

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

1 June – 3 June 2010

Question: BET 82

Topic: Dispute Resolution Process

Hansard Page: E110 (02/06/2010)

Senator BUSHBY asked:

Senator BUSHBY—Can the commission indicate whether it advises small business complainants to pursue mediation as a precondition to the commission investigating a small business complaint?

Mr Samuel—Certainly not as a precondition, no. But in appropriate cases, it may well be that we would try to direct parties or advise parties to go into a mediation, particularly where there would not appear on the surface to be a direct breach of the Trade Practices Act involved or the various codes of conduct. In some cases, we may even assist in bringing about that mediation process. But it is certainly not a precondition to investigation.

Mr Cassidy—Particularly in relation to the codes—the franchising code, the horticultural code and the petroleum industry code—because there are mediation processes provided for each of those codes.

Senator BUSHBY—Is it a precondition in those codes?

Mr Cassidy—No, it is not a precondition either. But, depending on the nature of the complaint, quite often they can be resolved more quickly and cheaply through that mediation process than, say, if the matter were to proceed to litigation.

Mr Bezzi—I will just add in relation to franchising that it is usually a continuing relationship, so the last thing that the parties really want is to be in protracted litigation. They really need to try to resolve the thing quickly through a mediator, if possible. So while we do not require it, often people are encouraged to facilitate it.

Senator BUSHBY—On those codes, has the commission received any formal complaints from mediators under any of them—the franchising, oil or horticultural codes—particularly regarding possible breaches?

Mr Cassidy—We refer obviously to a lot of mediators, where we have a complaint that we think is suitable for mediation. Similarly, the mediators, if they have someone come in where the conduct is basically fairly egregious, they will say to them, ‘Look, we think this is a matter that you should be taking up with the ACCC’, and they will cross-refer to us. So we do have those arrangements with each of the mediators.

Senator BUSHBY—What about regarding specifically possible breaches of the dispute resolution processes under those codes?

Mr Samuel—Well, if it is a breach of the code itself, it is more likely to be referred to us for enforcement action, being a breach of the code.

Senator BUSHBY—By whom? The mediator?

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Mr Samuel—Generally what happens is that the mediator discerns that the dispute cannot be resolved and/or that there is a breach of the code that is involved. That may be referred to us for appropriate investigation and enforcement action.

Senator BUSHBY—Can the commission indicate how many complaints it has received in relation to possible breaches of the dispute resolution processes under those three codes?

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

Answer:

Since the commencement of dispute resolution processes under the three codes, the ACCC has received:

- 158 complaints in relation to possible breaches of the dispute resolution processes under the Franchising Code
- one complaint in relation to possible breaches of the dispute resolution processes under the Oilcode
- no complaints in relation to possible breaches of the dispute resolution processes under the Horticulture Code.

It should be noted that many of these complaints also involve other issues.