

Appendix 1: AGD Outstanding Questions on Notice

#	Question From/To	Reference
1	Watt/ Faulkner	When you say 'we' got together, do you remember who was part of that meeting? And if there were any meeting notes taken, could I please request a copy of those? (Committee Hansard 17/2/17, pp. 5–6)
2	Back/ Anderson	You may not know, but I wonder if you could take on notice, and if you could advise the committee, how much of anything did the Commonwealth of Australia contribute to those costs of litigation? (Committee Hansard 17/2/17, p. 8)
3	Watt/ Faulkner	Sure. My question to you is simply whether you were aware of that request having been made by the Attorney-General's office. (Committee Hansard 17/2/17, p. 12)
4	Watt/ Faulkner	My question to you is, to put it specifically: did you have any contact with the Attorney-General's department sorry—office—around the time of early June 2015 when they first sought this briefing from the Assistant Treasurer? (Committee Hansard 17/2/17, p. 12)
5	Watt/ Faulkner	And I think you have said, perhaps in answer to Senator Back, that, when this particular notice of a constitutional matter was served, there was no contact with the Attorney-General on that day or in the following days. You do not generally get the Attorney-General involved at that immediate stage? (Committee Hansard 17/2/17, p. 13)
6	Watt/ Kingston	So my real question here is whether that contact with the Solicitor-General was made with the knowledge of the Attorney-General or his office. (Committee Hansard 27/2/17, p. 13)

7	Watt/ Kingston	Could you take that on notice, whether there was earlier written advice in any form to the Attorney-General's office which flagged the potential for intervention in this litigation? (Committee Hansard 27/2/17, p. 14)
8	Watt/ Faulkner	My point is: when did the department first raise with the Attorney-General's office the possibility for intervention in this case? (Committee Hansard 27/2/17, p. 15)
9	Watt/ Loughton	I think it would be inappropriate for me to discuss any aspect of confidential legal work that we were doing for our clients at that time. (Committee Hansard 27/2/17, p. 15)
10	Watt/ Faulkner	There was a great deal of interaction with the office after providing this submission. As I have said before, I know there were different issues as to whether the ATO would intervene on certain points and whether the Commonwealth would intervene on certain points. Was the potential for intervention on both of those issues flagged with the office at that point? (Committee Hansard 27/2/17, p. 15)
11	Watt/ Loughton	Mr Loughton, in early 2016, did you become aware of any contact between the Commonwealth Attorney-General and his Western Australian counterpart around the issue of intervention in this case? (Committee Hansard 27/2/17, p. 16)
12	Watt/ Loughton	It is a fact, is it not, that on 5 February 2016 you sent an email to junior counsel and to Mr Faulkner advising them that the Attorney-General was in discussions with the Western Australian counterpart about whether the Commonwealth should intervene in this matter? (Committee Hansard 27/2/17, p. 17)

13	Watt/ Kingston	Just to be very clear, can you take on notice a request from me for a copy of any email correspondence between Mr Loughton, counsel in this matter and Mr Faulkner regarding any discussions the Commonwealth Attorney-General had had around 5 February 2016 about not intervening in this litigation at the request of the West Australian government. (Committee Hansard 27/2/17, p. 18)
14	MacDonald/ Faulkner	Are you aware in this case if the commissioner has sought any sort of costs order in the actions that have proceeded so far? (Committee Hansard 27/2/17, p. 20)
15	Watt/ Faulkner	Did you have any contact with the Attorney-General's office prior to 8 February about ensuring the Commonwealth was represented? (Committee Hansard 27/2/17, p. 2)
16	Watt/ Faulkner	I am just thinking really hard about that particular appearance. This is a question to both Mr Loughton and Mr Faulkner. Did Mr Lambie or anyone else from the Attorney-General's office instruct you or request that you appear for the Commonwealth, on that occasion? (Committee Hansard 27/2/17, p. 22)
17	Watt/ Faulkner	You are taking on notice whether there was any contact with Mr Lambie or the Attorney's office and whether instructions were provided to appear or a request was made to appear. Similarly, do you recall or does Mr Loughton recall whether the Attorney-General requested that the Commonwealth be represented on that occasion? (Committee Hansard 27/2/17, p. 22)
18	Watt/ Faulkner	I would also like to know how many times there was contact and what form that occurred in. Was it verbally, through meetings, written? (Committee Hansard 27/2/17, p. 22)

