



**Australian  
Competition &  
Consumer  
Commission**

# **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**

## **BACKGROUND BRIEFING**

# CONTENTS

## Background Briefing

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# ROLE AND STRUCTURE OF THE ACCC AND AER

## ROLE

### **Background**

In 1974 Parliament enacted the *Trade Practices Act 1974* (TPA) which introduced 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 as an independent Commonwealth statutory authority. The ACCC not only administered the TPA but also had regulatory functions in relation to areas such as electricity and gas. In 1997 telecommunications markets were opened to full competition and the ACCC became responsible for the competition and economic regulation of communications markets.

Further reforms by COAG resulted in the establishment under the TPA of the Australian Energy Regulator (AER) on 1 July 2005. The AER is Australia's independent national energy market regulator. It is an independent statutory authority and a constituent part of the ACCC.

### **Purpose**

The ACCC aims 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.

It promotes compliance with the Commonwealth competition, fair trading and consumer protection laws. The ACCC also regulates markets where competition is less effective, for example, the communications market.

### **Powers and functions**

The ACCC is the peak national agency for promoting competition, fair trading and consumer protection. Its consumer protection role complements that of the State and Territory consumer affairs agencies.

The ACCC's powers and functions are wide ranging allowing it to:

- investigate possible breaches of the competition and consumer protection provisions of the TPA
- provide advice on whether proposed mergers or acquisitions are likely to breach the TPA
- institute court proceedings against those suspected of breaching the TPA
- seek redress for consumers who have been harmed by breaches of the TPA
- authorise certain anti-competitive conduct when it is considered to be in the public benefit
- determine the terms and conditions for access to some nationally significant infrastructure services, and
- monitor or approve prices in markets where there is limited competition.

The AER regulates the wholesale electricity market and is responsible for the economic regulation of the electricity transmission and distribution networks in the national electricity market. The AER is also responsible for the economic regulation of gas transmission and distribution networks and enforcing the national gas law and national gas rules in all jurisdictions except Western Australia.

In addition to administering the TPA, the ACCC has responsibilities under other legislation, including the:

*Airports Act 1996*

*Australian Postal Corporation Act 1989*

*Broadcasting Services Act 1992*

*Copyright Act 1968*

*Radiocommunications Act 1992*

*Telecommunications Act 1997*

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

*Trade Marks Act 1995*

*Water Act 2007*

*Wheat Export Marketing Act 2008.*

The AER has responsibilities under the:

National Electricity Law 2005

National Electricity Rules

National Gas Law 2008

National Gas Rules.

## **MINISTERS' ROLES**

The ACCC comes within Treasury Portfolio with the designated Minister having responsibility for the ACCC and the legislation it administers. This includes most parts of the TPA (except Parts X, XIB and XIC).

### ***Ministerial directions***

#### **Section 29**

Under section 29 of the TPA, the Minister may give the ACCC directions connected with the performance of its functions or the exercise of its powers under certain parts of the TPA. Directions under section 29 may not be given in relation to:

- Part IIIA — access to services
- Part IV — restrictive trade practices
- Part VII — authorisations, notifications and clearances
- Part VIIA — prices surveillance

- Part X — international liner cargo shipping
- Part XIB or XIC — anti-competitive conduct and access regime in the telecommunications industry
- Section 65J, 65K, 65M or 65N (provisions relating to product safety conferences requested by suppliers) in relation to individual cases.

#### **Other directions**

Under sections 95ZE, 95ZF and 95ZH of the TPA, the Minister may, subject to conditions, give the ACCC directions relating to prices surveillance. The Minister may:

- Give the ACCC a direction to monitor prices, costs and profits relating to the supply of goods or services by persons in a specified industry, and to give the Minister reports on the monitoring as directed (section 95ZE).
- Give the ACCC a direction to monitor prices, costs and profits relating to the supply of goods or services by a specified person, and to give the Minister reports on the monitoring as directed (section 95ZF).
- Direct the ACCC to give special consideration to a specified matter or matters in exercising its powers and performing its functions under Part VIIA (prices surveillance) of the TPA (section 95ZH).

