

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2015 - 2016

Department/Agency: Australian Competition and Consumer Commission

Question: AET 73

Topic: Improving access to justice

Reference: Hansard page no. 119 - 10 February 2016

Senator: Xenophon, Nick

Question:

Senator XENOPHON: Not necessarily, and maybe you will want to take this on notice. I regularly hear from businesses, large and small, who believe they have been the subject of an abuse of market power by another corporation, a larger corporation up the chain. And even if they may have considerable resources, their lawyers tell them the cost of going to court could be in the many hundreds of thousands or millions of dollars, so there is a very live issue of access to justice and something that the ACCC is painfully aware of when you bring a case and it does not succeed. Could you on notice provide me with what thoughts, considerations, submissions and plans the ACCC may have to improve that access to justice? We may have laws that may be robust, but their enforcement is not because of the issue of costs.

Ms Sims: You are right, we will take that on notice. That is a big issue and a very important issue too.

Answer:

The Australian Competition and Consumer Commission (ACCC) is aware of the constraint that the cost of court action has on small businesses being able to access certain remedies. The ACCC receives thousands of complaints from small businesses each year. A small number result in ACCC enforcement action. The remainder often do not evidence a breach of the *Competition and Consumer Act 2010* or do not fall within our priorities as set out in our Compliance and Enforcement Policy.

The ACCC does seek to provide helpful referrals to small business complainants where there are other agencies that may be able to assist them. The ACCC will be working closely with the new Small Business & Family Enterprise Ombudsman and the state small business commissioners to ensure a streamlined referral process for small business complaints with concerns best suited to dispute resolution.

The ACCC is currently undertaking a number of initiatives to improve and enhance our referral process and information for small businesses, including:

- Conducting surveys of small businesses whose matters the ACCC has referred to another agency to gain a better understanding of their experience and improve our referral process.
- Reviewing our template response documents for small business to ensure the templates contain accurate and effective referrals to other agencies. The review includes consultation with those agencies to foster a positive experience for the small business complainants.
- Updating our website information targeted at small business. This will make it easier for small businesses to access relevant information and provide the ACCC with a platform to promote small business specific campaigns.

The ACCC has publicly released its 2016 Compliance and Enforcement Policy and we have identified two priority areas for the year ahead aimed at protecting small businesses:

- the new law protecting small businesses from unfair contract terms; and
- industry codes of conduct.

The policy also highlights that we are more likely to take enforcement action against larger companies ahead of smaller businesses, and we plan to consider the extent to which a trader has been willing to participate in mediation or other alternative dispute resolution processes when looking at our enforcement options.