

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

26 February 2014

Question: AET 501

Topic: Legal Costs (ACCC)

Written: 5 March 2014

Senator LUDWIG asked:

501. List all legal costs incurred by the department or agency since 7 September 2013.
- a. 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
 - b. 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)
 - c. How was each piece of advice procured? Detail the method of identifying legal advice.

Answer:

501. From 7 September 2013 until 28 February 2014, the Australian Competition and Consumer Commission (ACCC) incurred \$9,611,173.75 (GST exclusive) in external legal costs.
- The ACCC also has an internal legal group which provides legal advice and services, as well as other services such as freedom of information coordination and legal technology. From 7 September until 28 February 2014, the ACCC's internal legal group cost \$4,980,710.00 (GST exclusive). This figure is inclusive of on-costs and ancillary non-legal services such as those indicated above.
- a. Legal advice is often intertwined with broader legal services, including the preparation for and conduct of litigation, and the ACCC does not distinguish the costs of legal advice from costs of other legal services, therefore the following response relates to legal services costs. Of the ACCC's external legal costs from 7 September 2013 until 28 February 2014, \$8,609,914.31 was legal professional fees (including fees for both law firms and counsel) and \$ 1,001,259.44 was legal disbursements (including filing fees and witness costs). External legal services were provided by junior and senior counsel, as well as solicitors of varying levels of seniority from law firms. Internal legal services were provided by the ACCC's legal unit. It would be an unreasonable diversion of resources to provide an hourly breakdown of legal services.
 - b. Counsel fees were \$2,645,229, of which \$2,532,182 were fees for counsel briefed via a law firm instructed by the ACCC and \$113,047 were fees for counsel directly briefed by the ACCC. Of the counsel briefed, 25 counsel were male and 6 counsel were female. It would be an unreasonable diversion of resources to provide an hourly breakdown of counsel services.

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- c. Until the end of 2013, the ACCC procured its external legal services in two main ways: through a panel of law firms; and through direct briefing of counsel. The ACCC's legal panel expired at the end of 2013. Since 1 January 2014, the ACCC procures its external legal services in three main ways:
- through a parcelling arrangement with 5 law firms for competition, merger and regulatory law work;
 - through another parcelling arrangement with 5 law firms for consumer law work; and
 - through the direct briefing of counsel.

The two parcelling arrangements are based on the Legal Services Multi-Use List (LSMUL) established by the Attorney-General's Department for Commonwealth legal services. Expenditure on external legal services, including detailed estimates, must receive prior approval by the ACCC's Executive General Manager, Legal and Economic Division before any legal services can be undertaken. The ACCC has requirements on internal and external legal providers to ensure that all substantive legal advice is captured in a central internal database maintained by the ACCC.