

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN GOVERNMENT SOLICITOR

Question No. 56

Senator Brandis asked the following question at the hearing on 18 October 2011:

Senator BRANDIS: ... Were officers of your department involved in the preparation of the written submissions that were filed in the High Court on the appeal?

Mr Govey: Yes.

Senator BRANDIS: Did they draft those submissions or were the submissions drafted by the Solicitor-General and his office?

Mr Govey: I am not sure of the precise details. I know that my colleagues from AGS were part of the Solicitor's team.

Senator BRANDIS: Were officers of the Australian Government Solicitor, apart from Mr Deane, involved in the drafting of the terms of the document issued by the governments of Australia and Malaysia which has misleadingly been called an agreement but is described on its face as an arrangement in relation to asylum seekers?

Mr Govey: Again, I would need to take that on notice.

Senator BRANDIS: Did you or officers of your department at any time advise the government that it was likely to be successful in the High Court proceedings?

Mr Govey: I will have to take that on notice as well. Again, it will not be a matter for us in AGS to provide the answer.

Senator BRANDIS: I understand that.

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

AGS advises that AGS were the solicitors on the record for the High Court challenge and assisted in the preparation of the written submissions filed in the High Court.

Mr Deane was the only AGS lawyer involved in advising on the terms of the arrangement between Australia and Malaysia.

AGS has consulted with the Attorney General's Department of the Department of Immigration and Citizenship about the request for information about the content of advice AGS gave in relation to the High Court proceedings. Consistent with the usual position that it is not generally in the public interest to provide details of legal advice because of the prejudice the Commonwealth might suffer in the conduct of its legal affairs, it is not considered appropriate to provide the information.