



Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

Australian Competition and Consumer Commission, Australia

The following template is submitted by **Australian Competition and Consumer Commission, Australia** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures ("CAP").

I. Introduction

Agency background

The Australian Competition and Consumer Commission (ACCC) is an independent Commonwealth statutory authority whose role is to enforce the *Competition and Consumer Act 2010* (CCA) and a range of additional legislation, promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians.

More information about the ACCC can be found on the ACCC [website](#).

This information is in English. Some materials on the ACCC's website are available in other languages including: Arabic, Chinese, Dari, Dinka, Farsi, Greek, Italian, Khmer, Korean, Serbian, Thai, Turkish, and Vietnamese.

Australia has a common law legal system. Competition law consists of both legislation (the CCA and other related legislation), and case law interpreting and applying the provisions of the statutes.

Definitions

For the purposes of this Template, the ACCC adopts the definitions in section A of the Annex to the ICN Framework on Competition Agency Procedures.

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

Equal application of the law

Australia's Competition Laws apply to people and businesses that carry on business in Australia or are otherwise connected to an Australian State or Territory. The nationality, residence, or origin of a Person being investigated is irrelevant to the question of whether the law applies to a Person. The ACCC conducts its investigations and enforcement activities accordingly.

Section 5 of the CCA extends the application of Australia's restrictive trade practices, enforcement and remedies, and consumer law provisions to conduct that occurs outside Australia, if the conduct was by bodies corporate incorporated or carrying on business within Australia, or by Australian citizens or persons ordinarily resident within Australia. Neither the law or any of the ACCC's policies permit the ACCC to treat Persons of another jurisdiction less favourably than Persons of Australia in like circumstances.

This applies at the State and Territory level too. Each jurisdiction within Australia has passed laws so that the text of the CCA applies to Persons connected to that jurisdiction, creating a uniform competition law across the country.

The procedural rules of the Australian legal system afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances. Australia is also party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

Prioritisation

The ACCC publishes its [Compliance and Enforcement Priorities](#) annually. This policy sets out the principles adopted by the ACCC to achieve compliance with the law, and outlines the ACCC's enforcement powers, functions, priorities and strategies.

The 2019 Policy notes that 'the ACCC will always prioritise cartel conduct causing detriment in Australia. When dealing with international cartels, the ACCC will focus on pursuing cartels that have a connection to, or cause detriment in Australia; that is, cartels that involve Australians, Australian businesses or entities carrying on business in Australia.'

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

- i. The Australian Government maintains the [Federal Register of Legislation](#). This is the authorised whole-of-government website for Commonwealth legislation and related documents. It contains the full text and details of the lifecycle of individual laws and the relationships between them.*

- Further, the ACCC has a [page on its website](#) outlining key components of the CCA, and providing external links to the full text of the legislation.
- ii. The ACCC creates a Compliance and Enforcement Policy that is updated annually and is available [online](#). The ACCC also has a [series of guidelines](#) that cover its merger review activities.
- All Australian courts with the jurisdiction to hear Competition law matters are governed by legislation and a set of procedural rules (see for example the [Federal Court Act and Rules](#)).
- iii. As noted in points i and ii above, all relevant laws and procedural rules related to competition law are publicly available.
- iv. While the ACCC is not the decision maker to determine contraventions of the CCA, the ACCC does make decisions about the use of its powers under the CCA. The ACCC is committed to accountability and has and is subject to a range of measures to ensure it complies with its legal obligations. These include:
- A [service charter](#) that sets out the standards of service the public may expect from the ACCC and the steps they may take if these standards are not met (including internal and external appeal of decisions);
 - The ability for Persons to have ACCC decisions reviewed by the [Commonwealth Ombudsman](#), or the Courts under the principles of administrative law
 - A [series of codes of conduct](#) for Commissioner members and the staff of the ACCC (including the Australian Public Service Code of Conduct and Values);
 - The [regular publication](#) of quarterly and annual reports, budgets and public interest disclosures;
 - [Public registers](#) to ensure decision making is transparent and accountable including in relation to merger reviews, enforceable undertakings, authorisations and notifications, and issued infringement notices;
 - Internal governance structure requiring that decisions to exercise statutory powers are made by the Commission as a whole (or as delegated), working under well-defined terms of reference and subject to quorum requirements;
 - Maintaining [policies](#) on fraud prevention and accountability in investigations.
- v. The ACCC's [Compliance & enforcement priorities](#) document is made available online in a manner that provides additional guidance and clarity. Further, the ACCC releases dozens of publications each year, including [ACCCount](#), a quarterly report about the ACCC's Investigations and Enforcement Proceedings. This is in addition to the roughly 250 [press releases](#) published each year informing the public of the ACCC's investigations and enforcement activities.

