

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

16 February 2012

Question No: AET 171 - 175

Topic: Legal Services Practice Strategy

Hansard Page: Written

Senator Bushby asked:

171. In relation to the ATO's announcement of a new legal services practice strategy: What prompted the review into legal services?
172. How is the new strategy different to the old legal services practice strategy?
173. How much will it cost to implement the new legal services practice strategy?
174. Will the new legal practice strategy result in any new positions at the ATO?
175. Will the new system reduce outsourcing external legal services?

Answer:

171. We believe the ATO announcement referred to by Senator Bushby relates to the Australian Financial Review article of 18 January 2012 titled "ATO overhauls Legal Services". This refers to the changes the ATO is making to increase the levels of tax and superannuation law expertise available to its frontline compliance and operations staff with the aim of resolving more complex issues at an earlier stage.

The review focussed on identifying the practical steps that could be implemented to improve corporate processes for managing interpretive advice and tax technical decision making. The review involved senior level law experts within the Centres of Expertise and Tax Counsel Network.

The review identified a number of effective practices which had been adopted in some areas within the ATO such as early issue identification and engagement of specialist expertise based on risk, increased use of technical networks and greater access to senior level law experts through on-site tax clinics. These practices are now being progressively implemented in frontline areas that are involved in interpretive advice and tax technical decision making.

To support this approach the ATO is taking the following key steps:

- approximately 145 law experts from the ATO's Centres of Expertise are being placed into business and service lines to provide technical leadership for interpretive assistance and active compliance areas

- implementing early issue identification and expert engagement into the management of tax technical decisions across the ATO
- making it easier to engage expertise by streamlining processes and establishing a centralised work management area
- changing the basis for engaging law experts to a risk based approach to ensure that the ATO's small number of law experts are focussed on the highest risk matters, and
- establishing an ongoing review process to give the ATO the capacity to decide how to best support and deploy its law experts and other technical staff to deal with current and emerging technical risks and challenges.

172. The review recognised that people and businesses have more complex and varied tax affairs and that ATO expertise needs to grow both at the generalist and specialist level.

The previous strategy for delivering interpretive advice and tax technical decision making was based on precedential and other identified high risk priority tax technical issues being escalated to law experts within the Centres of Expertise and Tax Counsel Network for resolution.

As discussed by Second Commissioner Jennie Granger in the Australian Financial Review article of 18 January 2012 entitled "ATO overhauls Legal Services", law experts were generally brought in at a later stage after issues had been identified and refined. In some circumstances, this meant a delay in applying the necessary expertise, which resulted in a delay in resolving the issues.

The new strategy is based on identifying tax technical issues as early as practicable in the decision making process, prioritising the issues, identifying the required specialist expertise and bringing that expertise to bear as early as practicable in the process. Importantly, it also aims to lift the ATO's general level of tax and superannuation expertise in frontline areas by having law experts based in those areas also carrying responsibility for developing the technical expertise of staff in these areas. This is being supplemented by tax clinics run by senior tax counsel to directly engage with staff.

As noted, the previous strategy was based on escalation to law experts while the new strategy is based on engagement of relevant expertise, which provides the advantage of streamlining and allowing for more timely decision making. This approach also supports knowledge sharing between case officers and law experts to help build and develop technical capability. There will still be a need to escalate the most complex, highest risk issues to Tax Counsel Network but we expect less work will need to be escalated.

173. The new strategy is not anticipated to incur any material additional costs as it involves moving existing staff and reorganising workflows.
174. The strategy involves moving existing staff and reorganising workflows. It involves the transfer of current technical positions rather than the creation of new positions.
175. The ATO engages external legal providers for litigation and legal advisory work in relation to revenue collection, tax and superannuation law interpretation and non-tax law matters such as employment law and freedom of information.

The new ATO system was developed following a review of how best to improve the ATO's internal corporate business processes for delivering interpretative advice and tax technical decision making. The scope of the review was to build on and develop technical expertise across the ATO and did not specifically include litigation processes. Outsourcing of external legal services was out of scope for this review.

It is expected that the new system will ensure the ATO makes sound and timely tax technical decisions and that the reasons for decisions are known and understood by everyone involved. Ultimately this aims to reduce the level of disputation and therefore reduce the flow on costs associated with litigation.