

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates 2014
3 June to 5 June 2014

Department/ Agency: ACCC

Question: BET 844-875

Topic: Australian Competition and Consumer Commission

Reference: Written - 12 June 2014

Senator: Wong

Question:

- 844. The ACCC has indicated there will be further redundancies over the 2014-15 financial year. You currently have 745 full time staff, can you anticipate the size of your agency by the end of the 2014-15 period?
- 845. Have previous reductions on your staff had an impact on your output?
- 846. Have you ever requested more staff from the government in order to increase ACCC output?
- 847. Which APS levels will redundancies over 2014-15 be drawn from?
- 848. What is the saving?
- 849. What would be the typical roles these staff members would have played?
- 850. Can you elaborate on other financial management and governance reforms that will assist in meeting the agreed budget for 2014-15?
- 851. If the government succeeds in repealing the carbon price, the job of monitoring the knock-on effects in the marketplace will fall to the ACCC at a time when staff levels are the lowest they have been in a number of years. Are you concerned that the agency's work on other fronts will suffer?
- 852. Would you say the efficacy of the ACCC is in direct proportion to the size of its staff?
- 853. If not, what other facets of the agency's activity ensure Australian consumers and businesses interact in a fair marketplace?
- 854. Does the component of your funding that's specifically for monitoring the repeal of the carbon price include a set amount for employing staff?
- 855. If so, how much is that component?
- 856. How many APS employees and at what levels would this be intended to fund?
- 857. Is the ACCC preparing strategies to monitor the prospective repeal of the carbon price?
- 858. What difficulties do you anticipate that your staff might face in regulating this change?
- 859. Will this involve diversion of staff or resources from other areas of regulation or enquiries?
- 860. Are there other specific facets of the ACCCs work that will be prioritised or significantly boosted as a result of the funding announced in Budget 2014-15?
- 861. Will it be necessary to increase staffing levels specifically in relation to these priorities?

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- 862. What portion of the 68.5 million will be allocated to creating new positions in the ACCC over the next four years?
- 863. Have you established an ideal target for staffing levels by the end of this four year period?
- 864. The ACCC has noted in the past that building cases of unconscionable conduct, cartel behaviour, misuse of market power etcetera is necessarily a long and intensive process, are you concerned that the investigations will take longer?
- 865. Which level of staff would typically be involved in building this kind of case? As an example, what would be the make-up of the team that put together the recent case of unconscionable conduct against Coles?
- 866. Given that case took 18 months to put together at previous staffing levels, would it be reasonable to expect that this kind of enquiry would take longer unless staffing levels climb?
- 867. Where the ACCC pursues such cases there is implicitly an unjustified cost either to consumers or suppliers - how will the ACCC ensure that it can make timely interventions in the market whenever that's due?
- 868. Could you explain how the absence of an Assistant Treasurer has affected your agency's work?
- 869. Has the acting Assistant Treasurer indicated any conditions or desirable performance goals that are tied to the increased funding over the four years from 2014-15?
- 870. Do you understand the increased funding to be intended to strengthen the ACCC's current models of practice, or is it intended to facilitate new methods and fields of investigation?
- 871. If the latter, can you elaborate on what you expect those new methods and fields of investigation might involve?
- 872. Have you had any indication from the Assistant Treasurer that a change is planned for the focus of your agency's work?
- 873. Can you give us a sense of your commitment to pursuing your case against unconscionable conduct in the supermarket sector?
- 874. To your mind, did the recent changes made by Coles and Woolworths to their fuel shopper dockets programs flout the intention of the ACCC's guidelines on this program?
- 875. Are you concerned that these changes continue the kind of anti-competitive behaviour that your agency's previous interventions had been intended to stop?

Answer:

- 844. Following a voluntary redundancy program, the ACCC is now a smaller more sustainable organisation that is capable of operating within its budget. The ACCC does not have any current plans for further reductions in staff levels and has no

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current plan to undertake a round of involuntary redundancies.

845. While staff levels are inherently linked to output, the ACCC is confident that it can continue to perform as an effective regulator with its current staffing numbers. As part of this, the ACCC is continuing to develop the way it operates to be more efficient and to prioritise its work effectively within available resources.
846. The ACCC has not specifically requested more staff from the government in order to increase output.
847. The ACCC does not have any current plan for further reductions in staffing levels and has no current plan to undertake a round of involuntary redundancies.
848. Not applicable.
849. Not applicable.
850. The ACCC has enhanced its corporate governance and is placing a greater focus on how the agency goes about making decisions that relate to the ACCC and AER as a corporate entity. This focus is designed to align decision-making around the best use of the organisation's people and resources to achieve outcomes that benefit the Australian community within the budget allocated by the Government.

