

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates 20-21 February 2008

**Question: aet 52**

**Topic: Section 46 – Trade Practices Act**

**Hansard Page: E129**

**Senator BUSHBY asked:**

**Senator BUSHBY**—How many actions has the ACCC taken under section 46 of the Trade Practices Act in the past five years? I am happy for that one to be on notice.

**Mr Cassidy**—Yes, we will take that on notice. This is a familiar question that we have been asked ever since the Boral case. The answer boils down to very few.

**Answer:**

In the period from 1 January 2003 to 31 March 2008 the Australian Competition and Consumer Commission (ACCC) commenced one proceeding under section 46 of the *Trade Practices Act 1974* (the Act).

This proceeding was commenced on 5 February 2007 against two cardiothoracic surgeons who operate in the Adelaide metropolitan area. The surgeons, Mr John Lincoln Knight and Mr Iain Kenneth Ross, allegedly breached a number of provisions of the *Competition Code of South Australia* (the Code), including section 46. The proceedings were settled by consent on 5 July 2007 with the ACCC discontinuing its claims under section 46.

The court made declarations under section 45 of the Code and ordered Mr Knight and Mr Ross to each pay a pecuniary penalty of \$55,000 and make a contribution of \$5,000 each to the ACCC's costs in relation to the proceedings. Mr Knight and Mr Ross were also required to attend trade practices law compliance training.

On 1 November 2002 proceedings were commenced against Baxter Healthcare Pty Ltd for alleged breaches of sections 46 and 47 of the Act and are continuing before the Full Federal Court of Australia.