49 MaxCap)  
Singtel Optus Pty Ltd (24 July 2010, *Newcastle Herald*, \$49 MaxCap)  
Singtel Optus Pty Ltd (26 July 2010, SMH, \$49 MaxCap)  
Singtel Optus Pty Ltd (25 July 2010, *Sunday Telegraph*, \$49 MaxCap)  
Armastore Pty Ltd (Harvey Norman WA franchisees)  
Ellicom Pty Ltd (Harvey Norman WA franchisees)  
Avitmont Pty Ltd (Harvey Norman WA franchisees)  
Kenstore Pty Ltd (Harvey Norman WA Franchisees)  
CW Superstore Pty Ltd (Harvey Norman WA franchisees)  
Midlander Pty Ltd (Harvey Norman WA franchisees)

## Water Act section 163 undertakings

Murray Irrigation Limited, 27 July 2010  
Murrumbidgee Irrigation Limited, 13 September 2010

## Water Act section 156 infringement notices

Murrumbidgee Irrigation Limited, 14 September 2010  
Murrumbidgee Irrigation Limited, 14 September 2010  
Murrumbidgee Irrigation Limited, 14 September 2010

# Appendix 11: Litigation matters, review proceedings and tribunal proceedings in 2010–11

## ACCC

### Litigation concluded in 2010–11

#### Lawful competition and informed markets

##### *APRIL International Marketing Services Australia*

Commenced 6 December 2006

Concluded 25 February 2011

Federal Court Sydney

##### *IGC Dorel*

Commenced 22 July 2010

Concluded 30 November 2010

Federal Court Adelaide

##### *Black and White Cabs Pty Ltd*

Commenced 6 August 2010

Concluded 3 November 2010

Federal Court Melbourne

##### *Cabcharge Australia Ltd*

Commenced 24 June 2009

Concluded 24 September 2010

Federal Court Melbourne

##### *Baxter Healthcare Pty Ltd*

Commenced 1 November 2002

Concluded 26 August 2010

Federal Court Sydney

##### *Japan Airlines International Co Ltd*

Commenced 17 May 2010

Concluded 11 April 2011

Federal Court Sydney

## Consumer Protection and Fair Trading

### *Darryl Peter Jones*

Commenced 24 February 2010  
Concluded 11 February 2011  
Federal Court Brisbane

### *Philip James Robinson*

Commenced 14 May 2010  
Concluded 17 January 2011  
Federal Court Adelaide

### *Le Sands Restaurant & Le Sands Café T/A Signature Brasserie*

Commenced 6 September 2010  
Concluded 8 February 2011  
Federal Court Sydney

### *Singtel Optus (Unlimited)*

Commenced 3 June 2010  
Concluded 11 February 2011  
Federal Court Melbourne

### *Boost Tel Pty Ltd & Anor*

Commenced 24 July 2009  
Concluded 22 July 2010  
Federal Court Perth

### *PB Supplies Pty Ltd*

Commenced 24 May 2009  
Concluded 26 July 2010  
Federal Court Sydney

### *Panasonic Australia*

Commenced 16 March 2010  
Concluded 19 May 2010  
Federal Court Adelaide

### *Alvaton Holdings Pty Ltd*

Commenced 26 March 2010  
Concluded 21 July 2010  
Federal Court Perth

### *Jetplace Pty Ltd & Ors*

Commenced 4 November 2009  
Concluded 21 July 2010  
Federal Court Perth

### *Telstra Corporation*

Commenced 19 March 2009  
Concluded 23 August 2010  
Federal Court Melbourne

### *Auscha Corp & Anor*

Commenced 2 July 2010  
Concluded 15 October 2010

Federal Court Sydney

*Helmos (George's Bar & Grill)*

Commenced 6 September 2010

Concluded 2 November 2010

Federal Court Sydney

*Steersons Steakhouse (Gourmet Goodies)*

Commenced 6 September 2010

Concluded 2 November 2010

Federal Court Sydney

*Goody Environment Pty Ltd*

Commenced 2 July 2010

Concluded 20 December 2010

Federal Court Adelaide

*C.I. & Co Pty Ltd & Ors*

Commenced 23 September 2010

Concluded 23 December 2010

Federal Court Perth

*Dimmeys Stores Pty Ltd*

Commenced 10 November 2010

Concluded 8 April 2011

Federal Court Melbourne

*Yellow Page Marketing*

Commenced 4 November 2010

Concluded 12 April 2011

Federal Court Melbourne

*Smash Enterprises Pty Ltd*

Commenced 14 December 2010

Concluded 14 April 2011

Federal Court Melbourne

*Gwyneth Graham*

Commenced 13 January 2011

Concluded 21 April 2011

Federal Court Perth

*MSY Technology Pty Ltd*

Commenced 28 October 2010

Concluded 2 May 2011

Federal Court Sydney

*Global One Mobile Entertainment Ltd*

Commenced 20 October 2010

Concluded 15 June 2011

Federal Court Sydney

*Marksun Australia*

Commenced 24 December 2010

Concluded 23 June 2011

Federal Court Perth

## Other proceedings

### *Allergy Pathway (Contempt)*

Commenced 2 June 2010

Concluded 30 May 2011

Federal Court Melbourne

### *Darryl Peter Jones (Contempt)*

Commenced 28 May 2010

Concluded 29 November 2010

Full Federal Court

### *Global Green Plan (Contempt)*

Commenced 11 April 2011

Concluded 25 May 2011

Federal Court Sydney

### *Global Green Plan (87B breach)*

Commenced 2 June 2010

Concluded 29 September 2010

Federal Court Sydney

### *Alignity Consulting and Compas Contract*

Commenced 17 May 2010

Concluded 21 June 2011

Federal Court Canberra

## Litigation continuing at the end of 2010–11

### Lawful competition and informed markets

#### *Air New Zealand Limited*

Commenced 12 May 2010

Federal Court Sydney

#### *ANZ Banking Corporation*

Commenced 25 July 2007

Federal Court Brisbane

#### *Cathay Pacific Airways Ltd*

Commenced 30 April 2009

Federal Court Sydney

#### *Cement Australia*

Commenced 12 September 2008

Federal Court Brisbane

#### *Emirates*

Commenced 18 August 2009

Federal Court Sydney

#### *Korean Air Lines Co Ltd*

Commenced 5 March 2010

Federal Court Sydney

*Link Solutions Pty Ltd & Ors*

Commenced 17 September 2008

Federal Court Sydney

*Malaysian Airline System Berhad & Anor*

Commenced 9 April 2010

Federal Court Sydney

*P.T. Garuda Indonesia Ltd (Federal Court)*

Commenced 2 September 2009

Federal Court Sydney

*P.T. Garuda Indonesia Ltd (High Court)*

Commenced 9 June 2010

Federal Court Sydney

*Prysmian Cavi e Sistemi*

Commenced 23 September 2009

Federal Court Adelaide

*Singapore Airlines Cargo Pty Ltd*

Commenced 22 December 2008

Federal Court Sydney

*TF Woollam & Son Pty Ltd and Ors*

Commenced 18 September 2009

Federal Court Brisbane

*Thai Airways International PCL*

Commenced 28 October 2009

Federal Court Sydney

## Consumer protection and fair trading

*Adepto Publications*

Commenced 30 September 2010

Federal Court Sydney

*Advanced Medical Institute Pty Ltd and Ors*

Commenced 21 December 2010

Federal Court Melbourne

*EDirect (2010)*

Commenced 18 August 2010

Federal Court Darwin

*EDirect Pty Ltd (2011)*

Commenced 30 March 2011

Federal Court Darwin

*European City Guide SL*

Commenced 18 August 2009

Federal Court Sydney

*Halkalia Pty Ltd*

Commenced 6 May 2011



Federal Court Melbourne

*L Jutsen & Ors (TVI Express)*

Commenced 14 May 2010

Federal Court Sydney

*Pippa Sampson*

Commenced 6 October 2010

Federal Court Melbourne

