

Response to Senate Economic References Committee question on notice

Subject: Senate Economic References Committee question on notice

I refer to your email of 28 February forwarding me the question put to me during my appearance before the Senate Economic References Committee from Senator Bushby on the special enforcement account which has been created in favour of the Australian Securities and Investments Commission.

I have examined the relevant documentation under which the account has been established, and I am rather surprised that the account does not appear to have been utilised in the way that the government of the day intended it to be used.

The account permits ASIC to bring more significant cases by utilising the additional funding that is available to run those cases without prejudicing the budget for running its regular cases and other investigations. However, the account does not create any special rules enabling ASIC to retain Queen's Counsel (or Senior Counsel) or other experts on terms outside the permitted terms of engagement set down by the Australian Government Solicitor, the Director of Public Prosecutions or any other Government rules that exist in this context. It is my contention that the Government should relax these rules to enable the regulator (in this case ASIC), perhaps after obtaining permission from the Minister, to engage Counsel who would charge rates in excess of the rates that ASIC normally pays to act on behalf of ASIC in a major investigation or prosecution. That flexibility would enable ASIC to retain the very best experts so as to operate on a level playing field against the major defendants that ASIC finds itself having to deal with in the higher profile cases discussed.

I would be interested to know how often the special fund has been used by ASIC and in what cases it has been used.

I hope that this answer will be satisfactory for the purposes of the Senate inquiry but naturally I would be happy to consider additional questions if they are thought relevant.

Yours sincerely

Bob Baxt