

Written Question on Notice

Date: 11 August 2015

Subject: Environment Centre NT Inc v Minister for Land Resource Management Legal Fees

From: Mr Ken Vowles (Member for Johnston)

To: Minister for Land Resource Management

Number: WQ331

Question:

- (a) Including legal fees, court costs and other costs consequential to the Supreme Court's decision in *The Environment Centre Northern Territory (NT) Incorporated v The Minister for Land Resource Management*, what is the total itemised cost arising from your failure to conduct a merits based review of decisions by the Controller of Water Resources (the Controller) to grant certain water extraction licenses?
- (b) Why didn't you conduct a merits based review of the Controller's decisions to award the water extraction licenses mentioned in the Supreme Court's Judgement?
- (c) Will you accept responsibility for the costs incurred to taxpayers by your failure to conduct a merits based review of the Controller's decisions with respect to the water extraction licenses mentioned in the Supreme Court's judgement?
- (d) What steps and procedures have you put in place to ensure that any future reviews of the Controller's decisions to award water extraction licenses are conducted on their merits consistent with the Supreme Court's decision?
- (e) How many other applications have you received to review decisions of the Controller to grant water extraction licenses?
- (f) What are the details of each water extraction license relevant to (e) above and when did you receive each review application?
- (g) What decision did you make with respect to each of the review applications mentioned in (e) above?
- (h) Did you undertake a merits based review of each decision of the Controller relevant to (e) above and if not:
 - (i) Which licenses were not subject to a merits bases review?
 - (ii) And in each case, why didn't you conduct a merits base review?

Answer:

- (a) Costs for the Supreme Court action of the Environment Centre Northern Territory (NT) Incorporated v The Minister for Land Resource Management totalled \$119,962. This amount includes legal advice, legal services, general disbursements and final settlement. The following table itemises these costs.

Cost Category	Amount
Legal Advice	\$ 3,000.00
Legal Services	\$ 45,900.00
General Disbursements	\$ 3,061.85
Plaintiff's Costs	\$ 68,000.00
TOTAL	\$119,961.85

- (b) The Supreme Court's Judgement was the first time that this particular review process was the subject of a judicial review application. Since the inception of the *Water Act* in 1992, the same process has been consistently applied by all Ministers with responsibility under this section of the *Water Act*. Until the Supreme Court clarified the process, it was not understood that a merit based review, in the terms as set out by the Supreme Court in its judgment, was required.
- (c) On the day that the Supreme Court decision was handed down, I issued a statement to say that I accepted the decision by the court to clarify the interpretation of Section 30 of the *Water Act* in relation to the process that I or any other Minister must adhere to in consideration of a review of the Water Controller's decision. The decision did not call into legal question the broader operation of the *Water Act*, or the application of Government policy in respect of water resources via the *Water Act*. I therefore consider that the costs incurred were part of the normal operations of the Northern Territory Government.
- (d) I have directed the Department of Land Resource Management to take advice from the Department of Attorney General and Justice in regard to the procedures for conducting merits based reviews and to ensure that those procedures will be followed in all future reviews.
- (e) 3.
- (f) In April 2013, two applications were received for review of the decision made on 15 March 2013 to grant an increase of 5,300ML/year for maximum water entitlement for groundwater extraction licence TLAM05 in the Tindall Limestone Aquifer in the Mataranka area.

In October 2014, an application was received for review of the decision made on 22 September 2014 to grant two new groundwater extraction licences (O31 and O33) of 3,003ML/year and 2,056ML/year maximum water entitlement in the Ooloo Dolostone Aquifer in the Douglas/Daly Region.

In June 2015 an application was received for review of the decision made on 15 May 2015 to grant an increase of 10,300ML/year for maximum water

entitlement for groundwater extraction licence J21 in the Jinduckin Formation Aquifer underlying Tipperary Station.

- (g) I upheld the decision made by the Controller on 15 March 2013.

I requested the Controller to reconsider the decision of 22 September 2014.

I upheld the decision made by the Controller on 15 May 2015.

- (h) I undertook a merits based review of the decision made by the Controller on 15 May 2015.

I did not undertake merits based reviews of the decisions made by the Controller on 15 March 2013 and 22 September 2014.

- (i) My determinations of the appeals lodged in regard to licences TLAM05, O31 and O33 were not undertaken as merits based reviews.

- (ii) I did not conduct a merits based review of the decisions made by the Controller on 15 March 2013 and 22 September 2014 as it was not understood at that time that merits based reviews were required.