

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates 25-26 February 2009

**Question: aet 24**

**Topic: Criminal Prosecution of Mr Richard Pratt**

**Hansard Page: Written**

**Senator FIERRAVANTI-WELLS asked:**

1. In the previous Senate Estimates I asked the following question on notice -

*How much has been expended to date in investigating, preparing and furthering the criminal prosecution of Richard Pratt and how much had been budgeted for future expenditures in pursuing the matter?*

The response was as follows:

*"By the end of October 2008 the ACCC had expended approximately \$190,000 in legal costs associated with the matter. Forward legal estimates are reviewed and provided for on an ongoing basis"*

- (a) What is the updated figure for the legal costs associated with the matter, up to and including the end of January 2009? How much is budgeted for future expenditures related to this particular case?
  - (b) If you are unable to provide a budget, could you advise whether it is standard practice for the ACCC to prepare budgets for prosecutions it undertakes?
  - (c) Please provide details of the legal expenditure of the ACCC in each of the last 10 years?
2. What are the processes in place at the ACCC to ensure that it meets the expectation of the community that it behaves at all times as a model litigant? Without commenting on the legal issues in the Pratt criminal prosecution or referring to legal advice obtained about the case, why did the Chairman not attend the Court and give evidence to diffuse the allegations that the Chairman and the ACCC had acted improperly in their earlier dealings with the defendant?
- (a) Did the ACCC lawyers expect that the Pratt legal team would run the defences offered? If so, what facts and circumstances did the ACCC rely upon to have that expectation.
  - (b) How did the FOI officer of the ACCC locate documents after the ACCC chief legal officer had sworn that they did not exist? What searches were undertaken by the ACCC to ascertain the existence of those documents?

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- (c) Has the ACCC chief legal officer explained these events and his conduct to the court?
- (d) Has the ACCC complied with all of its disclosure obligations in the Pratt matter?
3. Has the ACCC acted inconsistently with assurances and promises given to Mr Pratt in the civil penalty proceeding?
4. Officers of the ACCC informed the Federal Court in the Pratt proceedings that they did not have a lot of understanding of the criminal law. Is the ACCC concerned that it may have erred in not pursuing the criminal prosecution of Mr Pratt before commencing the civil prosecution of Visy?

#### Answer:

- 1.
- (a) As at 31 January the ACCC had expended approximately \$689 925 in legal costs associated with this matter. Forward legal estimates are reviewed and provided for on an ongoing basis.
- (b) In criminal matters, the Commonwealth Director of Public Prosecutions (CDPP) does not invoice the ACCC for their work; the ACCC pays for its counsel fees. Prosecution is conducted by the CDPP and instructing counsel is a matter for the CDPP.
- (c) The Legal spend for the ACCC over the past ten years is set out in the table below. Please note, the 2008-09 figure is to the end of February 2009.

| ACCC Legal Spend |            |
|------------------|------------|
| Year             | Amount     |
| 2008-09*         | 13,122,394 |
| 2007-08          | 29,650,867 |
| 2006-07          | 21,286,565 |
| 2005-06          | 13,805,290 |
| 2004-05          | 25,337,559 |
| 2003-04          | 25,226,334 |
| 2002-03          | 19,024,934 |
| 2001-02          | 14,531,970 |
| 2000-01          | 10,466,690 |
| 1999-2000        | 12,384,495 |

2. Copies of the relevant sections of the Legal Services Directions relating to the ACCC's obligations as a model litigant are included as part of standing instructions to counsel and as part of the panel arrangements between the ACCC and its legal advisors.

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The ACCC has internal processes to address the requirements of the Legal Services Directions and Model Litigant Obligations, including in relation to seeking written legal advice prior to commencement of proceedings, consideration of alternate means of resolving proceedings and consulting where requests for legal advice may impact on other areas within the Commonwealth.

The matter in question is currently before the court and therefore it would not be appropriate to comment.

- (a) The matter in question is currently before the court and therefore it would not be appropriate to comment.
- (b) The FOI officer asked relevant staff to look for documents following receipt of the FOI request. The relevant staff searched their papers for any such documents.
- (c) No, this issue has not arisen in court to date.
- (d) Yes.

3. No

4. No