

## 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 8

**Senator:** Xenophon

**Type of question:** Hansard page 27

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

**Number of pages:** 3

#### **Question:**

Senator XENOPHON: I note that the legal services directions require you to get a written advice before commencing proceedings. Did that occur in this instance?

Mr Hutson: That certainly occurs.

Senator XENOPHON: You also need to get an estimate under the various professional rules as to what the likely cost of this action would be?

Mr Hutson: Yes.

Senator XENOPHON: Can you tell us what the estimate was?

Mr Hutson: No, I would have to take that one on notice.

Senator XENOPHON: Yes, but you will tell me that, won't you? Or the likely costs—

Mr Hutson: If I am able to tell you that. I will take the question on notice and I will—

Senator XENOPHON: No, no. What I do not understand is that you have refused previously to let me know what the costs of this are, notwithstanding that Senator David Johnston, when he was in opposition, was asking similar questions and you provided information to him as to what the costs were a couple of years ago. Back then it was \$25,000. It has now gone up to \$565,000. I want to know why you have refused, in answers on notice, to provide me with details of cost. It does not relate to the identity of the parties. I just want to know what the costs are.

Mr Hutson: I will take that question on notice then.

#### **Answer:**

The estimate for external legal costs for the department's appeal of the decision by the Office of the Australian Information Commissioner to the Administrative Appeals Tribunal is \$45,000 exclusive of GST.

The department did not previously provide an answer to HS 140 (a question on notice following the Supplementary Budget Estimates on 23-24 October 2014). At the time that the department prepared that response it was believed that the nature of the litigation and the costs of that litigation were matters that could give rise to issues of confidentiality in relation

to the individuals involved. That response has been reviewed. A full response should have been provided as set out in the response to HS 19.

The revised response to HS 140 (a question on notice following the Supplementary Budget Estimates on 23-24 October 2014) includes information that was correct as at December 2014. Answers to questions (a), (d) and (e) are provided in response to HS19. Answers to other sections of HS 140 are below.

**HS 140 Question** (a question on notice following the Supplementary Budget Estimates on 23-24 October 2014):

Referring to a Child Support Program matter that has involved proceedings in the Family Court, anonymised as “Pedrana and Pedrana and [Child Support Registrar]”:

- a) What is the total amount that Department of Human Services have been invoiced by the Australian Government Solicitor (AGS) in relation to all aspect (direct and incidental) of this particular Change of Assessment including, but not limited to:
  - 1) Change of Assessment;
  - 2) Review on Objection;
  - 3) Social Security Administrative Tribunal Review;
  - 4) Ombudsman Review;
  - 5) Office of the Australian Information Commissioner Reviews;
  - 6) proceedings initiated by the Child Support Registrar; and
  - 7) proceedings initiated by either of the parents to which the Child Support Registrar was a party.
- b) Of that total invoiced by the AGS, what cost is attributable to AGS submissions opposing the paying parent’s December 2012 Freedom of Information request for it to disclose its external legal costs in relation to the matter?
- c) On what basis did the Department seek to oppose the paying parent’s December 2012 Freedom of Information request for it to disclose the Department’s external legal costs in relation to the matter?
- d) What are the Department of Human Services’ total internal legal costs in relation to dealing with this particular Change of Assessment including, but not limited to:
  - 1) Change of Assessment;
  - 2) Review on Objection;
  - 3) SSAT Review;
  - 4) Ombudsman Review;
  - 5) Office of the Australian Information Commissioner Review;
  - 6) proceedings initiated by the Child Support Registrar; and
  - 7) proceedings initiated by either of the parents to which the Child Support Registrar was a party.
- e) What was the difference between:
  - 1) the original Change of Assessment decision ‘assessed annual child support amount’; and
  - 2) the Review on Objection decision ‘assessed annual child support amount’ for the period centred about the date of the original Change of Assessment decision?
- f) With respect to the length of this Change of Assessment:
  - 1) What was the month and year of the original Change of Assessment Application?

- 2) Has the matter been resolved to finality yet?
  - 3) If the matter has not been resolved to finality, when does the Child Support Registrar expect it to be?
  - 4) What is the average time period between a Child Support Change of Assessment Application being received and the assessment being resolved to finality?
  - 5) What is the longest time period between a Child Support Change of Assessment Application being received and the assessment being resolved to finality?
- g) How many times throughout this process did the paying parent ask for alternate dispute resolution to be used in preference to litigation?

**HS 140 Answer** (a question on notice following the Supplementary Budget Estimates on 23-24 October 2014):

- b) AGS has advised a total of \$3,000 is referable to the Freedom of Information matter.
- c) On 14 March 2013, the departmental decision-maker refused access to the documents requested by the paying parent under the *Freedom of Information Act 1982*, on the basis that the documents were exempt under section 42 (legal professional privilege) and section 47 (commercially valuable information) of the *Freedom of Information Act 1982*. The paying parent sought review of the decision with the Office of the Australian Information Commissioner. The Information Commissioner advised that the paying parent would be satisfied with being provided with a total sum rather than the documents. The department subsequently released the total cost figure, being \$509,356.17 (at that time), in submissions to the Information Commissioner. The department consented to the Information Commissioner providing the total cost figure to the paying parent.
- f) 1) The original change of assessment application was lodged by the receiving parent and received by the department on 1 June 2011.
- 2) No.
  - 3) As the matter is reserved before the Courts the Child Support Registrar is unable to indicate when the matter is likely to be resolved.
  - 4) The average time period between lodgement and finalisation is 53 days. Please note that this does not include reference to any Objection/SSAT/Court appeal processes – it refers to internal change of assessment processes only.
  - 5) The longest time period between a change of assessment application being received and the process being resolved to finality is 411 days. In that case the process was put on hold pending an SSAT outcome involving the same customers. The longest period between a change of assessment application being received and resolved without any delays due to pending SSAT processes is 183 days.
- g) The paying parent formally requested Alternative Dispute Resolution on one occasion, and informally and without substance referenced Alternative Dispute Resolution several times in other correspondence. The department has responded to all requests for Alternative Dispute Resolution, noting that any alternative dispute resolution would be not only between the paying parent and the Child Support Registrar, but also the other parent.