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual,*

legal, economic, and procedural issues, according to the status and specific needs of the Investigation.

- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.

i. The ACCC's behaviour in relation to Investigations is governed by its [accountability framework](#). Subject to the status and specific needs of the matter, this framework guarantees that ACCC investigative processes will take place in a transparent, timely, consistent and fair manner. The ACCC is also subject to a [service charter](#) that sets out a standard of service Persons engaging with the ACCC are entitled to expect. ACCC investigations take place within rigorous corporate governance processes and are able to be reviewed by a range of agencies, the Courts and the Commonwealth Ombudsman. Similar [guidelines and review processes](#) govern the ACCC's merger related matters and [concerted practices](#) Investigations.

ii. See paragraph (i) above.

iii. The ACCC has [public guidelines](#) about how it can use its statutory powers to request information. In addition to these policies, all statutory requests for information as part of an Investigation are subject to specific requirements outlined in the CCA.

The s 155 Notice most commonly used to investigate contraventions of the CCA as well as merger authorisation investigations is valid only if is:

- Based on a reasonable belief the Person has information related to the Investigation, and a proper basis in fact for this belief ([WA Pines Pty Ltd v Bannerman](#) (1980) 41 FLR 175);
- Related to a matter that constitutes or may constitute a contravention of the CCA ([Melbourne Home of Ford Pty Ltd v TPC](#) (1979) 36 FLR 450);
- Conveys with reasonable clarity the information to be furnished and that the ACCC is entitled to require it ([Seven Network Ltd v ACCC](#) (2004) 140 FCR 170); and
- Any s 155 noticed issued to achieve an extraneous purpose will be invalid ([Kotani Holdings Pty Ltd v TPC](#) (1991) 30 FCR 511).

The ACCC assesses its performance against the [Regulator Performance Framework](#), which is designed to reduce unnecessary or inefficient regulation imposed on individuals, business and community organisations, and publishes an annual report. This report includes statistics about the use of s155 Notices and steps taken to balance the burden of notices against the value of the information, documents or evidence being sought.

e) **Timing of Investigations and Enforcement Proceedings**

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

Timing of Investigations

The accountability framework specifically notes that the ACCC's investigative and merger processes, and the resolution of enforcement matters are to be conducted as efficiently as possible to avoid costly delays and business uncertainty.

The ACCC also [publishes a document](#) outlining its investigative stages and expected time frames.

The ACCC's seeks to complete most matters within the following timeframes:

- Preliminary assessments = 15 days
- Initial investigation = 3 months
- In-depth investigation = 12 months

More complex investigations and those in which special circumstances apply often take longer than these indicated timeframes.

The annual report against the [Regulator Performance Framework](#) includes measuring compliance with these timeframes as part of assessing the burden on regulated entities.

Timing as a party to Enforcement Proceedings

As an Australian Commonwealth agency, the ACCC has an obligation to act as a model litigant under a Legal Service Direction issued by the Attorney-General pursuant to s 55ZF of the [Judiciary Act 1903](#). This requires the ACCC to behave honestly and fairly in litigation, including:

- making an early assessment of the prospects of a matter;
- endeavouring to avoid, prevent and limit the scope of litigation including by participating in alternative dispute resolution where appropriate; and
- dealing with claims promptly and not causing delay.

f) Confidentiality

- Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

The ACCC has an [information policy](#) setting out how the ACCC obtains, uses and discloses information, including confidential information. The ACCC is committed to treating confidential information responsibly and in accordance with the law. Information that is given in confidence to the ACCC and that relates to a core statutory provision is 'protected information' under section 155AAA of the CCA. The same applies to CCA section 95ZK notices used to seek information as part of the ACCC's market studies.

