

Select Committee on COVID-19
Australian Government's response to the COVID-19 pandemic
Attorney-General's Department

Hearing date: 11 August 2020

Hansard page: 28

Question type: Spoken

Senator Gallagher **asked the following question:**

CHAIR: How much has the case cost taxpayers?

Ms Foster: I don't have that detail.

CHAIR: Could you take that on notice please?

Ms Foster: It may be a better question for Attorney-General's.

CHAIR: You can refer it to them. We haven't had them before us for a while. I'm sure there will be more questions on that. Senator Davey, I understand you have some questions.

Senator Siewert, I'll see if I can squeeze you in at the end of Senator Davey.

The supplementary response to the Senator's question is as follows:

This answer supplements an earlier answer provided to this Committee on 3 September 2020.

As outlined in the earlier answer, there is a public interest in not disclosing the Commonwealth's actual or estimated expenditure in *Palmer v Western Australia* while the matter is ongoing. This is because there is a risk that disclosure may prejudice the Commonwealth's legal position. For example, disclosure of the Commonwealth's legal costs may affect the Commonwealth's position in negotiations with the other parties on the payment of costs post-hearing, or the Commonwealth's position in any subsequent litigation on costs if negotiations fail.

Departmental officers generally do not comment on matters before courts and tribunals. This is to avoid possible prejudice to legal proceedings.

Since 3 September 2020, the High Court has now set a hearing date in *Palmer v Western Australia* on 3 to 4 November 2020. Following the finalisation of this and any related matters, including questions of costs, the department would be able to provide further details to the Committee.

Further information on the Commonwealth's involvement in *Palmer v Western Australia*, and the related and now discontinued High Court challenges to Queensland's border restrictions (*Travel Essence Pty Ltd v Queensland*, *Mineralogy Pty Ltd v Queensland*) is also outlined in answers to the following Senate Questions on Notice:

- Senate question on notice no. 1754 (**Attachment A**)
- Senate question on notice no. 1806 (**Attachment B**)
- Senate question on notice no. 1807 (**Attachment C**).

Question on notice no. 1754

Senator Rex Patrick: asked the Minister representing the Attorney-General on 3 August 2020

With reference to the High Court case of *Palmer & Anor v The State of Western Australia* (Case no. B26/2020) :

1. What is the total cost of the Attorney-General's intervention in the High Court case no. B26/2020.
2. Did the Attorney-General receive any legal advice in relation to this matter from external counsel; if so, who provided advice, when was any external legal advice provided, and what was the cost of such advice.
3. On what dates did the Attorney-General correspond with, or otherwise confer with, the Prime Minister in relation to this matter.
4. On what dates did the Attorney-General's Department and/or the Australian Government Solicitor correspond with, or otherwise confer with, the Department of the Prime Minister and Cabinet in relation to this matter.
5. On what dates did the Attorney-General, the Attorney-General's Department and/or the Australian Government Solicitor correspond with, or otherwise confer with, Mr Clive Palmer and/or his legal representatives in relation to this matter.
6. On what dates did the Attorney-General, the Attorney-General's Department and/or the Australian Government Solicitor correspond with, or otherwise confer with, the Government of Western Australia and/or their legal representatives in relation to this matter.

Answer —

Senator the Hon Marise Payne The Hon Christian Porter MP has provided the following answer to the honourable senator's question:

1. As this proceeding is ongoing, it would not be appropriate at this stage to disclose details of actual or estimated expenditure on legal costs for the three border challenges. Disclosure may prejudice the Commonwealth's position in handling costs claims.
For completeness, it should be noted that the Commonwealth position with respect to future potential costs orders was put at the Federal Court hearing on 7 August 2020, the position being that the appropriate course would be for any costs orders to be made by the High Court at the conclusion of the matter.
2. Three external junior counsel were briefed in this matter, as well as for *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Young*. External counsel were briefed to represent the Commonwealth in the conduct of the proceedings, but were not briefed to provide specific opinions separate from their work on the proceedings.
3. The Attorney-General conferred with the Prime Minister in relation to these matters on a number of occasions. It would not be possible to provide an exhaustive list of every time these matters were discussed.

