

Senate Community Affairs Legislation Committee

SUPPLEMENTARY BUDGET ESTIMATES – 22 OCTOBER 2015 ANSWER TO QUESTION ON NOTICE

Department of Human Services

Topic: WA Non Agency Payment Case

Question reference number: HS 165

Senator: Xenophon

Type of question: Written

Date set by the committee for the return of answer: 11 December 2015

Number of pages: 2

Question:

Referring to this matter discussed at hearing:

Senator XENOPHON: I was copied in on the father's 9 October 2015 email to you. I think you are familiar with that. Obviously we do not identify the parties. My officer has spoken to the father about that. I know it is late, but I want to go to parts of the judgement in this case. The judge says: 'There is no doubt the father is the author of his own misfortune. His inability to say no to his children when they requested financial assistance from him, together with his dysfunctional relationship with the mother, produced the result that, although he provided more financial assistance to the children than he was otherwise required to do under his child support obligations, in the eyes of the child support registrar and the mother he failed to meet his child support obligations.' The judge says he made that decision not to pay the agency directly and brought these enforcement proceedings on himself. He goes on to say: 'There's no doubt that the father has paid either directly to or on behalf of the children more than he otherwise would have been required to pay had he restricted himself to his child support liability. There is also no doubt that the financial assistance that he has given to the children has significantly assisted the children's quality of life.' Given the principal objective of the Child Support Assessment Act is about the welfare of children and making sure they are provided for properly, what does the Department do in cases where the father has materially morally met the principal objective, albeit without complying with the letter of the law? What do you do in those unusual cases where there is clear evidence that the father has been generous, has done the right thing and has not complied with the letter of the law but there is evidence to indicate that he has?

Mr Learmonth: The short answer is there is ample flexibility and provision within the scheme to take account of these payments. This is not just a process matter that says that if he did not pay it through the child support agency then it will not be counted. The reality is that, where a child support liability is determined, we have a legal obligation to pursue it. In fulfilment of a child support obligation a paying parent can make, as I think you referred to, non-agency payments—in other words, payments made direct to a supported child or to a third party on behalf of that child. They are standard provisions within our arrangement. They are ideally, best and usually done with the consent of the receiving parent.

Can the Department confirm that the father sought to have the direct payments that he made for the benefit of the children (as appeared in the judgement) recognised as non-agency payments prior to proceedings?

Answer:

Paragraph 16 of the judgement refers to applications for non-agency payments that were made to the Department between 30 June 2010 and 5 September 2013. These applications for non-agency payments were made by either the father or the mother.

The judgement also refers to a handwritten summary of payments prepared by the father referred to in paragraphs 18, 19 and 20 of the judgement. Not all of these payments were claimed, by the father, as non-agency payments.

The Department will consider any further non-agency payment applications made by the father, as noted in the judgement, but not yet received by the Department.