

A black and white speckled dog is shown in profile, looking out of a window. The dog's head is resting on the wooden windowsill. The window has a wooden frame and a white latch. The background outside the window is a bright, hazy landscape.

FEBRUARY 2020

REGULATOR WATCH

**The enforcement performance
of Australia's consumer
protection regulators**

REGULATOR WATCH

The enforcement performance of Australia's consumer protection regulators

2nd Edition - February 2020

ABOUT

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

ACKNOWLEDGEMENTS

This Report was researched, compiled and written by Catriona Lowe and James Simonsen, drawing on publicly available data. Each of the regulators reviewed were provided with a copy of the data about their agency prior to publication for fact-checking. Proof reading and editing was undertaken by Bridie Fennessy. All errors remain the responsibility of Consumer Action Law Centre.



Consumer Action is located on the land of the Kulin Nations. We acknowledge all Traditional Owners of Country throughout Australia and recognise the continuing connection to lands, waters and communities. We pay our respect to cultures; and to Elders past, present and emerging.



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List of Abbreviations used throughout this report

The Australian regulatory environment is full of acronyms, some better known and commonly understood than others.

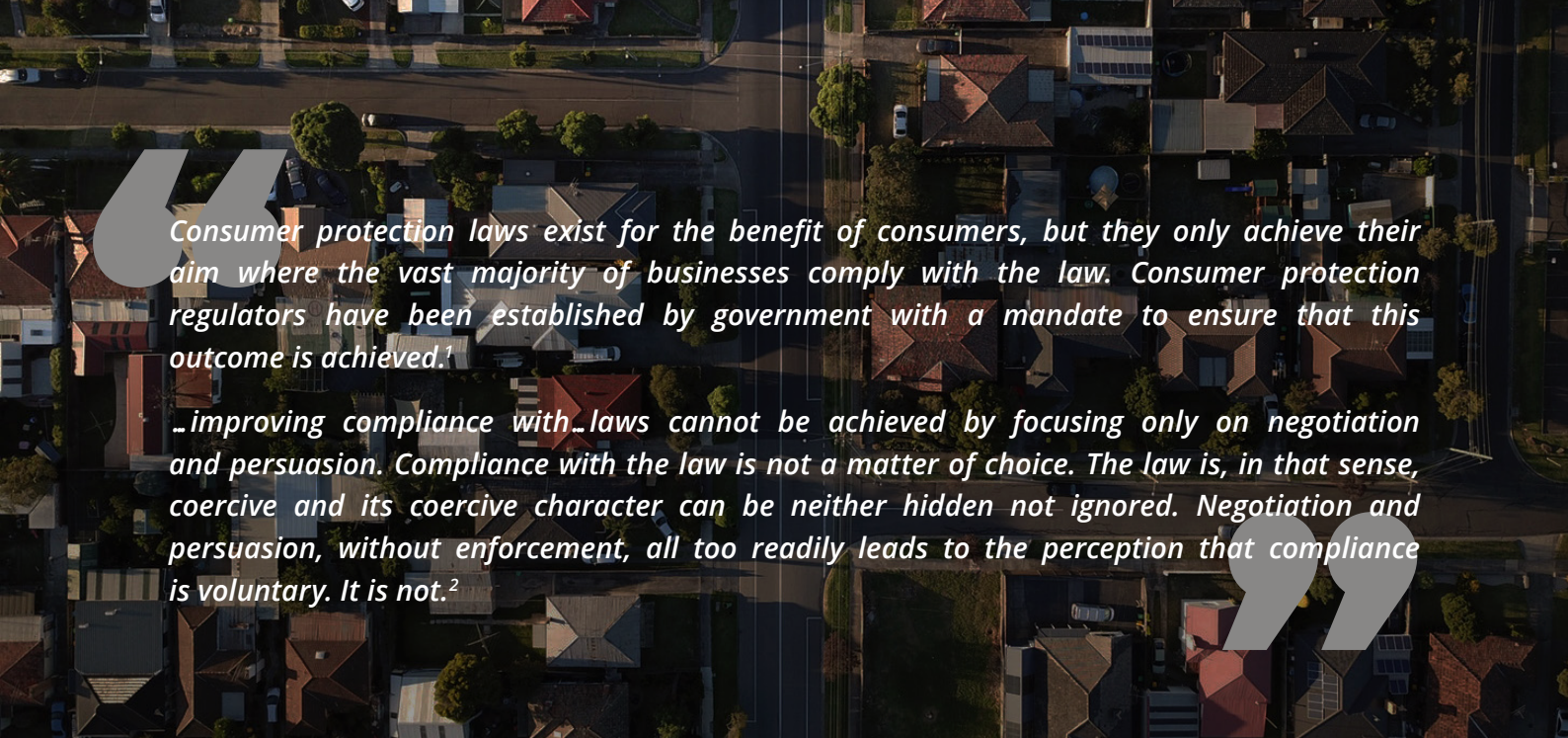
For ease of reading, we have elected to only use the more commonly known acronyms in this Report and to spell others out in full.

Outlined below are the common acronyms used through this Report.

Abbreviation/ Acronym	Full Name/Description
ACL	Australian Consumer Law
ACCC	Australian Competition and Consumer Commission
ASIC	Australian Security and Investments Commission
ACMA	Australian Communications and Media Authority
AER	Australian Energy Regulator
APRA	Australian Prudential Regulatory Authority
ASFA	Australian Financial Security Authority
CAANZ	Consumer Affairs Australia and New Zealand
CALC (used in footnotes only)	Consumer Action Law Centre
Consumer Action (used in body of Report)	Consumer Action Law Centre
Financial Services Royal Commission (used in body of Report)	Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry
FSRC (used in footnotes only)	Financial Services Royal Commission - aka The Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry
The 2013 Report	Regulator Watch, 2013 Consumer Action Law Centre
This Report	Regulator Watch, 2020 Consumer Action Law Centre

Consumer Protection Regulators Review in this Report

Regulator	Jurisdiction
Australian Competition and Consumer Commission	National
Australian Communications and Media Authority	National
Australian Energy Regulator	National
Australian Security and Investments Commission	National
Access Canberra ACT	State or Territory
Consumer Affairs Victoria	State or Territory
Consumer Building Occupational Services Tasmania	State or Territory
Consumer Protection Western Australia	State or Territory
Fair Trading Queensland	State or Territory
NSW Fair Trading	State or Territory
Northern Territory Consumer Affairs	State or Territory
South Australia Consumer and Business Services	State or Territory



Consumer protection laws exist for the benefit of consumers, but they only achieve their aim where the vast majority of businesses comply with the law. Consumer protection regulators have been established by government with a mandate to ensure that this outcome is achieved.¹

...improving compliance with...laws cannot be achieved by focusing only on negotiation and persuasion. Compliance with the law is not a matter of choice. The law is, in that sense, coercive and its coercive character can be neither hidden nor ignored. Negotiation and persuasion, without enforcement, all too readily leads to the perception that compliance is voluntary. It is not.²

00

EXECUTIVE SUMMARY

Effective enforcement is a critical task of consumer protection regulators and is essential to a well-functioning consumer protection framework.

Accessible, consistent and clear reporting on enforcement strategies and activities is vital to demonstrate the effectiveness of the regulator in administering the laws in its remit and enabling consumers, the advocates who represent them and parliament to hold regulators to account.

In 2013, the Consumer Action Law Centre published comparative enforcement reporting on Australia's key consumer protection regulators — *Regulator Watch* (the 2013 Report). The 2013 Report sought to assess the enforcement activities and performance of regulators. The task proved extremely complex due to inconsistent approaches to reporting, varied publication of data types, and different naming conventions and counting methodologies.

This Report seeks to update the information contained in the 2013 Report, and make commentary on changes to the enforcement performance of regulators since the initial report's publication.

Consumer Action has deliberately designed these reviews to use only publicly reported/available data—which is the only information ordinary consumers have available to them.

Six recommendations were made in the 2013 Report. The focus of the recommendations was on:

- ▶ Improving the amount of enforcement work undertaken by regulators
- ▶ Increasing the accessibility, consistency and clarity of reporting and
- ▶ Ensuring vulnerable consumers were supported during enforcement action.

Since the 2013 Report was published, a great deal has happened in the regulatory landscape – including reviews of the effectiveness of the Australian Consumer Law (ACL), the Review of the Australian Communication and Media Authority and most recently the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Financial Services Royal Commission).

It is therefore fitting for Consumer Action to once again compare the enforcement activities of key regulators, to assess how their

¹ Renouf, G. & Balgi, T. *Regulator Watch* Consumer Action Law Centre, 2013 at 24 (the 2013 Report).

² Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry Final Report Vol1 at 424-5 (FSRC).

performance has improved (or not) and to renew calls for greater enforcement activity and more consistent, accessible and transparent reporting.

Prior to the Financial Services Royal Commission, it was not uncommon for discussions with some regulatory agencies to focus on whether enforcement is necessary not when or how it should be done.

We are hopeful that the Financial Services Royal Commission's searing examination of misconduct and consumer harm in financial services, and how a lack of effective enforcement contributed to this, will create a stronger commitment from our regulators more broadly to enforcing the law when it is broken.

The Financial Services Royal Commission sought to answer very similar questions posed in our 2013 Report, questions that we believe still need asking following our latest assessment of regulator enforcement performance, namely:

"What can be done to improve compliance with the law (and industry codes), and the effectiveness of the regulators to deter misconduct and ensure that grave misconduct meets proportionate consequences?"³

Our 2020 assessment found mixed results, with some regulators increasing their enforcement activities and reporting, while others have dramatically reduced theirs.

Consistency in naming conventions and counting methodologies across regulators continues to create major barriers for consumers trying to assess the performance of their regulators both individually and as a whole. The Report also draws on the views of consumers advocates, who were surveyed by the Consumers' Federation of Australia, to reveal strong and largely consistent views about the importance of regulator accountability.

We have made 11 recommendations in this Report, which are aimed at increasing enforcement activity and creating national enforcement reporting mechanisms and methodologies.

We hope our second Regulator Watch Report and the 11 recommendations made, generates conversation and discussion about what will and needs to be different in the wake of the Financial Services Royal Commission and in a consumer marketplace which demands greater intervention and transparency than ever before.

Gerard Brody

CEO - Consumer Action Law Centre

February 2020

³ FSRC Final Report Vol 1, p.5.

RECOMMENDATIONS 2020

A number of recommendations have been made throughout this Report and are summarised below. They include standardised reporting methodologies, specific actions for specific regulators to take to improve the transparency of their enforcement work and recommendations about increasing enforcement activities.

RECOMMENDATION 1 - Enforcement Reporting Framework

In our 2013 Report, we outlined a reporting Framework we felt best supported transparent and consistent reporting across consumer protection regulators. This Framework remains largely unchanged following our 2020 review. We believe the Framework will provide better access to information and insights into enforcement activity generally and specifically the efforts being made by regulators to protect consumers when the law is broken.

We recommend the consumer protection regulators examined in this Report implement the below Reporting Framework as a minimum standard for public reporting on their enforcement activities. Regulators should work together to agree on consistent and defined reporting data sets (including naming conventions and counting methodologies) using the below Framework, to enable easy and comprehensive comparative public reporting.

Recommended Enforcement Activity Reporting Framework

CLEAR	<ul style="list-style-type: none">▶ Information is arranged logically▶ Terminology and classification is explained
COMPREHENSIVE	<ul style="list-style-type: none">▶ Quantitative data sets on all (consumer protection) enforcement action commenced and concluded (including matters abandoned, settled before court action etc).▶ Data should break down action:<ul style="list-style-type: none">▶ by type of action (e.g. prosecution, civil proceeding, disciplinary action, undertaking, infringement notice)▶ by type of wrongdoing▶ by action per regulated industry (e.g. builders, pawnbrokers, financial advisers)▶ by outcomes achieved (i.e. successful litigation, compensation awarded etc)▶ Qualitative information about court cases, such as narrative reporting, case studies and/or testimonials▶ Normalised against an agreed measure – i.e. per 100,000 people
FREQUENT AND TIMELY	<ul style="list-style-type: none">▶ At least six-monthly▶ Ideally quarterly
CONSISTENT	<ul style="list-style-type: none">▶ Across jurisdictions▶ Across time▶ With consistent and agreed naming conventions for actions/outcomes▶ With consistent and agreed counting methodologies
ACCESSIBLE	<ul style="list-style-type: none">▶ Reports are publicly available on websites▶ Reports are easy to find (including back issued reports)▶ Available in a range of formats, including csv, Word and Excel▶ Changes in methodology are minimised, identified and explained
RESOURCES	<ul style="list-style-type: none">▶ Reporting should quantify and report on the budget allocation and the staffing resources allocated to enforcement.

RECOMMENDATIONS

KEY AREA

RECOMMENDATION 2

Future Australian Financial Security Authority public reports and statistical data sets should clearly separate work regulating insolvency practitioners from work relating to bankrupts and to include narrative reporting about the underlying character of actions.

REPORTING

RECOMMENDATION 3

That CAANZ should review its Compliance and Enforcement Approach documents to ensure key concepts are defined and that documents support an effective enforcement culture.

ENFORCEMENT

RECOMMENDATION 4

That ACL regulators should adopt or affirm commitment to the Productivity Commission recommendations to:

REPORTING

- ▶ develop a national data base of consumer intelligence
- ▶ ensure the data on consumer complaints published by ACL regulators are meaningful
- ▶ improve the transparency of the resourcing and performance of the ACL regulators.

RECOMMENDATION 5

That Consumer Affairs Forum (CAF), together with other Australia consumer protection regulators, establish a project to examine and adopt examples of good practice in data and information sharing, including specific consideration of establishing registers of complaints and super complaints mechanisms.

REPORTING

RECOMMENDATION 6

Increase the quantity of enforcement work (repeated recommendation from 2013 Report), having regard to the following:

ENFORCEMENT

- ▶ enforcement action should be undertaken in a strategic way designed to achieve specific and articulated marketplace outcomes
- ▶ activity should increase across the regulatory pyramid and ensure there are sufficient actions at the 'pointy end' of the pyramid to be an effective deterrent to the marketplace
- ▶ litigation should be used where it is necessary to test the law
- ▶ regulators should have regard to the issues of regulatory agency culture and what they may need to change culturally (removing barriers) to support greater enforcement activity.

RECOMMENDATION 7

Regulators should continue to explore ways to leverage the structures that have been formed to manage the multi regulator model to improve information sharing and strengths based learning, including establishing regulatory communities of practice.

ENFORCEMENT

RECOMMENDATIONS

KEY AREA

RECOMMENDATION 8

Each consumer regulator should use a campaign approach to target specific market problems – taking a multi-faceted approach including education, building awareness and undertaking enforcement action. Campaigns should be co-created when an issue is multi-jurisdictions and when an issue impacts a single jurisdictions a sharing and learning approach taken to campaign development.

ENFORCEMENT

RECOMMENDATION 9

ACL regulators, together with ACMA and the AER should develop formalised mechanism(s) to provide timely and effective feedback and status reports to consumer organisations who lodge complaints with the regulator.

REPORTING

RECOMMENDATION 10

Australian regulators develop frameworks to articulate positive factors, characteristics or outcomes of the markets within their remit that demonstrate they are functioning well for disadvantaged and vulnerable consumers.

REPORTING

RECOMMENDATION 11

ACL regulators, together with ACMA and the AER, commit to the practice of routinely issuing press releases at the commencement and conclusion of litigation.

REPORTING



01

INTRODUCTION

1.1 Background

1.1.1 Why this report?

This Report updates Consumer Action's first Regulator Watch report published in 2013.

It examines the last six years of enforcement action and reporting by key national and State and Territory consumer protection agencies.

It explores the relevance and lessons from some of the significant inquiries into the effectiveness of enforcement activities in the Australian and International context that have been undertaken since 2013.

It assesses the extent of the implementation of the six recommendations made in our 2013 Report.

It makes further recommendations on improving the enforcement activities and reporting by our consumer protection regulators.

Both the 2013 and 2020 Reports argue that effective enforcement is an essential part

of a well-functioning consumer protection framework and therefore a key task of consumer protection regulators.

Enforcement action is a necessary function of the regulator's role, as:

- ▶ consumers need their regulators to act on their behalf – as there are significant barriers (financial and other) to individual consumers enforcing their consumer rights
- ▶ poor market outcomes impacting consumers occur when there is non-compliance with consumer protection laws and the market is seen to 'get away with it' due to a lack of regulatory action – for example anti-competitive conduct
- ▶ there is a need to test the boundaries of the law so consumers, market players, governments and regulators are clear on their rights and responsibilities under that law.⁴

4 2013 Report, pp.7-9.

This is a perspective that has gained greater focus in recent years, both in the Productivity Commission's 2017 Research Report into *Consumer Law Enforcement and Administration*⁵ and in the Final Report of the Financial Services Royal Commission.⁶

Our Reports recognise that regulators in general, and perhaps State and Territory consumer protection regulators in particular, face a number of challenges in fully exercising their enforcement role.

These challenges include; broad remits, resource constraints, political pressure—both to 'work with' businesses to achieve compliance and to have taken the right action in hindsight when problems occur, and in some cases, a less than supportive judiciary.

For some regulators sitting within blended ministerial portfolios may exacerbate these challenges. At a State and Territory level we have also seen a reduction in scope and scale of some independent consumer protection agencies and a trend to absorb these agencies into government departments.

These challenges, while real, do not however, justify a lack of enforcement activity or taking only persuasive or administrative action to discourage breaches of the law. As the Financial Services Royal Commission noted:

"Misconduct will only be deterred if entities believe that misconduct will be detected, denounced and justly punished. Misconduct, especially misconduct that yields profit, is not deterred by requiring those who are found to have done wrong to do no more than pay compensation. And wrongdoing is not denounced by issuing a media release."

1.1.2 Methodology

The importance of enforcement work has been the subject of a sharper focus since the 2013 Report both in Australia and internationally. And increasingly, there are other examples of attempts to assess the enforcement performance and effectiveness of regulators, which we explore in section 2.2.1.

The 2013 and 2020 Reports remain, so far as we are aware, the only Australian attempt to systematically document the volume of enforcement work undertaken by our national, State and Territory consumer protection regulators. We acknowledge the previous work by the Consumers' Federation of Australia⁸ and CHOICE⁹ in this area, as well as more recent initiatives such as the yearly *Australian Consumer Law Implementation Reports*, discussed in section 3.2.

The 2013 Report generally considered the enforcement work of the Australian Competition and Consumer Commission

(ACCC) and the Australian Security and Investments Commission (ASIC), as well as the fair trading agency for each State and Territory. It generally covered the period 2006-2012.

This Report examines the enforcement performance and quality of public reporting on the performance of the same regulators between 2012 -2018. It adds the following national consumer protection regulators to the analysis – the Australian Communications and Media Authority (ACMA) and the Australian Energy Regulator (AER). There is potential to include other consumer protection agencies in future Reports.

As far as possible, the 2020 Report replicates the methodology of the 2013 Report, so data and outcomes can be compared. Infringement Notice activity has been added to the 2020 Report, given this power is now common to all regulators examined.

This Report continues to bring a qualitative element through discussion of other issues relevant to enforcement. It also provides commentary about the recommendations made and developments in relation to the qualitative issues identified in the 2013 Report.

A survey of consumer advocate regarding their views on regulator accountability has been included in the 2020 Report analysis.

The Report presents a Scorecard for each regulator based on our assessment of the following factors:

- ▶ how well each regulator reports on its enforcement
- ▶ whether the regulator has been increasing or decreasing the overall amount of enforcement work, and
- ▶ for State and Territory regulators, their comparative rate of prosecutions per capita.

Many of the reporting and data limitations identified in the 2013 Report remain. These limitations require adjustments and assumptions about what the data tells us about the type and amount of enforcement work undertaken.

The continuing limitations in data sets also tells us about the inconsistent value regulators placed on transparent, accessible and clear reporting across our consumer protection regulators.

⁵ Consumer Law Enforcement and Administration Report, Productivity Commission, 2017.

⁶ FSRC Final Report Vol 1.

⁷ FSRC Final Report, p. 3.

⁸ deration of ACCC enforcement outcomes from 2001-02 to 2005-06.

⁹ K Halliday T Loranzo and G Renouf (2008) *Good Practice in Consumer Protection Enforcement: A Review of 12 Consumer Protection Regulators*

Limitations in data sets include:

- ▶ The 2020 Report only uses data that is **publicly** available and makes allowances (and assumptions) for inconsistencies and incompleteness in reporting.
- ▶ While there have been reporting improvements—some system wide and some by individual agencies—inadequate reporting makes it difficult to assess the amount of enforcement activity overall and, in some instances, to compare work done by one regulator in one year with the same regulator in a different year.
- ▶ Despite much greater alignment of powers and tools for ACL regulators, it remains difficult to compare enforcement activities across regulators and across time.
- ▶ Reporting discrepancies include:
 - ▶ differences in categorisation of work (e.g. differing definitions of what constitute enforcement work)
 - ▶ differences in counting methodologies (e.g. by proceedings commenced or concluded, counting enforceable undertaking or prosecutions by number of parties or instances of conduct)
 - ▶ failure to distinguish consumer protection work from non-consumer protection work
 - ▶ reporting errors / discrepancies between reports at the agency level.

Where available, the detail of how enforcement actions were counted (including assumptions made) and how they vary from other agencies are set out for each agency in Appendix A.

In comparing results across the two Reports the following factors are noted:

- ▶ The ACL framework has operated for the entire period of the 2020 Report but only applied in the final year(s) of the 2013 Report.
- ▶ The National Consumer Credit Protection Act Framework, which moved credit regulation from the States and Territories to the Commonwealth, was introduced in 2009 and only operated for part of the period examined by the 2013 Report. It operated for all the period examined by the 2020 Report.
- ▶ Legislation has been repealed as national consumer protection laws have been rolled out. We have endeavoured to note this in Appendix A with the detailed analysis for each agency.

1.1.3 The Australian Consumer Protection Enforcement approach

Our 2013 Report noted there is no definitive statement of good practice in enforcement in consumer protection in Australian or overseas English language literature.¹⁰ This remains the case.

The 2013 Report examined theories of regulation in general, and of effective regulatory compliance and enforcement in particular – for example Parker and *Braithwaite's Regulatory Pyramid*, *Sparrow's Regulatory Craft* and CHOICE's *Good Practice in Consumer Protection Enforcement*.¹¹ These frameworks continue to have currency and relevance, with a number of them cited with approval in the Financial Services Royal Commission, including the Regulatory Pyramid.

Figure 1: Regulatory Pyramid



Source: Ayres and Braithwaite (1992).

We continue to have some reservations with these models and their potential to inhibit effective enforcement activity and protection for consumers if not applied in a nuanced way. Namely, concerns arise if regulators:

- ▶ focus only on **enforcing** the biggest and worst breaches of the law—impacting the largest number of consumers. By doing so they can fail to send early warning signals to the market on smaller but potentially more impactful breaches. Early warning signals can prevent issues becoming more widespread and help to show the market where the boundaries of acceptable behaviour lie.
- ▶ take a **linear** or rigidly stepped approach to breaches of the law or ensuring compliance. For example, to always use education and persuasion as a first step and only move to the next 'pyramid layer' if this is not successful at deterring the market behaviour.

10 2013 Report, p.35.

11 2013 Report, pp.24-25, 35-41.

- ▶ This approach can unnecessarily draw out the time taken to enforce the law and can create an impression in the market and in the minds of consumers that the regulator is ‘toothless’—leaving the door open for more bad market behaviour.
- ▶ focus too heavily on **consistency** of approach to compliance/enforcement activity across their remit, which can lead to missed opportunities for taking a test case approach to enforcing and learning about the law.

1.2 Consumer protection regulators

1.2.1 What defines a consumer protection regulator?

We define a consumer protection regulator as a regulator accountable for undertaking consumer protection work, where this work is a core or key focus of their office.

This sounds like a straightforward definition, but continues to be difficult to apply in practice, as we found in 2013.

“It is not always simple to decide what constitutes consumer protection work. Many laws that are generally thought of as not being “consumer protection law” ultimately exist for the benefit of consumers (competition law for example). There is also a considerable amount of industry-specific legislation, particularly occupational licensing, that has mixed consumer protection and other objectives, and some of the agencies included in the report have responsibility for enforcing laws that have mixed purposes—for example protecting workers’ interests or the interests of small businesses as well as consumers. Agencies don’t always separately publish their enforcement statistics against each area of responsibility.”¹²

A determining characteristic for future inclusions in Regulator Watch Reports will be a clear enforcement and compliance remit.

1.2.2 Broadening the view of consumer protection regulators

The notion of a consumer protection regulator is broader than simply those administering the ACL (and the parallel laws relating to financial services administered by ASIC).

The 2020 Report has added the work of the ACMA and the AER to the analysis, as well as considering (and determining against) the inclusion of two other regulators—the Australian Financial Security Authority (**AFSA**) and the Australian Prudential Regulatory Authority (**APRA**).

Future Reports will continue to expand and include more agencies, giving a more comprehensive picture of the consumer protection enforcement work being performed across Australia. Future possibilities for inclusion are Food Standards Australia and New Zealand and the Therapeutic Goods Administrator, in addition to AFSA and APRA.

This section covers our examination of APRA and AFSA for inclusion in this Report.

The Australian Prudential Regulatory Authority

APRA describes itself as “an independent statutory authority that supervises institutions across banking, insurance and superannuation and promotes financial system stability in Australia.”¹³

During the Financial Services Royal Commission, it became clear APRA viewed itself first and foremost as a prudential regulator, despite its responsibility for conduct regulation (and enforcement), particularly relating to superannuation.¹⁴

The Final Report of the Financial Services Royal Commission noted “APRA, as the prudential regulator, does not naturally administer those covenants with consumer protection in mind.”¹⁵

The Financial Services Royal Commission has recommended ASIC be given powers to undertake Superannuation Industry (Supervision) Act 1993 enforcement as it relates to consumer protection and for APRA to retain its current powers under the Act to enable it to exercise its prudential function.¹⁶

For these reasons we have not included APRA as a consumer protection regulator despite it currently having consumer protection powers.

Australian Financial Security Authority

AFSA describes itself as “responsible for Australia’s personal insolvency and personal property securities systems.....Our work supporting these systems helps to protect consumers, and also provides formal options for people to deal with unmanageable levels of debt.”¹⁷

Led by a CEO and Inspector General in Bankruptcy, AFSA’s key roles include administration of the *Bankruptcy Act 1966* and

¹² 2013 Report, p.29.

¹³ <https://www.apra.gov.au> accessed 23 August 2019.

¹⁴ FSRC Final Report, p.448.

¹⁵ Ibid, p.450.

¹⁶ FSRC Final Report, Recommendation 6.4, p. 454.

¹⁷ <https://www.afsa.gov.au/about-us/corporate-publications/corporate-plan>, accessed 20 July 2019.

the National Personal Property Security Register, regulation of personal insolvency practitioners and investigation and referral for prosecution breaches of the *Bankruptcy Act 1966* and the *Personal Property Securities Act 2009*.¹⁸

The work of AFSA is at the edge of consumer protection enforcement. It's regulation, enforcement and compliance statistical data is accessible and regularly updated on its website (quarterly).¹⁹ It also provides data sets for download in an excel format.

Its 2018/19 enforcement snapshot indicates most court-based work involved referrals to the Commonwealth Director of Public Prosecution for alleged offences by individuals or bankrupts rather than insolvency practitioners. This is clearly not consumer protection work.

In contrast, the snapshot notes that 11 infringement notices were issued to registered trustees, and a further 65 notices issued to other persons such as debt agreement administrators, petitioning creditors and executors for deceased estates. This work appears to contain important elements of consumer protection, particularly as it relates to trustees and debt agreement administrators.

On balance we consider AFSA has consumer protection elements in its remit. Currently, this element of their work appears secondary to other areas of its jurisdiction, which is of concern given the market in debt management services is growing rapidly. It is also currently very difficult to separate out the different enforcement action AFSA takes, some which is consumer protection work and some which is not.

In light of this, we have decided not to include tracking of AFSA's enforcement work in this Report.

RECOMMENDATION 2:

Future Australian Financial Security Authority public reports and statistical data sets should clearly separate work regulating insolvency practitioners from work relating to bankrupts and to include narrative reporting about the underlying character of actions.

¹⁸ <https://www.afsa.gov.au/about-us/agency-overview/introduction-to-afsa> accessed 20 July 2019.

¹⁹ <https://www.afsa.gov.au/statistics/regulation-enforcement-compliance-statistics>, accessed 20 July 2019.



02

DEVELOPMENTS SINCE THE 2013 REPORT

2.1 Significant events / inquiries

2.1.1 Financial Services Royal Commission

While focused on financial services regulation and regulators, the *Final Report of the Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry*, provides rich food for thought for all regulators.

The Financial Services Royal Commission extensively canvassed the role of regulators in the many market failings and consequent consumer harm identified through its work. It considered concepts of regulatory craft and the role and importance of enforcement and regulatory cultures.

Our 2020 Report draws extensively on the Royal Commission's Final Report to support and illustrate a range of enforcement issues, many of which were raised in the 2013 Report also.

We contend that the below characteristics, highlighted throughout the Royal Commission's Final Report, impact on the effectiveness of regulators in general:

- ▶ understanding of core role/s (e.g. conduct or prudential)²⁰
- ▶ the alignment or tension between multiple core roles²¹
- ▶ size of remit – requiring in turn deft management, a stable and appropriate level of funding and effective oversight²²
- ▶ requirements to communicate, cooperate or coordinate with other regulators²³
- ▶ accountability²⁴

²⁰ FSRC Final Report Vol 1, p.413.

²¹ Ibid. p.453 quoting Wallis Inquiry Final Report at 244 "As the Wallis Inquiry noted, where an agency is charged with both consumer protection and prudential regulation, consumer protection tends to become subservient to the prudential objectives."

²² Ibid. pp.421-425.

²³ Ibid. p.415.

²⁴ Ibid. p.417.

- ▶ a statement of expectations by government and a regulator's statement of intent
- ▶ adequacy of civil and criminal penalties²⁵
- ▶ powers, including information gathering powers²⁶
- ▶ frameworks for notification of breaches²⁷
- ▶ effective mechanism/s for keeping enforcement policies and practices congruent with the needs of the economy more generally²⁸
- ▶ culture – described as “one of the chief challenges for leadership of a regulatory agency²⁹

The Royal Commission valued **leadership, culture and resourcing** most highly in this range of factors.

*"The impact of the breadth of remit on a regulator is largely a function of its leadership and resourcing (including staffing)...with strong leadership and adequate resources, a broad remit is not a problem."*³⁰

The Royal Commission also pointed to skill and judgment to be applied by regulators. For example, the Final Report famously identified the critical question for the regulator in considering any contravention of the law to be “why not litigate?”, noting that answering this question requires continued focus and reconsideration to understand the essential character of any misconduct that is in issue.³¹

The Royal Commission's recommendations relating to APRA and ASIC have the effect of creating (or affirming) a ‘multi-regulator model’ for superannuation services, which also exists in the Australian Consumer Law context. The Royal Commission commented on factors critical for co-regulatory success, which are applicable to regulation and regulators more generally.

*"the need....to co-regulate.....means the two regulators will have to work more closely than ever across a arrange of entities and subject matters. Failures to share information, co-ordinate approaches and act with a consistent purpose will result in duplication of effort or, worse, regulatory failings."*³²

*"the sharing of information.....should be founded on the premise that joint responsibility and co-operation necessitates substantial commonality of information."*³³

The Royal Commission's Final Report also poses a challenge for the methodology our Regulator Watch Reports have used to chart the performance of our regulators. The Commission noted:

*"While it may become necessary to develop benchmarks or metrics that serve as a shorthand method to assess performance, formal measures should not be allowed to obscure the fact that the role of each regulator is defined by statute and the tasks entrusted to each regulator by its statute must be the foundation of any assessment. In most cases, that assessment will not be capable of measurement or quantitative expression. For example, the number of proceedings filed, or infringement notices issued, will say little about ASIC's enforcement culture unless the decisions behind those numbers are evaluated."*³⁴ {emphasis added}

Consumer Action makes three responses to the risks of measuring regulator performance by the numbers:

- ▶ First, the limits of purely quantitative measurement in assessing enforcement culture and effectiveness are accepted. To balance out these limitations, this Reports canvases a range of issues ‘beyond the numbers’, ranging from the development of enforcement policies to approaches to protect disadvantaged and vulnerable consumers.
- ▶ Second, it is accepted that an incremental rise or fall in number of enforcement actions tells us little without an accompanying consideration of the complexity and importance of the actions behind those numbers.
- ▶ Conversely, we are of the view that a sharp increase or decrease in activity, or little or no enforcement action by a regulator speaks directly to the enforcement culture and effectiveness of that regulator.
- ▶ Third, in the absence of publicly available and clearly articulated enforcement policies, narrative information about what is driving enforcement activity up or down and consistent and comprehensive data sets, we are left with a decision—do nothing or attempt to understand the enforcement landscape with the information that is available and use findings to advocate for improvements. We choose the latter.

25 Ibid. p. 419.

26 Ibid.

27 Ibid.

28 Ibid. p.425.

29 Ibid.

30 Ibid. p.423 quoting Commonwealth Treasury submission at 38. (though take care not to create artificial distinctions e.g. between competition and consumer protection regulation – unifying concept – long term interest of consumers)

31 FSRC Final Report, p.427.

32 Ibid. p.458.

33 Ibid. p.462.

34 Ibid. p.477.

The potential for methodological concerns was also addressed in the 2013 Report, which noted:

"Ideally measurement of the effectiveness of enforcement work would have regard to outcomes – that is reductions in consumer detriment flowing from regulator action – not just outputs. Some regulators have attempted to implement outcome measures but these have not been generally considered successful including by the agencies themselves."

*"It is however clear that without outputs we won't get outcomes. Provided we have confidence that the regulators are undertaking good risk assessments then more enforcement work rather than less is very likely to be associated with better outcomes."*³⁵

2.1.2 Australian Consumer Law reviews

The Australian Consumer Law commenced on 1 January 2011, towards the end of the period examined by the 2013 Report. It brought together nine State, Territory and national fair trading regimes into a single law (with some State and Territory derogations). It also introduced the 'one law, multi regulator' model.

As noted in the 2013 Report, a Memorandum of Understanding (**MoU**) and governance structure was introduced with the ACL to aid the administration of the model.³⁶ For the purposes of this Report, key questions are how well the model and governance structures:

- ▶ improve information sharing to support enforcement and other work
- ▶ operate to determine whether, and if so, which, regulator or regulators will undertake enforcement action
- ▶ improve consistency and quality of reporting
- ▶ remove duplication from the system
- ▶ fills gaps in the system, and
- ▶ encourages collaboration and cooperation.

In 2017, Consumer Affairs Australia and New Zealand (**CAANZ**) and the Productivity Commission published findings from parallel reviews of the ACL.³⁷

The CAANZ review focused on the substance of the law itself and its fitness to achieve its purpose. The key finding was that "the introduction of the ACL has been good for both

consumers and businesses. Consumers are more empowered, business compliance costs have reduced and there are fewer disputes."³⁸

The Productivity Commission review focused on the administration and enforcement of the ACL. It made a number of findings regarding the effectiveness of the 'one law many regulators model'. Given the centrality of the ACL to Australia's consumer protection framework, the findings of the Productivity Commission review are directly relevant to this Report.

The Productivity Commission made a positive key finding that the multiple regulator model appears to be operating reasonably effectively given the intrinsic challenges in having 10 regulators administer and enforce one law, and in particular that the ACL regulators communicate coordinate and collaborate with each other through well-developed governance arrangements.³⁹ This suggests that ACL regulators may have already overcome some of the communication challenges identified by the Financial Services Royal Commission in the context of financial regulation.

However, the challenges identified by the Productivity Commission are broader than communications and include risks of gaps or overlaps in investigations and enforcement, and inconsistent approaches to interpreting, administering and applying the law.⁴⁰

The Productivity Commission was positive about how the ACL regulators have sought to overcome these challenges— noting that "they have established protocols, meet regularly, share intelligence, develop common educational and guidance materials, undertake joint investigations, and designate lead regulators to deal with certain multi-jurisdictional cases."⁴¹ This collaboration is apparent in the Annual Reports of various ACL agencies and the ACL's *Year in Review* Reports.

It is also clear significant effort has been made to create effective governance structures for the ACL, including:

- ▶ an Intergovernmental Agreement, which amongst other things establishes six operational objectives for the ACL
- ▶ a tiered governance structure comprising the Legislative and Governance Forum on Consumer Affairs (made up of relevant New Zealand and Australian State, Territory and Commonwealth Ministers) and CAANZ (made up of officials of Commonwealth, State and Territory and New Zealand government agencies responsible for consumer affairs and fair trading), and

³⁵ 2013 Report, p.29.

³⁶ The Memorandum of Understanding and supporting arrangements are examined in detail in the 2013 Report – see pp.32-34.

³⁷ Australian Consumer Law Review Final Report, CAANZ, 2017 and Australian Consumer Law Enforcement and Administration Study Report, Productivity Commission, 2017.

³⁸ Australian Consumer Law Year in Review 2016-17, March 2018, p.4.

³⁹ Productivity Commission Study Report, p. 2.

⁴⁰ Ibid. p.5.

⁴¹ Ibid. p.6.

- ▶ CAANZ in turn has three advisory committees and three operations groups. The Compliance and Dispute Resolution Advisory Committee and the Fair Trading Operations Group are the most relevant to this Report, focusing on “national cooperation and coordination for compliance, dispute resolution and enforcement activities relating to the ACL.”⁴²

Initiatives such as the multi-jurisdictional action against itinerant traders, and coordination of publications, suggest the days of agency-specific guidance notes that aren’t aligned with each other, or taking different types of action against the same conduct are largely a matter of the past.

Consumer organisation submissions to the Productivity Commission’s Study Report, while generally supportive of the ‘one law many regulator’ model, flagged several areas for future focus, including:

- ▶ a need for even greater communication, coordination and consistency amongst ACL regulators
- ▶ an observed distinction between the national and State based regulators, with State based regulators generally less proactive in enforcing the ACL compared to their national counterparts
- ▶ the opportunity for all ACL regulators to adopt initiatives such as the super complaints mechanisms and the NSW complaints register, and
- ▶ concern regarding the interaction of the product safety system under the ACL and various specialist safety regimes, as well as concern regarding the effectiveness of communication in relation to bans and recalls⁴³.

The Productivity Commission’s Report echoes concerns raised in our 2013 and 2020 Regulator Watch Reports, namely:

- ▶ some ACL regulators undertake **insufficient** enforcement work. Limited resources partly explain this, but regulator culture may also play a role, and
- ▶ **limited publicly** available information about regulators’ resources, and performance makes definitive assessments of a regulator’s performance and its enforcement culture difficult.⁴⁴

Our analysis of enforcement volumes suggests that a lack of enforcement is an issue for a number of regulators, with some doing little enforcement and no court-based work. This is generally problematic for the markets in these jurisdictions but is particularly problematic for disadvantaged and vulnerable consumers who do not have the bargaining power to insist on their rights being upheld.

It is also true that this often occurs in smaller jurisdictions where resourcing is an issue. However, it is not universally a problem of smaller jurisdictions. It is more likely a result of the type of enforcement culture within the regulator’s office and whether this culture supports and values enforcement as a critical part of its function.

While the multi-regulator model governance arrangements specify who takes action when (for example ACCC for national and multi-State matters and the relevant State or Territory agency for localised issues), they do not prevent a lack of enforcement action, as they do not deal specifically with regulator culture.

Language and its interpretation are important and there are elements of the governing framework that may enable or even encourage a view that enforcement is not a critical activity. Examples include:

- ▶ the relevant advisory committee doesn’t have ‘enforcement’ in its name, and
- ▶ while a number of the ACL objectives are positive and clear statements of intent,⁴⁵ the objective relating specifically to enforcement speaks of “proportionate, risk-based enforcement”—concepts very open to wide and varied interpretations based on agency culture.

The Productivity Commission made a number of recommendations to strengthen information and reporting by the ACL regulators, which echo and respond to the difficulties Consumer Action has had in compiling the 2013 and 2020 Regulator Watch Reports. The Productivity Commission recommended ACL regulators:

- ▶ develop a national data base of consumer intelligence
- ▶ ensure the data on consumer complaints published by ACL regulators are meaningful, and
- ▶ improve the transparency of the resourcing and performance of the ACL regulators.⁴⁶

Other recommendations went to the adequacy of enforcement tools, powers and penalties, consistent with themes appearing in the Financial Services Royal Commission and Retail Electricity Pricing Inquiry Reports, as well as the CAANZ Report referred to above.

RECOMMENDATION 3:

Consumer Affairs Australia and New Zealand should review its Compliance and Enforcement Approach documents to ensure key concepts are defined and that documents support an effective enforcement culture.

⁴² Australian Consumer Law Year in Review 2016-17, March 2018, p.2.

⁴³ For example, Consumer Action Law Centre’s Submission, 30 August 2016.

⁴⁴ Productivity Commission Study Report, p. 2.

⁴⁵ For example, “to prevent practices that are unfair” or “to meet the need of those consumers who are most vulnerable or are at the greatest disadvantage”.

⁴⁶ Productivity Commission Study Report, p. 2.

RECOMMENDATION 4:

ACL regulators should adopt or affirm their commitment to the Productivity Commission recommendations to:

- ▶ develop a national data base of consumer intelligence
- ▶ ensure the data on consumer complaints published by ACL regulators are meaningful, and
- ▶ improve the transparency of the resourcing and performance of the ACL regulators.

2.1.3 Retail Electricity Pricing Inquiry

The Retail Electricity Pricing Inquiry Final Report *Restoring electricity affordability and Australia's competitive advantage*, of June 2018, was primarily concerned with poor consumer and competition outcomes in the retail electricity market. In answering its reference, the ACCC considered the current regulatory framework and the role of the regulator, the Australian Energy Regulator (AER).

A key finding and recommendation of the Retail Electricity Pricing Inquiry Final Report relates to the adequacy of powers and penalties available to the AER in the electricity laws. The finding speaks directly to the effectiveness factors Consumer Action has identified in section 2.1.1. of this Report.

*"Penalties under the national electricity laws are generally set at a lower level than comparable regulatory regimes in Australia like the ACL. To build a strong compliance culture in retail energy markets, energy market penalties should be increased in line with the ACL."*⁴⁷

The reasoning underpinning this recommendation echoes views also expressed in this Report and the Financial Services Royal Commission:

*"The ACCC considers that the current civil penalty amounts are insufficient to impose a credible level of deterrence and provide meaningful consequences to businesses. Therefore, the ACCC considers that the penalties should be increased to provide the AER with a greater level of flexibility in its response to address breaches of the national energy laws."*⁴⁸

It recommended that:

- ▶ the AER receive all the necessary powers to obtain information from retailers about price, offers, customer billing data and retail costs
- ▶ additional provisions are subject to civil penalties when breached
- ▶ the range of orders the AER can apply for is expanded, including community service orders, adverse publicity orders and probation, and
- ▶ the AER have power to require individuals to give evidence under oath.⁴⁹

The Retail Electricity Pricing Inquiry Final Report notes that the AER expressed the view that "access to better quality information would help guide investigations and is a necessary tool, as it will allow the AER to make more informed decisions about potential action."⁵⁰

Finally, of relevance to this Report, the Retail Electricity Pricing Inquiry Final Report noted that "governments currently have no framework or consumer protection principles by which they can manage and review the overall operation of energy specific consumer protections, particularly in light of market change and technological disruption. Providing such guidance would lead to regulation that is more clearly aimed at benefiting consumers."⁵¹

Each of the matters described above is likely to enhance the effectiveness of energy markets regulation, provided one additional ingredient is present—an effective enforcement culture within the regulator(s). Recent action and public statements give cause to believe this is improving, potentially significantly.⁵²

2.1.4 Review of the Australian Communications and Media Authority

The Review of the Australian Communications and Media Authority (ACMA) was published in 2016, recognising the transformational changes in the communications sector over the previous decade and the centrality of communications to the lives of Australians.⁵³ The review considered ACMA's remit, responsibilities, functions, performance, governance and resourcing across its wide range of responsibilities.

