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Australian Competition and Consumer Commission

Executive minute

Minute No 07/2022
To: Treasurer
Date: 30/05/2022
Subject: Incoming brief
Timing: Routine

Issue

- The Australian Competition and Consumer Commission (ACCC) is providing you a series of briefs as the incoming Treasurer.

Key points

- On behalf of the ACCC, we welcome you as the new Treasurer and look forward to a productive relationship as we work to enhance the welfare of consumers. We do this by promoting competition in Australian markets, enforcing fair trading, and efficiently regulating monopoly infrastructure.
- Enclosed is a general brief about the ACCC as well as briefs on priority matters for the ACCC and your Government's election commitments.
- We will also brief you in more detail as required on specific reports that the ACCC will provide to you and decisions we will ask you to make. A schedule of expected briefs for the next two months is provided.
- Our contact details are set out below and we will contact your diary manager shortly. We look forward to working with you and your staff.

ACCC key contacts

Chair	Gina Cass-Gottlieb	[REDACTED]
Chief Executive Officer	Scott Gregson	(02) 6243 1350; 0438 288 246
General Manager, Executive Office	Lisa Anne Ayres	(03) 9290 1980; 0404 801 493

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Relationship with Ministers and government

The ACCC is in the Treasury portfolio. Our role as a regulator complements the Treasury's role in advising government on competition and consumer policy.

Areas of competition enforcement, economic regulation and competition advocacy often overlap. Due to that overlap, the ACCC is well placed to observe the strengths and limitations of the legislative framework to promote competition, fair trading and consumer protection.

Where we consider we can add value, we can inform and advocate for policy change including by appearing at parliamentary inquiries, making submissions to review processes, commenting on exposure draft legislation and participating in forums.

Under the ACL, the Minister has a range of powers for market intervention to protect consumers from unsafe products. The ACCC advises the Minister on the use of these powers. This includes making recommendations to the Minister in relation to mandatory safety standards, information standards, mandatory recalls and safety warning notices.

We believe Ministerial engagement is essential to maintaining of the single law multi regulator ACL arrangements. This is in our view key to preventing disparate reforms brought about by State regulators.

Engagement with Ministerial offices

We are committed to providing timely and accurate information to our portfolio Ministers. In practice this means that our Executive Office has a regular dialogue with Ministerial offices to keep them abreast of key outputs. We do this by:

- having weekly meetings between the ACCC Executive Office and Ministerial advisors,
- circulating a weekly report of upcoming announcements,
- providing executive minutes or other briefing on ACCC reports and announcements,
- providing embargoed copies of reports, media releases and major speeches, and
- drafting question time briefs in consultation with the Treasury.



Scott Gregson
Chief Executive Officer

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Incoming Government Brief

May 2022

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Note from the Chair

Productivity growth is central to the economic prosperity of all Australians and supports key social and environmental goals.

Properly functioning markets are critical to productivity growth. They provide signals that encourage resources to be devoted to their most highly valued uses. Properly functioning markets also drive innovation and reduce waste by encouraging firms to employ efficient production processes and to pursue better ways of doing things. However, markets don't always work as effectively as they could.

Competition engineers a process of creative destruction where more productive firms replace less productive firms. It also drives innovation and the adoption of cutting-edge technologies and processes. Firms that fail to innovate, adopt productivity-enhancing technologies, or adapt to the changing demands of consumers, are replaced by those that do. This dynamic process underpins productivity growth.

We believe that effective competition and productivity growth are inherently linked in a market-based economy.

The ACCC's role, simply put, is to make markets work for consumers now and in the future. Not by overriding markets, but by maintaining and promoting competition and fixing market failure where we can, and by protecting the interests and safety of consumers in the support of a fair marketplace.

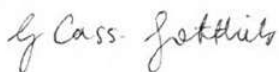
Our experience, expertise and reputation as a competition and consumer champion can be drawn upon across a range of sectors to assist the Government in addressing challenges in the economy.

This brief sets out key aspects of the ACCC's remit that are of immediate interest, as well as:

- our current law reform agenda having regard to the Government's election commitments
- details of our organisational structure and operations, and
- a schedule of expected briefs for the next quarter.

The ACCC is committed to work with the Government, portfolio Departments and fellow independent regulators to deliver on the Government's economic agenda.

My fellow Commissioners and I, along with the ACCC Senior Executive team look forward to a productive working relationship with you.



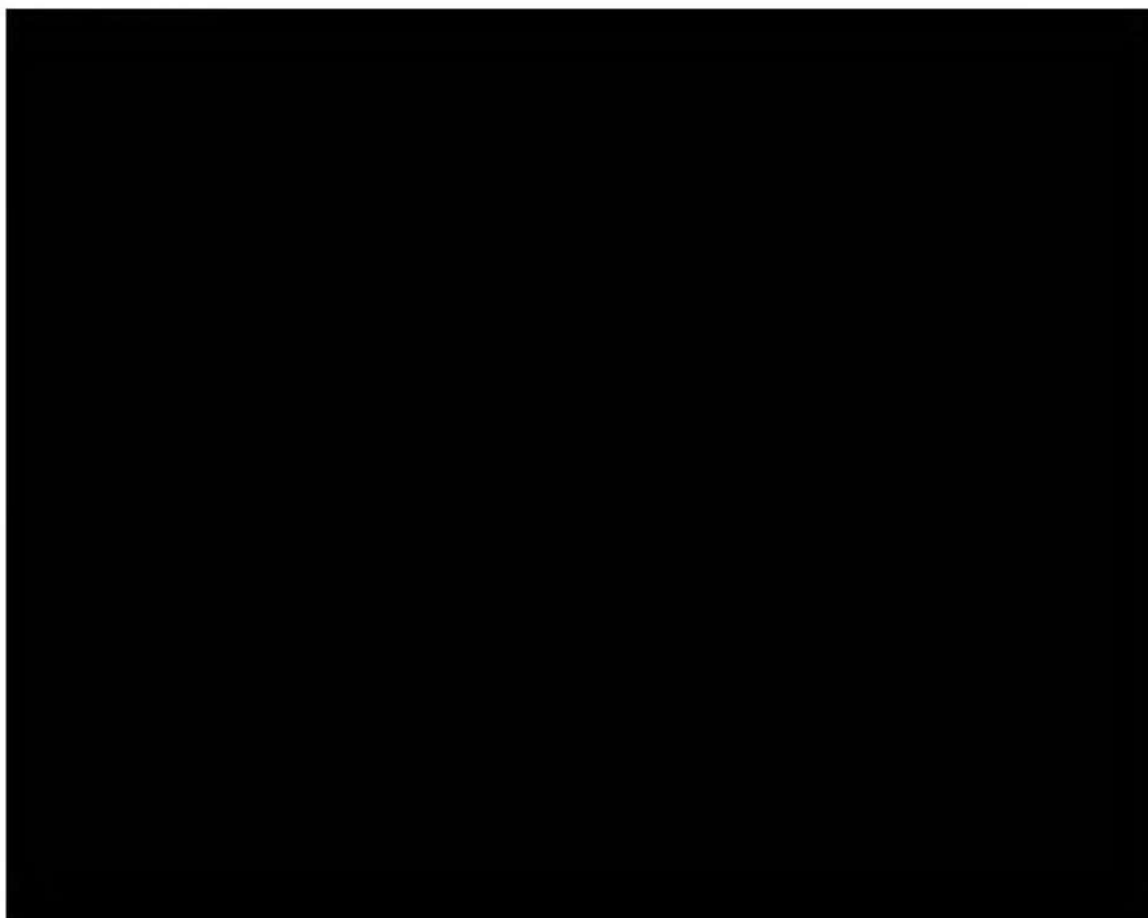
Gina Cass-Gottlieb
Chair

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2.1 ACCC Deputy Chair Appointment

Issue

- The term of ACCC Deputy Chair, Delia Rickard, is set to expire on 26 July 2022. This appointment needs to be extended or filled.
- Ms Rickard leads the ACCC's consumer, product safety and scams work, including media and stakeholder engagement. A timely appointment or process for this position is a crucial signal to the consumer movement of the government's commitment to consumer issues.
- Treasury is the Department responsible for progressing ACCC Commissioner appointments.

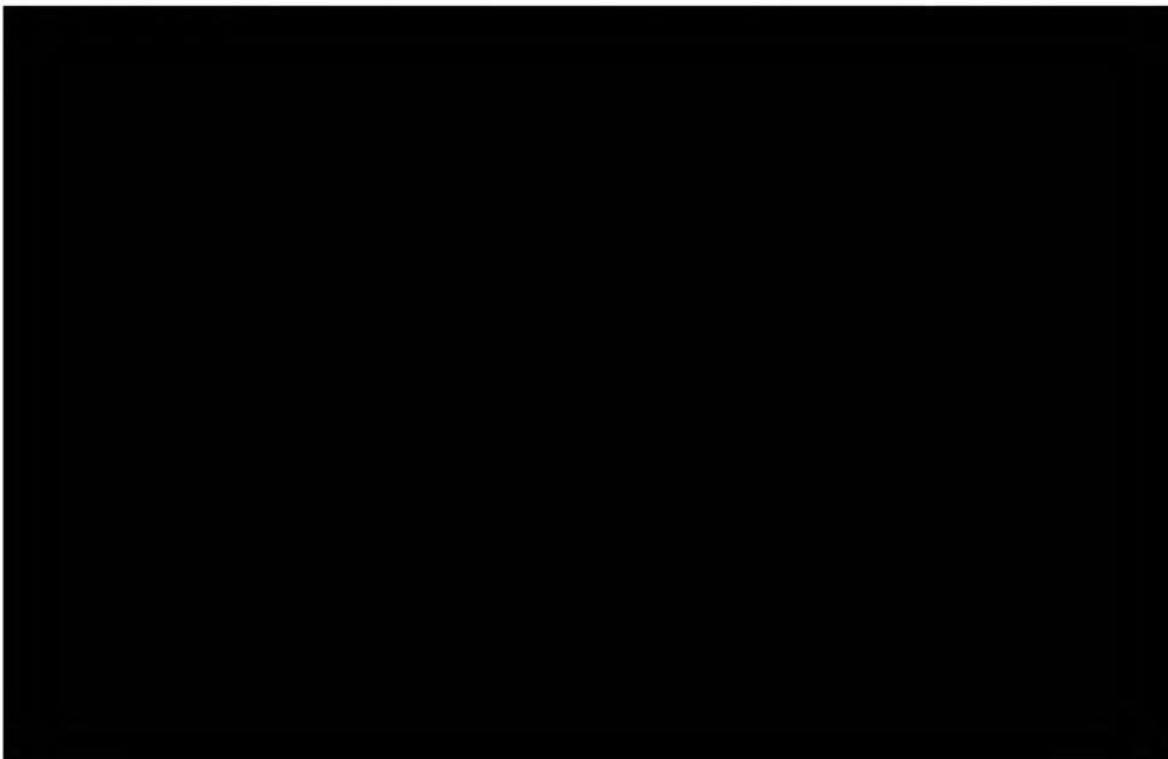


¹ Section 7(4).