4. The Attorney-General's Department, which includes the Australian Government Solicitor, regularly corresponded by phone and email with the Department of the Prime Minister and Cabinet about this matter and the two other border challenges. It would be an unreasonable diversion of resources to provide specific dates of correspondence.

5. The Attorney General's Department is not aware of any contact between the Attorney General and Mr Clive Palmer and/or his legal representatives in relation to this matter.

The Attorney-General's Department (excluding AGS) did not directly correspond or confer with Mr Palmer and/or his legal representatives on this matter.

The AGS (which is formally part of the Attorney-General's Department) had no direct contact with Mr Palmer. AGS was in regular contact with the legal representatives of all parties (and, on occasion, interveners) about the conduct of the proceedings. AGS had first contact with Mr Palmer's legal representatives on 26 May 2020. It would be an unreasonable diversion of resources to provide specific dates of correspondence.

6. The Attorney-General received letters dated 7 July and 14 August 2020 from the Attorney General of Western Australia, the Hon John Quigley MLA, in relation to this matter, and responded on 23 August 2020. The Attorney-General also discussed this matter with the Attorney General of Western Australia on a number of occasions. It would not be possible to provide an exhaustive list of every time these matters were discussed.

The Attorney-General's Department (excluding AGS) did not directly correspond or confer with the Government of Western Australia or their legal representatives on this matter.

AGS (which is formally part of the Attorney-General's Department) did not directly correspond or confer with the Government of Western Australia. As indicated above, AGS was regularly in correspondence with the legal representatives of all parties (and, on occasion, interveners) about the conduct of the proceedings, including Western Australia's legal representatives. AGS first contacted Western Australia's legal representatives on 28 May 2020. It would be an unreasonable diversion of resources to provide specific dates of correspondence between AGS and Western Australia's legal representatives.

SENATE QUESTION

QUESTION NUMBER: 1806

Senator Murray Watt asked the following question, upon notice, on 04 August 2020.

With reference to Mr Clive Palmer's legal challenge to Queensland's border closure:

1. What is the expected total cost to the Commonwealth of its participation in Mr Clive Palmer's challenge in respect of Western Australia's border closure (Travel Essence Pty Ltd Ors v. Young Anor) ; and specifically:
 - a. what is the expected total cost – to the Commonwealth – of the legal services provided by the Australian Government Solicitor in relation to this matter;
 - b. what is the expected total cost of legal services provided by counsel to the Commonwealth in relation to this matter;
 - c. what is the expected total cost – to the Commonwealth – of experts in relation to this matter;
 - d. what is the expected total cost – to the Commonwealth – of travel in relation to this matter;
 - e. what is the expected total cost – to the Commonwealth – of accommodation in relation to this matter; and
 - f. what is the expected total cost – to the Commonwealth – of food and beverages in relation to this matter.
2. How many individual lawyers at the Australian Government Solicitor worked for the Commonwealth on this matter.
3. How many hours did the Australian Government Solicitor spend working for the Commonwealth on this matter.
4. How many individual barristers worked for the Commonwealth on this matter.
5. How many hours did counsel spend working on this matter.
6. In respect of each lawyer from the Australian Government Solicitor who worked for the Commonwealth on this matter:
 - a. what class of travel did he or she use (e.g. economy or business) ;
 - b. what hotel did he or she stay in; and
 - c. what class of room did he or she stay in.
7. In respect of each barrister who worked for the Commonwealth on this matter:
 - a. what class of travel did he or she use (e.g. economy or business) ;
 - b. what hotel did he or she stay in; and
 - c. what class of room did he or she stay in.
8. In respect of each expert who assisted the Commonwealth on this matter:
 - a. what class of travel did he or she use (e.g. economy or business) ;
 - b. what hotel did he or she stay in; and
 - c. what class of room did he or she stay in.
9. Can copies be provided of all receipts for any food or beverages consumed by people who worked for the Commonwealth on this matter.
10. Can details be provided as to the AusTender Contract Notice IDs for each contract that relates to the Commonwealth's participation in this matter.
11. How many staff within the Attorney-General's Department worked on this matter, and for each staff member who worked on this matter:
 - a. what is the staff member's classification within the Australian Public Service; and
 - b. what is the approximate total number of hours that the staff member worked on this matter..

