

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

31 May – 2 June 2011

Question No: BET 123

Topic: Rescinded s49 of the Trade Practices Act

Hansard Page: Written

Senator Bushby asked:

The National Association of Retailer Grocers of Australia has called for the reintroduction of section 49. We know that this was rescinded after the Hilmer review in the mid 1990s.

The ACCC has not expressed an opinion for almost half a decade on its reintroduction.

1. Is it time for a debate on the reintroduction of s49 that outlawed price discrimination?

Answer:

As the Senator notes, section 49 of the then Trade Practices Act (the Act) was repealed following the 1993 Hilmer Committee recommendation that echoed concerns of previous enquiries, including the 1976 Swanson review and the 1979 Blunt review, about the effectiveness and utility of the provision.

On a number of occasions in recent times the ACCC has expressed opinions in relation to price discrimination generally and calls for the reintroduction of section 49 or an equivalent provision. For example:

- In its July 2008 Report into the competitiveness of retail prices for standard groceries¹, the ACCC discussed submissions commenting on price discrimination. It concluded that there can be significant economic efficiency and competition benefits resulting from price discrimination and that it was of the view that the various existing provisions of the Act are able to address concerns about anti-competitive price discrimination. It went on to express the view that the re-introduction of the former section 49, or the amendment of current provisions in the Act, was not necessary to address issues of price discrimination.
- More recently, in October 2009, the ACCC appeared before the Senate Committee inquiry into the Trade Practices Amendment (Guaranteed Lowest Prices – Blacktown Amendment) Bill 2009². At the hearings the ACCC was asked a number of questions in relation price discrimination and the adequacy or otherwise of existing provisions to address

¹ The report of the ACCC inquiry into the competitiveness of retail prices for standard groceries, July 2008, can be located at: <http://www.accc.gov.au/content/index.phtml?itemId=838251>

² Hansard for the ACCC's appearance before the Senate Economics Legislation Committee into the Trade Practices Amendment (Guaranteed Lowest Prices – Blacktown Amendment) Bill 2009 can be located at: http://www.aph.gov.au/senate/committee/economics_ctte/blacktown_amendment_09/hearings/index.htm

anti-competitive instances of price discrimination. The ACCC's contribution is referenced throughout the Committee report.