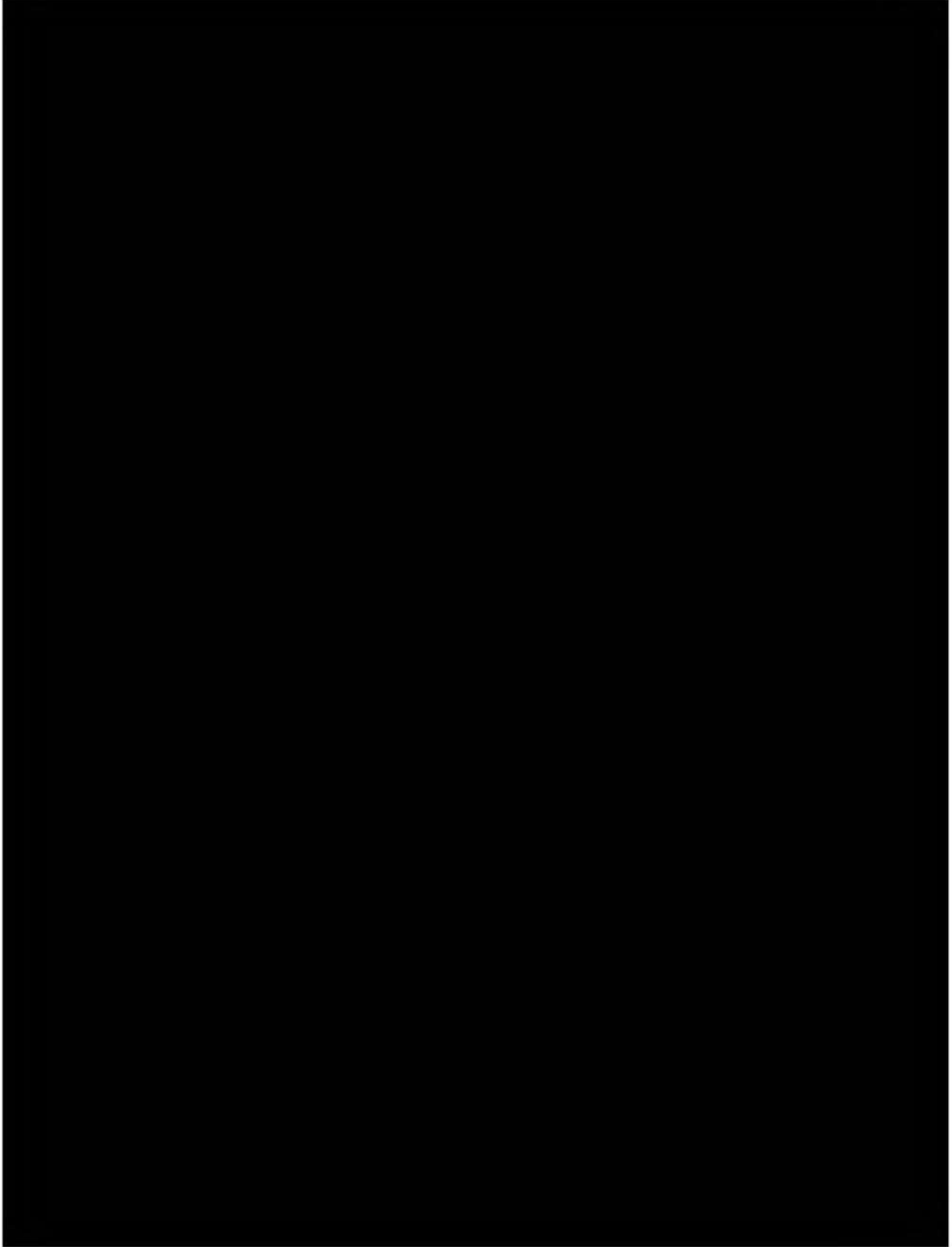
2.2 NBN Regulatory Framework

Issues

- The NBN is a crucial piece of national infrastructure and getting the regulatory settings right will directly benefit productivity and the long term interests of Australian consumers through the promotion of competition and efficient investment in, and operation of, the network.
- The ACCC must decide whether to accept or reject a variation that NBN Co has proposed to its Special Access Undertaking (SAU). The SAU specifies the default rules for retailers to access the NBN through to 2040. The ACCC makes its decision on the basis of the long term interests of end users.
- The ACCC is consulting extensively with NBN Co, retailers and other stakeholders with a view to reaching a decision on whether to accept or reject the SAU by the end of September 2022. There are three fundamental questions in the ACCC's consideration: price, future expenditure and quality. The ACCC has not yet reached any preliminary decision regarding whether or not to accept the proposed variation and is progressing consultation on all relevant issues.
- If ultimately the ACCC is unable to accept the SAU variation, there are alternative regulatory options for both the ACCC and Government.
- The ACCC will engage with the Communications and Finance Ministers on this issue in coming weeks.



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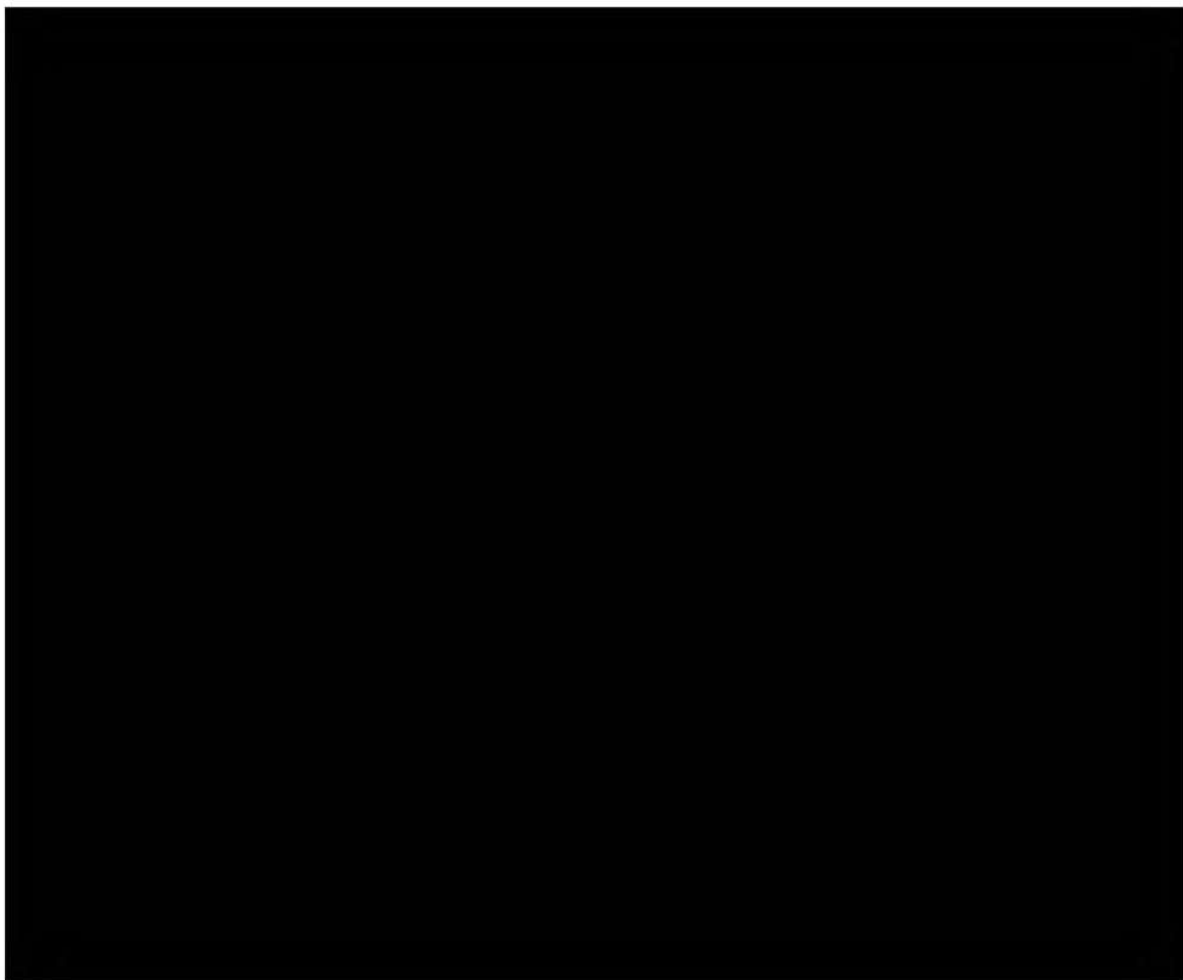


2.3 Digital Platforms Service Inquiry

Issues

- In the fifth report of the five-year Digital Platforms Services Inquiry, the ACCC is considering the need for broad reform to address competition and consumer harms arising from digital platform services and, if required, what reform could look like. This report comes at a time when overseas jurisdictions are actively considering further regulation of large digital platforms.
 - On 28 February 2022 the ACCC released a Discussion Paper seeking stakeholder feedback on harms and potential reforms. Submissions closed on 1 April 2022. The ACCC is also conducting two stakeholder roundtables in June with interested parties.
 - The report is due to the Treasurer by 30 September 2022 and will be a significant milestone in the ACCC's consideration of issues and harms in the supply of digital platform services in Australia.
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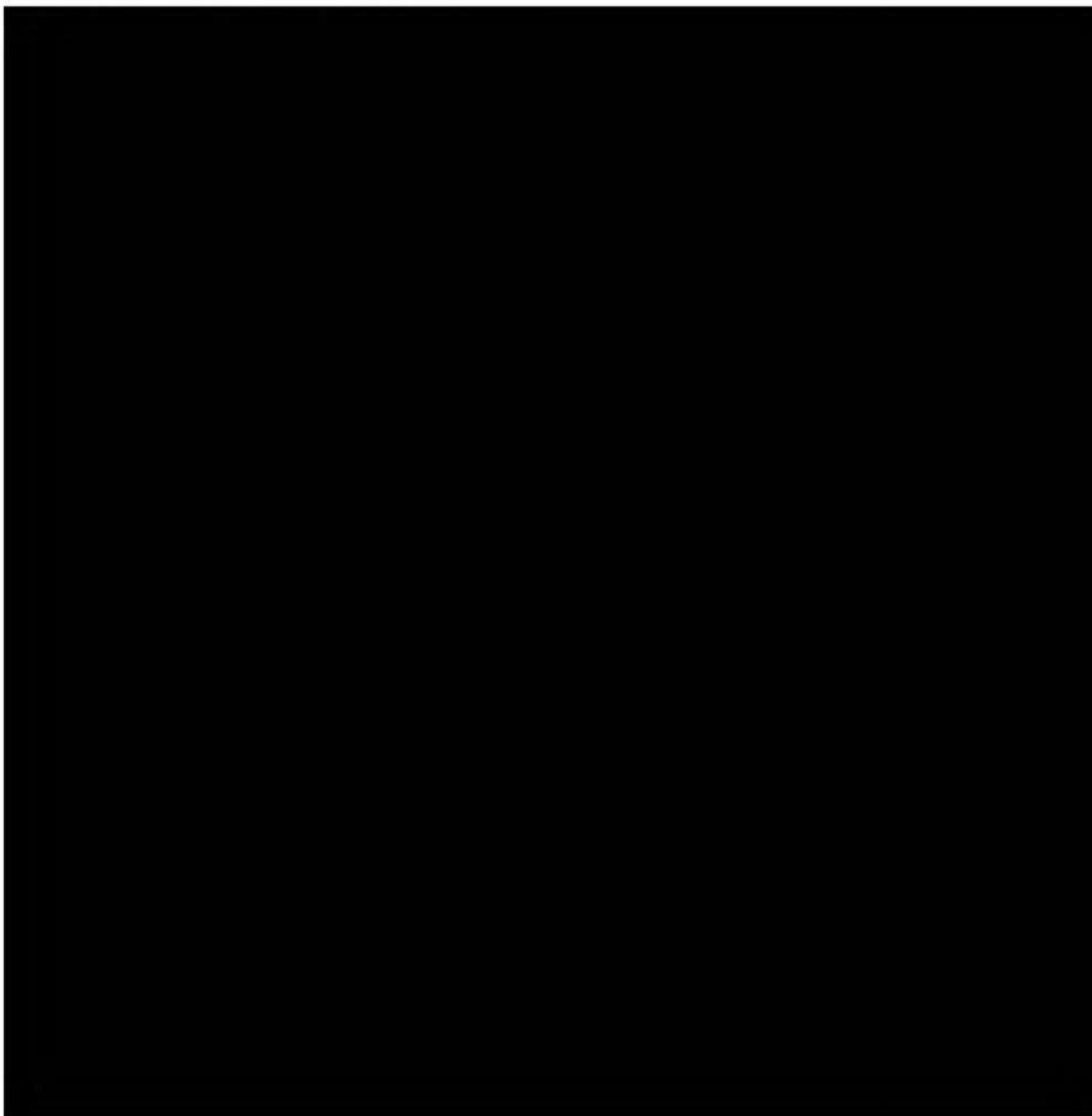


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2.4 Childcare

Issue

- The ACCC notes the election commitment that:
“We’ll also get the ACCC to design a price regulation mechanism [for child care] to drive out of pocket costs down for good, and the Productivity Commission will conduct a comprehensive review of the sector with the aim of implementing a universal 90 per cent subsidy for all families.”
- The ACCC will work with relevant Ministers and Departments in the coming months to provide input to child care policies.