Senator the Hon Marise Payne – The Hon Christian Porter MP has provided the following answer to the honourable senator’s question:

The following answers proceed on the basis that the questions are concerned with the High Court litigation challenging the validity of Queensland’s border closure, namely *Mineralogy Pty Ltd v Queensland* (High Court No B29/2020), and *Travel Essence Pty Ltd v Young* (High Court No S87/2020), notwithstanding that question 1 refers to:

- ‘Mr Clive Palmer’ (who was not a party to either proceeding) and
- ‘Western Australia’ rather than Queensland.

1. As the related proceeding, *Palmer v Western Australia* (High Court No B26/2020), is ongoing, it would not be appropriate at this stage to disclose details of actual or estimated expenditure on legal costs for the three border challenges. Disclosure may prejudice the Commonwealth’s position in handling costs claims. This answer also applies to questions 1(a) to 1(f).

For completeness, it should be noted that the Commonwealth position with respect to future potential costs orders in the related proceeding was put at the Federal Court hearing on 7 August 2020, the position being that the appropriate course would be for any costs orders to be made by the High Court at the conclusion of the matter.

2. The AGS team with conduct of *Palmer v Western Australia*, *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Young* (to the 17 July 2020, when consents by the parties to discontinue *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Young* were filed) for the Commonwealth comprised four lawyers: A Senior Executive Lawyer, two Senior Lawyers, and one Lawyer. Of the total fees charged by AGS in the period up to 17 July 2020, 80% was for work done by this team. Of the total hours charged by AGS in the period up to 17 July 2020, 82% was for work done by this team.

From time to time other lawyers in AGS worked on discrete tasks for one or more of the three matters, where for example they had particular expertise, or were of an appropriate level for the particular task, or for reasons of efficiency or geographic location. It is not possible to identify how many of those other lawyers worked on tasks for *Mineralogy Pty Ltd v Queensland* and/or *Travel Essence Pty Ltd v Young* separately from *Palmer v Western Australia*.

3. As the related proceeding, *Palmer v Western Australia* (High Court No B26/2020), is ongoing, it would not be appropriate at this stage to disclose details of actual or estimated expenditure on legal costs for the three border challenges, including hours spent by solicitors acting for the Commonwealth on the matter, noting such expenditure is generally determined on an hourly basis. Disclosure may prejudice the Commonwealth’s position in handling costs claims.
4. In addition to the Commonwealth Solicitor-General, three external barristers (junior counsel) were briefed for the Commonwealth in relation to *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Young* (as well as for *Palmer v Western Australia*).
5. It is not possible to identify how many hours each counsel spent working on *Mineralogy Pty Ltd v Queensland* and/or *Travel Essence Pty Ltd v Young*. This is because external counsel were each briefed at hourly rates, with a daily maximum calculated at six times the hourly rate (in accordance with Appendix D to the *Legal Services Directions 2017*). If counsel worked in excess of the daily maximum, those hours are not recorded on their invoices.

Furthermore, counsel worked concurrently on the matters of *Palmer v Western Australia*, *Mineralogy v Queensland* and *Travel Essence v Young*. Counsel hours and fees were not necessarily attributable to a particular matter.

6. AGS lawyers working on *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Young* did not travel interstate for those matters.
7. Counsel working for the Commonwealth on *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Young* did not travel interstate for those matters.