*Sensaslim Australia*

Commenced 16 June 2011

Federal Court Sydney

*Singtel Optus (Think Bigger)*

Commenced 6 September 2010

Federal Court Sydney

*SMS Global Pty Ltd*

Commenced 22 December 2010

Federal Court Melbourne

*Sontax Australia*

Commenced 17 June 2011

Federal Court Melbourne

*The Jewellery Group*

Commenced 5 April 2011

Federal Court Adelaide

*TPG Internet Pty Ltd*

Commenced 16 December 2010

Federal Court Melbourne

*Trading Post & Google*

Commenced 11 July 2007

Federal Court Sydney

*Willesee Healthcare Pty Ltd*

Commenced 8 October 2010

Federal Court Melbourne

*The Jewellery Group*

Commenced 5 April 2011

Federal Court Adelaide

*Halkalia Pty Ltd*

Commenced 6 May 2011

Federal Court Melbourne

*Sensaslim Australia*

Commenced 16 June 2011

Federal Court Sydney

*Sontax Australia*

Commenced 17 June 2011

Federal Court Melbourne

## Other proceedings

### *Allphones (Contempt)*

Commenced 17 August 2009

Federal Court Sydney

### *Jutsen (Contempt)*

Commenced 7 July 2010

Federal Court Sydney

### *AGL Energy Ltd v Graeme Samuel & Anor (respondent)*

Commenced 9 December 2010

Federal Court Sydney

### *A.I Constructions*

Commenced 8 June 2011

Federal Court Canberra

### *MSY Technology Pty Ltd (2011)*

Commenced 5 May 2011

Federal Court Sydney

### *Sensaslim Australia*

Commenced 16 June 2011

Federal Court Sydney

## Public warning notices

Halkalia Pty Ltd, whose sole director is Mr Norman Lander

Heartlink Enterprises Pty Ltd, whose sole director is Ms Vicki Lowe, and

National Semi Retired Group Pty Ltd, whose sole director is Mr Laurence Hann

Issued: 6 October 2010

The ACCC suspects the companies breached the Act by making misleading claims about the income from the delivery of Heartlink-branded household products to independent supermarkets.

The 'part-time delivery business' is advertised in rural, regional and metropolitan newspapers and claims earnings of between \$900 and \$2000 per week for between three to four days' work. Complainants had paid between \$10 000 and \$30 000 for a business, the majority of which earned no income.

## Disqualification orders

Mr Jacov (Jack) Vaisman (AMI)

Alleged contravention: Section 51AB

One sought (still before the court)

## AER

Review of the Victorian electricity distribution determinations by the Australian Competition Tribunal, December 2010

Tribunal decision on AER electricity distribution determinations for South Australia and Queensland, May 2011

ActewAGL sought review of the debt risk premium for the 2010–15 access arrangement period. The tribunal handed down its decision in September 2010 increasing ActewAGL's debt risk premium.

Jemena Gas Networks (NSW) appealed for merits review of the AER's 2010 decision covering its NSW gas distribution network.

## Litigation continuing at the end of 2010–11

*Stanwell Corporation Limited*

Commenced 28 July 2009

Federal Court Brisbane

# Appendix 12:

## Draft and final decisions in relation to regulated industries in 2010–11

### AER

#### Transmission

- > Final transmission service target performance incentive scheme version 3, March 2011
- > ElectraNet contingent project decision, March 2011
- > Final decision on ElectraNet's market impact parameter, December 2010
- > Final decision—Amendments to the transmission roll forward model and post-tax revenue model, December 2010
- > Proposed amendments to transmission service target performance incentive scheme, December 2010

#### Distribution

- > Final decision on Ergon Energy's ring-fencing waiver application regarding its photovoltaic installations, May 2011
- > Final decision: applications for exclusion from the Victorian service incentives for supply reliability, supply interruption events July—December 2010, May 2011
- > AER decision—Powercor's cost pass through application in relation to the Victorian Bushfire Royal Commission, May 2011
- > AER rejects SP AusNet's revised AMI budget application for 2009–11, May 2011
- > Draft decision on Ergon Energy's ring-fencing waiver application, April 2011
- > Determination for Endeavour Energy: reporting on the recovery of jurisdictional scheme amounts in respect of the NSW Solar Bonus Scheme, March 2011
- > Determination for Ergon Energy: reporting on the recovery of jurisdictional scheme amounts in respect of the Qld Solar Bonus Scheme, March 2011
- > Draft decision—applications for exclusion from the Victorian service incentives for supply reliability, supply interruption events July—December 2010, March 2011
- > Determination on Ausgrid's NSW Solar Bonus Scheme cost pass through application, March 2011
- > Dispute between Sietel Limited and United Energy for the upgrade of electricity supply—Draft Decision Paper, March 2011
- > Final: Victorian electricity distribution network service providers—Advanced Metering Infrastructure remote service charges, February 2011
- > Final decision—Applications for exclusion from the Victorian service incentives for supply reliability (supply interruptions in January—June 2010), February 2011

- > Determination—Ergon Energy reporting of jurisdictional scheme amounts (Queensland Government Solar Bonus Scheme), January 2011
- > Determination—Integral Energy reporting of jurisdictional scheme amounts (NSW Solar Bonus Scheme), January 2011
- > CitiPower's and Powercor's proposed security fee scheme draft decision paper, December 2010
- > Approved 2011 Victorian electricity distribution pricing proposals, December 2010
- > Final framework and approach paper for Aurora Energy, November 2010
- > Advanced Metering Infrastructure Bring forward service fee proposed by Citipower and Powercor, January 2011
- > Draft decision: Victorian electricity distribution network service providers—Advanced Metering Infrastructure remote service charges, November 2010
- > Approved AMI revised charges for 2011, October 2010
- > Final decision and distribution determinations—CitiPower, Powercor, United Energy, Jemena Electricity Networks, SP AusNet, October 2010
- > Demand management incentive scheme for Aurora Energy (Tasmania), October 2010
- > Final decision—applications for exclusion from the Victorian service incentives for supply reliability (supply interruption events March—December 2009), September 2010
- > Draft decision—applications for exclusion from the Victorian service incentives for supply reliability, supply interruption events January—June 2010, September 2010
- > Final decision—Aurora Energy Proposed Cost Allocation Method amendment, May 2011