2.5 Online Scams

Issue

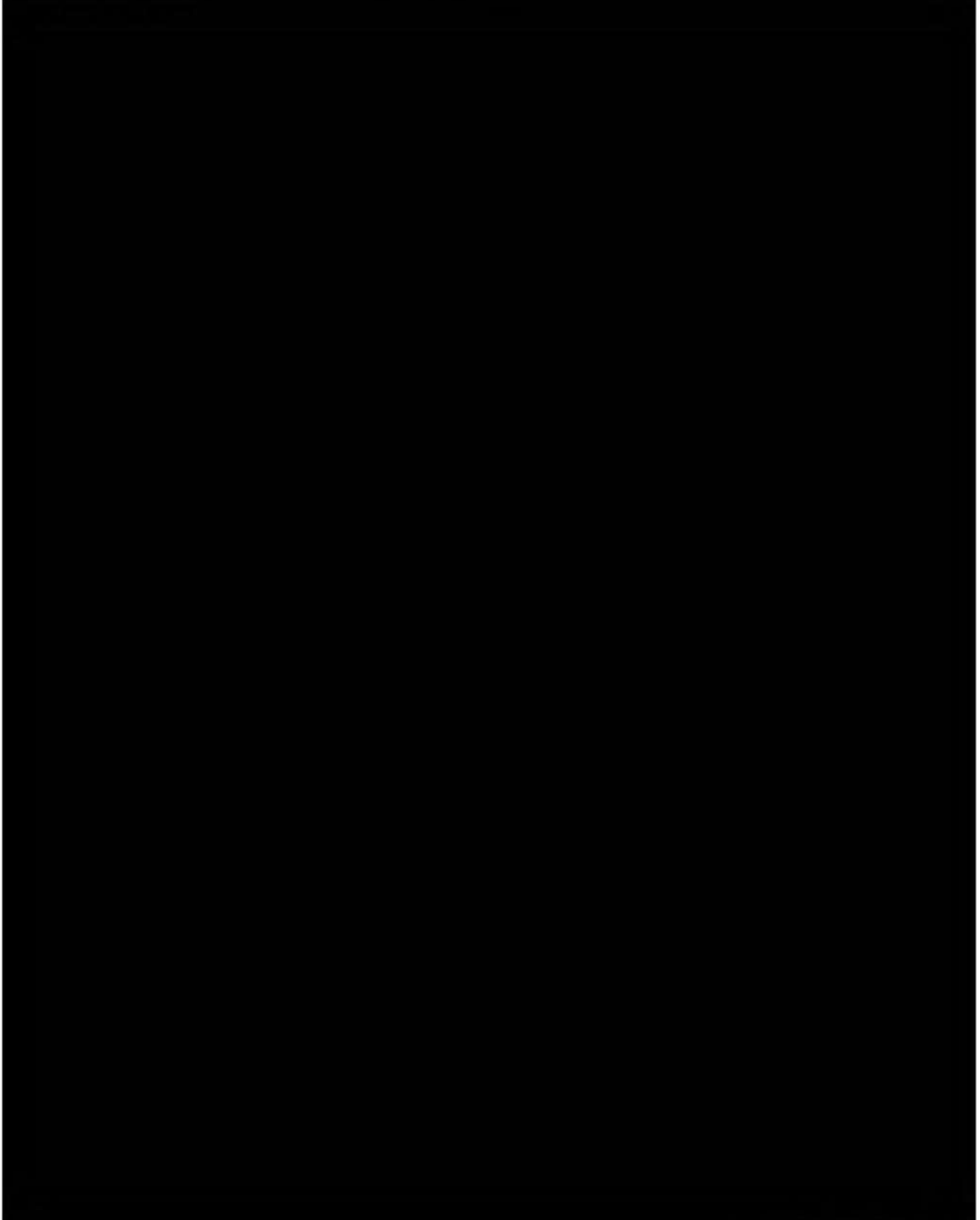
- The Government committed to take action to combat scams and online fraud including:
 - establishing a national anti-scam centre
 - introducing industry codes across a range of sectors
 - reviewing the penalties framework
 - requiring digital platforms to remove scam advertising, and
 - tasking a Minister with direct portfolio responsibility for championing the protection of consumers and businesses online.
- The ACCC has a strong brand in scams awareness and education and works closely with other regulators and the private sector within its current funding envelope.

Key points

- Scams are an increasing problem in Australia with \$323m lost in 2021 representing an increase of 84% from 2020. Only 12% of victims report to Scamwatch. Our informed estimate of scam losses in 2021 is over \$2 billion. Already in 2022 we have seen a 166% increase in losses, primarily due to investment scams.
- Preventing scams and online fraud is a significant concern for consumers and small business. It is also important for maintaining confidence in the economy.
- The ACCC runs Scamwatch, the most common government avenue for consumers reporting scams.
- In 2021, the ACCC received 286,602 scam reports compared to 62,349 reports made to the police via ReportCyber, 50,684 to the ATO and over 146,198 reports across all of the major financial institutions.
- To achieve this the ACCC educates the public about how to recognise, avoid and report scams. Deputy Chair Rickard leads public media and stakeholder engagement on scams. We also share intelligence and work with government, law enforcement and the private sector to disrupt and prevent scams.
- The ACCC is not responsible for criminal law enforcement against scams. Due to the nature of scams, law enforcement is not effective to reduce harm or prevent scams. Increasing penalties will not overcome the challenges involved in detecting and prosecuting scammers who are often based overseas and difficult to identify.
- The ACCC enforces a range of mandatory industry codes. In our experience, industry codes with clear obligations, effective monitoring, enforcement and penalties can lead to significant improvements in industry conduct. There are examples of codes in the UK that provide increased protection to victims of scams and better scams prevention in the financial sector.

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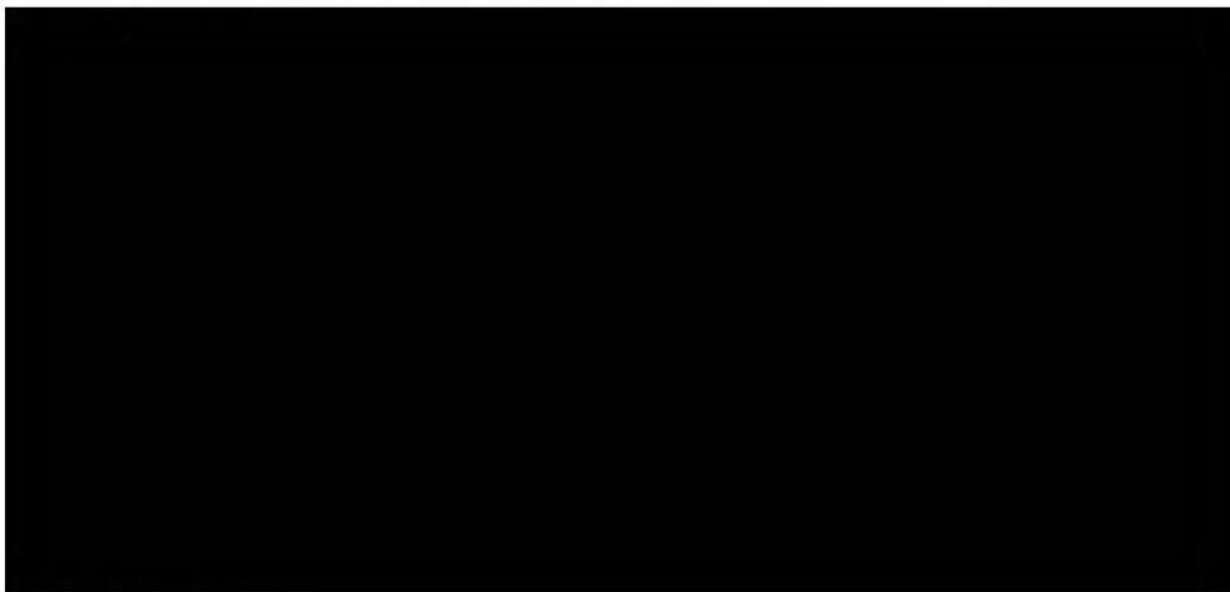
- Due to our strong relationships with government, law enforcement and the private sector and our experience in developing and implementing a wide variety of industry codes, the ACCC is well placed to continue to make a strong contribution to the Government's scam prevention work.



2.6 Matters impacting First Nations consumers

Issue

- Matters impacting Indigenous Australians are an enduring priority for the ACCC.
- We note the Government's election commitment that: *"We will strengthen protection of First Nations intellectual property, combatting the unconscionable market in fake art and reaffirming the importance of Indigenous rights in future international trade agreements."*



Background

- Each year, the ACCC sets out its Compliance and Enforcement Priorities. This signals to industry and other stakeholders the areas we intend to focus on and guides our allocation of resources. In addition to identifying priorities for the year ahead, the ACCC identifies certain areas where we have an enduring focus and prioritise our work.
- Since 2016 the ACCC has identified matters impacting First Nations Australians as an enduring priority and indicated this is likely to remain so long as the additional challenges facing Indigenous Australians continue.
- Consistent with this priority position, the ACCC undertakes a number of compliance initiatives and takes enforcement action against businesses relevant to First Nations Australians. Some recent and continuing examples include:
 - On 13 May 2021 the Federal Court ordered that Telstra pay \$50 million in penalties for engaging in unconscionable conduct when it sold mobile contracts to more than 100 Indigenous consumers across three states and territories, in proceedings brought by the ACCC. Telstra admitted that it had acted unconscionably when sales staff signed up Indigenous consumers to multiple post-paid mobile contracts which they did not understand and could not afford. Telstra also undertook to provide remediation.