19	Watt/ Faulkner	The Attorney-General has told parliament that his first personal involvement, whatever that means, in this matter was on 3 March 2016. Mr Loughton, did you have any contact with the Attorney-General, or are you aware of any contact with the Attorney-General himself, about this matter prior to 3 March 2016? (Committee Hansard 27/2/17, p. 23)
20	Watt/ Kingston	The Attorney-General has also said that he was not convinced at an early stage that the Commonwealth needed to intervene separately to the ATO. When were you first made aware that the Attorney-General was not convinced of the need for separate Commonwealth intervention? Again, I am happy for you to take that on notice if that is your wish. (Committee Hansard 27/2/17, p. 24)
21	Watt/ Kingston	Mr Loughton, in the run-up to 8 March, when those submissions were due, did you advise counsel that the Attorney-General had decided to not intervene in this matter? (Committee Hansard 27/2/17, p. 24)
22	Watt/ Faulkner	Mr Faulkner, I do not think I have asked the question this way. Did the Attorney-General or his office at any point in the lead-up to 8 March express concern to you about reports or information that Commonwealth agencies such as the ATO were considering intervening of their own accord? (Committee Hansard 27/2/17, p. 26)
23	Watt/ Faulkner	It is a fact, is it not, that on around 4 March the Attorney-General or his office asked you to draft a legal services direction that would prevent the ATO from intervening of its own accord? (Committee Hansard 27/2/17, p. 26)

24	Watt/ Faulkner	It is a fact, is it not, that after you advised the ATO that they could not seek legal advice about the legality of this direction that would have stopped them intervening, that on or around 6 March 2016 the ATO made a formal request to your department through the Office of Legal Services Coordination (Committee Hansard 27/2/17, p. 27)
25	Watt/ Faulkner	Could you also take on notice any contact you had with the Attorney-General or his office about that?(Committee Hansard 27/2/17, p. 27)
26	Watt/ Kingston	As I have asked this, I am thinking it might actually be more appropriate to send to Mr Loughton, because any correspondence would probably have gone to him as solicitor on the record. Did the Western Australian Crown Solicitor or Solicitor-General write to the Australian Government Solicitor, expressing concern about the decision to intervene in this matter? (Committee Hansard 27/2/17, p. 28)
27	Watt/ Kingston	And if such correspondence did occur, that the Western Australian Crown Solicitor or Solicitor-General expressed concern about intervening, did that correspondence make any reference to intervening breaching some kind of agreement, or understanding or deal between the Western Australian and Commonwealth governments about the payment of tax? (Committee Hansard 27/2/17, p. 28)
28	Watt/ Faulkner	I understand that after this all fell apart from the Attorney's point of view, and it became clear that the ATO was going to intervene in this matter, despite his wishes, that the Attorney wrote to the Assistant Treasurer, Ms O'Dwyer, complaining about the ATO's actions and saying, 'They will not be permitted to seek the advice of the Solicitor-General if my actions are unlawful.' Mr Faulkner, are you aware of that correspondence? (Committee Hansard 27/2/17, p. 28)

29	Watt/ Faulkner	Were you at that meeting, Mr Faulkner? It sounded like a pretty heated meeting, on 4 April, where the Solicitor-General reported back to the Attorney-General as to his unsuccessful negotiations with the Western Australian Solicitor-General. (Committee Hansard 27/2/17, p. 28)
30	Watt/ Faulkner	I think we have gone over that two or three times, Mr Anderson. Mr Faulkner, that is the evidence that Mr Anderson has given. Is that the case for you as well? You did not have any knowledge prior to 20 April about the potential for this broad direction? (Committee Hansard 27/2/17, p. 29)
31	Pratt/Brandis	<p>CHAIR: That does not specify the harm to the public interest, because as has been outlined to you, the disclosure of legal advice in and of itself is not a grounds accepted by the Senate for a public interest immunity claim.</p> <p>Senator Brandis: The person who has made this claim has referred to the longstanding precedent of successive Australian governments. This is an absolutely commonplace ground on which public interest immunity is claimed. If you would like me to elaborate upon the ground of the claim then I will reflect upon the matter. I myself think that, particularly given the notoriety and uncontroversial nature of the public interest immunity claimed, there is no need to do so, but if you want me to reflect further, I will take the matter on notice. (Committee Hansard 8/3/17, p. 3)</p>