Recent examples of the use of these directions include the ACCC's 2008 inquiry into the competitiveness of retail prices for standard groceries (conducted in accordance with a direction under 95ZH), and the ACCC's formal petrol monitoring activities (undertaken in accordance with a direction under section 95ZE).

#### **Product safety**

The Minister has a large role and a comprehensive range of powers in relation to product safety. The Minister is involved in issuing warning notices, making mandatory safety and information standards and banning unsafe products. The Minister also has reserve mandatory recall powers. The ACCC advises the Minister on the exercise of those powers. For further detail, see p. 25.

#### **Declarations**

Under Part IIIA of the TPA, the designated Minister can 'declare' facilities that the National Competition Council believes to be essential. If the facility is owned or operated by a State or Territory Government, the designated Minister is the responsible State/Territory Minister. Otherwise the designated Minister is the responsible Commonwealth Minister.

Ministers' decisions under Part IIIA are subject to appeal to the Australian Competition Tribunal. Once a service is declared, parties are free to negotiate terms and conditions of access, including by arbitration.

#### **Roles of other Commonwealth Ministers**

The Minister with responsibility for transport can 'declare' airport services under the provisions of the *Airports Act 1996*. The Minister is also responsible for Part X of the TPA. The Minister receives a needs-basis briefing from the ACCC on its work affecting transport, particularly airports, ports and rail.

As a major communications industry regulator, the ACCC keeps the Minister with responsibility for communications informed of its activities. The Minister also has formal responsibility for Parts XIB and XIC of the TPA.

Under the *Water Act 2007*, the ACCC has a role in providing policy advice to the Minister with responsibility for water policy and programs, as well as other relevant government agencies. The ACCC is also responsible for monitoring compliance with and enforcing the water market rules and water charge rules. For further detail of the ACCC's role in water, see p.37.

## STRUCTURE

### ***The ACCC***

The Chairman of the ACCC is Graeme Samuel AC. The ACCC also has two Deputy Chairs (Peter Kell and Michael Schaper) and four other full-time members (Sarah Court, Joseph Dimasi, Jill Walker and Ed Willett). Andrew Reeves, Chairman of the AER, is an ex officio member of the Commission. Chris Chapman, Chair of the Australian Communications and Media Authority, is an Associate Member of the ACCC. Details about their terms of appointment are below:

#### **Terms of appointment—current members**

Position	Name	Appointed/reappointed on
Chairman	Graeme Samuel	1 August 2008 (three year term)
Deputy chairs	Michael Schaper	30 May 2008 (five year term)
	Peter Kell	1 August 2008 (five year term)
Members	Sarah Court	1 May 2008 (five year term)
	Ed Willett	30 May 2008 (five year term)
	Joe Dimasi	28 November 2008 (five year term)
	Jill Walker	12 August 2009 (five year term)
Associate members	Christopher Chapman	12 December 2007 (until 27 February 2011)
	Andrew Reeves	19 July 2010 (three year term)

### ***The AER***

Under the TPA, the AER is to consist of a Commonwealth member (who must be a member of the ACCC) and two State/Territory members.

Under the current Australian Energy Market Agreement, the State/Territory members are recommended for appointment by agreement of at least five State and Territory Ministers who are members of the Ministerial Council on Energy (excluding Western Australia). A member of the AER is recommended for appointment as AER Chair by agreement of the Commonwealth Minister and a majority of the State and Territory Ministers who are members of the Ministerial Council on Energy (excluding Western Australia).

Andrew Reeves was appointed Chairman of the AER for a three year term from 19 July 2010. Prior to this appointment, Mr Reeves was a part-time State/Territory Member of the AER (appointed in 2008). Ed Willett was appointed the full-time Commonwealth member (this appointment to be served concurrently with his ACCC appointment).