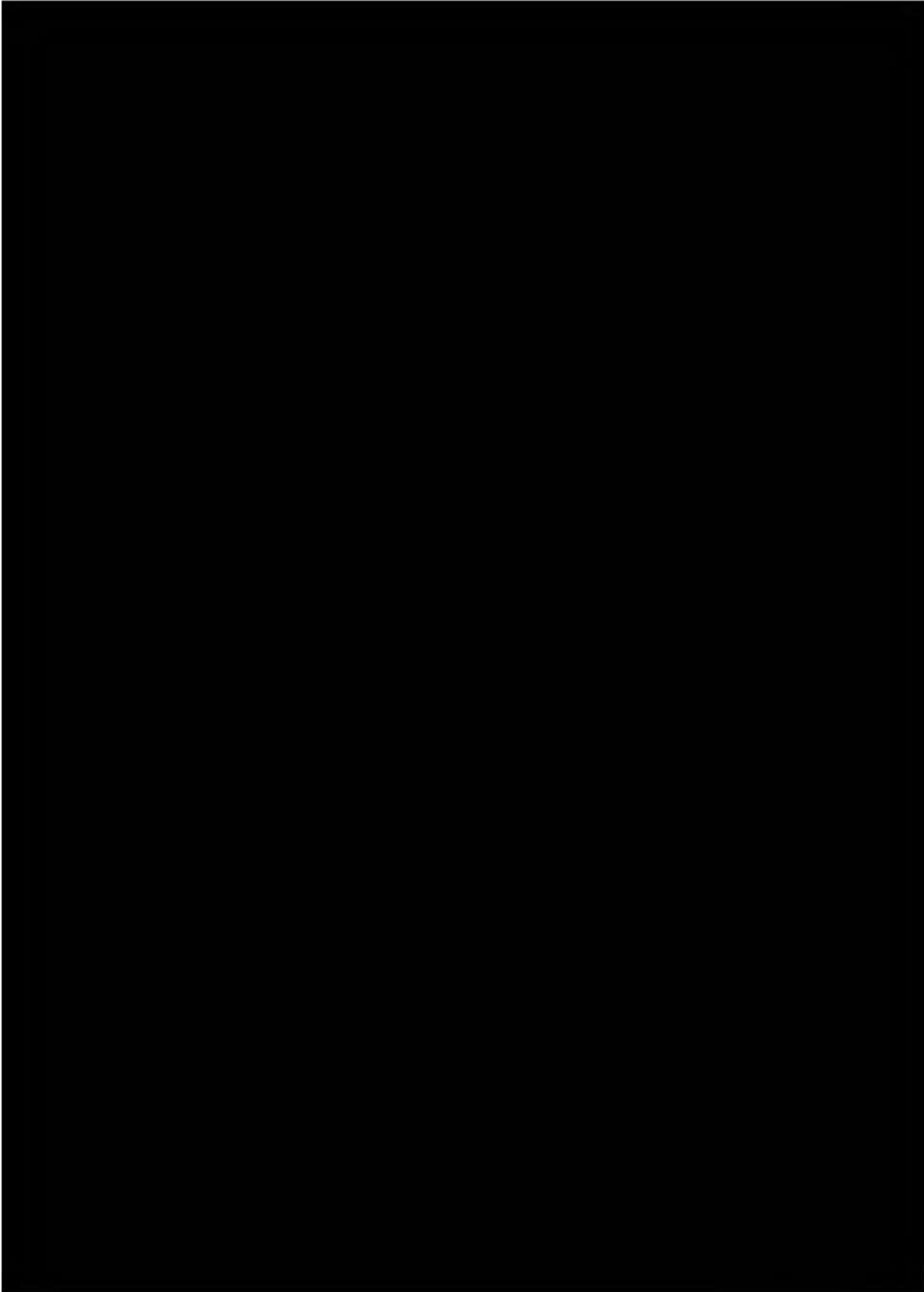
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- The ACCC operates Indigenous consumer awareness and community outreach program including regular visits, targeted social media activity including videos with Indigenous participants. This work focusses on matters impacting Indigenous consumers including scams.
- The ACCC supports communities in establishing themselves as 'do not knock towns' allowing them to assert their consumer rights with direct marketers. We also partner with these communities to identify and address instances of improper conduct in door-to-door sales.
- Focussed product safety activity and initiatives. For example, in administering the mandatory recall of dangerous Takata airbags in recent years, the ACCC undertook focussed activity in communities at particular risk given their access to recall support and risk due to environmental impact (high humidity) on the products.
- We have taken particular interest in various matters raised in relation to Indigenous Art, from treatment of artists by buyers and the sale of art not produced by Indigenous artists. On 26 June 2019, The Federal Court ordered Birubi Art Pty Ltd (in liquidation) to pay \$2.3 million for making false or misleading representations about products it sold as being painted by Indigenous artists.



- Over recent years, the ACCC has participated in a number of Parliamentary inquiries relevant to First Nations consumers:
 - Inquiry into food pricing and food security in remote Indigenous communities
 - Indigenous art and craft, and
 - Corporate Australia's engagement with Indigenous consumers
- The Government has responded to some but not all recommendations arising from those reviews.

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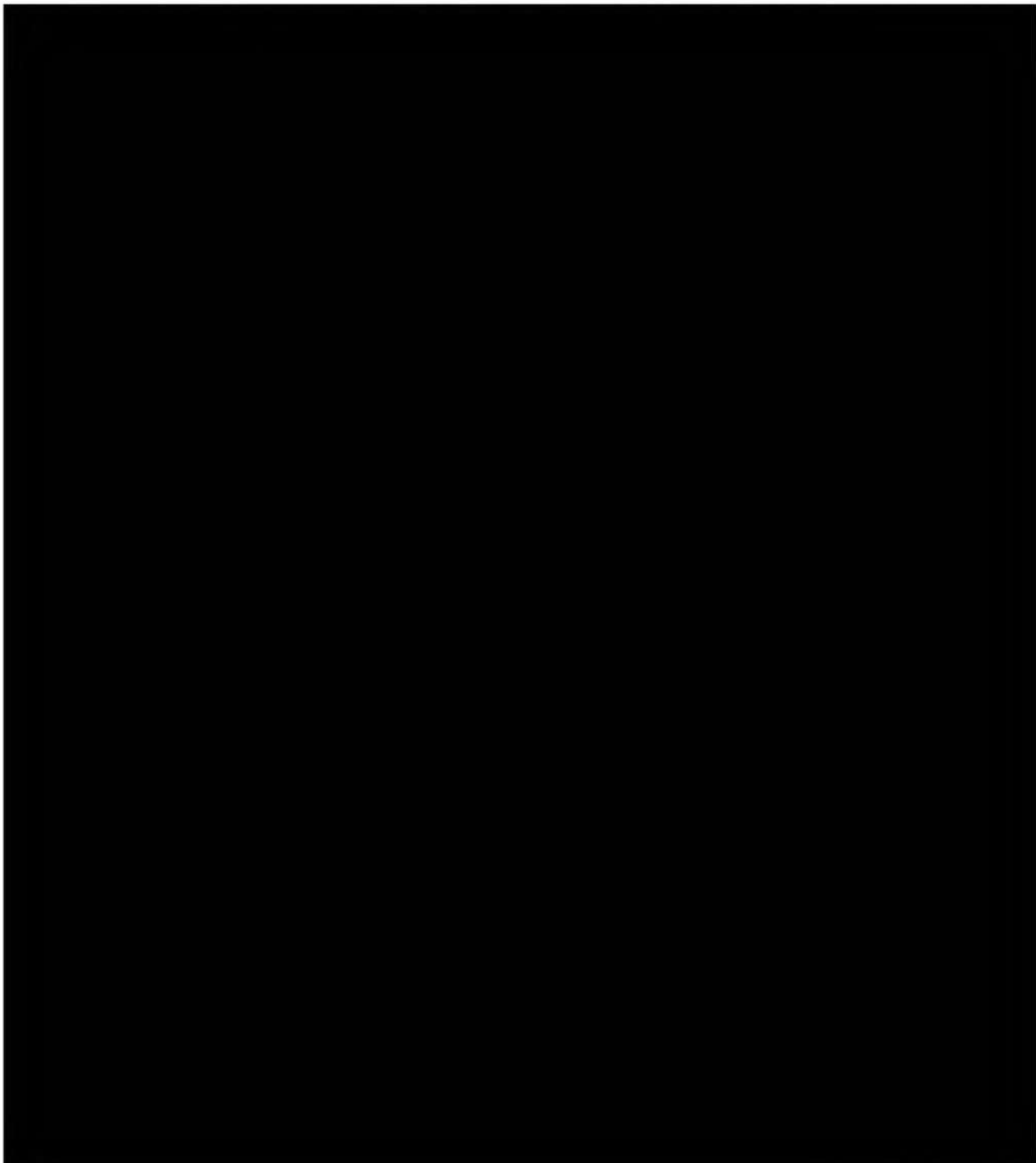


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3.2 Increasing penalties to \$50 million

Issue

- Labor has proposed an increase of the maximum fine for competition law breaches under the CCA from \$10 million to \$50 million.
- The ACCC welcomes this measure and recommends that the penalty for Australian Consumer Law (ACL) breaches also be increased from \$10 million to \$50 million.

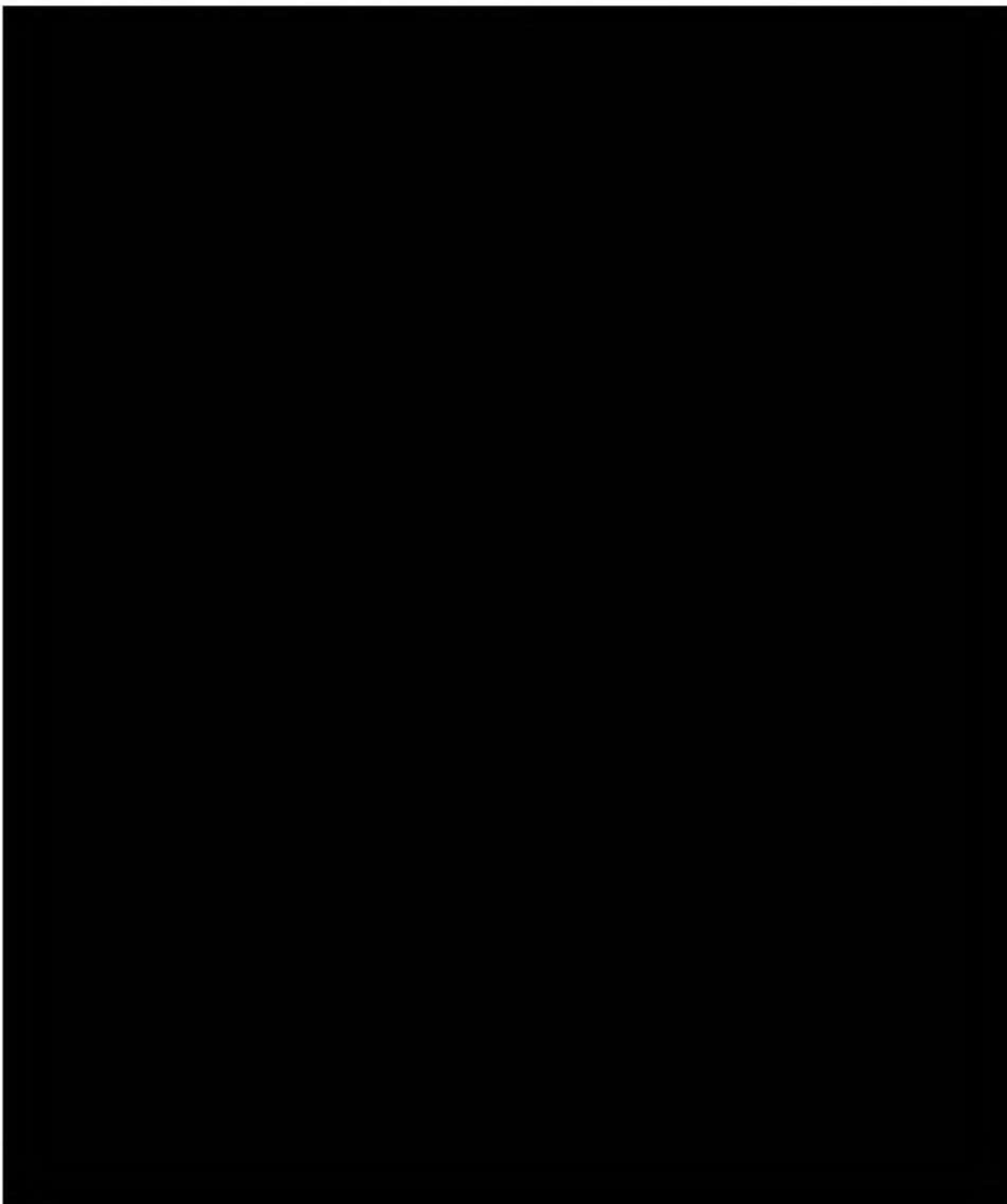


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3.3 Super complaints

Issue

- Labor's [better competition](#) measures include establishing a 'Super Complaint' function within the ACCC modelled on the UK Competition and Markets Authority (CMA) through which trusted consumer groups, such as CHOICE, and business sector advocates can enlist the ACCC to investigate serious complaints.



