

**Senate Economics Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates

2016 - 2017

**Department/Agency:** ACCC  
**Question:** BET 283-291  
**Topic:** ACCC  
**Reference:** Written - 6 May 2016  
**Senators:** Penny Wong and Chris Ketter

**Question:**

283. Action by the ACCC recently resulted in a \$1.7m fine against Neurofen – was this the penalty sought?
284. Are higher penalties warranted?
285. Why are penalties set at current rates?
286. Are there limits to seeking higher penalties under the current regime?
287. Are there other examples of misconduct, alleged or proven by the ACCC, where harsher penalties would have been more appropriate relative to the seriousness of the crime?
288. Is there rational for differences between the rate of penalties under the Australian Consumer Law, and those in the Competition and Consumer Act for activity like cartels?
289. What deterrence effect would a different penalty regime have?
290. Please summarise the ACCC submission to Australian Consumer Law review?
291. Since cutting the ACCC Budget, what percentage of cut funding has the Government restored?

**Answer:**

283. The ACCC did not seek a penalty of \$1.7 million, we had sought a penalty of at least \$6 million based primarily on:
  - the size of Reckitt Benckiser (the owner and supplier of Nurofen products) – during the relevant period Reckitt Benckiser had a large share of the market for oral analgesics in retail and grocery stores. Its sales amounted to many millions of dollars;
  - the extent of Reckitt Benckiser’s contravening conduct – 5 years duration, around 6 million units sold;
  - the substantial profits Reckitt Benckiser derived from the sale of the products;
  - Reckitt Benckiser’s marketing documents which clearly showed a deliberate strategy for displaying and selling the products in a manner that maximised its profits; and
  - the fact that Reckitt Benckiser was on notice that it risked contravening the Australian Consumer Law by reason of criticisms of its products by Choice, the ABC Checkout program and a previous determination by the Therapeutic Goods Administration that it had engaged in misleading advertising.

284. The ACCC believes that higher penalties are warranted on the grounds outlined in SBE283 and to ensure that civil penalties for contraventions of the Australian Consumer Law by large companies like Reckitt Benckiser are not seen simply as an acceptable cost of doing business. The ACCC has appealed the primary judge's penalty award of \$1.7 million on a number of grounds, including that the penalty awarded is not sufficient for the primary purposes of general and specific deterrence.
285. The *Competition and Consumer Act 2010* (CCA) and the Australian Consumer Law (ACL) outline the maximum penalties that can be imposed by the Courts for breaches of the competition and consumer provisions of the Act.
286. The penalties that a Court can impose for contraventions of the consumer and competition laws are specified in the CCA and the ACL.

When imposing a penalty the Court is required to consider all relevant matters, including the nature and extent of the conduct and any loss suffered as a result, the circumstances in which the conduct took place and whether the person has breached the CCA or ACL previously.

287. In the past two years, the ACCC has appealed three court judgments in relation to quantum of penalty. These matters were Flight Centre Ltd, Cement Australia Pty Ltd & Ors, and Reckitt Benckiser (Australia) Pty Ltd.
- In these matters, the ACCC submitted to the Court that the penalties awarded at first instance were inadequate for the purpose of specific and general deterrence, and risk being seen as simply the cost of doing business.
288. Questions regarding the rationale behind why penalty rates were set differently on the introduction of the ACL is a policy question and should be directed to the Treasury.
289. As set out in response to SBT 287, the ACCC seeks to have penalties set at such a level to achieve both specific and general deterrence which encourages compliance with the Act. To achieve this, the penalty must not be seen as the cost of doing business, rather the penalties must outweigh the gains that businesses obtain from the offending conduct.
290. The review of the ACL is being undertaken by Consumer Affairs Australia and New Zealand (CAANZ), a body made up of Commonwealth, State and Territory officials with responsibility for consumer policy within their respective jurisdictions. The review commenced with the release of an Issues Paper on 31 March 2016. The ACCC is participating in the review as a member of CAANZ, in conjunction with Commonwealth, State and Territory counterparts. The ACCC did not make a submission to the Issues Paper on the review of the law.
291. Reductions in the ACCC's budget have primarily been due to efficiency dividends but also whole-of-government savings measures. Its base funding has not been subject to any significant one-off cuts.