In relation to consumer protection, the review concluded that, due to the unique complexity of communications products and services, it was appropriate to retain sectoral regulation

47 Retail Electricity Pricing Inquiry Final Report *Restoring electricity affordability and Australia's competitive advantage*, June 2018, at p.318.

48 Ibid. p.324.

49 Ibid. pp.318 - 325.

50 Ibid. p.326 quoting AER *Submission on the Review of Enforcement Regimes under National Energy Laws – recommendation to the Final Report* October 2014, p.4.

51 Ibid. p.328.

52 For example, the AER has recently taken enforcement action against large energy retailers in relation to wrongful disconnection and failure to provide market performance data: <https://www.aer.gov.au/news-release/origin-pays-penalties-for-alleged-unlawful-customer-disconnections> and <https://www.aer.gov.au/news-release/agl-in-court-over-alleged-failure-to-provide-accurate-and-timely-performance-data>.

53 Department of Communications and the Arts, *Review of the Australian Communications and Media Authority*, Final Report, October 2016.

to complement the general consumer law. It thus did not recommend changes to the concurrent consumer protection roles for the ACMA and ACCC in the communication sector.

The review gave little consideration, however, to ACMA's role in enforcement of consumer protections. The review did note that stakeholders have different perspectives on how the ACMA approaches its compliance and enforcement role and made a recommendation that the ACMA publish information on the steps it takes to ensure stakeholders have a clear understanding of the relationship between its actions and its compliance policy.⁵⁴ It also recommended legislative change requiring ACMA to apply a risk-based approach to its enforcement activities.⁵⁵

As previously noted, 'risk-based' approaches can depend significantly upon interpretation and regulatory culture. On the one hand, 'risk-based enforcement' may be understood as encouraging a focus on potential for harm. On the other, such language can be (and has been) interpreted as placing enforcement as a reactive activity, underselling the importance of its role in market shaping, deterrence and clearly establishing the boundaries of the law.

2.1.5 Regulator Performance Framework

In 2014, the Regulator Performance Framework was established by the Australian Government. The stated objective of the framework is to:

- ▶ "improve the way regulators operate
- ▶ reduce the costs incurred by business, individuals and the community from the administration of regulations, and
- ▶ increase public accountability and transparency."⁵⁶

These objectives are underpinned by six key performance indicators (KPI), which Commonwealth regulators must report against annually:

1. **"Regulators do not unnecessarily impede the efficient operation of regulated entities**
2. **Communication with regulated entities is clear, targeted and effective**
3. **Actions undertaken by regulators are proportionate to the risk being managed**
4. **Compliance and monitoring approaches are streamlined and coordinated**

5. **Regulators are open and transparent in their dealing with regulated entities, and**
6. **Regulators actively contribute to the continuous improvement of regulatory frameworks."**⁵⁷

While the overarching objective of the framework is commendable, the KPIs intended to measure achievement of the objective and that drive behaviours and culture create cause for concern. Namely, they:

- ▶ are silent on the impact to consumers and the community and focus solely on impact to and communications with regulated entities
- ▶ use minimising language such as 'proportionate' 'streamlined' 'do not unnecessarily impede' and 'efficient' which indicates a desire for outcomes reached only by agreement and that are not too impactful to regulated entities, and
- ▶ do not use any language associated with enforcing the law when it is broken—words like 'protect' 'redress' or 'deter' are conspicuous in their absence.

The KPIs are at best inadequate to deliver on the stated objective and at worst could encourage a focus on cost minimisation and reducing compliance burden on regulated entities rather than effectively enforcing the law and protecting consumers.

2.2 Other matters

2.2.1 International approaches to accountability

A scan of available literature shows an increased recognition of the importance of measuring the effectiveness of enforcement activity of consumer protection regulators. We observed several examples of tracking and endeavours to analyse regulator performance in the period covered by this Report. Examples from consumer organisations include the United Kingdom's Consumer Focus' *Rating Regulators*⁵⁸ and the Consumer Federation of America's report *Dormant: The Consumer Financial Protection Bureau's Law Enforcement Program in Decline*.⁵⁹

The Consumer Focus Report rates regulators against an assessment framework comprised of twenty indicators organized under five main headings:

- ▶ legal framework (including mandate, structures and tools)

⁵⁴ Ibid, recommendation 22, p.74.

⁵⁵ Ibid, recommendation 18, p.70.

⁵⁶ *Regulator Performance framework – Guidance – Key Performance Indicators*, Department of Prime Minister and Cabinet, January 2015, p.3.

⁵⁷ Ibid. pp.13-19

⁵⁸ *Rating Regulators*, Consumer Focus, United Kingdom, 2009.

⁵⁹ Peterson, C.L., *Dormant: The Consumer Financial Protection Bureau's Law Enforcement Program in Decline*, Consumer Federation of America, March 2019.

- ▶ culture and accountability (including language used, how consumer focus is embedded, transparency and accessibility)
- ▶ state of readiness (including consumer research, how detriment is identified and influencing the wider regulatory agenda)
- ▶ state of action (effective of actions taken, timeliness, protection of disadvantaged and vulnerable consumers, incentives for compliance), and
- ▶ impact and learning (outcomes and outputs, measurement of impact)

The Consumer Federation of America's Report examines enforcement activity by the United States Consumer Financial Protection Bureau, established in the wake of the global financial crisis. Performance is examined with reference to the number of actions taken and the amount of restitution obtained, charted against agency employee numbers and different agency directors.

In the United Kingdom in 2016, the National Audit Office published a best practice guide for regulators in measuring and reporting their performance.⁶⁰ In March 2019, the National Audit Office published an assessment of how well four key consumer protection regulators were performing against the framework—Ofwat, Ofgem, Ofcom and the Financial Conduct Authority, the regulators of water, energy, telecommunications and financial services respectively.

The best practice guide and the assessment acknowledge the challenge for regulators in measuring performance but nevertheless concluded:

"it is vital that regulators measure and report transparently their intentions and achievements in meeting their duties towards consumers. This means they need to ensure they:

- ▶ *set out clearly their intended consumer outcomes, how they have dealt with competing incentives such as those of consumers and industry stakeholders, and any barriers and constraints they face in delivering their outcomes;*
- ▶ *examine whether they are achieving intended outcomes, and take corrective action where necessary; and*
- ▶ *demonstrate credibly to Parliament and other stakeholders how well they are discharging their duties and addressing the key issues for consumers.*"⁶¹

The assessment asserts that it is *because of* the challenges regulators face and the differing views about effectiveness, that measurement and reporting of intentions and achievements is crucial.⁶²

In addition to being informative for Australian regulators, the National Audit Office assessment makes a number of key findings that echo the issues and challenges discussed in our Regulator Watch Reports, including:

- ▶ "regulators have not been specific enough in defining the overall outcomes they want to achieve for consumers
- ▶ regulators find it difficult to manage the trade-offs they face between competing objectives in protecting consumers
- ▶ regulators monitor data on consumers' experiences and outcomes but do not routinely use this information to assess their own performance
- ▶ regulators' public reporting does not provide a meaningful assessment of how well they are protecting consumers' interests
- ▶ consumer representatives find regulators' publications on specific interventions and issues useful, and
- ▶ regulators have no common set of standards for what and how to report."⁶³

2.2.2 Use of information and data

There is an increasing importance of data in most aspects of modern life, and this is also true for the regulatory craft. In this section we explore how effectively regulators use and share the information and data they hold. Sharing is generally easier to comment on than the use of data given there is little public information available about the latter.

Sharing information and release of data by regulators can empower stakeholders, regulated entities and consumers. In the context of enforcement, data about complaints is particularly relevant, however, other data such as information gained through market studies or other research can help consumer organisations to understand the root causes of problems experienced by their clients and to alert regulators to breaches of the law.

There are a couple of examples where regulators are sharing and releasing data in sophisticated and modern ways. Generally, however we believe greater action is needed in this area. The need for an improved focus on data trends and patterns was highlighted in the consumer advocates survey (section 2.2.4) and also by the Australian National Audit Office in the context of its 2016 Review of the ACCC.⁶⁴

60 National Audit Office, *Performance Measurement by Regulators*, November 2016.

61 National Audit Office (UK), *Regulating to protect consumers in utilities, communications and financial services markets*, 2019, p.6.

62 Ibid.

63 Ibid. pp.8-10.

64 Australian National Audit Office, *Managing Compliance with Fair Trading Obligations*, 2016

In Australia, a leader in this area is NSW Fair Trading. Since 2016, NSW Fair Trading has published a 'Complaints Register,' emulating the approach of the US Consumer Financial Protection Bureau. The Register:

"... lists businesses that have had 10 or more complaints lodged with NSW Fair Trading against them in one calendar month.

The Complaints Register also lists:

- ▶ *the location of the business being complained about*
- ▶ *a general description of the product/service or transaction being complained about*
- ▶ *a general description of the issue the complaint relates to.*

The Complaints Register allows the ability to view complaints data over 24 months."⁶⁵

A submission by the Consumer Action Law Centre to the Productivity Commission's Issues Paper on *Consumer Law Enforcement and Administration* noted there had been a 43% reduction in complaints about traders who were routinely reaching the threshold for reporting on the Register.⁶⁶ To date, NSW Fair Trading is the only Australian ACL regulator to adopt this approach. Given how successful the Register has been at reducing complaints, it is not clear why other regulators have not implemented the same approach.

Another leading initiative by NSW Fair Trading was the 18-month super complaint trial in 2012. The trial was a partnership between NSW Fair Trading and CHOICE, and was based on the United Kingdom's legislated Super Complaints framework.⁶⁷ The UK framework enables certain specified consumer agencies to make complaints to the Office of Fair Trading regarding potential systemic or widespread consumer problems. One of the strengths of the regime is that it requires the regulator to respond to the complaint within a specified timeframe.

The NSW trial led to two super complaints in 2012 and 2013—one involving electricity switching sites and the other free range egg claims. We understand the trial was not continued as complaints tended to raise issues requiring action at a national, rather than State level. We are not aware of any public evaluation of the trial, however note the trial was very effective at drawing attention to issues and placing them on the policy agenda.

The Australian Financial Security Authority is another regulatory leader in terms of data provision. Its website

contains an extensive statistics section, with reports as well as the raw data underpinning reports available for download. The data is compiled and released quarterly and any gaps or breaks in the data series are noted and explained.

The ACL regulators have undertaken two national projects that specifically relate to or support data sharing—neither have delivered lasting results.

The first, Project Sentinel, led by NSW Fair Trading, sought to deliver an analytics platform that would greatly improve regulators' ability to share information and identify consumer issues in the marketplace at a national level.⁶⁸ Project Sentinel is now noted as a 'previous project' on the ACL website and it is not clear what the outcomes of the pilot project were or why it has not been pursued.

The second was an online dispute resolution project, aimed at researching "online conciliation mechanisms and their ability to satisfy various jurisdictional requirements and whether any one system could be adapted by state and territory consumer regulators in the future."⁶⁹ A shared complaints system has additional benefits of aligned data collection practices and reporting capabilities across State, Territory and national regulators.

Unfortunately, it appears this project will not progress in the near future. The ACL site notes "while options have been identified, the initial proposal for a 'one size fits all' online dispute resolution system is at this stage unachievable. It appears clear that the various differences in state-based dispute resolution processes and differences in IT platforms would favour individual jurisdictional consideration and response."⁷⁰

Australian developments outside the regulatory field are also relevant.

The guiding benchmarks for industry-based external dispute resolution schemes include accountability through public reporting on complaints.⁷¹ Schemes have a long history of publishing extensive customer complaint data and are becoming more sophisticated in their reporting approach.

For example, the Financial Ombudsman Service (FOS) published reports that compared the number of complaints received by its larger members relative to their size/market size. In November 2018, the Australian Financial Complaints Authority was launched and took over FOS and a number of other financial services dispute resolution schemes. In October 2019, the Australian Financial Complaints Authority dramatically increased the accessibility of its complaint data,

⁶⁵ NSW Fair Trading Complaint Register, <https://www.fairtrading.nsw.gov.au/help-centre/online-tools/complaints-register>, accessed on 8 August 2019.

⁶⁶ CALC Submission 30 August 2016 the Productivity Commission's Issues Paper *Consumer Law Enforcement and Administration*, p.8.

⁶⁷ 'A super-complaint, as defined by section 11(1) of the Enterprise Act 2002 (EA02), is a complaint submitted by a designated consumer body that 'any feature, or combination of features, of a market in the UK for goods or services is or appears to be significantly harming the interests of consumers'. Guidance – What are super complaints, Competition & Market Authority UK, 2015.

⁶⁸ <https://consumerlaw.gov.au/acl-national-projects>

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Benchmarks of Industry-based customer dispute resolution schemes, The Australian Government the Treasury, 2015 (originally published in 1997).

by publishing a micro site enabling greater customisation and interactivity with its data, as well as releasing the underlying 'data cube'.

The Consumer Policy Research Centre has published a report *But are they any good?*, which examines the lack of independent reporting about service quality for consumers to make good and informed decisions on.

The Consumer Policy Research Centre advocates regulators and policy makers should take four actions to combat the lack of information and "enhance choice and competition in service quality:

- ▶ develop clear, comprehensible and comparable measures of service quality
- ▶ conduct rigorous consumer testing of measures of service quality
- ▶ increase transparency to improve industry performance
- ▶ ensure data sources are available for the public good."⁷²

A number of international developments are also instructive.

In the United States, the Consumer Financial Protection Bureau has been publishing complaints data since 2008. There are other interesting, although isolated examples. For example, 'grade.dc' is a website that enables residents in the District of Columbia (the dc in 'grade.dc') to submit reviews about certain agencies in the District and view how other residents graded those agencies. The stated goal is to help residents better engage with their government and help government agencies to improve the quality of their services.⁷³ The latest gradings on the site at time of writing are from September 2018, indicating it is not regularly updated.

In the United Kingdom, there is evidence that regulators are turning their minds to the data they hold and how it might be usefully shared. This coincides with initiatives related to consumers accessing their own data—such as 'midata' and in some cases specific legislative requirement. Notable examples include:

- ▶ the Financial Conduct Authority published a transparency framework in August 2013.⁷⁴ This is also relevant to the accountability discussion in Section 2.2.1
- ▶ Ofgem publishes underlying data it receives when commissioning a report or market study—including releasing it in machine readable form so that it can be analysed by stakeholders,⁷⁵ and

- ▶ the United Kingdom Regulators Network published its discussion paper - *The use of data publication to enable reputational regulation*.⁷⁶ The paper contains a useful canvassing of possible approaches and key questions for regulators contemplating their approach to data publication.

RECOMMENDATION 5:

The Consumer Affairs Forum (CAF), together with other Australia consumer protection regulators establish a project to examine and adopt examples of good practice in data and information sharing, including specific consideration of establishing registers of complaints and super complaints mechanisms.

2.2.3 Selection of matters and enforcement policies

Even a regulator with a well-developed enforcement culture, good resourcing and tools will not be able to take action on all potential breaches of the law. A mechanism for prioritising potential action is necessary.

There are many ways to prioritise including:

- ▶ scope of impact (widespread, harms many)
- ▶ impact on vulnerable groups (harms a few significantly)
- ▶ egregious or repeat conduct
- ▶ deterrence of widespread conduct
- ▶ market shaping (setting the rules of the game early)
- ▶ focus on particular market sectors
- ▶ focus on particular types of conduct
- ▶ the need to clarify the operation of the law.

There are merits to each of these priority factors and a detailed examination of each is beyond the scope of this Report. For the purposes of this Report, it is enough to note that:

- ▶ it is preferable that regulators turn their minds to how enforcement action will be prioritised and are overt about the factors they will use to decide, and
- ▶ the availability of intelligence inputs (for example, complaints, market research, critical analyses etc) is crucial.

⁷² Martin Hobbs, B. *But are they any good? The value of service quality information in complex markets* Consumer Policy Research Centre, 23 September 2018.

⁷³ <https://grade.dc.gov>.

⁷⁴ <http://fca.org.uk/your-fca/documents/feedback-statements/transparency-framework>

⁷⁵ <https://www.ofgem.gov.uk/about-us/ofgem-data-and-cyber-security>

⁷⁶ Cullum P, *The use of data publication to enable reputational regulation*, Regulators Network, July 2014.

One mechanism to guide prioritisation is an enforcement policy. Since the 2013 Report, it has become more common for enforcement policies to be published and in some instances annual enforcement priorities to be developed.

Enforcement policies can articulate the circumstances in which an agency will consider enforcement an appropriate response. Priorities help stakeholders understand where the regulator will focus its attention in a given period. They can both provide useful insight into the agency view about balancing the costs and benefits of litigation.

All agencies examined, except Access Canberra, publish enforcement or compliance policies on their websites. Some agencies publish annual enforcement priorities, including the ACCC, the AER and South Australia's Consumer and Business Services. ASIC's approach is perhaps the most detailed, as it also publishes Regulatory Guides about certain types of enforcement remedies.⁷⁷ Fair Trading Queensland and Consumer Protection Western Australia have also made notable efforts to articulate the factors that guide their decision making (noting Consumer Protection Western Australia's publication dates back to 2011).

While this publication is welcome, an examination of the policies indicates in many instances there is significant work required to ensure the policies are effective in guiding enforcement decisions and activity. There are three key issues:

- ▶ the extent to which the policies set out the information inputs used to guide enforcement decisions
- ▶ what the policies reflect about the enforcement culture of the agency, and
- ▶ whether they are sufficiently specific to guide selection of the best tool from the regulatory toolkit.

Most of the policies provide some insight into the information regulators use to inform their decisions about which matters will be the subject of enforcement action, and the type of action pursued. The policies vary significantly in terms of the detail provided and the breadth of intelligence inputs that are considered.

In terms of enforcement culture, it is instructive to review the language used in the policies. Three categories of approach were observed:

- ▶ policies that tend to reserve court proceedings as a 'last resort,' for example to respond to serial offenders or for the most egregious conduct. This approach was observed in the policies of the ACMA, AER, Northern Territory Consumer Affairs, Fair Trading Queensland and Consumer Protection Western Australian
- ▶ policies that reflect a 'right tool for the job' approach i.e. policies that reflect a view that sometimes court proceedings are the first best approach. This

approach was observed in the policies of the ACCC and to a lesser extent ASIC, Consumer Building and Occupational Services Tasmania (though the policy does not envisage civil litigation as an option)

- ▶ policies that are a combination of the two. For example, Consumer Affairs Victoria, NSW Fair Trading (although the NSW policy is sparse compared with others reviewed) and South Australia's Consumer and Business Services.

The 'last resort' approach is problematic and is at odds with the 'why not litigate' approach suggested by Financial Services Royal Commission. The last resort approach can underplay the importance of court proceedings in deterrence, market shaping and establishing the boundaries of the law.

The need for specificity in enforcement policies and priorities was the subject of discussion in the Financial Services Royal Commission's Final Report. In discussing the use of infringement notices, the Report recommended:

"ASIC's enforcement policy in respect of infringement notices be redrawn to reflect that:

- ▶ *infringement notices should primarily be used in respect of administrative failings by entities;*
- ▶ *the use of infringement notices for provisions that require an evaluative judgment will rarely, if ever, be appropriate; and*
- ▶ *beyond purely administrative failings, infringement notices will rarely be the appropriate enforcement tool where the infringing party is a large corporation."*⁷⁸

This is significantly more specific than most of the policies reviewed by Consumer Action. A number of policies refer to 'risk-based' enforcement approaches and 'proportionality' but do not specify the nature of the risks to be considered, the consequences of different levels of risk being identified or how proportionality is applied in practice.

In the absence of more detailed guidance there is a risk that a preference for compliance or other 'softer' action becomes ingrained in the regulator's culture, rather than taking the 'harder' enforcement approach.

It is of course necessary that regulators have discretion in selecting enforcement matters. However, a clear and specific articulation of enforcement principles should not inhibit this discretion, rather it provides a mechanism to assess whether action matches the intent of the enforcement policy.

While there are other sources that can be drawn on, the Financial Services Royal Commission's Final Report provides a very useful articulation of the role of a number of 'levels' of

77 For example, Regulatory Guides - RG100 Enforceable Undertakings

78 Final Report FSRC, p.439.

the enforcement pyramid, including infringement notices, enforceable undertakings, and civil and criminal court proceedings.⁷⁹

2.2.4 Consumer Advocates' views

Consumer Action sought the views and input of consumer advocates as part of this Report. The Consumers' Federation of Australia facilitated a survey of its members about their view of regulator accountability.⁸⁰

Members completing the survey included representatives of consumer advocacy organisations, community legal centres, legal aid offices, financial counselling agencies and an individual member. Just over 35% of respondents were employed at executive or management level, just under 30% were lawyers and just over 10% were advocates. Two thirds have more than 10 years' experience in their role.

The survey revealed strong and largely consistent views about the importance of regulator accountability and the desire for more enforcement and compliance activities and better reporting on it.

100% of respondents felt public reporting of activity by regulators was important, with close to 93% of respondents indicating it was very important.

Respondents were asked questions about the type of information and data they felt was important to be reported by regulators.

- ▶ 100% of respondents felt publication of information about complaints and enforcement and compliance policies were important (85% felt it was very important)
- ▶ 64% felt publication of information about penalties awarded, compensation received and market data was very important, and
- ▶ 42% felt the publication of market research as very important.

A clear desire for reporting of systemic issues came through the survey results. Other suggestions included:

- ▶ outcomes of complaints received
- ▶ more details about complaints e.g. NSW Fair Trading Complaints Register
- ▶ industry wide perspectives e.g. United Kingdom Financial Conduct Authority's Perimeter Report⁸¹
- ▶ naming of businesses commonly the subject of complaints
- ▶ role and public policy objectives e.g. what type of regulator are they—legal, economic etc, and

- ▶ monitoring changes relating to sector transformation.

In terms of publication of data, over 92% of respondents ranked publication of activity data regarding court proceedings as very important. 85% ranked data regarding compliance activities as very important and 78% of respondents ranked data about administrative actions as very important.

In contrast, only 42% of respondents felt data about consultations was very important and only 28% rated data on education activities as very important.

Suggestions about other activities regulators could report on included:

- ▶ impact reporting (as distinct from outputs or outcomes)
- ▶ collegiate activity with similar regulators (e.g. ASIC, APRA, ACCC), and
- ▶ audits undertaken e.g. of mandatory code compliance.

Respondents were asked for their views about the form(s) of data that would be useful. Views were mixed. For example:

- ▶ 100% of respondents felt graphic information was important
- ▶ 64% of respondents felt machine readable data was important (only 29% felt it was very important). 36% had a neutral response to machine readable data
- ▶ 86% of respondents felt numeric data was important, and
- ▶ 100% felt narrative descriptions of actions undertaken were important.

There were mixed views about the frequency of reporting. Respondents were asked if they wanted reports quarterly, six-monthly, annually or another frequency. Six-monthly was the most favoured (36% of respondents). 21% nominated 'other'.

Respondents who nominated 'other' made the reasonable point that the desired frequency of reporting will depend on the nature of the report. For example:

"It depends—some things like financial data can be annual but complaints data would be most useful if reported monthly or quarterly."

"Depends entirely on what they are reporting. For example, Australian energy regulator weekly market reports and annual state of the market reports seem like suitable intervals."

⁷⁹ Ibid. p.437-8.

⁸⁰ The survey was open to Consumers' Federation of Australia members for the period 18 June to 15 July 2019. 17 members responded to the survey. A copy of the survey instrument appears at Appendix B.

⁸¹ For example, <https://www.fca.org.uk/publication/annual-reports/perimeter-report-2018-19.pdf>

Respondents were asked to nominate examples of innovative or useful reporting by regulators they have encountered. Responses included:

"We don't want to tie them down in red tape, but there's always room for short summaries. We might ask for heaps and heaps of information, but most of us won't read it. So getting digestible short reports are good."

"I like the suite of reports that ACCC delivers, including the sector studies"

"Reporting on life insurance policies by APRA & ASIC."

"The statistics produced by the Financial Ombudsman Service regarding disputes received and the outcomes were useful in working out whether a business was going to be 'easy' to deal with in a dispute. While we are not talking about dispute resolution but rather regulatory activity, it would be interesting to see in table form how different industries respond to regulator activity."

Finally, respondents were asked to provide any additional comments regarding regulator accountability:

"I think ASIC and the ACCC are very accountable."

"I don't think we focus enough on some authorities that have key regulatory roles. Examples are: 1. Gambling and liquor regulators which have product safety obligations assigned to them 2. Local government sector. I'm not aware of what, if anything, is used as a gold standard for consumer (i.e. ratepayer) satisfaction."

"Regular meetings where consumer advocacy groups can seek direct updates from the regulator are useful (ASIC CAP, ACCC CCC)."

"In SA, we only see high level information through an annual report and some media reporting which may or may not get noticed."

"Financial counsellors and community lawyers had made thousands of complaints prior to the Royal Commission about misconduct. It took a Royal Commission for some action. Regulators need to encourage complaints, analyse the data and report somehow so the complaints actually lead to action. people need to know if there are trends on particular conduct that the regulator is ignoring because it is too hard (or some other reason)."



03

PROGRESS ON ISSUES RAISED IN THE 2013 REPORT

Progress on each of the issues identified and recommendations made in the 2013 Report are discussed in this section.

It is clear from our review that while there are some strong performers, there is still much room for improvement on the fundamentals—undertaking enforcement work, increasing its significance and impact and reporting it effectively.

3.1 2013 Recommendation 1: Increase the quantity of enforcement work

The enforcement performance of each regulator is examined in detail in Part 5.

There has been very mixed progress on this recommendation. Some regulators have maintained or improved an already strong enforcement performance. Others have maintained an almost complete absence of enforcement work. Disappointingly, a couple of

regulators with a relatively strong performance in this area in the 2013 Report have reduced their level of enforcement work.

The data makes it clear there is room for all consumer protection regulators to increase the amount of enforcement work they undertake in line with population growth and/or market growth. There is significant need for an increase in activity on the part of consumer protection regulators in the Northern Territory, Australian Capital Territory, Tasmania, Victoria and potentially Western Australia and by ACMA and the AER nationally. In doing so agencies should consider the following:

- ▶ regulators should ensure they are undertaking enforcement action in a strategic way designed to achieve specific and articulated marketplace outcomes
- ▶ doing more enforcement work is not just about increasing the total number of enforcement actions, but, subject to the demands of the articulated strategy, regulators should increase actions across the regulatory pyramid and in particular ensure there are sufficient actions at the

'pointy end' of the pyramid to have a real deterrent effect on businesses that may otherwise fail to comply with the law

- ▶ increasing enforcement action includes taking on litigation where it is necessary to test the law. Governments and the community have an interest in the law being tested to ensure that it meets policy objectives. If it is demonstrated to be adequate via the court process, it can circumvent the need for inquiries, debates and the imposition of further regulation
- ▶ to facilitate an increase in enforcement work regulators should have regard to the issues of regulatory agency culture discussed in Sections 3.3 and 3.6 of this Report, and
- ▶ to deliver an increase in enforcement activity, regulators need to understand what has driven a lack of enforcement activity and overcome any barriers that exist, such as organisational culture, lack of capability/experience, fear of media or marketplace backlash, lack of resources or political influence.

RECOMMENDATION 6:

Increase the quantity of enforcement work (repeated recommendation from 2013 Report), having regard to the following:

- ▶ enforcement action should be undertaken in a strategic way designed to achieve specific and articulated marketplace outcomes
- ▶ activity should increase across the regulatory pyramid and ensure there are sufficient actions at the 'pointy end' of the pyramid to be an effective deterrent to the marketplace
- ▶ litigation should be used where it is necessary to test the law
- ▶ regulators should have regard to the issues of regulatory agency culture and what they may need to change culturally (removing barriers) to support greater enforcement activity.

3.2 2013 Recommendation 2: Report better on enforcement work

There has been very mixed progress regarding this recommendation. On the positive side, there is evidence of renewed focus on reporting enforcement work by some regulators. In some cases, there has been improvement in enforcement reporting. In other cases, previously strong reporting has reduced or almost disappeared.

More broadly, many of the problems identified in the 2013 Report remain. Even among regulators who generally report well, data anomalies were identified.

In too many instances there were changes to what is reported, how it is counted or how it is presented. This makes comparison of the same regulator year to year a difficult task, and comparison between regulators near impossible. In some instances, year-to-year comparisons were only possible by making certain assumptions or extrapolations of the data.

The reporting performance of individual agencies is examined in detail in Part 5. Here we examine whether the introduction of the Australian Consumer Law 'one law many regulator' model has improved reporting across the system.

In the 2013 Report, Consumer Action was hopeful improvements to reporting would come via a proposed national framework for occupational licensing for key occupations including plumbers, electricians and building practitioners (NOLA) and the introduction of the ACL 'one law many regulator' model.

Unfortunately, our review has found the anticipated shift in reporting consistency, quantity or quality has not occurred. State and Territory regulators have tended to focus their enforcement activity on their occupational functions and the NOLA project did not progress.

This section of the Report draws on two ACL reporting sets produced since the 2013 Report (the *ACL Implementation Reports* (2011-2016) and the *ACL Year in Review* reports (2016 – to date) and the Productivity Commission's Review discussed in Section 2.1.2.

The *ACL Implementation Reports* provided information on progress to implement the ACL including the multi regulator model. The *ACL Year in Review* "focus on the ACL's ongoing operation and development rather than its implementation."⁸² These reports chart progress against the six objectives set out in the intergovernmental agreement for the ACL, with enforcement related reporting generally relating to Objective 6: "to promote proportionate, risk-based enforcement".⁸³

82 Australian Consumer Law *Year in Review* 2016-17, March 2018.

83 Intergovernmental Agreement for the Australian Consumer Law, 2009, https://consumerlaw.gov.au/sites/consumer/files/2015/06/acl_iga.pdf

The reports provide a picture of enforcement undertaken across the framework that was not previously available. While providing welcome insights, the reports fall short of the level quantitative and qualitative information recommended by the Consumer Action's Reporting Framework outlined in Recommendation 1 of this Report. In particular:

- ▶ the reports are not comprehensive, in that what is reported is a selection of enforcement matters rather than a complete list of actions taken by regulators. It is not clear on what basis matters are selected. It may be that the compilers of the report have encountered similar difficulties with data to those described in this Report, however that is not specified;
- ▶ the reports are produced annually rather than six monthly or quarterly
- ▶ the reports are readily accessible from the ACL site but are not also available on the sites of individual regulators that make up the system, and
- ▶ other than in narrative commentary, reporting does not identify the agency or agencies acting in a matter. It is therefore not possible to make any form of assessment of the contribution of individual agencies to the ACL system as a whole.

To address these issues, regulators should implement the Reporting Framework outlined in Recommendation 1 of this Report. The agreed reporting standard regarding enforcement and compliance activity, including agreed naming conventions and counting methodology, could be managed via the intergovernmental agreement and ACL governance infrastructure.

The Financial Services Royal Commission Final Report also suggested additional actions to improve information sharing, which are also applicable to consumer protection regulators:

- ▶ rather than starting from the premise that information belongs to a particular regulator, view the information as belonging to the regulatory system, for example the ACL regulatory system
- ▶ amend the framework to require sharing of any system information including information concerning entities that regulators have joint regulatory responsibilities for, and which is relevant to the exercise or possible exercise of a power or function of the other regulator
- ▶ a shared database.⁸⁴

There is also more to be gained from the structures that has been created to manage the multi regulator model, including regulatory communities of practice where agencies can share

the benefits of their own strengths while learning from the strengths of others. This aligns with the current ACL national project relating to training and professional development.

RECOMMENDATION 7:

Regulators should continue to explore ways to leverage the structures that have been formed to manage the multi regulator model to improve information sharing and strengths-based learning, including establishing regulatory communities of practice.

3.3 Responding to compliance risks with a campaign approach

The 2013 Report noted:

"Regulators are generally confronted with the reality that they do not have enough resources to respond to each and every breach of consumer protection law. How regulators respond to this reality has a significant impact on effectiveness."⁸⁵

The 2013 Report called for regulators to adopt a proactive campaign approach rather than being purely reactive. A campaign approach has regulators taking a range of complementary actions, including strategic enforcement, to address a specific issue, as "[r]egulators need to be able to prevent consumer harm, not just deal with misconduct after it occurs."⁸⁶

Campaigns can be proactive—tackling emerging market problems, or reactive—addressing research or significant consumer complaints and systemic issues. The objectives of a campaign approach are to highlight specific problems, educate the market and change behaviour, ideally before it has become entrenched or caused widespread consumer harm.

Developments in the use of a campaign approach to market issues have been largely positive since the 2013 Report—but not widespread. The ACCC has continued to take a campaign approach, particularly in the vocational education and training sector, broadband pricing and debt collection practices. ASIC's work in payday lending and responsible lending more generally is another example.

There is evidence that the multi regulator model has added significantly to coordination of a campaign approach across jurisdictions. Examples include the partnership between the ACCC, Fair Trading Queensland and the Indigenous Consumer Action Network to establish a 'Do not knock'

84 FSRC Final Report, p.463.

85 Ibid. p.42.

86 Consumers' Federation of Australia, Submission to the ACL Review Secretariat, *Issues Paper for the Australian Consumer Law review*, 10 June 2008.

town in Yarrabah,⁸⁷ information sharing and coordinated action by ACL regulators against itinerant traders,⁸⁸ and the development of an updated single product safety site providing recall information to consumers as well as other product safety information.⁸⁹

Coordinated action is a focus of the Year in Review reports, with some examples reported more comprehensively than others. For example, on the more comprehensive side is product safety action taken by Consumer Affairs Victoria with assistance from both NSW Fair Trading and Fair Trading Queensland.⁹⁰

A less comprehensive example is a coordinated approach to action against misconduct in the retail energy sector including against solar panel suppliers. A detailed review revealed Consumer Protection Western Australia undertook all enforcement action in 2016-17, except for one action taken by the ACCC. Consumer protection regulators in Victoria and NSW did not take any action despite their markets being impacted by solar panel suppliers. Truly national campaigns should see enforcement activity by all State, Territory and national regulators. Subsequent action was taken by Consumer Affairs Victoria in 2018-19.⁹¹

There is less evidence of a campaign approach being successfully used for single jurisdiction issues, though there are exceptions. For example, Consumer Affairs Victoria has conducted an extensive campaign relating to under-quoting in real estate sales including education materials for traders and consumers, surveillance work, awareness raising and substantial enforcement action.

The coordinated campaign approach has the potential to have a significant impact on markets, without the significant impact to regulator resourcing. Jointly created information, communications, approaches and actions provides economies of scale when well-coordinated. When done regularly, it can generate a standard operating rhythm that allows further efficiencies and savings to be found.

The coordination of campaigns for multi-jurisdictional issues also creates opportunities for regulators to share resourcing and materials for single jurisdiction issues they may have already run—again saving time and money.

RECOMMENDATION 8:

Each consumer regulators should use a campaign approach to target specific market problems—taking a multi-faceted approach including education, building awareness and undertaking enforcement action. Campaigns should be co-created when an issue is multi-jurisdictions and when an issue impacts a single jurisdiction a sharing and learning approach taken to campaign development.

3.4 2013 Recommendation 5 – Reporting to consumer organisations

The 2013 Report noted:

"Consumer organisations play an important role in early identification of consumer issues in the marketplace, through complaints services, legal advice and assistance services, financial counselling, and market monitoring. The information provided by consumer organisations to regulators can help identify emerging issues and trends of consumer concern. However, consumer organisations often receive limited feedback about complaints, and regulatory action (if undertaken) can occur many years after a complaint is made."⁹²

It recommended "regulators should set up improved systems to regularly and routinely report to consumer organisations on outcomes of complaints made by or through those organisations."⁹³

There have been positive, though not widespread, developments in this area. Developments have occurred in two areas:

- ▶ informal mechanisms – generally tied to regulators' consumer consultative mechanisms which provide (broad and confidential) updates regarding the progress of matters referred to the regulator by consumer organisations, and
- ▶ more formal mechanisms – such as the NSW Fair Trading and CHOICE super complaints trial.

For some time, the ACCC has operated a 'matter register' as part of its consumer consultative arrangements. The register records complaints lodged by consumer organisations and

87 Australian Consumer Law, *Year in Review 2016-17*, p.7.

88 See e.g. Northern Territory Consumer Affairs Annual Report 2016-17, p.22.

89 <https://www.productsafety.gov.au>

90 *ACL Year in Review*, p.11.

91 Consumer Affairs Victoria, Vic Solar Technologies Pty Ltd, commencement of action, 8 April 2019, <https://www.consumer.vic.gov.au/latest-news/vic-solar-technologies-pty-ltd-court-action>.

92 2013 Report, CALC, p.59.

93 *Ibid.* p.22.

provides a quarterly status update, including whether they have been referred to other ACL regulators. There has been a steady increase in the number of referrals made by consumer organisations and a significant number of enforcement actions by the ACCC as a consequence. The approach has been particularly effective in identifying issues impacting disadvantaged and vulnerable consumers.

ASIC operates a similar system where complaints lodged by consumer organisations are logged and updates provided as part of the quarterly papers for Consumer Advisory Panel meetings. More recently, ASIC has introduced a process of identifying themes arising from issues referred by members and discussing possible solutions.

Consumer Affairs Victoria is the only State or Territory regulator we could identify that has a similar mechanism for capturing and reporting back on complaints/issues referred by consumer organisations. In August 2018, in response to issues arising from its annual Community Forum, Consumer Affairs Victoria set up a portal that enables consumer organisations to refer complaints/issues. Consumer Affairs Victoria provides a response to advocates in relation to complaints lodged via the portal.

Our review has not identified mechanisms to share progress information with organisations lodging complaints with ACMA, the AER or other State and Territory regulators, although ACMA and AER both have formal consultative forums.⁹⁴

Beyond 'matter registers', portals or similar mechanisms, we believe more can be done to work with consumer organisations.

The Consumers' Federation of Australia in its submissions to the Productivity Commission's Review of Enforcement and Administration Arrangements underpinning the Australian Consumer Law, called for innovation in consumer organisation and regulator relationships and encouraged the exploration of initiatives, such as the formation (and evolution) of the North Queensland Indigenous Consumer Taskforce.⁹⁵

The Taskforce takes a collaborative approach to addressing systemic issue affecting indigenous communities, sharing knowledge and resources. It includes the ACCC, ASIC, Indigenous Consumers' Action Network (ICAN), Fair Trading Queensland, the Energy and Water Ombudsman Queensland, Shelter Housing Action Cairns, the Cairns Community Legal Centre and Save the Children.

Work of the taskforce encompasses or has led to:

- ▶ two-way knowledge exchange and transfer
- ▶ a collaborative enforcement approach including outcomes against a number of traders
- ▶ increased regulatory presence in remote communities
- ▶ timely approach to consumer cases and feedback
- ▶ direct access to decision makers for financial counsellors, and
- ▶ direct partnerships between regulators and communities (e.g. Wujal Wujal Do Not Knock Town)

The Consumers' Federation of Australia has encouraged regulators to explore the possibility that partnerships like this one could focus on issues impacting other vulnerable populations—for example, other indigenous communities, newly arrived migrant communities and people with disabilities.⁹⁶

RECOMMENDATION 9:

All ACL regulators, together with ACMA and the AER develop formalised mechanism(s) to provide timely and effective feedback and status reports to consumer organisations who lodge complaints with the regulator.

⁹⁴ We have not considered the NSW Fair Trading Complaints Register initiative in this section, as it is a public report regarding complaints received rather than progress on potential investigation of matters referred by consumer organisations.

⁹⁵ Consumers' Federation of Australia, Submission to Productivity Commission Issues Paper for Study into enforcement and administration arrangements underpinning the Australian Consumer Law, 31 August 2016.

⁹⁶ Ibid. p.8.

3.5 2013 Recommendation 6 - Model litigant policies

The 2013 Report outlined the dangers of being overly focused on the success rates of litigation.⁹⁷

In the realm of consumer protection, losing can generate as many benefits as winning. Sometimes the only way to clarify what is expected under the law, is to have the matter determined by a court—win or lose—the objective is achieved as the law is clarified. Often the regulator is the only party with capacity to bring an action, as court action is out of the grasp of most consumers.

The law imposes obligations on government agencies when handling claims and conducting litigation, that are higher than for ordinary citizens. These obligations have been supplemented by specific model litigant policies developed by governments, which have been used by regulators in the past to justify not taking actions that may be perceived as more risky or marginal.

The 2013 Report recommended “Regulators and the governments to which they are accountable should ensure that the model litigant policy does not interfere with regulators’ ability to use their enforcement powers to protect consumers and where appropriate to test the law.”⁹⁸

Model litigant policies were raised in evidence and submissions before the Financial Services Royal Commission and were the subject of commentary by Commissioner Hayne in his Interim and Final reports:

“Nor is it the case that a regulator is only permitted to commence proceedings when there are reasonable prospects of success...the requirement for ‘reasonable grounds’ directs attention to other factors, interests and considerations than just prospects of success. And so, there may be reasonable grounds for commencing a civil penalty proceeding where the issue raised is systemic or will assist to clarify the law, notwithstanding that the prospects of success may be uncertain (emphasis added).”⁹⁹

Consumer Action urges continued vigilance by consumer protection regulators to ensure model litigant policies do not prevent court-based enforcement action being undertaken, where it is warranted and needed to clarify the law.

3.6 How much will it cost to enforce that?

Culture is a key determiner of how limited resources will be used by a regulator. The 2013 Report noted:

“Enforcement agencies have limited budgets and must ensure that their resources are targeted. At the same time, they have duties to respond to breaches of the law in ways that are effective. Combined with other agency risks that may arise from litigation (criticism for failure, criticism for failing to meet court timelines) there is a danger that agencies will too easily shy away from litigation. Agencies, which don’t undertake litigation regularly, may well have difficulty in undertaking any litigation effectively. In the absence of good systems and experienced staff the risks of getting it wrong will increase.”¹⁰⁰

These concerns were also raised in the Financial Services Royal Commission Final Report:

“Litigation takes time. It costs money and often great effort. There is always some uncertainty. What is to be made of time, cost and uncertainty? All three considerations will always be there. Why not avoid them? If a compromise can be reached without those risks, why not take it?”