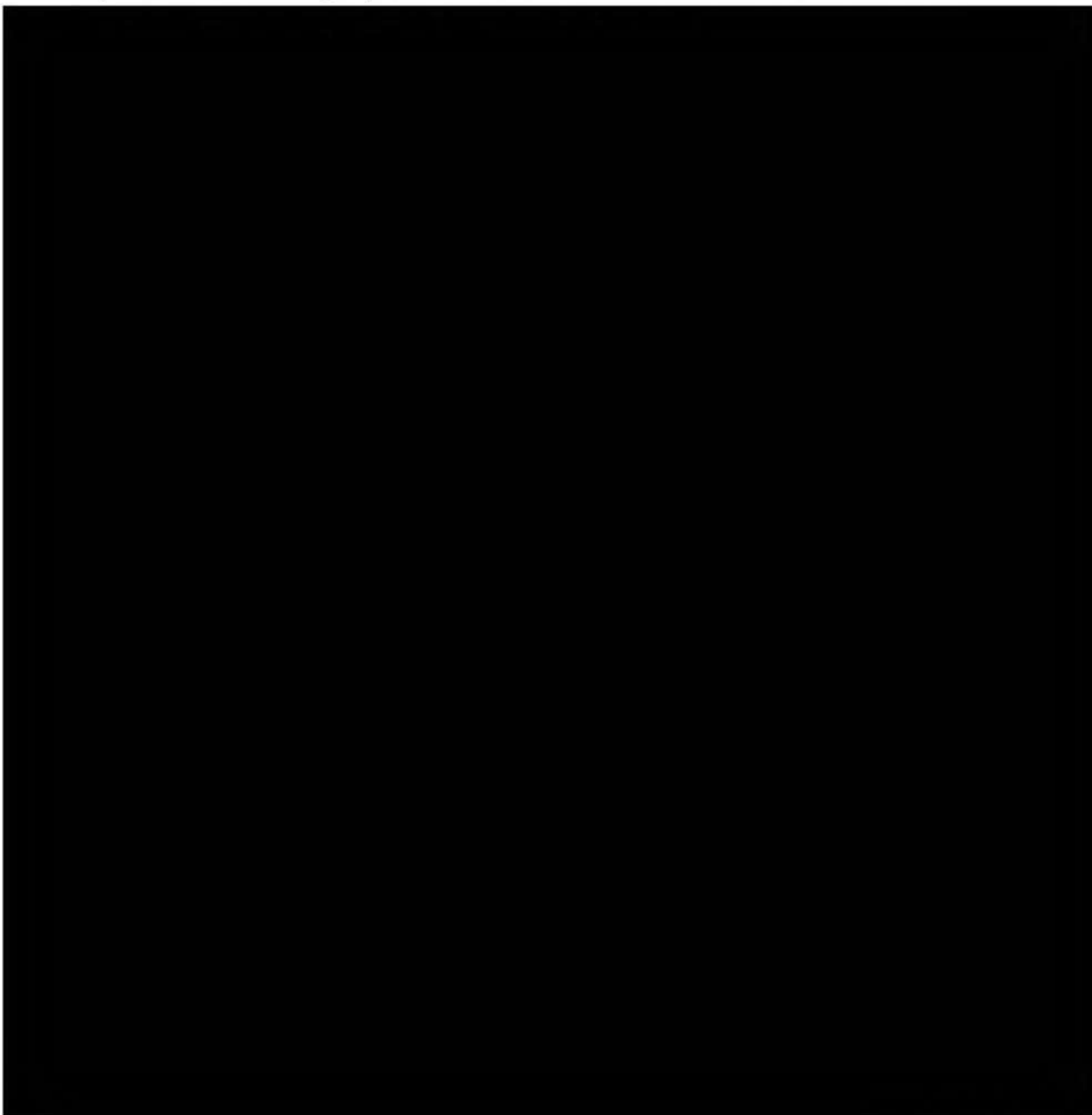
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4.1 Potential ACCC grains sector study

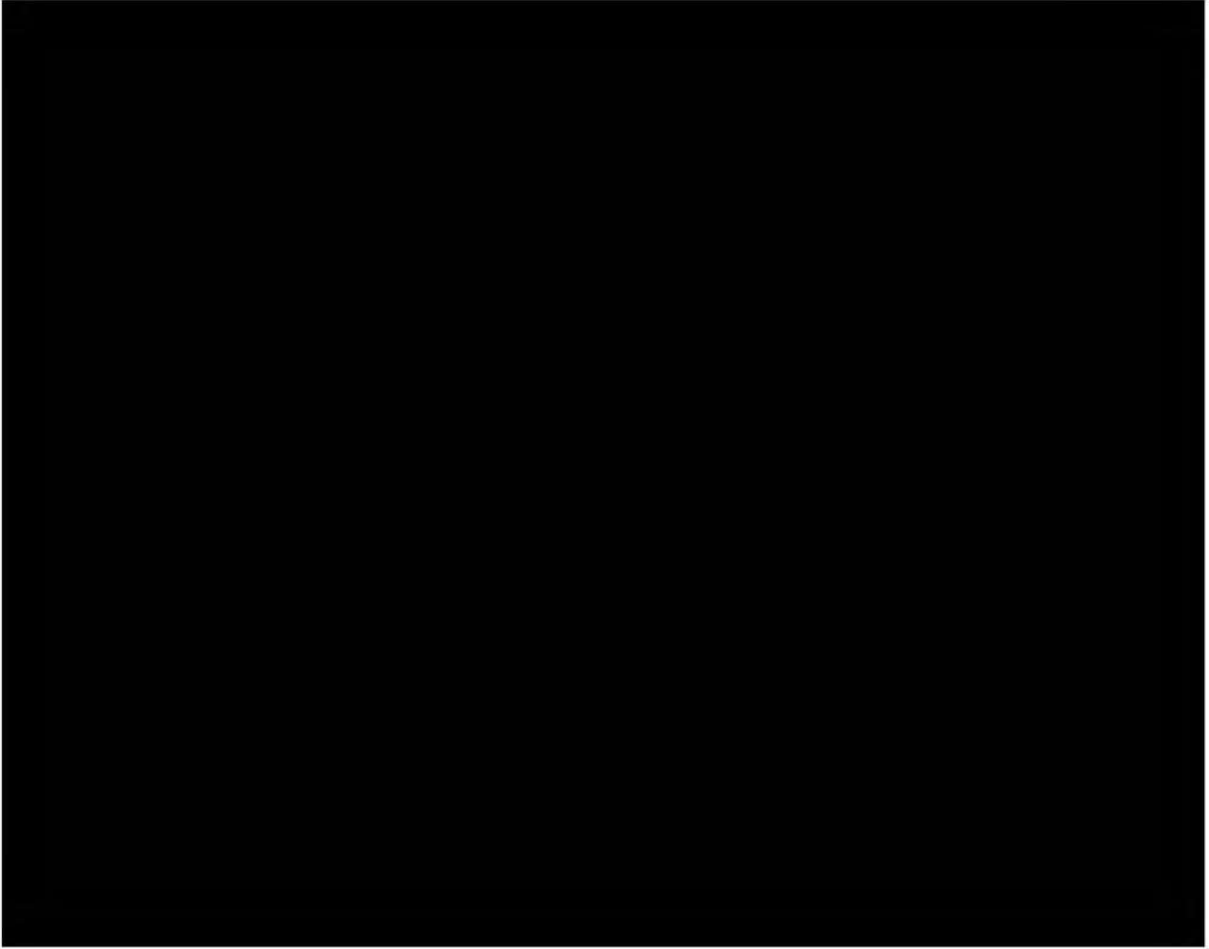
Issue

- In response to ongoing concerns about the efficiency of grain markets in Australia, and the role of near-monopoly, vertically-integrated grain corporations, the ALP National Secretary Paul Erickson wrote to Grain Producers Australia in response to GPA's call for the ACCC to conduct a study of the Australian grains sector to "optimise competition". Mr Erickson wrote that:

Following the election, should Labor form government, Labor would be prepared to meet the sector to better understand the basis of current concerns, and how an ACCC study would assist in addressing current grain grower concerns, as well as potential cost-of-living impacts for Australian consumers.



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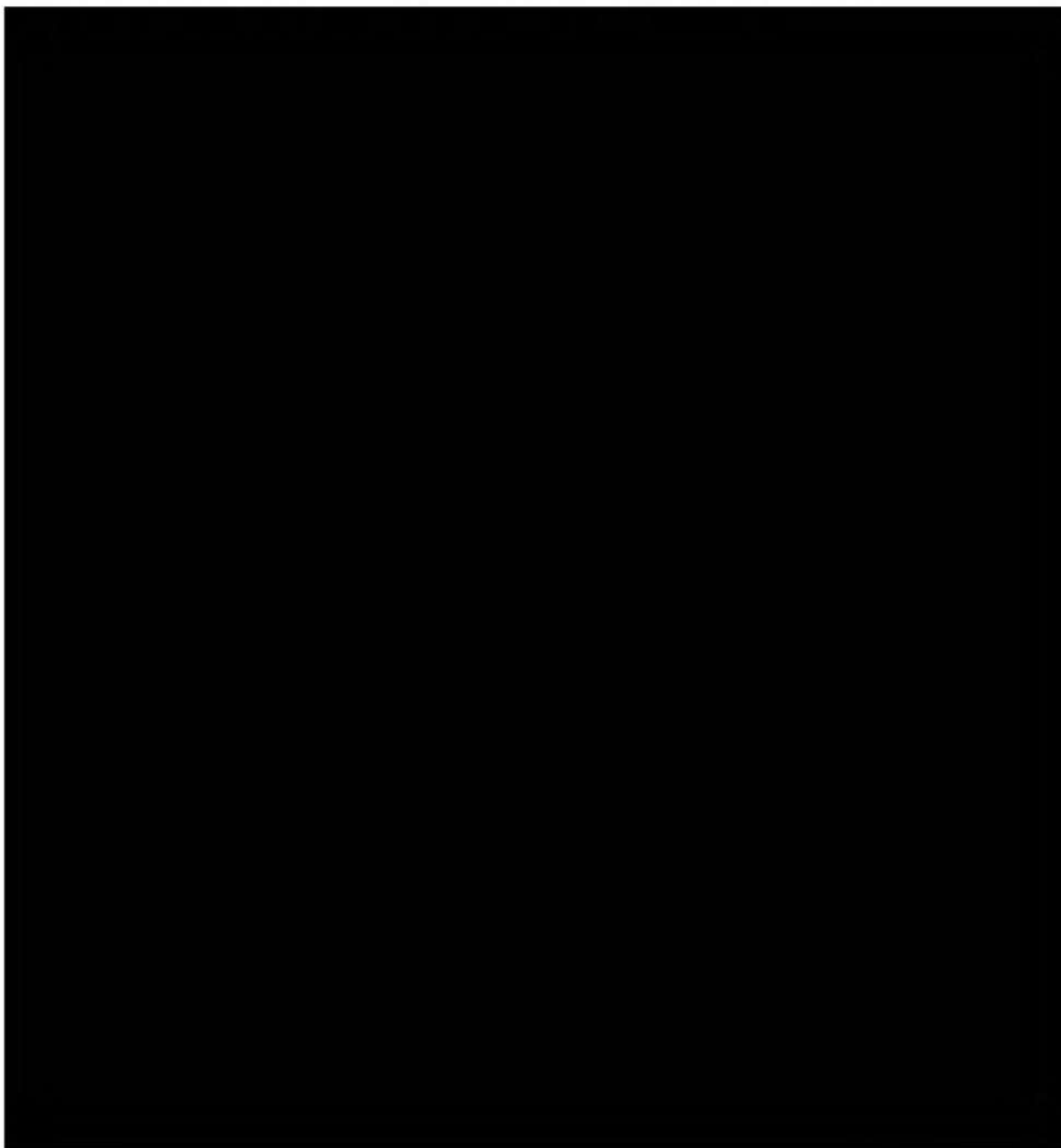


