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25 August 2023

[REDACTED]  
Inquiry Secretary  
Joint Committee of Public Accounts and Audit  
PO Box 6021  
R1.106 Parliament House  
Canberra ACT 2600

Via email: [REDACTED]

Dear [REDACTED]

**Re: Australian Competition and Consumer Commission submission to the Joint Committee of Public Accounts and Audit inquiry into probity and ethics in the Australian Public Sector**

Thank you for your correspondence dated 4 July 2023 and for the opportunity to provide a submission to the Joint Committee of Public Accounts and Audit (JCPAA) inquiry into probity and ethics in the Australian Public Sector. We note that the inquiry will have particular regard to Auditor-General Report No. 38 of 2022-23 *Probity Management in Financial Regulators – Australian Competition and Consumer Commission* (the ANAO report).

I am writing to you as the acting Chair of the Australian Competition and Consumer Commission (ACCC), which for the purposes of finance law and the JCPAA's inquiry includes the Australian Energy Regulator (AER).

The ACCC, including the AER, places the highest importance on the integrity of our agency, our people, and systems. As a regulator, we are appropriately held to a high standard of conduct. A strong probity management and governance framework supports our regulatory functions, and therefore supports our respective objectives of making markets work for consumers and making energy consumers better off – now and in the future.

We welcome the independent oversight of our probity arrangements provided by the ANAO and the JCPAA.

The ACCC acknowledges the ANAO's overall conclusion that the agency's probity management was partly effective. During the past 2-3 years, the ACCC has undertaken a number of process improvement initiatives and is implementing a range of other measures to enhance internal governance and probity management, as noted in the ANAO report. We are pleased to note the ANAO found the ACCC has fully or largely complied with most of the

probity related requirements examined in the audit, and has arrangements mostly structured to manage the probity risks referred to in the audit.

The ACCC welcomed the ANAO's findings and has agreed with all five recommendations presented in the ANAO report. The ACCC has also acknowledged the 9 identified opportunities for improvement aimed at further enhancing the agency's management of probity risks.

Attached is the ACCC's response to the ANAO's recommendations and proposed timelines for implementation (**Attachment A**).

The agency has commenced work to respond to the ANAO's recommendations and opportunities for improvement. Specific accountability for implementation of each recommendation and opportunity for improvement has been assigned to Senior Executive Service employees. A risk-based approach has also been taken to assess the priority of actions to address the ANAO's findings and for developing implementation timeframes. Internal monitoring, tracking and reporting on implementation will occur via existing processes.

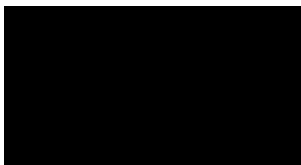
The agency is aiming to action the majority of the ANAO's recommendations by the end of 2023, with work commenced in relation to all recommendations. Recommendation 2 is likely to require broader action to implement further technology and system changes, although steps have already been taken to update practices and processes to restrict access to sensitive information and documents relating to merger matters and AER matters. A working group has also been established to consider how the application of the need-to-know principles to other agency practices and processes could be further strengthened.

The agency has also begun exploring the ANAO's opportunities for improvement and has so far implemented one (explicitly recognising 'regulatory capture' as an enterprise risk in the Corporate Plan).

The agency recognises the importance of public trust and confidence in institutions like the ACCC and AER and the appropriately high expectations stakeholders have of regulators. In addition to improvement initiatives already underway, addressing the ANAO's findings will strengthen our management of probity risks and of one of our identified enterprise risks, being serious findings of a lack of integrity, inadequate compliance and/or assurance systems damage the agency's reputation as an effective regulator (including regulatory capture).

If you require further information, please contact myself or Scott Gregson, Chief Executive Officer, at the contact details above.

Yours sincerely

A solid black rectangular box used to redact the signature of Mick Keogh.