The answer lies in recognising that litigation of the kind now under consideration is the exercise of public power for public purposes. It is litigation by a public authority to enforce the law.”¹⁰¹

Theories of regulatory practice, such as Braithwaite’s pyramid, are tools that can guide decisions about using that ‘public power’ in the face of limited resources. As stated by the Financial Services Royal Commission:

“The regulatory pyramid, to which so much reference has been made in evidence and submissions, reflects two very practical observations: not all contraventions of the law are of equal significance; and regulators do not have unlimited time or resources.”¹⁰²

Of course, as with regulatory practice, theory is not static. International developments are instructive. For example, the United Kingdom Financial Conduct Authority has developed a plan for how they will work that is a wheel rather than a pyramid.¹⁰³

97 2013 Report, pp.73-74.

98 Ibid. p.22.

99 FSRC Final Report, p.434 and Legal Services Directions 2017, Appendix B (containing Commonwealth Model Litigant requirements).

100 2013 Report, p.114.

101 FSRC Final report, p.432.

102 Ibid. p.433.

103 <https://www.fca.org.uk/publication/corporate/approach-to-consumers.pdf> at 28.

Figure 2: Our plan for how we will work



While this model is focused on regulation rather than enforcement, its attraction lay in the fact that it's inherently non-linear nature and incorporates priority factors that reflect a focus on consumer behaviour and vulnerability.

Even with a strong enforcement culture and tools to guide the use of enforcement powers, available resources clearly have an impact on a regulator's effectiveness. In acknowledging this, we have examined publicly available information about funding and staffing levels for each regulator in Part 5 of this Report.¹⁰⁴

As with enforcement data reviewed, there is significant variability about whether:

- ▶ revenue is reported (and how it is reported)
- ▶ staffing numbers are reported, and
- ▶ consumer protection work (or even the work of a division within a department) can be identified.

As a result, it has not been possible to draw significant conclusions from the information we reviewed. We note the following:

- ▶ there is no clear correlation between funding and enforcement performance between regulators
- ▶ there is significant levels of variability in funding amounts, where funding of individual agencies can be identified, and
- ▶ individual agencies may be subject of significant funding variation from year to year, which does appear to correlate somewhat with performance.

¹⁰⁴ See Appendix C for full details.

3.7 2013 Recommendation

3 - Vulnerable consumers

The 2013 Report raised the importance of regulator focus on market impacts on disadvantaged and vulnerable consumers.

"vulnerable and disadvantaged consumers are less likely to be able to use dispute-resolution or the courts to protect their own interests, and they often rely on regulators to protect them from market misconduct."¹⁰⁵

There is increasing evidence that there are particular market problems that arise for vulnerable and disadvantaged consumers, such as business models expressly designed to exploit vulnerability and that general market problems impact more severely on vulnerable and disadvantaged consumers who may have less resources to begin with.

For regulators, there may also be particular challenges in working with disadvantaged and vulnerable witnesses. The 2013 Report recommended, "that government, regulators and consumer organisations work with courts and policy makers to ensure that the interests of vulnerable and disadvantaged consumers benefit from CP enforcement."¹⁰⁶ The 2013 Report also made recommendations about regulators better supporting disadvantaged or vulnerable consumers and exploring alternative forms of evidence. We are not aware of any new work in this area.

In terms of the more general issue of protecting vulnerable consumers all but one regulator has a published enforcement or enforcement and compliance policy.

The ACCC policy nominates issues impacting disadvantaged and vulnerable consumers as an enduring priority. All other published enforcement or compliance policies identify consumer vulnerability as a factor to consider when taking action in response to particular conduct. However in the absence of a specific priority it is just one of several factors to be weighed.

When enforcement policies are specific about the priority placed on protecting vulnerable and disadvantaged consumers, it leads to focussed enforcement action. Notable examples include the coordinated action by ACL regulators against itinerant traders, work by the Queensland Consumer Taskforce, payday-lending enforcement by ASIC and door-to-door, debt collection and the ACCC action against VET private colleges.

While many policies identify conduct impacting disadvantaged and vulnerable consumers as a priority factor, there is less evidence of a broader conceptual discussion about what gives rise to (or amplifies existing) disadvantage and vulnerability in a market context and what fair markets for consumers might look like.

A clear understanding of consumer biases and behaviour can indicate arenas or times when consumers may be vulnerable as well as indicating which regulatory approaches may be effective in eliminating or addressing harm.

The link is two-fold:

- ▶ behavioural insights are adding weight to the view that **any** consumer can be vulnerable in certain situations or at certain times, and
- ▶ actions to address features of markets that exploit behavioural biases are likely to be particularly beneficial to disadvantaged and vulnerable consumers. For example, the conduct of 'sludge audits' as recommended by Sunstein would make markets more navigable for all consumers and particularly disadvantaged and vulnerable consumers.¹⁰⁷

There is an obvious challenge when considering everyone can be vulnerable to ensure it doesn't tip into the assertion that everyone is vulnerable—as the latter view provides no basis on which to prioritise action. The challenge for regulators is to identify the situations or factors that may make a consumer less able than the average consumer to represent themselves in the marketplace. For example, the impact of recent bereavement may be a reason that consumers are less able to drive lower costs in funeral service markets.

Sunstein's paper on sludge audits suggests one framework for consideration:¹⁰⁸

	Low friction	High friction
Good	Helpful "Make it Easy" Nudge (eg, simplification; airport maps; automatic enrollment in good pension plan) (1)	Deliberating-Promoting Nudge (eg, "are you sure you want to?"; cooling off period) (2)
Bad	Harmful "Make it Easy" Nudge (eg, automatic enrollment in costly "overdraft protection" program) (3)	Sludge (eg, form-filling nightmares; long waiting times for drivers' licenses or visas) (4)

¹⁰⁵ 2013 Report, p.116.

¹⁰⁶ Ibid. p.21.

¹⁰⁷ Sludge audits refer to the removal of "excessive or unjustified frictions that make it more difficult for consumers ...to get what they want or do as they wish" and are explored in *Sludge Audits* Sunstein S, draft April 2019.

¹⁰⁸ Ibid. p.7.

In support of sludge audits, Sunstein notes:

*"Simplification and burden reduction do not merely reduce frustration, they can change people's lives. An underlying reason is that our cognitive resources are limited. Inevitably, we are able to focus on only a small subset of life's challenges. For those who are busy, poor, disabled or elderly, the problem of cognitive scarcity is especially serious. For that reason, it is important to focus on the distributional effects of sludge—on whom it is most likely to hurt. As a practical matter, the answer is often the poorest."*¹⁰⁹

In Australia, regulators have encouraged some discussion and reflection on these issues—for example through keynote addresses or panel consideration at the National Consumer Congress. It is time for Australian regulators to take the 'next step' in relation to effective ways to focus on addressing conduct impacting disadvantaged and vulnerable consumers and to move away from traditional notions of financial hardship being the principle driver of vulnerability.

There is evidence of a broader conversation and action in some international regulatory agencies, explored below.

The British Standards Institution has developed a standard on vulnerability that recognises vulnerability as transient rather than permanent. This work is currently being used as a foundation for the potential development of an international standard. The approach here incorporates universal design principles, which guide the design of products, services and communications to meet the need of all in the community.

UK's Ofgem is presently consulting with stakeholders on its 2025 Consumer Vulnerability Strategy. The Strategy will replace the existing Strategy and sets outcomes it expects the energy market to achieve to ensure vulnerable consumers are not "left behind by the pace of change in the energy industry."¹¹⁰ The five themes are:

- ▶ improving identification of vulnerability and smart use of data
- ▶ supporting those struggling with their bills
- ▶ driving significant improvements in customer service
- ▶ encouraging positive and inclusive innovation
- ▶ working with partners to tackle issues that cut across multiple sectors.

Ofgem has noted that strong enforcement and compliance action has been a feature of the current strategy and its current focus on ability to pay has been successful in "nearly eliminating disconnections for debt." Under the new strategy a priority will be to strengthen protections for customer on pre-payment meters to reduce the risk of self-disconnection.

*"we cannot have a situation in which the most savvy and affluent customers benefit from [changes in the energy sector], while others are left behind."*¹¹¹

Significantly the above strategy displays a strong proactive focus on issues impacting vulnerable consumers and also sets expectations about positive outcomes for these consumers rather than seeking to simply stamp out problematic conduct.

The UK's Financial Conduct Authority has been active in leading a discussion about the definition of vulnerability. More recently, the Financial Conduct Authority has developed an overall framework outlining the positive factors they will see when markets are functioning well for consumers. This framework includes specific consideration of vulnerable consumers:

"Inclusion: Where the financial needs of all consumers, including vulnerable consumers, are taken into account when accessing financial products.

In markets where consumers are fairly included, we see the following:

- ▶ *Fair treatment and fair risk pricing mean consumers are not unduly excluded.*
- ▶ *All consumers can access basic financial services.*
- ▶ *The needs of all consumers, including vulnerable consumers, are taken into account."*¹¹²

The significant difference in the framework is its positive and proactive signalling.

The Financial Conduct Authority is very clear (publicly) in its expectations of regulated entities. For example, its 2018 FCA Mission: Approach to Consumers is:

*"To provide clarity on our expectations of firms and ensure good outcomes for all consumers, particularly vulnerable consumers, we plan to consult...on guidance for firms on the identification and treatment of vulnerable consumers."*¹¹³

¹⁰⁹ Ibid, p.11.

¹¹⁰ Ofgem media release *Ofgem sets out five point plan to help vulnerable consumers*, 13 June 2019.

¹¹¹ Ibid.

¹¹² FCA Mission: Approach to Consumers, Financial Conduct Authority, July 2018, p.9.

¹¹³ Ibid. Executive Summary.

The clear public statement of an expected market state provides a powerful call to action for the regulator where these conditions are not met.

Other notable examples include market studies by the UK Competition and Markets Authority that recognise consumers are not a homogenous group. For example, its energy market study has specifically considered issues facing pre-payment meter customers¹¹⁴ and a banking market study the needs of overdraft customers.¹¹⁵

RECOMMENDATION 10:

Australian regulators develop frameworks to articulate positive factors, characteristics or outcomes of the markets within their remit that demonstrate they are functioning well for disadvantaged and vulnerable consumers.

3.8 2013 Recommendation 4 - Tell everybody: Publicising enforcement

The 2013 Report noted:

*"Consumer regulators need to ensure that regulated industries, governments and the public are aware of their work. Individual enforcement successes need to be communicated to other businesses who can be reassured that they are not being unfairly disadvantaged by a rival as well as deterred from similar conduct. Governments and the public need to know that consumer protection laws are being upheld and compliance promoted."*¹¹⁶

The 2013 Report recommended, "Regulators should make systemic use of the media to increase the deterrence value of their enforcement actions and to gain maximum educative value from enforcement outcomes."¹¹⁷

Improvements in this area can be seen. For example, the strategic priorities for CAANZ for 2015-17, included "Better leverage the compliance and enforcement outcomes of regulators." Furthermore, in practice, the use of the press and social media to publicise outcomes and the willingness to make public warnings has generally improved. However, Consumer Action believes (with the exception of ACCC and ASIC) that most ACL regulators could make better use of the media to tell the market and consumers about the enforcement activity undertaken. It is a way of building awareness and the profile of the ACL and it can deter bad behaviour, thereby avoiding the need for further enforcement action (which impacts resourcing).

Not all regulators appear to have the practice of routinely issuing press releases at the commencement or conclusion of litigation. This is a missed opportunity to amplify the deterrent effect of taking action and to provide public confidence that wrongdoing in the marketplace will be punished.

RECOMMENDATION 11:

ACL regulators, together with ACMA and the AER, commit to the practice of routinely issuing press releases at the commencement and conclusion of litigation.

¹¹⁴ Competition & Markets Authority, CMA puts £300m saving in place for prepayment energy customers, 7 December 2016, <https://www.gov.uk/government/news/cma-puts-300m-saving-in-place-for-prepayment-energy-customers>

¹¹⁵ CMA, New overdraft alerts as CMA banking rules come into force, 2 February 2018, <https://www.gov.uk/government/news/new-overdraft-alerts-as-cma-banking-rules-come-into-force>.

¹¹⁶ 2013 Report, p. 120.

¹¹⁷ Ibid. p.21.



04

REPORTING

4.1 A Reporting Framework

This part of the Report focusses on the quality and consistency of reporting. We consider whether reports meet acceptable accountability and transparency requirements, and provide sufficient information to assess the level of enforcement work undertaken by agencies.

This Report adopts the Reporting Framework outlined in the 2013 Report with some minor additions including emphasising the importance of clarity and resourcing.¹¹⁸

As outlined in Recommendation 1, consumer protection regulators should implement the below Reporting Framework as a minimum standard for public reporting on their enforcement activities. Regulators should work together to agree on consistent and defined reporting data sets using the below Framework, to enable easy and comprehensive comparative public reporting.

¹¹⁸ 2013 Report, pp.46-49.

Recommended Enforcement Activity Reporting Framework

Clear	<ul style="list-style-type: none">▶ Information is arranged logically▶ Terminology and classification is explained
Comprehensive	<ul style="list-style-type: none">▶ Quantitative data sets on all (consumer protection) enforcement action commenced and concluded (including matters abandoned, settled before court action etc).▶ Data should break down action:<ul style="list-style-type: none">▶ by type of action (e.g. prosecution, civil proceeding, disciplinary action, undertaking, infringement notice)▶ by type of wrongdoing▶ by action per regulated industry (e.g. builders, pawnbrokers, financial advisers)▶ by outcomes achieved (i.e. successful litigation, compensation awarded etc)▶ Qualitative information about court cases, such as narrative reporting, case studies and/or testimonials▶ Normalised against an agreed measure – i.e. per 100,000 people
Frequent and timely	<ul style="list-style-type: none">▶ At least six-monthly▶ Ideally quarterly
Consistent	<ul style="list-style-type: none">▶ Across jurisdictions▶ Across time▶ With consistent and agreed naming conventions for actions/outcomes▶ With consistent and agreed counting methodologies
Accessible	<ul style="list-style-type: none">▶ Reports are publicly available on websites▶ Reports are easy to find (including back issued reports)▶ Available in a range of formats, including csv, Word and Excel▶ Changes in methodology are minimised, identified and explained
Resources	<ul style="list-style-type: none">▶ Reporting should quantify and report on the budget allocation and the staffing resources allocated to enforcement.

4.2 What is reported

This section provides an overview of the categories of activity reported across the different regulators and the consistency or inconsistency of this reporting, using the framework outlined above.

Decisions to count particular work as ‘consumer protection’ enforcement have been made based on the information available, including the agencies’ own characterisations of the work, in line with our 2013 Report approach.

We do not examine the competition work of the ACCC or the markets supervision and corporate governance work of ASIC. Nor do we include the market supervision and regulatory work of the AER or the broadcasting and other non-consumer protection work of the ACMA.

The Report also excludes work by State and Territory agencies that is more focussed on occupational licensing

than consumer protection—where this can be delineated (which is not always possible). Decisions about what activity to include as consumer protection enforcement necessarily require some judgment. This means that it is very difficult to compare the overall performance among state-based regulators. Given this, this report focuses on the trend for individual agencies rather than attempting to compare them.

The Australian Consumer Law has been in operation for the duration of the period examined in this Report, therefore there are consistent powers and remedies available to the ACL regulators. Each agency can issue enforceable undertakings, infringement notices and public warning notices. These tools are also available to the ACMA and the AER.

ACL regulators can also commence civil court action seeking:

- ▶ civil pecuniary penalties
- ▶ injunctions

- compensation for injured persons
- non-party redress
- adverse publicity orders
- disqualification orders
- declarations.

The Australian Security and Investment Commission Act 2001 includes broadly similar substantive provisions and remedies in relation to financial services including consumer credit. ACMA and AER can also commence civil court action although the range of orders and penalties available to them is different.

As noted, State and Territory regulators continue to administer a range of other laws. Prosecution and disciplinary action is generally (though not always) undertaken under these other laws, sometimes in combination with action under the ACL, making classification of these actions a particular challenge. While there are instances of commonality between States and Territories, there are also significant differences.

Civil and criminal litigation

All regulators other than ACMA reported instances of civil and/or criminal litigation (generally State and Territory agencies report prosecutions, though some also undertake civil action). Access Canberra reported referrals for prosecution in 12/13 only. In the case of the Northern Territory, only one instance was reported. As with the 2013 Report, the majority reported on matters concluded (in some cases only matters successfully concluded) rather than litigation commenced. We remain of the view that the latter measure is more useful as a measure of activity in any one year given the variability of litigation timeframes.

Penalties and compensation

ACCC, AER, ASIC, NSW Fair Trading, Fair Trading Queensland (in aggregate), South Australia Consumer and Business Services and Consumer Protection Western Australia (until 17/18), report penalties. A number also endeavour to quantify compensation to consumers in a range of ways. Penalties and proceeds from infringement notices (if any) are not reported in ACMA Annual Reports though reference to penalty amounts appears from time to time in Quarterly Reports.

Enforceable undertakings

All regulators examined have the power to obtain enforceable undertakings. ACCC, ACMA, Access Canberra (until 17/18), AER, ASIC, Consumer Affairs Victoria, NSW Fair Trading, Fair Trading Queensland, South Australia Consumer and Business Services and Consumer Protection Western Australia report on undertakings they have obtained. Consumer Building and Occupational Services Tasmania does not. Most regulators

report on enforceable undertakings obtained as well as maintaining a register of enforceable undertakings on their website.

Penalty/ infringement notices

All regulators examined have the power to issue penalty or infringement notices and all but South Australia Consumer and Business Services report on numbers issued. All regulators report the names of companies subject of infringement notices. There is a mixed approach to reporting infringement notices issues against individuals (with some regulators naming the party and others not).

Disciplinary actions

Not all regulators have the power to bring disciplinary proceedings, as powers of this kind typically accompany a licensing regime. That said, all regulators examined other than the ACCC have some form of licensing function. Access Canberra (12/13 to 14/15 only), ASIC, Consumer Affairs Victoria, NSW Fair Trading, Fair Trading Queensland, South Australia Consumer and Business Services Consumer Building and Occupational Services Tasmania and Consumer Protection Western Australia each report on disciplinary actions.

Other matters

A number of regulators report on warnings issued, namely ACCC, ACMA, Access Canberra (15/16 only), Consumer Affairs Victoria, NSW Fair Trading, Northern Territory Consumer Affairs, Fair Trading Queensland and Consumer Building and Occupational Services Tasmania. All regulators examined have this capacity, and while a useful public awareness tool that undoubtedly has an element of sanction, warnings are not considered enforcement per se and are therefore not included as part of our assessments of enforcement effectiveness. They have been included in reporting on individual agency performance only where there is little other more formal enforcement activity reported.

ACMA has the power to issue directions to comply, a power that is unique among the regulators examined. The issue of directions to comply have been included in ACMA reporting and assessment.

Qualitative information regarding more significant matters

The ACCC, AER, ASIC and NSW Fair Trading appear to provide qualitative information regarding all court proceedings. Consumer Protection Western Australia also did so until 17/18. Fair Trading Queensland provides an overview of court actions. Other agencies tend to take a case study approach. ACMA describe broadly the substance and outcome of consumer protection and enforcement matters.

Frequency of reporting

Continuous	AER maintains an interactive list of all enforcement matters (current).
Quarterly	ACCC, ACMA, NSW Fair Trading
Six-monthly	ASIC
Annual	Access Canberra, Consumer Affairs Victoria, Consumer Building and Occupational Services Tasmania, Fair Trading Queensland, South Australia Consumer and Business Services, Consumer Protection WA

It is noted that most regulators issue media or other statements about enforcement activity at the time of the activity, separate to the above reporting. However, it is not easy to determine whether this style of reporting is complete.

Clarity, consistency and accessibility

The ACL has brought some improvement to the alignment of what is reported. However, there is still significant variability across agencies in terms of the quality of reporting and the consistency of underlying definitions and counting methods.

All regulators other than the ACCC, ASIC and AER made significant changes to reporting. In some cases this was positive—for example ACMA moved from narrative to narrative and quantitative reporting. Fair Trading Queensland has significantly improved its reporting also.

There were many other instances where changes were made to counting methodologies. Changes to methodology were often not explained. Sometimes activity was reported for one or two years and then not others. Some reporting is text based only and figures must be derived from narrative reporting rather than in easily accessible (or consistent) tabular form. These issues are examined in more detail in Part 5.

4.3 Folding into bigger agencies

At a State or Territory level there have been a number of instances of change to the relevant fair trading agency. Examples include changes in the government department that houses the agency (in Western Australia and Tasmania), and instances where the consumer protection function has been folded into a broader government 'contact centre' (ACT and, to a lesser extent, South Australia).

When these changes have occurred, we observed a significant negative impact on the level and quality of enforcement and other consumer protection activity reporting (other than in South Australia). It is difficult to determine whether there has also been a negative impact on enforcement activity itself.

There are many reasons changes occur including change in government priority and the desire to conserve or redeploy expenditure. Nevertheless, it is critical that the level of publicly available information about enforcement activity be maintained or improved when changes occur.

The development of the recommended common Reporting Framework, naming conventions and counting methodology would help protect this important public reporting function.

The Consumer Protection Western Australia experience (discussed in Section 5.12) highlights challenges with implementing legislative obligations for reporting. During the period, reporting from Consumer Protection Western Australia has moved from being comprehensive to limited to reporting on legislative obligations only.

There are many downsides to prescribing reporting in legislation, not least the lack of flexibility and difficulty in amending requirements. It is preferable that regulators reach an agreed and consistent Reporting Framework independent of legislation.



05

INDIVIDUAL AGENCY OUTCOMES

This section of the Report considers the reporting done and enforcement outcomes achieved by each consumer protection agency.

National regulators are explored first, followed by State and Territory regulators.

Data from the 2013 and 2020 Reports has been summarised and combined to enable a view of long-term trends. Detailed data sets, underlying data sources and any assumptions made about data gaps or interpretations are included as Appendices.

While reporting on resources and staffing levels is one of the key items of the Reporting Framework in Recommendation 1, our review found it difficult to collate this information and there were many instances where it could not be ascertained from public reports. This information has therefore been included in Appendix C, rather than being included in this section of the Report.

We have not provided a combined score card for all regulators as we did in the 2013 Report. Given the vastly different approach to reporting and enforcement work, we do not feel a combined

score cards is useful and feel it may lead to unfair comparisons or incorrect conclusions about regulators.

REVIEW METHODOLOGY

We have rated the performance of each regulator using the same methodology as the 2013 Report. Namely:

Reporting

- ▶ how well the regulator reports on its enforcement work based on a judgment on the adequacy of the agency's reporting in relation to the criteria specified in Recommendation 1, using the following guide:

Description	Score	Typical characteristics
Wholly inadequate	0	
Poor	2	▶ May have one or more of the following features: Significant areas of enforcement not reported, lack of comparability year on year, significant inconsistencies
Fair	4	▶ Covers most essential items, data on most enforcement tools available. No unexplained inconsistencies. Qualitative information available.
Good	6	▶ Covers all or most essential items; data on all enforcement tools available, possible to distinguish enforcement in consumer matters from small business matters, comparable over time. Qualitative information available.

This replicates the 2013 methodology. Future reports may also need to consider the extent to which regulators make data available and report against more detailed enforcement policies, however such practices are not currently sufficiently widespread to be a useful scoring criteria for this Report.

Enforcement Outcomes

- ▶ whether the regulator has been increasing or decreasing the amount of enforcement work based on trends, including some assessment of the nature of the matters, using the following guide:

Description	Score	Typical characteristics
Fall in	0	▶ Overall downwards trend in enforcement. ▶ So little enforcement reported that not possible to fall much lower.
Trending down / steady weak	2	▶ Overall reduction and no compensatory increase in major actions. ▶ Or steady trend but balance of outcomes moving to softer options. ▶ Significant fluctuations in enforcement in both directions.
Steady / adequate	3	▶ Steady enforcement (overall and on major matters) outcomes with no significant fluctuations.
Trending up	4	▶ Major actions or number of actions increasing somewhat (e.g. prosecutions and civil actions)
Increasing / steady strong	6	▶ Generally upwards trend in enforcement outcomes achieved or in the enforcement approach and/or sophistication of matters undertaken.

This part of the score examines questions such as: is the total level of enforcement work increasing or decreasing? Is the balance between enforcement tools changing in ways that are consistent with a strong enforcement culture and strategy?¹¹⁹

Given the Reports now cover two time periods, we have added descriptors that better capture a steady weak or steady strong performance. This recognises that given finite resources, it may not be reasonable to expect numbers of enforcement actions to perpetually increase. We would however expect to see ongoing development in more qualitative areas such as use of strategy and sophistication of matters for a regulator to earn a steady strong rating. Similarly, a decrease in or maintenance of number of actions may nevertheless indicate a strong performance where there is an evident increase in the scale or complexity of matters undertaken and vice versa.

Relative enforcement performance

- for State and Territory regulators, their comparative rate of prosecutions per 1,000,000 of population, where that data can be calculated, using the following guide.

Total reported prosecutions over 5 years until 2017/18 have been added and then compared to population to gain a rate per million for that jurisdiction. Two jurisdictions (ACT and Northern Territory) have been excluded due to lack of data. A detailed breakdown of data is provided in the Appendix.

Description	Score	Typical characteristics
Much lower than average	1	► More than 50% below the mean for the 5 states
Low rate per capita	2	► More than 20 % below the mean
Average / close to average	3	
Higher than average	4	► More than 20% above the mean
Much higher than average	5	► More than 50% above the mean

5.1 Australian Competition and Consumer Commission

5.1.1 Reporting

Information about the ACCC's enforcement activity is publicly available, primarily its Annual Reports, the quarterly ACCCount reports, its online Register of Enforceable Undertakings and media releases. In the main, the reporting meets the benchmark suggested by the Reporting Framework outlined in Recommendation 1 and in Section 4.1.1. There is consistency of terminology and explanations where differences in figures may not be clear.

In a few instances it is difficult to track data consistently across reports—for example matching enforceable undertakings reported in the Register and those reported in ACCCount is difficult. This appears to be due to counting the number of

matters where an undertaking is obtained and the number of parties by which an undertaking is given (the latter being potentially larger than the former).

The ACCC reports about exercising its key enforcement powers in a way that can be tracked from year to year. It also publishes annual enforcement priorities.

The ACCCount provides a narrative description of enforcement (and a range of other) matters as well as a data in tabular format including whether they are competition or consumer protection related, the broad nature of the conduct (e.g. scam disruption, misleading and deceptive, cartel), the court and date of commencement.

ACCCount also provides quarterly information about ongoing proceedings, proceedings concluded, use of compulsory information gathering powers and major speeches.

Generally, reporting is consistent, in accessible formats and publicly available.

¹¹⁹ The 2013 Report also noted the possible argument that given it is not possible to know, based on current data, the appropriate level of enforcement, and in the absence of such knowledge it may be unreasonable to expect and agency to increase the level of enforcement outcomes achieved. We maintain that the 2013 response to this argument remains valid—namely that levels of consumer complaint to regulators, and in particular the level of problems experienced by vulnerable and disadvantaged consumers reported to legal and social welfare agencies, mean it is not possible to argue that current levels of enforcement are adequate in any State or Territory.

5.1.2 Enforcement Outcomes

We have summarised the enforcement work reported by the ACCC during the period 2006 – 2019, in tabular form and in a graph for easy assessment. This draws together data from our previous report and data collected for this Report.

The period covered by this Report is in the second table.

Table: Enforcement activity ACCC – 2006 – 2019

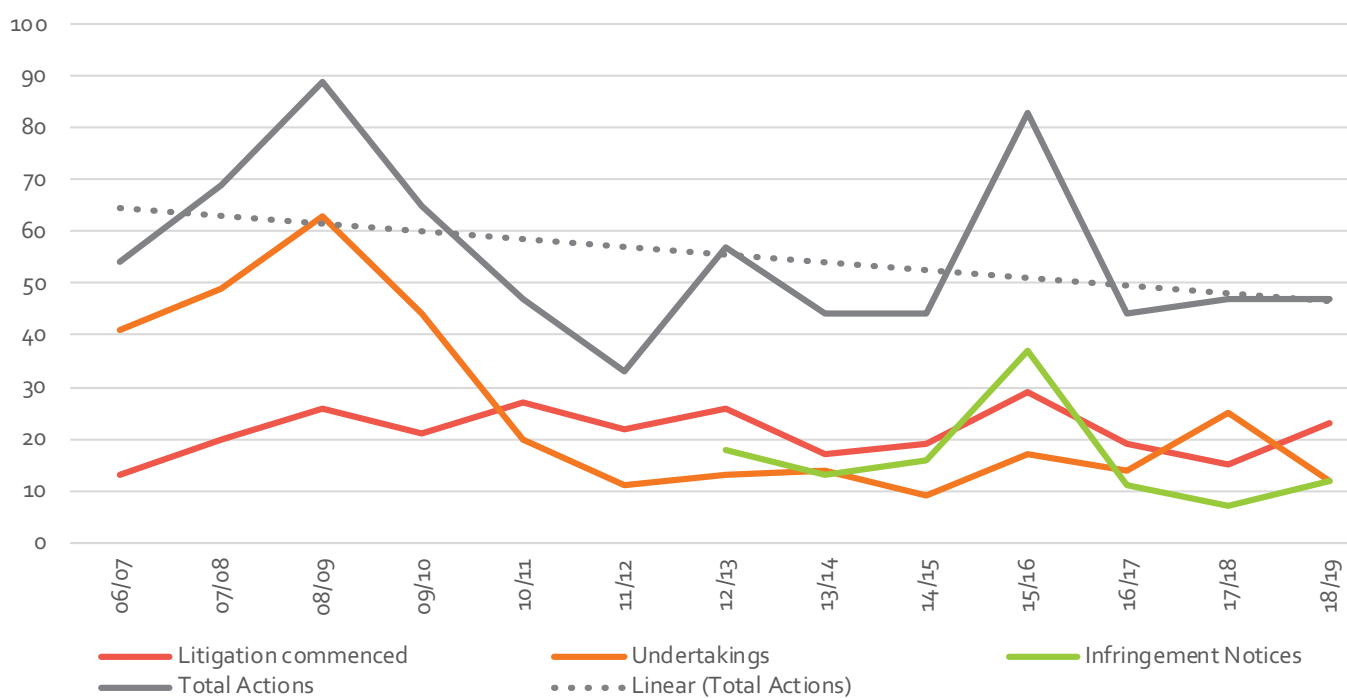
ACCC	06/07	07/08	08/09	09/10	10/11	11/12
Litigation commenced	13	20	26	21	27	22
Undertaking*	41	49	63	44	20	11
Infringement Notices**	-	-	-	-	-	-
Total Actions	54	69	89	65	47	33

ACCC	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Litigation commenced	26	17	19	29	19	15	23
Undertaking*	13	14	9	17	14	25	12
Infringement Notices**	18	13	16	37	11	7	12
Total Actions	57	44	44	83	44	47	47

* Based on consumer protection, small business and product safety undertakings reporting ACCCount.

** Based on infringement notices reported in the public register. Data not collected in 2013 Report.

Graph: Enforcement activity ACCC – 2006 – 2019



5.1.3 Rate of prosecutions per million population

We have not calculated a rate of prosecutions per capita for national regulators.

Observations

- ▶ The ACCC reports on matters commenced (as well as ongoing matters and matters concluded). We consider this is the most useful way of counting litigation activity in any one period.
- ▶ Litigation commenced numbers tend to be 'peaky' but in general fall in the range of 15 to 30 matters per year. This is consistent with the range observed in the 2013 Report from 2007-08 onwards.
- ▶ Litigation commenced has remained well above the low point recorded in 2005-06 (8 matters) however from 2013-14 to 2017-18 has been at the lower end of the range.
- ▶ Litigation commenced involves a range of matters, including against major entities. For example, in 2017-18 proceedings were commenced against Ford Motor Company, Viagogo, GlaxoSmithKline, Optus Internet, Telstra Corporation, Woolworths and Equifax. That year also had the lowest number of consumer protection matters initiated since 2006-07.
- ▶ The use of enforceable undertakings has remained well below the levels seen between 2005 - 2010, although there was a slight upward trend until 2018-19 where use fell again.
- ▶ The use of infringement notices is reported for the first time in this Report. Infringement use spiked in 2015/16 and has now fallen back to very low levels.
- ▶ The ACCC has been a consistently strong performer both in reporting and enforcement terms. To ensure this continued strong performance and future improvements in enforcement activity and reporting, Consumer Action suggests the ACCC:
 - ▶ look for ways to expand the use of data and analytics (and wherever possible sharing that data with stakeholders), including identifying additional information sources to guide priority setting and selection of enforcement matters, including greater use of market studies, and
 - ▶ consider publication of market conditions expected where markets are working well for consumers (noting Ofgem and FCA work in this area).

5.1.4 Score Card

Score Card	ACCC
Current Assessment	Steady Strong
Reporting Score 2020	6 out of 6
Enforcement Score 2020	6 out of 6
Relative Enforcement Performance	Only rated for State and Territory Regulators
2013 Assessment	Trending up

As noted above, until 2018/19 the number of new matters commenced was at the lower end of the long-term range. However, the low numbers of enforcement activities should be balanced with the sophistication and/or complexity of the action taken and the significance of the defendants.

On balance and noting the high numbers of ongoing matters the ACCC has running, we believe an assessment of '**Steady Strong**' is appropriate.

5.2 Australian Communications and Media Authority

5.2.1 Reporting

ACMA publicly reports on compliance and enforcement activity in a number of places, including:

- ▶ Annual Reports
- ▶ Regulator Performance Framework Performance Assessment Reports
- ▶ Quarterly Reports – Action on telecommunications consumer safeguards.

The Quarterly Reports give the most detailed and useful information however the reports readily available (on the ACMA website) cover only one quarter of the 2017/18 year and the 2018/19 year. The link for previous reports did not function during the period this Report was generated. As outlined earlier, we deliberately did not seek reports directly from regulators, as we wanted to rely on 'publicly available' material in assessing reporting.

This is particularly unfortunate as these reports contain more detailed information about spam and do not call register investigations and outcomes. Action taken as a result of these investigations can be considered consumer protection activity. The Quarterly Reports also contain information regarding compliance priorities, a snapshot of key developments or reports in the quarter and other useful information.

In order to cover the full period examined, this Report has used Annual Report data. The reporting of consumer protection activity in the Annual Reports has improved steadily over time. For 2011/12 and 2012/13 reporting was in narrative form—describing a range of compliance work and a limited amount of enforcement work. In many cases references were to numbers of activities. In some cases, descriptions of conduct of concern and response was provided.

In 2013/14, tabular information was introduced with prior year comparison. There are three different tables for different elements of consumer protection work—telecommunications consumer protection (TCP), scams and do not call register—but no table drawing the work together as a whole. This approach was continued in 2014/15 with the addition of a table providing detail of TCP warnings and directions, including the entity subject of the warning and direction and the subject matter of the direction. From 2015/16 summary infographics were added and provided a snapshot of selected enforcement and compliance work across the agency.

Entities subject to action are named and the regulation under which action has been taken, the subject matter of the action and the outcome are described.

The reporting in recent years meets a number of the elements of the recommended Reporting Framework. However, there are a number of important areas for attention:

- ▶ reporting would benefit from a comprehensive picture of consumer protection work
- ▶ the link to earlier reporting should be fixed and maintained
- ▶ there is a need to provide a 'narrative to the numbers.' There is presently no detail regarding the nature of the conduct.

As noted elsewhere in this (and the 2013) Report, compliance and complaint handling work are not considered to be consumer protection enforcement. Where this work has been included it is to provide context for the lack of available data in relation to consumer protection enforcement. Investigations and warnings by ACMA have been included for similar reasons.

5.2.2 Enforcement Outcomes

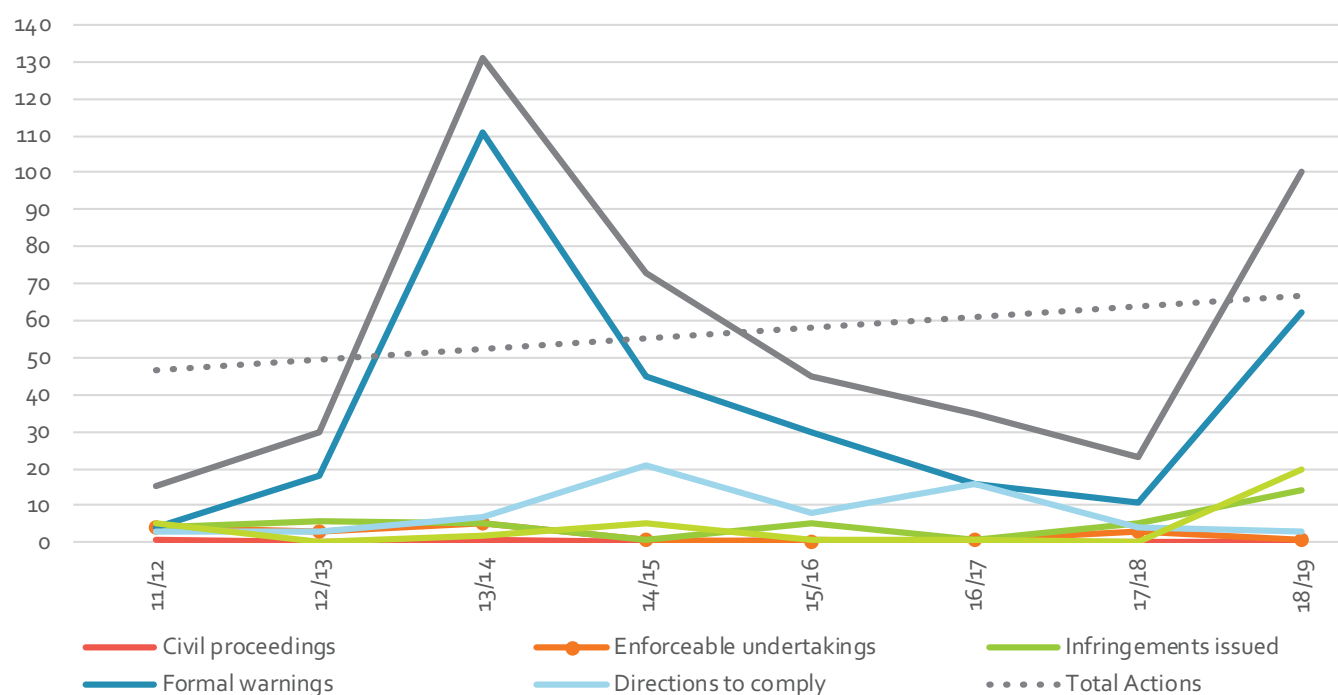
This is the first time ACMA has been examined. Therefore, there is no comparison to the 2013 Report.

We have summarised the enforcement work reported by the ACCC during the period 2011 – 2019, in tabular form and in a graph for easy assessment.

Table: Enforcement activity ACMA - 2011 – 2019

ACMA	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Civil proceedings	1	0	1	0	1	0	0	0
Enforceable undertakings	4	3	5	1	0	1	3	1
Infringements issued	4	6	5	1	5	1	5	14
Formal warnings	4	18	111	45	30	16	11	62
Remedial action	5	0	2	5	1	1	0	20
Directions to comply	3	3	7	21	8	16	4	3
Total Actions	21	30	131	73	45	35	23	100

Graph: Enforcement activity ACMA - 2011 – 2019



5.2.3 Rate of prosecutions per million population

We have not calculated a rate of prosecutions per capita for national regulators.

Observations

- ▶ Our review highlights very little in the way of formal enforcement work compared with other national regulators.
- ▶ Particularly noticeable is the absence of civil proceedings and relatively limited use of enforceable undertakings. Use of the 'direction to comply' power, which is unique to ACMA amongst regulators examined, peaked in 2014/15 and 2016/2017 but has reduced dramatically since then.
- ▶ Entities subject of action tended to be smaller players and action is almost exclusively at the 'softer' end of the enforcement spectrum—formal warnings and infringements. This contrasts with actions in the broadcasting jurisdiction.
- ▶ A significant portion of directions to comply and formal warnings related to compliance matters. Other action tended to be taken thematically.
- ▶ Information in the Annual Reports suggests a significant skewing of enforcement and compliance activity towards the broadcasting elements of ACMA's functions as distinct from telecommunications consumer protection. For example, in 2017-18, ACMA reported 64 broadcasting investigations outcomes and 13 telecommunications consumer protection compliance and enforcement outcomes.
- ▶ More recently there has been an increase in the amount and breadth of the telecommunications consumer protection enforcement work undertaken by the ACMA. 2018/19 saw the highest ever number of infringements issued and the highest number of formal warnings since 2013/14. Together with a stronger publicly voiced enforcement focus, these figures may represent a welcome shift in enforcement culture at ACMA.

5.2.4 Score Card

Score Card	ACMA
Current Assessment	Adequate
Reporting Score 2020	4 out of 6
Enforcement Score 2020	3 out of 6
Relative Enforcement Performance	Only rated for State and Territory Regulators
2013 Assessment	NA

ACMA's jurisdictions has significant consumer protection issues. ACMA has only once taken court-based action in a consumer protection matter in the past 5 years. Until 2017/18 a sharp decline in activity and preference for a softer approach has been observed.

Since 2017/18 there has been a significant increase in the number and range of actions, although the actions tend to be of an administrative nature. Considering the recent increase in activity balanced with the more administrative nature of the activity, we have determined that **'Adequate'** is an appropriate rating.

5.3 The Australian Energy Regulator

5.3.1 Reporting

The AER was established in July 2005. The AER's functions are to regulate wholesale and retail energy markets, and energy networks, under national energy legislation and rules. Its functions mostly relate to energy markets in eastern and southern Australia, although not retail markets in Victoria. Like the ACCC and ASIC, the AER's work can be described as having consumer benefit, for the purposes of this Report we have focussed on the AER's enforcement work in retail energy markets.

While the AER has existed for nearly 15 years, its consumer protection enforcement remit is much more recent—commencing in July 2012. Only matters relating to consumer protection are assessed by this Report; enforcement matters relating to wholesale market performance and market despatch rules and reporting have not been included.

The AER's *Compliance and Enforcement Policy* notes that "Our approach to compliance and enforcement is underpinned by the objectives of the national energy laws, that is: *to promote efficient investment in and efficient operation and use of energy services for the long term interests of consumers with respect to price, quality, safety, reliability and security of supply energy.*"¹²⁰

The AER publishes an Annual Report and currently provides continuous updates of enforcement (and compliance) actions on its website. Helpfully, information reported includes the name of the party, the nature of the action and date of issue or commencement. Each item links to an overview of the action, including allegations where relevant, and a link to the relevant media release. Information can be sorted with reference to sector, release date and type of action.

5.3.2 Enforcement Outcomes

This is the first time AER has been examined. Therefore, there is no comparison to the 2013 Report.