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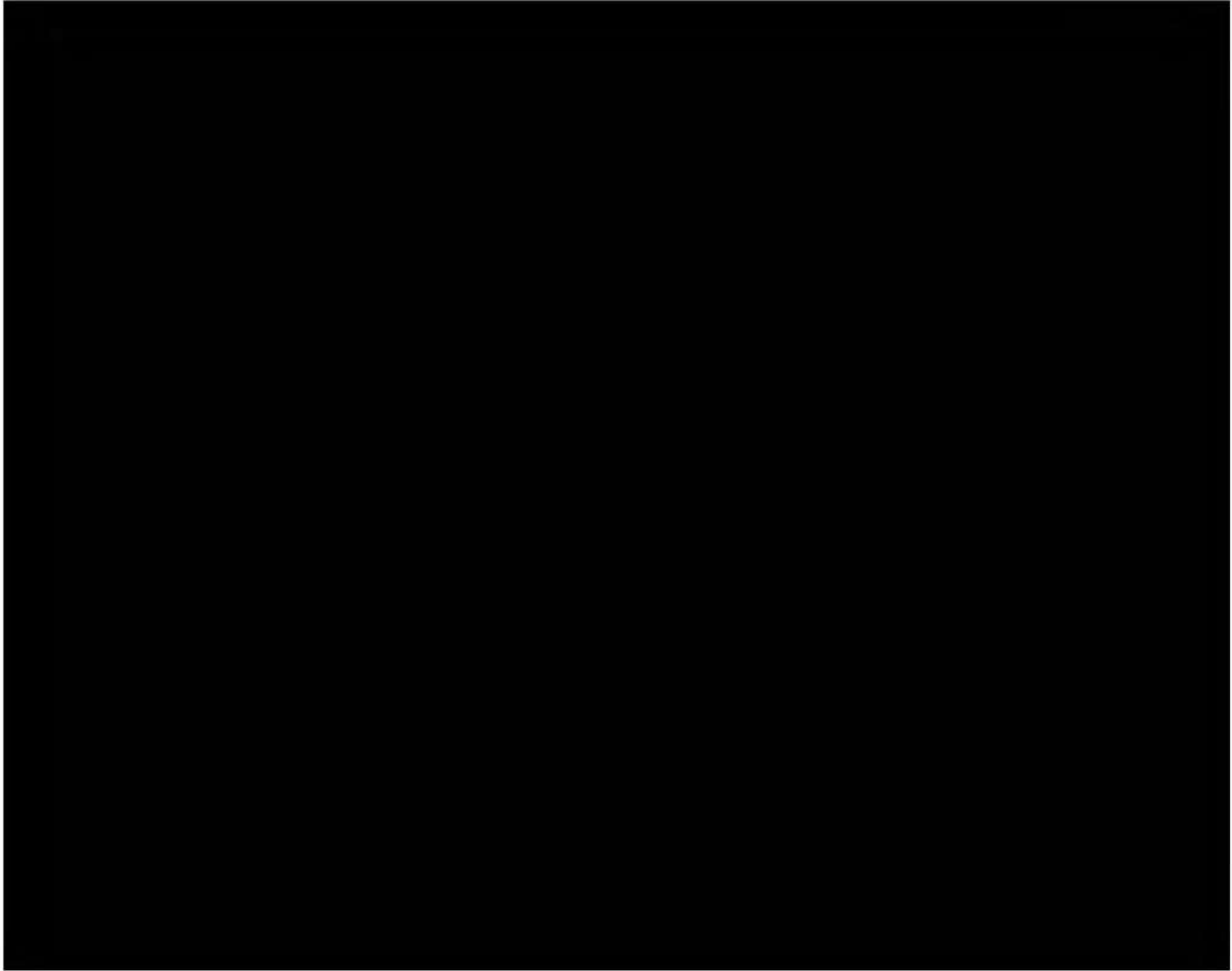
4.2 Murray-Darling Basin water markets reforms

Issue

- Labor's five-point plan to safeguard the Murray-Darling Basin included a commitment to provide a full response to the ACCC's recent water reports and to implement relevant recommendations from the ACCC's Murray-Darling Basin Inquiry final report.
- The Basin water markets are critical to the efficiency and productivity of Australian agriculture. The deficiencies in the settings for, and governance of, water trading undermine the efficiency of water markets and agricultural industries.



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Appendix: About the ACCC and AER

A – Overview of the Agency

Overview of the Australian Competition and Consumer Commission

- The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading, and product safety for the benefit of consumers, businesses, and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading, and product safety provisions of the *Competition and Consumer Act 2010 (CCA)*, regulate national infrastructure, and undertake market studies.
- The purpose of the CCA is to enhance the welfare of Australians by:
 - Promoting competition among business
 - Promoting fair trading by business
 - Protecting consumers in their dealings with business.
- The ACCC is responsible for competition enforcement for the whole economy.
- The ACCC shares consumer protection responsibility with state and territory consumer affairs agencies, who administer mirror consumer protection legislation in each of their jurisdictions, and the Australian Securities and Investments Commission (ASIC) who are responsible for consumer protection in relation to financial products and services.

Overview of the Australian Energy Regulator (AER)

- The AER works to make all Australian energy consumers better off, now and in the future.
- The AER is established as an independent entity under the CCA. The AER is supported by staff and facilities that are shared with the ACCC.
- The Commonwealth Treasurer is the Minister with portfolio responsibility for the AER. The Energy National Cabinet Reform Committee (ENCRC) and the Energy Ministers' Meeting (EMM) is the national policy and governance body for the Australian energy sector, providing leadership and strategic direction.
- The AER works collaboratively with the Australian Energy Market Commission and the Australian Energy Market Operator, including as a Member of the Energy Security Board.
- The AER will brief in more detail on its role and functions the Treasurer and the Commonwealth Minister with responsibility for Energy.

B – ACCC Priorities and Advocacy

ACCC enforcement and compliance priorities

- Each year the ACCC announces our compliance and enforcement priorities for the forthcoming year. Our [priorities for 2022/23](#) are:
 - Consumer and fair trading issues in relation to **environmental claims and sustainability**
 - Consumer and fair trading issues relating to manipulative or deceptive advertising and marketing practices in the **digital economy**
 - Consumer and fair trading issues arising from the **COVID-19 pandemic**
 - Competition and consumer issues arising from the pricing and selling of **essential services**, with a focus on **energy and telecommunications**
 - Empowering consumers and improving industry compliance with consumer guarantees, with a focus on high value goods including **motor vehicles and caravans**
 - Competition and consumer issues relating to **digital platforms**
 - Competition issues in **global and domestic supply chains**, particularly where they are disrupted by the COVID-19 pandemic
 - Promoting competition and investigating allegations of anti competitive conduct in the **financial services sector**, with a focus on **payment services**
 - **Exclusive arrangements** by firms with market power that impact competition
 - Ensuring that **small businesses** receive the protections of the competition and consumer laws and industry codes of conduct, including **agriculture and franchising**
 - **Consumer product safety** issues for **young children**, with a focus on compliance, enforcement, and education initiatives.

Enduring priorities

- There are some forms of conduct so detrimental to consumer welfare and the competitive process that the ACCC will always regard them as a priority, these are:
 - Conduct impacting Indigenous Australians
 - Consumers experiencing vulnerability or disadvantage
 - Cartel conduct
 - Anti-competitive conduct
 - Product safety.

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C – ACCC Structure and Governance

Workforce numbers and demographics

- The ACCC/AER headcount is 1,335 (excluding contractors).
- 58% identify as female
- 42% identify as male
- 4.5% identify with a disability
- 1.4% identify as Indigenous.

	Name	Appointed until
Chair	Gina Cass-Gottlieb	21 March 2027
Deputy Chairs	Delia Rickard (consumer) Mick Keogh (small business)	26 July 2022 30 May 2023
Commissioners	Stephen Ridgeway Anna Brakey Peter Crone Liza Carver	26 June 2024 9 December 2025 9 December 2025 1 March 2027

Statement of Expectations

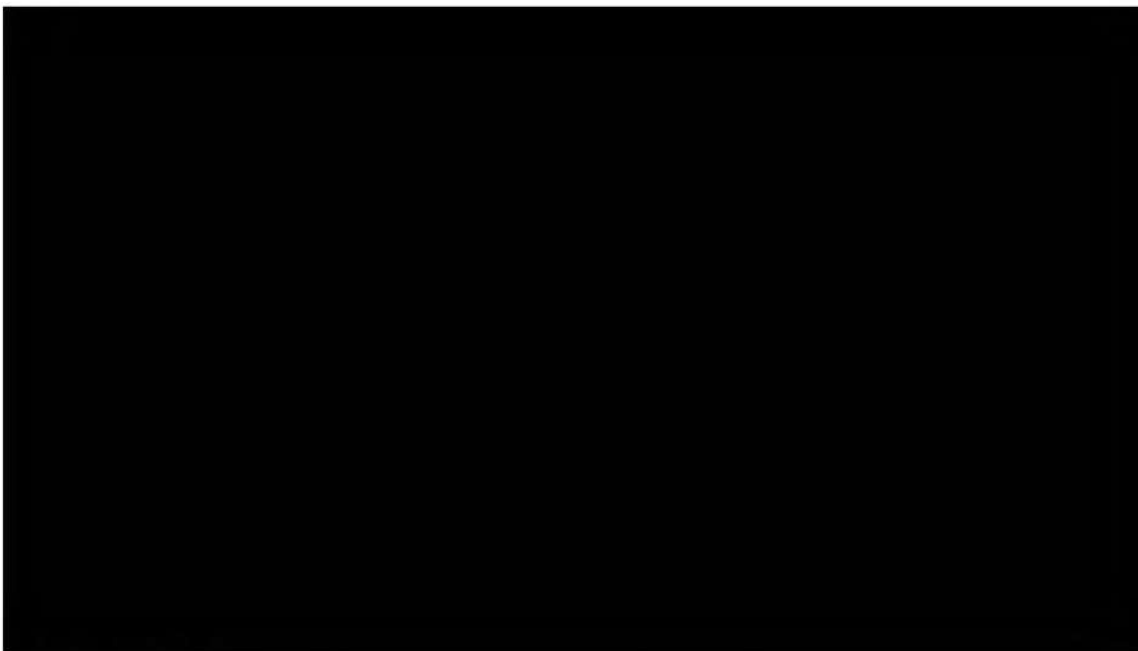
- The ACCC operates in accordance with a [Statement of Expectations](#) (SOE) from the government. A new SOE was provided in April 2022. We are preparing a Statement of Intent in response. It is open to the new Government to revise the current SOE to better reflect current context. In general terms, we recognise that it is important for us to take into account the Government's broad policy framework in the performance of our roles and responsibilities.
- The ACCC also received a separate Statement of Expectations from the former Communications Minister in relation to our role in telecommunications.

