

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Supplementary Budget Estimates 2016 - 2017

Agency - Comcare

Department of Employment Question No. EMSQ16-000826

Senator Paterson asked on 19 October 2016 on proof Hansard page 87

Question

Comcare - Legal Expenses

Senator PATERSON: Yes. I should have said that Mr Towell's comment is from April 2014, so it is a little bit out of date. And you are right: there have obviously been changes made since. I know Senator Abetz takes great interest in these matters. As you have identified, this is a real issue, and I am still interested in options for measures the government could take in the future to address this if it was minded to do so. I guess when there are Comcare claims there are a couple of different categories. One is a claim which Comcare sees as legitimate and so grants. Other claims are rejected by Comcare, and there are a couple of different paths there. The applicant can accept the outcome of the decision. They can appeal the decision. And if they do appeal the decision then either Comcare can prevail in that process or the applicant can prevail in that process.

So I want to refer to a couple of those. And what I am trying to get at here, in the interests of full disclosure, is the costs and the expense involved for Comcare in defending these claims in the court. For example, one appeal of a decision that Comcare made, which was, as I understand it, subsequently lost, was the case over a \$20,000 breast-reduction surgery. I am referring to an article by, again, Mr Towell. It was on 7 October 2015 in The Canberra Times. It was an ATO employee. Are you familiar with that case?

Ms Taylor: Yes, I am.

Senator PATERSON: It first went to AAT and I understand that it went subsequently to the Federal Court, and Comcare was not successful in defending its decision. Do you have available—or you might have to take it on notice—what the legal costs were in defending that case?

Ms Taylor: I will see whether my colleague Mr Watson has that particular one. I do not have that level of detail. But I can tell you our legal expenditure costs. For the period 1 September 2015 to 31 August our legal expenditure was \$11,385,155. Regarding our legal costs we use both internal and external, and of course if we take matters to the High Court, as we have done in the past, then of course—

Senator PATERSON: Yes, I will come to that case.

Ms Taylor: And no, we do not have the breakdown of that legal expenditure, but I can get that for you on notice.

Senator PATERSON: Yes, I was going to ask whether you could provide a breakdown of what those internal costs are and what the costs of external lawyers are. So, in this case I understand that the applicant had an injury at work which she felt caused her to increase in weight and as a result she thought she required breast-reduction surgery, because she had related neck and shoulder pain, I think it was. Whether you want to comment on this case specifically or not, why would Comcare reject a case like that? What are the grounds for rejecting an application like that?

Ms Taylor: There has to be a link to employment. The injury has to be because of the employment. For example, you tripped over a chair at work and you broke your leg—a pretty simple case. In cases where we do not consider that the injury has been caused by or is arising out of the person's employment—there has not been that contribution to it—then we

would reject the claim.

Senator PATERSON: I note in this case that costs were awarded to the applicant. Again, you will probably need to take this on notice, but perhaps you could provide to us the total value of costs in recent years. I do not mind how far you go back—just a reasonable period of time where costs have been awarded, and what that has amounted to.

Ms Taylor: We will certainly do so.

Answer

The ATO employee's matter in question has been through both the Administrative Appeals Tribunal and the Federal Court. Total legal costs incurred by Comcare to date are \$101,218.38. In addition, costs awarded to the claimant, and paid by Comcare, total \$77,590.84.

Comcare's internal and external legal services expenditure (exclusive of GST) associated with workers' compensation disputes, and payments made by Comcare to claimants following an award of legal costs (also exclusive of GST), are as follows:

Year	Comcare's internal legal services expenditure – workers compensation matters	Comcare's external legal services expenditure – workers compensation matters	Comcare's payments to workers compensation claimants following an award of costs	Comcare's total legal services expenditure – workers compensation matters
2012-13	\$3,210,943	\$8,361,537	\$2,245,325	\$13,817,805
2013-14	\$3,019,124	\$9,050,755	\$3,011,308	\$15,081,187
2014-15	\$1,706,836	\$9,425,722	\$2,073,730	\$13,206,288
2015-16	\$1,906,646	\$11,853,014	\$1,971,902	\$15,731,562