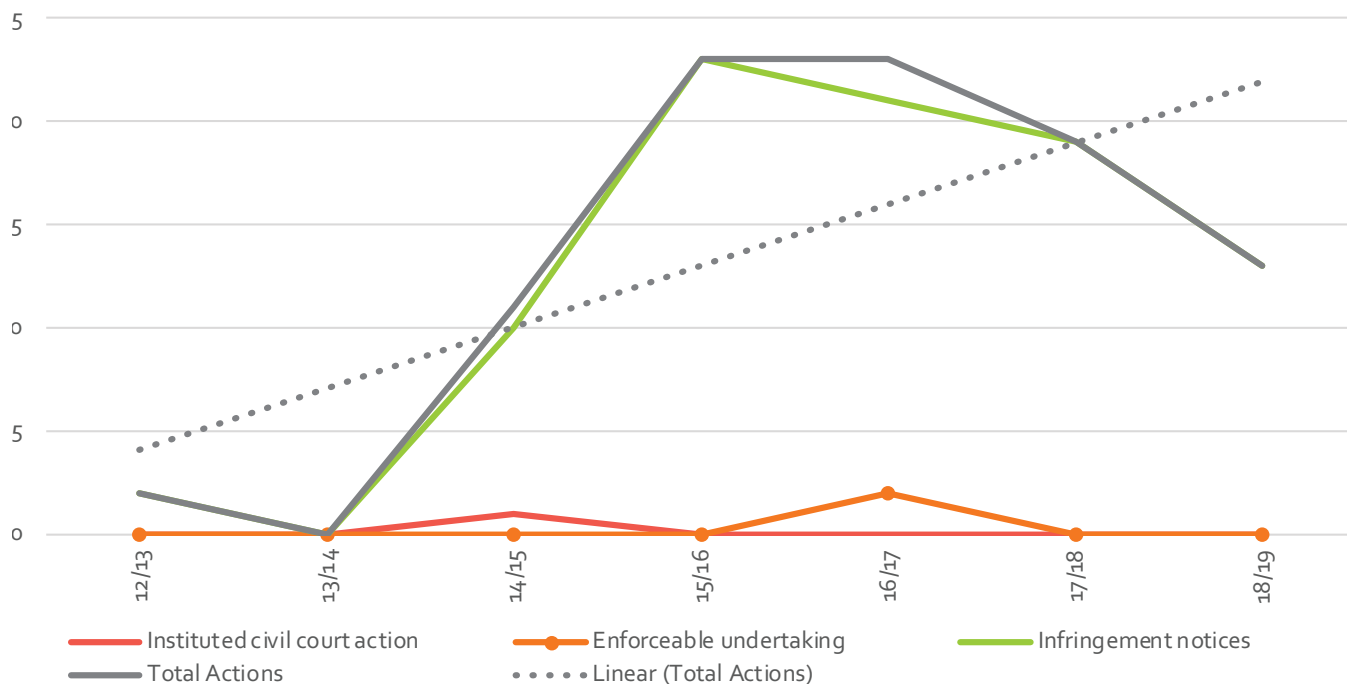
We have summarised the enforcement work reported by the AER during the period 2012 – 2019, in tabular form and in a graph for easy assessment.

Table: Enforcement activity AER - 2012 – 2019

AER	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Instituted civil proceedings	0	0	1	0	0	0	0
Enforceable undertakings	0	0	0	0	2	0	0
Infringements issued	2	0	10	23	21	19	13
Total Actions	2	0	11	23	23	19	13

¹²⁰ AER Compliance and Enforcement Policy, p.1. Quoting s.7 National Electricity Law, s.23 National Gas Law, and s.13 National Energy Retail Law.

Graph: Enforcement activity AER – 2012 – 2019



5.3.3 Rate of prosecutions per million population

We have not calculated a rate of prosecutions per capita for national regulators.

Observations

- ▶ The AER issued its first infringement notice in December 2012 and issued its first civil proceeding in November 2014.¹²¹
- ▶ More recently the ACCC's Retail Electricity Pricing Inquiry Final Report has recommended significant uplift in the powers and penalties available to the AER.
- ▶ With seven years of this jurisdiction under its belt, and a tendency for the to use 'softer' enforcement options, we consider there is scope for the AER to more fully use its civil litigation powers to enforce the law.
- ▶ We note the AER has issued two civil proceedings pursuant to its consumer protection jurisdiction in 2019/20.

5.3.4 Score Card

Score Card	AER
Current Assessment	Adequate
Reporting Score 2020	6 out of 6
Enforcement Score 2020	3 out of 6
Relative Enforcement Performance	Only rated for State and Territory Regulators
2013 Assessment	NA

The AER is a federal regulator in an important consumer sector with significant consumer protection issues. The AER only took court-based action in a consumer protection matter once in the period examined, though there is an upward trend in overall activity.

Giving weight to recent activity, an assessment of 'trending up' is possible. Having regard to the administrative nature of matters, however (and not taking into account the court action taken in 19/20 which is beyond the scope of this report) we have determined that '**Adequate**' is an appropriate rating.

¹²¹ <https://www.aer.gov.au/retail-markets/compliance/enforcement-matters> accessed 23 August 2019.

5.4 Australian Securities and Investments Commission (ASIC)

5.4.1 Reporting

Information about ASIC's enforcement activity is reported in ASIC's six-monthly Enforcement Outcomes Report, its Annual Reports, in media releases and on its website. The 2013 Report noted positively that from February 2012, ASIC had begun issuing six monthly enforcement reports, a practice it has continued.

The six-monthly reports helpfully distinguish between financial services work and market integrity and other work undertaken by ASIC, providing a better picture of consumer protection work. The blurring of this work in most (though not all) Annual Reports remains a challenge in that data source.

The summary data below is based on what is reported in ASIC's Annual Reports. We have also included a table and graph based on the Enforcement Updates in the Appendix. This is because it is challenging to reconcile the information reported in the two documents due to the different way work

is categorised and sorted. ASIC should take steps to ensure its various reports reconcile, to avoid confusion and reduce effort in trying to make comparisons.

The assessment in the 2020 Report is based on the Annual Report information to maintain comparative reporting with the 2013 Report. Future reports will use data from the six-monthly Enforcement Outcomes Report.

ASIC's enforcement outcomes report provides both quantitative and narrative information regarding enforcement activity, including separating civil and criminal actions, reporting on matters concluded and matters pending, and penalties awarded or negotiated in concluded matters. Early reports were extensive and included a summary of all relevant media releases issued during the relevant period, providing a good narrative about the underlying detail of the matters. Later reports have removed the summary of media releases but have retained the use of case studies to illustrate 'areas of focus' by the regulator, including sections 'looking forward' as to next steps or other areas of interest.

The ASIC reporting largely meets the Reporting Framework outlined in Recommendation 1. Further, its reporting on areas of focus and future activity, suggests ASIC is looking for new ways to make reporting meaningful.

5.4.2 Enforcement outcomes

We have summarised the enforcement work reported by ASIC during the period 2006 – 2019, in tabular and graphic form. This draws together data from our previous report and data collected for this Report.

Table: Enforcement activity ASIC - 2006 – 2019

ASIC	06/07	07/08	08/09	09/10	10/11	11/12
Criminal Proceedings finalised	51	52	39	23	26	28
Civil proceedings completed	76	44	35	30	34	24
Enforceable undertakings	6	9	5	2	12	20
Infringements	-	-	-	-	-	-
Bans, cancellations/suspensions from financial service**	35	49	47	41	64	54
Schemes shut down	105	80	NA	50	30	1
Total	237	234	126	146	166	127

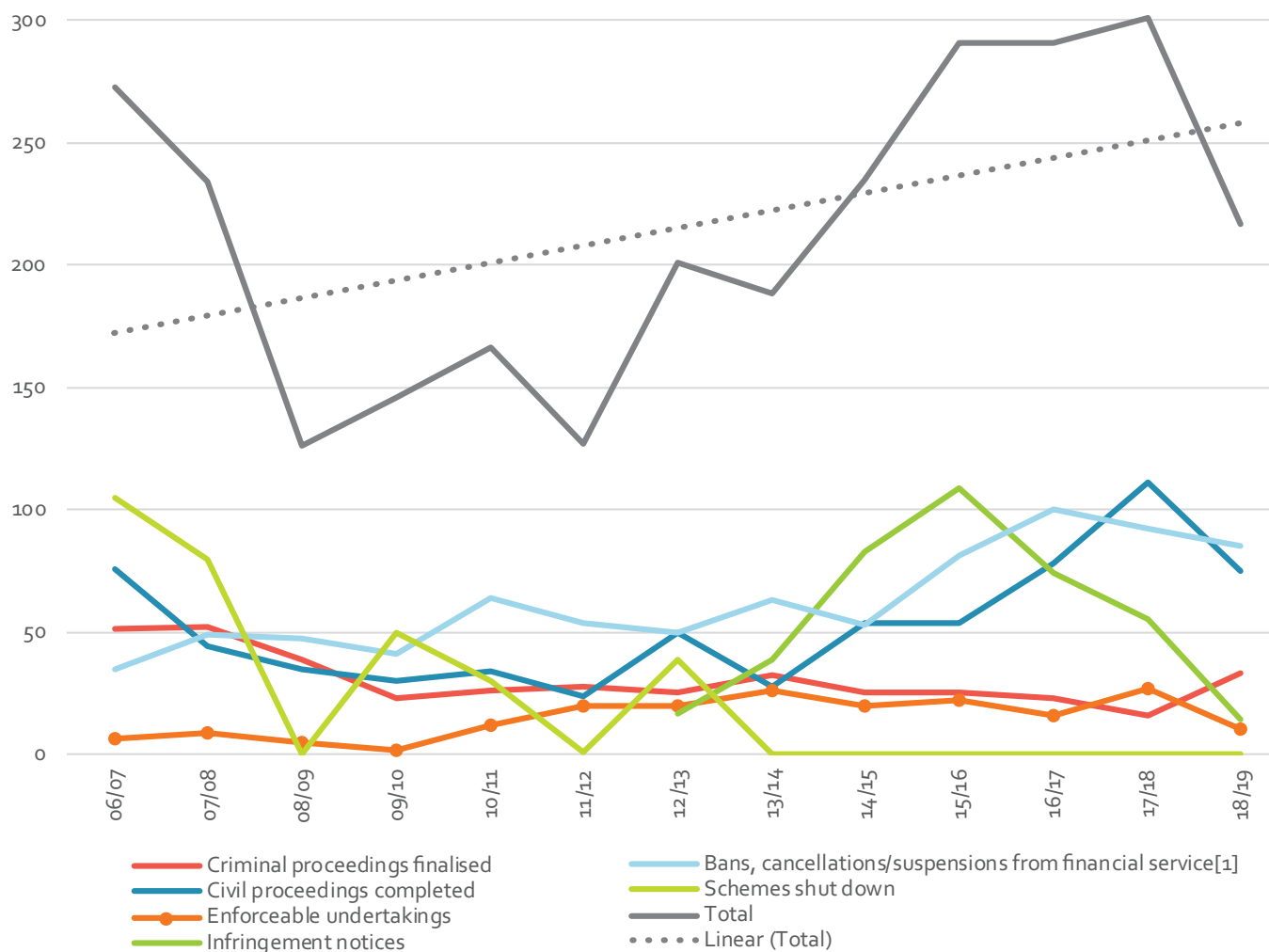
ASIC	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Criminal Proceedings finalised	25	32	25	25	23	16	33
Civil proceedings completed	50*	28*	54	54	78	111	75
Enforceable undertakings	20	26	20	22	16	27	10
Infringements	17	39	83	109	74	55	14
Bans, cancellations/suspensions from financial service**	50	63***	53	81	100	92	85
Schemes shut down	39	0	0	0	0	0	0
Total	201	188	235	291	291	301	217

* This number was 15 in the annual report, however from 2014-15 the methodology for counting civil proceedings changed and we have changed this number to 50 to reflect this changed methodology for consistency.

** These numbers do not include bans, cancellations/suspensions from credit provision to maintain direct comparability with the 2013 Report. The figures for credit ban are included in the detailed Table in Appendix A.

*** This number was 57 in the annual report 13/14, however was incorrect and was changed in the following year's annual report.

Graph: Enforcement activity ASIC – 2006 – 2019



5.4.3 Rate of prosecutions per million population

We have not calculated a rate of prosecutions per capita for national regulators.

Observations

- In general terms we observed an upward trend in enforcement activity. This is particularly noticeable for civil proceedings completed from 2014/15 onwards and bans cancellations and suspensions from financial services from 2015/16 onwards.
- Use of enforceable undertakings has remained relatively steady over the period but is at significantly higher levels than in the 2013 Report.
- 2017/18 indicates an extremely high number of civil proceedings were completed. A review of the Enforcement Update reports for the same period refers to 42 civil matters in financial services suggesting that a significant portion of the Annual Report figure occurred outside the consumer protection area. 42 is nevertheless a significant number of matters.
- 2018/19 had lower volumes of completed civil proceedings. 2018/19 was also the period the Financial Services Royal Commission occurred, and there was also significant change at the ASIC Commissioner level.
- Schemes shut down are the exceptions to the generally upward trend with schemes shut down dropping to zero from 2013/14 onwards.
- Criminal proceedings finalised trended slightly down from 2015/16 to 2017/18 and then rebounded in 2018/19.
- More recent years demonstrate a willingness to issue civil proceedings against major entities, in contrast to earlier years where negotiated outcomes with large entities was favoured. In 2017/18 consumer protection activity included proceedings against AMP, Westpac and ANZ. The report for the first half of the 2012/13 financial year reported negotiated outcomes (with no admission as to liability) with GE, RAMS and CBA, with civil litigation against the ACM Group (debt collectors) a notable exception to this trend.

5.4.4 Score Card

Score Card	ASIC
Current Assessment	Increasing
Reporting Score 2020	6 out of 6
Enforcement Score 2020	6 out of 6
Relative Enforcement Performance	Only rated for State and Territory Regulators
2013 Assessment	Steady

ASIC's public reports demonstrate an increasing commitment to enforcement activity and improvements in the accessibility of its data. Its future focus reporting is also a welcome development.

5.5 Access Canberra (formerly ACT Office of Regulatory Services)

5.5.1 Reporting

Until 2014/15, the ACT Office of Regulatory Services fell within the Justice and Community Safety Directorate, having responsibility for fair-trading and consumer protection, among a number of other functions including occupational licensing and work safety.

During 2014/15 the Office of Regulatory Services became part of a multi service agency known as Access Canberra. It is part of the Chief Minister, Treasury and Economic Development Directorate. Reporting on activity moved to the Annual Report of that Directorate. The role of Commissioner of Fair Trading has been retained. The Directorate is responsible for a wide range of functions from workplace safety to road regulation to fair-trading.

For 2012/13 and 2013/14 the information in the table is obtained from the Annual Reports of the Department of Community Justice and Safety. For subsequent years, the information was obtained from the Annual Reports of the Chief Minister, Treasury and Economic Development Directorate. The website¹²² has been used as it contains reports on enforceable undertakings obtained.

A consequence of the merger of fair trading functions into Access Canberra is diminished visibility of consumer protection activity, and potentially, diminished activity itself.

To illustrate, in 2012/13 the Office of Regulatory Services accounted for a substantial portion of the Justice and Community Safety Annual Report, including six pages on fair trading and business licensing compliance. It included narrative reporting on key activities, compliance priorities and approach and tabulated information regarding inspections and formal compliance actions. In 2014/15 the work of all Access Canberra functions was reported in four pages within the Annual Report of the Chief Minister, Treasury and Economic Development Directorate. Five dot points related to fair trading activity. The tables have disappeared. The narrative case studies illustrating enforcement activity have not been retained. Reporting recovered somewhat in 2018/19 with a clear section of the Annual Report devoted to Access Canberra, including a specific section on fair trading activity.

122 www.accesscanberra/Home/Fairtrading/notificaitonsalertsandwarnings/ACTCommissionerforfairtradingenforceableundertakings

5.5.2 Enforcement outcomes

We have summarised the enforcement work reported by Access Canberra during the period 2006 – 2019, in tabular form for easy assessment. This draws together data from our previous report and data collected for this Report.

As with the 2013 Report, due to low levels of enforcement activity, we did not consider it necessary to produce a graph.

Table: Enforcement activity Access Canberra - 2006 – 2019

Financial Year		06/ 07	07/ 08	08/ 09	09/ 10	10/ 11	11/12
Infringement notices	Security industry	NA	NA	NA	34	15	NA
	Motor vehicle industry	NA	NA	NA	1	1	NA
	Other	NA	NA	NA	0	42	NA
	Total	NA	39	53	35	58	34
Disciplinary proceedings	Liquor	NA	NA	26	4	10	3
	Security	NA	NA	12	0	0	0
	Tobacco	NA	NA	1	0	0	1
	Agents	NA	NA	0	0	3	1

NR = not relevant

NA = not available

Financial Year		12/13*	13/14	14/15**	15/16	16/17	17/18	18/19
Infringement notices	Security industry	0	9	NA	NA	0	0	0
	Motor vehicle industry	0	17	NA	NA	0	0	0
	Other	3	0	NA	NA	0	0	0
	Total	3	26	16	6	0	0	0
Disciplinary proceedings	Liquor	4	1	1	NA	NA	NA	NA
	Security	NA	NA	NA	NA	NA	NA	NA
	Tobacco	1	NA	NA	NA	NA	NA	NA
	Agents	2	2	2	NA	NA	NA	2
Enforceable Undertakings		1	2	4	1	2	0	0
Written warnings		NA	NA	NA	39	NA	NA	9
Court matters		3***	3***	NA	NA	NA	NA	1****

NA = not available

* Data for 12/13 is from the 13/14/ Annual Report

** Note that there is no longer a table of data, rather this information has been derived from text and may not represent all activity. Data is now coming from Chief Minister, Treasury and Economic Development Directorate rather than ACT Justice and Community safety. The data is very difficult to find.

*** ACT Justice and Community Safety Annual Report 13-14 Section B – Performance Reporting p.64.

**** Chief minister, Treasury and Economic Development Directorate Annual Report at 51

5.5.3 Rate of prosecutions per million population

We were unable to calculate a rate of prosecutions per capita for Access Canberra due to a lack of available data.

Observations

- ▶ There was very little reported formal enforcement activity after 2014/15. Until 2018/19 there was even less than observed in the 2013 Report. It is possible this is due to a lack of reporting rather than lack of activity.
- ▶ Access Canberra continues to undertake other activity such as complaint handling, conciliation of complaints, inspections and compliance activity.
- ▶ The more detailed Table in Appendix A records matters referred to the ACT Civil and Administrative Tribunal. While it is not clear from the description it appears a reference to 'referral' is a reference to disciplinary action by ACT Office of Regulatory Services or Access Canberra, as the descriptions also refer to the imposing disciplinary orders (an action not available to private litigants). While having an element of consumer protection, these matters are primarily related to occupational licensing.
- ▶ Overall activity has been very inconsistent and low level.

5.5.4 Score Card

Score Card	Access Canberra
Current Assessment	Steady Weak
Reporting Score 2020	0 out of 6
Enforcement Score 2020	0 out of 6
Relative Enforcement Performance	Excluded due to lack of data
2013 Assessment	Falling

There has been a general decline in activity over the period with a slight resurgence of activity in 2018/19. While overall activity remains low, we have balanced that with recent activity including court-based work and determined '**Steady Weak**' is an appropriate rating.

5.6 Consumer Affairs Victoria

5.6.1 Reporting

Information about Consumer Affairs Victoria's enforcement performance is primarily found in its Year in Review Reports or Annual Reports. Consumer Affairs Victoria's website also contains a list of enforceable undertakings obtained, court actions commenced and court actions concluded, including detail regarding the nature of allegation or court findings.

Consumer Affairs Victoria's quantitative reporting is generally consistent, however it does not distinguish between disciplinary inquiries and other types of civil litigation. Consumer Affairs Victoria also counts parties rather than proceedings, creating the risk that court proceedings are double counted in reporting and overstate the activity of the regulator.

From 2015/6 Consumer Affairs Victoria began reporting a 'rate of compliance with key consumer laws' figure (97.6% in 2015/16). This replaced the previous quality measure 'customer satisfaction with services provided.' The 2015/16 Report notes "this new measure includes estate agents, rooming house operators and residential park owners compliance with their obligations under relevant consumer laws." It is not clear how the number has been derived. It is particularly important that rating methodology are well explained, so consumers and regulated entity can more easily assess the performance of the market the regulator oversees and assess the enforcement activity of the regulator in light of the 'rate of compliance' observed.

Most Consumer Affairs Victoria Reports provide a figure for infringement notices and warning letters issued overall. It is not possible to tell how many people or companies the notices or letters have been issued to or for what types of matters. Figures therefore may contain infringement notices that were issued for non-consumer protection matters, or numerous notices issued for the same breach.

Reporting of civil proceedings is broken down by legislation, which is helpful for making a broad conclusion about whether it can be termed consumer protection work. Data on civil matters commenced is only included in the 2010/11 Annual Report. For later years information on matters finalised and ongoing is available in the Year in Review, but information on matters commenced is not.

Consumer Affairs Victoria's Year in Review takes a case study approach to narrative reporting, highlighting campaigns or areas of focus.

5.6.2 Enforcement outcomes

We have summarised the enforcement work reported by ASIC during the period 2006 – 2019, in tabular and graphic form. This draws together data from our previous report and data collected for this Report.

Table: Enforcement activity Consumer Affairs Victoria - 2006 – 2019

ASIC	06/07	07/08	08/09	09/10	10/11	11/12
Prosecutions finalised	42	42	25	33	25	15*
Civil litigation finalised**	29	7	19	10	11	15
Infringement Notice***	188	NR	77	119	50	NR
Enforceable undertakings	58	42	20	13	14	5
Total	317	91	141	175	100	35

ASIC	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Prosecutions finalised	33	24	21	14	16	6	7
Civil litigation finalised	61	64	42	31	18	24	10
Infringement Notice	99	NR	NR	NR	154^	64^	198
Enforceable undertakings	30	15	17	9	19	13	2
Total	223	103	80	54	207	107	217

NA = not available

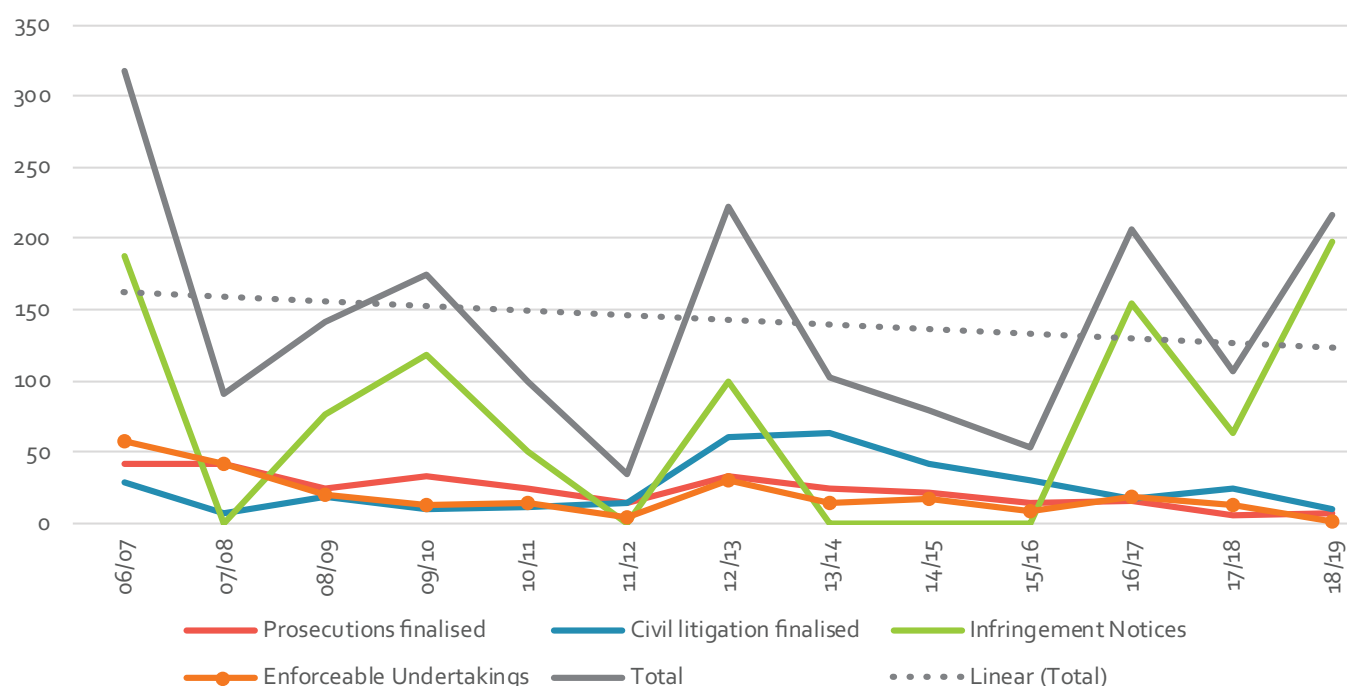
* In its 2012 Online Annual Report Consumer Affairs Victoria report 27 prosecutions without breaking these down by area of enforcement. As with all regulators, our research counted the actual cases listed on the CAV web site, which involved consumer issues. See Annual Report: Year in Review – Activities: <http://annualreport.consumer.vic.gov.au/introduction-highlights/year-in-review-activities.html>. For more details about how cases were counted as part of this research see Appendix A

** Statistics on civil matters commenced are only included in the 2010/11 CAV Annual Report. For the other years only information on matters finalized is available. Hence civil matters finalized is used in the table though matters commenced is preferable.

*** Most of the CAV Annual Reports provide a figure for infringement notices issued overall. It was not possible to tell how many people/companies the letters had been issued to or for what kind of matters they had been issued. Therefore the figure may contain infringement notices which were issued for non-consumer protection matters, or numerous notices issued to different people for the same breach.

^ Data from CAV 2018/19 Annual Report.

Graph: Enforcement activity Consumer Affairs Victoria - 2006 – 2019



5.6.3 Rate of prosecutions per million population

Using the methodology above we calculated Consumer Affairs Victoria's prosecution rate, over the last five years to 2017/18:

State/ Territory	Population (millions) ¹²³	2013/14	2014/15	2015/16	2016/17	2017/18	Most recent 5 years	Rate per million most recent 5	Variation from Average	% Variation from average
VIC	6.244	24	21	14	16	6	81	12.97	-38.11	-25%
Average rate per million across all State and Territory Regulator										51.08

Observations

- ▶ Consumer Affairs Victoria shows a surprisingly similar pattern of enforcement activity across both Reports. In both Reports, a strong enforcement performance was observed at the beginning of the period followed by a significant decline.
- ▶ In the 2013 Report the decline was most marked in the numbers of enforceable undertakings obtained (from 129 in 2006/07 to 35 in 2011/12). In this Report the decline is most marked in civil litigation finalised (64 matters in 2013/14 down to 10 matters in 2018/19).
- ▶ The 61 and 64 instances of civil litigation finalised in 2012/13 and 2013/14 easily represent the high water mark for this type of enforcement action by Consumer Affairs Victoria.
- ▶ The past three years (2016/17 to 2018/19) demonstrates a significant uptick in the use of infringement notices.
- ▶ It is feasible that infringement notices have more recently provided some substitute for court-based work, however numbers of court actions were declining prior to the uptick in utilisation of infringement notices.
- ▶ In the absence of more detailed reporting by CAV the nature of the conduct subject of the notices is not known.

5.6.4 Score Card

Score Card	Consumer Affairs Victoria
Current Assessment	Trending Down
Reporting Score 2020	4 out of 6
Enforcement Score 2020	2 out of 6
Relative Enforcement Performance	2 out of 5 - A low rate per capita
2013 Assessment	Trending Down

There has been a general decline in activity over the period after a strong start to the reporting period. While infringement notice numbers are higher in recent years (followed by a period where these were not reported), given the reduction in court-based activity in recent years, we believe 'Trending Down' is an appropriate rating.

¹²³ 2016 Census

5.7 Consumer Building and Occupational Services Tasmania

5.7.1 Reporting

On 1 July 2015, Consumer Affairs and Fair Trading (Tas CAFT in the 2013 Report) and the Building Standards and Occupational Licensing Branch merged to become Consumer Building and Occupational Services. The General Manager of Consumer Building and Occupational Services is appointed to more than 10 statutory roles, including the Director of Consumer Affairs and Fair Trading.

The function has remained within the overall auspices of the Department of Justice, though it appears to move around Divisions within that Department. For example, in 2016/17

Consumer Building and Occupational Services reported as part of Corrections, Enforcement and Consumer Protection, whereas in 2017/18 it reported as part of Regulatory and Other Services.

The information in the tables was collected from the relevant section of the Department of Justice Annual Reports, as with the 2013 Report. Between 2012/13 and 2016/17, there was strong consistency in reporting data. This was lost in the 2017/18 when a new (and more limited) data set was reported. The level of narrative about consumer protection activities has steadily reduced over time, most notably in 2015/16—at the time Consumer Building and Occupational Services was established and in 2017/18 when the change to reporting as part of Regulatory and Other Services occurred.

5.7.2 Enforcement Outcomes

We have summarised the enforcement work reported by Consumer Building and Occupational Services Tasmania during the period 2006 – 2019 in tabular form, drawing together data from our previous report and data collected for this Report (different categories are used). The graph relates to the data collected for this Report, 2012 to 2019.

Table: Enforcement activity Consumer Building and Occupational Services - 2006 – 2019

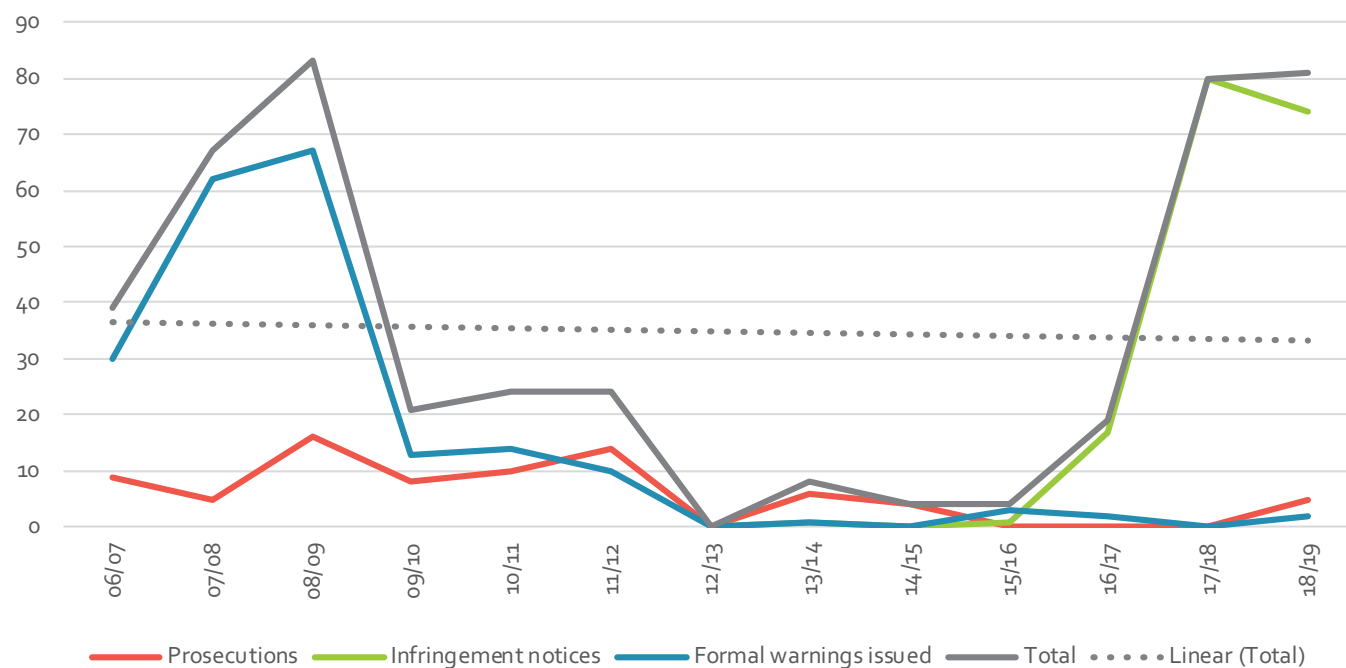
Financial Year		06/ 07	07/ 08	08/ 09	09/ 10	10/ 11	11/12	
Prosecutions*	Security industry	9	5	16	8	10	14	
Warnings issued	Fair trading	19	48	NA	NA	NA	NA	
	Total Warnings	30	62	67	13	14	10	
Licenses suspended or cancelled	Security and Investigation Agents Act	2	3	12	19	NA	NA	
		12/13	13/14	14/15	15/16	16/17	17/18	18/19
Prosecutions finalised		0	6	4	0	0	NA	5**
Infringement Notice		0	1	0	1	17	80	74
Formal warnings issued		0	1	0	3	2	0	2
Total		0	8	4	4	19	80	76

NA = not available

* Data on prosecutions under the Security and Investigation Agents Act in the Prosecutions Actions have not been included as the data provided between years is radically inconsistent. See Appendix A.

** The 2018/19 Report records 5 matters being referred to the Director of Public Prosecutions to institute proceedings. It is not clear whether these matters proceeded and whether they involved action by CBOS.

Graph: Enforcement activity Consumer Building and Occupational Services - 2006 – 2019



5.7.3 Rate of prosecutions per million population

Using the methodology above we calculated Tasmania's Consumer Building and Occupations Services prosecution rate as follows:

State/ Territory	Population (millions) ¹²⁴	2013/14	2014/15	2015/16	2016/17	2017/18	Most recent 5 years	Rate per million most recent 5	Variation from Average	% Variation from average
TAS	0.519	6	4	0	0	NA	10	19.27	-31.81	-38%
Average rate per million across all State and Territory Regulator										51.08

124 2016 Census

Observations

- ▶ Prosecutions have trended down to zero after 2014/15. This is in distinct contrast to the period examined in the 2013 Report, which demonstrated a small but steady rate of prosecutions, but there has been a recent increase in 2018/19.
- ▶ The rate of warnings issued has also trended down. This continues the trend observed in the 2013 Report.
- ▶ The number of infringement notices issued trended sharply upward from 2016/17. Infringement notices were the only reported enforcement activity in 2017/18.
- ▶ 2018/19 reports continued infringement notice activity and two formal warnings.
- ▶ Consumer Building and Occupational Services does not appear to use its enforceable undertakings powers. It is not clear why.
- ▶ The Regulator Watch reports give the greatest weight to prosecutions data, which have been low over the period. It is feasible that more recently infringement notices have provided some substitute for this work, however numbers of prosecutions were declining prior to the increased use of infringement notices.
- ▶ In the absence of more detailed reporting by Consumer Building and Occupational Services we are unable to determine what type of conduct has resulted in infringement notices being issued.
- ▶ It is difficult in these circumstances to weigh the value of the enforcement work represented by a larger number of infringement notices against a smaller number of prosecutions.

5.7.4 Score Card

Score Card	Consumer Building and Occupational Services Tasmania
Current Assessment	Trending Down
Reporting Score 2020	2 out of 6
Enforcement Score 2020	2 out of 6
Relative Enforcement Performance	2 out of 5 - A low rate per capita
2013 Assessment	Adequate

The significant increase in infringement notice activity does not outweigh the significant decline in court based work compared to the 2013 Report. The absence of enforceable undertakings being used as a regulatory tool is also noted. Therefore, an overall assessment of **'Trending Down'** is appropriate.

5.8 Consumer Protection Western Australia

5.8.1 Reporting

Information about Consumer Protection Western Australia's enforcement activity is primarily found in Annual Reports. For the period 2012/13 until 2016/17 reporting was included in the Department of Commerce Annual Report (Final Report in 2016/17), of which Consumer Protection was a Division. These reports included tabulated information in Appendices, including specific information regarding action undertaken by the Consumer Protection Division.

The body of the reports included narrative and qualitative information about trends emerging. Information recorded included parties, the nature of allegations, the outcome achieved, the costs penalties ordered, or fines issued. It appears that Consumer Protection Western Australia had taken the approach of reporting matters commenced as distinct from matters concluded in any year, which is welcome.

While until 2017/18 the Consumer Protection Western Australia's reports contained a significant amount of detail they were among the most confusing reports to analyse. The same types of activity seemed to be counted in a number of places (for example included in consolidated tables as well as narrative sections regarding particular areas of responsibility). The numbers in the different areas were not always consistent and did not include explanations for any differences.

Further, perhaps due to the range of available information, the 2013 Report has some types of action grouped with reference to where the action took place (e.g. Magistrates' Court or State Administrative Tribunal) whereas others are referenced by the nature of the action (e.g. civil proceeding or disciplinary action). We have continued this practice to enable comparison across the two reports however suggest the sharp drop in activity reported in 2017/18 may provide a basis for a different approach for future reports.

Reporting by Consumer Protection Western Australia also illustrates a number of the consistency challenges we encountered in developing this Report. For example, it is not possible to be definitive about warning notices as figures reported may include warning letters, administrative warnings, cautions, education or advice issued under some of the Acts.

In 2017/18, the Department of Commerce ceased and the consumer protection function, including the Commissioner for Consumer Protection, became part of the Department of Mines, Industry Regulations and Safety.

The 2017/18 Annual Report of the Department of Mines, Industry Regulations and Safety notes that some of the Acts it administers require reporting of “the number, nature and outcome of compliance activities.”¹²⁵ It would appear that the Department has stopped reporting activity that are not required to be reported on under legislation. For example, we could find no reference to activity under the Australian Consumer Law in the report, despite suggestion of action under the ACL on the consumer protection website.¹²⁶

The Report also includes the following note:

“...some figures relating to ongoing complaints, investigations or inquiries for the start of the current financial year (2017-18), differ slightly to the ongoing figures for the end of the previous financial year (2016-17) provided within the former Department of Commerce’s Final Report 2016-17. This is due to the data within the Complaints and Licensing System (CALS) used by the department being dynamic in nature. Details and classifications of certain types of complaints, investigations or inquiries are updated as further information regarding these complaints, investigations or inquiries is obtained. This potential reclassification can result in different ‘ongoing’ figures.”¹²⁷

While acknowledging this inconsistency is welcome, the challenge ‘dynamic’ data presents to ongoing and comparative reporting is obvious.

The 2018/19 Annual Report had not been published as at 1 November 2019 and is therefore not included in analysis.

The Consumer Protection Western Australia website contains a list of enforceable undertakings obtained, an enforcement and prosecution policy and copies of media releases issued.

While Consumer Protection Western Australia’s reporting once met many elements of the Reporting Framework in Recommendation 1, its move to the Department of Mines Industry Regulation and Safety has resulted in a move away from comprehensive reporting, to meeting base line legislative obligations for reporting. We hoped this is a transitional period for Consumer Protection Western Australia and it will reimplement the quality reporting it had in place previously and ensure it aligns with the recommended Reporting Framework.

5.8.2 Enforcement Outcomes

We have summarised the enforcement work reported by Consumer Protection Western Australia during the period 2006 – 2018 in tabular form, drawing together data from our previous report and data collected for this Report. The graph presents data collected for this report, being 2012 – 2018.

Table: Enforcement activity Consumer Protection Western Australia - 2006 – 2018

Consumer Protection Western Australia	06/07	07/08	08/09	09/10	10/11	11/12
Prosecutions finalised in Magistrates Court*	63	80	72	66	76	25
Civil litigation	3	0	3	4	5	5
Matters finalised State Administrative Tribunal	33	41	41	29	24	10
Penalty/ Infringement notices**	172	39	141	109	106	NA
Total	271	160	257	208	211	40

* Unlike for other consumer regulators, due to the nature of the reporting, figures in the table are for individuals prosecuted rather than for the overall number of prosecution matters.

** This information has been aggregated from prose note in the reports rather than taken from information provided in table form. It is likely that it is not comprehensive, however we were unable to locate any comprehensive reporting.

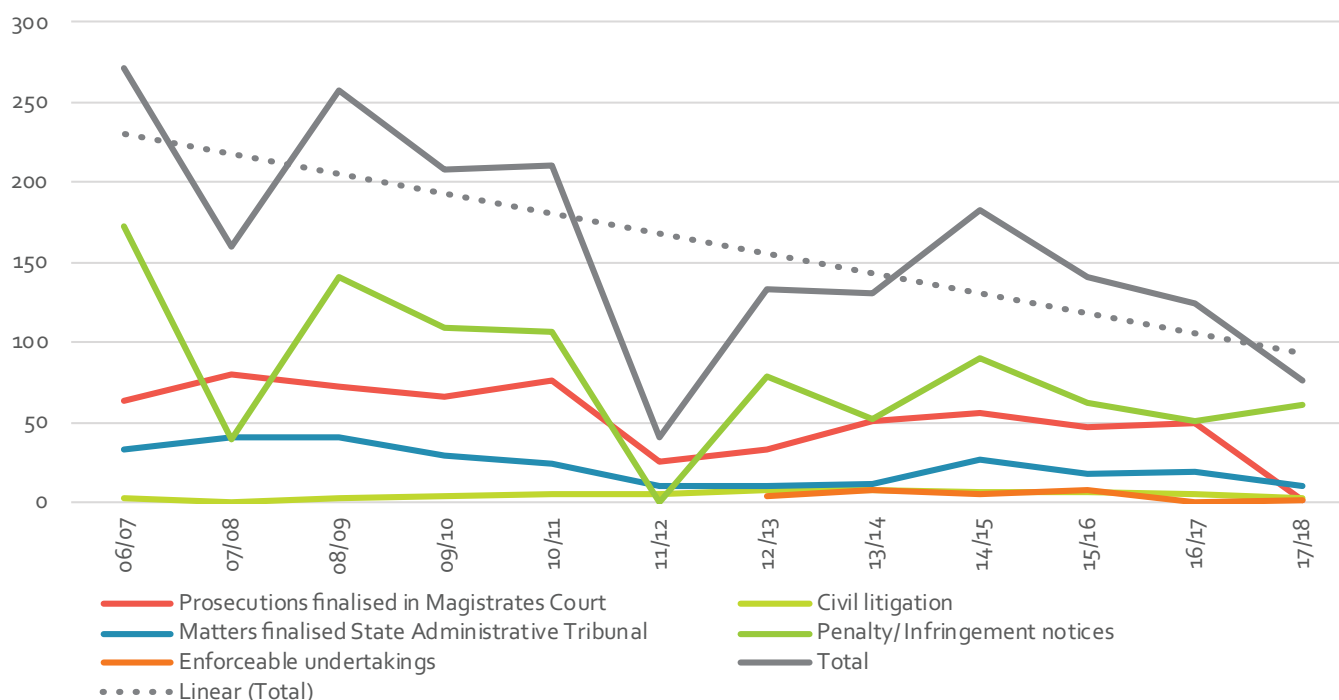
Consumer Protection Western Australia	12/13	13/14	14/15	15/16	16/17	17/18
Prosecutions finalised in Magistrates Court	33	51	56	47	49	1
Civil litigation	8	8	6	6	5	3
Matters finalised State Administrative Tribunal	10	12	26	18	19	10
Penalty/ Infringement notices	78	52	90	62	51	61
Enforceable undertakings	4	8	5	8	0	1
Total	133	131	183	141	124	76

¹²⁵ Department of Mines, Industry Regulations and Safety Annual Report at p.193.

¹²⁶ <https://www.commerce.wa.gov.au/consumer-protection/compliance-actions-1>

¹²⁷ Department of Mines, Industry Regulations and Safety Annual Report at p.193.

