

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates, 1 to 4 June 2004

Question: Bud 22

Topic: ACCC – Disendorsing of Codes

Hansard Page: E35

Senator Webber asked:

At the recent economics references committee inquiry into the Trade Practices Act there was, as I recall it, some discussion about the legal capacity of the ACCC to disendorse codes where a firm or industry breached them. I think at the time the commission said that it was confident that the withdrawal of endorsement would not give rise to a legal challenge. The commission said that they had received oral advice to that effect. I was wondering if we could obtain that advice, if it was available, in writing.

Mr Cassidy—We will take that on notice.

Senator WEBBER—Thank you.

Answer:

The ACCC understands Senator Webber’s question, as to disendorsing industry codes, to be in the context of comments made by the ACCC on Friday 7 November 2003 to the Senate Economics References Committee inquiry into the effectiveness of the Trade Practices Act in protecting small business.

The ACCC indicated to that Committee that it was satisfied its proposed processes to disendorse a code would meet concerns about due process and natural justice.

The ACCC also undertook to provide further information to the Committee on how it was proposing to meet the issues of procedural fairness and natural justice. This information was subsequently provided to the Committee in a letter addressed to the Committee Secretary, Dr Sarah Bachelard on 27 November 2003. A copy of this correspondence is attached.



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27 November 2003

Dr Sarah Bachelard
Committee Secretary
Economics References Committee
Australian Senate
Parliament House
CANBERRA ACT 2600

Dear Dr Bachelard

At the Australian Competition and Consumer Commission's ("the Commission") appearance before the Committee on 7 November 2003, I indicated that the Commission looked at some issues relating particularly to the disendorsement process (with respect to industry codes of conduct endorsed by the ACCC) such as natural justice and due process.

The Commission anticipates endorsing industry codes of conduct which meet the criteria indicated in the "ACCC Guidelines for developing and endorsing effective voluntary industry codes."

All industry codes that are endorsed by the Commission are required to undergo regular review to ensure that these codes continue to maintain the standard that enabled them to secure ACCC endorsement.

To ensure that a given national industry code ("the Code") maintains the requisite standard, the Code Administration Committee ("the Committee") will be required to provide an annual report to the Commission about the functioning of the code and, every three years, commission an independent audit on the operations of the code and make this report available to the Commission.

To assist with reporting obligations imposed under the endorsement regime, the Commission will design a report template to ensure that only the necessary data and information are collected to enable an informed assessment by the Commission on the effectiveness of the Code.

EXECUTIVE OFFICE



In the event that a report indicates the Code is not meeting one or more of the essential criteria for endorsement, the ACCC staff will advise the full Commission accordingly. The Commission will provide the Committee with the opportunity to respond to the report. This response may include a view by the Committee that the Code continues to meet all essential criteria.

The Code will retain its endorsed status if the Commission is convinced, upon considering the Committee's response and reviewing the report, that the Code is meeting the criteria.

However, if the Commission considers that the report has properly concluded that the code is failing to meet one or more criteria, the Commission will determine what action needs to be taken by the Committee to rectify the failure if such failure can be rectified.

The Commission will inform the Committee accordingly and provide the Committee with a reasonable period of time (to be agreed between the Commission and the Committee with reference to the circumstances) to rectify the failure as required.

If the Commission considers that it is not possible to rectify the failure or if the Committee does not rectify the failure within the time agreed, the Commission may require the Committee to remove the ACCC endorsement and all references to such endorsement from the Code and relevant literature. Where printed material displaying the ACCC logo is in circulation and cannot be withdrawn, it would be the Committee's responsibility to advise all signatories to the Code that they must advise their clients that their Code no longer has the ACCC endorsement.

Should you have further queries on the matter, please feel free to contact Nigel Ridgway on 6243 1223, at the first instance.

Yours sincerely



Brian Cassidy
Chief Executive Officer