Respect for confidentiality and notification

The ACCC recognises that in some cases release of information provided by complainants and informants (such as their identity) may have a substantial adverse effect on that party. This may also affect the willingness of other information providers to assist the ACCC in its functions. Where requested to do so, the ACCC will, to the extent reasonably possible, seek to protect that information.

The [Privacy Act](#) prohibits the ACCC from disclosing personal information for a purpose other than the purpose for which it was collected unless, for example:

- the information provider has given their consent;

- the information provider would reasonably expect the information to be used for the other purpose and it is related to the purpose for which it was collected;
- disclosure is necessary to prevent or lessen a serious and imminent threat to life or health;
- the law or a court/tribunal order requires or authorises the disclosure; or
- the disclosure is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of public revenue.

In most cases, the ACCC will endeavour to notify and consult the person who provided confidential information about the proposed release of that information.

Disclosure

In some circumstances, the ACCC may be legally required to produce confidential information. For example, under s 155AAA of the CCA, the ACCC is permitted to disclose confidential information relating to certain ACCC functions under the Act (enforcement, mergers, authorisations and telecommunications) to certain ministers, government departments, royal commissions, Australian government agencies, or international counterpart competition agencies. These disclosures must be justified and requires the ACCC Chairperson to be satisfied that disclosing the information will enable or assist the recipient to perform or exercise any of the functions. When communicating information to international counterpart competition agencies the ACCC and the recipient agency are additionally bound to confidentiality provisions in the [Memorandums of Understanding and other negotiated international cooperation agreements](#) the ACCC is a party to.

The ACCC publishes information on a number of [Public registers](#) as required by legislation, as well as some voluntary public registers. The ACCC has implemented an approvals process before information can be published on a register which includes considering the confidentiality and sensitivity of information.

The ACCC recognises that the disclosure of confidential commercial information in respect of a business may have a substantial adverse effect on the interests of that business. However, the ACCC's function may also substantially affect other parties (such as competitors) and some disclosure of information may be necessary for open and transparent decision-making. In these circumstances, options available to the ACCC may include:

- releasing aggregated data
- disclosing the substance of submissions rather than releasing individual submissions or disclosing the identity of the information provider
- restricting disclosure to limited internal personnel and external lawyers and consultants.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Members of the Commission

There is a [Code of Conduct](#) for Commission Members and Associate Members. The Code of Conduct notes that:

Where an officeholder possesses, directly or indirectly, an interest which conflicts or might reasonably be thought to conflict with their public duty, or improperly to influence their conduct in the discharge of their responsibilities in respect of some matter with which they is concerned, they should disclose that interest according to the prescribed procedures. Should circumstances change after an initial disclosure has been made, so that new or additional facts become material, the officeholder should disclose the further information.

Certain conflicts of interest are dealt with in applicable legislation.

Section 17 of the CCA applies to any pecuniary interest that a member (other than the Chairperson) has or acquires which could conflict with the proper performance of the member's functions in relation to the determination of a matter. In such a case, the member must disclose the interest to the Chairperson (failure to comply with obligations under s 17 is a basis for the termination of the appointment). Section 17 prescribes a procedure to be followed so that either the Chairperson determines the member should not take part in the matter or the interest is disclosed to the persons concerned in the matter and if they do not all consent, then the member must not take any further part in the matter.

Section 29 of the [Public Governance, Performance and Accountability Act 2013](#) applies where an official of a Commonwealth entity has a material personal interest that relates to the affairs of the entity, and requires that the official must disclose details of the interest.

Staff of the ACCC

The staff of the ACCC are members of the Australian Public Service and employed under the [Public Service Act 1999](#). As public servants engaged under this law, ACCC staff must adhere to the Australian Public Service Code of Conduct and Values. These include Rule 7 of the Code which requires a public servant to take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's employment; and disclose details of any material personal interest of the employee in connection with the employee's employment.

There are procedures to apply in determining whether an ACCC employee has breached the Code and, if so, in determining any sanction to be imposed on the employee. Sanctions can include termination and criminal prosecution.

Staff are also subject to the ACCC's internal conflict of interest policy, and a gifts and hospitality policy.

