

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2015 - 2016

Department/Agency: ATO

Question: SBT 1851-1854

Topic: Legal Costs

Reference: written - 30 October 2015

Senator: Wong, Penny

Question:

Since 1 January 2015:

1851. List all legal costs incurred by the department or agency.
1852. List the total cost for these items, broken down by source of legal advice, hours retained or taken to prepare the advice and the level of counsel used in preparing the advice, whether the advice was internal or external.
1853. List cost spend briefing Counsel, broken down by hours spent briefing, whether it was direct or indirect briefing, the gender ratio of Counsel, how each Counsel was engaged (departmental, ministerial).
1854. How was each piece of advice procured? Detail the method of identifying legal advice

Answer:

1851. The ATO's, including Tax Practitioner Board (TPB), legal services expenditure from 1 January to 31 October 2015 are provided in the table below.

Expenditure	ATO (\$) (GST exclusive)	TPB (\$) (GST exclusive)	Total value (\$) (GST exclusive)
External legal services			
Professional fees	17,325,070	21,989	17,347,059
Counsel fees	8,691,923	9,938	8,701,861
Disbursements	18,831,556	887,475	19,719,031
Total external legal services	44,848,549	919,403	45,767,951
Internal legal services			
Total direct staff costs and salaries	19,069,840	954,413	20,024,252
Total overhead costs	10,873,250	716,315	11,589,565
Total internal legal services	29,943,090	1,670,727	31,613,817
Total legal services expenditure	74,791,639	2,590,130	77,381,768

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2015 - 2016

Notes for table above:

- External legal services expenditure excludes costs awarded against the ATO, external expenditure on compensation and the ATO's Test Case Program legal costs.
- Professional fees include fees charged by external legal services providers for the work undertaken by their solicitors.
- Counsel fees include panel counsel briefings and direct briefings (ATO and the Tax Practitioners Board (TPB)).
- Disbursements includes court filing fees, summons fees, expert witness costs, indemnity fees (payments of costs incurred by lawyers or other professionals where the ATO has agreed to provide an indemnity), legal costs for settlement of cases (payments of third party legal costs where a case has been settled) and fees associated with mediating legal disputes.
- Internal legal services expenditure includes ATO (Review and Dispute Resolution and General Counsel) and TPB internal legal services expenditure. We manage tax litigation (under Part IVC of the Taxation Administration Act 1953), debt litigation, general law and freedom of information. There are areas within the ATO where employees perform functions of a legal nature (for example preparation of writs, statutory demands and bankruptcy notices) and provide interpretative advice on the more complex areas of tax and superannuation law. The cost associated with the legal component in these areas is not included.
- Direct staff costs includes direct salary costs, superannuation costs, leave entitlement costs and other salary related staff costs for areas mentioned above.
- Overhead costs include direct overhead costs such as staff travel costs, training and development costs, stationery and other miscellaneous costs such as electronic and hard copy legal information (online database and journals) and indirect overhead costs such as desktop services, accommodation, recruitment services and communication technology services costs for areas as mentioned above.

1852. Legal advice for the ATO is provided by:

- Law firms engaged by the ATO
- Counsel engaged via law firms
- Counsel engaged directly by the ATO (direct briefs), and
- ATO in-house lawyers.

A further breakdown of this information would be an unreasonable diversion of departmental resources.

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
 Supplementary Budget Estimates
 2015 - 2016

1853. Counsel break down from 1 January to 31 October 2015

	Total (\$) (GST exclusive)	
Total Counsel	8,569,769	
Male	6,340,509	74%
Female	2,229,261	26%
Total direct brief	3,080,982	
Male	2,467,032	80%
Female	613,950	20%
Total panel brief	5,488,787	
Male	3,873,477	71%
Female	1,615,311	29%

Notes to table above:

- The cost of briefing counsel is broken down by the manner of engagement. Counsel is either engaged indirectly through a panel firm of solicitors on behalf of the ATO or the ATO directly brief counsel.
- All engagement of counsel was by or on behalf of the ATO – i.e. Departmental.

A further breakdown of this information would be an unreasonable diversion of departmental resources.

1854. Please refer to tenders.gov.au for the published procurement method. Please note that counsel are not engaged through the tender process and are briefed by the ATO to provide advice or appear on behalf of the Commissioner in accordance with the *Legal Services Directions 2005*.