The ACCC has established a new Corporate Governance Board. This Board sits at the apex of the new governance structure. The board is supported by the work of a number of committees. These are the Audit and Finance Committee, Legal Committee, and People and Capability Committee.

The Corporate Governance Board's purpose is to oversee the ACCC's corporate and financial performance. The board's responsibilities include strategy setting and corporate planning, internal budgets and resource management, performance monitoring and reporting, capability development, and agency accountability.

851. No. The ACCC was provided specific funding in relation to roles assigned to it in relation to the repeal of the carbon price and this role will therefore not impact on the ACCC's other functions.
852. ACCC is confident that it can continue to perform as an effective regulator with its current staffing levels.
853. As noted above, the ACCC is continuing to change the way it operates to be more efficient and remain an effective force as a smaller, more sustainable organisation delivering strong outcomes that benefit consumers and businesses.
854. The ACCC was provided funding in relation to roles assigned to it in relation to the repeal of the carbon price. That funding includes a staff component. Staff costs include monitoring, compliance and enforcement activities as required.
855. \$6.9 million over 3 years.

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856. This was calculated based on a profile of 28 staff across levels – APS4 – SES Band 1.
857. On 24 February 2014, the Australian Treasurer, pursuant to the price monitoring provisions (s. 95ZE) in the *Competition and Consumer Act 2010* (CCA), directed the ACCC to monitor prices, costs and profits to assess the general effect of the carbon tax scheme in Australia in preparation for the anticipated carbon tax repeal post July 2014 (the Direction).

The Direction covers the supply of regulated goods - natural gas, electricity and synthetic greenhouse gases – as well as corporations identified as liable entities under the Clean Energy Act 2011.

To date the ACCC has received 350 responses to information requests to relevant entities and a further 15 from entities that at the time were not covered by the Direction but made representations during the carbon pricing period.

The ACCC has focussed its information collection on baseline prices, price setting practices, and how the carbon tax scheme has impacted on the entity's pricing structures and carbon component costs. Broadly, the information provided concerns:

- the impact of the carbon tax scheme on the entity
- managing financial risk
- pricing
- customer contracts
- sales and acquisitions
- supply agreements.

Responses are currently being analysed. While the initial information requests are voluntary the CCA includes compulsory information gathering powers if required.

In undertaking its monitoring role, the ACCC has also been consulting with industry associations, small business groups and consumer representative groups. This consultation has begun to feed into targeted and practical guidance to businesses and consumers about their responsibilities and rights in respect of the proposed provisions.

The Direction also requires the ACCC to provide quarterly reports on its monitoring activities to the Minister. The first report can be found at <http://www.accc.gov.au/publications/monitoring-of-prices-costs-profits-to-assess-the-general-effect-of-the-carbon-tax-scheme-in-australia>

The second report will be provided to the Minister on or before 28 July 2014. The report will then be published on the ACCC's website.

The proposed carbon tax repeal legislation also includes a similar monitoring function.

858. Under the proposed carbon tax repeal legislation the ACCC's key roles are:

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- price monitoring in key sectors
- taking action against businesses in key sectors that attempt to exploit other businesses and consumers by charging a price that is unreasonably high having regard to the carbon tax repeal (price exploitation)
- taking action against businesses that make false or misleading claims about the effect of the carbon tax repeal or carbon tax scheme on the price for the supply of goods or services.

The ACCC is a regulator that has strong experience across all aspects of the role.

The ACCC currently has a monitoring role with regards to complex sectors such as stevedoring, airports and petrol. Expertise developed through this work has been utilised in the ACCC's current monitoring role.

The ACCC was successful in protecting consumers during the introduction of carbon pricing and has a strong and well recognised record in dealing with misleading or deceptive conduct.

The ACCC was also successful in dealing with price exploitation at the time the GST was introduced. Again expertise developed during that period should assist during the proposed carbon tax repeal transition period.

In its proposed new role the ACCC will take a 3 pronged approach:

- monitor prices to gauge the effect of the carbon price in key industries;
- educate businesses and consumers as to their rights obligations; and,
- take enforcement action where required.

859. No. The ACCC was provided specific funding in relation to roles assigned to it in relation to the repeal of the carbon price and this role will therefore not impact on the ACCC's other functions.

860. The additional funding received by the ACCC will enable the agency to operate effectively and sustainably across the forward estimates. The ACCC will continue to focus on its current priorities, including those set out in the ACCC Portfolio Budget Statement, Corporate Plan and Compliance and Enforcement Policy. These documents are available on the ACCC website. The ACCC has not set new priorities as a result of this additional funding but will continue to use prioritisation as part of its approach to producing the outcomes, within its budget funding, that most benefit the Australian community.