## Retail

- > Final decision—Approval of the interest rate for CitiPower's and Powercor's security deposit scheme for network connections in Victoria, April 2011
- > AER draft determination on SP AusNet's AMI Revised Budget Application 2009–11, April 2011
- > Notice of draft instrument—Statement of Approach, Procedures and Guidelines for compliance with the National Energy Customer Framework, March 2011
- > Determination—QLD Retailer of Last Resort scheme is a jurisdictional scheme, March 2011
- > Determination—Whether the QLD Retailer of Last Resort scheme is a jurisdictional scheme, February 2011
- > AER's draft decision on proposed approach to compliance and enforcement under the NECF, December 2010
- > Retailer of Last Resort cost recovery scheme issues paper, November 2010
- > Retailer of Last Resort scheme issues papers, 19 November 2010
- > Retail Market Performance Reporting—Position Paper, November 2010
- > Final Guidance AER approval of customer hardship policies, May 2011

## Gas

- > Access arrangement draft decision—Amadeus Gas Pipeline, April 2011
- > Access arrangement draft decision—Queensland gas distribution networks—APT Allgas's, February 2011
- > Access arrangement draft decision—Queensland gas distribution networks—Envestra Limited, February 2011

- > Access arrangement draft decision—South Australian gas distribution network—Envestra Limited, February 2011
- > AER approved Reference Tariffs and Ancillary Reference Tariffs, November 2010
- > Variation to the access arrangement—Country Energy Wagga Wagga gas distribution network, September 2010

## Communications

- > Final determination and statement of reasons—Telstra/Chime ULLS access dispute, August 2010
- > Final determination and statement of reasons—Telstra/Digiplus LCS access dispute, August 2010
- > Final determination and statement of reasons—Telstra/Digiplus WLR access dispute, August 2010
- > Draft Report—Review of the 1997 telecommunications access pricing principles for fixed line services, September 2010.
- > Interim Access Determinations No 1–6 and statement of reasons for making the IADs for the declared fixed line services, March 2011
- > Draft Final Report on reviewing the declaration of the Domestic Transmission Capacity Service (DTCS), July 2010
- > Final Report on reviewing the declaration of the Domestic Transmission Capacity Service, September 2010
- > Interim Access Determination No 7 and statement of reasons for making the IADs for the declared domestic transmission capacity service, April 2011

## Transport

### Rail

- > ARTC Hunter Valley Access Undertaking 2010 Position Paper (Draft) 21 December 2010
- > ARTC Hunter Valley Access Undertaking 2010 (Final) 29 June 2011

### Wheat export marketing arrangements

- > Draft Decision on GrainCorp's Proposed 2011 Port Terminal Services Access Undertaking (Draft) 24 March 2011
- > Final Decision on GrainCorp's Proposed 2011 Port Terminal Services Access Undertaking (Final) 22 June 2011

### Airports/Aviation

- > Sydney Airport Corporation Limited price notification for regional air services Decision (Final) September 2010

### Postal Services

- > Draft Price Notification for Australia Post business letter pricing (Draft) 27 May 2011
- > Price Notification for Australia Post business letter pricing (Final) 23 June 2011

# Appendix 13: Major regulatory reports and reviews in 2010–11

## AER

### Reports

- > March 2011 Energy Quarterly Compliance Report, May 2011
- > December 2010 Energy Quarterly Compliance Report, February 2011
- > Victorian electricity distributors' preparation for meeting the 2010–11 summer peak demand, December 2010
- > Performance reports of Victorian electricity distribution businesses, 2009, December 2010
- > 2008–09 TNSP Electricity Performance Report, February 2011
- > Monitoring and enforcing compliance of electricity offer, bid and rebid information in the National Electricity Market, 7 December 2010
- > September 2010 Energy Quarterly Compliance Report, 27 October 2010
- > Final investigation report—TransGrid compliance with clause 5.6.6, 10 September 2010
- > June 2010 Energy Quarterly Compliance Report, July 2010
- > Approach to reporting requirements and monitoring standards in the electricity market, February 2011
- > State of the Energy Market, 2010.

### Guidelines and guideline consultation

- > Retail Pricing Information Guideline released for consultation, May 2011
- > Notice of draft instrument: Retailer authorisation guideline, May 2011
- > Notice of draft instrument: Performance Reporting Procedures and Guidelines, April 2011
- > Process guideline on how to prepare a transmission network support pass through application, January 2011
- > Guideline on the imposition of additional or more onerous requirements, procedures or standards, November 2010
- > Retail authorisation guideline—draft guideline and consultation paper, November 2010
- > Retail pricing information guidelines—Position paper and draft guideline, September 2010
- > Final Report and Guideline—Approach to reporting requirements and monitoring standards in the electricity market, March 2011
- > Approach to Retail Exemptions Consultation Paper, draft Exempt Selling Guidelines and draft determination of class exemptions, December 2010
- > Draft guidance on AER approval of customer hardship policies, December 2010.

## Communications

- > Telstra's compliance with the price control arrangements 1 July 2008 to 30 June 2009, November 2010
- > Methodology for Administration of the Telstra carrier charges prices control arrangements, October 2010
- > Telecommunications competitive safeguards for 2008–09, tabled in Parliament November 2010
- > Changes in prices paid for telecommunications services in Australia, 2008–09, tabled in Parliament November 2010
- > Advice to Government: National Broadband Network Points of Interconnect, November 2010
- > Position Paper on pricing the domestic transmission capacity service, November 2010
- > Public inquiry to make final access determinations for the declared fixed line services—Discussion paper, April 2011
- > Public inquiry to make final access determinations for the declared DTCS—Discussion paper, April 2011.

## Fuel

- > Monitoring of the Australian petroleum industry—Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia, December 2010
- > Monitoring of the Australian petroleum industry—summary 2010, December 2010.

## Transport

- > Airport Monitoring Report 2009-10: Price, financial performance and quality of service monitoring, February 2011
- > Container Stevedoring Monitoring Report 2009–10, November 2010
- > Australia Post—Cross Subsidy Report 2008–09, 23 July 2010
- > Australia Post—Cross Subsidy Report 2009–10, 7 April 2011.

## Water

- > ACCC Water Monitoring Report 2009–10, April 2011
- > Water market intermediaries—industry practices and developments, December 2010
- > ACCC Water Monitoring Update, October 2010.



