

Senate Community Affairs Legislation Committee

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

Department of Human Services

Topic: Mediation in Child Support

Question reference number: HS 172

Senator: Xenophon

Type of question: Written

Date set by the committee for the return of answer: 23 December 2015

Number of pages: 2

Question:

Noting the following dialogue at hearing (**emphasis added**):

Senator XENOPHON: That is a bit of a circuitous answer. 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

- a) Notwithstanding and in addition to the request within the dialogue, has the Department given any policy consideration to mandatory mediation in the form used by the Family Court on the pathway to litigation (noting it is mandatory, but certificates can be tendered to the Court if mediation is deemed unsuitable by the mediator).
- b) If so, please provide details as to the pros and cons.

Answer:

The Department gives consideration in all cases to alternative ways of settling a dispute.

Mediation is a particular form of alternative dispute resolution that the Department may consider. Currently, mediation is one of many tools that are available to resolve a dispute, but it is not a mandatory step in all litigation. The Department does not consider that mandating of mediation would be appropriate. However, the Department is working on building into all litigation formalised consideration of mediation as part of the usual alternative dispute resolution discussions.

The current alternative dispute resolution processes include multiple attempts to negotiate an acceptable payment arrangement with the paying parent before commencing litigation. The Department will also explore any administrative options available to resolve the debt, such as making deductions from a paying parent's salary and wages or issuing garnishee notices to third parties (for example, a bank) who may hold money on behalf of the paying parent.

The pros and cons of mandatory mediation relate to the appropriateness of mediation to resolve a dispute about a child support debt. In certain circumstances mediation may be the most appropriate resolution tool – such as where the matters in dispute are capable of being resolved by agreement between the parties – and may be inappropriate in other circumstances – for example where one party has raised an issue that can only be determined by a court or where there has been domestic violence between parents such that one parent is fearful of the other. Mediation is best assessed as an appropriate form of alternative dispute resolution on a case by case basis.