

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

10 – 11 February 2010

Question: aet 80

Topic: Issues put to the Enforcement Committee

Hansard Page: E9 – E10 (10/02/2010)

Senator BRANDIS asked:

Senator BRANDIS—On another way of approaching it, my inquiry might be to ask this: have there been any cases where a potential or a possible Birdsville amendment issue has been sufficiently serious that counsel's advice has been obtained by the commission as to whether the Birdsville amendment could be relied upon on that occasion?

Mr Samuel—Yes, there have.

Senator BRANDIS—How many?

Mr Samuel—I would have to take that on notice.

Senator BRANDIS—Is it many? Is it half a dozen?

Mr Samuel—Not many but several, whatever several might mean.

Senator BRANDIS—May I take it from the fact that there have not been many cases that on each of those occasions counsel has advised against reliance on the Birdsville amendment?

Mr Samuel—Sorry, I was not sure if there was a double negative there. Could you repeat the question?

Senator BRANDIS—Perhaps there was. In each of those cases was the advice from counsel that the prospects of invoking the Birdsville amendment were not good?

Mr Samuel—Let me state quite clearly: there has not been a case put to the enforcement committee where the recommendation of staff or of counsel has been that a Birdsville case ought to be pursued. Whether by way of litigation or by way of alternative enforcement remedy, there has not been the case put before us where the enforcement committee has rejected that advice and not proceeded.

Senator BRANDIS—Thank you.

Answer:

The ACCC has sought legal advice relating to two matters concerning alleged conduct that may contravene section 46(1AA) of the *Trade Practices Act 1974*.

One matter has since been closed and the ACCC has not yet received the legal advice for the second matter.

As outlined in the evidence given in response to Senator Brandis' question concerning legal advice on the application of section 46(1AA), as extracted above, there has not been a case where the enforcement committee has acted contrary to legal advice on the application of section 46(1AA) to the alleged conduct.