# Appendix 14: Mergers in 2010–11— major assessments

All public merger decisions for 2010–11 were published on the ACCC website at [www.accc.gov.au/mergers](http://www.accc.gov.au/mergers). Notable examples are listed below.

## Merger reviews publicly opposed

- > National Australia Bank Limited—proposed acquisition of AXA Asia Pacific Holdings Limited—proposed undertakings
- > Metcash Trading Limited—proposed acquisition of Interfrank Group Holdings Pty Ltd (Franklins)
- > Asahi Holdings (Australia) Pty Ltd—proposed acquisition of P&N Beverages Australia Pty Ltd.

## Merger reviews resolved by court enforceable undertakings

- > Aspen Pharmicare Holdings Ltd —proposed acquisition of Sigma Pharmaceuticals (Australia) Pty Ltd
- > Scandinavian Tobacco Group A/S—proposed acquisition of Swedish Match AB
- > Novartis AG—proposed acquisition of Alcon Laboratories Inc
- > InvoCare Limited—proposed acquisition of Bledisloe Group Holdings Pty Ltd
- > OneSteel Limited—proposed acquisition of Moly-Cop Group S.a.r.l
- > 7-Eleven Stores Pty Ltd—proposed acquisition of retail assets of Mobil Oil Australia Pty Ltd
- > Peregrine Corporation—proposed acquisition of retail assets of Mobil Oil Australia Pty Ltd.

## Merger reviews not opposed

- > Fairfax Media Limited—proposed acquisition of Southern Independent Publishers Ltd
- > Woolworths Limited—proposed acquisition of The Cellarmasters Group
- > Luxottica Retail Australia Pty Limited—proposed acquisition of Optifashion Group
- > Origin Energy Limited—proposed acquisition of electricity privatisation assets of the New South Wales Government
- > AGL Energy Limited—proposed acquisition of certain electricity privatisation assets of the New South Wales Government
- > Jetset Travelworld Limited—proposed acquisition of Stella Travel Services Holdings Pty Ltd
- > Sleepyhead—proposed acquisition of Sleepmaker and Dunlop Foams from Pacific Brands
- > Pacific Brands—proposed acquisition of Wonderlay from Sleepyhead
- > Swift Australia Pty Ltd—proposed acquisition of Rockdale Beef Pty Ltd.

# Appendix 15: Authorisations and notifications in 2010–11—significant decisions

## Authorisations

In 2010–11 the ACCC assessed 27 applications for authorisation. Copies of all authorisation decisions for 2010–11 were published on the ACCC website at [www.accc.gov.au/publicregister](http://www.accc.gov.au/publicregister). Notable examples are listed below.

### Authorisations granted

- > North West Shelf Project—joint marketing arrangements for natural gas, granted on condition for a period of five years
- > Vision Group Holdings Limited—discussion and agreement of fees for ophthalmology services, granted for a period of five years
- > Premium Milk Ltd—collective bargaining between milk producers and Parmalat Australia Ltd, granted for a period of 10 years
- > Generic Medicines Industry Association Pty Ltd—code of practice (2nd edition) for the generic medicines industry, granted on condition for a period of three years
- > State of Queensland Acting through the Office of Liquor and Gaming Regulation—liquor accord agreement, granted on condition for a period of three years
- > Virgin Blue Airlines Pty Ltd & Ors—airline alliance between Virgin Blue and Air New Zealand in respect of trans-Tasman services, granted on condition for period of three years
- > Various Queensland Coal Producers using Wiggins Island Coal Terminal—collective negotiation of access to rail infrastructure at the Wiggins Island Coal Export Terminal, granted for a period of 15 years
- > Virgin Blue Airlines Pty Ltd & Ors—airline alliance between Virgin Blue and Etihad in respect of services between Australia and Abu Dhabi, granted for a period of five years
- > Australian Paint Manufacturers' Federation Inc—levy on the wholesale sale of paint, granted for a period of one year
- > Refrigerant Reclaim Australia Limited—product stewardship scheme for the recovery of refrigerant, granted on condition for a period of five years
- > Energy Assured Limited—code of practice for door to door energy sales, granted for a period of three years.

## Authorisations denied

- > Brisbane Marine Pilots Pty Ltd—pilotage services agreement with the State of Queensland at the Port of Brisbane.

## Collective bargaining notifications

In addition to seeking authorisation for collective bargaining arrangements, parties are able to lodge a collective bargaining notification. In 2010–11, two collective bargaining notifications were lodged and the ACCC finalised its assessment of one notification lodged in 2009–10. Copies of all collective bargaining notifications and ACCC decisions are available from the ACCC's website at [www.accc.gov.au/publicregister](http://www.accc.gov.au/publicregister). Notable examples are listed below.

## Notifications allowed to stand

- > Queensland citrus growers re-notified collective bargaining arrangements involving the negotiation of price and volume of the supply of citrus fruit to Woolworths Limited.

## Notifications revoked

- > Hertz Australia Pty Limited and a group of car rental companies, for the collective negotiation of price and other terms and conditions at which the car rental companies will acquire airport facility services (car parks and counter space) at Perth airport.

## Exclusive dealing notifications

In 2010–11 the ACCC assessed more than 650 exclusive dealing notifications. Copies of all notifications are available from the ACCC's website at [www.accc.gov.au/publicregister](http://www.accc.gov.au/publicregister). Notable examples are listed below.

## Notifications allowed to stand

- > Attendant Care Industry Association of NSW Inc providing certification to attendant care provider organisations on condition they are audited by a nominated body.

## Notifications revoked

- > Perth Motorplex and Avalon International Raceway providing access to speedway tracks on condition licensees have a license from the National Association of Speedway racing
- > Co-operative Bulk Handling Limited (CHB) providing storage and handling services on condition grain growers and marketers acquire supply chain coordination services and transport services from CBH.

