

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

**Group 1**

**Program 1.1**

**Question No. 6**

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

**Senator BRANDIS:** Alright. I am surprised the new Attorney General did not contact the opposition [about the de facto proclamation amendment]. Because, although the opposition might, of course, criticise the government for this mistake, the correction of the mistake was never likely to be a party-political issue. When I first read about it in the newspapers I immediately made it clear that the opposition would support urgent retrospective legislation to validate all of these, no doubt many thousands, of orders. Is there a reason why the Attorney General did not seek the immediate cooperation of the opposition?

**Mr Wilkins:** I am not sure that I am in a position to answer that.

**Senator BRANDIS:** Senator Ludwig, you represent the Attorney General here.

**Senator LUDWIG:** Thank you, Senator Brandis, I can check with the Attorney General whether she wants to provide any additional answer to the questions.

**Senator BRANDIS:** Would you take that on notice?

**Senator LUDWIG:** I will, I am also not sure what happened in 2006, so I would not mind refreshing my mind of whether, at that time, the then-Attorney General brought it to the attention of the opposition—that oversight—and then the following up.

**Senator BRANDIS:** No, we have heard the 2006 oversight was only identified in 2009—I am sorry, last year—as well.

**Mr Wilkins:** The only thing I was going to say was that there quite was a lot of follow-up legal advice as a result of that initial discussion and uncovering of that matter with the Attorney. I guess on the best way forward, and how this could be dealt with, that might explain why—until there was some clarity around what the way forward might be—it probably would not have been valued sense in talking to yourself until there was a—

**Senator Ludwig:** I will check and see what the timeline was like.

**Senator BRANDIS:** I would appreciate that, Senator Ludwig. I mean, partisan arguments notwithstanding, and the proper criticism of the opposition might choose to make the government ultimately responsible for the oversight, notwithstanding, there was never any remote prospect that the opposition would not afford cooperation in what was the correction of essentially a clerical error—an important clerical error, but essentially a correction of a clerical error which would have needed urgently to be corrected. I am a little surprised that an approach to the opposition was not made immediately and that the problem was identified at least at the political level of the government.

**Senator Ludwig:** No, I take your point.

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

Decisions about consulting with the Opposition are a matter for the Government.