Question: E12-010

OUTCOME 2: Access to Pharmaceutical Services

Topic: Pharmaceutical Benefits Scheme

Type of Question: Written Question on Notice

Number of pages: 1

Senator: Senator Heffernan

Question:

Two important evergreening patents have been invalidated, one only a few weeks ago (May 2012) when the High Court of Australia refused leave to appeal over a second evergreening patent for the drug venlafaxine. The trade mark of this drug is EFEXOR XR. The cost of this evergreening patent to the PBS has been estimated to be around the $198 million mark. Pfizer, that patent owner, gave an undertaking to the Federal Court that if the patent was invalidated that it would cover the cost to the PBS during course of the injunction, which was granted in June 2009 and withdrawn in November 2011. That cost, just for the period of 29 months, is some $70 million.

a)   Has DoHA taken steps to recover the $79 million from Pfizer? And if so what steps and if not why not, please provide details and an update?

b)   Does DoHA plan on trying to recover the $198 million it has overpaid Pfizer as a result of the evergreening patent which apparently extended the period of patent protection illegally for over 3 years? If yes, what is the update/timetable for recovery, please provide details? If not why not, please provide details?

Answer:

a) and b)
As outlined in the Department of Health and Ageing's Budget Paper No. 2 for 2012-13, the Government is providing funding in 2012-13 to seek to recover compensation from pharmaceutical companies relating to losses incurred by the Government as a result of delays in the listing of generic forms of medicines on the Pharmaceutical Benefits Scheme. The specific matter referred to in the question has been referred to the Department's legal advisers. Therefore, it is not appropriate to comment further on this matter.