

ACCC Inquiry into the Competitiveness of Retail Prices for Standard Groceries

This hearing is convened under Part VIIA of the *Trade Practices Act 1974*. It is held pursuant to a request by the Federal Assistant Treasurer and Minister for Competition Policy and Consumer Affairs that the Australian Competition and Consumer Commission (ACCC) hold an inquiry into the competitiveness of retail prices for standard groceries.

With regard to submissions, witnesses should take them as being read.

Participants will be questioned on matters of specific interest to the ACCC. If witnesses are given an opportunity to comment generally, they should confine their remarks to the critical issues and not simply provide commentary on the price of groceries.

Procedural Issues

The terms of reference for this inquiry have been published on the ACCC's web site, together with an issues paper and all public submissions that have been received.

The procedure to be followed at a public inquiry is within the discretion of the inquiry Chair. The procedure for the taking of evidence will generally be as follows:

- Witnesses will not be required to give evidence on oath or affirmation. Witnesses are however reminded that it is an offence to give false or misleading evidence to the ACCC;
- Witnesses will then be asked questions by the Commissioners, Counsel assisting the inquiry and/or ACCC staff
- Witnesses will then be given the opportunity to make any clarifying remarks, either directly or (where the witness is represented) through questioning by their legal representatives. These remarks should be confined to clarifying or responding to issues that arise during questioning.
- Persons who use insulting or offensive language or otherwise disrupt the hearing may be excluded from the hearing.
- The ACCC may wish to question witnesses about information that is competitively sensitive. The ACCC can take evidence in private if a witness objects to giving evidence of a confidential nature in public and the ACCC considers it appropriate to do so. If this occurs, it may be necessary for all persons other than the Commissioner/s, Counsel assisting the inquiry and ACCC staff, the witness and (if represented) the witnesses legal representative, to leave the room for parts of the hearing. The ACCC intends to hold hearings in public as far as possible, but will be required to ask witnesses about matters that are competitively sensitive or otherwise confidential. This means the hearing may need to be closed at certain points.

- When a witness is asked a question during a public hearing, and believe that to answer that question would be to provide confidential information, the witness should object to the question on the basis that the answer is confidential. The Commissioner/s can then determine whether this information should be provided in private.
- An audio recording of proceedings will be taken. This recording will be transcribed and the transcript of hearings will be made available on the ACCC's web site as soon as possible after the hearing. Evidence given in private will be recorded and transcribed, but will not be made available on the website. However, the ACCC may disclose some aspects of the confidential components of the transcript after the hearing if it considers that some of the material should be in the public domain. The ACCC will consult with the relevant witness regarding confidentiality of the material before doing this.

Obligations and liabilities of witnesses giving evidence at the inquiry

- It is a serious offence under the Criminal Code to give evidence at this inquiry that a witness knows is false or misleading, or to omit any matter or thing without which the evidence is misleading.
- Under section 95T of the *Trade Practices Act 1974*, it is a criminal offence if a person, without reasonable excuse:
 - Fails to attend as required by a summons to appear and report from day to day unless excused or released from further attendance by the inquiry Chair;
 - Refuses or fails to answer a question that a witness is required to answer by the inquiry Chair;
 - Refuses or fails to produce a document that a witness is required to produce by a summons.
- Under section 95V of the *Trade Practices Act 1974* a witness summoned to appear at an inquiry has the same protection, and is subject to the same liabilities, as a witness in proceedings in the High Court. A barrister, solicitor or other person appearing on behalf of another person at the inquiry has the same protection and immunity as a barrister in appearing for a party in proceedings in the High Court (*Trade Practices Regulations*, regulation 28AA).

Many witnesses at these hearings are not attending voluntarily and have been summonsed to appear under s95S of the *Trade Practices Act 1974*. In general the ACCC has summonsed all supplier companies. Therefore, no conclusions can be drawn regarding a company's willingness to participate in the inquiry from the fact that a company is appearing at the hearings. The ACCC has also used its information gathering powers to compel the provision of documents and information from many organisations. It did so to ensure that it had access to the most reliable information direct from industry participants.