Graph: Enforcement activity Consumer Protection Western Australia- 2012 – 2018



5.8.3 Rate of prosecutions per million population

Using the methodology above we calculated Consumer Protection Western Australia's prosecution rate as follows:

State/ Territory	Population (millions) ¹²⁸	2013/14	2014/15	2015/16	2016/17	2017/18	Most recent 5 years	Rate per million most recent 5	Variation from Average	% Variation from average
WA	2.568	51	56	30	49	1	187	72.82	+21.74	+43%
Average rate per million across all State and Territory Regulator										51.08

Observations

- ▶ With the exception of the 2017/18 year, prosecutions have ranged from 30-56 during the period examined in the 2020 Report. This compares with a range of 25-80 in the 2013 Report.
- ▶ Civil litigation matters have ranged from 3 to 8 during the current period. This compares with a range of 0 to 5 in the 2013 Report.
- ▶ For 2017/18 information on penalty/infringement notices has been aggregated from notes in the reports rather than taken from information provided in table form. It is likely that it is not comprehensive, however we were unable to locate any comprehensive reporting.
- ▶ It is not clear whether activity has dropped away as strongly as Figure 10 suggests or whether the issue is more with the reporting provided.

5.8.4 Score Card

Score Card	Consumer Protection Western Australia
Current Assessment	Steady
Reporting Score 2020	0 out of 5
Enforcement Score 2020	3 out of 5
Relative Enforcement Performance	4 out of 5 - Higher than average
2013 Assessment	Steady

While Consumer Protection Western Australia has seen a reported reduction in the number of prosecutions it appears this may be due to incomplete data for 2017-18. The downward trend in prosecutions is also slightly offset by a minor trend up in civil litigation. On balance, given there is still significant enforcement activity being undertaken that **'Steady'** is the appropriate assessment.

128 2016 Census

5.9 Fair Trading Queensland

5.9.1 Reporting

Information about Fair Trading Queensland's enforcement activity can be found primarily in Annual Reports. Fair Trading Queensland's activity is included in the Annual Reports of the Department of Justice and Attorney-General.

The 2013 Report noted that the availability of data on enforcement work by Fair Trading Queensland was variable and often not comprehensive. A particular feature was the reporting of 'number of enforcement actions initiated', which was reported until (and including) the 2011/12 year. This term was not defined and appeared to include a range

of activity beyond enforcement outcomes, which meant that Queensland figures were in no way comparable to those of other jurisdictions.

This shifted significantly in the 2012/13 reporting year and again in the 2014/15 reporting year. In 2012/13 while number of enforcement actions initiated was still noted, numbers of outcomes, including court actions, disciplinary proceedings, warnings, infringement notices and enforceable undertakings were also reported.

There is little to no data for the 2013/14 year but then in 2014/15 Fair Trading Queensland introduced an outcomes report and commenced reporting action relating to the Acts it administers as well as specific data regarding different types of enforcement actions. There is some narrative reporting about the underlying nature of court actions as well as a number of case studies. This is a positive development.

5.9.2 Enforcement Outcomes

The top 5 rows of the below tables replicate the information contained in the 2013 Report for continuity. As noted above, the current period demonstrates a significant improvement in reporting and potentially actual enforcement activity so that activity can be meaningfully broken down. This new information makes up the balance of the second table. The graph covers enforcement actions for the period from 2011 – 2019, being new data collected for this Report.

Table: Enforcement activity Fair Trading Queensland - 2006 – 2019

Fair Trading Queensland	06/07	07/08	08/09	09/10	10/11
Number of enforcement actions initiated	3750*	3064	3900	3720	1529
Number of entities monitored for compliance	10532	12391	13800	11870	NA
Number of complaints finalised	15800**	NA	13735	17660	NA
Amount of redress achieved for consumers (\$) ***	5.35M#	5.517M	5.76M	6.5M	4.8M
Percentage of disputes satisfactorily finalised##	79%	86%	88%	90%	89%

* This figure was obtained from the 2006/07 Department of Tourism, Fair Trading and Wine Industry Development final report. Another figure – 3049 – is given for the same indicator for 2006/07 in the 2007/08 Department of Justice and Attorney-General annual report.

** This figure was obtained from the 2006/07 Department of Tourism, Fair Trading and Wine Industry Development final report. Another figure – 12292 – is given for the same indicator for 2006/07 in the 2007/08 Department of Justice and Attorney-General annual report

*** Redress is described in the 2010/11 Department of Justice and Attorney-General Annual Report as "the compensation, or the in-kind value to address issues a consumer has complained about. The amount of redress can vary significantly as it depends on the nature of complaints on hand. Redress can be achieved through conciliation, investigations, prosecution, restitution and from the Property Agents and Motor Dealer's Claim Fund."

This figure was obtained from the 2006/07 Department of Tourism, Fair Trading and Wine Industry Development final report. Another figure – \$3.278M – is given for the same indicator for 2006/07 in the 2007/08 Department of Justice and Attorney-General annual report.

This indicator refers to consumer complaints not enforcement actions. "Satisfactorily finalised disputes" result in one of the following: complaint resolved, apology obtained, partial/full redress obtained, redress over/above that entitled to obtained, repairs/replacement/exchange obtained or compliance action commenced.

Fair Trading Queensland	11/12	12/13	13/14*	14/15	15/16	16/17	17/18	18/19
Number of enforcement actions initiated	1829**	1306***	19	1361#	1351##	1375	1504	1992
Entities monitored	9873	9400	NA	8340	8539	8747	9898	9248
Complaints finalised	NA	11,380###	NA	15,286	14,871	15,381	15,230	15,639
Redress for consumers	\$6.2m	\$7.5m	\$5.5m	\$6.1m	\$6.07m	\$5.6m	\$8.14m	\$7.6m
% Disputes satisfactorily finalised	88%	89%	NA	93%	91%	85%	82%	83%
Admin. Disciplinary Action	NA	NA	NA	1742	486	1121	1224	1369
Civil penalty notices	NA	NA	NA	28	44	11	9	5
Enforceable undertakings^	10	39	19	28	12	26	24	0
Public naming	NA	NA	NA	3	0	2	4	2
Investigations completed	2926	2012	NA	3805	4990	3786	3433	3022
Infringements issued	0	573	0	466	466	460	385	374
Warnings issued^^	0	0	0	666	602	652	898	1320
Disciplinary Proceedings (QCAT)	NA	9	NA	4	17	4	3	20
Total Court actions	0	80	0	74	81	81	73	72

* Previous years data was reported in the AR's then OFT Qld moved to an "Outcomes report" which we have access to from 2014/15. In 13/14 there is really no data in the Department of Justice and Attorney-General AR and no outcome report, hence the lack of data for this year.

** This is the total number of enforcement actions reported in the AR, and is consistent with the previous Regulator Watch report.

*** The 2012 A-G's Annual Report 2012-13, Page 39 states that there are 1,306 enforcement actions and breaks this down to be 39 disciplinary proceedings QCAT, 80 court actions, 588 warnings, 573 infringement notices and 56 enforceable undertakings.

This number is Enforcement actions listed in the AR, excluding Administrative disciplinary actions and Public naming. Also under court actions we are excluding Security Providers Act (1993), Criminal Code Act (1899) and Property Occupations Act (2014). NOTE: This methodology is different from the previous years and the previous Regulator Watch report as additional detail has now been reported.

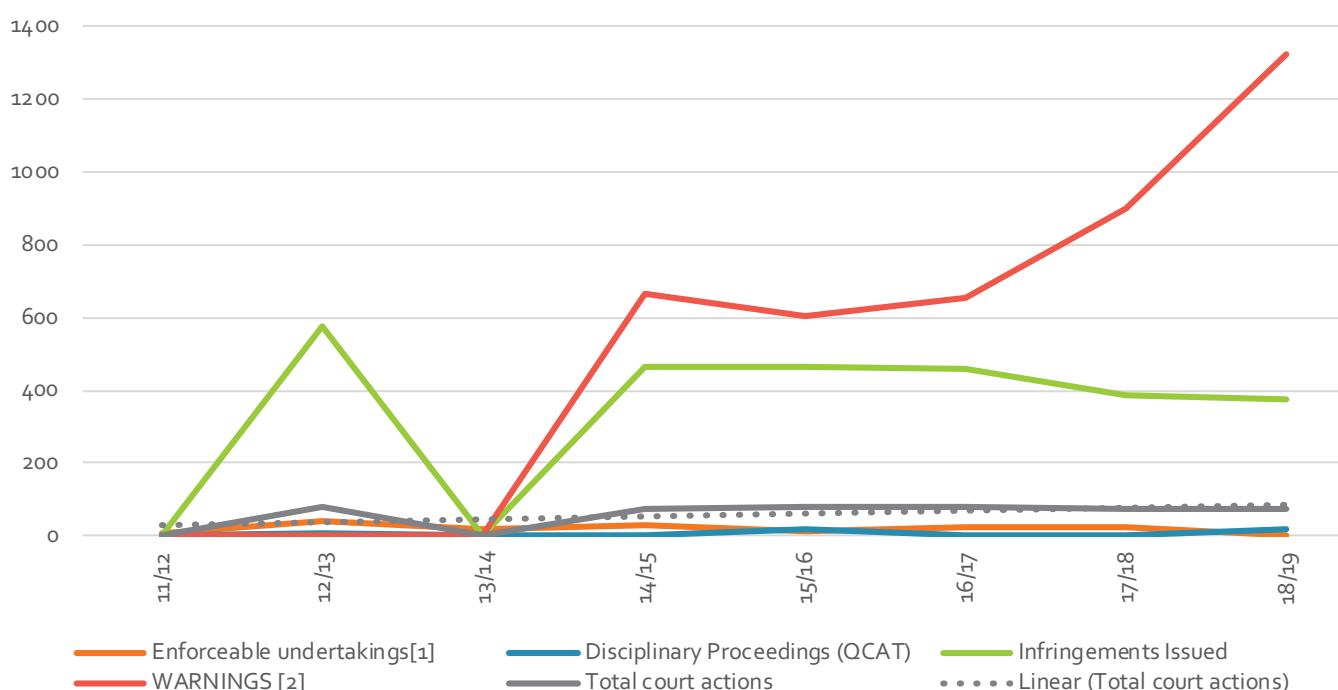
Note that in this year there is an inconsistency between the figures reported in the Outcomes Report 2016-17 page 6 for court actions (81) and the court actions on page 12 (63). Our number for court actions for this year is 58 as we have excluded Criminal Code Act (1899) and the Property Occupations Act (2014) bringing our total of court actions to 58.

In the AR 2012/13 the number 11,380 is listed as "Office of Fair Trading finalised over 11,380 conciliations"

^ These numbers are based on the Register of Enforceable Undertakings on the OFT Qld website. In a number of instances different numbers are reported in Annual Reports. See for example 2012-13, 2014-15 – 2017-18. These numbers include the Fair Trading Act (1989), including the Australian Consumer Law (ACL), Property Agents, Motor dealers and Debt Collectors and Process servers (commercial agents), introductory agents and Inbound tour operators (organizers of foreign tour groups).

^^ Issued under legislation that can be broadly termed consumer protection legislation – This includes: Agents Financial Administration Act (2014), Collections Act (1966), Criminal Code Act (1899), Debt Collectors (Field Agents and Collection Agents) Act (2014), Fair Trading Act (1989) (incorporating the Australian Consumer Law), Fair Trading Inspectors Act (2014), Motor Dealers and Chattel Auctioneers Act (2014), Property Agents and Motor Dealers Act (2000) and Second-hand Dealers and Pawnbrokers Act (2003), but EXCLUDES: Land Sales Act (1984), Property Occupations Act (2014), Security Providers Act (1993) and Tattoo Industry Act (2013)

Graph: Enforcement activity Fair Trading Queensland - 2011 – 2019



5.9.3 Rate of prosecutions per million population

Using the methodology above we calculated Fair Trading Queensland's prosecution rate as follows:

State/ Territory	Population (millions) ¹²⁹	2013/14	2014/15	2015/16	2016/17	2017/18	Most recent 5 years	Rate per million most recent 5	Variation from Average	% Variation from average
QLD	4.883	NA	74	100	81	73	328	67.17	+16.09	+31%
Average rate per million across all State and Territory Regulator										51.08

Observations

- In the 2013 Report Fair Trading Queensland was one of two agencies whose compliance and enforcement data was combined due to the lack of discernible enforcement data. The position has significantly improved, particularly from 2014/15 with the publication of the outcomes reports.
- Court action volumes have been remarkably consistent during the period examined particularly noting that the 2015/16 outcomes report has an inconsistency on this measure—with 100 court actions recorded on page six of the report and 81 court actions recorded on page 12 of the same report. We have used the latter number on the basis that page 12 also provides a breakdown of legislation under which the actions were taken.

5.9.4 Score Card

Score Card	Fair Trading Queensland
Current Assessment	Steady
Reporting Score 2020	3 out of 6
Enforcement Score 2020	3 out of 6
Relative Enforcement Performance	4 out of 5 - Higher than average
2013 Assessment	Falling

There has been a significant improvement from the assessment in the 2013 Report. While activity appears to rise sharply in 2018/19 this is largely attributable to warnings issued. On balance and giving greatest weight to court actions and disciplinary proceedings we have given an assessment of 'Steady' for the period covered by the 2020 Report.

5.10 New South Wales Fair Trading (NSW Fair Trading)

5.10.1 Reporting

Information regarding NSW Fair Trading enforcement activity can be found in their Year in Review publications, in the quarterly Enforcement Actions Reports and on the NSW Fair Trading website, which also includes a Register of Enforceable Undertakings. The Enforcement Actions Reports are only retained on the NSW Fair Trading website for a period of two years from their issue. These are the most detailed reports available, covering prosecutions and penalties by name of trader, the date of action, the nature of the offence or unfair conduct, the type of action taken and the value of any fine or penalty.

NSW Fair Trading does not publish statistics on prosecutions commenced and only publishes matters finalised successfully (not all matters finalised). This approach is also used in publishing civil matters.

From both Year in Review and quarterly reports it was difficult to tell which matters involved a consumer protection issue (as distinct from a disciplinary or occupational licensing matter for example). While both may ultimately serve a consumer protection purpose, this Report has sought to replicate the 2013 Report approach of focusing, where possible, on action taken under consumer protection legislation. As such, we have extracted the legislation likely to cover consumer protection issues from the list of legislation administered by NSW Fair Trading. The matters conducted under these laws have been included in the NSW Fair Trading detailed data sets in Appendix A. It may mean non consumer protection matters are included in the figures.

Given the limited availability of the quarterly reports, the data in the tables was initially compiled using the Year in Review publication. This has presented a particular challenge for the period examined.

For many years the Year in Review publications were largely consistent in terminology and what was reported. There

was a significant change in approach in 2015/16. The tables summarising civil litigation, penalty notices and disciplinary actions and prosecution results no longer appeared in these reports. Now data is reported as part of narrative on initiatives or market sectors and it not clear that this data is comprehensive. Since 2015/16 data contained in the report has continued to reduce.

Following discussions with NSW Fair Trading, earlier quarterly reports were made available. As such, the data for earlier years has been used in this Report on the basis that the data was published historically. This means that all data reported now has a consistent source.

NSW Fair Trading also advises that OpenGov.nsw.gov.au may hold more fair trading enforcement data over time. While we can understand the desire to maintain currency on the NSW Fair Trading website, we suggest that in order to maintain accountability it would be desirable for the website to at least include a link to where more historical data is held.

The quarterly reports categorise action by legislation, with each type of action taken reported in brief narrative form. As such it has been necessary to make assumptions about whether the action is a prosecution, disciplinary action or civil proceeding.

5.10.2 Enforcement Outcomes

We have summarised the enforcement work reported by the NSW Fair Trading during the period 2006 – 2019 in tabular form. This draws together data from our previous report and data collected for this Report. The graph shows the period 2011 – 2019, being the new data collected for this report. For that period, we have disaggregated penalty notices relating to the Home Building Act to enable variation in other activity more visible.

Table: Enforcement activity NSW Fair Trading - 2006 – 2019

NSW Fair Trading	06/07	07/08	08/09	09/10	10/11
Successful prosecutions finalised*	116	101	76	85	67
Civil litigation finalised**	3	4	5	1	4
Disciplinary actions	19	2	0	95	98
Enforceable undertakings	1	2	0	0	1
Penalty/infringement notices	935	605	719	589	516
Public warnings***	NA	NA	NA	NA	4
Show cause#	NA	57	NA	60	75

* Statistics on prosecutions commenced are not published by NSW OFT. Only information on matters finalised is available. Further only information on successful prosecutions (not all commenced prosecutions) is provided.

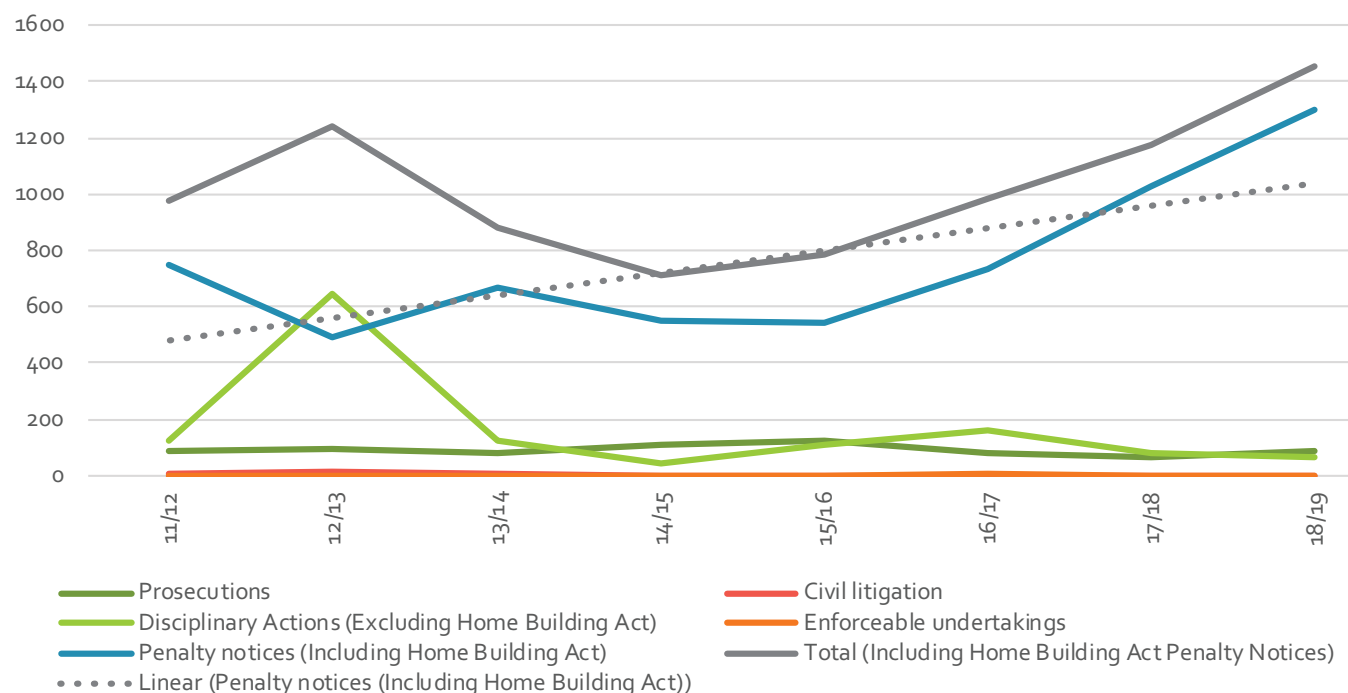
** Statistics on civil matters commenced are not published by NSW OFT. Only information on matters finalised is available.

*** Only information for public warnings from 2011 is available.

The OFT has the power to issue "show cause notices" under some legislation. These notices issued to traders at the start of the administrative disciplinary action process (one of the outcomes that may result from an investigation) which can lead to disqualifications, bans, etc, usually in relation to occupational licences. This power remains in the Fair Trading Act and various statutes relating to occupational licences.

NSW Fair Trading	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Prosecutions	91	95	80	106	261	NA	69	80
Civil litigation	7	11	6	3	NA	NA	0	1
Disciplinary Actions (Excluding Home Building Act)	98	111	120	47	41	NA	48	46
Infringements	28	37	497	95	29	NA	NA	NA
Enforceable undertakings	1	0	0	1	2	4	1	0
Penalty notices (Excluding Home Building Act)	276	279	444	353	0	144	746	956
Total (Excluding Home Building Act Penalty Notices)	473	496	649	510	304	148	864	1083

Graph: Enforcement activity NSW Fair Trading - 2011 - 2019



5.10.3 Rate of prosecutions per million population

Using the methodology above we calculated NSW Fair Trading prosecution rate as follows:

State/ Territory	Population (millions) ¹³⁰	2013/14	2014/15	2015/16	2016/17	2017/18	Most recent 5 years	Rate per million most recent 5	Variation from Average	% Variation from average
NSW	7.48	79	106	261	NA	103	549	73.4	+22.32	+44%
Average rate per million across all State and Territory Regulator										51.08

Observations

- It is evident from our Reports that civil litigation is not the enforcement tool of choice for NSW Fair Trading.
- In contrast prosecutions actions (particularly given only successful prosecutions are reported) are quite active.
- Prosecution numbers have fluctuated throughout the current period, peaking in 2015/16. They are now back in line with historical levels.
- Disciplinary action has followed a similar trend to prosecutions during the current period but is at significantly higher levels than during the 2013 Report period.
- The significant decline in reported activity in 2015/16 and 2016/17 is difficult to attribute to gaps in reporting

or a true reduction in activity. Given the recovery of volumes in 2017/18, it seems more likely this is an issue of reporting, although it is not possible to be certain.

5.10.4 Score Card

Score Card	NSW Fair Trading
Current Assessment	Trending Up
Reporting Score 2020	4 out of 5
Enforcement Score 2020	4 out of 5
Relative Enforcement Performance	4 out of 5 - Higher than average
2013 Assessment	Trending Down

Noting the resurgence in court based work in 2018/19 as well as the issue of civil litigation, a rating of **'Trending Up'** is appropriate.

5.11 Northern Territory Consumer Affairs

5.11.1 Reporting

Northern Territory Consumer Affairs is part of the Department of Attorney-General and Justice. Information about enforcement and compliance activity is largely contained Northern Territory Consumer Affairs' Annual Reports. An enforcement and compliance policy is published on its website.

As with the 2013 Report, this Report examines both the enforcement and compliance work of Northern Territory Consumer Affairs. While we do not consider that compliance and complaint handling is consumer protection enforcement, there is a considerable lack of data available for enforcement work. Accordingly, we have provided compliance data for context, as we did in the 2013 Report.¹³¹

The Annual Reports are easy to find on the website and relatively consistent in their presentation. As illustrated by the table below, they demonstrate very little enforcement work however. The Reports tend to focus on educational and liaison activities.

The qualitative data provided in the Annual Reports relates to enquiries received and compliance activity. Any reference to enforcement actions are generally in narrative form and are too general to be used to measure activity. For example, the 27 prosecutions referred to in the below table in 2011/12 are reported as part of a joint initiative and therefore may not represent prosecutions undertaken by Northern Territory Consumer Affairs.

5.11.2 Enforcement Outcomes

We have summarised the enforcement work reported by Northern Territory Consumer Affairs during the period 2006 – 2019, in tabular form for easy assessment. This draws together data from our previous report and data collected for this Report.

Data for 2012 – 2019 does not include the product safety matters included in the 2013 Report as Northern Territory Consumer Affairs' reports indicate this work is now undertaken by the ACCC.

A graph has not been produced due to the lack of available data on enforcement activities, as with the 2013 Report.

¹³¹ The 2013 Report, CALC, p. 85.

Table: Enforcement activity NSW Fair Trading - 2006 – 2019

NSW Fair Trading	06/07	07/08	08/09	09/10	10/11
Investigations conducted	NA	87	95	52	45
Investigations concluded	NA	67	76	44	42
Complaints withdrawn, resolved to the satisfaction of the complainant or where no breach was disclosed	NA	NA	32	15	18
Complaints referred to other organisations	NA	NA	113	59	7
Traders placed on notice	NA	NA	18	12	4
Investigations referred for prosecution	NA	1	1	1	0
Trader visits	NA	114	168	105	69
Compliance education provided	NA	NA	41	64	86
Contracts annulled or varied	NA	NA	7	251	62
Investigations involving or leading to banned products	NA	2	5	1	1
Investigations/notification involving or leading to recalled products	NA	0	137	45	0
Investigations involving or leading to mandatory standards	NA	NA	1	1	14
Investigations involving or leading to warning labels on products	NA	NA	9	5	4
Corrective advertising obtained	NA	NA	4	NA	NA
Trader publicly named	NA	NA	6	NA	NA

NSW Fair Trading	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Investigations conducted	38	36	21	42	30	33	23	33
Investigations concluded	36	32	17	34	28	32	22	32
Complaints withdrawn, resolved to the satisfaction of the complainant or where no breach was disclosed	3	5	3	NA	NA	NA	NA	NA
Complaints referred to other organisations	12	5	5	8	NA	NA	NA	NA
Traders placed on notice	5	5	3	2	6	2	2	82
Investigations referred for prosecution	0	0	0	0	1	0	1	NA
Infringement Notices issued	NA	NA	NA	1	2	0	1	6
Public Warnings issued	NA	NA	2	0	3	0	NA	NA
Trader visits	26	7	12	12*	4	2	2	767
Compliance education provided	80	142	19	9	11	15	8	202
Contracts annulled or varied	2	NA	NA	NA	NA	NA	NA	NA
"Stop the travelling Con Men Individuals prosecuted	27	NA	NA	NA	NA	NA	NA	NA
Corrective advertising obtained	NA	NA	1**	NA	NA	NA	NA	NA
Trader publicly named	NA	NA	NA	NA	NA	NA	NA	NA
Enforceable Undertakings	0	0	0	0	1***	0	0	NA
Substantiate advertised claim	NA	NA	41	NA	NA	NA	NA	NA
Other court proceedings	NA	NA	NA	NA	2#	NA	NA	NA
Complaints conciliated	NA	NA	NA	NA	NA	167	220	179

* This is now changed to trader engagement.

** Page 30 2013-14 Annual Report – Northern Territory Liquorland outlets

*** Page 28 2015-16 Annual Report

It is unclear if these actions were NT Consumer Affairs actions – Page 27 and 28 2015-16 Annual Report

5.11.3 Rate of prosecutions per million population

We were unable to calculate a rate of prosecutions per capita for Northern Territory Consumer Affairs due to a lack of available data.

Observations

We can only repeat the observations made in the 2013 Report on the basis that we have had to assume (based on reported activity) that there is little of no enforcement action taken:

"the level of enforcement action of the NT Consumer Affairs (as distinct from investigations which may lead to enforcement action) is astoundingly low, especially given the very high proportion of NT consumers who are vulnerable and disadvantaged and the known problems that they face."

There is, however, evidence of increased cooperative activity relating to both compliance and enforcement. In particular Annual Reports in recent years note a number of instances of investigations and other cooperation in prosecutions lead by other fair trading agencies. This is welcome and will hopefully contribute to development of relevant skills and enforcement appetite.

The 2018/19 year also demonstrates an uptick in traders placed on notice and issue of infringement notices as well as other compliance activity.

5.11.4 Score Card

Score Card	Northern Territory Consumer Affairs
Current Assessment	Falling
Reporting Score 2020	2 out of 5
Enforcement Score 2020	0 out of 5
Relative Enforcement Performance	Excluded due to lack of data.
2013 Assessment	Falling

Overall levels of formal enforcement activity very low such that an assessment of **'Falling'** is considered appropriate, though this is a more difficult call particularly in light of 2018/19 activity. In the event additional activity demonstrated in 2018/19 is sustained, a revision of this assessment may be warranted in future reports.

5.12 South Australia's Consumer and Business Services

5.12.1 Reporting

Information about South Australia's Consumer and Business Services enforcement activity is primarily found in its Annual Reports. There is a compliance and enforcement policy on its website, but very limited information about enforcement action undertaken.

South Australia's Consumer and Business Services was formed in 2011/12 by a merger of the former Office of Consumer and Business Affairs and the Office of the Liquor and Gambling Commissioner.

Consumer and Business Services is a division of the Attorney General's Department. The figures reported in the 2020 Report were obtained from the Annual Reports issued by Consumer and Business Services for the years 2011/12 to 2015/16. It appears that from this time Consumer and Business Services reporting was incorporated in the Annual Report for the South Australian Attorney General's Department. There is also some ad hoc enforcement information on the Consumer and Business Services website.

The Annual Reports provide detailed information about enforceable undertakings (also described as assurances) and court actions, including the name of the trader subject of the action, the date of the action, the Act under which action is taken and the nature of the undertaking given or outcome obtained. Penalties and fines are included. Reporting on court actions also includes a summary of the allegations. Reports contain some narrative information about key initiatives.

The quality of reporting by South Australia's Consumer and Business Services has been maintained despite the merger and subsequent incorporation of previously independent reporting within the Attorney-General's Department Reporting. This is quite different to other jurisdictions when similar shifts have occurred, where a notable reduction in the amount and utility of reporting (and potentially activity) has been observed.

5.12.2 Enforcement Outcomes

We have summarised the enforcement work reported by South Australia's Consumer and Business Services during the period 2006 – 2019 in tabular form and in a graph for easy assessment. This draws together data from our previous report and data collected for this Report.

There was no reporting of any infringements issues during the period examined by the 2020 Report.

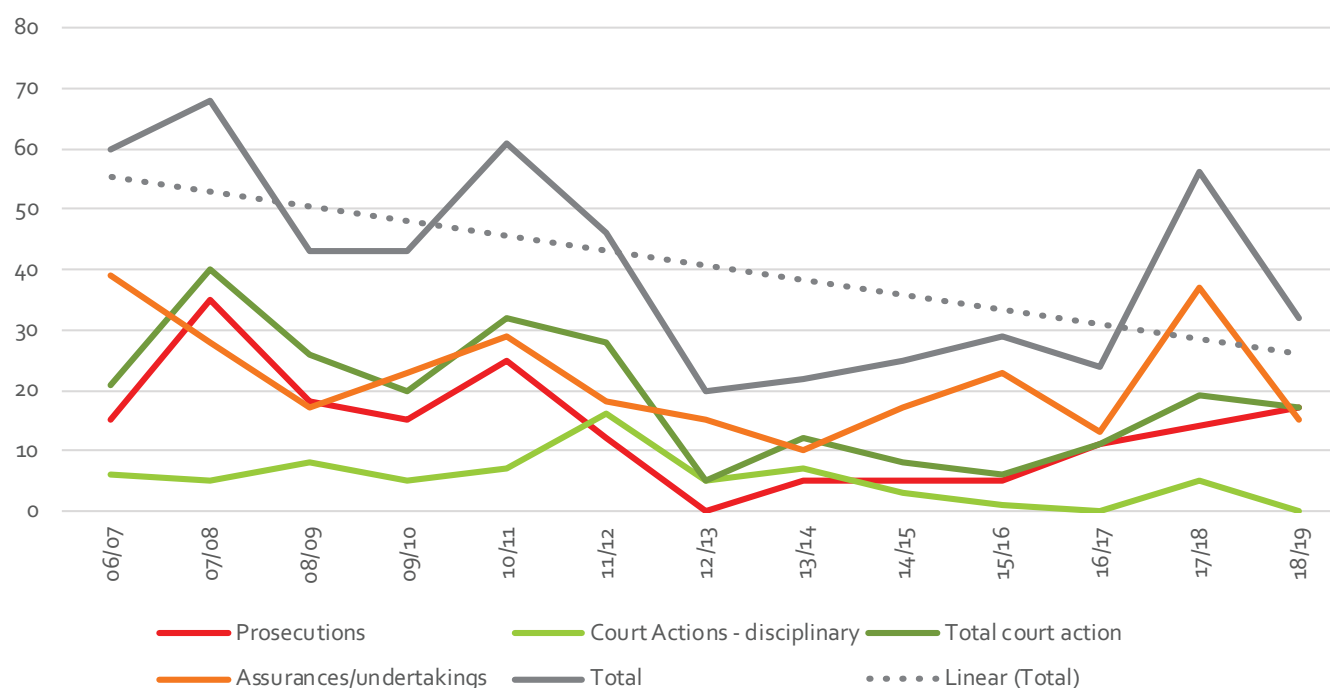
Table: Enforcement activity Consumer and Business Services - 2006 – 2019

SA Consumer and Business Services	06/07	07/08	08/09	09/10	10/11
Prosecutions*	15	35	18	15	25
Court actions - disciplinary	6	5	8	5	7
Total court action	21	40	26	20	32
Assurances/undertakings	39	28	17	23	29
Total	60	68	43	43	61

* This appears to only include successful prosecutions, including those where there has been no conviction recorded.

SA Consumer and Business Services	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Prosecutions	12	0	5	5	5	11	14	17
Court Actions - disciplinary	16	5	7	3	1	0	5	0
Total court action	28	5	12	8	6	11	19	17
Assurances/undertakings	28	37	497	95	29	NA	NA	NA
	18	15	10	17	23	13	37	15
Total	46	20	22	25	29	24	56	32

Graph: Enforcement activity Consumer and Business Services - 2006 – 2019



5.12.3 Rate of prosecutions per million population

Using the methodology above we calculated South Australia's Consumer and Business Services prosecution rate, over the last five years as follows:

State/ Territory	Population (millions) ¹³²	2013/14	2014/15	2015/16	2016/17	2017/18	Most recent 5 years	Rate per million most recent 5	Variation from Average	% Variation from average
SA	1.677	4	5	5	11	14	39	23.26	-27.82	-46%
Average rate per million across all State and Territory Regulator										51.08

Observations

- Prosecutions have trended up in recent years after trending down sharply in 2011/12 and 2012/13. Prosecutions in 2017/18 increased to above 2011/12 levels but remain below levels recorded for much of the period examined in the 2013 Report.
- Total court actions have trended up in the last two years examined recovering after a sharp downward trend earlier in the period. Total court actions have not recovered to 2011/12 levels however.
- Numbers of assurances /undertakings have trended up from 2013/14 save for a sharp dip in 2016/17 but are lower again in 2018/19.

5.12.4 Score Card

Score Card	South Australia Consumer and Business Services
Current Assessment	Trending Up
Reporting Score 2020	6 out of 6
Enforcement Score 2020	4 out of 6
Relative Enforcement Performance	2 - Low rate per capita
2013 Assessment	Steady

Giving the greatest weight to prosecutions and court actions and to a lesser extent, undertakings activity, on balance we believe 'Trending Up' is the appropriate assessment.

¹³² 2016 Census



06

CONCLUSION

There has been mixed progress since the 2013 Report.

There has been significant progress in the willingness of consumer protection agencies to publicise issues and results in the media and increased evidence of a campaign approach, particularly through ACL coordination. While there is still significant progress to be made in relation to responding to consumer organisations, there have been pleasing developments in this area also.

At a national level, regulators have remained strong or improved over the period both in terms of enforcement action and reporting.

At a State and Territory level, some agencies have improved performance, some have remained weak and others are trending down.

There is more to be done to ensure that a key objective of the ACL framework—consistent protection across the jurisdictions—is realised and that regulators embrace enforcement as a necessary tool to ensuring markets are fair for consumers.

The key, in our view, is for our consumer protection regulators to:

- ▶ establish and nurture enforcement cultures within their agencies and across agencies
- ▶ align approaches to reporting, campaigning and enforcement activities—driving shared learning and efficiencies, and
- ▶ tell everyone what enforcement action has been taken and why—including consumer organisations, consumers, the media and marketplaces.

We hope this Report along with the findings Australian and International reviews, inquiries and Royal Commissions, assists in highlighting the spaces to improve, the spaces to learn from and the spaces where opportunities to innovate exist.



07

APPENDIX A

This section sets out detailed analysis for each regulator for the period 2012 – 2018.

Detailed data sets for the 2006 – 2011 period are available in our 2013 Report.

The appendix includes:

- ▶ detailed data regarding enforcement and compliance activities for the period examined
- ▶ information about the source of the data, and
- ▶ information about any interpretations, assumptions made or gaps identified.

This detailed data underpins the analysis in Part 5 of the Report.

A1 Australian Competition and Consumer Commission (ACCC)

Table: ACCC Enforcement Actions 2012/13 – 2018/19

Financial Year		12/13	13/14	14/15	15/16	16/17	17/18	18/19
Litigation commenced	Consumer protection	26	17	16	28	14	12	20
	Small business	0	0	0	0	4	3	3
	Other	0	0	3	0	1	0	0
	Product safety	0	0	0	1	0	0	0
	Subtotal	26	17	19	29	19	15	23
Undertakings ¹³³	Consumer protection	9	11	5	17	10	23	12
	Small business	3	0	2	0	2	2	0
	Product safety	1	3	2	0	2	0	0
	Subtotal	13	14	9	17	14	25	12
Total actions		39	31	28	46	33	40	35
Other actions	Infringement notices ¹³⁴	18	13	16	37	11	7	12
	Public warnings	0	0	0	1	1	1	0
	Consumer product safety recalls ¹³⁵	105 ¹³⁶	407	556	658	597	550	686
	Total	123	420	572	696	609	558	698
	Total (Excluding Consumer product safety recalls)	18	13	16	38	12	8	34

The ACCC administered the Trade Practices Act 1974 until it was superseded by the Competition and Consumer Act 2010 on 1 January 2011.

Unless otherwise stated, the data in the table is drawn from ACCC ACCCount bulletins, which has been published since mid 2007. Information about cases and undertakings is also published in the ACCC Annual Report, with detailed information being included until 2009/10. Information about undertakings is also available in the Undertakings Register on the ACCC website.

As for the 2013 Report, The following rules were used when compiling the table:

- ▶ Where a matter involves both litigation and an undertaking it is only counted once (under litigation).
- ▶ Where a matter is pursued against multiple people (e.g. directors) associated with the same company, or against the company and directors of the company it is counted once.
- ▶ Where a matter involves one or more different companies it is counted for each company.

The following issues arose when compiling the litigation section of the table:

- ▶ Litigation commenced is the most useful measure of enforcement activity and was available in the ACCCount bulletins. It has therefore been used for the ACCC, while litigation finalised it used for other regulators.
- ▶ The following types of cases are not included in the numbers so as to avoid double counting or because they are not strictly relevant: reviews, proceedings for failure to provide information, costs proceedings, actions commenced against the ACCC and ACCC interventions in private cases.
- ▶ Unlike the 2013 Report, this edition includes appeals and contempt proceedings.

¹³³ Based on consumer protection, small business and product safety undertakings reported in Account.

¹³⁴ Data from the public register of Infringement notice from the ACCC website. There is an inconsistency between the numbers in the public register and the ACCCount bulletins. For example, counting infringement notices quarterly from the quarterly "ACCCCount 1 July to 30 September 2012_0.pdf's" there are 26. From the register <https://www.accc.gov.au/public-registers/> there are 18. It appears that the difference may be explained by counting number of notices (Account) and number of traders (Register). The Register is calendar year, we are reporting financial year to align with the 2013 Report. The quarter April-June 2013 illustrates this issue best –see the "ACCCCount 1 July to 30 September 2012_0.pdf" - "2.9 Infringement Notices in March 2013 quarter, the ACCC issued 9 infringement notices to 4 traders" yet in the register there are only four infringement notices listed for this period. p. 24

¹³⁵ Recalls negotiated by the ACCC and other Regulators from the tables in the quarterly ACCCount's.

¹³⁶ We are missing data from Q1,12/13 as we could find no table on Recalls Negotiated by the ACCC and other regulators. Furthermore, there appears to be an anomaly in the data for Q1/Q2 – "...the ACCC received notifications for 116 consumer product safety recalls..." (in the Oct/Dec '12 quarter) and also "...the ACCC received notifications for 116 consumer product safety recalls..." (in the July/Sept '12 quarter) – this alignment of numbers between two quarters seems highly unlikely.

A2 Australian Communication and Media Authority (ACMA)

Table: ACMA Enforcement Actions 2011/12 – 2018/19

Financial Year	11/12 ¹³⁷	12/13	13/14 ¹³⁸	14/15 ¹³⁹	15/16 ¹⁴⁰	16/17 ¹⁴¹	17/18	18/19
Investigations concluded	18 ¹⁴²	21 ¹⁴³	13 ¹⁴⁴	9 ¹⁴⁵	24 ¹⁴⁶	36	31	109 ¹⁴⁷
Infringements issued	4 ¹⁴⁸	6 ¹⁴⁹	5 ¹⁵⁰	1 ¹⁵¹	5 ¹⁵²	1 ¹⁵³	5 ¹⁵⁴	14 ¹⁵⁵
Enforceable undertakings	4	3 ¹⁵⁶	5	1	0	1	3	1
Formal warnings	4	18 ¹⁵⁷	111 ¹⁵⁸	45	30	16	11	55
Directions to comply	3	3	7	21	8	16	4	3
Civil proceedings	0	0	0	0	1 ¹⁵⁹	0	0	0
Total Actions	15	30	128	68	44	34	23	182

137 "Four enforceable undertakings, gave four infringement notices and issued four formal warnings for 62 contraventions of the Do Not Call regulatory regime." – page 93, ACMA Annual Report 2011-12.

138 This year there are four tables of data with information on Consumer Protection, however the DNCR information is still in text form – page 84 of AR.

139 The three tables of Consumer Protection data used in the previous year has been abandoned for a single table "Graduated compliance activities and enforcement outcomes" "SPAM and DNCR Act and related industry standards" (page 78) and an Appendix (7) "Telecommunications consumer protection compliance and enforcement outcomes 2014-15" we have combined these data sets to get the number in the table above.

140 Data for Consumer protection is in the Appendix (5) and the table "Graduated compliance activities and enforcement outcomes" "SPAM and DNCR Act and related industry standards" as in the previous year we have combined these data sets to get the number in the table above. There are still anomalies in the data - for example: page 21 of the AR has a graphical summary of Telecommunications consumer protection states that there are 37 formal warnings, directions or infringement notices, the Appendix has 8 directions to comply, 27 formal warnings and 2 infringement notice – total of 37, which corresponds. However, the Spam and DNCR table data on Formal warnings (1+2=3) and Infringement notices (1+2=3) is missing from the graphical summary and the Appendix.

141 Data for Consumer protection is in the Appendix (5) and the table "Graduated compliance activities and enforcement outcomes" "SPAM and DNCR Act and related industry standards" as in the previous year we have combined these data sets to get the number in the table above. There is variance in the text relating to data in the table above. Further the graphical information of Telco consumer protection lists 24 formal warnings or directions, however in the Appendix there are 25.

142 Page 93 AR 2011-12

143 Page 9 of AR – "ACMA finalised 21 formal investigation into potential contraventions of the Do Not Call and Spam Acts, It is unclear if this number includes the 10 investigations under Part 26 of the Telecommunications Act referred to on page 89.

144 Total number of investigations concluded referred to in the text is 13 –

- page 81 "Customer transfer investigations and review – "concluded three investigations " - (emphasis)
- page 82 – Complaints-handling investigations – "concluded investigations into Telstra, Optus and Vodafone's compliance with the TCP code..." (assuming three investigations).
- page 82 – "Direct debit investigations and review – "concluded an investigation"
- page 84 – "ACMA finalised six telemarketing-related investigations"

145 Four is the number reported for "investigations" in Table 25: Graduated compliance activities and enforcement outcomes, Activity, Spam Act – page 78 of the AR. It should also be noted that on page 78 (the same page as the Table 25) there is a reference – "finalised five telemarketing and five spam-related investigations". Other references to investigations in the AR are unclear as to whether they are finalised with words like – Initiated, A subsequent, Led to an – Investigation (see page 72,73). We have used the number 9, which is an addition of 4 and 5 investigations (Spam Act and DNCR Act respectfully) from table 25.