Position	Name	Appointed/reappointed on
Chairman	Andrew Reeves	19 July 2010 (three year term)
Members	Edward Willett	17 July 2008 (to be served concurrently with ACCC appointment)
	(vacant)	

## ACCC MEMBER PROFILES

**Graeme Samuel AC** took up the position of Chairman of the ACCC in July 2003. Until then 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 is 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.

**Peter Kell** was appointed a deputy chair of the ACCC for a five-year term commencing August 2008. 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 BA with Honours in Economics from the University of Sydney.

**Michael Schaper** was appointed a deputy chair of the ACCC on 30 May 2008 for five years.

Dr Schaper brings extensive experience in the area of small business through his previous roles as the Australian Capital Territory Small Business Commissioner, Dean of Murdoch University Business School in Western Australia and as President of the Small Enterprise Association of Australia and New Zealand. He has also been a member of the board of directors of the International Council for Small Business, served as head of the School of Business at Bond University and held the foundation professorial chair in entrepreneurship and small business at the University of Newcastle. Before 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 in Lyon, France and at the University of St Gallen, 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.

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 state and federal levels.

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.

**Sarah Court** was appointed a Commissioner of the ACCC in May 2008 for five years. She brings with her more than 10 years experience as a senior government lawyer specialising in federal litigation, including administrative law, employment law, workers compensation, freedom of information and trade practices enforcement litigation.

Ms Court oversees the ACCC's enforcement and litigation program; she is also chair of the Commission's Enforcement Committee.

Before joining the ACCC Ms Court was employed as a senior executive lawyer and director at the Australian Government Solicitor. Ms Court's roles at AGS included director of the Adelaide and Darwin AGS offices, director of the National Tax Practice and National Client Service Manager for the ACCC. Ms Court also practised extensively in trade practices law and litigation and has considerable experience conducting consumer protection enforcement litigation for the ACCC. This included advising on investigations, evidence-gathering, conducting formal interviews, working with counsel and developing case management and investigation strategies.

Ms Court has particular expertise in unconscionable conduct matters.

Ms Court holds a Bachelor of Arts (Jurisprudence) and Bachelor of Law from the University of Adelaide as well as a Graduate Diploma in Legal Practice from the ANU. She was admitted to legal practice (in the Australian Capital Territory) in 1996.

**Joe Dimasi** was appointed a commissioner of the ACCC in November 2008 for five years. Before his appointment, Joe 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.

**Dr Walker** was appointed in August 2009 for a five year term, and brings extensive experience in the fields of trade practices and antitrust economics. Before joining the ACCC, she 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 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 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.

**Edward Willett** was re-appointed in May 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.

## **AER MEMBER PROFILES**

**Andrew Reeves** was appointed as the part-time State/Territory Member of the AER for a five year term from 17 July 2008, and as Chair for three years from 19 July 2010. Andrew is also the Commissioner of the Northern Territory Utilities Commission. Prior to his AER appointment, Andrew 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.

Other responsibilities included the regulation of the Tasmanian natural gas industry and investigations of the pricing policies of water authorities, the public transport operator and the provider of motor vehicle accident personal injury insurance. The Commission also carried out occasional investigations of energy prices and analysis of proposed energy sector reforms at the request of Government.

Until 2005, Andrew Reeves was an Associate Commissioner in the Energy Division of the ACCC. His first professional discipline was engineering, with post graduate qualifications in economics.

**Edward Willett** – see ACCC member profiles. Mr Willett is the Commonwealth member of the AER, an appointment he serves concurrently with that of member of the ACCC. Part IIIAA of the TPA provides that one of the members of the AER must be a member of the ACCC.

## DECISION MAKING STRUCTURE – ACCC AND AER

The ACCC's decisions are made at meetings of the Commission members held once a week and otherwise as necessary. The ACCC held 57 formal meetings during 2009–10 and considered 285 formal papers dealing with matters under investigation, litigation, mergers, access matters, adjudication decisions, submissions to inquiries, and compliance and education strategies. It also received recommendations from its committees.

