COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Estimates

(Public)

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CANBERRA

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ATTORNEY-GENERAL’S PORTFOLIO

In Attendance

Senator Brandis QC, Attorney-General

Executive

Mr Chris Moraitis PSM, Secretary
Mr David Fredericks, Deputy Secretary, Strategic Operations and Coordination Group
Mr Greg Manning, Acting Deputy Secretary, Civil Justice and Legal Services Group
Ms Katherine Jones, Deputy Secretary, National Security and Criminal Justice Group
Ms Samantha, Chard, Assistant Secretary, Data Retention Taskforce Executive

Outcome 1—A just and secure society through the maintenance and improvement of Australia’s law and justice framework and its national security and emergency management system

Access to Justice Division

Mr Matt Hall PSM, Acting First Assistant Secretary
Dr Albin Smrdel, Assistant Secretary, Courts Tribunal and Justice
Ms Elizabeth Quinn, Assistant Secretary, Legal Assistance
Ms Kelly Williams, Assistant Secretary, Marriage and Intercountry Adoption
Ms Tamsyn Harvey, Assistant Secretary, Family Law

Australian Government Solicitor

Mr Ian Govey, Australian Government Solicitor
Mr Daryl Adam, Corporate Secretary

Civil Law Division

Mr Matt Minogue, First Assistant Secretary
Mr Andrew Walter, Assistant Secretary, Commercial and Administrative Law
Ms Carmen Miragaya, Assistant Secretary, Native Title Unit
Mr Chris Allen, Acting Assistant Secretary, Classification
Ms Petra Gartmann, Assistant Secretary, Legal Services Policy Coordination
Ms Toni Pirani, Assistant Secretary, Commonwealth Representation Royal Commission

Constitutional and Corporate Counsel

Mr James Faulkner SC, First Assistant Secretary
Ms Carol Wall, Assistant Director, Freedom of Information
Ms Helen Daniels, Special Advisor

Corporate Division

Mr Stephen Lutze, Chief Financial Officer
Mr Justin Keefe, Assistant Secretary, AGD Service Centre
Mr Trevor Kennedy, Assistant Secretary, Financial Management, Framework and Property

Criminal Justice Division

Mr Iain Anderson, First Assistant Secretary
Ms Catherine Smith, Assistant Secretary, Crime Prevention and Federal Offenders
Ms Margaret Close, Acting Assistant Secretary, Criminal Law and Law Enforcement
Mr Michael Pahlow, Assistant Secretary, AusCheck
Ms Tara Inverarity, Executive Director, Crime Prevention and People Smuggling Unit

Defence Abuse Response Taskforce

Ms Kirsty Windeyer, Executive Director
Mr Matt Hall PSM, Former Executive Director
Ms Quinn: Do you mean the Women's Safety Package specifically?


Mr Manning: The Attorney-General’s Department is overseeing the Commonwealth’s aspect of it, but our colleagues from the criminal justice area, in group 3, are best placed to answer that.

Mr Moraitis: There are two elements: there is the model law and the IT proposal associated with those who were involved with it.

Senator LINDGREN: We will leave that for them then. Can you talk about service areas and legal assistance providers.

Mr Manning: Yes.

Senator LINDGREN: How were the service areas and legal assistance providers chosen to participate in the Australian government’s initiatives?

Ms Quinn: Of the $100 million that was allocated for the Women’s Safety Package, $15 million is specifically for legal assistance services. We will be administering that over the next three years. We looked at a number of things. Domestic violence, as we know, is not limited to high-disadvantage, high-crime rate areas. There is not a particular definitive source of nationally comparable figures, and the figures that are available are quite difficult to disaggregate. We selected locations that would deliver a spread across all states and territories, covering metropolitan, regional and remote services, and also allowing for some regions that had very high Indigenous populations and areas that reflected high numbers of culturally and linguistically diverse populations.

Senator LINDGREN: The Attorney-General just turned up but, just in case, I will ask you one more question and if you cannot answer just let me know. What other initiatives are being pursued within the Attorney-General’s portfolio to combat family violence?

Ms Quinn: If I talk about legal assistance, I have just mentioned that under the National Partnership agreement, in the list of priority clients that Mr Manning referred to, people at risk of or experiencing family violence are a key priority area.

Ms Harvey: In the family law area, there are also some initiatives we have underway to look at family violence. One of those is the development of a family violence bench book, which will be a national bench book that will look at both civil and criminal laws that deal with family violence. So that will be across all of those as well as more of the procedural areas where family violence might be an issue, such as how courts can protect witnesses, how they can take evidence and things like that. That is being prepared by the Sydney Law School in conjunction with the Australian Institute of Judicial Administration. We expect that will be finalised in 2017.