Budget

- The ACCC's appropriation for 2022-23 is \$286.976m with an ASL of 1,287.

All figures \$'000	2021-22 Estimated Actual	2022-23 Budget	2023-24 Forward Estimate	2024-25 Forward Estimate	2025-26 Forward Estimate
<i>Appropriation</i>	288,855	286,876	254,142	247,378	237,476
<i>Other Revenue</i>	3,100	2,700	1,400	1,400	1,400
Departmental Revenue	291,955	289,576	255,542	248,778	238,876
Capital Funding	32,772	30,621	18,101	9,966	10,030
Administered Revenue	104,028	120,724	137,498	137,498	137,498
Average Staffing Level (ASL)	1,245	1,287	1,160	1,156	1,116

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Operating costs

- In 2020-21 the ACCC recorded an operating loss of \$4.5m, against a budgeted loss of \$11.2m in the 2020-21 Portfolio Budget Statement (an effective surplus). This includes litigation settlement expense, depreciation, impacts of bond rate adjustments and application of the new leasing standard. By comparison, the ACCC recorded an operating loss of \$41.5.m for 2019-20.

D – Consumer Product Safety

- Unlike a number of its other functions, the ACCC has a direct policy role in advising the Minister in relation to product safety matters. The ACCC has previously facilitated regular updates and briefing to the Minister and / or Office and would be pleased to continue this approach.
- The April 2022 Federal Budget provided the ACCC with funding to implement reforms to mandatory standards regulation.

Key points

- We advise the Minister on the use of a range of ministerial powers for market intervention to protect consumers from unsafe products including introducing product bans, mandatory safety standards or information standards, issuing compulsory recall notice and safety warning notices to the public.
- The Minister is the statutory decision maker and the ACCC advises the Minister on the use of these powers.
- The Minister is the statutory recipient of Recall Notices. Suppliers who voluntarily take action to recall consumer products are obliged to notify the Minister. The ACCC administers this process for the Minister.

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- The Minister is also the statutory recipient of Mandatory Reports. Suppliers must report product related services associated with the death or serious injury or illness of any person. The ACCC also administers this process for the Minister.
- Enforcement and compliance decisions (for example alleged breaches of mandatory standards or failure to comply with a mandatory recall) are made by the ACCC.
- The ACCC works cooperatively with state and territory ACL regulators to deliver the objectives of our shared legislative scheme.
- Our ACL consumer product safety responsibilities form part of Australia's overall product safety framework, which is complemented by the role of specialist safety regulators who are responsible for the safety of specific classes of goods including motor vehicles, food, agricultural chemicals and veterinary medicines, therapeutic goods and industrial chemicals, electrical safety, gas appliances, building regulation, road use and maritime safety.
- We work collaboratively with a range of departments and agencies to achieve the best outcomes for the public and to avoid the duplication of regulatory oversight.
- We also administer the Product Safety Australia website. This website provides information about recalled consumer products, applicable regulations such as safety standards and bans, broader education and guidance materials for industry and consumers and enables consumers to report unsafe products.

Improvements to mandatory standards regulation

- The April 2022 Federal Budget provided the ACCC with funding to implement reforms to mandatory standards regulation.
- Implementation of these reforms will be undertaken over a 4-year period and involve revisions to all existing mandatory standards to incorporate the latest voluntary Australian and overseas standards. The reforms support business to innovate, grow and minimise compliance costs while maintaining stringent safety standards for consumer products and related services.
- Amendments to the ACL will be needed to implement reforms to mandatory standards regulation.

E – Fuel Excise

- Since 30 March 2022 the ACCC has been monitoring the prices of retailers to ensure that the lower excise rate was fully passed on. This has been undertaken under our existing fuel price monitoring direction.
- We wrote to wholesalers and retailers to set a clear expectation that excise reductions would be passed on to consumers in full.
- After the cut in fuel excise came into effect on 30 March 2022, ACCC monitoring found significant falls in retail fuel prices in all capital cities and the majority of regional locations.

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- After 8 weeks, the cuts to fuel excise have clearly been passed on to a large extent. There are other factors that also contributed to price falls around the time of the cuts, such as a decrease in international refined petrol and diesel prices in early April.
- We are providing weekly updates on our Petrol Price Cycles webpage.
- From the middle of April, international benchmark refined petrol and diesel prices have increased, influenced by the impact of the war in Ukraine on international crude oil prices. This has led to increases in wholesale prices in Australia which are likely to flow through to retail prices.

F - Consumer Data Right

Issue

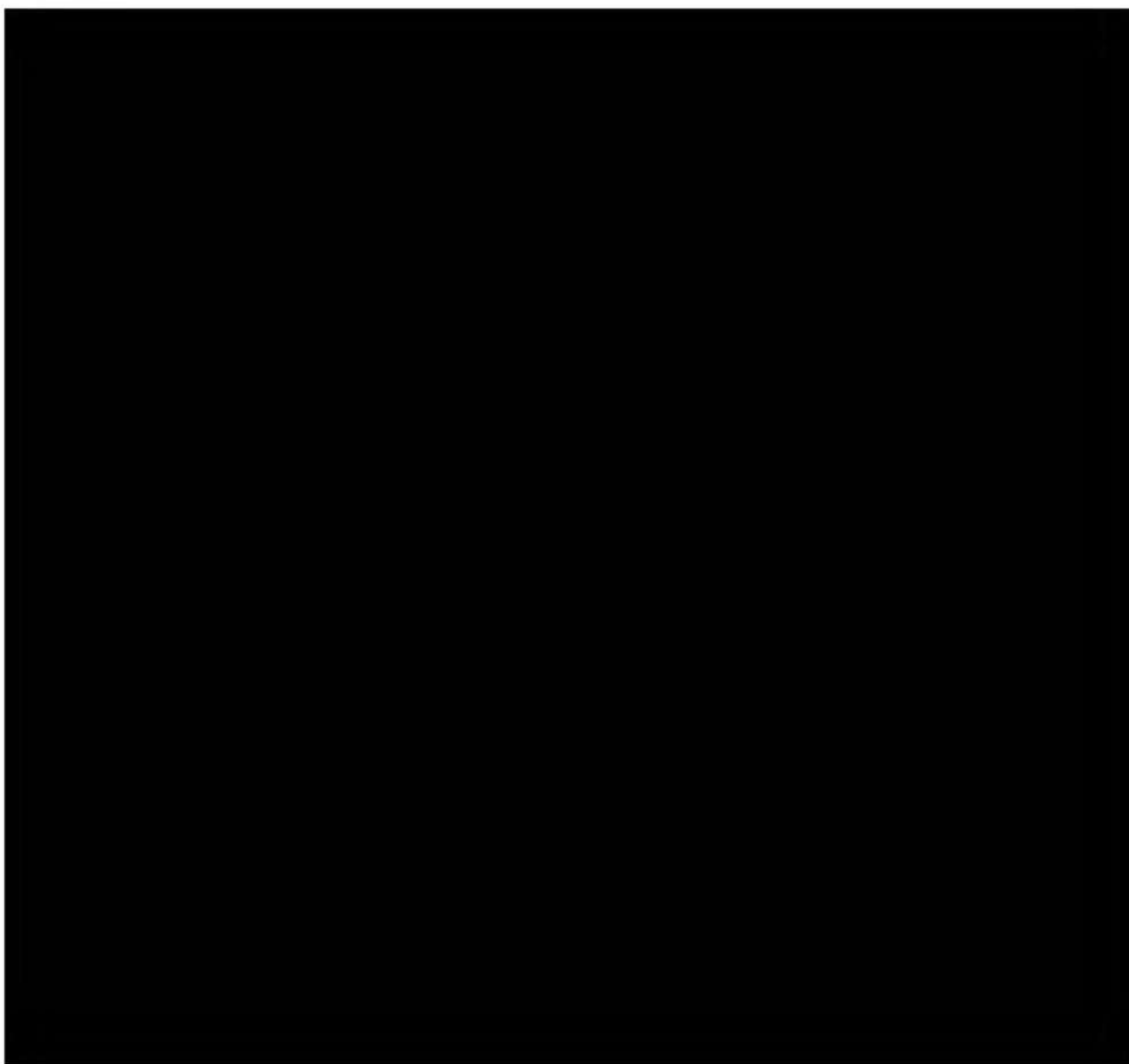
- The Consumer Data Right (CDR) is a significant economy-wide program that will enable Australian consumers to leverage the data Australian businesses' hold about them for their own benefit. The program will significantly strengthen innovation, competition and productivity.
- The CDR is underpinned by a statutory framework supported by legislation, CDR Rules (that provide the framework for how the CDR operates and functions) and Data Standards (which set out the format and processes for the CDR data that is shared).
- The ACCC's CDR roles are set out in the legislation and Rules include accrediting potential data recipients, establishing and maintaining a Register of Accredited Persons and Data Holders, monitoring compliance and taking enforcement action in collaboration with the Office of the Australian Information Commissioner (OAIC).
- The government must appoint a Minister responsible for the CDR. The Minister has the power to issue CDR Designation Instruments, which designate sectors of the economy for the purposes of the CDR, and make the CDR Rules (the Rules).

