

**Senate Standing Committee on Environment and Communications
Legislation Committee**
Answers to questions on notice
Environment portfolio

Question No: 196
Hearing: Additional Estimates
Outcome: Corporate
Programme: Policy and Communications Division (PCD)
Topic: Department legal matters
Hansard Page: N/A
Question Date: 7 March 2014
Question Type: Written

Senator Waters asked:

I understand that Clive Palmer MP has threatened to sue the Department for performing its regulatory functions and upholding our environmental laws.

1. How does the Department allocate funding towards proactive and defensive legal matters? Is there a set fund?

2. Is there a set funding allocation from which both proactive compliance actions and defensive legal action is funded?

3. Has the Department ever been the target of legal action for doing its job in the past? Please provide a list including all such legal actions and detail the cost to the Department in,

a) staff hours

b) legal fees

c) fees for expert witnesses

d.) other expenses

4. How much money would it cost the Department to defend such a claim in the Courts?

Answer:

Question 1

The Department of the Environment (Department) allocates funding towards litigation and enforcement actions as follows:

for matters not instigated by the Department (that is, “defensive legal matters”), the Department uses funding from a separate litigation budget; and

for matters in which the Department is acting in a regulatory or enforcement capacity (that is, “proactive legal matters”) funding for that matter comes from the budget of the line area responsible for that regulatory or enforcement activity.

Question 2

As above, funding for compliance and enforcement actions comes from separate budget allocations, distinct from the budget allocation for matters in which the Department is the respondent (or defendant).

In relation to defending matters, funding is provided on an as needed basis in response to individual actions.

There is no set fund for actions in which the Department is acting in an enforcement or regulatory capacity. A line area will allocate funding to such an action as required after an assessment of the matter including, for example, an assessment as to risk.

Question 3

Decisions made by the Minister, the Secretary or relevant delegates under various pieces of portfolio legislation have been challenged in the past.

The Australian Government does not disclose the content of its legal advice without fully considering the implications of disclosure from a legal professional privilege perspective. It is important for any government to be able to make fully informed decisions based on comprehensive and confidential legal advice. As such, no details of individual cases can be provided, however the total litigation budget spend (which typically comprises legal fees including fees for counsel, fees for expert witnesses and other expenses for matters not instigated by the Department) in 2012-13 was \$972,289.70 for 10 matters. This figure does not include Departmental staff hours, as it is not possible to calculate this information.

Question 4

The cost for a matter to which the Department is party is highly variable and is dependent on a range of factors including; complexity, whether the matter requires expert witnesses, and the way in which the applicant manages the case. As such, it is not possible to provide a precise answer as to how much it would cost the Department to defend any specific action.