

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
BUDGET ESTIMATES 2011-2012

Finance and Deregulation Portfolio

Department/Agency: Department of Finance and Deregulation

Outcome/Program: 2/2.1

Topic: Equine Influenza

Senator: Williams

Question reference number: F128

Type of question: Written

Date set by the committee for the return of answer: Friday, 8 July 2011

Number of pages: 2

Question:

- a) Is it the case there are only 2 claims for damages --1 by Livestock Transport Group which had been in the business of the transport of thoroughbred horses and was forced to shut down for 6 months, and 1 by a horse stud owner for damages relating to no stud service fees being received as result of EI shut down?
- b) Is it the case that invitations to the Commonwealth since 2009 to discuss the resolution of this matter have been refused?
- c) Is it the case that the Commonwealth has advised that all claims in relation to EI will never be settled and that if the Court orders the Commonwealth to pay damages the Commonwealth will appeal the Court orders?
- d) Is it the case the Minister believes the approach taken by the Commonwealth is the financially prudent way to manage the taxpayers money?
- e) Is it the case that whilst Livestock Transport's claim is minimal to the overall Commonwealth's budget that the approach adopted by the Commonwealth is impractical, costly and unfair?
- f) Why is it that the Commonwealth is prepared to contest this matter in a court of law when other sectors of the horse industry did receive forms of compensation?

Answer:

- a) Two sets of legal proceedings for compensation relating to the 2007 equine influenza (EI) outbreak have been filed in courts against the Commonwealth. One set of proceedings was commenced by Livestock Transport (Sydney) Pty Ltd (LTG) in the NSW Supreme Court. It seeks recovery for pure economic losses linked to the impact of the EI outbreak (and related travel restrictions) on LTG's livestock transport business. The second set of

proceedings was commenced by a Queensland horse stud named Clasul Pty Limited (Clasul) in the Qld Supreme Court. It is seeking recovery for property damage and attendant claimed economic loss.

b) The Commonwealth has denied liability for losses associated with the outbreak of EI. A court ruling on the two proceedings may assist with the resolution of other claims, as such the Commonwealth considers it appropriate to use the two cases as test cases for the purposes of determining legal liability. Consistent with the *Legal Services Directions 2005*, the Commonwealth has used, and remains ready to consider opportunities for alternative dispute resolution to narrow the issues in dispute and clarify the respective parties' positions. It is consistent with the Directions that the Commonwealth can test and defend claims in order to clarify a significant point of law even if the other party wishes to settle the dispute.

c) The Commonwealth has not indicated that any Court orders against it arising from the conclusion of these cases would definitely be appealed.

d) The Commonwealth's handling of the two claims has been the subject of advice by the Solicitor-General, as well as the Commonwealth's legal advisers in the proceedings, Mr Robert Weber SC and Blake Dawson solicitors. It is appropriate for the cases to be run as test cases for the purposes of determining legal liability as this may assist with the handling of other claims. Noting that the Commonwealth has denied liability for losses associated with the outbreak of EI and that EI Commission was not tasked with and did not make any recommendations as to legal liability.

e) The LTG claim is for in excess of \$3m but there is the potential for many more claims to follow. The Commonwealth has denied liability for losses associated with the outbreak of EI. The Commonwealth's handling of the claims has been the subject of advice by the Solicitor-General, as well as the Commonwealth's legal advisers in the proceedings, Mr Robert Weber SC and Blake Dawson solicitors and is consistent with its obligations under the *Legal Services Directions 2005*. It is appropriate for the cases to be run as test cases for the purposes of determining legal liability as this may assist with the handling of other claims.

f) The Commonwealth denies liability for losses associated with the outbreak of EI and considers it appropriate to test the current cases in court to determine liability. Independent of any legal liability being established, the Commonwealth has provided hundreds of millions of dollars in grants and business assistance, in excess of \$263m, to persons and entities affected by the outbreak. It also implemented a range of additional measures, working closely with State Governments, to help deal with the impact and effects of the outbreak.