146 See table Telecommunications consumer protection – page 21, which states "We undertook 105 preliminary enquiries and 24 investigations." We have assumed that "undertook" is past tense so these investigations are completed. In following years these tables have used the text – "We undertook X preliminary inquiries and concluded Y investigations" – see page 19 16/17 for example.

147 Now called "Telecommunications safeguards" rather than "Telco consumer protection" and includes unsolicited communications.

148 Page 93, ACMA Annual report 2011-12

149 Page 9, ACMA Annual report 2012-13

150 Page 80, Regulatory environment – 1 infringement notice (Other (including privacy)), page 84 – 1 Infringement notice, Table 27: Summary of telemarketing and fax marketing compliance and enforcement activities, 2012-13 and 2013-14, Page 85 ACMA Annual Report 2013-14, Table 28: Summary of spam compliance and enforcement activities, 2013-13 and 2013-14.

151 Page 78, Chapter 3, Consumer safeguards, education and information.

152 See pages 82 (1 Spam, 2 DNCR), page 185 (1)

153 See page 35 ACMA annual report 2016-17 "...one infringement notice".

154 Page 19, Chapter 1 –The year in review – 5 unsolicited communications. Also reported on page 79 and on page 81, Chapter 3 – Report on performance, Part 1.

155 8 Telecommunication consumer safeguards and 6 Unsolicited communications.

156 In the text of the 12/13 year there is reference to four enforceable undertakings (p.9).

157 Note that in the Annual Report for the following (13/14) there is reference to 13 Formal Warnings in the summary table for the 12/13 year, however in the text of the Annual Report for the 12/13 year there is reference to 18 Formal Warnings (See page 7 and 84 (counted once), 7 formal warnings for breaches of the TCP Code, page 9 8 formal warnings for do not call register page 84 3 formal warnings for noncompliance with critical information summaries. Page 88, there is reference to 3 formal warnings for Do Not Register, we have made the assumption that these formal warnings have already been included in the 8 formal warnings for Do Not Call register mentioned on page 9.

158 This number is formal warning for Advertising and point of sale (includes critical information summaries) (2), Billing (4), Usage alerts (1), Changing suppliers (1), Complaints-handling, Other (including privacy) (1) and Code compliance and monitoring (CommCom) 95 of the 112 relate to code compliance and onitoring. on page 80, Chapter 2 Regulatory environment, ACMA Annual Report 2013-14. In addition, there are 2 DNCR formals warnings, page 84 and 5 SPAM compliance warnings, page 85, bringing the total to 111.

159 Federal court proceeding – p 82

In order to cover the full period examined, this Report has utilised Annual Report data. The treatment of consumer protection activity in the Annual Reports has improved steadily over time. For 2011/12 and 2012/13 reporting was narrative—describing a range of compliance work and a limited amount of enforcement work. In many cases references were to numbers of activities. In some cases descriptions of conduct of concern and response was provided.

In 2013/14, tabular information was introduced with prior year comparison. There are three different tables for different elements of consumer protection work – telecommunications consumer protection (TCP), scams and do not call register - but no table drawing the work together as a whole. This approach was continued in 2014/15 with the addition of a table providing detail of TCP warnings and directions, including the entity subject of the warning and direction and the subject matter of the direction. From 2015/16 summary infographics were added provided a snapshot of selected enforcement and compliance work across the agency.

Entities subject of action are named and the regulation under which action has been taken, the subject matter of the action and the outcome are described.

A3 Australian Energy Regulator (AER)

There is no further data for the AER.

A4 Australian Security and Investments Commission (ASIC)

Table: ASIC Enforcement Actions 2012/13 – 2018/19 (Annual Reports)

NR = Not relevant (e.g. did not/does not possess power, action not available, Act repealed)

NA = Not available (e.g. agency may have ceased reporting information or changed the way it is reported.)

Financial Year	12/13	13/14 ¹⁶⁰	14/15	15/16	16/17	17/18 ¹⁶¹	18/19
Criminal proceedings finalised							
Overall	25 ¹⁶²	31 ¹⁶³	35 ¹⁶⁴	25 ¹⁶⁵	23 ¹⁶⁶	16	33
Criminals convicted							
Financial services	NA	NA	NA	NA	NA	NA	NA
Overall	22 ¹⁶⁷	30 ¹⁶⁸	23 ¹⁶⁹	22 ¹⁷⁰	20 ¹⁷¹	22	27
Criminals jailed							
Financial services	NA	NA	NA	NA	NA	NA	NA
Overall	9 ¹⁷²	14 ¹⁷³	12 ¹⁷⁴	18 ¹⁷⁵	13 ¹⁷⁶	13	14
% successful criminal litigation total¹⁷⁷							
Overall	NA	NA	NA	NA	NA	100%	89%
% successful criminal litigation Priority 1							
Overall	86% ¹⁷⁸	94% ¹⁷⁹	86%	100%	90%	NA	NA
% successful civil litigation Priority 1							
Overall	86% ¹⁸⁰	100% ¹⁸¹	100%	94%	91%	NA	NA
% successful criminal litigation Priority 2							
Overall	85% ¹⁸²	88% ¹⁸³	94%	94%	92%	NA	NA
% successful civil litigation Priority 2							
Overall	100% ¹⁸⁴	81% ¹⁸⁵	55%	100%	87%	NA	NA

¹⁶⁰ In this year ASIC combined priority 1 & 2 reporting.

¹⁶¹ In this year ASIC combined priority 1 & 2 reporting.

¹⁶² ASIC Annual Report 2013-14 Summary of Outcomes, by Priority, p.7

¹⁶³ Ibid.

¹⁶⁴ ASIC Annual Report 2014-15, Key Outcomes 2014-15, pp.8-9. Priority 1 and Priority 2: 18+7=35

¹⁶⁵ ASIC Annual Report 2015-16, Annual Performance Statement, p. 32. Priority 1 + Priority 2 -> 7+18=25

¹⁶⁶ ASIC Annual Report 2016-17 Annual Performance Statement Pages 31 and 37 10+13=23 NOTE Excludes summary prosecutions for strict liability offences.

¹⁶⁷ ASIC Annual Report 2016-17, Annual Performance Statement, pp.31-37. 10+13=23 NOTE Excludes summary prosecutions for strict liability offences.

¹⁶⁸ ASIC Annual Report 2013-14, Summary of Outcomes, by Priority, p.7.

¹⁶⁹ ASIC Annual Report 2014-15, Key Outcomes 2014-15, pp.7-8. Priority 1 and Priority 2: 17+6=23. Excludes summary prosecutions for strict liability offences.

¹⁷⁰ ASIC Annual Report 2015-16, Annual Performance Statement, p.2. 32 and 58 Priority 1 + Priority 2 -> 7+15=22. The reporting of this outcome in 2015-16 has changed compared to previous years (for "numbers of imprisonments") to take account of custodial sentences that have been fully suspended. The figures for non-custodial sentences/fines from 2012-13 to 2014-15 have also been adjusted because of this change (Footnote 6 ASIC Annual Report 2015-16 Annual Performance Statement Page 32).

¹⁷¹ ASIC Annual Report 2016-17, Annual Performance Statement pp.31-37. 10+10=20

¹⁷² ASIC Annual Report 2012-13, Major enforcement outcomes, p.18. note that the following year this number becomes 21 as one criminal outcome was quashed on appeal.

¹⁷³ ASIC Annual Report 2013-14, Summary of Outcomes, by Priority, p.7.

¹⁷⁴ ASIC Annual Report 2014-15, Key Outcomes 2014-15, pp.7-9. Priority 1 and Priority 2: 9+3=12

¹⁷⁵ ASIC Annual Report 2015-16, Annual Performance Statement, p.32 and p.58. Priority 1 + Priority 2 -> 3+15=18

¹⁷⁶ ASIC Annual Report 2016-17, Annual Performance Statement pp.31-37. 6+7=13

¹⁷⁷ Note that the total % of successful litigation was split in to priority 1 and two from 2014-15

¹⁷⁸ Note that this number comes from the 2014-15 report page 7

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

Financial Year	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Civil proceedings completed							
Overall	15 ¹⁸⁶	13 ¹⁸⁷	54 ¹⁸⁸	54 ¹⁸⁹	78 ¹⁹⁰	111	75
% successful civil litigation							
Overall	NA	NA	NA	NA	NA	99% ¹⁹¹	96%
Litigation commenced							
Overall	82 ¹⁹²	82	62	93 ¹⁹³	123	107 ¹⁹⁴	69
Investigations Commenced ²	193	224	229	206	163	126	151
Investigations Completed	187	238	321	175	157	124	103
Litigation concluded							
Overall	77 ¹⁹⁵	60	79	79 ¹⁹⁶	101 ¹⁹⁷	127	108
Administrative actions completed	67 ¹⁹⁸	89 ¹⁹⁹	88 ²⁰⁰	102 ²⁰¹	119	91	84
New administrative action commenced	67 ²⁰²	81 ²⁰³	104 ²⁰⁴	70 ²⁰⁵	73	56	61
% successful litigation							
Overall	95%	90%	NA	NA	NA	NA	NA
Bans, cancellations and suspensions from providing financial services							
People/Companies banned from Financial Services	50	57	53	81	100	92	85
AFS licence cancellations/ suspensions	30	0	0	0 ²⁰⁶	0	0	0
Sub Total²⁰⁷	80	57	53	81	100	92	85
People/Companies banned from Credit services	38	46	39	55	108	41	97
Total	118	103	92	136	208	133	182

186 ASIC Annual Report 2012-13, Major enforcement outcomes, p.18.

187 ASIC Annual Report 2013-14, Summary of Outcomes, by Priority, p.7.

188 ASIC Annual Report 2014-15, Key Outcomes 2014-15, pp.7-8. Priority 1 and Priority 2: 11+43=54

189 ASIC Annual Report 2015-16, Annual Performance Statement, p.32. Priority 1 + Priority 2 -> 36+18=54

190 ASIC Annual Report 2016-17, Annual Performance Statement, p.31. and p.37. 55+23=78

191 In 2017-18 only the consolidated figure was reported. Prior years only report the percentage broken down into Priority 1 and 2.

192 ASIC Annual Report 2012-13, Major enforcement outcomes. P.18. NOTE This is a combined figure of "Includes criminal and civil litigation but not administrative actions.

Excludes summary prosecutions, conducted by ASIC, for less serious offences" – ASIC Footnote 1, p.18

193 Annual Performance Statement, ASIC Annual Report 2015-16 Page 32 is 13+44=57 (Priority 1) +6+30=36 (Priority 2) -> 57+36=93

194 Combined civil and criminal litigation

195 ASIC Annual Report 2012-13, Major enforcement outcomes, p.18. NOTE This is a combined figure of "Includes criminal and civil litigation but not administrative actions.

Excludes summary prosecutions, conducted by ASIC, for less serious offences" – ASIC Footnote 1, page 18

196 ASIC Annual Report 2015-16, Annual Performance Statement, p.32. 7+36=43. Priority 1 + Priority 2 -> 18+18=36; 43+36=79

197 ASIC Annual Report 2016-17, Priority 1, p.31. 10+55, Priority 2 p.37. 13+23 total 101

198 ASIC Annual Report 2015-16, Annual Performance Statement, p.32. 9(P1)+ 58(P2) 58+9=67 NOTE these numbers have been used from the 2015-16 report to give numbers in 2012-13 because in the preceding years reports (2012-2015) the administrative actions were combined with litigation – see p.5, 2012-13 Annual Report for example.

199 ASIC Annual Report 2015-16, Annual Performance Statement, p.32.(P1)+58(P2) 67+22=89

200 Ibid. p.32. (P1)+58(P2) 64+24=88

201 Ibid. p.32. (P1)+58(P2) 74+28=102

202 Ibid. p.32. (P1)+58(P2) 59+28=102

203 Ibid. p.32. (P1)+58(P2) 60+21=81

204 Ibid. p.32. (P1)+58(P2) 74+30=104

205 Ibid. p.32. (P1)+58(P2) 51+19=70

206 ASIC Annual Report 2015-16, p.78. No numbers have been noted in the, however there is the comment – "In response to our review, ASIC obtained over 150 regulatory outcomes across 55 AFS licensees (and other associated parties, such as authorised representatives), including AFS licence cancellations and suspensions, rectification of non-compliant behaviour, updating and correction of information, referrals to other Australian and international regulators, and the issue of infringement notices for misleading conduct."

207 This subtotal is here so that we can compare the same numbers that were reported in the previous report. Note that we have expanded the section in the table for the current report.

Financial Year	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Illegal schemes shutdown or action taken							
Overall	39 ²⁰⁸	0 ²⁰⁹	NA	NA	NA	NA	NA
Enforceable undertakings							
Overall	20 ²¹⁰	26 ²¹¹	20 ²¹²	22 ²¹³	16	27	
Infringement notices							
Number of infringement notices	17 ²¹⁴	39 ²¹⁵	83	109 ²¹⁶	74 ²¹⁷	55	
Dollar value of infringement notices (Ins)	\$25,300 ²¹⁸	\$240,200 ²¹⁹	\$710,440	\$2.3M	\$4.3M ²²⁰	\$2.02M	
# infringement notices -ASIC Act	2 ²²¹	16 ²²²	32 ²²³	9	6	NA	
Dollar value of INs ASIC	\$19,800	\$163,200	\$319.4K	\$93,600	\$64,800	NA	
# infringement notices Nat. Credit Act	5	4	38	87	54	NA	
Dollar value of INs. N.C. Act	\$5k	\$163k	\$391k	\$1.1M	\$1.8M	NA	
# infringement notices Mk't Integrity rules	9	12	9	9	12	NA	
\$ values of I.N. Mk't Integrity rules	\$452k	\$1m	\$541k	\$984k	\$2.3M	NA	
# of I.N. issued – ASIC Market derivative tran's	0	0	0	0	1	0	
\$ value of I.N. ASIC Market derivative tran's	0	0	0	0	\$128k	0	
# infringement notices Continuous disclosure	1	6	4	4	1	NA	
\$ value of I.N. Continuous disclosure	\$66k	\$198k	\$132k	\$132k	\$33k	NA	
Summary prosecutions for strict liability off'n	528	314	355	410	438	398	

208 From page 7 ASIC Annual Report 2013-14 Major Enforceable Outcomes

209 From page 7 ASIC Annual Report 2013-14 Major Enforceable Outcomes

210 Ibid.

211 Ibid.

212 ASIC Annual Report 2014-15, Key Outcomes 2014-15, p.7 and 9. (Priority 1 & 2): 10+10=20

213 ASIC Annual Report 2015-16, Annual Performance Statement, p.33 and 58. (Priority 1 & 2): 9+22=22

214 ASIC Annual Report 2014-15, p.7 and 9.

215 Ibid.

216 The total number of infringement notices should be the total of P1 and P2 infringement notices looking back through the years 12/13-14/15 – however they don't add up. We have used the number 109 from page 3 of the annual report

217 ASIC Annual Report 2017-18, p.5.

218 ASIC Annual Report 2014-15, p.7 and 9.

219 Ibid.

220 ASIC Annual Report 2016-17, p.5.

221 ASIC Annual Report 2014-15, p.7 and 9.

222 Ibid.

223 Ibid.

Table: Financial outcomes of selected ASIC Enforcement Actions 2012/13 – 2017/18, \$millions

Financial Year	12/13	13/14	14/15	15/16	16/17	17/18
Recoveries, costs, compensation, fines or assets frozen ²²⁴	\$222.4M ²²⁵	\$172.6M	\$36.1M ²²⁶	\$210.5M	\$849.7M	\$437.8M
Assets frozen	\$86.4M ²²⁷	\$42M ²²⁸	\$25M ²²⁹	\$6.9M ²³⁰	\$12M ²³¹	\$86.2M ²³²
Total	\$308.8M	\$214.6M	\$61.1M	\$217.4M	\$861.7M	\$524M

As with the 2013 Report, save where otherwise stated, the above information was obtained from the ASIC Annual Reports, and the same data rules have been applied, namely:

- ▶ ASIC is Australia's corporate, markets and financial services regulator. The aim of data collation was to look at the enforcement work of ASIC as it relates to financial services provided to consumers and retail investors. It is difficult and often not possible to isolate the financial services work. This is because ASIC's annual reports typically (though not always) report against two priorities – 'Investor and financial consumer trust and confidence' and 'Fair, orderly and transparent markets' and enforcement outcomes are often aggregated. In the table "Overall" figures include all of ASIC's enforcement activity and are not limited to financial services for consumers and retail investors.
- ▶ Where there are multiple different types of enforcement action taken for a matter, for example a prosecution and an undertaking, each action is counted.
- ▶ There is a list of enforceable undertakings available on the ASIC website. There is a range of different matters covered by the list. It is not always clear which relate to consumer protection in financial services matters. We have treated them as follows:

When the enforceable undertaking relates to the following it is included in the figures:

- ▶ Where retail investors or consumers are directly affected
- ▶ Offering to buy shares but misrepresenting the value of them
- ▶ Directors of a company where an employee engaged in misleading or deceptive conduct towards retail investors.

Individual enforceable undertakings are counted separately, even if they relate to people from the same company.

The 2020 Report adds reporting on cancellation and other credit licence activity.

As noted in Section 5 of this Report, ASIC publish enforcement information in both its Annual Report and Enforcement Outcomes Reports. The latter reports distinguish between financial services and market integrity and other work and therefore provide a better picture of consumer protection work.

The data above is based on the annual Reports and replicates the methodology followed in the 2013 Report. The data below is based on the Enforcement Update Reports. It can be observed that there are significant differences.

When the enforceable undertaking relates to the following it is not included in the figures:

- ▶ Auditors who have engaged in incompetent or deceptive behaviour
- ▶ Liquidators who have engaged in incompetent or deceptive behaviour
- ▶ Failing to disclose an issue or price sensitive information to the Australian Stock Exchange
- ▶ Failing to comply with its continuous disclosure obligations.

²²⁴ Note that this heading is different from the 2013 Report as assets frozen are now included in Recoveries, costs compensation fines or assets frozen – ASIC Annual Report 2012-13, p.151.

²²⁵ ASIC Annual Report 2012-13, p.5: includes additional compensation of \$136M for Storm Financial investors.

²²⁶ ASIC Annual Report 2014-15, pp.162-163.

²²⁷ This number is extrapolated from \$222.4M (Recoveries, costs, compensation, fines or assets frozen) page 152 less \$136M "in additional compensation secured for Storm Financial investors" page 5. Usually this number is reported as "in compensation or remediation secured for investors and financial consumers"

²²⁸ ASIC Annual Report 2013-14, p.X. Reasoning as above.

²²⁹ ASIC Annual Report 2014-15, pp.167&418. Reasoning as above.

²³⁰ ASIC Annual Report 2015-16, pp.33&186. Reasoning as above.

²³¹ ASIC Annual Report 2016-17, pp.5&182. Reasoning as above.

²³² ASIC Annual Report 2017-18, pp.5&192. Reasoning as above.

Table: ASIC Financial Services Enforcement Actions 2012/13 – 2018/19 (Enforcement Outcomes Reports)

Financial Year	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Criminal proceedings finalised	19	17	12	11	8	10	9
Civil proceedings finalised	27	7	22	19	28	42	21
Administrative remedies	54	66	100	115	195	97	60
Enforceable undertakings/ negotiated outcomes	20	38	33	NA	NA	NA	NA
Enforceable undertakings	NA	NA	NA	14	9	17	7
Negotiated outcomes	NA	NA	NA	36	35	23	10
Infringement notices	NA	NA	77	95	74	50	17
Bans from financial services or credit	NA	NA	NA	51	62	122	175
Public warnings	1	4	4	NR	NR	NR	NR
Total	121	132	248	341	411	361	299

A5 Access Canberra - ACT

Table: Enforcement action for Access Canberra for 2012-2019

NR = Not relevant (e.g. did not/does not possess power, action not available, Act repealed)

NA = Not available (e.g. agency may have ceased reporting information or changed the way it is reported.)

Financial Year	12/13 ²³³	13/14	14/15 ²³⁴	15/16	16/17	17/18	18/19
Infringement notices	Security industry	0	9 ²³⁵	NA	NA	0	NA
	Motor vehicle industry	0	17 ²³⁶	NA	NA	0	NA
	Other	3 ²³⁷	0	NA	NA	0	NA
	Total	3	26	16²³⁸	6²³⁹	0	0
Disciplinary proceedings ²⁴⁰	Liquor	4	1	1	0	0	NA
	Security	0	0	0	0	0	NA
	Tobacco	1 ²⁴¹	0	0	0	0	NA
	Agents	2	2	2	0	0	2 ²⁴²
Enforceable Undertakings ²⁴³	1	2	4	1	2	0	0
Written warnings	NA	NA	NA	39	NA	NA	9 ²⁴⁴
Referrals for prosecution	9 ²⁴⁵	NA	NA	NA	NA	NA	1 ²⁴⁶

233 Data for 2012/13 is from ACT Justice and Community Safety Annual Report 2013-14

234 Note that there is no longer a table of data, so the figures have been derived from text and may understate activity. Data is now obtained from Chief Minister, Treasury and Economic Development Directorate rather than ACT Justice and Community safety. The data is very difficult to find.

235 ACT Justice and Community Safety Annual report 2013-14 Section B – Performance reporting, p.62.

236 Ibid, p. 64.

237 ACT Justice and Community Safety Annual Report 12-13 – no information on type of infringement notice. p.82.

238 Chief Minister, Treasury and Economic Development Directorate Annual Report 2014-15 Volume 1, p.239.

239 Annual Report '15/16, p.87. Breakdown of type not mentioned 'issued 39 written warnings regarding non compliance and issued six infringement notices for breaches of the law under the Liquor Act 2010, Security Act 2003, Public Unleased Land Act 2013, and the Sale of Motor Vehicles Act 1977;"

240 Compiled from Access Canberra website: Fair trading/Notifications, alerts and warnings/Fair Trading court decisions. https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2278#itabs-1 This has been done by reviewing all actions listed and attributing them to the relevant financial year.

241 Also referred to in ACT Justice and Community Safety Annual Report '12-13, p.80.

242 Chief minister, Treasury and Economic Development Directorate Annual Report, p.52

243 Compiled from the Access Canberra website: https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2275/kw/enforceable%20undertaking#itabs-2 This has been done by reviewing all enforceable undertakings listed and attributing them to the relevant financial year.

244 Chief minister, Treasury and Economic Development Directorate Annual Report, p.52.

245 "The ORS referred the nine matters to the Director of Public Prosecutions who will determine whether or not to proceed with the individual matter." ACT Justice and Community Safety Annual Report '12-13, p.81.

246 Chief minister, Treasury and Economic Development Directorate Annual Report, p.52.

Financial Year		12/13	13/14	14/15	15/16	16/17	17/18	18/19
Inspections	(ACL) (incl product safety inspections)	436 ²⁴⁷	333 ²⁴⁸	0	NA	NA	NA	NA
	Egg Labelling	46 ²⁴⁹	70 ²⁵⁰	0	NA	NA	NA	NA
	Fair Trading	2,501 ²⁵¹	2,700 ²⁵²	3,077 ²⁵³	NA	NA	NA	NA
	Liquor	1,101 ²⁵⁴	1,240 ²⁵⁵	569 ²⁵⁶	NA	NA	NA	NA
	Motor vehicle dealers	64 ²⁵⁷	9 ²⁵⁸	0	NA	NA	NA	NA
	Motor vehicle repairers	436 ²⁵⁹	81 ²⁶⁰	35 ²⁶¹	NA	NA	NA	NA
	Outdoor Cafes	43 ²⁶²	186 ²⁶³	NA ²⁶⁴	NA	NA	NA	NA
	Real Estate agents	90 ²⁶⁵	99 ²⁶⁶	0	NA	NA	NA	NA
	Security industry	55 ²⁶⁷	393 ²⁶⁸	0	NA	NA	NA	NA
	Tobacco	216 ²⁶⁹	250 ²⁷⁰	0	NA	NA	NA	NA
	Other (e.g. fitness industry, hawkers, unit titles, second hand goods)	14 ²⁷¹	39 ²⁷²	0	NA	NA	NA	NA
Total		2,501	2,700	3,681	NA	NA	NA	NA
ACT Civil and Admin Tribunal referral		6 ^{273, 274}	3 ²⁷⁵	4 ²⁷⁶	NA	5 ²⁷⁷	NA	4 ²⁷⁸
Court matters		3 ²⁷⁹	3 ²⁸⁰	NA	NA	NA	NA	1 ²⁸¹

²⁴⁷ ACT Justice and Community Safety Annual Report 13-14 Section B – Performance Reporting, p.63

²⁴⁸ Ibid.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ From the 13/14 Annual Report, excluding Industry-focused inspections for Plastic bags, R18+ Computer Games, Security Industry, Verge Parking, Working with Vulnerable People and X-rated Film Industry

²⁵² Ibid, p.64.

²⁵³ Annual Report Chief Minister , Treasury and Economic Development Directorate 2014-15, p.73.

²⁵⁴ ACT Justice and Community Safety Annual Report 13-14 Section B – Performance Reporting, p.63

²⁵⁵ Ibid.

²⁵⁶ This number is now combined with Outdoor cafes below. Chief Minister, Treasury and Economic Development Directorate Annual Report 2014-15 Volume 1, p.73.

²⁵⁷ ACT Justice and Community Safety Annual Report 13-14 Section B – Performance Reporting, p.63

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Chief Minister, Treasury and Economic Development Directorate Annual Report 2014-15 Volume 1, p.73.

²⁶² ACT Justice and Community Safety Annual Report 13-14 Section B – Performance Reporting, p. 63.

²⁶³ Ibid.

²⁶⁴ Chief Minister, Treasury and Economic Development Directorate Annual Report 2014-15 Volume 1, p.73.This number includes licensed bars, clubs, restaurants and cafes.

²⁶⁵ ACT Justice and Community Safety Annual Report 13-14 Section B – Performance Reporting, p. 63.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Not clear if referral complaint to take action or take action themselves.

²⁷⁴ Ibid. p.64.

²⁷⁵ Ibid.

²⁷⁶ Chief Minister, Treasury and Economic Development Directorate Annual Report 2014-15 Volume 1, p.73.

²⁷⁷ Chief Minister, Treasury and Economic Development Directorate Annual Report 2016-17, p.41.

²⁷⁸ Chief minister, Treasury and Economic Development Directorate Annual Report 2018-19, p.52

²⁷⁹ ACT Justice and Community Safety Annual Report 13-14 Section B – Performance Reporting, p.64

²⁸⁰ Ibid.

²⁸¹ Chief Minister, Treasury and Economic Development Directorate Annual Report 2018-19, p.51

Access Canberra, is responsible for:

- ▶ building, utilities, land and lease regulation;
- ▶ electricity and natural gas, water and sewerage industry technical regulation;
- ▶ environment protection and water regulation;
- ▶ fair trading and registration, inspection and regulatory services;
- ▶ occupational licensing;
- ▶ public health protection and regulation for food permits;
- ▶ public unleased land permits;
- ▶ racing and gambling regulation;
- ▶ road safety regulation, and driver and vehicle licensing;
- ▶ workplace safety; and most ACT Government shopfronts.²⁸²

Its website states that Fair Trading is responsible for the following Acts (and associated regulations) (though additional Acts are referred to in Annual Reports):

- ▶ *Competition and Consumer Act 2010 (C'wealth)*
- ▶ *Fair Trading (Australian Consumer Law) Act 1992*
- ▶ *Agents Act 2003*
- ▶ *Civil Law (Sale of Residential Property) Act 2003*
- ▶ *Sale of Motor Vehicles Act 1977*
- ▶ *Smoke-Free Public Places Act 2003*
- ▶ *Tobacco Act 1927*
- ▶ *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*
- ▶ *Liquor Act 2010*
- ▶ *Pawnbrokers Act 1902*
- ▶ *Security Industry Act 2003*
- ▶ *Second-hand Dealers Act 1906*
- ▶ *Fair Trading (Motor Vehicle Repair Industry) Act 2010*
- ▶ *Unit Titles (Management) Act 2011*
- ▶ *Retirement Villages Act 2012*
- ▶ *Plastic Shopping Bags Ban Act 2010*
- ▶ *Public Unleased Land Act 2013*

Of these, the following are not considered consumer protection Acts and have been excluded from analysis, where reporting by individual Act is available:

- ▶ *Smoke-Free Public Places Act 2003*

- ▶ *Tobacco Act 1927*
- ▶ *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*

The website²⁸³ has been used as it contains reports of enforceable undertakings obtained and disciplinary matters. Disciplinary matters relate to matters brought by the Commissioner for Fair Trading in the Consumer and Trader Tribunal.

The balance of information in the table is obtained from the Annual Reports of the Department of Community Justice and Safety for 2012-13 and 2013-14. For subsequent years the information is obtained from the Annual Reports of the Chief Minister, Treasury and Economic Development Directorate.

As with the 2013 Report there is limited information about enforcement action taken in relation to consumer protection matters. ACCESS Canberra plays a significant role in the regulation of occupational licensing, building regulation and workplace safety amongst other things. While important, this work is not considered consumer protection for the purposes of this report.

282 Annual Report 2014-15 Chief Minister Treasury and Economic Development Directorate, p.71.

283 www.accesscanberra/Home/Fairtrading/notificationsalertsandwarnings/ACTCommissionerforfairtradingenforceableundertakings

A6 Consumer Affairs Victoria

Table: Consumer Affairs Victoria Enforcement Actions 2012/13– 2018/19

NR = Not relevant (e.g. did not/does not possess power, action not available, Act repealed)

NA = Not available (e.g. agency may have ceased reporting information or changed the way it is reported.)

Financial Year	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Prosecutions finalised							
Australian Consumer Law (2011)	NA	NA	3	2	6 ²⁸⁴	0	0
Consumer Credit (Vic) Act (1995)	NA	NA	0	0	0	0	0
Conveyancers Act (2006)	NA	NA	0	0	0	0	1
Domestic Building Contracts Act (1995)	NA	NA	2	5	3	0	1
Estate Agents Act (1980)	NA	NA	5	3	3	5	2
Fair Trading Act ²⁸⁵	NA	NA	0	0	0	0	0
Introduction Agents Act (1997) ²⁸⁶	NR	NR	NR	NR	NR	NR	NR
Motor Car Traders Act (1986)	NA	NA	9	2	3	0	3
Residential Tenancies Act (1997)	NA	NA	2	2	1	1	0
Sale of Land Act (1962)	NA	NA	0	0	0	0	0
Trade Measurement Act (1995) ²⁸⁷	NR	NR	NR	NR	NR	NR	NR
Travel Agents Act ²⁸⁸	NA	NA	0	NR	NR	NR	NR
Total	33	24	21	14	16	6	7
Civil litigation finalised							
Australian Consumer Law (2011)	NA	NA	14	14	7	15	4
Consumer Credit (Vic) Act (1995)	NA	NA	0	0	0	0	0
Conveyancers Act (2006)	NA	NA	10	1	2	0	0
Domestic Building Contracts Act (1995)	NA	NA	0	0	0	0	1
Estate Agents Act (1980)	NA	NA	15	10	6	8	3
Fair Trading Act ²⁸⁹	NA	NA	0	0	0	0	0
Fire Services Levy Monitor ²⁹⁰	NR	NR	0	2 ²⁹¹	0	0	0
Fund Raising Act (1998)	NA	NA	1	0	0	0	0
Funerals Act (2006)	NA	NA	0	1	0	0	0
Introduction Agents Act (1997) ²⁹²	NR	NR	NR	NR	NR	NR	NR
Motor Car Traders Act (1986)	NA	NA	2	0	0	0	2
Sale of Land Act (1962)	NA	NA	0	0	0	0	0
Retirement Villages Act (1997)	NA	NA	0	3	0	0	0
Residential Tenancies Act (1997)	NA	NA	0	0	3	0	0
Rooming House Operators Act (2016)	NA	NA	0	0	0	1	0
Travel Agents Act ²⁹³	NA	NA	0	0	0	0	NR
Total	61	64	42	31	18	24	10

284 Includes one ACL and Fair Trading Act 2012

285 We assume that Fair Trading Act is reported in ACL.

286 Repealed 1 Jan 2011

287 Repealed 2010

288 Repealed 12 Jan 2015

289 We assume that Fair Trading Act is reported in ACL.

290 From 1 July 2013, the Victorian Government replaced the insurance-based fire services levy, as recommended by the Victorian Bushfires Royal Commission. Rather than contributing through insurance premiums, a property-based levy is now collected with council rates.

291 Director of Consumer Affairs as the legal successor

292 Repealed 1 Jan 2011

293 Repealed 12 Jan 2015

Financial Year	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Enforceable undertakings²⁹⁴							
Australian Consumer Law (2011)	NA	NA	15	4	18	13	1
Consumer Credit (Vic) Act (1995)	NA	NA	0	0	0	0	0
Conveyancers Act (2006)	NA	NA	0	0	0	0	0
Domestic Building Contracts Act (1995)	NA	NA	0	0	0	0	0
Estate Agents Act (1980)	NA	NA	2	2	1	0	1
Estate Agents Act (1980) and Residential Tenancies Act (1997)	NA	NA	0	3	0	0	0
Fair Trading Act ²⁹⁵	NA	NA	0	0	0	0	0
Introduction Agents Act (1997) ²⁹⁶	NR	NR	NR	NR	NR	NR	NR
Motor Car Traders Act (1986)	NA	NA	0	0	0	0	0
Sale of Land Act (1962)	NA	NA	0	0	0	0	0
Trade Measurement Act (1995) ²⁹⁷	NR	NR	NR	NR	NR	NR	NR
Travel Agents Act ²⁹⁸	NA	NA	0	0	0	0	0
Total	30	15	17	9	19	13	2
Grand Total	124	103	80	54	53	43	19
Compliance							
Compliance assisted visits	4,434	4,671	1,768	9,774 ²⁹⁹	9,075 ³⁰⁰	9,584 ³⁰¹	NA
Rooming house inspections	499	1,377	NA	1,253	621	738	406
Total inspections and investigations	3,275	3,323	3,470	5,796	5,874	6,043	4,414
Banning orders – ACL ³⁰²	0	4	0	0	0	0	0
Parties signed to enforceable undertakings ³⁰³	30	15	15	9	19	13	4
Other actions - inconsistent data							
Penalty/ Infringement notices – number ³⁰⁴	99	0 ³⁰⁵	0	0 ³⁰⁶	154	64	198
Public warnings	4	0	0	1	0	0	NA
Warning letters ³⁰⁷	NA ³⁰⁸	0	0	0	6	112	947
Substantiation notices issued ³⁰⁹	64	5	0	0	0	0	0

294 The Fair Trading Act s 146 gave the Director power to accept a written undertaking in relation to any matter where the Director has a power or function under the Fair Trading Act 1999 or matters in relation to the contravention of any other consumer Acts listed (exceptions are noted by NR in the table). A similar power is contained in s 198 of the Australian Consumer Law and Fair Trading Act 2012.

295 We assume that Fair Trading Act is reported in ACL.

296 Repealed 1 Jan 2011

297 Repealed 2010

298 Repealed 12 Jan 2015

299 Note that this number now includes – “Compliance activities, from compliance assistance through to court actions” with a foot note in the Annual Report 2015/16, p.8 – “Compliance activities were lower than in previous years due to a shift from compliance assistance visits to inspections, which are more time intensive”

300 Compliance Assisted Visits through to Court Actions

301 Compliance Assisted Visits through to Court Actions

302 Banning orders should strictly speaking be included in enforcement outcomes. They have not been included in Consumer Affairs Victoria figures on the basis that the power was only utilised in one year – and this year was a year of high enforcement activity in any event, so the trend is not impacted.

303 Consumer Affairs Victoria publishes enforceable undertakings obtained as well as number of parties signed to enforceable undertakings. Both figures have been included to demonstrate that counting parties leads to a higher number than counting undertakings.

304 Most of the Consumer Affairs Victoria Annual Reports provide a figure for infringement notices issued overall. It was not possible to tell how many people/companies the letters had been issued to or for what kind of matters they had been issued. Therefore, the figure may contain infringement notices that were issued for non-consumer protection matters, or numerous notices issued to different people for the same breach.

305 Annual Report 2013/14, p.17. No numbers of infringement notices – “We issued infringement notices when premises were found to be in breach of the standards...”

306 No numbers were given in the report, only general comments, Annual Report 2015/16, p.14 and 19.

307 Most of the Annual Reports provide a figure for warning letters issued overall. It was not possible to tell how many people/companies the letters had been issued to or for what kind of matters they had been issued. Therefore, the figure may contain letters that were issued for non-consumer protection matters, or numerous letters issued to different people for the same breach. Later reports refer to ‘official warnings’ that “are issued in accordance with our regulatory approach and compliance program in lieu of infringement notices e.g. Annual Report 2018/19, p.10.

308 Annual Report 2012/13, p. 43. “Consumer Affairs Victoria sent warning letters in several cases.”

309 Only one Annual Report (2006/07) contains any reference to substantiation notices. Three were issued in that year but it is unclear whom they were issued to and under what law.

Consumer Affairs Victoria's website notes is responsible for the following Acts (and associated regulations):

- ▶ *Chattel Securities Act 1987*
- ▶ *Company Titles (Home Units) Act 2013*
- ▶ *Consumer Credit (Victoria) Act 1995*
- ▶ *Conveyancers Act 2006*
- ▶ *Cooperatives National Law Application Act 2013*
- ▶ *Credit Act 1984*
- ▶ *Credit (Administration) Act 1984*
- ▶ *Domestic Building Contracts Act 1995* (except Part 5, which is administered by the Attorney-General)
- ▶ *Estate Agents Act 1980*
- ▶ *Fundraising Act 1998*
- ▶ *Funerals Act 2006*
- ▶ *Goods Act 1958*
- ▶ *Motor Car Traders Act 1986*
- ▶ *Owners Corporation Act 2006*
- ▶ *Partnership Act*
- ▶ *Residential Tenancies Act 1997*
- ▶ *Retirement Villages Act 1986*
- ▶ *Rooming House Operators Act 2016*
- ▶ *Sale of Land Act 1962*
- ▶ *Second-Hand Dealers and Pawnbrokers Act 1989*
- ▶ *Sex Work Act 1994*
- ▶ *Subdivision Act 1988*
 - ▶ Part 5
 - ▶ Section 43 insofar as it relates to Part 5
 - ▶ The Act is otherwise administered by the Minister for Planning.
- ▶ *Veterans Act 2005* (Part 4 only; the rest of the Act is administered by the Minister for Veterans Affairs)
- ▶ *Warehousemen's Liens Act 1958*

Of those Acts, the following are not considered consumer protection legislation and have been excluded from analysis where activity is reported by individual Act:

- ▶ *Cooperatives National Law Application Act 2013*
- ▶ *Fundraising Act 1998*
- ▶ *Owners Corporation Act 2006*
- ▶ *Partnership Act*
- ▶ *Sex Work Act 1994*
- ▶ *Subdivision Act 1988*
- ▶ *Veterans Act 2005 (Warehousemen's Liens Act 1958)*

Information about Consumer Affairs Victoria's enforcement performance is primarily found in its reports described as either Year in Review Reports or Annual Reports during the period. Consumer Affairs Victoria's website also contains a list of enforceable undertakings obtained, court actions commenced and court actions concluded, including detail regarding the nature of allegation or court findings.

Consumer Affairs Victoria's quantitative reporting is generally consistent however does not distinguish between disciplinary inquiries and other types of civil litigation. Consumer Affairs Victoria also counts parties rather than proceedings with the significant risk that the numbers outlined below therefore understate the number of actions.

From 2015-16 Consumer Affairs Victoria began reporting a 'rate of compliance with key consumer laws' figure (97.6% in 2015-16). This replaced the previous quality measure 'customer satisfaction with services provided.' The 2015/16 report notes that "this new measure includes estate agents, rooming house operators and residential park owners compliance with their obligations under relevant consumer laws." What is not clear is how the number is derived. This is particularly important to understand given other regulators who have utilised such measures have tended to move away from them over time.

Most Consumer Affairs Victoria Reports provide a figure for infringement notices and warning letters issued overall. It is not possible to tell to how many people or companies the notices or letters have been issued to or for what types of matters. Therefore, figures may contain infringement notices that were issued for non-consumer protection matters, or numerous notices issued in respect of the same breach.

Reporting of civil proceedings is broken down by legislation which is helpful for making a broad conclusion about whether it can be termed consumer protection work. Data on civil matters commenced is only included in the 2010/11 Annual Report. For later years, only information on matters finalised and ongoing is available in the Year in Review.

Most of the Consumer Affairs Victoria Annual Reports provide a figure for warning letters issued overall. It was not possible to tell how many people/companies the letters had been issued to or for what kind of matters they had been issued. Therefore, the figure may contain letters that were issued for non-consumer protection matters, or numerous letters issued to different people for the same breach.

Later reports refer to 'official warnings' that "are issued in accordance with our regulatory approach and compliance program in lieu of infringement notices.

A7 Consumer Building and Occupation Services Tasmania

Table: Consumer Building and Occupation Services Tasmania Enforcement Actions 20012/13– 2017/18

NR = Not relevant (e.g. did not/does not possess power, action not available, Act repealed)

NA = Not available (e.g. agency may have ceased reporting information or changed the way it is reported.)

Financial Year		12/13	13/14 ³¹⁰	14/15	15/16	16/17	17/18	18/19
Prosecution Actions	Australian Consumer Law ³¹¹	0	NA	NA	0	0	NA	NA
	Consumer Affairs Act	0	NA	NA	0	0	NA	NA
	Door to Door Trading Act	NR	NR	NR	NR	NR	NR	NR
	Fair Trading Act	NR	NR	NR	NR	NR	NR	NR
	Housing Indemnity Act	0	NA	NA	0	0	NA	NA
	Motor Vehicle Traders Act	0	NA	NA	0	0	NA	NA
	Sale of Hazardous Goods Act	NR	NR	NR	NR	NR	NR	NR
	Surveyors Act	0	NA	NA	0	0	NA	NA
	Trade Measurement Act	0	NA	NA	0	0	NA	NA
	Total Prosecutions	0	6	4	0	0	NA	5³¹²
Warnings issued	Fair trading	0	0	0	0	0	NA	NA
	Public warning	0	1	0	3	2	NA	2
	Trader warning	7	7	4	40	0	NA	0
	Total Warnings	7	8	4	43	2	NA	2
Licenses suspended or cancelled	Security and Investigation Agents Act	0	0	0	0	0	0	0
Small Claims or other Court action		58	17	7	12	1	0	NA
Audit Visits		82	150 ³¹³	NA	428 ³¹⁴	626 ³¹⁵	199 ³¹⁶	NA
Interim Bans (product safety)		2	0	0	0	0	0	NA
Infringements		0	10	0	1	13	80 ³¹⁷	74

Consumer Affairs and Fair Trading (Tas CAFT in the 2013 Report) and the Building Standards and Occupational Licensing Branch merged on 1 July 2015 to become Consumer Building and Occupational Services. The General Manager is appointed to more than 10 statutory roles including the Director of Consumer Affairs and Fair Trading.

