



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION  
COMMITTEE

**Estimates**

(Public)

TUESDAY, 20 OCTOBER 2015

CANBERRA

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**SENATE**

**LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**

**Tuesday, 20 October 2015**

**Members in attendance:** Senators Bilyk, Brandis, Canavan, Jacinta Collins, Dastyari, Heffernan, Leyonhjelm, Lindgren, Ludlam, Ian Macdonald, Marshall, McKenzie, McKim, Rhiannon, Siewert, Whish-Wilson, Xenophon.

**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

**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 issue 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.