

Senate Community Affairs Legislation Committee

ADDITIONAL ESTIMATES – 26 FEBRUARY 2015 ANSWER TO QUESTION ON NOTICE

Department of Human Services

Topic: Child Support matter – consideration of documents

Question reference number: HS 7

Senator: Xenophon

Type of question: Hansard page 26

Date set by the committee for the return of answer: 17 April 2015

Number of pages: 2

Question:

Senator XENOPHON: Let us talk about the issue of model litigant. I note that when the agency fronted the Family Court two weeks ago it had a barrister, two AGS lawyers and a departmental lawyer to oppose an untrained, self-representing father asking that his matter be re-opened to lay out documents that he says—and that I say—were erroneously withheld from him and he wanted the judge to consider. It concerns me that there is now an argument about not allowing documents. You are supposed to be a model litigant and you are saying you are fighting—you are spending tens of thousands of dollars with each court hearing—about not allowing documents to be reconsidered in respect of this matter, attempting to refuse that these documents be considered.

Ms Campbell: To do that I would need to call the legal practitioners so that we could go through that level of detail. As you can imagine, we do provide the actual operation of these legal cases to the lawyers to construct those. I do not have the information about that exact point with me.

Senator XENOPHON: Again, I ask that you take this on notice. A fortune is now being spent, with up to four lawyers turning up against an unrepresented father about documents that he says—and I say—were erroneously withheld from him.

Answer:

On 18 February 2015 the Family Court heard an interlocutory application made by the paying parent seeking to re-open his Family Court appeal of the Social Security Appeal Tribunal's (SSAT) decision made on 17 May 2013 in relation to the child support assessment (which had been heard and the decision reserved on 14 February 2014). In the interlocutory application, the paying parent was seeking to put further documents before the Family Court.

The Child Support Registrar was represented by the same junior counsel who represented the Child Support Registrar at the substantive Family Court hearing on 14 February 2014. The substantive hearing related to the paying parent's appeal of the SSAT decision (dated 17 May 2013) in relation to the child support assessment. This legal proceeding is separate from the department's appeal to the Administrative Appeal Tribunal of the Office of the

Australian Information Commissioner's decision in relation to a Freedom of Information request made by the paying parent.

At the 18 February 2015 Family Court hearing of the paying parent's interlocutory application, a solicitor from the Australian Government Solicitor (AGS) was present to instruct counsel. A department officer was in attendance to provide instructions to the AGS. An AGS junior lawyer also attended Court for the AGS' internal training purposes. The Child Support Registrar did not incur any legal costs for the AGS junior lawyer's attendance.

The department's actions, in defending these proceedings brought by the paying parent, are consistent with its obligations as a model litigant under the *Legal Services Directions 2005*. Where an allegation of a breach of the department's model litigant obligation is made, normal practice is to refer the allegation to the Office of Legal Services Coordination (OLSC) in the Attorney-General's Department. Allegations by the paying parent in this matter have been referred to OLSC on three occasions. OLSC has confirmed that on each occasion there has been no breach.