³¹⁰ Department of Justice Annual Reports

³¹¹ The Australian Consumer Law came into effect on 1 January 2011.

³¹² Tas Department of Justice Annual Report 2018-19, p.52 refers to 5 matters being referred to the Director of Public Prosecutions to institute proceedings. It is not clear whether these matters proceeded or whether they involved action by CBOS.

³¹³ Tas Department of Justice Annual Report 2013-14, p.75: Total Audit visits 4,560 less 805 Charities, less 3,605 Incorporated Associations

³¹⁴ Tas Department of Justice Annual Report 2015-16, p.40: Total Audit and compliance checks including 120 Accredited building practitioner audits and 160 OLA (Occupational Licensing Act) NOTE 160+120 does not = 428 – unsure what other audits are included in this total.

³¹⁵ Tas Department of Justice Annual Report 2016-17, p.43: Total Audit and compliance checks including 122 Accredited building practitioner audits, 450 ACL trader visits and 54 OLA licence checks.

³¹⁶ Tas Department of Justice Annual Report 2017-18, p.43: Total Audit and compliance checks including 107 Accredited building practitioner audits, 55 ACL trader visits and 37 OLA licence checks.

³¹⁷ Ibid, p.67. We have not counted 104 relating to the Occupational Licensing Act.

We were unable to locate a list of legislation it administers on the CBOS website, however the following legislation was listed as being subject to audit and inspection in the CBOS Audit and Engagement Program:³¹⁸

- ▶ *Australian Consumer Law (Tasmania) Act 2010*
- ▶ *Building Act 2016*
- ▶ *Building and Construction Industry Security of Payments Act 2009*
- ▶ *Consumer Affairs Act 1988*
- ▶ *Conveyancing Act 2004*
- ▶ *Motor Vehicle Traders Act 2011*
- ▶ *Occupational Licensing Act 2005*
- ▶ *Prepaid Funerals Act 2004*
- ▶ *Residential Building Work Contracts and Dispute Resolution Act 2016*
- ▶ *Security and Investigations Agents Act 2002*

This is evidently not a complete given the Acts reported against elsewhere.

The fair trading functions have remained within the overall auspices of the Department of Justice, though it appears to move within Divisions of that Department. For example in 2016-17 reporting was part of Corrections, Enforcement and Consumer Protection, whereas in 2017-18 it was reported as part of Regulatory and Other Services.

As in the 2013 Report, the information in the tables was collected from the relevant section of the Department of Justice Annual Report. For the years 2012-13 until 2016-17, there was strong consistency of reporting of data. This was lost in the 2017-18 when a new (and more limited data set was reporting). The level of narrative regarding consumer protection activities has steadily diminished over time, most notably in 2015-16 and in 2017-18.

318 https://www.cbos.tas.gov.au/_data/assets/pdf_file/0010/536788/CBOS-audit-and-engagement-program-guide-2019-2020.pdf

A8 Consumer Protection Western Australia

Table: Consumer Protection Western Australia Enforcement Actions 2012/13– 2017/18

NR = Not relevant (e.g. did not/does not possess power, action not available, Act repealed)

NA = Not available (e.g. agency may have ceased reporting information or changed the way it is reported.)

Financial Year	12/13	13/14	14/15	15/16	16/17	17/18
Prosecutions in Magistrates Court finalised³¹⁹						
Australian Consumer Law (WA)	6	12	12	8	20	0
Building Laws ³²⁰	0	15	21	18	18	0
Code of conduct for Agents and sales representatives 2011	0	0	0	0	0	1
Consumer Credit Code ³²¹	NR	NR	NR	NR	NR	NR
Credit (Administration) Act 1984	NR	NR	NR	NR	NR	NR
Debt Collectors' Licensing Act 1964	0	0	0	0	0	0
Door to Door Trading Act 1987	0	0	0	0	0	0
Employment Agents Act 1976	0	0	0	0	0	0
Fair Trading Act 1987	3	2	3	0	0	0
Hairdressers Registration Act ³²²	NR	NR	NR	NR	NR	NR
Motor Vehicle Repairers Act 2003	4	1	4	2	1	0
Motor Vehicle Dealers Act 1973	8	12	10	13	5	0 ³²³
Painters' Registration Act 1961 ³²⁴	NR	NR	NR	NR	NR	NR
Petroleum Products Pricing Act 1983	0	0	0	0	0	0
Real Estate & Business Agents Act 1978 ³²⁵	3	0	6	3	1	0
Residential Tenancies Act 1987	4	8	0	4	3	0
Settlement Agents Act 1981 ³²⁶	1	1	0	0	0	0
Trade Measure Act 2006 ³²⁷	NR	NR	NR	NR	NR	NR
Travel Agents Act 1985	0	0	0	0	0	0
Water Services Licensing Act 1995 ³²⁸	NR	NR	NR	NR	NR	NR
Totals	30	51	56	30	47	1³²⁹

319 Due to the nature of the reporting, figures in the table are for individuals prosecuted rather than for the overall number of prosecution matters.

320 Building Laws cover laws administrated by the Building Commissioner – Building Services (Registration) Act 2011, Building Services (Complaint Resolution and Administration) Act 2011, Builders' Registration Act 1939, Home Building Contracts Act 1991. Due to the nature of reporting by the Builders Registration Board these figures are for the number of people prosecuted not the overall number of matters.

321 The Consumer Credit Code and Credit Administration Act were repealed. 1. Standing Order 230A applies until 02/05/2003.

322 Administered by the Hairdressers Registration Board until it ceased on 30 November 2010.

323 There are no recorded finalised prosecutions in the Magistrates court for MVD although on p.203 of the 2017-18 Annual Report there is reference to 234 matter referred to this court. The reporting method for this year has changed from the previous years, which may explain this anomaly.

324 Repealed August 2011 - This Act was repealed by the Building Services (Registration) Act 2011 s. 108 (No. 19 of 2011) as at 29 Aug 2011 (see s. 2(b) and Gazette 26 Aug 2011 p. 3475-6).

325 Administered by the Real Estate and Business Agents Supervisory Board until 30 June 2011.

326 Administered by the Settlement Agents Supervisory Board until 30 June 2011.

327 This Act sunsetted on 1 Jul 2013 (see s. 3B).

328 Administered by Plumbers' Licensing Board, now part of the Building Commission Division.

329 Annual Report 2017-18, p.99 states –“Prosecutions remain steady at 23 for both years”

Financial Year	12/13	13/14	14/15	15/16	16/17	17/18
Civil litigation matters commenced and finalised						
Application for declarations, injunctions and compensation orders	0	0	0	0	2	NA
Common law	0	0	0	0	0	NA
Corporations Act 2001	0	0	0	1	0	NA
Australian Consumer Law (WA)	4	5	4	3	2	NA
Australian Consumer Law (WA) and Fair Trading Act 1987	2	1	2	0	0	NA
Breach of undertaking	0	0	0	1	0	NA
Fair Trading Act 1987	1 ³³⁰	1	0	0	0	NA
Injunction	0	0	0	1	0	NA
Retirement Villages Act 1992	1	1	0	0	0	NA
Unconscionable conduct	0	0	0	0	1	NA
Total	8	8	6	6	5	3³³¹

Financial Year	12/13	13/14	14/15	15/16	16/17	17/18
Civil litigation matters commenced and finalised						
Australian Consumer Law (WA)	0	0	0	0	3	0
Building Laws	0	2	4	6	9	0
Code of conduct for Agents and sales representatives 2011	0	0	0	4	5	1
Code of Fair Practice for Retirement Villages 2013	0	1	0	0	0	0
Consumer Credit (Western Australia) Code	0	0	0	0	0	0
Credit (Administration) Act 1984	0	0	0	0	0	0
Debt Collectors Licensing Act 1964	0	0	0	0	0	0
Employment Agents Act 1976	0	0	0	0	0	0
Fair Trading Act 2010	0	0	0	0	0	0
Finance Brokers Control Act 1975	0	0	0	0	0	0
Hairdressers Registration Act ³³²	NR	NR	NR	NR	NR	NR
Land Valuers Licensing Act 1978 ³³³	0	0	0	0	0	0
Motor Vehicle Laws ³³⁴	0	2	2	1	2	1
Painters' Registration Act 1961 ³³⁵	NR	NR	NR	NR	NR	NR
Real Estate & Business Agents Act 1978	7	8	18	13	7	5
Residential Tenancies Act 1987	0	0	0	0	2	0
Settlement Agents Act 1981	1	1	2	0	0	3
Travel Agents Act 1985	0	0	0	0	0	0
Water Services Licensing Act 1995	0	0	0	0	0	0
Total	10	12	26	18	19	10

330 Also includes an enforceable undertaking.

331 This number was referenced from the Department of mines, industry regulation and safety 2017/18 Annual Report, p.99 under section Service 1: Consumer Protection. It is unclear what the underlying nature of the action is. **Results in detail:**

- In 2017-18 there were fewer audit reports completed (4,460 compared with 4,695), compliance inspections (28,137 compared with 30,164), and traders named (51 compared with 64).
- Conversely, in 2017-18 there were more fidelity fund investigations (46 compared with 19), investigations (2,936 compared with 2,626), and civil actions concluded (3 compared with 1).
- prosecutions remained steady at 23 for both years."

332 Administered by the Hairdressers Registration Board until it ceased on 30 November 2010.

333 Administered by the Land Valuers Licensing Board until 30 June 2011. Due to the nature of reporting by the Land Valuers Board these figures are for the number of people prosecuted not the number of matters.

334 Includes Motor Vehicle Dealers Act 1973 and Motor Vehicle Repairers Act 2003

335 Repealed August 2011 - This Act was repealed by the Building Services (Registration) Act 2011 s. 108 (No. 19 of 2011) as at 29 Aug 2011 (see s. 2(b) and Gazette 26 Aug 2011 p. 3475-6).

Financial Year	12/13	13/14	14/15	15/16	16/17	17/18
Penalty/ Infringement notices – number³³⁶						
Building Laws	0	0	0	0	0	0
Energy Safety Division ³³⁷	78	52	89	62	51	61
Fair Trading Act 2010	0	0	0	0	0	0
Finance Brokers Control Act 1975	0	0	0	0	0	0
Motor Vehicle Laws ³³⁸	0	0	0	0	0	0
Petroleum Products Pricing Act 1983	0	0	0	0	0	0
Real Estate Business Agents Act 1978	0	0	1	0	0	0
Water Services Licensing Act 1995	0	0	0	0	0	0
Total	0	0	1	0	0	0

Consumer Protection Western Australia Enforcement Actions 2012/13– 2017/18 Other Powers

Financial Year	12/13	13/14	14/15	15/16	16/17	17/18
Disciplinary outcomes						
Code of conduct for Agents and sales representatives 2011	0	0	0	1	0	0
Australian Consumer Law (WA)	0	0	3	1	1	0
Building Laws	0	0	0	0	0	0
Civil Judgement Enforcement Act 2004	0	0	2	0	0	0
Fair Trading Act 1987	0	2	1	0	0	0
Finance Brokers Control Act 1975	0	0	0	0	0	0
Hairdressers Registration Act	NR	NR	NR	NR	NR	NR
Judgement Enforcement act 2004	0	0	0	3	0	0
Land Valuers Licensing Act 1978	0	0	0	0	0	0
Motor Vehicle Laws	0	2	0	0	0	1 ³³⁹
Painters' Registration Act	NR	NR	NR	NR	NR	NR
Real Estate & Business Agents Act 1978	0	4	8	2	18	24
Residential Tenancies Act 1987	0	0	1	0	0	0
Settlement Agents Act 1981	0	1	0	0	0	0
Travel Agents Act 1985	0	0	0	0	0	0
Total	0	9	15	7	19	25

Prohibition notices						
Total	0	0	0	0	0	0

Traders named						
Total	0	0	0	0	64³⁴⁰	51

"Orders to remedy" defects						
Motor Vehicle Laws	0	0	0	0	0	0

Notice to remedy breach						
Trade Measure Laws	0	0	0	0	0	0

336 This information has been taken from information provided in table form. There are discrepancies with the data reported in the table and the data aggregated from prose in the report.

337 EnergySafety Division with regard to gas and electricity non-compliance aspects of electrical and gas installations. We have not included the Plumbers Licensing Act (1995)

338 Department of Commerce Annual Report 2012-13, p.159 – "It was identified that proactive officers were no longer 'authorised persons' under the MVD Act, and therefore unable to issue infringement notices"

339 Annual Report 2017-18, p.203 – "One matter was commenced and finalised during 2017-18." There is also mention on this page of – "234 (matters) were referred to the Magistrates Court for further action" yet there is no mention in the AR of matters finalised in the Magistrates Court for MVD or MVR.

340 This number is sources from the 17/18 Annual Report, p. 99

Financial Year	12/13	13/14	14/15	15/16	16/17	17/18
Rectification notices						
Water Services Licensing Act 1995 ³⁴¹	0	0	0	128	189	0
Warning letters³⁴²						
Credit (Administration) Act 1984	0	0	0	0	0	0
Debt Collectors Licensing Act 1964	1	0	0	0	0	0
Land Valuers Licensing Act 1978	0	0	1	0	0	0
Motor Vehicle Laws	41	17	13	7	0	51
Real Estate and Business Agents Act 1978	0	73	171	139	157	115
Residential Tenancies Act 1987	80	0	0	0	0	0
Settlement Agents Act 1981	4	3	9	10	13	23
Travel Agents Act 1985	3	5 ³⁴³	0	0	0	0
Total	382	261	546	443	448	417

Consumer Protection Western Australia Enforcement Actions 2012/13– 2017/18 Other Powers

Financial Year	12/13	13/14	14/15	15/16	16/17	17/18
The extent to which traders comply with regulatory requirements ³⁴⁴	97%	97%	96%	95%	95%	96%
The extent of consumer confidence in Western Australia's trading environment	76%	74%	74%	NA	NA	NA
The extent to which consumers believe businesses generally act fairly towards consumer ³⁴⁵	80%	75%	80%	NA	NA	NA
Enforceable Undertakings	4	8	5	8	0	1 ³⁴⁶
Substantiation Notices	12	13	8	NA	NA	NA

The link to 'consumer protection legislation' on the commerce.wa.gov.au website (which includes Consumer Protection WA) provides the following information:

"The Parliamentary Counsel's Office publishes all Western Australian legislation. You can search and download Acts and Regulations in PDF or Word format.

You can download a document with a list of Acts by administering portfolios."

Following the link to administering portfolios leads to the WA legislation site (legislation.wa.gov.au), which includes a document "Acts with administering portfolios and public sector agencies (Agency order)." Consumer protection legislation is listed under the auspices of the Minister for Commerce, together with a range of non-consumer protection legislation. There is no separate listing of legislation that is the responsibility of Fair Trading that we could locate.

Information about Consumer Protection Western Australia enforcement activity is found primarily in Annual Reports. For the period 2012/13 until 2016/17 reporting was included in the Department of Commerce Annual Report (Final Report in 2016/17), of which Consumer Protection was a Division. These reports included tabulated information in Appendices, including specific information regarding action undertaken by the Consumer Protection Division.

The body of the reports included narrative and qualitative information about trends or special problems emerging. Information recorded included parties, the nature of allegations, the outcome achieved, and costs penalties or fines ordered. It appears that Consumer Protection Western Australia had taken the approach of reporting matters commenced as distinct from matters concluded in any year, which is welcome.

³⁴¹ Issued by the Plumbers Licensing Board.

³⁴² This list is not comprehensive as information on warning letters was not easily available. It includes warning letters, administrative warnings and formal warnings issued under some of the Acts.

³⁴³ One investigation resulted in a licence being cancelled.

³⁴⁴ Department of Commerce calculated these figures by looking at the percentage of compliant traders identified during routine and proactive inspections.

³⁴⁵ Department of Commerce obtained these figures through surveying a sample of consumers.

³⁴⁶ This is referenced from the enforceable undertaking page on CP WA's website – <https://www.commerce.wa.gov.au/consumer-protection/enforceable-undertakings-0> The information on this page does not appear consistent with information reported in Annual Reports. For example, the online information references no enforceable undertakings for the 2016-17 year.

As outlined in Section 5, while until 2017/18 the Consumer Protection Western Australia reports contained a significant amount of detail they were amongst the most confusing reports to analyse.

Reporting by Consumer Protection Western Australia also illustrates a number of the consistency challenges encountered. For example, it is not possible to be definitive about warning notices as figures reported may include warning letters, administrative warnings, cautions, education or advice issued under some of the Acts.

In 2017/18 the Department of Commerce ceased and the consumer protection function, including the Commissioner for Consumer Protection, became part of the Department of Mines, Industry Regulations and Safety.

The 2017/18 Annual Report of the Department of Mines, Industry Regulations and Safety notes that some of the Acts it administers require reporting of “the number, nature and outcome of compliance activities.”³⁴⁷ It would appear that the Department has ceased reporting activity other than under legislation that requires such reporting. Thus for example, there we could find no reference to activity under the Australian Consumer Law in the report, despite suggestion of ACL action on the consumer protection website.³⁴⁸

We have not included information on product bans and recalls in this Report as no activity was recorded during the period examined.

³⁴⁷ Department of Mines, Industry Regulations and Safety Annual Report 2017-18, p.193.

³⁴⁸ <https://www.commerce.wa.gov.au/consumer-protection/compliance-actions-1>

A9 Fair Trading Queensland

Table: Fair Trading Queensland Enforcement activities 2011/12 – 2018/19

NR = Not relevant (e.g. did not/does not possess power, action not available, Act repealed)

NA = Not available (e.g. agency may have ceased reporting information or changed the way it is reported.)

Financial Year	11/12	12/13	13/14 ³⁴⁹	14/15	15/16	16/17	17/18	18/19
Number of enforcement actions initiated	1,829 ³⁵⁰	1,306 ³⁵¹	19	1,361 ³⁵²	1,351	1,375	1,504	1,994
Entities monitored	9,873	9,400	NA	8,340	14,871	8,747	9,898	15,639
Complaints finalised	NA	11,380 ³⁵³	NA	15,286	14,505	15,381	15,230	14,529
Redress for consumers	\$6.2M	\$7.5M	\$5.5M	\$6.1M	\$6.07M	\$5.6M	\$8.14	\$7.6M
% Disputes satisfactorily finalised	88%	89%	NA	93%	91%	85%	82%	83%
NOTE THE ABOVE FIVE ROWS REPLICATES THE 2013 REPORT CATEGORIES. NEW REPORTING IS REFLECTED BELOW. As with the 2013 Report, the above figures, may or may not all relate to 'enforcement' outcomes. For a period, the Qld OFT reports on measures more usually considered to be compliance or complaint handling.								
Admin. Disciplinary action	NA	NA	NA	1,742	486	1,121	1,224	1,369
Civil penalty notices	NA	NA	NA	28	44	11	9	5
Enforceable undertakings ³⁵⁴	10	39	19	28 ³⁵⁵	3	11	12	0
Disciplinary Proceedings (QCAT)	NA	9	NA	4	17	4	3	20
Public naming	NA	NA	NA	3	0	2	4	2
Investigations Completed	2,926	2,012	NA	3,805	4,990	3,786	3,433	3,022
Infringements issued	NA	573	NA	466	466	460	385	374
Warnings								
Agents Financial Admin Act 2014	NA	NA	NA	80	346	480	689	1,139
Collections Act 1966				3		3	4	2
Debt Collectors (Field Agents and Collection Agents) Act 2014						1	2	
Fair Trading Act 1989 (incorporating the Australian Consumer Law)	NA	NA	NA	149	104	95	107	130
Fair Trading Inspectors Act 2014	NR	NR	NR	NR	3	3	1	1
Funeral Benefits Business Act 1982								1
Motor Deals & Chattell Auct'n Act 2014	NR	NR	NR	2	40	42	85	33
Property Agents and Motor Dealers Act 2000 ³⁵⁶	NA	NA	NA	406	97	12	0	NA
Second-hand Dealers and P'brokers Act 2003	NA	NA	NA	26	12	16	9	14
Consumer protection warnings	NA	NA	NA	666 ³⁵⁷	602 ³⁵⁸	652 ³⁵⁹	897 ³⁶⁰	1,317
Total warnings issued	NA	588	NA	749³⁶¹	749	794	1,016	1,521

349 Previous years data was reported in the Annual Reports then they moved to an "Outcomes Report" which we have access to from 2014/15. In 13/14 there is really no data in the Department of Justice and Attorney-General Annual Report and no outcome report, hence the distinct lack of data for this year.

350 This is the total number of enforcement actions reported in the Annual Report which is consistent with the previous Regulator Watch reports.

351 Department of Justice and Attorney-General Annual Report 2012-13, p.39. 1,306 is an addition of numbers on – 9 disciplinary proceedings QCAT, 80 court actions, 588 warnings, 573 infringement notices and 56 enforceable undertakings – see 5 rows in bold in the table.

352 The reporting has changed now to the Outcomes report. There is additional information provided and our methodology as changed slightly because of this. From court actions we are now excluding: Security Providers Act (2003), Collections Act (1966) and Criminal Code Act (1966). Under Enforcement Actions we are including: Warnings issued, Infringements Issued, Civil penalty notices, Disciplinary proceedings (QCAT), Enforceable Undertakings and Court Actions, but Excluding Administrative disciplinary actions and Public naming.

353 In the Annual Report 2012/13 the number 11,380 is listed as "Office of Fair Trading finalised over 11,380 conciliations"

354 These numbers are based on the register of enforceable undertakings on the website. In a number of instances different numbers are reported in Annual Reports. See for example 2012-13, 2014-15 to 2017-18.

355 These numbers come from the public register and include the Fair Trading Act (1989) including the Australian Consumer Law (ACL), property agents, motor dealers, Debt collectors and process servers (commercial agents).

356 The 2014-15 Outcomes Report contains the following note: "On 1 December 2014, the Property Agents and Motor Dealers Act 2000 (PAMDA) was repealed and replaced with industry specific Acts. Conduct occurring on 30 November 2014 or earlier was dealt with under the former PAMDA." Nevertheless, subsequent years continue to report activity.

357 This number is the addition of the nine rows above.

358 As above.

359 As above.

360 As above.

361 From 2014-15 onwards this is the total number of warnings reported in the outcomes report, so for this year it contains 3 from the Collections Act 1966, 16 from the Property Occupations Act 2014, 6 from the Residential Services (Accreditation) Act 2002 [Administrative responsibility for Residential Service (Accreditation) Act 2002 and Retirement Villages Act 1999 transitioned to the Department of Housing and Public Works in May 2012 however activity under these acts continues to be recorded via Office of Fair Trading systems.], 2 from the Retirement Villages Act(1999) and 59 from the Security Providers Act 1993 that we excluded from the consumer protection total for this report as they were not Consumer focused.

Financial Year	11/12	12/13	13/14 ³⁶²	14/15	15/16	16/17	17/18	18/19
Court Actions								
Agents Financial Admin Act 2014	NA	NA	NA	NA	0	1	8	20
Collections Act 1966							4	
Debt Collectors (Field Agents and Collections Agents) Act 2014								
Fair Trading Act 1989 (incorporating the Australian Consumer Law)	NA	NA	NA	51	57	51	40	39
Fair Trading Inspectors Act 2014	NA	NA	NA	NA	0	1	0	0
Funeral Benefits Business Act 1982								
Motor Deals & Chattell Auct'n Act 2014	NA	NA	NA	NA	1	4	6	5
Property Agents and Motor Dealers Act 2000 ³⁶³	NA	NA	NA	20	21	1	0	8
Second-hand Dealers and P'brokers Act 2003	NA	NA	NA	1	0	0	1	0
Total Court Actions	NA	80	NA	74	81³⁶⁴	81	73	72

The queensland.qld.gov.au website lists the following as fair trading legislation:

- ▶ *Agents Financial Administration Act 2014*
- ▶ *All Saints Church Lands Act 1924*
- ▶ *All Saints Church Lands Act 1960*
- ▶ *Anglican Church of Australia Act 1895*
- ▶ *Anglican Church of Australia Act 1895 Amendment Act 1901*
- ▶ *Anglican Church of Australia Act 1977*
- ▶ *Anglican Church of Australia Constitution Act 1961*
- ▶ *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889*
- ▶ *Ann Street Presbyterian Church Act 1889*
- ▶ *Associations Incorporation Act 1981*
- ▶ *Bishopsbourne Estate and See Endowment Trusts Act 1898*
- ▶ *Body Corporate and Community Management Act 1997*
- ▶ *Boonah Show Ground Act 1914*
- ▶ *Building Units and Group Titles Act 1980 Jointly administered with the Minister for State Development and Minister Natural Resources and Mines*
- ▶ *Business Names (Commonwealth Powers) Act 2011*
- ▶ *Charitable Funds Act 1958*
- ▶ *Chinese Temple Society Act 1964*
- ▶ *Churches of Christ, Scientist, Incorporation Act 1964*
- ▶ *Collections Act 1966*
- ▶ *Cooperatives Act 1997*
- ▶ *Credit (Commonwealth Powers) Act 2010*
- ▶ *Credit (Rural Finance) Act 1996*
- ▶ *Debt Collectors (Field Agents and Collection Agents) Act 2014*
- ▶ *Disposal of Uncollected Goods Act 1967*
- ▶ *Factors Act 1892*
- ▶ *Fair Trading Act 1989, incorporating the Australian Consumer Law*
- ▶ *Fair Trading Inspectors Act 2014*
- ▶ *Fair Trading (Fuel Price Board) Regulation 2017*
- ▶ *Funeral Benefit Business Act 1982*
- ▶ *Guides Queensland Act 1970*
- ▶ *Introduction Agents Act 2001*
- ▶ *Land Sales Act 1984*
- ▶ *Mercantile Act 1867*
- ▶ *Motor Dealers and Chattel Auctioneers Act 2014*
- ▶ *Partnership Act 1891*
- ▶ *Personal Property Securities (Ancillary Provisions) Act 2010*
- ▶ *Personal Property Securities (Commonwealth Powers) Act 2009*
- ▶ *Presbyterian Church of Australia Act 1900*
- ▶ *Presbyterian Church of Australia Act 1971*
- ▶ *Property Occupations Act 2014*
- ▶ *Queensland Congregational Union Act 1967*
- ▶ *Queensland Temperance League Lands Act 1985*

³⁶² Previous years data was reported in the Annual Reports then they moved to an "Outcomes Report" which we have access to from 2014/15. In 13/14 there is really no data in the Department of Justice and Attorney-General Annual Report and no Outcome Report, hence the distinct lack of data for this year.

³⁶³ On 1 December 2014, the Property Agents and Motor Dealers Act 2000 (PAMDA) was repealed and replaced with industry specific Acts. Conduct occurring on 30 November 2014 or earlier was dealt with under the former PAMDA.

³⁶⁴ This number (81, p.12 of the 2015-16 Annual Report) does not match the number (100, p.6 of the 2015-16 Annual Report).

- ▶ *Returned & Services League of Australia (Queensland Branch) Act 1956*
- ▶ *Returned Servicemen's Badges Act 1956*
- ▶ *Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945*
- ▶ *Roman Catholic Church (Incorporation of Church Entities) Act 1994 ,*
- ▶ *Roman Catholic Church Lands Act 1985*
- ▶ *Roman Catholic Church (Northern Lands) Vesting Act 1941*
- ▶ *Roman Catholic Relief Act 1830*
- ▶ *Sale of Goods Act 1896*
- ▶ *Sale of Goods (Vienna Convention) Act 1986*
- ▶ *Salvation Army (Queensland) Property Trust Act 1930*
- ▶ *Scout Association of Australia Queensland Branch Act 1975*
- ▶ *Sea-Carriage Documents Act 1996*
- ▶ *Second-hand Dealers and Pawnbrokers Act 2003*
- ▶ *Security Providers Act 1993*
- ▶ *Storage Liens Act 1973*
- ▶ *Tattoo Industry Act 2013*
- ▶ *Tourism Services Act 2003*
- ▶ *United Grand Lodge of Ancient Free and Accepted Masons of Queensland Trustees Act 1942*
- ▶ *Uniting Church in Australia Act 1977*
- ▶ *Wesleyan Methodist Trust Property Act 1853*
- ▶ *Wesleyan Methodists, Independents, and Baptists Churches Act 1838*

Only the following Acts are considered consumer protection for the purposes of this Report. Where activity is reported by individual Act other Acts have been excluded.

- ▶ *Collections Act 1966*
- ▶ *Debt Collectors (Field Agents and Collection Agents) Act 2014*
- ▶ *Disposal of Uncollected Goods Act 1967*
- ▶ *Factors Act 1892*
- ▶ *Fair Trading Act 1989, incorporating the Australian Consumer Law*
- ▶ *Fair Trading Inspectors Act 2014*
- ▶ *Fair Trading (Fuel Price Board) Regulation 2017*
- ▶ *Funeral Benefit Business Act 1982*
- ▶ *Introduction Agents Act 2001*
- ▶ *Land Sales Act 1984*

- ▶ *Mercantile Act 1867*
- ▶ *Motor Dealers and Chattel Auctioneers Act 2014 Sale of Goods Act 1896*
- ▶ *Sale of Goods (Vienna Convention) Act 1986*
- ▶ *Second-hand Dealers and Pawnbrokers Act 2003*
- ▶ *Security Providers Act 1993*
- ▶ *Storage Liens Act 1973*
- ▶ *Tattoo Industry Act 2013*

Information about Fair Trading Queensland's enforcement activity can be found primarily in the Annual Reports of the Department of Justice and Attorney-General.

The 2013 Report noted that the availability of data on enforcement work by Fair Trading Queensland was variable and often not comprehensive. A particular feature was the reporting of 'number of enforcement actions initiated', which was reported until (and including) the 2011/12 year. This term was not defined and appeared to include a range of activity beyond enforcement outcomes, which meant that Queensland figures were in no way referable to those of other jurisdictions.

This shifted significantly in the 2012/13 reporting year and again in the 2014/15 reporting year. In 2012/13 while the number of enforcement actions initiated was still noted, numbers of outcomes, including court actions, disciplinary proceedings, warnings, infringement notices and enforceable undertakings were also reported.

There is little to no data for the 2013/14 year but then in 2014/15 Queensland Fair Trading introduced an Outcomes Report and commenced reporting action in respect of the individual Acts it administers as well as specific data regarding different types of enforcement actions.

A10 NSW Fair Trading

Table: NSW Fair Trading Enforcement activities 2012/13 – 2018/19

NR = Not relevant (e.g. did not/does not possess power, action not available, Act repealed)

NA = Not available (e.g. agency may have ceased reporting information or changed the way it is reported.)

Financial Year	11/12	12/13	13/14	14/15	15/16 ³⁶⁵	16/17 ³⁶⁶	17/18 ³⁶⁷	18/19 ³⁶⁸
Successful prosecutions finalised³⁶⁹								
Australian Consumer Law (2011) ³⁷⁰	24	40	28	36	41	16	14	19
Bankruptcy Act (1966)	0	0	0	0	0	0	9,898	15,639
Consumer, Trader and Tenancy Tribunal Act (2001 No 82) ³⁷¹	1 ³⁷²	0	1 ³⁷³	NR	NR	NR	NR	NR
Consumer Credit Administration Act (1995) ³⁷⁴	NR	NR	NR	NR	NR	NR	NR	NR
Credit (Finance Brokers) Act (1984) ³⁷⁵	NR	NR	NR	NR	NR	NR	NR	NR
Crimes Act (1900) ³⁷⁶	9	10	6	15	13	14	13	7 ³⁷⁷
Electricity (Consumer Safety) Act (2004)	4	2	1	2	0	4	0	0
Fair Trading Act (1987)	8	4	3	2	2	1	0	0
Fitness Services (Pre-paid fees) Act (2000) ³⁷⁸	0 ³⁷⁹	0	0	0	0	NR	NR	NR
Home Building Act (1989)	33	27	22 ³⁸⁰	33	47 ³⁸¹	33	25	24
Motor Dealers Act (1974) ³⁸²	9	7	10	13	12	4	3	NR
Motor Vehicle Repairs Act (1980)	NA	1	1	1	1	NR	NR	NR
Motor Vehicle Repairs Act (2013)	NR	NR	NR	NR	4	2	4	19
Pawnbrokers & Second-Hand Dealers Act (1996)	1	0	1	0	0	0	0	0
Property, Stock and Business Agents Act (2002)	0	4	7	4	5	14	5	9
Supreme Court Rules (contempt)	0	0	0	0	0	0	1	0
Tow Truck Industry Act	NR	NR	NR	NR	NR	NR	3	9
Trade Measurement Act ³⁸³	NR	NR	NR	NR	NR	NR	NR	NR
Travel Agents Act (1996) No 5	2	0	0	NR ³⁸⁴	NR	NR	NR	NR
Valuers Act (2003) No 5	NA	0	0	0	0 ³⁸⁵	NR	NR	NR
Total	91³⁸⁶	95	80	107	128³⁸⁷	79	66	89

365 There is essentially no data in the Year in Review. Publication of the full series of quarterly reports will address this issue.

366 This is only one quarter of data and the only quarter available taken from the April-June 2017 Enforcement Action Report. 2016-17 was the last year the Year in Review was published however it did not contain useable data.

367 Information drawn from quarterly enforcement actions report.

368 Information drawn from quarterly enforcement actions report.

369 Statistics on prosecutions commenced are not published by NSW Fair Trading. Only information on matters finalised is available. Further only information on successful prosecutions (not all commenced prosecutions) is provided.

370 This is a new category. Defendants are counted not offences – there are two columns on p.26 Year in Review 2011-2012 – offences and defendants. Note also that we have excluded successful prosecutions for Associations Incorporation Act, Business Names Act, Consumer, trader and Tenancy Tribunal Act and Co-operatives Act.

371 There is reference to this legislation being administered by Fair Trading every year until 12/13 the following years (13/14, and onwards) there is no reference to this legislation being administered by Fair Trading, however in the 13/14 year there is a reference to in the table Prosecution results of a defendant under Consumer, Trader and Tenancy Tribunal Act. See for example p. 6, 11, 12

372 Year in Review 2011-12, p.28

373 Ibid.

374 On 1 July 2010 – ASIC assumed responsibility for credit regulation.

375 On 1 July 2010 ASIC assumed responsibility for the regulation of finance brokers.

376 Prosecutions under the Crimes Act appear mainly to be prosecutions for using false instruments or making false declarations; it is not clear which substantive consumer or other issues within the remit of the OFT are involved. See for example: http://www.fairtrading.nsw.gov.au/pdfs/About_us/Enforcement_Action_Report_June_2011.pdf p2.

377 NSW Fair Trading say this total is 9 however the quarterly reports show Q1 – 3 + Q2 – 2 + Q3 – 2 + Q4 0 = 7.

378 This Act was repealed by s.3(b) of the Fair Trading Legislation (Repeal Amendment) Act 2015 No. 12 with effect from 3 August 2015.

379 We assume is that this heading was absorbed by Australian Consumer Law from 2013-14.

380 Conflicting numbers – p.28 Year in Review 2013-2014, NSW Fair Trading has 22 defendants in the table "Prosecution results", however on p.17 of the same document there is reference to 166 successful prosecutions from the HBS (Fair Trading's Home Building Service that investigates compliance with the Home Building Act 1998 along with the Electrical (Consumer Safety) Act 2004 and Gas Supply (Consumer Safety) Regulation 2012 – there are not sufficient numbers of successful prosecutions in the table on page 28 under these acts and regulations to make up the number 166.

381 It is unclear if this number is just for the Home and Building Act or includes Electricity (Consumer Safety) and Gas Supply (Consumer Safety) – see p. 8 Year in Review 2015-2016

382 The Motor Dealers and Repairs Act was promulgated in 2013, replacing the previous Motor Dealers Act and Motor Vehicle Repairs Act.

383 Repealed by Trade Measurement (Repeal) Act 2009 No 108

384 Repealed - <https://www.legislation.nsw.gov.au/#/view/act/1986/5/full>

385 This Act was repealed by sec 3 (q) of the Regulatory Reform and Other Legislative Repeals Act 2015 No 48 with effect from 1.3.2016.

386 Note that this number is the addition of the successful prosecutions (defendants) less Associations Incorporation Act, Business Names Act, Consumer, Trader and Tenancy Tribunal Act and Co-operatives Act), see 2011-12 Annual Report, p. 26.

387 Annual Report 2015-16, p.8 Successful prosecutions were undertaken for 261 offences – NOTE this is offences not defendants – a departure from the previous report and earlier years in this report.

Financial Year	11/12	12/13	13/14	14/15	15/16 ³⁶⁵	16/17 ³⁶⁶	17/18 ³⁶⁷	18/19 ³⁶⁸
Civil litigation finalised^{388, 389}								
Supreme Court	4 ³⁹⁰	7 ³⁹¹	5 ³⁹²	2	1	0	0	1
District Court	3	3	1	1	0	0	0	0
Local Court	0	1	0	0	2	0	0	0
Supreme Court injunctions under PSHDA ³⁹³	0	0	0	0	0	0	0	0
Total	7	11	6	3	3	0	0	1
Penalty Notices								
Australian Consumer Law (2011)	17	32	52	61	50 ³⁹⁴	36	24	10
Bankruptcy Act (1966)	0	0	0	0	0	0	1	0
BioFuels Act (2007)	0	0	0	0	0	0	1	0
Conveyances' Licensing Act (2003)	0	0	1	0	0	1	4	1
Crimes Act (1900)	3	0	0	0	0	0	3	0
Electricity (Consumer Safety) Act (2004)	12	19	3	28	7	1	0	2
Fair Trading Act (1987)	1	1	102	6	9	7	83	24
Home Building Act (1989)	249	210	224	200	218 ³⁹⁵	250	279	264
Motor Dealers Act (1974) & Motor Vehicle Repairs Act 1980	121	104	154	47	5	NR	NR	NR
Motor Vehicle Repairs Act (1980)	69	65	32	8	0	NR	NR	NR
Motor Vehicle Repairs Act (2013)	NR	NR	NR	10	90	95	221	246
Pawnbrokers and Second-Hand Dealers Act (1996)	9	4	7	4	2	4	21	3
Property, Stock and Business Agents Act (2002)	37	53	83	185	123	290	279	458
Plumbing and Drainage Act (2011)	0	0	6	1	36	38	37	145
Residential Park Act (1998)	0	0	0	0	0	0	0	0
Retirement Villages Act (1999)	2	1	0	0	NA	NA	0	2
Tattoo Parlours Act 2012	NR	1	0	0	0	0	0	0
Tow Truck Industry Act (1998)	0	0	0	0	NA	NA	68	81
Travel Agents Act (1996) No 5	0	0	0	NR ³⁹⁶	NR	NR	NR	NR
Residential Tenancies Act (2010)	4	0	4	3	2	15	9	18
Valuers Act (2003)	0	0	0	0	NA	NA	0	0
Total	524	489	668	553	542 ³⁹⁷	737	1,030	1,255
Enforceable undertakings								
Total	1 ³⁹⁸	0	0	1	2	4	1	0

388 Statistics on prosecutions commenced are not published by NSW Fair Trading. Only information on matters finalised is available. Further only information on successful prosecutions (not all commenced prosecutions) is provided.

389 Note that we are following the previous report in Civil litigation finalised, specifically we are not including Administrative Appeals Tribunal, Administrative Decisions Tribunal and Consumer Trader & Tenancy Tribunal – these civil matters have been recorded in our report in the table “Administrative Decisions Tribunal.

390 4=Fair Trading Act (Injunction)(1), Australian Consumer Law (Injunction)(1), Other (2).

391 5 Australian Consumer Law (NSW)/Fair Trading Act 1987, 2 Other

392 Includes one contempt of court.

393 Pawnbrokers and Second-Hand Dealers Act

394 Year in Review 2015-16, p.21

395 Year in Review 2015-16, p.8 – derived from text

396 Repealed - <https://www.legislation.nsw.gov.au/#/view/act/1986/5/full>

397 Year in Review 2015-2016, p.8

398 Year in Review 2011-2011, p.20– Danoz Direct

Disciplinary Actions ³⁹⁹								
Building Professionals Act 2005	NR	NR	NR	NR	0	0	6	2
Conveyancers Licensing Act (2003)	0	3	0	0	0	0	1	1
Home Building Act (1989) No 147 (except parts, the Treasurer)	28	534	7	0	38	75	26	11
Motor Dealers Act (1974)	9	19	21	7	NA	NA	1	NR
Motor Vehicle Repairers Act 1980	8	15	19	3	NR	NR	NR	NR
Motor Vehicle Dealers and Repairs Act (2013)	NR	NR	NR	0	15	25	20	22
Pawnbrokers and Second-Hand Dealers Act (1996) No 13	3	3	13	0	0	1	1	0
Property, Stock and Business Agents Act (2002)	66	52	67	37	56	59	26	23
Residential Parks Act (1998) No 142	0	0	0	0	0	NA	0	0
Travel Agents Act (1986)	12	15	0	NR ⁴⁰⁰	NR	NR	NR	NR
Valuers Act (2003)	0	4	0	0	0	NA	NR	NR
Total	127	645	127	47	109	160	80	67
Administrative Decisions Tribunal								
Home Building Act (1989)	20	21	25	63	28	9	9	7
Motor Dealers Act (1974)	1	3	5	4	NA	NA	NA	NA
Motor Vehicle Repairs Act (2013)	3	7	2	1	NA	NA	NA	NA
Motor Vehicle Dealers and Repairers Act 2013	NR	NR	NR	0	1	6	2	1
Pawnbrokers & Second-Hand Dealers Act (1996)	1	0	0	0	0	2	0	0
Property, Stock and Business Agents Act (2002)	13	8	11	16	4	3	2	0
Trade Measurement Act ⁴⁰¹	NR	NR	NR	NR	NR	NR	NR	NR
Travel Agents Act (1996) No 5	0	0	0	NR ⁴⁰²	NR	NR	NR	NR
Valuers Act (2003)	0	0	0	0	NA	NA	NA	NA
Total	38	39	43	84	33	20	13	8
Public warnings								
Total	NA	35⁴⁰³	5	3	8	6	3	15
Warning letters								
Total	125	30⁴⁰⁴	230	117	NA	NA	631	537
Show cause notices ⁴⁰⁵								
Home Building ⁴⁰⁶	115 ⁴⁰⁷	85 ⁴⁰⁸	36 ⁴⁰⁹	46 ⁴¹⁰	46 ⁴¹¹	NA	NA	143
Total	120⁴¹²	86⁴¹³	36	2655	119	NA⁴¹⁴	NA	NA

399 These numbers are the combination of Licence suspensions and Licence disqualifications/cancellations

400 Repealed - <https://www.legislation.nsw.gov.au/#/view/act/1986/5/full>

401 Repealed by Trade Measurement (Repeal) Act 2009 No 108

402 Repealed - <https://www.legislation.nsw.gov.au/#/view/act/1986/5/full>

403 Repealed - <https://www.legislation.nsw.gov.au/#/view/act/1986/5/full>

404 No numbers, however on page 19 under Digital Engagement - ...included public warnings...

405 The reason that Show cause notices for Home Building dispute resolutions and the Total Show Cause number do not add up is because the Annual Report gives a total Show Cause number and a total Show Cause number for Home building dispute resolution.

406 This covers - Home Building Act 1989, Electricity (Consumer Safety) Act 2004 and Gas Supply (Consumer Safety) Regulation 2012.