861. No.

862. As noted above, the additional funding will enable the ACCC to operate as a more sustainable organisation at its current staffing levels. The ACCC will continue to manage its staff numbers within budget.

863. See above response to BET 862.

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864. Assessment of cases such as unconscionable conduct, cartel behaviour and misuse of market power can require complex investigations. Investigations can involve lengthy evidence gathering through both voluntary measures and by using our compulsory information gathering powers, followed by legal and economic analysis. The ACCC has and continues to manage its portfolio of investigations having regard to the resources available to it and consistent with its Compliance and Enforcement Policy.
865. The size and composition of an investigation team will vary from matter to matter and through the life of an investigation. While composition varies at different times in various investigations, there were approximately seven investigative and internal legal staff involved in the various supermarket investigations referred to in the question.
866. The length of investigations are influenced by a number of factors including the number of witnesses involved, the duration and breadth of conduct, the volume and complexity of documentary evidence, and the extent to which statutory information gathering powers are employed. As noted in the response to BET 864, the ACCC has and continues to manage its portfolio of investigations having regard to the resources available to it and consistent with its Compliance and Enforcement Policy.
867. The ACCC prioritises matters in accordance with its Compliance and Enforcement Policy. Where a matter is identified as a priority and requires urgent intervention, the ACCC will ensure that its investigative processes and the resolution of matters is conducted as efficiently as possible to avoid costly delays, and business and consumer uncertainty.
- The ACCC has a range of enforcement tools available to it to facilitate the timely resolution of matters such as infringement notices.
868. The ACCC's responsible Minister is the Minister for Small Business, the Hon Bruce Billson MP. As such, the absence of the Assistant Treasurer has not had a direct impact on the work of the ACCC.
869. No.
870. The additional funding received by the ACCC will enable the agency to operate sustainably across the forward estimates. While this funding will be primarily used to maintain current operational levels, the ACCC will always consider potential innovation when undertaking investigations if appropriate in the circumstances. Any such changes to practice would be considered on a case by case basis in the context of the ACCC's priorities and budget position.
871. See above response to BET 870.
872. No.
873. The ACCC remains committed to addressing unconscionable conduct and other unlawful conduct in the supermarket sector.

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Competition and consumer issues in highly concentrated sectors, in particular in the supermarket and fuel sectors are identified as a priority in the ACCC's 2014 Compliance and Enforcement Policy.

On 5 May 2014 the ACCC instituted civil proceedings against Coles Supermarkets Australia Pty Ltd and Grocery Holdings Pty Ltd (together, Coles) alleging that Coles engaged in unconscionable conduct in relation to its Active Retail Collaboration (ARC) program, in contravention of the Australian Consumer Law. The ACCC will continue to allocate sufficient resources to see this matter through to its conclusion.

As part of its broader inquiry into claims made against the major supermarket chains in relation to their dealings with suppliers, the ACCC continues to dedicate resources to these investigations.

874. On 6 December 2013, the ACCC accepted court enforceable undertakings from Coles and Woolworths to voluntarily cease making fuel savings offers which are wholly or partially funded by any part of their business other than their fuel retailing business. Pursuant to the undertaking, Coles and Woolworths will not make or allow fuel discounts where those discounts are:

- not funded wholly by the fuel subsidiary or division of Coles or Woolworths
- greater in value than 4 cents per litre and contingent on purchases of goods or services at a store or business separate from the retail fuel outlets.

On 25 February 2014, the ACCC instituted proceedings against Coles and Woolworths for allegedly breaching the undertakings provided. It was alleged that Coles and Woolworths breached the undertaking as:

- from January 2014, Woolworths continued to offer discounts of 8 cents per litre (4+4 cents).
- in early February 2014, Coles offered a bundled discount of 14 cents per litre (10+4 cents).

On 14 April 2014, the Federal Court found that Woolworths had breached its undertaking by offering a 8 cents per litre (4+4 cents) fuel discount until 9 March 2014, that was conditional on Woolworths' supermarket purchases. The Federal Court dismissed the ACCC's case against Coles and part of the case against Woolworths that argued their recent bundled discount offers breached their undertakings to the ACCC. The Court's decision clarified that supermarket fuel offers greater than 4 cents in a single acquisition of fuel will not be permitted, however bundling supermarket fuel offers with a petrol station offer is not in breach of the undertaking.

875. The ACCC was concerned that while large shopper docket discounts may provide short term benefits to some consumers, the likely harm to other fuel retailers and the competitive process could over time, result in higher petrol prices.

The Federal Court's decision has clarified that supermarket fuel offers greater than 4 cents in a single acquisition of fuel will not be permitted.

The ACCC will continue to monitor compliance by Coles and Woolworths with their undertakings.