

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Group 2

Program 1.1

Question No. 4

Senator Brandis asked the following question at the hearing on 23 May 2012:

Senator BRANDIS: ... Mr Foster, let me start with the mistake made in relation to the proclamation of legislation concerning orders in relation to de facto couples, which had to be urgently corrected by retrospective legislation earlier this year. As I understand it, that oversight was first detected by a judge of your court, wasn't it?

Mr Foster: I think that is right, Senator. I do not have the details in front of me, but that is my memory of it.

Senator BRANDIS: Does anyone with you have the details?

Mr Foster: I think it was brought to the Chief Justice's attention in December last year.

Senator BRANDIS: In December last year. What happened then?

Mr Foster: I would have to take that on notice. I do not have a brief on that—unless I can find out in the meantime.

Senator BRANDIS: Mr Wilkins, you can come in on this discussion too, if you like. Were steps made to make the government aware of what had been detected by the court?

Mr Foster: I am just making some inquiries now, to try and find out for you.

Senator BRANDIS: We will wait for you; that is fine.

Mr Foster: It is going to require a phone call, Senator.

Senator BRANDIS: That is fine. If you would not mind making that phone call, I will persist with the matter.

...

Senator BRANDIS: ... Do you have those dates, Mr Foster?

Mr Foster: Yes, but can I just correct the evidence that I gave you earlier?

Senator BRANDIS: Yes, by all means.

Mr Foster: I said, 'a judge advises the Chief Justice.' That was not the case. I am now told that the Chief Justice received notification by email from the department on 22 December. She immediately told the judges that the court—

Senator BRANDIS: Just pausing there: that is the date, Mr Fredericks, you told me that the AGS advice had been received, was is not—22 December?

Mr Fredericks: Correct.

Senator BRANDIS: Back to you, Mr Foster.

Mr Foster: And the Chief Justice immediately informed the court.

Senator BRANDIS: Right.

Mr Foster: Then a judge—I am not sure who it was—on or around 7 January had a case before him or her and advised the profession at that time that there was an issue. Then the Chief Justice discussed this matter with the Attorney-General on 9 January.

Senator BRANDIS: And it is right to say that was the first occasion—on 9 January—on which it was drawn to the attention of the Attorney-General?

Mr Foster: I am not sure about that, but that was the time the Chief Justice spoke to the Attorney-General.

Senator BRANDIS: Senator Ludwig, will you take that on notice?

Senator Ludwig: I will take it on notice.

The answer to the honourable senator's question is as follows:

Prior to the Chief Justice's discussion with the Attorney-General on 9 January 2012, the Department had informed the Attorney-General's Office of the existence of the issue on 8 January 2012.