We have also just had the Australian Institute of Family Studies provide us with their evaluation of amendments to the Family Law Act 2012, which were designed to assist the family law system in dealing with family violence. That was delivered at the end of August and has gradually been released last week and this week. There are four large reports and we are currently having a look at those to determine what further measures we might need to take around family violence.

The third key piece of work that has been going on has been a reference to the Family Law Council, which the Attorney mentioned earlier. That reference is looking at the intersection between family law as a federal jurisdiction and then the state child protection and also family violence laws, and how some of those issues can be better addressed to assist families with complex needs which include family violence but also include substance abuse and mental health issues, and things like that.

Senator BILYK: Apologies, I still have some questions in group 2, we have just been trying to sort out which group these questions go into. I want to ask about the settlement of the litigation that Timor-Leste brought against Australia in the International Court of Justice. I understand that Australia recently settled litigation—is that correct?

Senator Brandis: That is correct.

Senator BILYK: What was the subject of that litigation?

Senator Brandis: The subject matter of the litigation was certain claims made by the government of Timor-Leste concerning documents.

Senator BILYK: What documents?

Senator Brandis: Documents that were in dispute, Senator.

Senator BILYK: Why did ASIO raid the offices of Timor-Leste’s lawyers?
Senator Brandis: Senator, I made a statement about this matter to the Senate in December 2013 in which I explained with some detail and particularity why ASIO had conducted that particular intelligence operation. I refer you to that statement.

Senator BILYK: Have you got the date of that statement, minister?

Senator Brandis: Not to hand, but it was in early December or possibly late November 2013.

Senator BILYK: Maybe you could find out the date for me.

Senator BRANDIS: You can find out, Senator.

Senator BILYK: No, I am asking you to.

Senator Brandis: I refer you to my statement, Senator. I have got nothing to add.

Senator BILYK: Did ASIO obtain a warrant to carry out that raid?

Senator Brandis: Yes, of course it did. ASIO can only undertake activities of that kind on a warranted basis.

Senator BILYK: Who authorised that warrant?

Senator Brandis: The only minister authorised to issues warrants is the Attorney-General.

Senator BILYK: So that was you, Senator Brandis, at the time?

Senator Brandis: Yes, I was the Attorney-General at the time.

Senator BILYK: What was the basis of the Timor-Leste’s claim in the ICJ?

Senator Brandis: These are public documents, I refer you to Timor-Leste's points of claim filed in the ICJ proceedings.

CHAIR: Senator, I do not want to interrupt your line of questioning but these are apparently matters that relate to a budget that is not the 2015-16 budget, unless there are still budgetary implications currently afoot.

Senator Brandis: Mr Reid can correct me if I am wrong, but I am fairly sure that I am right in saying that the settlement of the proceedings between Australia and Timor-Leste occurred before 1 July this year, so not within the 2015-16 budget period.

CHAIR: Were the terms of the settlement confidential?

Senator Brandis: No, they were not.

Senator BILYK: Can I still ask the questions?

CHAIR: Yes you can, but they are not pertinent to the estimates we are investigating here—

Senator BILYK: Sometimes we have to keep coming back estimates after estimates to get some answers, don’t we?

Senator Brandis: It all depends on what question you ask, Senator.

Senator BILYK: It does. If I was allowed to continue, I will keep asking them.

CHAIR: Go ahead.

Senator BILYK: What were the terms of settlement between Australia and Timor-Leste? You have just said it is not confidential.

Senator Brandis: We will provide you with a copy, Senator.

Senator BILYK: You will provide me with a copy?

Senator Brandis: Yes.

Senator BILYK: When might that be?

Senator Brandis: We will take the question on notice so that, rather than paraphrasing a legal instrument, you will have the actual terms for your own private study.

Senator BILYK: Am I correct in saying that, essentially, Australia agreed to restore the status that would have existed had you never authorised the ASIO raid?

Senator Brandis: I would not express it that way but, rather than be a commentator or put my own gloss on the meaning of the terms that settled, I think it is safer to let the terms speak for themselves.

Senator BILYK: When was the case actually settled, Senator Brandis.

Senator Brandis: 11 June.

Senator BILYK: Which year? This year?

Senator Brandis: Yes.
Senator BILYK: So this is the first time in estimates—just to clarify—that I have had a chance to ask questions about it.

Senator Brandis: That was not the point that the chairman was making to you. The point the chairman was making to you was that this estimates committee is convened for the purpose of considering the budget estimates for the 2015-16 financial year, and none of these events occurred in that year.

Senator BILYK: No, except that the settlement took place on 1 June, so one would think it reasonable—

Senator Brandis: 11 June.

Senator BILYK: that I asked questions about it.

Senator Brandis: I am not the author of the standing orders. The standing orders say that the estimates committee consider the estimates of the current budget year.