8. There was no interstate travel by experts engaged by the Commonwealth in *Palmer v Western Australia*, *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Young*.
9. As the related proceeding, *Palmer v Western Australia* (High Court No B26/2020), is ongoing, it would not be appropriate at this stage to disclose details of actual or estimated expenditure on legal costs (including disbursements) for the three border challenges. Disclosure may prejudice the Commonwealth's position in handling costs claims.
10. There are no Austender Contract Notice IDs for this matter.
11. The Office of Constitutional Law had carriage of the matter within the Attorney-General's Department and instructed AGS on behalf of the Attorney-General in relation to *Palmer v Western Australia*, *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Queensland*.

The key personnel in the Office supporting the conduct of these matters were an SES Band 2, one Acting SES Band 1, two EL1s, and one graduate, GRAPS. From time to time other members of the Office provided additional support, and/or worked on other discrete tasks related to these matters.

The Attorney-General's Department does not keep records of the number of hours that staff members work on particular matters or tasks.

SENATE QUESTION

QUESTION NUMBER: 1807

Senator Murray Watt asked the following question, upon notice, on 04 August 2020.

With reference to Mr Clive Palmer's legal challenge to Western Australia's border closure:

1. What is the expected total cost to the Commonwealth of its participation in Mr Clive Palmer's challenge in respect of Western Australia's border closure (Clive Federick Palmer & Anor v State of Western Australia & Anor) ; and specifically:
 - a. what is the expected total cost – to the Commonwealth – of the legal services provided by the Australian Government Solicitor in relation to this matter;
 - b. what is the expected total cost of legal services provided by counsel to the Commonwealth in relation to this matter;
 - c. what is the expected total cost – to the Commonwealth – of experts in relation to this matter;
 - d. what is the expected total cost – to the Commonwealth – of travel in relation to this matter;
 - e. what is the expected total cost – to the Commonwealth – of accommodation in relation to this matter; and
 - f. what is the expected total cost – to the Commonwealth – of food and beverages in relation to this matter.
2. How many individual lawyers at the Australian Government Solicitor worked for the Commonwealth on this matter.
3. How many hours did the Australian Government Solicitor spend working for the Commonwealth on this matter.
4. How many individual barristers worked for the Commonwealth on this matter.
5. How many hours did counsel spend working on this matter.
6. In respect of each lawyer from the Australian Government Solicitor who worked for the Commonwealth on this matter:
 - a. what class of travel did he or she use (e.g. economy or business) ;
 - b. what hotel did he or she stay in; and
 - c. what class of room did he or she stay in.
7. In respect of each barrister who worked for the Commonwealth on this matter:
 - a. what class of travel did he or she use (e.g. economy or business) ;
 - b. what hotel did he or she stay in; and
 - c. what class of room did he or she stay in.
8. In respect of each expert who assisted the Commonwealth on this matter:
 - a. what class of travel did he or she use (e.g. economy or business) ;
 - b. what hotel did he or she stay in; and
 - c. what class of room did he or she stay in.
9. Can copies be provided of all receipts for any food or beverages consumed by people who worked for the Commonwealth on this matter.
10. Can details be provided as to the AusTender Contract Notice IDs for each contract that relates to the Commonwealth's participation in this matter.
11. How many staff within the Attorney-General's Department worked on this matter and for each staff member who worked on this matter:
 - a. what is the staff member's classification within the Australian Public Service; and
 - b. what is the approximate total number of hours that the staff member worked on this matter..

Senator the Hon Marise Payne – The Hon Christian Porter MP has provided the following answer to the honourable senator’s question:

1. As this proceeding is ongoing, it would not be appropriate at this stage to disclose details of actual or estimated expenditure on legal costs for the three border challenges. Disclosure may prejudice the Commonwealth’s position in handling costs claims. This answer also applies to questions 1(a) to 1(f).

For completeness, it should be noted that the Commonwealth position with respect to future potential costs orders was put at the Federal Court hearing on 7 August 2020, the position being that the appropriate course would be for any costs orders to be made by the High Court at the conclusion of the matter.