Mick Keogh  
Acting Chair

**Attachment A: ACCC response to ANAO recommendations**

	<b>ANAO recommendation</b>	<b>ACCC response</b>	<b>Target implementation date</b>
1	<p>The ACCC establish a requirement for ACCC Commissioners and AER Board members to obtain approval prior to trading in relevant financial instruments. There should also be specific arrangements for approval of trading in financial instruments by the ACCC Chair</p>	<p>The ACCC agrees with this recommendation.</p> <p>The ACCC will make necessary amendments to its existing <i>Code of Conduct for Commission Members and Associate Members</i>. It has been the agency's intent to implement a process requiring prior approval for trading in relevant financial instruments by the ACCC Chair and ACCC Commissioners (including Associate Members from the AER Board) to complement the existing policy for employees that was updated in 2022. This will include specific arrangements for the ACCC Chair.</p> <p>The AER will establish specific arrangements that require AER Board members to obtain prior approval of trading in relevant financial instruments.</p> <p>The ACCC notes that the term 'financial instruments' has a very broad meaning, which without further clarification would likely apply to circumstances beyond the intent of the recommendation. The ACCC therefore understand the recommendation is limited to 'relevant' financial instruments so the ACCC and AER respectively can identify appropriate definitions and scope to address the risks relevant to each agency.</p>	30 September 2023
2	<p>The ACCC ensure that, consistent with the Australian Government's Protective Security Policy Framework (PSPF):</p> <ul style="list-style-type: none"> <li>a) sensitive committee papers are only made available on a need-to-know basis; and</li> <li>b) documents</li> </ul>	<p>The ACCC agrees with this recommendation.</p> <p>The ACCC takes our obligations under the PSPF seriously and has controls in place directed towards the need-to-know principle. Work is well progressed in implementing recommendations from an Information Security &amp; Awareness internal audit (conducted in April 2022), that will assist in implementing the ANAO's recommendation.</p> <p>The ACCC will further review our existing</p>	31 December 2023

	<b>ANAO recommendation</b>	<b>ACCC response</b>	<b>Target implementation date</b>
	<p>containing sensitive information (including committee papers) contain appropriate protective markings consistent with PSPF requirements and the ACCC's internal 'Guidance on security classification 2019'</p>	<p>practices and processes for restricting access to a range of information and documents and make any necessary additional changes to strengthen our information management and governance frameworks and processes. These settings will continue to recognise the importance of engagement across different teams and functions to ensure information that is relevant to others is available, while ensuring consistency with need-to-know principles.</p> <p>The ACCC's document templates will be updated to better enable protective markings to be applied</p>	
3	<p>The ACCC address positional authority risk relating to the approval of ACCC Commissioner and AER Board member expenses by requiring that:</p> <ul style="list-style-type: none"> <li>a) expenditure made by or on behalf of the ACCC or AER Chair be approved by a deputy or other Commissioner or AER Board member; and</li> <li>b) expenditure made by or on behalf of ACCC Commissioners or AER Board members (other than the Chairs) be approved by the ACCC or AER Chair</li> </ul>	<p>The ACCC agrees with this recommendation.</p> <p>The ACCC acknowledges positional authority risk relating to the approval of ACCC Commissioner and AER Board Member expenses, which currently require CEO approval. The ACCC will seek to implement an efficient and effective process that addresses positional authority risk, likely including some senior management involvement as one of the checks and balances in this area.</p>	31 October 2023
4	<p>The ACCC require that all accepted offers of gifts, benefits and hospitality</p>	<p>The ACCC agrees with this recommendation.</p>	31 October 2023



	<b>ANAO recommendation</b>	<b>ACCC response</b>	<b>Target implementation date</b>
	be recorded in its human resources software system	While our Gifts, Benefits and Hospitality Policy requires approval of the acceptance of any gifts, benefits and hospitality by ACCC employees, it only requires they be recorded in the central HR system, when the value is over \$50. The ACCC will adjust the current policy to ensure all accepted offers of gifts, benefits and hospitality for statutory office holders, employees and contractors, regardless of value, be recorded in our software system.	
5	The ACCC strengthen its gifts, benefits and hospitality arrangements by requiring the recipients of offers of gifts, benefits or hospitality record in the ACCC's internal register whether accepting the gift, benefit or hospitality represents a real or perceived conflict of interest and document the basis for their decision	<p>The ACCC agrees with this recommendation.</p> <p>The recommendation will enhance our existing practices and procedures for gifts, benefits and hospitality and promote consistency of processes and documentation for statutory officeholders, employees and contractors and strengthen management of real or perceived conflicts of interest.</p>	31 October 2023