Key points

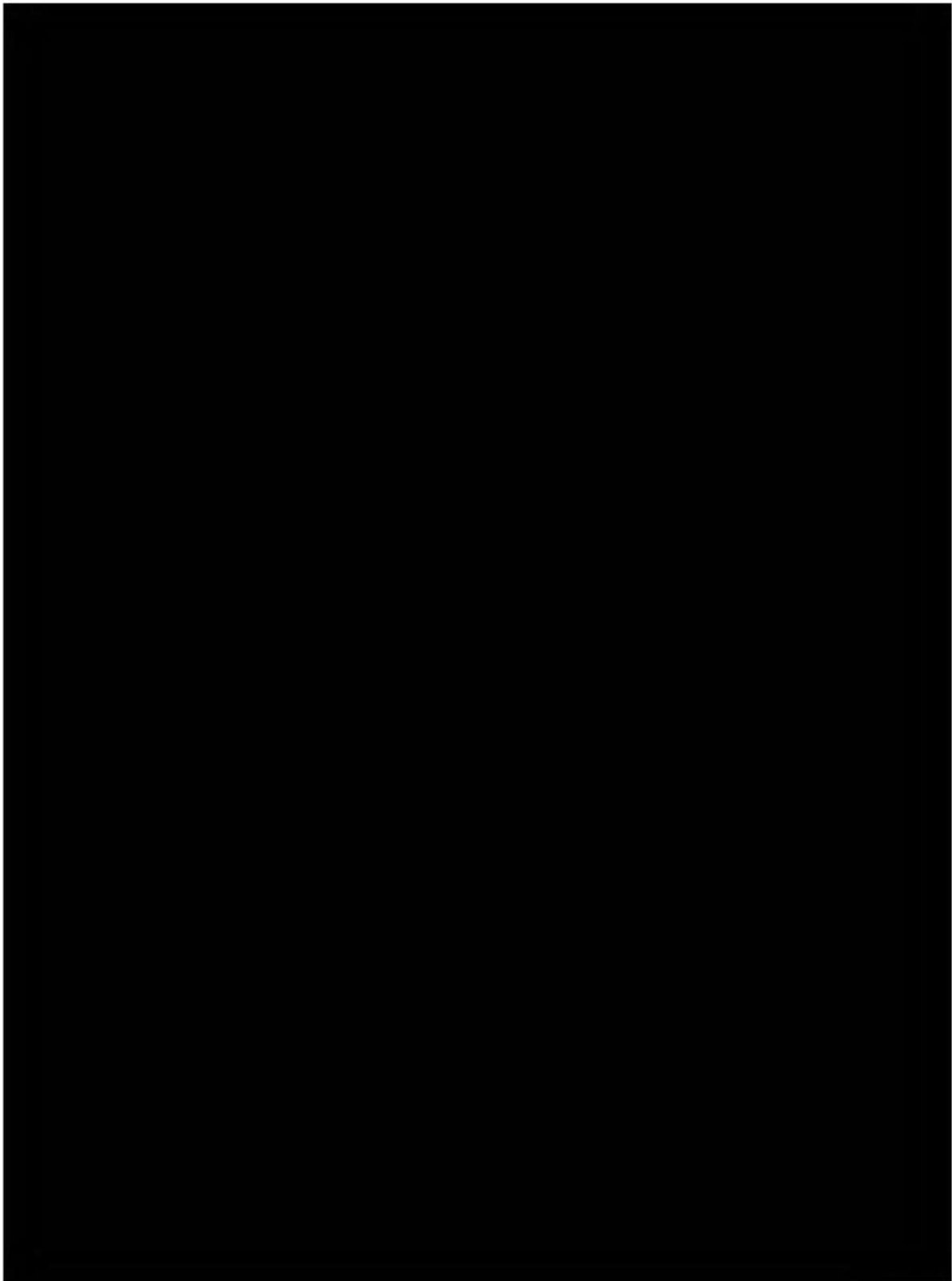
- The CDR program has significant complexity in its delivery. It is currently operational in the banking sector. The next stage of the CDR rollout will be the energy sector, followed by telecommunications aspects of the finance sector. This rollout will take several years, involve substantial consultation with industry and government stakeholders and will present ongoing delivery challenges.
- As the CDR program evolves and grows, it is important that the statutory framework is fit-for-purpose. A Statutory Review of the CDR is currently underway.
- Since its creation in 2019, the CDR division of the ACCC has increased in size reflecting the resource-intensive nature of delivering such a complex program. It now has the most staff of any division of the ACCC.
- While the ACCC has successfully built and continues to deliver a well-functioning register, the expansion over time has seen a significant increase in the engagement of contractors with IT skills. This has presented new challenges for the agency in terms of oversight requirements and technical capability. Limitations on the number of senior executive positions in the CDR Division have exacerbated this challenge.

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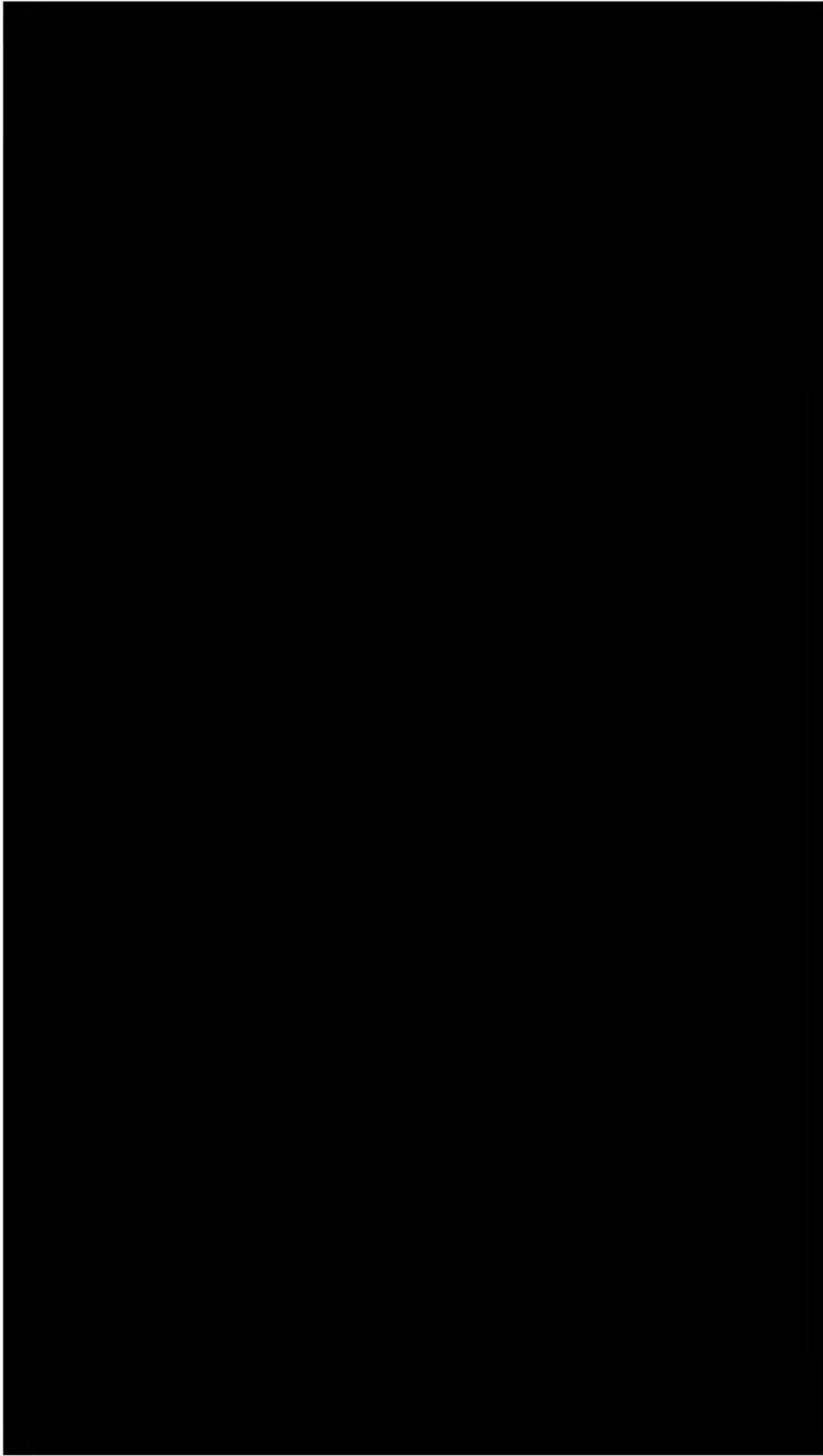
- The ACCC's submission to the Statutory Review identified a number of complexities and challenges that will arise in the continued implementation of the CDR including the need for strong coordination between responsible agencies and a step up in engagement with businesses and consumers to support expansion.
- The ACCC supports a specialist agency being tasked with responsibility for the implementation of the CDR and functional separation of the entities responsible for the rule-making (currently Treasury), operations and enforcement (both currently the ACCC) of the CDR. This division of responsibilities mirrors the regulatory principles in many other mature markets, such as energy, and the UK's open banking regulatory framework.
- The timing of the Statutory Review presents an opportunity to address these challenges.



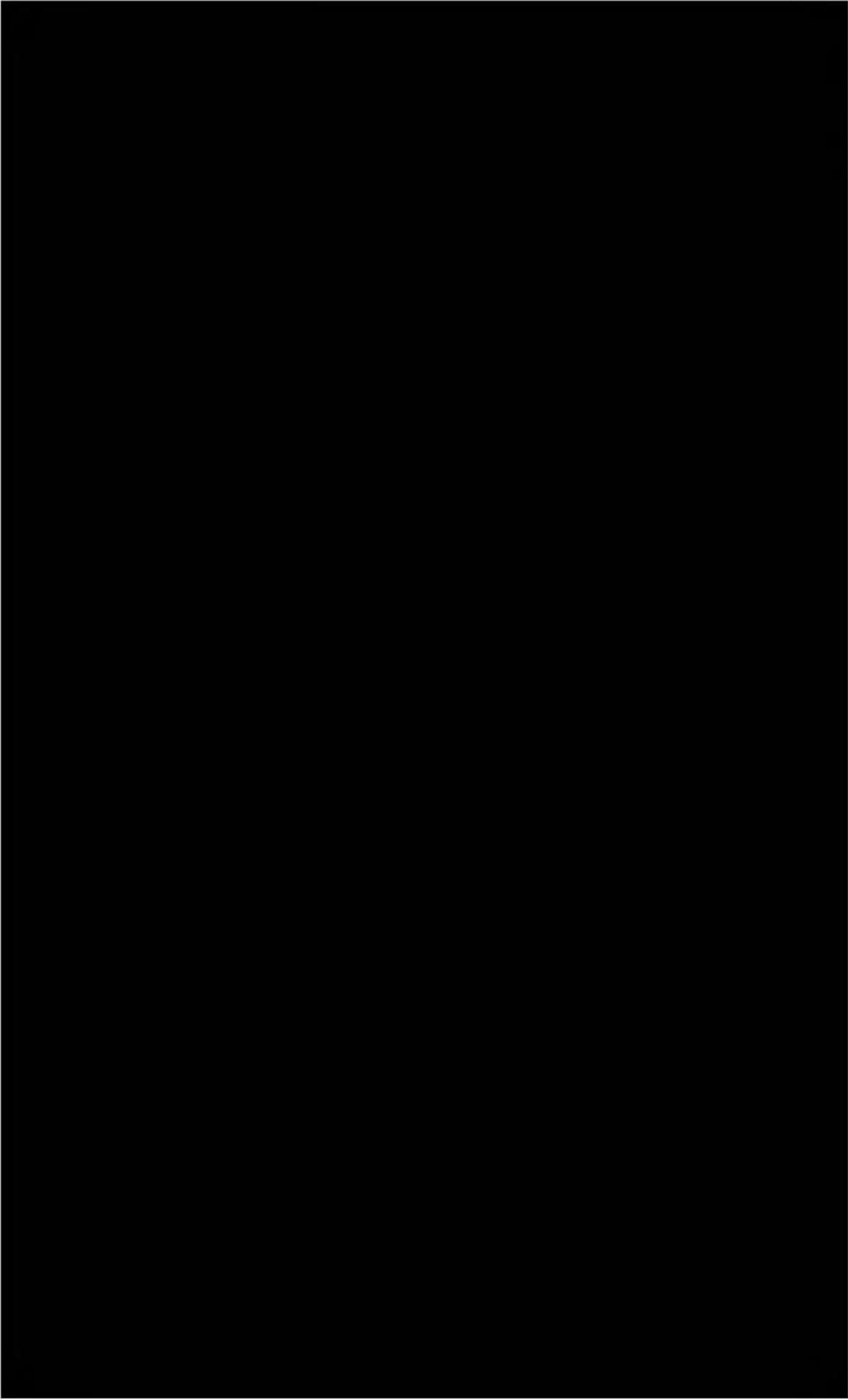
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