



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**THE SENATE**  
**QUESTIONS ON NOTICE**  
**Mr Mark McMurtrie**  
**QUESTION**

**2242**

**Wednesday, 28 February 2007**

BY AUTHORITY OF THE SENATE

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## QUESTION

<b>Date</b>	Wednesday, 28 February 2007	<b>Source</b>	Senate
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<b>Questioner</b>	Evans, Sen Chris	<b>Responder</b>	Kemp, Sen Rod
<b>Speaker</b>		<b>Question No.</b>	2242

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### Mr Mark McMurtrie

**Senator Chris Evans** (Western Australia) asked the Minister representing the Minister for Families, Community Services and Indigenous Affairs, upon notice, on 28 July 2006:

With reference to the legal proceedings involving claims by Mr Mark McMurtrie against the Commonwealth:

- (1) What is the total cost to the Commonwealth of this litigation up until and including the appeal in the (a) Supreme Court of New South Wales; and (b) what is included in this cost (including costs of external legal advice, any interlocutory proceedings and related departmental expenses).
- (2) From which budget were most, if not all, of these litigation costs met and can relevant items in the budget papers be specified.
- (3) When did the original legal proceedings begin.
- (4) When was the Commonwealth notified of the appeal.
- (5) Did the Commonwealth ever seek to negotiate an act of grace payment; if so, on what dates.
- (6) Did the Commonwealth ever seek to resolve the dispute via litigation alternatives, like mediation or negotiation; if so, on what dates.
- (7) Was the Commonwealth ever approached to mediate or negotiate a resolution by Mr McMurtrie; if so: (a) on what dates was the Commonwealth approached; and (b) what was the Commonwealth's response.
- (8) Can the Minister confirm that Mr McMurtrie was self-represented for part of these proceedings; if so, which part of the proceedings was Mr McMurtrie self-represented.
- (9) Does the Commonwealth have any special protocol for conduct in proceedings where the opponent is self-represented; if so, what does this protocol provide.
- (10) What sections and departments of the Commonwealth were involved in this litigation, either through acting in the legal proceedings, providing advice or funding or administration.

**Senator Kemp** (Victoria)—The Minister for Families, Community Services and Indigenous Affairs has provided the following answer to the honourable senator's question:

The total cost to the Commonwealth (including ATSI) of the litigation up to and including the appeal to the New Wales Supreme Court of Appeal is \$507,749.52. This figure includes the costs of external legal advice and interlocutory proceedings in relation to the filing of the Statement of Claim.

Litigation costs were met from the administered appropriation known as "Indigenous Affairs Litigation" identified in the budget papers. Mr McMurtrie's litigation was not separately identified.

The original Statement of Claim was issued out of the Supreme Court of New South Wales on 7 October 1999 against ATSI and six other parties including the Commonwealth. A global figure of \$33 million was claimed. Proceedings against the Commonwealth were dismissed on 16 November 2000. When ATSI was abolished on 24 March 2005 the Commonwealth became a party to the litigation. The Commonwealth was notified of the appeal on or about 12 July 2005.

ATSI did not seek to negotiate an Act of Grace Payment because ATSI had no demonstrated moral obligation to provide redress to Mr McMurtrie. ATSI did not seek to resolve the dispute by litigation alternatives as legal advice was that the matter was not suitable for mediation because the matter could not proceed unless Mr McMurtrie was granted leave to file a Further Amended Statement of Claim. Mr McMurtrie was not granted leave until 9 February 2004. Mr McMurtrie negotiated directly with the Minister and the ATSI CEO.

The Minister, the CEO of ATSIC and the ATSIC Board of Commissioners were approached by Mr McMurtrie on several occasions, including September 1999, December 2000, March 2001, May 2001, September 2001, October 2001, February 2002, March 2002, April 2003, May 2003, July 2003, August 2003, September 2003, October 2003, November 2003, January 2004, July 2005 and September 2005. Mr McMurtrie had meetings with Mr Sinodinos, Chief of Staff to the Prime Minister, who was called as a witness by Mr McMurtrie at the hearing in September 2004.

The Minister was advised that he had no role to play in any civil litigation brought by an individual against ATSIC. The ATSIC Board was advised that it would be inappropriate to discuss the matter because ATSIC was a party. The CEO arranged for a meeting to be held for Mr McMurtrie to discuss allegations against ATSIC other than those which were the subject of his litigation.

Mr McMurtrie was unrepresented when he filed the first Statement of Claim. He instructed a solicitor in November 2000 who was unable to settle the Statement of Claim. He retained another solicitor in February 2001 to amend the Statement of Claim and engaged counsel to appear at the hearings to amend the Statement of Claim. Mr McMurtrie terminated the retainer in June 2003 and was unrepresented at the hearing of submissions on the Fourth and subsequent Amended Statements of Claim. He was unrepresented at the hearing in September 2004 and at the appeal in May 2006.

Paragraph 2(f) of Appendix B to the Legal Services Directions prohibits the Commonwealth from taking advantage of a claimant who lacks the resources to litigate a legitimate claim. The conduct of ATSIC in relation to Mr McMurtrie's lack of legal representation can be discerned from the judgment of the trial judge in the matters of *McMurtrie v ATSIC* (2004) NSWSC 1198 and *McMurtrie v Commonwealth of Australia* (2006) NSWCA 148.

Legal sections of the Aboriginal and Torres Strait Islander Commission, Aboriginal and Torres Strait Islander Services, the Attorney-General's Department and the Australian Government Solicitor were involved in the litigation. The Department of Employment and Workplace Relations was subpoenaed on two occasions.