

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2016 - 2017

Division/Agency: Australian Securities and Investment Commission
Question No: 165
Topic: Community Benefit Payments
Reference: Written
Senator: Ketter, Chris

Questions:

1. How many community benefit payments have been made in the 2015-16 FY? What is their value?
2. How many community benefit payments have been ordered by ASIC or agreed to or ordered in the 2015-16 FY? What is their value?
3. What is the legal mechanism by which community benefit payments are ordered or made?
4. How are the recipient organisations chosen? Is it the choice of ASIC or the organization making the payment?
5. Please provide a list of the community benefit payments made in the 2015-16 FY (including the organisation paying and receiving and the amounts)
6. Please provide a list of the community benefit payments made to date in the 2016-17 FY (including the organisation paying and receiving and the amounts).

Responses:

1. In the FY 2015/2016 **four** community benefit payments (CBP) (with a total dollar value of **\$1,160,000**) were made pursuant to the terms of Enforceable Undertakings (EU) entered between ASIC and individual entities.
2. In the FY 2015/2016 **five** community benefit payments (with a total dollar value of **\$1,380,089.09**) were negotiated between ASIC and individual entities as part of the terms of EUs. (This information is based on the dates of the EUs on ASIC's public [EU Register](#)).
3. Sections 93AA and 93A of the ASIC Act and Section 322 of the National Credit Act allow ASIC to accept an EU from a person or responsible entity of a registered scheme "in connection with a matter in relation to which ASIC has a function or power". Sometimes, an EU may include payment of a sum of money to fund community service initiatives – CBPs.
4. 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.

5. List of the community benefit payments made in the FY 2015-16:

Payer	Payee	Amount
Philip Brian Vernon King (of Regal Funds Manageme nt Pty Ltd)	Financial Literacy Australia Financial Literacy Australia Limited (FLA) is a not-for-profit organisation founded in 2012 by members of the government's Financial Literacy Board. Its mission is to advance financial literacy in Australia. The primary program is the Financial Literacy Australia Grants program to boost financial literacy programs and research in Australia. Further information about FLA can be found at www.http://finlit.org.au/about/	\$80,000
Angus William Napier Aitken (of Bell Potter Securities Ltd)	Financial Literacy Australia (See above)	\$80,000
ACE Insurance Ltd	Financial Counselling Australia Financial Counselling Australia (FCA) is the peak body for financial counsellors in Australia.	\$500,000 to each payee

	<p>FCA's role is to support the financial counselling profession, providing a voice in national debates. It also advocates on behalf of the clients of financial counsellors to help prevent financial problems in the first place.</p> <p>FCA is a federated body and its members are each State and Territory financial counselling association in Australia. Further information about FCA can be found at https://www.financialcounsellingaustralia.org.au/Corporate/About</p> <p>The Smith Family</p> <p>The Smith Family is a national, independent children's charity helping disadvantaged Australians to get the most out of their education, so they can create better futures for themselves. Further information about the Smith Family can be found at https://www.thesmithfamily.com.au/about-us</p>	
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Note: This information is based on payment date, not date of EU.

6. List of the community benefit payments made to date in the FY 2016-17:

Payer	Payee	Amount
Nimble Australia Pty Ltd	Financial Counselling Australia (See above)	\$220,089.09 (comprises \$50,00 plus amounts required to be refunded to consumers but which had not been refunded or disbursed by the timeframes specified in the EU)
Hochtief Aktiengesellschaft	<p>Australian Shareholders Association</p> <p>The Australian Shareholders Association (ASA) is the representative body for independent investors. Further information about the ASA can be found at https://www.australianshareholders.com.au/about-australian-shareholders-association</p> <p>First Nations Foundation (FNF)</p> <p>FNF is involved in developing solutions for Australia's First Nations people and advocating on their behalf. FNF have helped the financial services</p>	\$103,400 to each payee

	sector become more flexible and delivered more tailored services to Indigenous people. Further information about FNF can be found at http://www.fnf.org.au/	
Commonwealth Bank of Australia	Financial Literacy Australia (See above)	\$2,500,000
National Australia Bank	Financial Literacy Australia (See above)	\$2,500,000
ANZ Bank	Financial Literacy Australia (See above)	\$3,000,000
Westpac Banking Corporation	Financial Literacy Australia (See above)	\$3,000,000

Note: This information is based on payment date, not date of EU.