

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Supplementary Estimates 22-23 October 2008

**Question: sbt 30**

**Topic: Cartel Behaviour/ ACCC Chairman**

**Hansard Page: Written**

**Senator Fierravanti-Wells asked:**

1. After settling the Visy Industries matter, why did the ACCC choose to undertake a criminal prosecution against its former Chairman? Please provide details of when the decision to commence prosecution was taken.
2. How much has been expended to date in investigating, preparing and furthering that prosecution and how much has been budgeted for future expenditures in pursuing the matter?
3. Pursuant to what legislative powers is the Chairman of the ACCC undertaking a public campaign to criminalise cartel behaviours?
4. Should that campaign be run while the ACCC is undertaking a very public prosecution of an individual which could appear to have its origins in those views?
5. Could such advocacy impact the procedural fairness of such proceedings?
6. Is it the Chairman's role to advocate in the media and publicly for legislative changes? Alternatively, are there other established processes through which the ACCC can make its views known to governments and legislators?
7. Further to the answer to question 114 in Budget Estimates 3-5 June 2008, when did the Government commence the procedure for the reappointment of the Chairman?
8. In relation to the procedure for the reappointment, were other candidates considered for the position. Please provide details of the actual procedure undertaken, including details of relevant dates and actions undertaken on those dates.

**Answer:**

1. In November 2007 a penalty of \$36 million was ordered against Visy Board Pty Ltd and its director and owner, Mr Richard Pratt, following findings by Justice Peter Heerey of the Federal Court that Visy Board had engaged in price-fixing and market-sharing contraventions of the *Trade Practices Act 1974* (the Act) with its rival, Amcor Limited.

In the separate criminal proceeding against Mr Pratt (FCA 1373) now before the Court, ACCC alleges that Mr Pratt knowingly gave false or misleading evidence at an examination under section 155 of the Act. The examination was conducted

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in July 2005 as part of the ACCC's investigation into the alleged cartel conduct referred to above.

The ACCC made the decision to institute the prosecution on 18 June 2008. The ACCC commenced criminal proceedings on 19 June 2008.

2. By the end of October 2008 the ACCC had expended approximately \$190,000 in legal costs associated with the matter. Forward legal estimates are reviewed and provided for on an ongoing basis.
3. The ACCC, under the previous and now the current Chairman, has argued for the criminalisation of cartel behaviour reflecting its seriousness and treatment in a number of overseas jurisdictions.

The ACCC has a statutory function of providing information to the public pursuant to section 28 of the Act.

4. In the criminal proceeding against Mr Pratt it is alleged that he knowingly gave false or misleading evidence at an examination under section 155 of the Act.

This prosecution is unrelated to the question of criminalisation of cartel conduct.

5. No
6. The ACCC has a statutory function of providing information to the public pursuant to section 28 of the Act. More generally, it is not inappropriate for the ACCC to comment on the application of and possible improvement in the laws it enforces.

In addition to public comments the ACCC has made in this area, it has made submissions to inquiries such as the Dawson inquiry and provided information to Parliamentary Committees.

7. This question is best directed to the Treasury.
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