# Appendix 16:

## Media releases in 2010–11

### ACCC

ACCC seeks further information on exemptions while proceeding to finalise fixed line pricing	30/06/11
Beware of end of financial year scams	30/06/11
Hair straightening products recalled by suppliers	30/06/11
ACCC accepts undertaking for Hunter Valley rail access and investment	29/06/11
ACCC to open WA grain supply chain to competition	29/06/11
Alleged supply of mislabelled elastic luggage straps	27/06/11
ACCC works to support women in leadership	24/06/11
Court penalises online ugg boot trader over Australian made claims	24/06/11
Scammers target VIPtel Mobile customers	23/06/11
ACCC authorises energy door-to-door sales code	23/06/11
ACCC delivers final decision on Australia Post's Business mail prices	23/06/11
ACCC accepts GrainCorp's wheat port access arrangements	22/06/11
Mobile premium service providers penalised \$375 000	17/06/11
Collective bargaining by dairy farmers to continue: Draft decision	16/06/11
ACCC allows Western Australian chicken growers to collectively bargain	16/06/11
ACCC issues MTAS pricing discussion paper	15/06/11
ACCC begins public inquiry into final access determination for regulated transmission services	15/06/11
Samuel stands on 'tough love' and points to challenges	15/06/11
ACCC obtains limits on AMI contracts	10/06/11
Beware of unproven breast imaging technologies, say ACCC, Cancer Council and TGA	09/06/11
ACCC not to oppose funerals acquisition after undertaking resolves concerns	09/06/11
ACCC approves variation to chemical waste collection scheme	09/06/11
ACCC grants interim approval to Qantas and American Airlines joint business agreement	09/06/11
ACCC institutes further proceedings against AMI	08/06/11
Six Harvey Norman franchisees pay for not stocking cameras	07/06/11
ACCC nets \$3.6 million in penalties in first year of new consumer laws	07/06/11
\$185 000 penalty for misleading allergy treatment claims	02/06/11
ACCC preliminary view on Australia Post's business mail prices	27/05/11
Unsafe bicycles found in national product safety survey	20/05/11
ACCC grants interim authorisation to variation of chemical waste collection scheme	19/05/11
Optus pays for 'max cap' advertising	18/05/11
ACCC appeals part of MSY technology judgment	17/05/11
ACCC proposes to allow collective bargaining by Western Australian chicken growers	13/05/11

ACCC allows continuation of refrigerant recovery scheme	12/05/11
ACCC calls for comment on Wesfarmers possible acquisition of interests in Burrup	11/05/11
Phase out of restrictive supermarket lease provisions: Supabarn undertaking	05/05/11
Solar claims must be accurate: Joint warning	04/05/11
Service stations misled motorists about petrol type	27/04/11
ACCC issues first water monitoring report	27/04/11
ACCC seeks comment on CBH proposed wheat port access arrangements	21/04/11
ACCC proposes five year regulatory pricing period in final access determinations for fixed line services	21/04/11
ACCC not to oppose Cellarmasters sale	21/04/11
ACCC allows collective bargaining by Australian Hotels Association	20/04/11
ACCC allows industry levy to fund waste paint collection trial	20/04/11
ACCC warns about holiday hazards	20/04/11
MSY Technology penalised \$203 500 for false and misleading consumer warranty representations	19/04/11
ACCC issues interim prices for regulated transmission services	18/04/11
Traders fail mandatory labelling standard for bean bags: Fantastic Furniture penalised \$300 000	15/04/11
\$2.7 million penalty for fake 'Yellow Pages' directory scam	14/04/11
ACCC issues contempt of court proceedings against Global Green Plan Ltd	13/04/11
Dimmeys penalised \$400 000 for selling children's dressing gowns which failed labelling standard	11/04/11
Japan Airlines penalised \$5.5 million for price fixing	11/04/11
ACCC finds door to door energy sales code wanting	11/04/11
No cross-subsidy in Australia Post: ACCC	07/04/11
ACCC to review proposed price increases for air services	07/04/11
ACCC takes court action over Zamel's catalogue claims	07/04/11
ACCC re-authorises collective bargaining by elite swimmers	06/04/11
ACCC alleges EDirect sold mobile contracts to consumers in areas without network coverage	05/04/11
ACCC proposes not to authorise Queensland fly ash agreement	29/03/11
Refund rights for 'The Latin Seed' weight-loss food	29/03/11
Mobility scooter injuries examined in ACCC report	24/03/11
ACCC issues draft decision on GrainCorp's proposed wheat port access arrangements	24/03/11
Beware of websites offering access to government grants	23/03/11
ACCC not to oppose grain acquisition	17/03/11
ACCC to allow Southern Cross proposed acquisition of Austereo	17/03/11
Sports eyewear supplier tried to stop online retailers from discounting	15/03/11
Holden dealer admits misleading 'lifetime mechanical warranty' promotion	15/03/11
Court finds allergy treatment claims misleading	11/03/11
ACCC proposes to allow levy for waste paint collection trial	09/03/11
ACCC to oppose Asahi's proposed acquisition of P&N Beverages	09/03/11
Scam reports double—National Consumer Fraud Week 7–13 March	
Scams: it's personal	06/03/11

ACCC reaches agreement with Airlines on website pricing	04/03/11
ACCC not to oppose single certifying body for attendant care standard	04/03/11
ACCC proposes to allow continuation of refrigerant product stewardship scheme	03/03/11
ACCC draft decision on Australian Hotels Association proposed collective bargaining arrangements	03/03/11
ACCC ushers in new era of telecommunications regulation with release of interim access determinations	03/03/11
ACCC authorises concrete cartage owner drivers collective bargaining	02/03/11
ACCC announces outcome of NBN points of interconnect confirmation process	01/03/11
\$4.2 million penalty for photocopy paper price fixing club	28/02/11
ACCC takes action over cancer cure claims on the internet	25/02/11
ACCC grants interim approval for WA chicken growers collective bargaining	25/02/11
ACCC seeks comment on proposed increases in business mail prices	25/02/11
ACCC allows collective bargaining for Telstra shops	24/02/11
ACCC proposes to re-authorise collective bargaining by elite swimmers	23/02/11
ACCC re-authorises Homeworkers Code of Practice	17/02/11
Optus 'unlimited' advertisements declared misleading and deceptive	14/02/11
Firm fined for testimonials by Facebook 'fans' and tweeters	11/02/11
ACCC warns sports fans to be vigilant when buying tickets online	10/02/11
Cancer treatment found to be misleading	07/02/11
ACCC issues annual report on airport performance	07/02/11
Court penalises wholesaler for 'cruel deception' on free range eggs	04/02/11
ACCC urges Australians to put child safety first with treadmills	04/02/11
ACCC allows Virgin Blue-Etihad alliance	03/02/11
ACCC identifies horticulture code breaches by banana trader	01/02/11
NSW irrigation trusts and districts must now comply with the ACCC rules	25/01/11
ACCC proposes to authorise collective bargaining by concrete cartage owner drivers	24/01/11
Online trader fined for selling flammable infant sleep bags	24/01/11
Jewellery trader offers refunds, informs retailers they are free to discount	21/01/11
ACCC consults on Viterra's proposed wheat port access arrangements for 2011-14	20/01/11
ACCC consults on ABA's proposed wheat port access arrangements	20/01/11
ACCC proposes to allow collective bargaining for Telstra shops	20/01/11
ACCC calls for comment on Sleepyhead's proposed acquisition of Dunlop Foams	19/01/11
ACCC calls for comment on the proposed acquisition by Invocare Limited of Bledisloe Group Holdings Pty Ltd	19/01/11
Water charges (infrastructure) rules commence: ACCC issues guides	17/01/11
Australia and United States signal closer ties on consumer product safety	13/01/11
ACCC allows Central Queensland councils to conduct green waste tender	13/01/11
ACCC urges prospective franchisees to do their homework	11/01/11
ACCC warns motorists of possible ethanol shortages	11/01/11
ACCC alleges ugg boot misrepresentations by online trader	07/01/11
Optus Mobile provides 24 month mobile handset warranties	07/01/11
Dodo pays infringement notices	06/01/11