32	Pratt/Brandis	<p>CHAIR: The test relates to the specific harm to the public interest in relation to the specific claim made, which means the claim needs to relate not to a general harm to the Commonwealth's interests in the disclosure of legal advice but a specific harm in relation to this matter.</p> <p>Senator Brandis: I have heard what had to say and, as I said, I will take that issue and the questions relating to it on notice and if on reflection it seems appropriate to expand on the grounds in order to satisfy the Senate's view I will do so. But may I also remind you, with respect and with great respect to the Senate, of which I am a member, that the Senate is not the only organ of the Constitution. (Committee Hansard 8/3/17, p. 13)</p>
33	McKim/Brandis	<p>Senator McKIM: Attorney, I understand you have been provided with a sheath of documents. I just want to make sure we have the same stack of papers in front of us. Is it right that you have been provided with a sheath of papers that, on its first page, contains questions that I was asking of Mr Moraitis, and my first Hansard reference is me saying, 'Thanks, I just wanted to be clear about that.'</p> <p>Senator Brandis: Yes, I have that...</p> <p>Senator McKIM: Thank you. In that case will you take on notice whether or not you are making a public interest immunity claim in regard to that question on the first page that I asked?</p> <p>Senator Brandis: Well, I am.</p> <p>(Committee Hansard 8/3/17, pp. 13–14)</p>

34	McKim/Brandis	<p>Senator McKIM: Will you take on notice the same manner that I just asked you—that is: will you provide the committee with the specific public harm on which your claim of public interest immunity—</p> <p>Senator Brandis: As with all the other questions that Senator Pratt has raised with me, I will consider whether it is appropriate to expand the statement of the public interest immunity claim. I do not for a moment concede that it is insufficient on its face, but in view of what has been put to me by Senator Pratt and by you I will consider it.</p> <p>Senator McKIM: Thank you. To shorten proceedings, can I ask you to confirm that you will give the same consideration to all of the refusals by your department to answer questions, based on their claim that it is the long-standing practice of successive Australian governments that it is against the public interest to disclose—</p> <p>Senator Brandis: I have been given a bundle of questions on notice. Very quickly, there are 15 of them.</p> <p>Senator McKIM: Yes—</p> <p>Senator Brandis: And several of them invoke the public interest immunity claim. In respect of the several questions in the bundle of 15 questions I have been handed I will do so, yes. (Committee Hansard 8/3/17, p. 14)</p>
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35	Watt/Brandis	<p>Senator WATT: My question to you is whether written instructions were provided by you or your office to government lawyers prior to that appearance on 8 February.</p> <p>Senator Brandis: Prior to the directions hearing?</p> <p>Senator WATT: Prior to the directions hearing.</p> <p>Senator Brandis: Well, I will take on notice whether written instructions were provided by my office. I do not know the answer to that question. It is not impossible that there might have been an email, so that would be a written instruction, I suppose. I do not know, so I will take that on notice. As for me personally, no. (Committee Hansard 8/3/17, p. 17)</p>
36	Watt/Brandis	<p>Senator WATT: In the days leading up to 8 March, the deadline for intervention, did you or your office become aware of a formal request by the ATO to your department to seek advice on the legality of a direction preventing them from intervening in this matter?</p> <p>Senator Brandis: I do not recall that, but I will take it on notice. (Committee Hansard 8/3/17, p. 19)</p>
37	Pratt/Brandis	<p>CHAIR: There were some 30 questions taken on notice that the department did not answer on 17 February, so the committee is asking if you can provide the answers from the department or, alternatively—</p> <p>Senator Brandis: I am sure that can be done.</p> <p>CHAIR: specify the harm to the public interest that would arise from answering the questions.</p> <p>Senator Brandis: I will ensure that the questions are answered, and those answers, of course, may include any appropriate claims of immunity. (Committee Hansard 8/3/17, pp. 23–24)</p>

