

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio

Supplementary Budget Estimates 1 - 2 November 2006

Question: **sbt 116 (ACCC)**
Topic: **Regulatory Impact**
Hansard Page: **Written**

Senator CONROY asked:

1. **Given the significant regulatory discretion possessed by the ACCC in dealing with telecommunications issues under the Trade Practices Act, has the ACCC considered preparing Regulatory Impact Statements for enduring regulatory interventions such as the imposition of record keeping rules and mandatory information requests?**
2. **If so, what is the ACCC's view of the appropriateness of such a move?**

Answer:

1. The Australian Competition and Consumer Commission (the ACCC) prepares Regulation Impact Statements in accordance with the requirements for agencies administered by Office of Best Practice Regulation, previously the Office of Regulation Review. Consistent with these requirements, the ACCC generally prepares Regulation Impact Statements in relation to record keeping rules, but not in relation to mandatory information requests under section 155 of the *Trade Practices Act 1974* (the Act).
2. Section 155 of the Act is the ACCC's most widely used mandatory information-gathering power. It gives the ACCC the power to require a person to furnish information, produce documents and/or give evidence under oath or by way of affirmation when investigating matters that constitute, or may constitute, a breach of:
 - the *Trade Practices Act 1974*;
 - Part 20 of the *Telecommunications Act 1977*; and
 - Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

The ACCC uses the statutory power under section 155 to properly investigate potential breaches of the above legislation.

A decision to issue a section 155 notice is not taken lightly by the ACCC. Before issuing a section 155 notice, the ACCC will consider whether the information is otherwise available, including whether it would be provided voluntarily. Information may not be provided for a range of reasons. A potential respondent may not want to co-operate with the ACCC. Other parties may not be able to co-operate because of confidentiality or other legal restraints. Some persons may wish not to be seen co-operating freely with the ACCC. Although information may otherwise be available

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from other sources, it may be appropriate to use section 155 powers to obtain information from a potential respondent for evidentiary purposes.

A section 155 notice may only be issued in circumstances where the ACCC, the Chairperson or the Deputy Chairperson has a 'reason to believe' that a person has engaged or is engaging in conduct that constitutes, or may constitute, a contravention of the above legislation. While it is not necessary for the ACCC, the Chairperson or Deputy Chairperson to set out the basis for its reason to believe in relation to the particular matter, it must have actual belief and a proper factual basis for that belief. In other words, there must be reasonable grounds or cause for that belief, objectively supportable by material facts and other relevant information.

The power under section 155 is only investigative, not judicial. In formulating a 'reason to believe' of the kind described in section 155, the ACCC is not making a determination as to the facts or applying the law to them in any way that is binding or authoritative.

Mandatory information requests issued pursuant to section 155 are not a form of enduring regulatory intervention, but rather an important power available to the ACCC to assist in fulfilling its investigatory role. On this basis, the ACCC has not considered preparing Regulatory Impact Statements in relation to section 155 notices and is of the firm view that such a move would be inappropriate.