Misleading conduct in relation to 'Goody' plastic bags	05/01/11
Trader pays infringement notice, wholesaler offers undertaking for supplying chewing tobacco	04/01/11
New legal protections for Australian consumers have begun	04/01/11
ACCC acts on Dell warranty misrepresentations	24/12/10
ACCC Christmas–New Year arrangements	24/12/10
ACCC alleges unconscionable conduct in promotion and supply of men's sexual dysfunction treatment program	23/12/10
Clearer labelling for 'leather look' furniture	23/12/10
National Foods to rebrand juice in response to ACCC concerns	23/12/10
Warning to consumers: Unsafe toys sold in Darwin	23/12/10
ACCC institutes legal action against SMS Global and Carl Krumins	23/12/10
Power Balance admits no reasonable basis for wristband claims, consumers offered refunds	22/12/10
Additional 52 Telstra exchange service areas to be exempt from standard access obligations	22/12/10
ACCC to issue Interim Access Determinations for telecommunications fixed line pricing in early 2011	21/12/10
Points of Interconnect to the National Broadband Network	20/12/10
ACCC issues position on Hunter Valley rail network	21/12/10
ACCC institutes proceedings against Fantastic Furniture, Spotlight and Smash over unlabelled bean bags	20/12/10
ACCC institutes proceedings against TPG alleging false and misleading broadband advertisements	17/12/10
Vodafone service issues	16/12/10
ACCC not to oppose pharmaceutical acquisition	16/12/10
Sanitarium offers undertaking to ACCC on cereal pack claims	16/12/10
David Lawrence, Jigsaw and Marcs pay infringement notices, offers undertaking over refund policy	16/12/10
ACCC issues draft decision to authorise Virgin Blue—Etihad Alliance	16/12/10
ACCC conditionally authorises Virgin Blue—Air New Zealand Alliance	16/12/10
ACCC proposes to re-authorise Homeworkers Code of Practice	15/12/10
ACCC issues report on water market intermediaries	15/12/10
ACCC reports on unleaded petrol prices, costs and profits	15/12/10
ACCC clears proposed acquisition of ASX by Singapore Exchange	15/12/10
ACCC clears potential acquisitions under NSW energy privatisation	09/12/10
Beware: The 10 scams of Christmas	08/12/10
Former café operator ordered to pay \$20 000 penalty	08/12/10
Commercial recycler makes clear it is not a charity	08/12/10
ACCC proposes to introduce competition in transport in W.A. grain supply chain	06/12/10
ACCC denies authorisation for exclusive pilotage agreement	03/12/10
ACCC grants interim approval for the continuation of a refrigerant gas levy	03/12/10
ACCC authorises Wiggins Island coal producers to collectively bargain	02/12/10
ACCC calls for comment on proposed acquisition of P&N Beverages by Asahi	02/12/10

ACCC calls for comment on proposed acquisition of Mobil assets at Gladstone fuel terminal	02/12/10
Pram distributor to pay \$100 000 for resale price maintenance	01/12/10
Unit pricing report card: Online and smaller supermarkets must do better	30/11/10
ACCC helps business understand new obligations	30/11/10
ACCC announces domestic benchmarking approach to transmission pricing	23/11/10
Darryl Jones appeal against contempt upheld	23/11/10
ACCC proposes to allow Central Queensland green waste tender	22/11/10
MSY gives undertakings to court over alleged misrepresentations of consumer warranty rights	19/11/10
ACCC to oppose Metcash proposed acquisition of Franklins supermarkets	17/11/10
ACCC reports show innovation and data usage increased in telco markets while prices drifted downward	16/11/10
ACCC institutes proceedings against Dimmeys over children's dressing gowns	12/11/10
ACCC authorises port truck access arrangements	10/11/10
ACCC takes court action against 'Yellow Page' directories	09/11/10
More competition to drive increased investment and productivity at container ports	08/11/10
Black & White Cabs to pay \$120 000 penalties, costs for unlawful conduct	04/11/10
Restaurant menus misled consumers	04/11/10
ACCC conditionally authorises generic medicines code	03/11/10
Appointment of new part-time member for AER	03/11/10
Optus' 'THINK BIGGER' internet plans declared 'tricky'	02/11/10
ACCC institutes proceedings against MSY alleging misrepresentation of consumer warranty rights	01/11/10
Unsafe cosmetics recalled over formaldehyde	29/10/10
Businesses invited to be in-the-know on product safety	29/10/10
ACCC grants interim approval for Queensland concrete cartage collective bargaining	28/10/10
ACCC allows Agsafe to continue industry stewardship program	27/10/10
Court declares Nupak 'Goody' plastic bags conduct misleading	27/10/10
ACCC calls for comment on proposed pharmaceutical acquisition	27/10/10
ACCC calls for comment on proposed acquisition of Centrel by BP Australia	21/10/10
ACCC invites comments on approach to points of interconnect to the national broadband network	21/10/10
ACCC institutes proceedings against mobile premium service providers for alleged misleading, deceptive conduct	21/10/10
ACCC allows proposed acquisition of Bell Bay sawmill by Gunns	20/10/10
ACCC accepts court enforceable undertakings from St Vincent's private anaesthetists	20/10/10
Federal Court declares consumers misled over Power Saver claims	18/10/10
Court orders lawyer to stop sending certain debt notices	14/10/10
Power saver device withdrawn from sale after ACCC action	13/10/10
ACCC institutes action against nine traders for false, misleading allergy claims	12/10/10
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ACCC institutes proceedings for alleged 'blowing' by Adepto Publications Pty Ltd	11/10/10
ACCC institutes court action against lawyer over debt recovery practices	08/10/10



