

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates 29, 30 & 31 May 2007

Question: bet 37 (ACCC)

Topic: Petrol Inquiry – Presentation of Statements

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Senator O'BRIEN asked:

Senator O'BRIEN—Is the presentation of these statements at the discretion of the judge?

Mr Cassidy—The consent orders?

Senator O'BRIEN—No, not the consent orders, the sworn witness statements.

Mr Cassidy—Very much so. It is a question of what the court will admit as evidence.

Senator O'BRIEN—Are they the rules of the court or the state of the legislation?

Mr Samuel—Rules of court, I am instructed.

Mr Cassidy—They are rules of court. Whether it is in the Federal Court Act or whether it is just the rules of evidence of the court I am afraid I would have to consult our lawyers on, but it would be one or the other. I suspect rules of evidence, which means that it is not a legislative matter as such.

Answer:

Section 59 of the *Federal Court of Australia Act 1976* provides for the Federal Court Rules. Order 10 rule 2 (a)(xiv) of the Federal Court Rules provides that the Court may make orders with respect to 'the giving of evidence at the hearing, including whether evidence of witnesses in chief shall be given orally or by affidavit, or both'. Therefore, the discretion of the Court to order sworn witness statements or oral evidence arises from the Federal Court Rules.