

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2016 - 2017

Division/Agency: Australian Competition and Consumer Commission
Question No: 118
Topic: Australian Consumer Law Review – higher penalties
Reference: Written
Senator: Ketter, Chris

Question:

1. Are you still of the view that penalties are insufficient when they apply to misconduct by large firms in particular?
2. Would the ACCC welcome the proposal put forward at various times, including Labor and the interim Australian Consumer Law Review, that penalties under the Australian Consumer Law Review should rise to at least match those in the Competition and Consumer Act?
3. Has the ACCC offered feedback on that proposal to the Australian Consumer Law review?
4. Has Treasury and/or the Government sought feedback on a proposal to raise penalties? Who approached the ACCC? When did this occur?
5. What are the implications of maintaining the status quo on penalties? Will we continue to see cases of misconduct?

Answer:

1. The ACCC continues to hold the view that the current maximum penalties available under the Australian Consumer Law (ACL) are too low and need to be increased if they are to act as an effective deterrent.

The ACL Review is considering the issue of whether the financial penalties available for breaches of the ACL are sufficient to provide specific and general deterrence.
2. The ACCC notes that the ACL Review Interim Report raises the option of aligning consumer penalties with those available for competition law breaches. The ACCC considers that penalties under the ACL ought to be more comparable to competition law penalties so they can provide better specific and general deterrence rather than risk being seen as simply a cost of doing business. The ACCC is on the public record and has reiterated during the course of the review our support for increased penalties in the ACL. The ACCC Chairman, Rod Sims addressed this point in his annual speech at the Committee for Economic Development Australia (CEDA) in February 2017. A copy of this speech is available on the ACCC's website: <http://www.accc.gov.au/speech/cca-compliance-in-interesting-times>.
3. The ACCC is participating in the ACL Review in conjunction with our Commonwealth, State and Territory counterparts. The ACCC has not made independent submissions as part of the review process.
4. The ACCC is in regular communication with the Treasury in relation to the ACL Review and including in relation to considerations as to increased penalties. Earlier this year the Minister sought ACCC views on the progress of the ACL Review generally.
5. As per question 1, the ACCC considers that the current maximum penalties available under the ACL are too low and need to be increased if they are to act as an effective

deterrent. There will always be firms who chose to break the law. The object of any change to penalties is to change the cost / benefit equation to one where penalties for contraventions are not seen as a cost of doing business.