

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Trade Practices Amendment (Australian Consumer Law) Bill 2009

Public Hearing, Friday, 21 August 2009

Question: 1

Topic: Application of unfair contract terms to small business

Senator Xenophon asked: You would be able to confirm that Minister Bowen has Cabinet approval for the unfair contract terms and provisions applied to small businesses? He would not have made that announcement in the absence of that approval?

Answer: Minister Bowen had sought and obtained, via an exchange of letters, the approval of relevant Ministers. This resulted in the release by the Government, on 11 May 2009, of an exposure draft of the unfair contract terms provisions. This was undertaken to ensure extensive consultation on the draft provisions.

Question: 2

Topic: Consultation with business on unfair contract terms

Senator Xenophon asked: Perhaps you could take this on notice: there was a fairly short window of time frame between Minister Bowen's announcement and the introduction of the bill, which now excludes small businesses. Could you provide details of the nature and extent of the consultations — which businesses were consulted or which business groups were consulted? And what aspects of Minister Emerson's role as small business Minister did he take with him in formulating a different policy by excluding small businesses?

Answer: Minister Emerson was sworn-in as Minister for Competition Policy and Consumer Affairs on 9 June 2009 and continued the consultations that Minister Bowen had been undertaking. Ninety-six submissions on the draft legislation were received and they are available on the Treasury website.

The Government announced the removal of business to business transactions from the unfair contract terms provisions of the Bill on 24 June 2009, when it was introduced. The Government responded to the concern that, in the context of business-to-business contracts, a general notion of unfairness that is subject to interpretation by the courts may have the effect of increasing risk and therefore costs faced by small businesses.

Minister Emerson also stated that the issue of application of unfair contract terms in business to business transactions would be considered further in the context of the Government's responses to the Parliamentary Committee inquiries into unconscionable conduct and the Franchising Code of Conduct.