

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ATTORNEY-GENERAL'S DEPARTMENT

**Program 1.3**

**Question No. 152**

**Senator Xenophon asked the following question at the hearing on 16 October 2012:**

In relation to the Ashby/Slipper case, can the Minister and the Department explain:

1. Whether there are protocols/guidelines/directives or other related systems to manage the cost of litigation, and if so provide details of the same?
2. Whether any such protocols/guidelines/directives or other related systems take into account:
  - a) The nature of the matter?
  - b) The potential liability in both costs and damages?
  - c) The inherent risks of litigation?
3. Were there any protocols/guidelines/directives or other related systems to trigger the review of the progress of the Ashby/Slipper case, and if so, did the triggers include:
  - a) Evidence that came to light either through discovery or any other means?
  - b) The costs incurred?
4. Who was responsible for the conduct of the Ashby/Slipper litigation?
5. Was the responsible person reporting to others in the Department and/or Government?
6. If so, to whom and on what dates, and to what extent?
7. Did such communications include any advice as to the costs being incurred? In particular, when did such communications take place?
8. On what dates did the legal costs for the Commonwealth exceed:
  - a) \$50,000
  - b) \$100,000
  - c) \$150,000
  - d) \$200,000

- e) \$250,000
- f) \$300,000
- g) \$350,000
- h) \$400,000
- i) \$450,000
- j) \$500,000
- k) \$550,000
- l) \$600,000
- m) \$650,000
- n) \$700,000

9. How many sexual harassment lawsuits has the Commonwealth been involved in over the last four years?

- a) Without disclosing the identities of the parties involved, what were:
  - i. The Commonwealth's legal costs in each such case (specifying if proceedings were formally issued or not)?
  - ii. What was the payout (if any) in each such case?
  - iii. What were the costs paid (if any) to the lawyers for the complainant in each such case?

10. What were the total costs involved in respect of:

- Taking instructions/communications from the Attorney-General and/or any conferences and communications involving the Attorney-General?

**The answer to the honourable senator's question is as follows:**

1. – 3. The Department managed the litigation in accordance with its obligations under the *Legal Services Directions 2005* and the *Financial Management and Accountability Act 1997*.
4. – 7. Management of the litigation was the responsibility of officers in the Department's Civil Law Division. Officers in the relevant areas of the Department of Finance and Deregulation were advised of the matter's progress and of costs incurred from time to time throughout the life of the matter.

8. The Commonwealth's legal Costs accrued in the matter were advised to be as follows:

At 10 May – Approximately \$103,000

At 1 June - Approximately \$220,000

At 28 June – Approximately \$278,000

At 26 July – Approximately \$517,000

At 25 September – Approximately \$729,000

These figures were provided by the AGS as part of its regular costs update to the Department and reflect total billed and unbilled fees as at that date.

9. The Department has been informed by AGS that matters are categorised in AGS's centralised legal practice management system according to broad legal matter categories. There is no category for 'sexual harassment'. A number of the categories could include sexual harassment claims, in particular, the categories of 'employment and workplace relations dispute' and 'employment and workplace relations advice'. Over the last 5 years AGS has opened around 550 matters in these 2 broad categories and a subset of them might have involved sexual harassment issues. Sexual harassment claims could also arise in categories involving workers compensation matters. To identify matters falling within the description of 'cases of sexual harassment' would require the individual review of AGS legal files within all these categories and possibly some others. This would be an unreasonable diversion of AGS's resources, noting AGS's role as a government business enterprise operating on a fully commercial and competitive basis in providing legal and related services to government agencies.

10. The Attorney-General was regularly informed about the proceedings, as is normal practice in relation to number of important cases where her Department is the instructing agency. This included briefings from the Department, AGS and counsel during the course of the proceedings. However, the Department had primary responsibility for issuing instructions to the AGS. As noted above, the Department acted in accordance with its obligations under the Legal Services Directions and the *Financial Management and Accountability Act 1997*.