Senator BILYK: It sounds like both countries could have been saved a lot of trouble had that raid never occurred, and obviously from the comments coming from you, Minister, you are a little bit embarrassed by it.

Senator Brandis: Not at all. That is absolutely incorrect.

Senator BILYK: I want to ask some questions about the cost of the implications for Australia of this litigation. In a previous round of estimates, I think it was Senator Collins who asked some questions and received the response that Australia had taken a team of 11 people to The Hague for the case, all of whom flew to the Netherlands in business class at a cost of almost $90,000. Over $18,000 was spent on accommodation and $16,500 was spent on meals and other incidentals. That tallies to over $120,000. I am wondering what the total costs are now that the case has been settled. Can you tell me the total amount spent on lawyers for this case?

Senator Brandis: Yes. We will take it on notice and get you that.

Senator BILYK: How many lawyers travelled to The Hague to represent Australia at the ICJ?

Senator Brandis: We will take that on notice and give you the answer.

Senator BILYK: You do not know?

Senator Brandis: Not off the top of my head.

Senator BILYK: How many public servants?

Senator Brandis: Again, we will take it on notice and give you that information.

Senator BILYK: Do you know if they all flew in business class?

Senator Brandis: I do not.

Senator BILYK: Sorry, was that another take on notice?

Senator Brandis: I said that I do not know whether they all flew in business class.

Senator BILYK: Will you take that on notice too?

Senator Brandis: I will take on notice what class they flew—yes.

Senator BILYK: I am presuming you do not know the total cost of flights either?

Senator Brandis: I do not.

Senator BILYK: Can you take that on notice?

Senator Brandis: I will.

Senator BILYK: What was the total cost of the ground transport?

Senator Brandis: I will take that on notice.

Senator BILYK: What were the costs of meals and other incidentals?

Senator Brandis: Yes, we will take that on notice.

Senator BILYK: You will take it on notice?

Senator Brandis: Yes.

Senator BILYK: What was the total cost to Australia for this litigation?

Senator Brandis: I think you have already asked that and I have already said that we would take that on notice.

Senator BILYK: No, I asked for the total amount spent on lawyers, but now I want to know what the total cost to Australia was.

Senator Brandis: I think you have already asked that but, in any event, we will take that on notice.
Senator BILYK: Thank you, obviously I am not going to get any answers here.

Senator Brandis: No. You will get all of the answers but they will be taken on notice because you have asked for particular figures and you have asked for—

Senator BILYK: And nobody at the table could give me those figures? You are so unprepared.

Senator Brandis: I have taken the questions on notice so that you can be provided with the information after its accuracy has been verified.

Senator BILYK: Okay; I look forward to that. I hope I get them in a shorter time frame than some other answers and not on the day before the next estimates. That is all I have there, but I do have some other questions with regard to the EPBC.

Senator BILYK: Since the change in leadership in the Liberal government, has the Attorney-General had a fresh discussions with either the Prime Minister or the Minister for the Environment regarding the proposed repeal of section 487?

Senator Brandis: You should know that conversations among ministers are not something that is ever disclosed at estimates hearings.

Senator BILYK: Will the government be proceeding with its plans to repeal section 487?

Senator Brandis: There has been no decision not to do so.

Senator BILYK: Does the Prime Minister agree with the Attorney-General that the repeal of section 487 is necessary to protect Australian jobs?

Senator Brandis: The Prime Minister and I are in agreement on all matters at all times.

Senator BILYK: So you cannot have a difference of opinion?

Senator Brandis: It is not for me to give you a tutorial on how cabinet government works, but that is the way cabinet government works.

Senator BILYK: You are such a funny man, Senator Brandis! When the former Prime Minister, Tony Abbott, stated 'whether it's ensuring that projects that meet the strictest standards can go ahead without the kind of 'lawfare' which the Labor-Green alliance is now waging against them, every day that is what we are on about', what did he mean?

Senator Brandis: You would have to ask him.

Senator BILYK: Did you agree with the former Prime Minister?

Senator Brandis: I did, as a matter of fact. You asked me what Mr Abbott meant but my own view, which I believe is what Mr Abbott was saying, is that section 487 of the EPBC Act provides unusual and indeed unique rules for standing on, unknown anywhere else, to the best of my knowledge, in Australian law, which enable people with no interest other than what might be thought of as a philosophical or political interest in a particular environmental project the right to challenge a ministerial decision made under the act. It was the view that I took and the view that the former Prime Minister took and that the current Prime Minister takes that where circumstances arise, as has been the case and was the case in relation to the Carmichael mine in the Galilee Basin in Queensland, that litigation was undertaken not to protect any bona fide interest but merely to prosecute a particular political view about environmental policy, that was not an appropriate basis on which litigation should