

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

1 June – 3 June 2010

Question: BET 233

Topic: Enforcement Special Account

Hansard Page: Written

Senator BUSHBY and EGGLESTON asked:

1. Please list the types of payments made under the Enforcement Special Account, as detailed in the Portfolio Budget Statements (Table 3.1.2: Estimates of special account cash flows and balances).
2. Please explain the process of having money granted to the Enforcement Special Account. When was the last time the Minister approved a grant of any draw over \$20 million?
3. Payments made from the Enforcement Special Account will more than double to over \$60 million in 2010-11. What does ASIC attribute to the increase in payments? What is the breakdown of the proportion of this money that will be spent on appeals, new cases and other items?
4. Does ASIC expect to require over \$60 million in payments for 2011-12, or will the increase be a one-off event for 2010-11?

* This question was also asked in writing by Senator Eggleston on 8/06/2010

Answer:

1. The Enforcement Special Account (ESA) provides funds to meet expenditure incurred in the course of individual public interest enforcement activities (investigation and related legal or administrative proceedings), to pay any court costs awarded against ASIC arising from such investigations or proceedings, pay any other such amounts for which ASIC may become liable (court or other costs agreed as an out-of-court settlement by ASIC, damages or other pecuniary orders made against ASIC) , and other costs incurred by ASIC that arise incidentally from these matters.
2. To be funded from the ESA individual public interest enforcement activities must involve total costs exceeding \$1.5m with ASIC contributing the first \$1.5m towards these costs from its existing budget appropriation; be limited to total costs of \$20m; involve a matter of importance for continued community confidence in the corporate regulatory framework; and be approved by the Chairman of ASIC.

The Minister for Financial Services, Superannuation and Corporate Law informed the Prime Minister on 16 December 2008 that 2 cases, namely Westpoint and James Hardie would exceed the \$20m threshold.

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3. At the time the estimates were prepared, it was anticipated that payments would exceed \$60m in 2010-11 due to costs awarded to One Tel and increased legal expenses associated with a number of current matters. However, the payment to One Tel was subsequently made in 2009-10 which resulted in actual payments from ESA in 2009-10 of \$57.2m. The revised estimate for 2010-11 will not exceed \$30m.

The \$30m that is anticipated to be spent from the ESA in 2010-11 is expected to be expended on existing or new matters. At this point in time there is only one matter under appeal that is being funded from ESA. That matter is the Fortescue matter. At this stage the costs of conducting the matter have not been separated from the cost of pursuing the appeal as the matter is still on foot.

4. No, ASIC does not expect to require more than \$60m in 2011-12 for ESA.

ENDS