

Responses to Questions on Notice or further information agreed to be supplied at the hearings

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Question

Bev McARTHUR: Thank you, Chair. Mr O'Connor, I refer to budget paper 3, page 94, 'Wage theft laws compliance and enforcement'. It was reported on 22 March 2023 that a company known as Rehmat and Mehar Pty Ltd had commenced proceedings in the High Court challenging the constitutional validity of Victoria's wage theft laws. Can you please advise what is the status of this matter?

Matt O'CONNOR: Yes. Thanks for the question, Ms McArthur. The matter is in the High Court, and there are preliminary steps being undertaken to bring the matter to a hearing sometime possibly later this year. I am not clear whether it will be before the end of this year or into next year.

Bev McARTHUR: Okay. Is there a real risk that the government's wage theft laws will be found unconstitutional and invalid?

Matt O'CONNOR: That is obviously a matter for the court, Ms McArthur.

Bev McARTHUR: What is your legal advice?

Matt O'CONNOR: Our legal advice when we were developing the laws was that they were on a sound constitutional basis – they are criminal laws – and that is the basis on which we will obviously defend the action in the High Court.

Bev McARTHUR: Good. So you are living in hope in that regard. That is excellent. **How much in legal fees has been spent by the wage inspectorate in relation to this matter?**

Matt O'CONNOR: I will have to take that on notice, I am sorry, Ms McArthur. I am not sure whether we have had a bill yet.

Answer

As of 5 June 2023, the Wage Inspectorate has paid \$28,159.78 (incl. GST) in legal fees regarding the High Court of Australia (HCA) proceedings.

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Question

Bev McARTHUR: Perfect. Thank you very much. Just continuing on. Budget paper 2, page 65 – the government will double its public sector wage policy from 1.5 per cent to 3 per cent. How much in additional employee expenses will this cost the budget? And how much, on average, will the additional 'limited cash payment' cost per employee?

Matt O'CONNOR: I do not have those figures, Ms McArthur, to hand. I am not sure that they are readily available. I would have to probably inquire with Treasury around those.

Bev McARTHUR: Okay. We are very happy for you to take it on notice. We will get them, hopefully, at the end of the session.

Answer

Budget Paper 2, Chapter 4, Table 4.2, Page 54 (see below) sets out employee expenses for the general government sector, including forecast growth in employee expenses over the forward estimates.

Employee expenses (including superannuation) are forecast to be \$39.8 billion in 2023-24. Average growth over the forward estimates of 2.7 per cent a year is forecast, consistent with the requirements of service delivery and enterprise bargaining agreements.

The amounts provisioned for the new Wages Policy, including the limited cash payment, are reflected in Table 4.2 referred to above.

Table 4.2: Summary operating statement for the general government sector ^(a) (\$ million)

	2021-22 actual	2022-23 revised	2023-24 budget	2024-25 estimate	2025-26 estimate	2026-27 estimate
Revenue and income from transactions						
Taxation	30 546	31 501	34 877	36 683	38 490	40 366
Dividends, TER and interest ^(b)	1 442	2 117	2 904	2 130	2 313	2 371
Sales of goods and services	5 645	6 068	6 111	6 441	6 419	6 497
Grants	41 805	39 804	41 751	43 227	45 888	46 765
Other revenue and income	3 586	3 462	3 617	3 304	3 382	3 902
Total revenue and income from transactions	83 023	82 952	89 260	91 785	96 491	99 901
% change		(0.1)	7.6	2.8	5.1	3.5
Expenses from transactions						
Employee expenses	32 239	33 850	35 280	35 929	36 984	38 272
Superannuation ^(c)	4 392	4 178	4 489	4 591	4 663	4 851
Depreciation	4 308	4 813	4 890	5 032	5 342	5 551
Interest expense	2 869	4 071	5 566	6 273	7 150	7 981
Grant expense	25 063	18 992	16 962	16 209	16 324	16 314
Other operating expenses	27 943	27 373	26 091	24 812	24 989	25 728
Total expenses from transactions	96 814	93 278	93 277	92 846	95 452	98 697
% change		(3.7)	(0.0)	(0.5)	2.8	3.4
Net result from transactions – net operating balance	(13 791)	(10 326)	(4 017)	(1 060)	1 039	1 204
Total other economic flows included in net result ^(d)	290	(214)	(369)	(306)	(181)	(197)
Net result	(13 501)	(10 541)	(4 387)	(1 366)	858	1 007

Notes:

(a) Figures in this table are subject to rounding to the nearest million and may not add up to totals.

