

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

10 – 11 February 2010

Question: aet 120

Topic: Consultations with ‘Fresh’ Senior Counsel

Hansard Page: E119 (11/02/2010)

Senator ABETZ asked:

Senator ABETZ—Having clarity in the law is important and I agree with that. Can I pursue the question that I intervened with Senator Eggleston on and that is: with these two big cases that you are appealing did you get fresh senior counsel unrelated to the legal firms that actually took the case?

Mr D’Aloisio—These cases are before the courts and we are appealing them. I have indicated that we satisfy ourselves that the advice we are getting is advice that we can rely on as independent. Beyond that I really do not think I should be going into how we actually prepare and run our cases. I have said that we will in some cases take additional independent advice if we feel we need it. We have the Office of Chief Legal Officer for that purpose. We have experienced lawyers also on the commission.

Senator ABETZ—We know all that. It was a very direct question and that is: did you get fresh senior counsel unrelated to the conduct of the case at first instant and unrelated to the legal firm that had been engaged prior to the appeal? The answer must be either yes or no.

Mr D’Aloisio—I think it is an operational matter. I would like to take that on notice and come back to the committee.

Senator ABETZ—You are entitled to do so, but I find that passing strange.

Answer:

In relation to matters that are currently before the courts, for operational reasons we do not wish to provide specific details of the sources of the legal advice ASIC receives. In the case of these two appeals, ASIC can say that appropriate legal advice was obtained (both internally and externally) in relation to the decisions to appeal and appropriate legal advice will continue to be received throughout the course of the Fortescue appeal. The appeal in respect of the matter involving the former CEO of AWB was successful.