

## Senate Community Affairs Legislation Committee

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

#### Department of Human Services

**Topic:** Child Support

**Question reference number:** HS 23

**Senator:** Xenophon

**Type of question:** Hansard pages 125-126

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

**Number of pages:** 2

#### **Question:**

a) Senator XENOPHON: ..... Can you take on notice on what basis you decide something should go to a full trial rather than trying to head it off at the pass with mediation. I am just trying to be pragmatic.

Mr Learmonth: The short answer is: where there is no other reasonable course of action.

b) Senator XENOPHON: ..... Is there a policy to have mediations as a matter of course in such matters? If this person in question is as recalcitrant as I think he may have been—from what I am reading between the lines—but was very generous to his daughters, I wonder whether it would have saved a whole lot of taxpayers' money if he had been hauled before a mediation? That is the only point I am making. I am happy for you to take that on notice, because my time is limited and I want to ask further questions. So please take that on notice—I just want to understand why there should not be mediations, or a mechanism for mediations, as a matter of course. I think that could save a lot of taxpayers' money and a lot of anguish all parties involved.

.....

c) Minister. I want to raise one more cost issue in relation to the original \$630,000 case I raised with you in February. I subsequently attended a mediation where the matter was resolved. It was a good outcome that it was finally resolved. In answer to question on notice HS 19 you provided me with a cost breakdown of the first tranche of litigation. The Department paid the father's and mother's costs. The father's costs for one lawyer and one junior counsel were \$71,459. The mother's costs for one lawyer were \$13,018. The CSA's costs, presumably for one lawyer and one junior counsel, were \$369,235. So the costs to the Department were five times that of the other party. I am trying to understand the rationale for that, Ms Campbell. The Department stated:

...it was necessary for the Department to obtain extensive legal advice and for the Department's external lawyers to prepare and make detailed submissions to the Court. The father's lawyer and barrister team would have done the same thing. I do not understand the massive cost differential.

Ms Campbell: Can we take that on notice? I do not have that information here, and I must admit I have not looked at this case for some time. I think we would be able to get you a better answer if we took that on notice.

d) Senator XENOPHON: ..... I will ask the Minister this question, though: from a policy point of view, will the government consider mandating mediation in such matters in order to avoid the cost of litigation? Is that something that may be on the agenda?

.....

e) Senator XENOPHON: First, can you please provide me with initial litigation estimate provided to the Department by the AGS in the \$630,000 matter referred to?

f) Second, noting that the matter settled—and I am grateful for the fact that that was facilitated—can you please provide to this committee a copy of the AGS invoices, obviously de-identified, associated with that tranche of litigation? In the alternative, would you consider having these costs investigated and providing the finding of the investigation to the committee, because it is such a massive difference between what the parties paid in legal fees at commercial rates and what the Department paid?

Ms Campbell: We will take those questions on notice.

**Answer:**

a) See response to HS172.

b) See response to HS 172.

c) The reference in the question to “the original \$630,000 case” misconstrues the Registrar’s legal fees as there was not a single case, but rather a series of legal advices, court matters and tribunal matters over a period from August 2011 to July 2015 in relation to these parents. Please refer to HS 36 (Budget Estimates – 3 June 2015) in relation to the relative quantum of the Registrar’s legal costs compared to the father’s legal costs. The Department has investigated the difference in legal costs. The Department is satisfied that the Registrar’s legal costs were appropriate and commensurate with the legal work performed, which included a series of legal advices, court matters and tribunal matters over a period from August 2011 to July 2015. This work also included a test case on an important point of law that required extensive legal advice and detailed submissions to the Court. The father’s legal costs (which were paid by the Department) were substantially less than those of the Registrar as they related only to the father’s representation in Family Court proceedings which concluded in 2012.

d) See response to HS 172.

e) See answer to (c) above. On 30 August 2011 the AGS estimated that the work involved in making an initial application to the Family Court would cost \$46,878 (inclusive GST). As the matter progressed this estimate changed to encompass additional work, not included in the original estimate. Separate estimates were provided in relation to later applications to the Family Court, appeals, and FOI applications which all form part of the total cost of matters involving the father.

f) See answer to (c) above.