The AER's decisions are made at meetings of its members, held once a fortnight and otherwise as necessary. The AER held 25 formal meetings during 2009-10.

The ACCC has five subject matter committees to streamline decision-making. These committees are represented in the following table.

### ACCC committee system

Adjudication committee	Peter Kell (chair), Michael Schaper, Ed Willett, Sarah Court and Jill Walker – oversees and considers adjudication issues; meets weekly.
Communications Committee	Ed Willet (chair), Graeme Samuel, Joe Dimasi, and Peter Kell – oversees telecommunications issues; meets fortnightly.
Enforcement Committee –	Sarah Court (chair), Graeme Samuel, Peter Kell, Michael Schaper, Jill Walker. Oversees enforcement program and refers recommendations to the full commission for decision; meets weekly.
Mergers Review Committee	Jill Walker (chair), Graeme Samuel, Sarah Court, and Joe Dimasi – considers most merger matters and reports to the full commission; meets weekly.
Regulated Access and Price Monitoring Committee	Joe Dimasi (chair), Michael Schaper and Ed Willett – oversees access and price monitoring issues; meets fortnightly.

## **CORPORATE PLAN AND PRIORITIES**

The ACCC has identified the following key focus areas in its 2010–11 corporate plan.

### ***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 groceries, petrol, and a range of airport prices including car parking.

## **RESOURCES**

The 2010–11 Budget allocated to the ACCC a total operating budget for 2010–11 of \$140.8M, a decrease of \$2.05M over the estimated actual income (\$142.9M) in 2009–10. This decrease is partially due to a change in the funding framework for depreciation and amortisation expenses.

As part of the 2010–11 Budget, the ACCC has received additional appropriations for specific measures, including for the:

- new functions and responsibilities relating to the regulatory framework of NBNCo
- generation of compliance with the new unfair contract term provisions of the Australian Consumer Law, and for the ACCC to undertake consultation with industry and consumer stakeholders on the structure and content of the unfair contract term guidance
- continuation of functions relating to the formal monitoring of petrol prices.

These measures are outlined in the table below.

Measure	2009-10	2010-11	2011-12	2012-13	2013-14
	\$'000	\$'000	\$'000	\$'000	\$'000
NBN Co Ltd (Regulatory Framework)	3,367	5,832	5,851	4,483	4,513
Implementation of Unfair Contract Terms Provisions of the Australian Consumer Law	596	1,170	1,163	1,171	1,179
Petrol Commissioner and formal monitoring of petrol prices - continuation	-	2,070	2,082	-	-

## STAFFING

The number of staff at the ACCC increased in 2009–10 in response to an increase in the functions and responsibilities of the ACCC. The ACCC's budgeted staff level for 2009–10 was 775.8 full-time equivalents. As at 30 June 2010, the total number of full-time equivalent staff employed, including seven full-time public office-holders (ACCC members) and one part-time office holder in the AER, was 774.01 (an increase of 45.11 on 2008–09).

The total actual number of staff employed (including ACCC and AER members, part-time employees and employees absent on leave and secondments) at 30 June 2010 was 813 (797 in June 2009). There were 73 commencements and 76 cessations during the year.

The ACCC's non SES staff are employed under a Certified Agreement made under section 327 of the *Workplace Relations Act 1996*. The nominal expiry date of the current agreement is 30 November 2010.

The employment arrangements of SES employees are set out in individual determinations made under section 24 of the *Public Service Act 1999*. No employee is covered by a common law contract or an Australian Workplace Agreement.

Commission members' terms and conditions are set by the Governor General and the Remuneration Tribunal.

