



2 December 2021

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO BOX 6100
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary

Clarification to Hansard – Supplementary Budget Estimates hearing on 26 November 2021

I am writing to provide a clarification to evidence I gave to the Senate Legal and Constitutional Affairs Legislation Committee during the Supplementary Budget Estimates spill-over hearing on 26 November 2021.

On p 17 of the transcript, in response to a question from Senator Grogan regarding costs paid by the Commonwealth in *Palmer v Western Australia*, I said:

Mr Lewis: As a general point, it's true that different parties will often have different costs for the same particular hearing. I think Mr Palmer and the other plaintiff, Mineralogy, had indicated to the Commonwealth—and I think it's referred to in answers to some of those questions on notice—that their costs exceeded the amount that the Commonwealth paid to them. In fact, I think they said that they had spent around \$62,000 in preparing for that hearing. It's true that the Commonwealth paid a claim from Western Australia for \$22,000, and that just reflects the amount that Western Australia was seeking from the Commonwealth. One factor there—and I could take this on notice, if it would assist—might be that, often, government parties have some costs that would be incurred but that they might not claim for against another party. For example, at the Commonwealth level, the Solicitor-General is paid as a statutory office holder, and we wouldn't normally seek to recover the costs of the Solicitor-General, whereas a private party won't have those sorts of costs absorbed as part of their general running.

I wish to clarify that, while it is accurate that the Solicitor-General does not charge Commonwealth clients for his time, as he is a statutory office holder, if costs are recoverable by the Commonwealth in litigation, the Commonwealth does seek to recover costs for the Solicitor-General's time from the party liable to pay the Commonwealth's costs.

The department will also note this clarification in its response to a question on notice concerning this exchange (Question Number LCC-SBE21-079)

The action officer for this matter is Desiree Thistlewaite who can be contacted on

Yours sincerely

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Office of Constitutional Law