2. The AGS team with conduct of this matter, together with *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Young* (to 17 July 2020, when consents by the parties to discontinue *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Young* were filed) for the Commonwealth comprised four lawyers: A Senior Executive Lawyer, two Senior Lawyers, and one Lawyer. Of the total fees charged by AGS in this matter, 85% was for work done by this team. Of the total hours charged by AGS in this matter, 84% was for work done by this team.

From time to time other lawyers in AGS worked on discrete tasks for this matter, *Mineralogy Pty Ltd v Queensland* and/or *Travel Essence Pty Ltd v Young*, where for example they had particular expertise, or were of an appropriate level for the particular task, or for reasons of efficiency or geographic location. A total of 15 other lawyers charged for working on the matter in that capacity, in some instances for less than 1 hour in total.

3. As this proceeding is ongoing, it would not be appropriate at this stage to disclose details of actual or estimated expenditure on legal costs for the three border challenges, including hours spent by solicitors acting for the Commonwealth on the matter, noting such expenditure is generally determined on an hourly basis. Disclosure may prejudice the Commonwealth’s position in handling costs claims.
4. In addition to the Commonwealth Solicitor-General, three external barristers (junior counsel) were briefed in this matter (as well as for *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Young*).
5. It is not possible to identify how many hours in total counsel spent working on *Palmer v Western Australia*. This is because external counsel were each briefed at hourly rates, with a daily maximum calculated at six times the hourly rate (in accordance with Appendix D to the *Legal Services Directions 2017*). If counsel worked hours in excess of the daily maximum, those hours are not recorded on their invoices.

Furthermore, counsel worked concurrently on the matters of *Palmer v Western Australia*, *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Young*. Counsel hours and fees were not necessarily attributable to a particular matter.

6. Three AGS lawyers travelled from Canberra to Brisbane to instruct at the Federal Court trial in *Palmer v Western Australia* held on 27, 28, 29 and 31 July 2020. The lawyers:
 - a) travelled economy class
 - b) stayed at the Evolution Apartments Brisbane
 - c) stayed in a 2 bedroom apartment.
7. The Solicitor-General:
 - a) did not travel interstate specifically for the purpose of this matter
 - b) in Brisbane, stayed at the W Hotel
 - c) stayed in a category room that the W Hotel describes as a ‘Wonderful room’. This appears to be the standard or base category of room offered at the W Hotel.

The answers to this question do not include Counsel-Assisting the Solicitor General.

One counsel engaged by the Commonwealth from the private bar travelled to Brisbane for the purpose of this matter. In respect of questions 7(a) to 7(c), that counsel:

- a) travelled business class, setting off the extra cost (over and above the cost of an economy class fare) against their other allowances
- b) stayed at the W Hotel Brisbane
- c) stayed in a room that the W Hotel describes as a 'Wonderful room'. This appears to be the standard or base category of room offered at the W Hotel.

- 8. There was no interstate travel by experts engaged by the Commonwealth in *Palmer v Western Australia*, *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Young*.
- 9. As this proceeding is ongoing, it would not be appropriate at this stage to disclose details of actual or estimated expenditure on legal costs (including disbursements) for the three border challenges. Disclosure may prejudice the Commonwealth's position in handling costs claims.
- 10. There are no Austender Contract Notice IDs for this matter.
- 11. The Office of Constitutional Law had carriage of the matter within the Attorney-General's Department and instructed AGS on behalf of the Attorney-General in relation to *Palmer v Western Australia*, *Mineralogy Pty Ltd v Queensland* and *Travel Essence Pty Ltd v Queensland*.

The key personnel in the Office supporting the conduct of these matters were an SES Band 2, one Acting SES Band 1, two EL1s, and one graduate GRAPS (total of 5). From time to time other members of the Office provided additional support, and/or worked on other discrete tasks related to these matters.

The Attorney-General's Department does not keep records of the number of hours that staff members work on particular matters or tasks.