407 Year in Review 2011-12, p.22.

408 Year in Review 2012-13, p.27. Including 19 license cancellations; 3 license suspensions and 12 written reprimands;

409 Year in Review 2013-14, p.17.- Including seven licences cancelled and/or disqualified

410 NOTE that in the Year in Review 2015-2016, p. 11. under the section Home building dispute resolution there is the text – “Forty-six Notices To Show Cause were issued resulting in a total value of \$237,000 in fines and seven licences being cancelled and/or the licensee disqualified from holding a licence.” In the Year in Review 2015-2016 under the section Home building dispute resolution there is the text – “46 Notices to Show Cause were issued resulting in a total value of \$237,000 in fines and seven licences being cancelled and/or the licensee disqualified from holding a licence.” Clearly there is an error in the reporting here, both years cannot have the same text in them.

411 Year in Review 2015-16, p.8. We note this same number and text is reported from the previous year.

412 Includes one Fair Trading relating to indemnity insurance, Three relating to Motor Vehicle Repairers Act 1980, One relating to residential building work

413 Includes one plumbing business

414 Note is made in the Year in Review 16/17 that there were notices to show cause issued, however no numbers.

NSW Fair Trading's website notes it administers the following Acts (and associated regulations):

- ▶ *Agricultural Tenancies Act 1990*
- ▶ *Associations Incorporation Act 2009*
- ▶ *Biofuels Act 2007*
- ▶ *Boarding Houses Act 2012, Part 1* (except sections 3 (b) and (c)), Part 2, Part 5 (except section 104), Schedule 2 (except Part 2) and subschedules 3.3 and 3.6
- ▶ *Building and Construction Industry Security of Payment Act 1999*
- ▶ *Building Professionals Act 2005*
- ▶ *Business Names (Commonwealth Powers) Act 2011*
- ▶ *Charitable Fundraising Act 1991*
- ▶ *Community Land Management Act 1989*
- ▶ *Contracts Review Act 1980*
- ▶ *Conveyancers Licensing Act 2003*
- ▶ *Co-operative Housing and Starr-Bowkett Societies Act 1998*
- ▶ *Co-operatives (Adoption of National Law) Act 2012*
- ▶ *Co-operatives National Law NSW*
- ▶ *Credit (Commonwealth Powers) Act 2010*
- ▶ *Entertainment Industry Act 2013*
- ▶ *Environmental Planning and Assessment Act 1979, Part 6* (remainder Minister for Planning and Public Spaces)
- ▶ *Fair Trading Act 1987*
- ▶ *Funeral Funds Act 1979*
- ▶ *Gas and Electricity (Consumer Safety) Act 2017*
- ▶ *Gas Supply Act 1996, section 83A* (remainder Minister for Resources and Energy)
- ▶ *Hairdressers Act 2003*
- ▶ *Holiday Parks (Long-term Casual Occupation) Act 2002*
- ▶ *Home Building Act 1989*
- ▶ *Landlord and Tenant Act 1899*
- ▶ *Lotteries and Art Unions Act 1901*
- ▶ *Motor Dealers and Repairers Act 2013*
- ▶ *Mutual Recognition (Automatic Licensed Occupations Recognition) Act 2014*
- ▶ *Paintball Act 2018*
- ▶ *Partnership Act 1892*, Attorney General jointly with the Minister for Innovation and Better Regulation, so far as it relates to the functions of the Registrar of the register of limited partnerships and incorporated

limited partnerships and to the setting of fees to be charged for maintaining that register; remainder, the Attorney General

- ▶ *Pawnbrokers and Second-hand Dealers Act 1996*
- ▶ *Personal Property Securities (Commonwealth Powers) Act 2009*, Attorney General, except parts; Division 2 of Part 2 of Schedule 1 and clause 24 of Schedule 1, jointly the Attorney General and the Minister for Innovation and Better Regulation
- ▶ *Plumbing and Drainage Act 2011*
- ▶ *Professional Standards Act 1994*
- ▶ *Property, Stock and Business Agents Act 2002*
- ▶ *Residential (Land Lease) Communities Act 2013*
- ▶ *Residential Tenancies Act 2010*
- ▶ *Retail Trading Act 2008*
- ▶ *Retirement Villages Act 1999*
- ▶ *Storage Liens Act 1935*
- ▶ *Strata Schemes Management Act 2015*
- ▶ *Swimming Pools Act 1992*
- ▶ *Tattoo Parlours Act 2012* (jointly with the Minister for Police and Emergency Services)
- ▶ *Tow Truck Industry Act 1998*
- ▶ *Uncollected Goods Act 1995*

Of these, the following Acts are not considered consumer protection legislation and have therefore been excluded from analysis where reporting is done by individual Act:

- ▶ *Agricultural Tenancies Act 1990*
- ▶ *Associations Incorporation Act 2009*
- ▶ *Boarding Houses Act 2012,*
- ▶ *Building and Construction Industry Security of Payment Act 1999*
- ▶ *Building Professionals Act 2005*
- ▶ *Business Names (Commonwealth Powers) Act 2011*
- ▶ *Charitable Fundraising Act 1991*
- ▶ *Community Land Management Act 1989*
- ▶ *Contracts Review Act 1980*
- ▶ *Entertainment Industry Act 2013*
- ▶ *Environmental Planning and Assessment Act 1979, Part 6* (remainder Minister for Planning and Public Spaces)
- ▶ *Lotteries and Art Unions Act 1901*
- ▶ *Mutual Recognition (Automatic Licensed Occupations Recognition) Act 2014*
- ▶ *Partnership Act 1892*
- ▶ *Professional Standards Act 1994*

- ▶ *Strata Schemes Management Act 2015*
- ▶ *Swimming Pools Act 1992*
- ▶ *Tattoo Parlours Act 2012 (jointly with the Minister for Police and Emergency Services)*
- ▶ *Tow Truck Industry Act 1998*

Information regarding NSW Fair Trading enforcement activity can be found in its Year in Review publications, in the quarterly Enforcement Actions Reports and on its website, which also includes a Register of Enforceable Undertakings. The Enforcement Actions Reports are only publicly available back to the April – June 2017 quarter. These are the most detailed reports available, covering prosecutions and penalties by name of trader, the date of action, the nature of the offence or unfair conduct, the type of enforcement action taken and the value of any fine or penalty.

NSW Fair Trading does not publish statistics on prosecutions commenced. Only information on matters finalised is available. Further only information on successful prosecutions (not all commenced prosecutions) is provided. Similarly, statistics on civil matters commenced are not published. Only information on matters finalised is available.

From both Year in Review and quarterly reports it was difficult to tell which matters involved a consumer protection issue (as distinct from a disciplinary or occupational licensing matter for example). This Report replicates the 2013 Report approach, namely to extract the legislation likely to cover consumer protection issues from the list of legislation administered by NSW Fair Trading.

A11 Northern Territory Consumer Affairs

Table: Northern Territory Consumer Affairs Enforcement activities 2011/12– 2017/18

NR = Not relevant (e.g. did not/does not possess power, action not available, Act repealed)

NA = Not available (e.g. agency may have ceased reporting information or changed the way it is reported.)

Financial Year	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Investigations conducted ⁴¹⁵	38	36	21	42	30	33	23	33
Investigations concluded	36	32	17	34	28	32	22	32
Complaints withdrawn, resolved to the satisfaction of the complainant or where no breach was disclosed	3	5	3	NA	NA	NA	NA	NA
Complaints referred to other organisations	12	5	5	8	NA	NA	NA	NA
Traders placed on notice	5	5	3	2	6	2	2	82
Investigations referred for prosecution	0	0	0	0	1	0	1	NA
Infringement Notices issued	NA	NA	NA	1	2	0	1	6
Public Warnings issued	NA	NA	2	0	3	0	NA	NA
Trader visits	26	7	12	12 ⁴¹⁶	4	2	2	767
Compliance education provided	80	142	19	9	11	15	8	202
Contracts annulled or varied	2	NA	NA	NA	NA	NA	NA	NA
“Stop the travelling Con Men								
Individuals prosecuted	27	NA	NA	NA	NA	NA	NA	NA
Investigations involving or leading to banned products	NA	NA	NA	NA	NA	NA	NA	NA
Investigations/notification involving or leading to recalled products	NA	NA	NA	NA	NA	NA	NA	NA
Investigations involving or leading to mandatory standards	NA	NA	NA	NA	NA	NA	NA	NA
Investigations involving or leading to warning labels on products	NA	NA	NA	NA	NA	NA	NA	NA
Corrective advertising obtained	NA	NA	1 ⁴¹⁷	NA	NA	NA	NA	NA
Trader publicly named	NA	NA	NA	NA	NA	NA	NA	NA
Enforceable Undertakings	0	0	0	0	1 ⁴¹⁸	0	0	NA
Substantiate advertised claim	NA	NA	41	NA	NA	NA	NA	NA
Other court proceedings	27 ⁴¹⁹	NA	NA	NA	2 ⁴²⁰	NA	NA	NA
Complaints conciliated	NA	NA	NA	NA	NA	167	220	179

⁴¹⁵ Information drawn from quarterly enforcement actions report.

⁴¹⁶ This is now changed to trader engagement.

⁴¹⁷ Northern Territory Consumer Affairs Annual Report 2013-14, p.30 – NT Liquorland outlets.

⁴¹⁸ Northern Territory Consumer Affairs Annual Report 2015-16, p.28.

⁴¹⁹ Stop the travelling con Men prosecutions.

⁴²⁰ It is unclear if these actions were undertaken by Northern Territory Consumer Affairs or another entity – Northern Territory Consumer Affairs Annual Report 2015-16, pp.27-28.

Northern Territory Consumer Affairs is responsible for administering the following legislation:

- ▶ *Accommodation Providers Act 1981*
- ▶ *Building Act 1993 (Residential Building Dispute Function)*
- ▶ *Business Tenancies (Fair Dealings) Act 2003*
- ▶ *Caravan Parks Act 2012*
- ▶ *Consumer Affairs and Fair Trading Act 1990 (including the Australian Consumer Law) Partnership Act 1997*
- ▶ *Price Exploitation Prevention Act 1949*
- ▶ *Residential Tenancies Act 1999*
- ▶ *Retirement Villages Act 1995*
- ▶ *Sale of Goods Act 1972*
- ▶ *Uncollected Goods Act 2004*
- ▶ *Warehousemen's Liens Act 1969*

The following legislation is not considered consumer protection legislation:

- ▶ *Business Tenancies (Fair Dealings) Act 2003*
- ▶ *Partnership Act 1997*
- ▶ *Warehousemen's Liens Act 1969*

Given the nature of Northern Territory Consumer Affairs reporting is not possible to distinguish activity under the Acts from other activity and therefore the activity reported is likely to include non consumer protection activity.

To the greatest extent possible we have followed the same rules in compiling the data as for the 2013 Report, namely:

- ▶ The information in the table is taken from the Annual Reports of the Commissioner for Consumer Affairs. As with the earlier Report, there is almost no statistical information available on enforcement actions taken by Northern Territory Consumer Affairs. The data in the table mainly relates to compliance and complaints related activity, rather than enforcement activity. There was very little enforcement activity data provided. There is some evidence of activity in 2011/12 and from 2013/14 in the there is evidence of enforcement action, though the levels remain very low—for example, it appears one enforceable undertaking has been obtained. The Annual Reports at times contain discussion of some of the enforcement actions taken.
- ▶ It appears that the statistics provided are for matters that concluded in the relevant financial year. Investigations that commenced in financial year but did not conclude prior to end of the year are counted in later annual reports.
- ▶ Matters may be counted a number of times in the table. For example, a complaint may be received which

is relevant to multiple other organisations, as well as requiring a compliance visit which leads to compliance education.

A12 South Australia Consumer and Business Services

Table: South Australia Consumer and Business Services Enforcement activities 2011/12– 2017/18

NR = Not relevant (e.g. did not/does not possess power, action not available, Act repealed)

NA = Not available (e.g. agency may have ceased reporting information or changed the way it is reported.)

Financial Year		12/13	13/14	14/15	15/16	16/17	17/18	18/19
Prosecutions - number	Australian Consumer Law (2011)	1	0	2	1	0	1	4
	Building Work Contractors Act (1995)	6	0	0	1	1	4	5 ⁴²¹
	Fair Trading Act (1987)	5	0	0	1	0	0	0
	Land Agents Act (1994)	0	0	0	0	2 ⁴²²	0	0
	Land & Business (Sale & Conveyancing) Act (1994)	0	0	0	0	0	0	0
	Plumbers, Gas Fitters and Electricians Act (1995)	0	0	0	0	0	1	2
	Second-Hand Vehicle Dealers Act (1995)	0	0	2	2	2	5	3
	Security and Investigations Agents Act (1995)	0	0	0	0	0	0	0
	Total	12	0	4	5	5	11	14
Warnings issued	Australian Consumer Law (2011)	0	0	1	1	1 ⁴²³	0	2 ⁴²⁴
	Building Work Contractors Act (1995)	7 ⁴²⁵	3	3	0	0	0	1
	Fair Trading Act (1987)	0	0	0	0	0	0	0
	Gaming Machines Act 1992	0	0	1	0	0	0	0
	Land Agents Act (1994)	3	0	1	1	0	0	1
	Land & Business (Sale & Conveyancing) Act (1994)	0	0	0	0	0	0	0
	Liquor Licensing Act (1997)	0	0	0	0	0	0	1
	Plumbers, Gas Fitters and Electricians Act (1995)	3 ⁴²⁶	2	1	1	0	0	0
	Second-Hand Vehicle Dealers Act (1995)	2	0	0	0	0	0	0
	Security and Investigations Agents Act (1995)	1 ⁴²⁷	0	0	0	0	0	0
	Total	16	5	7	3	1	0	5
Total Court Actions	Grand Total	28	5	12	8	6	11	19

421 Including one disqualification from managing corporations – until further notice.

422 Including one licence cancelled

423 Supreme court injunction issued – matter still before the courts

424 Including one disqualification from managing corporation for 12 months.

425 One Disqualification from being licensed.

426 One Disqualification from being licensed until further order

427 Security agents licence cancelled.

Financial Year	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Assurances/ undertaking ⁴²⁸	Australian Consumer Law (2011)	0	2	0	0	1	3
	Building Work Contractors Act (1995)	7	5	0	5 ⁴²⁹	8	13
	Consumer Credit (SA) Act (1995) ⁴³⁰	NR	NR	NR	NR	NR	NR
	Fair Trading Act (1987)	0	1	0	0	0	0
	Land Agents Act (1994)	2	2	1	2	1	0
	Land & Business (Sale & Conveyancing) Act (1994)	1	0	1	3	1	6
	Liquor Licensing Act (1997)	0	0	0	0	1	6
	Plumbers, Gas Fitters and Electricians Act (1995)	1	0	2	0	7	0
	Residential Tenancies Act (1995)	0	0	0	0	1	0
	Second-Hand Vehicle Dealers Act(1995)	7	5	6	7	5	9
	Security and Investigations Agents Act (1995)	0	0	0	0	0	0
Total		18	15	10	17	23	12⁴³¹
Product safety matters⁴³²		100	37	24⁴³³	51⁴³⁴	28⁴³⁵	203⁴³⁷
Public warning		NA⁴³⁸	6	NA	6	3	NA
Written warnings		1408	1070	NA	13	55	NA
Expiation notices		104	138	NA	1	4	8

The figures in the table were obtained from the Annual Reports for the years 2011/12 – 2015/16. It appears that from this time reporting was incorporated within the Annual Report for the Attorney General's Department. Data for the 2016/17 and 2017/18 years is drawn from the relevant Attorney General's Department report.

As with other agencies examined, Consumer and Business Services's remit is broader than solely consumer protection—including licensing responsibilities, maintenance of public purpose funds and administration of legislation other than consumer protection legislation.

SA Consumer and Business Services administers the following [South Australian Acts](#):

- ▶ *Associations Incorporation Act 1985*
- ▶ *Australian Consumer Law*
- ▶ *Authorised Betting Operations Act 2000*
- ▶ *Births, Deaths and Marriages Registration Act 1996*

- ▶ *Building and Construction Industry Security of Payment Act 2009*
- ▶ *Building Work Contractors Act 1995*
- ▶ *Burial and Cremation Act 2013*
- ▶ *Casino Act 1997*
- ▶ *Collections for Charitable Purposes Act 1939*
- ▶ *Companies (Administration) Act 1982*
- ▶ *Conveyancers Act 1994*
- ▶ *Co-operatives National Law (SA) 2013*
- ▶ *Fair Trading Act 1987*
- ▶ *Gambling Administration Act 1995 (formerly the Independent Gambling Authority Act 1995)*
- ▶ *Gaming Machines Act 1992*
- ▶ *Hairdressers Act 1988*
- ▶ *Justices of the Peace Act 2005*

⁴²⁸ Assurances and undertakings issued under the Fair Trading Act (1997) and related Acts. ACL gave power to the regulator to make undertakings.

⁴²⁹ One Suspension of licence

⁴³⁰ Repealed 2010

⁴³¹ Includes one assurance without reference to an Act.

⁴³² These are non-court matters, where compliance activities resulted in recalls, rectifications, seizures, voluntary withdrawals and removals of products.

⁴³³ Product lines.

⁴³⁴ Product lines

⁴³⁵ Including two extra recalls. NOTE: The number reported in the Annual Report 2015-16 was 1168. It appears this may refer to product lines rather than items when compared to previous years.

⁴³⁶ Product Lines

⁴³⁷ Products withdrawn and product recalls NOTE: No reference to Product-lines

⁴³⁸ No number specified in the Annual Report 2011-12 – "A number of public warnings were issued..."

- ▶ *Labour Hire Licensing Act 2017*
- ▶ *Land Agents Act 1994*
- ▶ *Land and Business (Sale and Conveyancing) Act 1994*
- ▶ *Land Valuers Act 1994*
- ▶ *Liquor Licensing Act 1997*
- ▶ *Lottery and Gaming Act 1936*
- ▶ *Marriage Act 1961*
- ▶ *Misrepresentation Act 1972*
- ▶ *Partnership Act 1891*
- ▶ *Plumbers, Gas Fitters and Electricians Act 1995*
- ▶ *Prices Act 1948*
- ▶ *Problem gambling Family Protection Orders Act 2004*
- ▶ *Relationships Register Act 2016*
- ▶ *Residential Parks Act 2007*
- ▶ *Residential Tenancies Act 1995*
- ▶ *Second-Hand Vehicle Dealers Act 1995*
- ▶ *Security and Investigation Industry Act 1995*
- ▶ *Sexual Reassignment Act 1988*
- ▶ *Tattooing Industry Control Act 2015*

The following Acts are not considered consumer protection legislation and have therefore been excluded from analysis where activity is reported by individual Act:

- ▶ *Associations Incorporation Act 1985*
- ▶ *Authorised Betting Operations Act 2000*
- ▶ *Births, Deaths and Marriages Registration Act 1996*
- ▶ *Building and Construction Industry Security of Payment Act 2009*
- ▶ *Burial and Cremation Act 2013*
- ▶ *Casino Act 1997*
- ▶ *Collections for Charitable Purposes Act 1939*
- ▶ *Companies (Administration) Act 1982*
- ▶ *Conveyancers Act 1994*
- ▶ *Co-operatives National Law (SA) 2013*
- ▶ *Gambling Administration Act 1995 (formerly the Independent Gambling Authority Act 1995)*
- ▶ *Gaming Machines Act 1992*
- ▶ *Justices of the Peace Act 2005*
- ▶ *Labour Hire Licensing Act 2017*
- ▶ *Land Valuers Act 1994*
- ▶ *Lottery and Gaming Act 1936*
- ▶ *Marriage Act 1961*

- ▶ *Misrepresentation Act 1972*
- ▶ *Partnership Act 1891*
- ▶ *Prices Act 1948*
- ▶ *Problem gambling Family Protection Orders Act 2004*
- ▶ *Relationships Register Act 2016*
- ▶ *Residential Parks Act 2007*
- ▶ *Sexual Reassignment Act 1988*
- ▶ *Tattooing Industry Control Act 2015*

The following Acts have been repealed since (or during the period covered by) the 2013 report:

- ▶ *Consumer Credit (South Australia) Act 1995*
- ▶ *Hairdressers Act 1988*

The update report uses the same rules as were followed when compiling the 2013 report, namely:

- ▶ Where a matter was pursued under two Acts it has only been counted under one.
- ▶ The Court Actions are for matters concluded not commenced in the given year.
- ▶ The Court Actions appear to be only for successful court actions.
- ▶ The "Prosecutions – fines ordered (\$)" section only includes fines and bonds, and not costs or compensation ordered.
- ▶ The product safety matters are not court matters. They are recalls, rectifications, seizures, voluntary withdrawals and removals that result from compliance activities.
- ▶ The Annual Reports refer to public warnings and often mention warnings issued. However, it was not clear exactly how many were issued in any given year and so this has been left off the table.

APPENDIX B

Advocate Survey Instrument

CFA MEMBER SURVEY - VIEWS ON REGULATOR ACCOUNTABILITY

About You

1. Your name (optional)

2. Type of CFA member

- | | | |
|---|---|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Financial Counselling agency | <input type="checkbox"/> Consumer advocacy organisation |
| <input type="checkbox"/> Legal Aid Office | <input type="checkbox"/> Community Legal Centre | <input type="checkbox"/> Special interest group representative (e.g. CALD, disability, health) |
| <input type="checkbox"/> Peak body | <input type="checkbox"/> Other (please specify) | |

3. Your role

- | | | |
|---|---|---|
| <input type="checkbox"/> Advocate | <input type="checkbox"/> Financial Counsellor | <input type="checkbox"/> Policy officer |
| <input type="checkbox"/> Manager | <input type="checkbox"/> Lawyer | <input type="checkbox"/> Executive |
| <input type="checkbox"/> Other (please specify) | | |

4. Your years of experience

- | | | |
|---|---|------------------------------------|
| <input type="checkbox"/> Less than 1 year | <input type="checkbox"/> 1-2 years | <input type="checkbox"/> 3-5 years |
| <input type="checkbox"/> 6-10 Years | <input type="checkbox"/> More than 10 years | |

5. How important do you think it is that regulators publicly report on their activity?

Not at all important	Not particularly important	Neutral	Somewhat important	Very important
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

6. Rate the importance of reporting of the following types of information

	Not at all important	Not particularly important	Neutral	Somewhat important	Very important
Complaints received	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Enforcement & compliance policies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Market research (other than confidential information)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Market data (other than confidential information)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Amounts of compensation secured	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Amounts of penalties awarded	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7. What other information would you like to see reported by regulators?

8. Rate the importance of reporting of the following types of activity

	Not at all important	Not particularly important	Neutral	Somewhat important	Very important
Education undertaken	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Compliance activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Consultations undertaken	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Research undertaken	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Administrative actions (eg. infringement notices, enforceable undertakings)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court proceedings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. What other activity would like to see reported by regulators?

10. Rate the importance of reporting of the following types of information

	Not at all important	Not particularly important	Neutral	Somewhat important	Very important
Narrative (eg. descriptions of activities or the subject matter of proceedings)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Machine readable data	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Numeric information (eg. number of proceedings issued or enforceable undertaking issued)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Graphic (eg. trend information)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Financial Information (eg. agency costs)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11. How often should regulators report?

☐ Quarterly

☐ Six monthly

☐ Annually

☐ Other (please specify)

12. Are there examples of innovative or useful reporting by regulators that you have encountered?

13. Do you have any other comments to make about regulator accountability?



09

APPENDIX C Staffing and Funding Information

The following charts track, where available, information regarding the leadership, financial and human resourcing of the consumer protection agencies examined in the body of the Report.

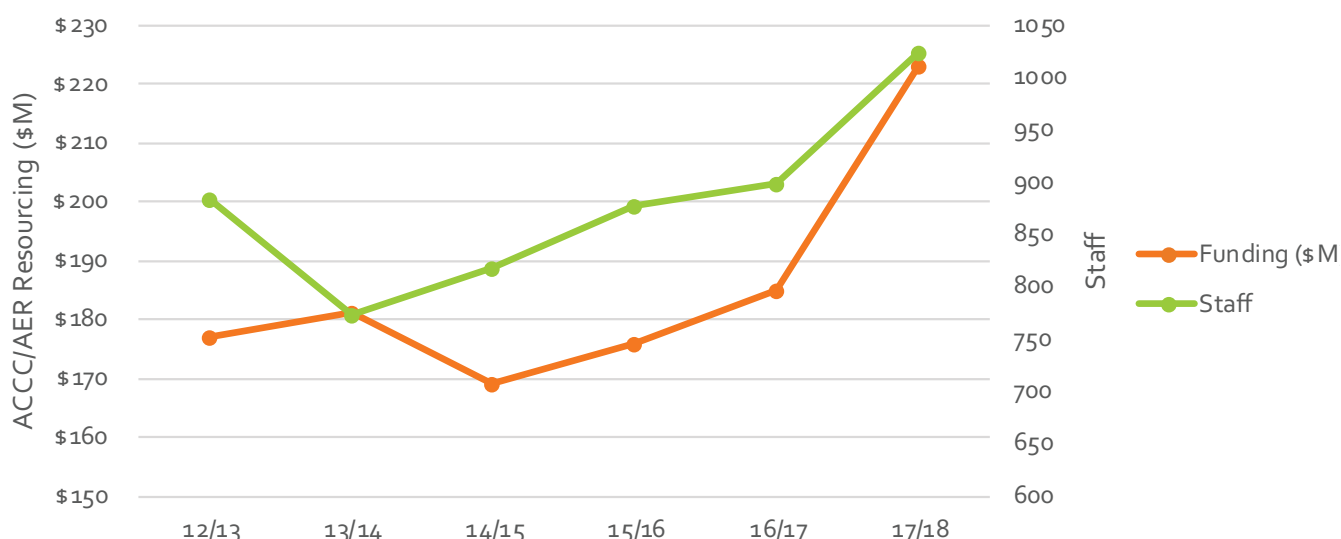
C1 and C2 ACCC & AER

Unfortunately, due to the structure of these two agencies, it is not possible to separate staffing and resources of the ACCC and AER respectively as they are reported combined. The information is therefore of limited use in drawing any conclusion regarding relationship between enforcement performance and resourcing. The table and chart is nevertheless included for completeness.

Table: ACCC & AER Resourcing and Staffing

Year	Funding (\$M)	Staff	Chair	Staff/\$M
12/13	\$177	884	Rod Sims/Andrew Reeves	4.99
13/14	\$181	773	Rod Sims/Andrew Reeves	4.27
14/15	\$169	818	Rod Sims/Paula Conboy	4.84
15/16	\$176	877	Rod Sims/Paula Conboy	4.98
16/17	\$185	898	Rod Sims/Paula Conboy	4.85
17/18	\$223	1024	Rod Sims/Paula Conboy	4.59

Figure: ACCC & AER Resourcing and Staffing



C3 ACMA

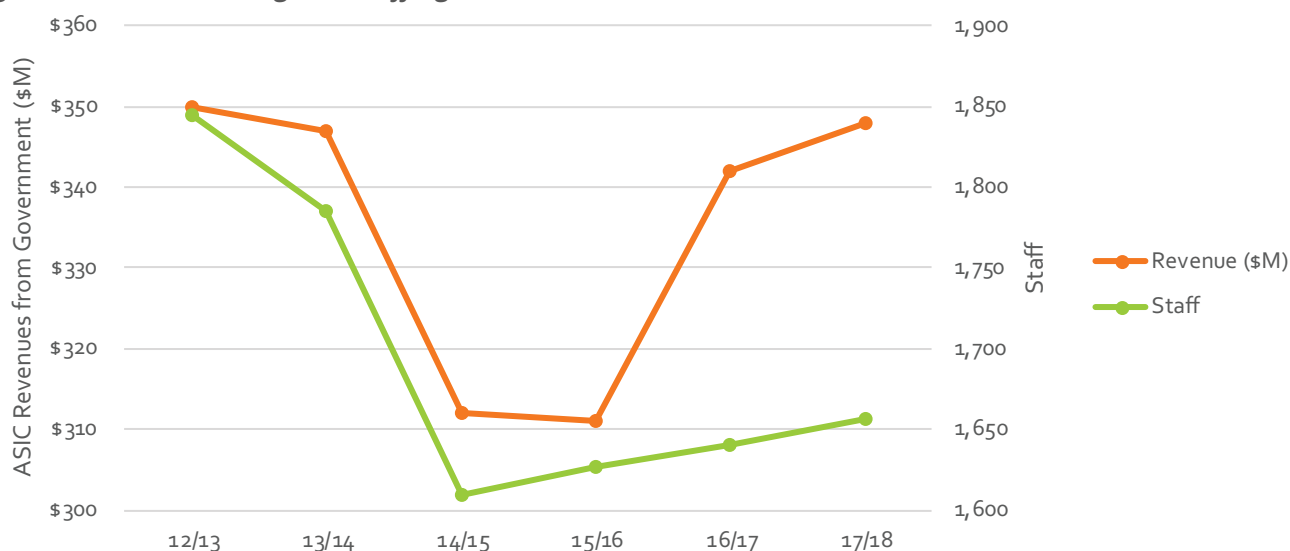
Information available for ACMA is reported on by agency outcome. The most relevant outcome for consumer protection enforcement is Outcome 1 – A communications and media environment that balances the needs of the industry and the Australian community through regulation, education and advice of which consumer safeguards, education and information are a program. Unfortunately there are not breakdowns of staffing numbers dedicated to the different outcomes.

C4 ASIC

Table: ASIC Resourcing and Staffing

Year	Revenue (\$M)	Staff	Chair	Staff/\$M
12/13	\$350	1,844	Greg Medcraft	5.27
13/14	\$347	1,785	Greg Medcraft	5.14
14/15	\$312	1,609	Greg Medcraft	5.16
15/16	\$311	1,627	Greg Medcraft	5.23
16/17	\$342	1,640	Greg Medcraft	4.80
17/18	\$348	1,656	James Shipton	4.76

Figure: ASIC Resourcing and Staffing



C5 Access Canberra

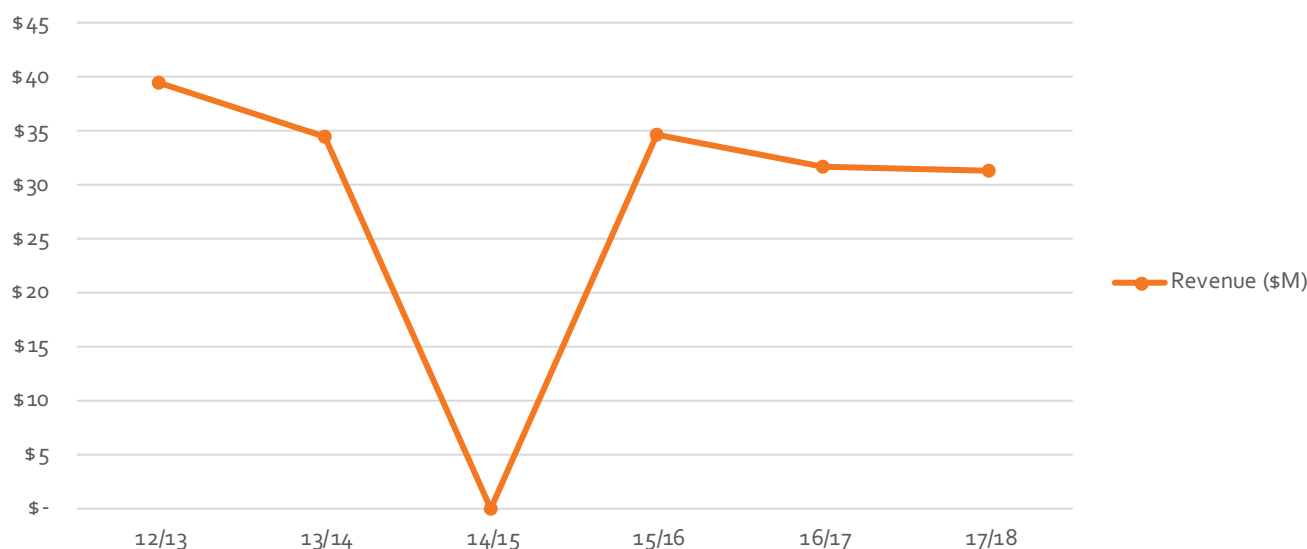
We were unable to locate staffing or funding information for Access Canberra as staffing and resource information is reported for ACT Justice and Community Safety as a whole.

C6 Consumer Affairs Victoria

Table: *Consumer Affairs Victoria Resourcing and Staffing*

Year	Revenue (\$M)	Staff	Director
12/13	\$39.448	NA	Claire Noone
13/14	\$34.529	NA	Claire Noone
14/15	NA	NA	Simon Cohen
15/16	\$34.559	NA	Simon Cohen
16/17	\$31.697	NA	Simon Cohen
17/18	\$31.348	NA	Simon Cohen

Figure: *CAV Resourcing and Staffing*



C7 Consumer Building and Occupational Services Tasmania

CBOS reporting is contained within the Department of Justice Annual Report. Separate staff and funding information is not reported for CBOS and therefore has not been included.

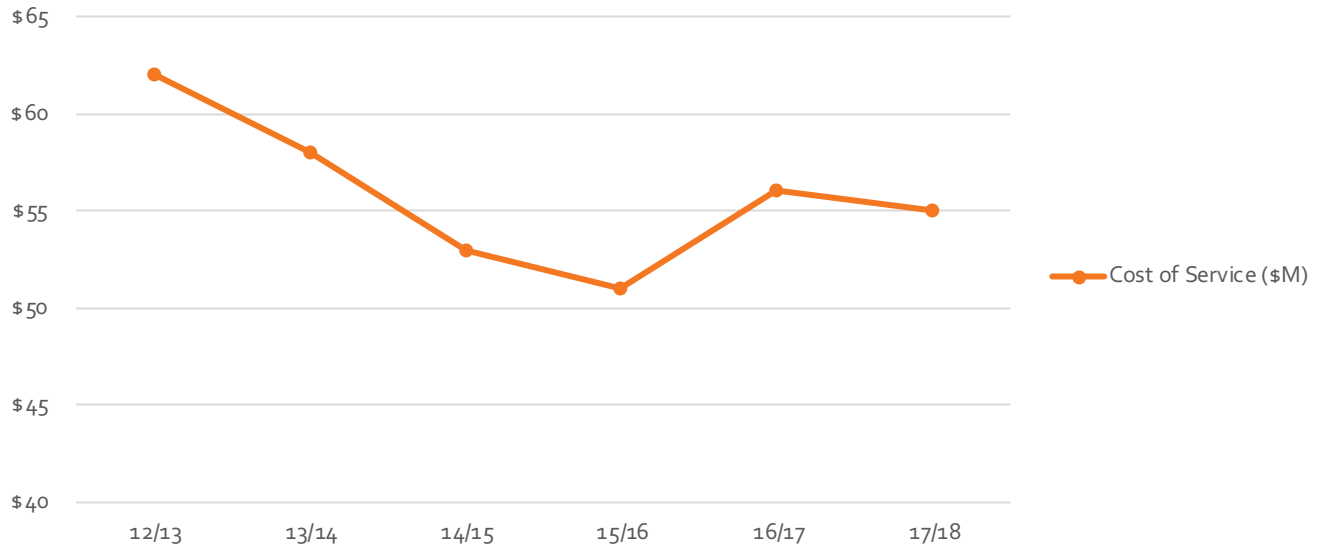
C8 Consumer Protection Western Australia

Financial information for WA Consumer Protection appears as part of the Industry Regulation and Consumer Protection Group in the Department of Commerce Annual Report and later in the Department of Mines Industry Regulation and Safety Annual Report. The cost of consumer protection services is separately recorded, however staff numbers are not.

Table: *Consumer Protection WA Resourcing and Staffing*

Year	Cost of Service (\$M)	Staff	Chair
12/13	\$62	NA	Anne Driscoll, Executive Director, Consumer Protection Division, Commissioner for Consumer Protection and Prices Commissioner
13/14	\$58	NA	Anne Driscoll, Executive Director, Consumer Protection Division, Commissioner for Consumer Protection and Prices Commissioner
14/15	\$53	NA	Anne Driscoll, Executive Director, Consumer Protection Division, Commissioner for Consumer Protection and Prices Commissioner
15/16	\$51	NA	Gary Newcombe, Acting Executive Director, Consumer Protection Division, Commissioner for Consumer Protection and Prices Commissioner
16/17	\$56	NA	David Hillyard, Acting Executive Director, Consumer Protection Division, Commissioner for Consumer Protection and Prices Commissioner
17/18	\$55	NA	Peter Gow, Acting Deputy Director General, Industry Regulation and Consumer Protection Group (retired at the end of 17/18)

Figure: Consumer Protection WA Resourcing and Staffing

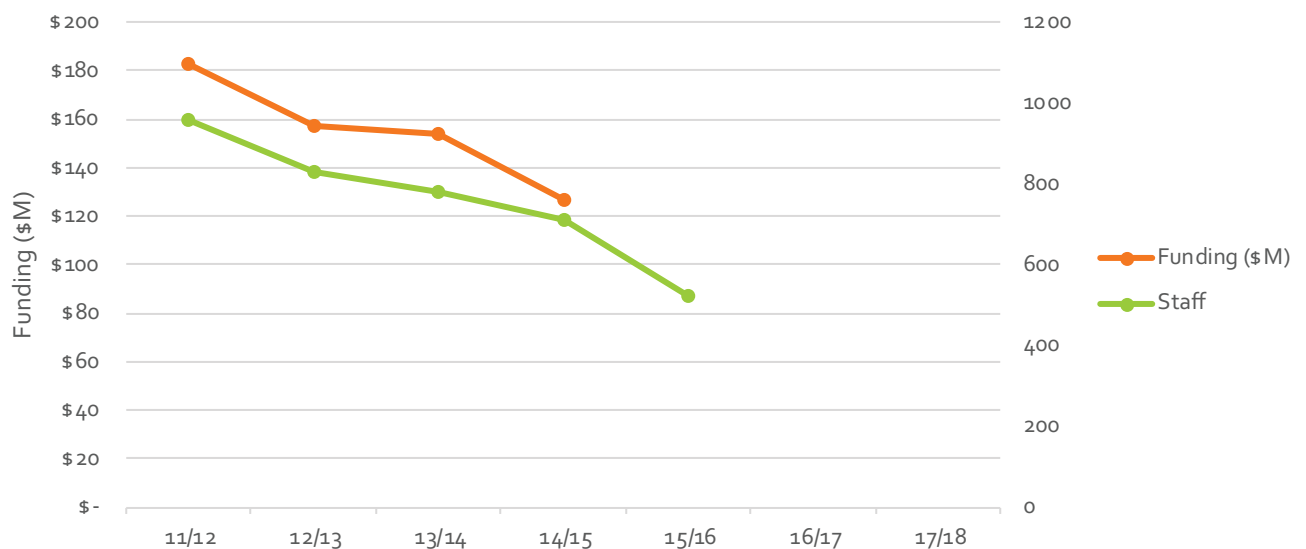


C9 NSW Fair Trading

Table: NSW Fair Trading Resourcing and Staffing

Year	Funding (\$M)	Staff	Commissioner	Staff/\$M	
11/12	\$183	956	Rod Stowe	5.22	
12/13	\$157	832	Rod Stowe	5.30	A division of the Office of Finance & Services
13/14	\$154	779	Rod Stowe	5.06	A division of the Office of Finance & Services
14/15	\$127	709	Rod Stowe	5.58	A division of the Department of Finance, Services and Innovation
15/16	NA	522	Rod Stowe		
16/17	NA	NA	Andrew Gavrielatos (acting)		
17/18	NA	NA	Rose Webb		Now part of the Department of Customer Service

Figure: NSW Fair Trading Resourcing and Staffing



C10 Northern Territory Consumer Affairs

Funding for NT CA is reported as part of the NT Department of Attorney General and Justice, under the heading 'Independent Offices'. As such it is not possible to identify how much of this funding is applied to NT CA. We were not able to locate staffing numbers.

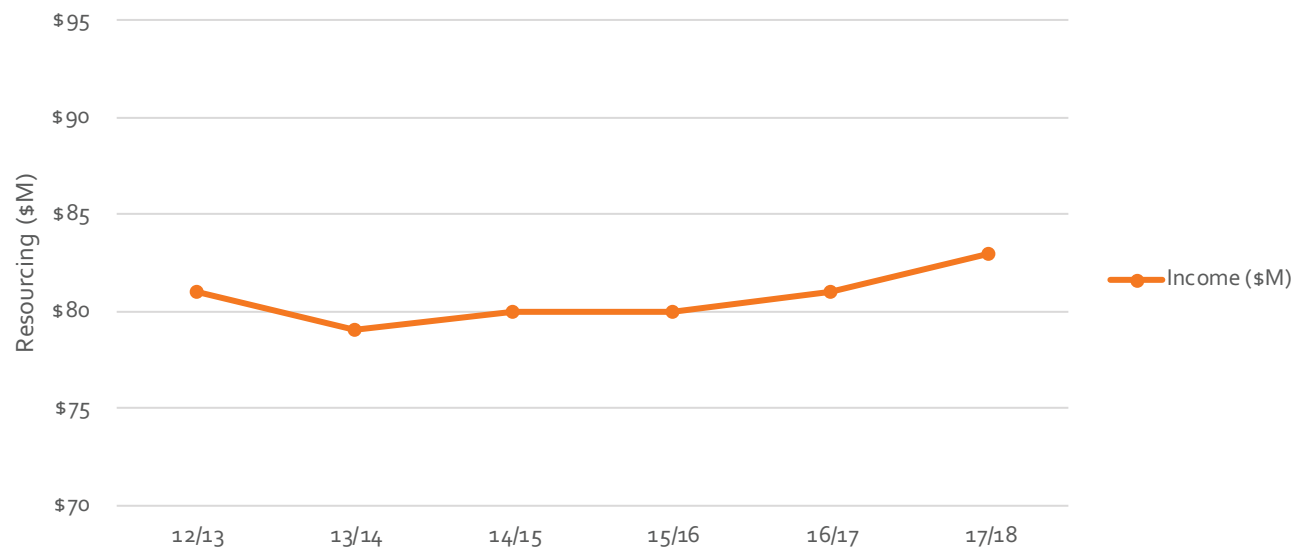
C11 Queensland Fair Trading

Queensland Fair Trading forms part of the Department of Justice and Attorney General. Income by department service area is reported. The Office of Fair Trading is part of the Liquor, Gaming and Fair Trading service area. Thus the figures below include liquor and gaming income as well as fair trading. Staffing is only reported at the Departmental level and has therefore not been included in the chart.

Table: *Liquor, Gaming and Fair Trading Services Resourcing and Staffing*

Year	Income (\$M)	Dept-Director General
11/12	\$92	David Ford
12/13	\$81	David Ford
13/14	\$79	David Ford
14/15	\$80	David Ford
15/16	\$80	David Ford
16/17	\$81	David Ford
17/18	\$83	David Ford

Figure: *Liquor, Gaming and Fair Trading Services Resourcing and Staffing*



C12 South Australia Consumer and Business Services

Financial information relating to Consumer Business Services is reported as part of the Attorney General's Department Annual Report. These reports contained expense information for Consumer and Business Affairs for 2011/12 only. Staffing numbers are only included at Departmental level.



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