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Draft decision to deny authorisation for exclusive pilotage agreement	07/10/10
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Trader pays infringement notice over alleged false building association membership claims	06/10/10
ACCC allows continuation of SA oyster research levy	01/10/10
GreenPower retailer breached undertaking	01/10/10
ACCC issues first water monitoring update	01/10/10
ACCC proposes to approve Wiggins Island coal producers to collectively bargain	01/10/10
ACCC action results in corrective steps by 3D TV retailer	30/09/10
ACCC proposes to allow port truck access arrangements	30/09/10
ACCC not to oppose tobacco acquisition after proposed sale of cigar assets	30/09/10
ACCC chief busts merger myths	30/09/10
ACCC clarifies Ethernet included in the DTCS declaration	30/09/10
ACCC issues contempt proceedings against Allergy Pathway Pty Ltd and Paul Keir	30/09/10
ACCC accepts court enforceable undertaking from ResMed Asia Pacific Limited	28/09/10
Cabcharge penalised for misuse of market power	24/09/10
ACCC institutes proceedings against WA egg wholesalers over 'free range' claims	24/09/10
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Big City Promotions holiday vouchers misleading	22/09/10
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ACCC objects to Sydney Airport's proposed increase in charges for regional airlines	17/09/10
ACCC proposes new simpler approach for wholesale fixed line telecommunications services pricing	17/09/10
ACCC consults on revised Hunter Valley rail access arrangements	16/09/10
LG Australia provides ACCC with undertaking over energy efficiency claims	16/09/10
ACCC delays decision on proposed BHP Billiton/ Rio Tinto joint venture at request of parties	15/09/10
ACCC accepts court enforceable undertaking from OZTAM, Seven, Nine and Ten	13/09/10
ACCC grants authorisation to Suncorp–Metway and Bendigo and Adelaide Bank ATM fee free arrangements	13/09/10
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ACCC institutes against cafés over alleged menu breaches	09/09/10
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ACCC institutes proceedings against Optus over 'think bigger' and 'supersonic' broadband promotions	08/09/10
ACCC grants interim approval for joint green waste tender	02/09/10
ACCC allows merger of Jetset Travelworld/Stella Travel Services	01/09/10
Baxter penalised for breach of Trade Practices Act	31/08/10
Sydney Airport stops certain price rises after ACCC concerns	26/08/10
Businesses must prepare now for mandatory reporting regime: ACCC	24/08/10
Public warning on Sanbrook latex Happy Baby dummies	20/08/10
ACCC proposes to allow Agsafe to continue industry stewardship program	20/08/10
ACCC proposes to allow continuation of SA oyster research levy	20/08/10
Public Warning: Distribution scheme 'business opportunity' draws ACCC's first public warning	20/08/10
Speedway racing notifications revoked	19/08/10
ACCC alleges VIPtel Mobile misled customers and acted unconscionably	19/08/10
Collective contract negotiations working well for Premium's dairy farmer members	18/08/10
Samuel recuses from NAB/AXA decision	18/08/10
Court finds Panasonic bonus Nintendo Wii promotion misled consumers	12/08/10
Draft decision to authorise Queensland liquor accord	12/08/10
Federal Court declares phone card advertising false and misleading	09/08/10
ACCC institutes legal action against Black and White Cabs	09/08/10
ACCC to consult market on proposed undertakings from NAB and AXA	09/08/10
Fitness First provides ACCC with undertaking	06/08/10
ACCC grants interim approval to Wiggins Island coal producers	04/08/10
Conditional authorisation for generic medicines code proposed	03/08/10
Solar panel retailers amend claims on discounts and electricity savings	02/08/10
Supplier misled buyers on franking cartridges	30/07/10
ACCC proposes to authorise ATM proposal	29/07/10
Novartis pharmaceutical acquisition allowed	29/07/10
Horse betting software promoter stops advertising	29/07/10
ACCC drive for mobility scooter safety	29/07/10
ACCC grants interim approval to Liquor Stax to collectively bargain	28/07/10
ACCC approves Fremantle Port vehicle access arrangements	28/07/10
\$18 million penalty impose on Telstra	28/07/10
ACCC takes first action to enforce termination fee rules	28/07/10
Water planning and management charges rules begin: ACCC issues guide to assist compliance	27/07/10
ACCC institutes legal action against Bertini pram distributor, IGC Dorel	26/07/10
Sale of non-compliant baby rattles breaches the Trade Practices Act	26/07/10

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ACCC: No cross-subsidy in Australia Post	23/07/10
ACCC does not proposed to intervene in sale of Mobil's retail assets	22/07/10
Court finds online dating website used fictitious profiles	22/07/10
ACCC calls for comment on proposed acquisition of Stella Travel Services Holdings Pty Ltd by Jetset Travelworld Ltd	21/07/10
ACCC draft final report on varying the DTCS declaration	20/07/10
ACCC Objects to car rental collective bargaining at Perth Airport	16/07/10
Nupak gives undertaking to court regarding 'Goody' plastic bags	15/07/10
Ray White provides undertaking after complaint of breach of franchising code	13/07/10
ACCC issues contempt of court proceeding against Lualhati Jutsen	12/07/10
ACCC seeks comment on proposed increases in prices for regional airlines serving NSW	09/07/10
ACCC proposes to authorise North West Shelf Gas Project joint marketing	08/07/10
ACCC institutes legal action against 'Goody' Bag companies	07/07/10
ACCC institutes proceedings against Auscha Corporation over power saving claims	06/07/10
ACCC Allows Recruitment Association's Minor Changes To Dispute Resolution	05/07/10
Misleading menus invite infringement notices	01/07/10
New financial year—new law for consumers and franchisees	01/07/10

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Federal Court upholds AER's electricity distribution determination for the Australian Capital Territory	21/06/11
Balance of power—Regulator urges rule change	20/06/11
Access arrangement final decision: APT Allgas gas distribution network	17/06/11
Access arrangement final decision: Envestra's Queensland gas distribution network	17/06/11
Access arrangement final decision: Envestra's South Australian gas distribution network	17/06/11
Tribunal decision on AER electricity distribution determinations for South Australia and Queensland	25/05/11
Response to Professor Garnaut's Climate Change Review Update	29/03/11
Access arrangement draft decision: Envestra's South Australian gas distribution network	17/02/11
Access arrangement draft decision: Envestra's Queensland gas distribution network	17/02/11
Access arrangement draft decision: APT Allgas gas distribution network	17/02/11
Victorian electricity distribution businesses comparative performance report 2009	21/12/10
AER approval of Victorian electricity network tariffs for 2011	14/12/10
Regulator published 4th annual report on energy sector	15/12/10
Electricity transmission sector performance report	10/12/10
Appointment of new part-time member for AER	03/11/10
AER rejects significant price rises by Victorian electricity distributors	29/10/10
Australian Competition Tribunal makes decision on AER access arrangement for ACT, Queanbeyan and Palerang gas distribution network	28/09/10
AER Chairman Appointed	26/07/10

# Appendix 17: Correction of material errors in previous annual reports

The ACCC Annual Report 2009–10 incorrectly recorded a closing balance for applications for revoke and substitute authorisation of three projects and four applications, the correct balance is three projects and seven applications.

The printed versions of the ACCC and the AER Annual Report 2009–10 contained an error in Part one, Year in review—Page six content provided under Mergers paragraph.

Final bullet point statement reads:

- > the proposed acquisition of AXA APH by AMP, which the ACCC opposed.

The correct statement is as follows:

- > the proposed acquisition of AXA APH by AMP, which the ACCC did not oppose.

This was corrected in the online versions.

