

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio (ACCC)

Budget Estimates, 22 June 2009

Question: bet 177

Topic: Australian Business Investment Partnership

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Senator Bushby asked:

Senator BUSHBY—What was the extent of the government’s consultation with the ACCC in the formation of the legislation for the Australian Business Investment Partnership?

Mr Cassidy—I am happy to answer that. We answered this question before this committee at estimates and when it inquired into the legislation, but I am happy to answer it again. We had some fairly, what I might call, ‘broad-brush discussions’ with Treasury early on, when I think they were thinking about how that might be formed and what shape it might take. We provided some fairly general advice about what we thought would be the relevant provisions of the act for the different processes that were available for possibly exempting ABIP or authorising its conduct, as the case may be. That was all fairly general broad-brush sort of stuff. In one of our previous answers on this subject, I think it was described as sort of ‘trade practices 101’ type material. Really, our discussions with Treasury did not get much beyond that, in the sense that we had those discussions and the exchange of material along those lines and then heard nothing from Treasury until, I think, following estimates hearings in February. Following some questions that were put on notice there, I think we were contacted by Treasury in relation to the issue and, at that stage, they indicated that serious thought was being given to a section 51 exemption for ABIP. We did not see, in a sense, confirmation of that until we saw the bill that was introduced into parliament with the so-called section 51 exemption in it. That was about it.

Senator BUSHBY—When Treasury came back to you and indicated that they were thinking about a section 51 exemption, did you provide any comment to them at that point?

Mr Cassidy—No. That comment was made in passing; I think something was said like ‘serious consideration’ was being given to that possibility. ‘That possibility’ was one of the possibilities that we had outlined earlier—

Senator BUSHBY—So at that stage it was—

Mr Cassidy—when there was a range of advice. It is a policy issue for government as to whether to use a section 51 exemption; it is not something that is within our remit, if I can put it that way. We took the view that it was a decision for government to make.

Senator BUSHBY—So you were never specifically asked to provide any comment or advice on the use of a section 51 exemption in that legislation.

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Mr Cassidy—No. As I say, the only advice that we provided relevant to that was fairly general earlier advice.

Senator BUSHBY—The advice earlier.

Mr Cassidy—Yes, that is right. But, in terms of the section 51 exemption, we did not see the terms of that exemption until it appeared in the bill; we were not asked about its drafting or anything like that.

Mr Gregson—Mr Cassidy is quite correct in that regard. The only supplementary information I would provide is that, in or around May this year, when there was consideration of proposed amendments to provide the ACCC with monitoring and reporting functions, we saw those proposed amendments and made comments therein.

Senator BUSHBY—Have those comments been made public?

Mr Gregson—No.

Senator BUSHBY—Are you able to table those for the committee?

Senator Sherry—That is advice to government on a policy matter.

Mr Gregson—Indeed, the amendments have since been tabled before the Senate.

Senator BUSHBY—The amendments have been tabled—

Mr Gregson—Correct.

Senator BUSHBY—but the advice has not been.

Mr Gregson—That is right.

Senator BUSHBY—Minister, are you claiming a public interest exemption on the basis of that advice?

Senator Sherry—I will take that on notice.

Answer:

The Government is claiming a public interest immunity exemption in relation to the disclosure of the Australian Competition and Consumer Commission's (ACCC) advice to Government on this matter. The public disclosure of the ACCC's advice could inhibit and/or compromise the future provision of advice to Government on similar matters which may adversely affect potential Government policy responses.