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## CONTACTS

### **ACCC Infocentre** (for all business and consumer inquiries)

Infoline:	1300 302 502
Email:	infocentre@acc.gov.au
Small business helpline	1300 302 021
SCAMwatch complaint line	1300 795 995

### **Websites**

ACCC	<a href="http://www.accc.gov.au">www.accc.gov.au</a>
AER	<a href="http://www.aer.gov.au">www.aer.gov.au</a>
SCAMwatch	<a href="http://www.scamwatch.gov.au">www.scamwatch.gov.au</a>
Product Safety Australia	<a href="http://www.productsafety.gov.au">www.productsafety.gov.au</a>
Product Safety Recalls Australia	<a href="http://www.recalls.gov.au">www.recalls.gov.au</a>

### **Chief Executive Officer**

Brian Cassidy (02) 6243 1124

### **Executive Officer**

Lisa Anne Ayres | (03) 9290 1980

### **Enforcement and Compliance Division**

Marcus Bezzi | Executive General Manager | (02) 9230 3894

#### **Enforcement Operations Group**

Scott Gregson | Group General Manager | (02) 6243 1350

**ACT & National Projects** – Mike Kiley (02) 6243 1052

**New South Wales** – Geoff Williams (02) 9230 9131

**Northern Territory** – Derek Farrell (08) 8946 9605

**Queensland** – Alan Ducret (07) 3835 4629

**South Australia** – George Kamencak (08) 8213 3453

**Tasmania** – Peter Clemes (03) 6215 9300

**Victoria** – Paul Zawa (03) 9290 1860

**Western Australia** – Sam Di Scerni (08) 9325 0601

#### **Compliance, Research, Outreach and Product Safety Group**

Nigel Ridgway | Group General Manager | (02) 6243 1223

#### **Information Research & Analysis Branch**

Bruce Cooper | General Manager | (02) 6243 1256

#### **Compliance Strategies**

Brenton Philp | Acting General Manager | (02) 6243 1220

#### **Product Safety Hazard Response Branch**

Ruth Mackay | General Manager | (02) 6243 4962

#### **Product Safety Compliance Operations Branch**

Steve Hutchison | Acting General Manager | (03) 9290 6967

## **Regulatory Affairs Division**

Mark Pearson | Executive General Manager | (02) 6243 1276

### **AER**

Michelle Groves | Chief Executive Officer | (03) 9290 1423

#### **Markets Branch**

Tom Leuner | General Manager | (03) 9290 1890

#### **Network Regulation North Branch**

Warwick Anderson | General Manager | (02) 6243 1240

#### **Network Regulation South Branch**

Chris Pattas | General Manager | (03) 9290 1845

### **Communications Group**

Michael Cosgrave | Group General Manager | (03) 9290 1914

#### **Access Operations and Pricing Branch**

Robert Wright | General Manager | (03) 9290 1864

#### **Convergence and Mobility Branch**

Rob Nicholls | General Manager | (02) 9230 3854

#### **NBN Engagement and Industry Compliance Branch**

Sean Riordan | General Manager | (03) 9290 1889

### **Fuel Group**

Matthew Schroder | Acting General Manager | (03) 9290 6924

#### **Regulatory Development Branch**

Anne Plympton | General Manager | (03) 9290 1845

#### **Transport and General Prices Oversight Branch**

Anthony Wing | General Manager | (03) 9290 1804

#### **Water Branch**

Sebastian Roberts | General Manager | (03) 9290 1435

## **Mergers and Acquisitions Group**

Tim Grimwade | Executive General Manager | (02) 6243 1226

### **Investigations Branch**

Rami Greiss | General Manager | (03) 9290 6949

### **Coordination and Strategy Branch**

Suzie Copley | General Manager | (02) 9230 9112

## **Adjudication Branch**

Richard Chadwick | General Manager | (02) 6243 1132

## **Corporate Division**

Jo Schumann | Executive General Manager | (02) 6243 4981

### **People Services and Management Branch**

Helen Lu | General Manager | (02) 6243 1009

### **Finance and Services Branch**

Adrian Brocklehurst | General Manager | (02) 6243 1044