(b) Comprises dividends, income tax and rate equivalent revenue and interest.

(c) Comprises superannuation interest expense and other superannuation expenses.

(d) This typically includes gains and losses from the disposal of non-financial assets, adjustments for bad and doubtful debts and revaluations of financial assets and liabilities.

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Question

Bev McARTHUR:Further on the compliance function – budget paper 3, page 94 – the recent full Federal Court decision in *Conroy's Smallgoods v. Australasian Meat Industry Employees Union*, which the inspectorate intervened in, found the inspectorate was wrong in relation to its interpretation of laws concerning long service leave entitlements. Do you accept the government's own wage inspectorate got the law wrong?

Matt O'CONNOR: It was obviously basing its interpretation of the laws on previous advice and decisions. That case has altered that position, that is right.

Bev McARTHUR: So you got it wrong?

Matt O'CONNOR: Whether a regulator gets something wrong in relation to court decisions is a matter for opinion, I suppose, Ms McArthur, but obviously sometimes you do need the direction of the courts to interpret what can sometimes be quite complicated provisions.

Bev McARTHUR: How much in legal fees was spent by the inspectorate in relation to that full court appeal?

Matt O'CONNOR: Again I would need to take that on notice.

Bev McARTHUR: We will look forward to that response. Was the inspectorate ordered to pay any legal costs in this proceeding, and if so, how much?

Matt O'CONNOR: Again I will take that on notice.

Bev McARTHUR: Okay. Has the decision caused any other investigations or proceedings of the inspectorate to be withdrawn, and if so, how many?

Matt O'CONNOR: I cannot say whether there have been any proceedings withdrawn. What I can say, Ms McArthur, is obviously the authority is reviewing its current investigations in light of the decision.

Bev McARTHUR: Will you take that on notice too?

Matt O'CONNOR: I can give you the numbers if there are any, but it may be zero.

Answer

[*Conroy's Smallgoods Pty Ltd v Australasian Meat Industry Employees Union* \[2023\] FCAFC 59](#) was an appeal to the Federal Court from a decision of the South Australian Employment Tribunal and concerned the proper construction of s113 of the Fair Work Act. Section 113 deals with the circumstances in which an employee will derive their long service leave (LSL) from a federal pre-modern award, rather than from the applicable State or Territory LSL legislation.

The employer (Conroy's Smallgoods) appealed the decision with the support of an intervener – the National Australia Bank (NAB). The Wage Inspectorate Victoria (WIV) and the State of NSW intervened in support of the union representing the worker.

WIV is obtaining advice about the impact of this appeal on one proceeding it has commenced (WIV v NAB, currently before the Magistrates' Court of Victoria). The appeal has not impacted upon WIV's investigative work. WIV spent \$89,820.50 in legal fees intervening in the Federal Court appeal. WIV was not ordered to pay any legal costs in this proceeding.

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Question

Matt O'CONNOR: Apologies. As the Minister for Industrial Relations outlined in his initial presentation, the inspectorate recovered \$1.1 million for Victorian workers during this financial year under –

Bev McARTHUR: Are you obliged to publish an annual report about this?

Matt O'CONNOR: That is an excellent question, Ms McArthur.

Bev McARTHUR: We will look forward to getting the answer.

Answer

The Wage Inspectorate is funded through the Department of Premier and Cabinet's (DPC) budget. It contributes content about its operations and performance against BP3 measures to DPC's Annual Report.