# Glossary and abbreviations

AAT	Administrative Appeals Tribunal
ACL	Australian Consumer Law
ACMA	Australian Communications and Media Authority
AGS	Australian Government Solicitor
APS	Australian Public Service
ARTC	Australian Rail Track Corporation
CCA	<i>Competition and Consumer Act 2010</i>
CEO	Chief Executive Officer
COAG	Council of Australian Governments
cpl	cents per litre
DEHP	diethylhexyl phthalate
DTCS	domestic transmission capacity service
ECA	ACCC Employee Collective Agreement 2009–10
EL	executive level
FMA Act	<i>Financial Management and Accountability Act 1997</i>
IMTS Branch	Information Management and Technology Services Branch
LCS	local carriage service
LSS	line-sharing service
LPG	liquefied petroleum gas
MDBA	Murray-Darling Basin Authority
Mogas	motor gasoline
MTAS	mobile terminating access service
PBS	portfolio budget statements
PSM Branch	People Services and Management Branch
PSTN OA	public switched telephone network originating access
PSTN TA	public switched telephone network terminating access
section 87B undertaking	court enforceable undertaking made under section 87B of the <i>Trade Practices Act 1974</i>
SES	Senior Executive Service
TSLRIC+	total service long-run incremental cost plus an allocation of indirect overhead costs
TPA	<i>Trade Practices Act 1974</i>
ULLS	unconditioned local loop service
WLR	wholesale line rental

# Compliance index

## List of requirements

The following list shows this report's compliance with the requirements for annual reports for departments, executive agencies and FMA Act bodies.

Part of Report	Description	Requirement	Page
	Letter of transmittal	Mandatory	iii
	Table of contents	Mandatory	v
	Index	Mandatory	284
	Glossary	Mandatory	278
	Contact officer(s)	Mandatory	ii
	Internet home page address and internet address for report	Mandatory	ii
	List of requirements	Mandatory	279
Review by secretary	Review by departmental secretary (i.e. Chairman)	Mandatory	2–10
	Summary of significant issues and developments	Suggested	2–7
	Overview of department's performance and financial results	Suggested	2–7, 11–14
	Outlook for following year	Suggested	8–10
	Significant issues and developments portfolio	Suggested— if applicable	Not applicable
Departmental overview	Overview description of department	Mandatory	16
	Role and functions	Mandatory	16–17
	Organisational structure	Mandatory	21
	Outcome and program structure	Mandatory	19
	Where outcome and program structures differ from PBS/PAES or other portfolio statements accompanying any other additional appropriation bills (other portfolio statements), details of variation and reasons for change	Mandatory	No variations
Report on performance	Review of performance during the year in relation to deliverables and KPIs, and their effectiveness in achieving the planned outcomes	Mandatory	26–114
	Actual performance in relation to deliverables and key performance indicators set out in PBS/PAES or other portfolio statements	Mandatory	26–114

Part of Report	Description	Requirement	Page
	Where performance targets differ from the PBS/PAES, details of both former and new targets, and reasons for the change	Mandatory	No variations
	Significant changes in nature of principal functions/services	Suggested	Not applicable
	If applicable to the outcomes, a report on performance of purchaser/provider arrangements	Suggested	Not applicable
	Factors, events or trends influencing departmental performance	Suggested	2–10, 26–114
	Contribution of risk management in achieving objectives	Suggested	125–126
	Information about relevant programs and progress in relation the social inclusion strategic change indicators	Mandatory— if applicable	Not applicable
	Performance against service charter customer service standards, complaints data, and the department's response to complaints	Mandatory— if applicable	53–59
	Discussion and analysis of the department's financial performance	Mandatory	11–14
	Discussion of any significant changes from the prior year or from budget	Suggested	Not applicable
	Agency resource statement and summary resource tables by outcomes	Mandatory	213–215
	Developments since the end of the financial year that have affected or may significantly affect the department's operations or financial results in future	Mandatory	146
	Trend information	Mandatory	11–14, 55, 59
Corporate governance	Agency heads are required to certify that their agency complies with the Commonwealth Fraud Control Guidelines	Mandatory	iii
	Statement of the main corporate governance practices in place	Mandatory	116–124
	Names of the senior executives and their responsibilities	Suggested	116–123
	Senior management committees and their roles	Suggested	124
	Corporate and operational planning and associated performance reporting and review	Suggested	124–126
	Approach adopted to identifying areas of significant financial or operational risk	Suggested	124–126
	Policy and practices on the establishment and maintenance of appropriate ethical standards	Suggested	126–127

Part of Report	Description	Requirement	Page
	How the nature and amount of remuneration for SES officers is determined	Suggested	127
External scrutiny	Significant developments in external scrutiny	Mandatory	128–130
	Judicial decisions and decisions of administrative tribunals	Mandatory	128–129
	Reports by the Auditor-General, a parliamentary committee or the Commonwealth Ombudsman	Mandatory	128–129
Management of human resources	Assessment of effectiveness in managing and developing human resources to achieve departmental objectives	Mandatory	134–139
	Workforce planning, staff turnover and retention	Suggested	134–136, 216, 217
	Impact and features of enterprise or collective agreements, individual flexibility arrangements, determinations, common law contracts and AWAs	Suggested	137–139
	Training and development undertaken and its impact	Suggested	140–141
	Occupational health and safety performance	Suggested	141, 218–219
	Statistics on staffing by: classification level, full time/part time, gender, location	Mandatory	216–217
	Enterprise or collective agreements, individual flexibility arrangements, determinations, common law contracts and AWAs	Mandatory	138–139
	Information on performance pay	Mandatory	139
Assets management	Assessment of effectiveness of assets management	Mandatory— if applicable	143
Purchasing	Assessment of purchasing against core policies and principles	Mandatory	143
Consultants	The number of new consultancy services contracts let during the year	Mandatory	145, 227–235
	The total actual expenditure on all new consultancy contracts let during the year	Mandatory	145, 227–235
	The number of ongoing consultancy contracts that were active in the reporting year	Mandatory	145, 227–235
	The total actual expenditure in the reporting year on the ongoing consultancy contracts	Mandatory	145, 227–235
	Contracts in excess of \$100 000 that do not provide for the Auditor-General to have access to the contractor's premises.	Mandatory	145, 227–235
Exempt contracts	Contracts in excess of \$10 000 exempt from AusTender	Mandatory	145



Part of Report	Description	Requirement	Page
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Financial statements	Financial statements	Mandatory	149–209
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	Freedom of information (subsection 8 of the <i>Freedom of Information Act 1982</i> )	Mandatory	220–222
	Advertising and market research (section 311A of the <i>Commonwealth Electoral Act 1918</i> ) and statement on advertising campaigns	Mandatory	223
	Ecologically sustainable development and environmental performance (section 516A of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> )	Mandatory	224–226
Other	Grant programs	Mandatory	144
	Correction of material errors in previous annual report	Mandatory	277

## Competition and Consumer Act requirements

The following list shows this report's compliance with additional reporting requirements under the Competition and Consumer Act.

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