## Information Management and Technology Services Branch

Joseph Stablum | Chief Information Officer | (02) 6243 4969

## Strategic Communications Branch

Lynne Haultain | General Manager | (03) 9290 1815

### Legal Group

Sean King | Acting Executive General Manager | (02) 6243 1282

#### Trade Practices & Litigation Unit

Bob Alexander | General Counsel | (02) 6243 1283

#### Regulatory Law Unit

Leanne Hanna | Deputy General Counsel | (03) 9290 1869

#### Corporate Law Unit

Elissa Keen | Assistant Deputy General Counsel | (02) 6243 1072

### Offices

The ACCC maintains nine offices, one in each State and Territory capital and an additional office in Townsville.

City	Address	Contact details
ACT (National Office)	23 Marcus Clarke Street CANBERRA ACT 2601  PO Box 3131, CANBERRA ACT 2601	Tel: (02) 6243 1111  Fax: (02) 6243 1199
New South Wales	Level 7, 123 Pitt Street SYDNEY NSW 2000  GPO Box 3648, SYDNEY NSW 1044	Tel: (02) 9230 9133  Fax: (02) 9223 1092
Victoria	Level 35, The Tower 360 Elizabeth Street MELBOURNE VIC 3000  GPO Box 520, MELBOURNE VIC 3001	Tel: (03) 9290 1800  Fax: (03) 9663 3699
South Australia	Level 2, 19 Grenfell Street ADELAIDE SA 5000  GPO Box 922, ADELAIDE SA 5001	Tel: (08) 8213 3444  Fax: (08) 8410 4155
Queensland	Level 24, 400 George Street BRISBANE QLD 4000  PO Box 12241 George Street Post Shop BRISBANE QLD 4003	Tel: (07) 3835 4666  Fax: (07) 3835 4653
North Queensland	Level 6, Central Plaza 370 Flinders Mall, TOWNSVILLE QLD 4810  PO Box 2016, TOWNSVILLE QLD 4810	Tel: (07) 4729 2666  Fax: (07) 4721 1538

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Western Australia	3rd floor, East Point Plaza 233 Adelaide Terrace PERTH WA 6000  PO Box 6381, EAST PERTH WA 6892	Tel: (08) 9325 0600 Fax: (08) 9325 5976
Tasmania	3rd floor, AMP Building 86 Collins St HOBART TAS 7000  GPO Box 1210, HOBART TAS 7001	Tel: (03) 6215 9333 Fax: (03) 6234 7796
Northern Territory	Level 8, National Mutual Centre 9-11 Cavenagh Street DARWIN NT 0800  GPO Box 3056, DARWIN NT 0801	Tel: (08) 8946 9666 Fax: (08) 8946 9600

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## ENFORCEMENT AND COMPLIANCE

The ACCC is the only national agency dealing generally with competition matters and the only agency with responsibility for enforcement of the TPA and the associated State/Territory competition codes.

The ACCC focuses its key enforcement and compliance work on promoting competition and fair trading. During 2009–10 the ACCC recorded in its national database nearly 83,000 complaints and inquiries, with over 3,000 matters escalated for assessment. In-depth investigations were conducted into 211 matters during the financial year. Court proceedings commenced in 31 matters across competition, fair trading and consumer protection, while 56 matters were settled by the ACCC accepting court enforceable undertakings under section 87B of the TPA (excluding remedy undertakings related to mergers and acquisitions). These undertakings are placed on the ACCC public register.

The ACCC maintains a strong litigation workload. As noted above, during 2009–10 the ACCC instituted 31 new cases matters across competition, fair trading and consumer protection. In the same period 30 cases were finalised—these consisted of both cases instituted during 2009–10 and cases instituted earlier. At the end of the 2009–10 financial year, 29 enforcement cases remained before the courts.

## THE SCOPE OF OUR RESPONSIBILITIES

### ***Anti-competitive conduct***

Part IV of the TPA, the competition provisions cover:

- cartels, including price fixing, bid rigging and market sharing
- primary boycotts
- secondary boycotts
- misuse of market power
- horizontal and vertical agreements that substantially lessen competition
- resale price maintenance.

