

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2016 - 2017

Division/Agency: Commonwealth-State Relations Division

Question No: 234

Topic: National Partnership Payments

Reference: Hansard page 94 (01 March 2017)

Senator: Leyonhjelm, David

Question:

Senator LEYONHJELM: I have a list of determinations that were lodged somewhere between one month and nine months after they were made—would that seem right?

Mr Rollings: Nine months after they were made does not seem right. I am not saying it is not right, but I could take that on notice just to check that. It does seem—

Senator LEYONHJELM: I could give you the numbers here: Nos 94 to 103 were made from between June 2015 and February 2016 and were registered in late March 2016. So that is a maximum of nine months from the first one to the registration date. Now I am relying on this information here, so if that is not correct—

Mr Rollings: I will take that on notice to check that out.

Senator LEYONHJELM: Are you aware the legislation act states that the minister 'must lodge an instrument for registration as soon as practicable'? Aren't these delays violating the legislation act?

Mr Rollings: Again, I will take that on notice.

Senator LEYONHJELM: According to the Legislation Act, an instrument is not a legislative instrument if it is not registered, and, according to the Federal Financial Relations Act, you need to make a legislative instrument for a payment to be authorised. Does this not mean that you regularly make payments without authority at the time that you make the payment?

Mr Rollings: I will take that on notice, but I have a reasonable level of confidence that we are operating appropriately.

Senator LEYONHJELM:[...] Do you rely on this provision when you make payments before the determination is registered?

Mr Rollings: To my knowledge, we are not relying on that; to my knowledge, we are operating in accordance with the legislation—but, again, we will check it out on notice.

Answer:

- During 2015 there were some delays in registering determinations. Treasury has taken steps to ensure that determinations are lodged regularly each month.
- Each of the determinations under section 9 and section 16 of the *Federal Financial Relations Act* 2009 contains a commencement clause stating that it commences on the date it is made (i.e. signed by the Minister). A legislative instrument, of the kind referred to, which has a commencement clause, takes effect from the date specified in the commencement clause so as to authorise payments (even though it cannot be enforced by or against any person). Treasury's view is that this is consistent with sections 12 and 15K of the *Legislation Act* 2003.