

# Senate Standing Committee on Economics

## ANSWERS TO QUESTIONS ON NOTICE

### Treasury Portfolio

Additional Estimates

26 February 2014

**Question:** AET 1065

**Topic:** Legal Costs (ATO)

**Written:** 5 March 2014

**Senator LUDWIG asked:**

1065) List all legal costs incurred by the department or agency since 7 September 2013

- List the total cost for these items, broken down by source of legal advice, hours retained or taken to prepare the advice and the level of counsel used in preparing the advice, whether the advice was internal or external
- List cost spend briefing Counsel, broken down by hours spend briefing, whether it was direct or indirect briefing, the gender ratio of Counsel, how each Counsel was engaged (departmental, ministerial)
- How was each piece of advice procured? Detail the method of identifying legal advice

**Answer:**

1065. The ATO (including Tax Practitioners Board) legal costs /expenditure from 1 September 2013 to 28 February 2014 was \$48.9 million. The legal expenditure for the 6 month period from 1 September 2013 to 28 February 2014 is 13 per cent lower than for the same 6 month period last financial year. This is the result of business improvements and cost saving initiatives implemented during 2013-14.

<b>Table 1: Breakdown of legal services expenditure 1 September 2013 to 28 February 2014</b>			
<b>Expenditure</b>	<b>ATO</b>	<b>TPB</b>	<b>Total Value (ex GST) (\$)</b>
<b>External legal services expenditure</b>			
Professional fees	10,163,687	514,558	10,678,245
Counsel fees	7,661,751	37,140	7,698,891
Disbursements	10,187,772	30,526	10,218,298
<b>Total external legal services expenditure</b>	<b>28,013,210</b>	<b>582,224</b>	<b>28,595,434</b>
<b>Internal legal services expenditure</b>			
Total direct staff costs and salaries	12,467,075	606,192	13,073,267
Total overhead costs	6,907,374	364,948	7,272,322
<b>Total internal legal services expenditure</b>	<b>19,374,449</b>	<b>971,140</b>	<b>20,345,589</b>
<b>Total legal services expenditure</b>	<b>47,387,659</b>	<b>1,553,364</b>	<b>48,941,023</b>

**Notes to Table 1:**

- external legal expenditure excludes costs awarded against the ATO, external expenditure on compensation and the ATO's Test Case Program legal costs
- professional fees include fees charged by external legal services providers for the work undertaken by their solicitors
- counsel expenditure includes panel counsel briefings and direct briefings (ATO and the Tax Practitioners Board)
- expenditure on disbursements includes court filing fees, summons fees, expert witness costs, indemnity fees (payments of costs incurred by lawyers or other professionals where the ATO has agreed to provide an indemnity), legal costs for settlements of cases (payments of third party legal costs where a case has been settled) and fees associated with mediating legal disputes

## Senate Standing Committee on Economics

### ANSWERS TO QUESTIONS ON NOTICE

#### Treasury Portfolio

Additional Estimates

26 February 2014

- direct staff costs includes direct salary costs, superannuation costs, leave entitlement costs and other salary related staff costs to the Dispute Resolution Branch and Tax Practitioners Board legal unit; and
  - overhead costs include direct overhead costs such as Dispute Resolution Branch and the Tax Practitioners Board staff travel costs, training and development costs, stationery and other miscellaneous costs such as electronic and hard copy legal information (online database and journals) and indirect overhead costs such as desktop services, accommodation, recruitment services and communication technology services costs.
- a) Legal advice for the ATO is provided by:
- Law firms engaged by the ATO
  - Counsel engaged via law firms
  - Counsel engaged directly by the ATO (direct briefs) , and
  - ATO in-house lawyers

To provide the more detailed information outlined below, it will be necessary to review individual invoices as current ATO systems do not provide sufficient breakdown of the type of legal work undertaken:

- source of legal advice
- hours retained or taken to prepare the advice
- the level of counsel used in preparing the advice, and
- whether the advice was internal or external.

- b) The cost of briefing counsel is broken down by the manner of engagement (see Table 2). Counsel is either engaged indirectly through a panel firm on behalf of the ATO or the ATO directly brief counsel.

<b>Table 2: Counsel breakdown</b>		
<b>Total Counsel (includes panel and direct brief)</b>		<b>\$7,698,889</b>
Male	\$5,739,782	75%
Female	\$1,959,108	25%
<b>Total Direct Brief</b>		<b>\$2,830,034</b>
Male	\$2,305,605	81%
Female	\$524,429	19%
<b>Total Panel Brief</b>		<b>\$4,868,855</b>
Male	\$3,434,176	71%
Female	\$1,434,679	29%

The average gender ratio of counsel is 75 per cent male to 25 per cent female. Panel firms engage more female counsel than the ATO direct briefs.

In the terms of the question, all engagement is by the ATO (i.e. departmental).

- c) Please refer to [tenders.gov.au](http://tenders.gov.au).