

Senate Community Affairs Legislation Committee

ADDITIONAL ESTIMATES – 11 FEBRUARY 2016 ANSWER TO QUESTION ON NOTICE

Department of Human Services

Topic: Child Support test case

Question reference number: HS 14

Senator: Xenophon

Type of question: Hansard pages 121-122

Date set by the committee for the return of answer: 4 April 2016

Number of pages: 2

Question:

- a) Senator XENOPHON: I have previously raised concerns about the difference in cost between the AGS and a father in a particular case—the so-called test case that has been referred to. I asked question on notice No. 19 in February 2015. The father's costs were \$71,459.92; the registrar's costs were \$369,283.17. There is a substantial difference—
Ms Campbell: There is.

Senator XENOPHON: I asked you about the cost difference, and the department answered that the department was satisfied that the registrar's legal costs were appropriate and commensurate with the legal work performed. I am just trying to understand why there was a difference. I know that you are satisfied but I am not satisfied in terms of trying to understand the difference. As a suburban lawyer in a past life, I was always astounded as to how much the big end of town costs were in some cases compared to the costs for some other parties. Under the Model Litigant Rules, the Commonwealth have agreed to pay the father's legal costs but he was advised to obtain only one junior counsel and an instructing solicitor in that case. That is my understanding.

Mr Hutson: Perhaps we might start by talking about the reasons why the legal costs for the department were so much greater than those of the—

Senator XENOPHON: You might start, but you might have to finish by taking it on notice, because I only have another three minutes.

Ms Campbell: Do you want us to put that question you just asked on notice?

Senator XENOPHON: Would you give me a 30-second summary, please.

Mr Hutson: The 30-second summary is that there were a lot of complex legal and administrative issues, including issues about whether the registrar could use the information provided to the father and making arrangements for the payments. There were a number of very serious allegations made by the father in that case about the department's conduct and about whether or not we had complied with the model litigant rules. Those things all added up to a total bill which, as you say, was quite a large sum of money.

Senator XENOPHON: I am very happy for you to give me more information in respect of that on notice ...

b) Senator XENOPHON: Very quickly, can I get details from you as to how big that legal team was in that particular case?

Ms Musolino: Certainly.

Senator XENOPHON: One argument is that each legal team was dealing with the same set of orders. Are you in a position to at least tender the invoices, with appropriate privacy—I do not need to know the names of the lawyers—to get an idea of the sort of work that was done in respect of that?

Ms Musolino: We can take that on notice.

Answer:

a) An explanation for the difference between the legal costs of the father compared to those of the Child Support Registrar was provided in Answer to Question HS 36, Budget Estimates of 3 June 2015.

The litigation arose out of serious allegations by the father alleging an improper use of information provided to the Child Support Registrar in making a child support assessment. These allegations raised broader questions of law regarding the Registrar's powers to inform himself.

As the Applicant in the proceeding, the Registrar was required to present a case which not only concerned the administrative actions in relation to the father but also the context, history and operation of the child support legislation more broadly. The scope of the case necessarily involved greater research, consultation, preparation and discussion than would normally be required in, for example, a simple review of a particular decision.

Leading up to, and throughout the course of, the litigation the father raised many issues and pursued his concerns through a number of department channels which the department was obliged to consider and respond to in the context of the impending and ongoing litigation.

In addition, the Child Support Registrar, as Commonwealth litigant, has a range of compliance and reporting obligations that are not imposed on individuals. Compliance with those obligations requires more legal assistance and cost.

b) The Child Support Registrar briefed the Australian Government Solicitor to conduct the litigation. There was no legal team formed for the sole and exclusive purpose of representing the Registrar in this particular matter. Various lawyers and administrative staff worked on this as well as other matters over the course of the litigation. Related invoices with appropriate redactions are provided.