

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE**

**2005-2006 SUPPLEMENTARY BUDGET SENATE ESTIMATES HEARING
2 and 3 NOVEMBER 2005**

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO

QUESTIONS ON NOTICE

OFFICE OF THE EMPLOYMENT ADVOCATE

Question Number: W543-06

Question:

Senator Marshall asked in writing:

Since the previous Estimates, please provide details for each prosecution the OEA has been involved in. For each case, please provide details outlining:

- (a) the case and reason for prosecution
- (b) resources spent engaging legal representation
- (c) legal representation engaged
- (d) number of lawyers engaged
- (e) number of hours lawyers were engaged
- (f) outcome of case
- (g) if any amount was recovered from the defendant, how much was recovered
- (h) how many internal resources were spent on the case? Please provide details of calculations

Answer:

The OEA has been involved in pursuing a civil application for contraventions of the freedom of association provisions of the *Workplace Relations Act 1996* in the following two proceedings. The OEA in these applications seeks pecuniary penalties and compensation.

1. **Peter Leslie McIlwain v Ramsey Food Packaging Pty Ltd & Ors in the Federal Court of Australia, Queensland Registry.**

(a) the case and reason for prosecution

The case for this civil penalty breach involves allegations that an employer had terminated its production employees and re-hired only certain employees. It is alleged that certain employees were dismissed and not re-hired because of their union membership and because they had been dissatisfied with their conditions of employment. It is further alleged that the employer dismissed and refused to rehire certain other employees because of their prior participation in unfair dismissal proceedings against the employer and their entitlement to the benefit of the subsequent reinstatement orders.

(b) resources spent engaging legal representation

Since 1 June 2005, the resources spent on engaging legal representation have been four OEA legal officers who instructed the Australian Government Solicitor.

(c) legal representation engaged

The OEA engaged the Australian Government Solicitor (AGS) who in turn briefed two barristers, Mr G. Martin SC and Mr Horneman-Wren.

(d) number of lawyers engaged

An AGS senior lawyer and the two barristers referred to in paragraph (c) above.

(e) number of hours lawyers were engaged

Based on the accounts received from AGS for services rendered for the period from 1 June to 11 November 2005, a senior AGS lawyer was engaged for a total number of 440 hours.

Based on accounts received from AGS, the number of hours Mr Martin SC was engaged was 272 hours. This does not include certain Court appearances at directions hearings and at the hearing of a notice of motion for which Senior Counsel has not yet rendered an account.

The OEA has not yet received any accounts in respect of Mr Horneman-Wren's fees and it is therefore not possible to provide the information in detail with respect to him. By way of guidance however, in September 2005, Mr Horneman-Wren conferred (together with Mr Martin) with witnesses for five days. Both barristers have spent a considerable amount of time preparing for the hearing and appeared for the Employment Advocate at the hearing from 17 October 2005 to 26 October 2005.

(f) outcome of case

The matter was part heard from 17 to 26 October 2005. It has not yet finalised.

(g) if any amount was recovered from the defendant, how much was recovered

Not applicable as the matter has not yet finalised.

(h) how many internal resources were spent on the case? Please provide details of calculations

Four internal lawyers have spent a considerable amount of time in this matter. A precise record of that time is not maintained. It is estimated that the time spent was as follows:

- Acting OEA Manager 2.5 approximately 136 hours
- Two legal officers approximately 77 hours
- One OEA Grade 2 approximately 34 hours

2. Employment Advocate v T & R (Murray Bridge) Pty Ltd [SAD254/2005] in the Federal Court of Australia, South Australia Registry.

(a) the case and reason for prosecution

The matter of *Employment Advocate v T & R (Murray Bridge) Pty Ltd* was filed in the Federal Court in South Australia on 7 October 2005. In that matter the Employment advocate alleges that the employer (an abattoir) breached the Freedom of Association provisions in the *Workplace Relations Act 1996*. More particularly it is alleged that that employer injured and altered the employee's position by moving that employee to particular work areas and rosters for one of the "prohibited reasons" set out in the *Workplace Relations Act 1996*. The prohibited reasons in this case are essentially that the employee had the benefit of an award and/or had made an inquiry or lodged a complaint with the OEA.

(b) resources spent engaging legal representation

An internal OEA officer being a Legal Manager OEA level 2.5 spent approximately 2 hours on the engagement of legal representation. The salary cost is approximately \$104.70 (based on \$52.35 per hour gross).

(c) legal representation engaged

The legal representation engaged consisted of the following:

- (i) The Australian Government Solicitor;

- (ii) Mr Brian Lawrence, barrister; and
- (iii) Mr Paul O'Grady, barrister.

(d) number of lawyers engaged

Refer to(c) above. The Australian Government Solicitor has one solicitor handling the matter

(e) number of hours lawyers were engaged

The number of hours lawyers have been engaged to date is as set out below:

- (i) Mr Lawrence-6.4 hours;
- (ii) Mr O'Grady- 17.5 hours; and
- (iii) AGS-16.5 hours (as at 11 November 2005).

(f) outcome of case

The first directions hearing for the matter was held on 2 November 2005 where the Court gave directions for the steps required to prepare the case for hearing. The matter was adjourned for further directions on 6 March 2006.

(g) if any amount was recovered from the defendant, how much was recovered

Not applicable as the matter is not yet completed.

(h) how many internal resources were spent on the case? Please provide details of calculations

Internal resources spent –

- a. one OEA Legal Manager 2.5-approx. 3 weeks x 38 hours at \$52.35 per hour (gross) for preparation and work done to date after the issue of proceedings \$5967.90 gross;
- b. one OEA Regional Manager-approx 12 days of investigation time-96 hours at \$39.00 gross-\$3744; and
- c. Total of a and b= \$9711.90.