

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2016 - 2017

Division/Agency: Commonwealth-State Relations Division

Question No: 235

Topic: National Partnership Payments

Reference: Written

Senator: Leyonhjelm, David

Question:

Further to the questions taken on notice by Mr Rollings on 1 March 2017 regarding instances where National Partnership Payments are paid before (sometimes well before) the associated determinations are registered:

- Is it correct that an unregistered instrument is not enforceable? If so, what are the implications of this for these instances of payment well before registration? Do any of these implications indicate that payment well before registration is imprudent?
- Are instances of payment well before registration a violation of section 83 of the Constitution? If not, why not? Do they represent losses under the Public Governance, Performance and Accountability Act 2013? If not, why not?
- Do you have legal advice supporting the answers to these questions on notice and the questions taken on notice on 1 March 2017? If so, what is the source of that advice? Please provide any such advice to the Committee.

Answer:

- It is true that an unregistered instrument is not enforceable by or against any person. However, the determinations in question are still effective so as to authorise Commonwealth payments.
- No to both questions. The payments are authorised from commencement of the determinations.
- Treasury's response to these questions has been reviewed by Treasury's Australian Government Solicitor legal counsel, but no formal advice has been sought.