The conflict of interest policy requires:

- employees to understand their obligations to disclose real, perceived or potential conflicts between private interests and official duties;
- non-executive level employees to conduct a self-assessment at least annually and to declare and establish an agreed plan to manage any identified conflict;
- executive level employees to provide, in accordance with established APS practice, an annual statement of interests.

The gifts and hospitality policy requires:

- employees should not accept gifts, hospitality or benefits that give rise to an actual or perceived conflict of interest
- employees must obtain senior executive approval before accepting any gifts, hospitality or benefits
- any accepted gifts, hospitality or benefits over a set monetary value must be declared on the ACCC gifts and hospitality register

These policies apply to all ongoing and non-ongoing employees.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

- i. The ACCC does not have the power to make a decision as to whether a Person has contravened the CCA. The ACCC (or the Commonwealth Department of Public Prosecutions in criminal matters) must commence Enforcement Proceedings in the Federal Court of Australia alleging that a business or individual has contravened the law. The Federal Court of Australia is responsible for hearing these proceedings, determining whether the law has been contravened and the remedy that should be imposed.

In both civil proceedings and in a criminal prosecution, the respondent/defendant is entitled to see the case against them. This will be set out in documentary form and must 'ensure the basic requirement of procedural fairness that a party should have the opportunity of meeting the case against him or her and, incidentally, to define the issues for decision' ([Banque Commerciale SA, En Liquidation v Akhil Holdings Ltd](#) (1990) 169 CLR 279 at 286).

- ii. Persons subject to an Enforcement Proceeding have a right to procedural fairness (civil) and a right to a fair trial (criminal). This includes access to the documents in the ACCC's possession that are necessary to prepare an adequate defence. Cognisant of the time and costs involved in litigation, the right is not unlimited access but to the information relevant to central issues in the case, subject to applicable legal exceptions ([Reading Entertainment Australia Pty Ltd v Birch Carroll & Coyle Ltd](#) [2002] FCAFC 109).
- iii. Enforcement Proceedings brought in administrative tribunals are subject to the same obligations to act judicially ([Re Herald & Weekly Times Ltd](#) (1978) 17 ALR 281). Persons subject to an Enforcement Proceeding heard at tribunal are guaranteed reasonable opportunities to defend themselves, including the opportunity to be heard and to present, respond to, and challenge evidence.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

i. ACCC policies

The ACCC does not deny, without due cause, the request of a Person engaging with the ACCC as part of investigations or enforcement proceedings to be represented by qualified legal counsel of its choosing. Further, the ACCC does not deny, without due cause, the request of a Person to have legal counsel or another support person present during all interactions with the ACCC.

This is subject to the qualification that in limited circumstances, forensic considerations may mean that the selection of particular representation is inappropriate. For example, aspects of the investigation may be confidential and it may be ethically difficult for the lawyer to withhold information gained while acting for one client from another for whom the lawyer is also acting. Generally, the ACCC would bring such issues to the attention of a party and encourage the party and the relevant lawyers to resolve the problem without ACCC intervention.

Statutory and common law rights

In addition to the general common law right to be represented by qualified legal counsel of their choosing, court and tribunal rules and regulations specifically state the right to legal representation (see [Competition and Consumer Regulations](#) 2010 r 28L; [Federal Court Rules](#) pt 4).

It is important to note that the right exists in Australia in the negative sense, which is that no agency may prevent a Person from using a lawyer. However, Australian law does not recognise that an indigent accused on trial for a serious criminal offence has a right to the provision of counsel at public expense. Instead, Australian law acknowledges that an accused has the right to a fair trial and that, depending on all the circumstances of the particular case, lack of representation may mean that an accused is unable to receive, or did not receive, a fair trial ([Dietrich v The Queen](#) (1992) 177 CLR 292, 311).

- ii. As part of its enforcement priorities and accountability framework, the ACCC guarantees Persons engaging with the ACCC will have a reasonable opportunity to present their views regarding substantive and procedural issues via counsel.*

The rights to procedural fairness (civil) and a fair trial (criminal) guarantee Persons subject to enforcement action before an Australian court or a tribunal a right to a hearing to present their views regarding the substantive and procedural issues via counsel.

iii. **Principles of legal privilege in Australia**

In [Baker v Campbell](#) (1983) 153 CLR 52 the High Court of Australia decided that the doctrine of legal professional privilege is not limited to judicial and quasi-judicial proceedings and that subject to the terms of the relevant legislation it is also available in relation to statutory administrative investigations and procedures. The purpose for which the confidential communications were brought into existence is vital to determining whether the legal professional privilege attaches to the communication ([ACCC v Australian Safeway Stores Pty Ltd](#) (1998) 153 ALR 393, 423).