Part IV also applies to mergers and acquisitions that may substantially lessen competition.

The Competition Code Agreement extends the application of Part IV to all sectors of the economy.

### ***Consumer protection***

The consumer protection provisions of the TPA apply to corporations, or to unincorporated entities where other constitutional heads of power, such as the post and telecommunications power apply. However, mirror consumer protection legislation in each state and territory that is administered in those jurisdictions covers unincorporated entities generally, including sole traders.

The ACCC's consumer protection roles are provided for in:

- Part IVA — consumer unconscionable conduct
- Part IVB — legislative framework for industry codes of conduct
- Part V — including misleading and deceptive conduct, product safety and product information, country of origin claims and conditions and warranties in consumer transactions
- Part VA — liability of manufacturers and importers for defective goods
- Part VC — largely mirrors Part V but provides criminal sanctions for conduct.

The consumer protection provisions of the TPA apply to all sectors of the economy, with the exception of the financial services sector. Provisions equivalent to those in Parts IVA and V (and VC) of the TPA have been included in the *Australian Securities and Investments Commission Act 2001* (the ASIC Act).

### **Small business**

The TPA contains provisions that address issues that are of particular relevance to small business.

- Part IVA — which deals with unconscionable conduct in business transactions
- Part IVB — which provides a legislative framework for industry codes of conduct (there are currently three mandatory codes of conduct: the Franchising Code, the Horticulture Code and the Oil Code).

The consumer protection and restrictive trade practices provisions create rights and responsibilities for small businesses.

## **STRATEGIES FOR ACHIEVING COMPLIANCE**

The ACCC uses three main strategies to achieve compliance:

- enforcement of the law
- education about rights and responsibilities under the TPA, providing information and encouraging voluntary compliance
- working with other agencies to implement these strategies, particularly where their action can assist in meeting the ACCC's goals.

### **1. Enforcement**

Experience shows that enforcement is the mechanism that most effectively drives compliance with the TPA. In enforcing the provisions of the TPA, the ACCC has as its primary goals:

- stop the unlawful conduct
- deter future offending conduct
- undo the harm caused by the contravening conduct (for example by corrective advertising or restitution for consumers and businesses adversely affected)
- encourage the effective use of compliance systems

- where warranted, punish the wrongdoer by the imposition of penalties or fines.

The ACCC's enforcement strategy is implemented through:

- strategic case selection focusing on priority areas
- professional and efficient investigation and assessment of potential breaches
- the use of measured enforcement response to relevant conduct;
- strategic assessment of priority areas
- liaison and cooperation with other relevant law enforcement agencies.

Factors relevant to the determination of priority areas include:

- conduct of significant public interest or concern
- conduct resulting in a significant consumer detriment
- conduct demonstrating a blatant disregard for the law
- conduct involving national or international issues
- conduct detrimentally affecting disadvantaged or vulnerable consumer groups
- conduct involving a significant new or emerging market issue
- conduct that is industry-wide or is likely to become widespread if the ACCC does not intervene
- whether ACCC action is likely to have a worthwhile educative or deterrent effect, and/or
- the person, business or industry has a history of previous contraventions of trade practices law.

## **2. *Encouraging voluntary compliance and the provision of education***

The ACCC believes that the preventative strategy of educating business and consumers about their rights and responsibilities in relation to the TPA is preferable to enforcement action after the conduct has occurred.

Compliance is encouraged through a variety of mechanisms:

- promoting understanding of how to achieve internal compliance
- encouraging appropriate self-regulatory responses to systemic problems (codes of conduct)
- emphasising the commercial value of compliance
- development of practical guidance on how to comply with the TPA
- liaison and cooperation with relevant industry and consumer stakeholders
- effective and extensive information and education campaigns to improve consumers' understanding of their rights and to educate business about their