

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

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Division/Agency: Australian Securities and Investment Commission
Question No: 161
Topic: ASIC - Prosecutions and Liabilities returned
Reference: Hansard page 23 (02 March 2017)
Senator: Gallagher, Katy

Question:

Senator GALLAGHER: Do you identify or report anywhere how much money is returned from successful prosecutions, agreements reached, to the government into consolidated revenue? Is there somewhere I can track that?

[...]

Mr Medcraft: We will come back to you on notice.

Senator GALLAGHER: Could I have that figure for the last few years?

[...]

Senator GALLAGHER: On notice, could you provide that information for the last however many years that

is convenient? And also where you reach agreements which provide money to third parties—

Mr Medcraft: Community benefit payments.

Senator GALLAGHER: Exactly; how many go there and maybe, if you can, on notice, the information that

informs that. Who chooses those people? Who chooses the organisations where they go to?

Mr Medcraft: Certainly. [...]

Response:

Court cost recoveries (amounts recovered by ASIC for court costs, investigations, professional fees, legal costs and prosecution disbursements) over the last 11 financial years are as per the table below.

Year	Cost
2005-06	\$1,280,000
2006-07	\$2,193,000
2007-08	\$3,160,000
2008-09	\$1,754,000
2009-10	\$1,627,000
2010-11	\$656,000
2011-12	\$3,550,000
2012-13	\$2,442,000
2013-14	\$1,476,000
2014-15	\$428,000
2015-16	\$750,000

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With regards to community benefit payments, this response should be read in conjunction with AET165.

The choice of the recipient entity is a choice generally negotiated between ASIC and the paying entity. ASIC's Regulatory Guide 100: Enforceable Undertakings sets out ASIC's approach to CBPs / community service obligations (see RG 100.36 to RG100.38 at <http://download.asic.gov.au/media/2976014/rg100-published-19-february-2015.pdf>).

Relevantly RG100.37 states:

We will generally apply the following principles when considering whether to accept an enforceable undertaking that includes a community service obligation:

- (a) priority will be given to payments directed to compensating persons who have suffered loss as a result of the conduct the subject of the enforceable undertaking;
- (b) if persons affected by the conduct the subject of the enforceable undertaking cannot be identified, or it is impracticable to compensate them, we may accept an undertaking to fund an education program, or pay money to a charity or community organisation;
- (c) we will not take account of an offer to perform a community service obligation in deciding whether to refer a brief to the Commonwealth Director of Public Prosecutions (CDPP) in respect of the promisor;
- (d) the community service obligation should be directed to purposes related to the conduct the subject of the enforceable undertaking; and
- (e) generally, we will not accept an enforceable undertaking that provides for the payment of money to ASIC or to a third party where ASIC has direct control over how that money is spent. We may depart from this principle in order to ensure the payment relates to the alleged conduct, and/or to ensure proper accountability as to how money is spent. For example, we may accept:
 - (i) a community service payment to ASIC to produce specified education materials; or
 - (ii) a payment to a third party to produce or fund an education program where ASIC has control over the timeframe, subject matter, target population, medium of communication, or to include reporting obligations.