In Australia, the dominant purpose test establishes that for legal professional privilege to attach, the confidential communications between a lawyer and client must have been made for the dominant purpose of:

- giving or obtaining legal advice (advice privilege);
- or preparing for, or for use in, existing or reasonably anticipated legal proceedings (litigation privilege) (see [Esso Australia Resources Ltd v Federal Commissioner of Taxation](#) (1999) 201 CLR 49).

ACCC policies

A recipient of a s 155 Notice is not required to produce documents that would disclose information that is privileged. Where the ACCC seeks production of documents from recipients who may wish to claim legal professional privilege in relation to information contained in the documents, either on their own behalf or on behalf of others whose documents they hold, a practical and realistic opportunity must be given for the privilege claim to be made.

As part of its [Information Policy](#), the ACCC has a general policy on how it collects, uses and discloses privileged information.

j) Decisions in Writing

- i. *Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. *Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

- i. The ACCC is not capable of imposing on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws. Only courts or tribunals are capable of doing so.

Decisions of Courts and Tribunals

Judges in Australian courts are under a general duty to provide written decisions and orders. Decisions and orders must include the Court's findings of fact and the relevant principles of law relied upon ([Soulemezis v Dudley](#) (1987) 10 NSWLR 247; *R v Arnold* (1999) 1 VR 179).

If the case relates to a criminal violation of the CCA, the judge must also include a statement of any warnings or directions the judge was required to consider and how the judge gave effect to that warning ([Fleming v R](#) (1998) 197 CLR 250).

Tribunals must also provide reasons for their decisions or orders under legislation (see for example [Civil and Administrative Tribunal Act 2013](#) (NSW) s 62), or under their duty to act judicially (*Re Herald & Weekly Times Ltd* (1978) 17 ALR 281)).

Australian court and tribunal decisions are generally available (subject to confidentiality rules and applicable legal exceptions). This includes on the websites of the [court](#) or [tribunal](#), or via the [Australasian Legal Information Institute](#) database of public legal information.

ACCC decisions

The ACCC is not required to provide a formal or informal reason when it chooses not to pursue a complaint or an investigation. The ACCC [Service Charter](#) sets out what the Australian public can expect of the ACCC in the performance of its regulatory function. Generally, the ACCC provides explanatory notes if the matter is the subject of a [media release](#).

- ii. The ACCC does not do private deals to resolve competition concerns. All enforcement actions with a formal resolution are made public. The ACCC publishes a number of [public registers](#) on the commitments it accepts, including s 87B undertakings in enforcement or merger investigations. Further, the ACCC publishes [media releases](#) about its enforcement activities, including the commitments it accepts and the factual background surrounding the commitment.

The ACCC's practice in relation to cartel immunity for whistleblowers is an exception where practical considerations and confidentiality rules justify the non-disclosure of the commitment until the conclusion of the investigation.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The ACCC is not capable of imposing on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws. Only courts or tribunals are capable of doing so.

Review of Tribunal decisions

The [Australian Competition Tribunal](#) has jurisdiction under the Act to hear a variety of applications, most notably reviews of determinations of:

- the ACCC granting or refusing authorisation for company mergers and acquisitions; and
- the ACCC granting or revoking authorisations permitting conduct and arrangements that would otherwise be prohibited under the CCA because of their anti-competitive effect.

A decision of the Competition Tribunal can be appealed to the Federal Court.

Review of court decisions

Decisions relating to the violation of the CCA are generally heard in the Federal Court. A Person can seek leave to appeal to the Full Court of the Federal Court (at least 3 Federal Court judges sitting together) on errors of law, but not errors of fact. The party can then seek leave to appeal to the High Court of Australia. Decisions of the High Court (including refusals of the High Court to hear a case) cannot be appealed.