

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2014 - 2015

Department/Agency: Treasury

Question: AET 18

Topic: Asset Recycling Advice

Reference: Hansard page no. 51 - 25 February 2015

Senator: Dastyari, Sam

Question:

Senator DASTYARI: This question was not hypothetical. The exact question I asked was whether or not Treasury was aware of statements to the effect from the Treasurer—obviously they are because they are an incredibly good agency. The second question was whether or not there had been legal advice sought from the Attorney-General's Department or the Australian Government Solicitor on the legality of direct payments to states following Williams (No. 1) and Williams (No. 2).

Mr Ray: We have advice post Williams on the—

Senator DASTYARI: Do you have advice specifically on the issue of asset recycling or only broadly on the post Williams case?

Mr Ray: We have advice specifically on asset recycling post Williams.

Senator DASTYARI: When did you receive that advice?

Mr Ray: We would need to take that on notice. I do not have that date.

Senator Cormann: Just to be clear and put this into context, post the Williams cases there was an exercise right across the government looking at all of the expenditure of government to make sure it is consistent with the constitutional requirements as interpreted following the High Court decision in the Williams cases. We did not specifically look at this in isolation.

Senator DASTYARI: No, but they are saying they specifically asked about this.

Senator Cormann: Sure, but across the government this was part of a broader exercise by this government.

Senator DASTYARI: Again, I am accessing information that you do not have, so I am just going to tell you what the Australian Attorney-General's Department said yesterday. The Attorney-General's Department said yesterday effectively that what had changed post Williams was that the court had said that you need some legislative support in addition to an appropriation act for some sorts of spending. They were of the view—and they said they confirmed this—that they were not the source of your advice and that probably your advice had come from the Australian Government Solicitor. Is the advice from the Australian Government Solicitor or from the Attorney-General's Department?

Senator Cormann: Firstly, there would be nothing unusual about sourcing advice from the Australian Government Solicitor.

Page 52 Senate Wednesday, 25 February 2015

ECONOMICS LEGISLATION COMMITTEE

Senator DASTYARI: No, none of this is—

Senator Cormann: They are the lawyers for the government.

Senator DASTYARI: I do not know why you think I am after some kind of 'gotcha' moment. I am not. I am trying to work out what has happened.

Senator Cormann: It is an unusual question because—

Senator DASTYARI: I am an unusual guy.

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Senator Cormann: Is the government seeking advice from the government's lawyers?

Senator DASTYARI: On a specific matter.

Senator Cormann: It was AGS. I can confirm that.

Senator DASTYARI: Okay.

Senator Cormann: So, the government sought advice from the government's lawyers.

Senator DASTYARI: Were you the person who commissioned the advice, Ms Reinhardt?

Ms Reinhardt: No, I did not actually commission the advice, but I can confirm that we sought advice. Obviously, post Williams there is a lot of work going into ensuring that all of the governments' payments to the states are consistent with that.

Senator Cormann: I will just stress again that this is an exercise that was done right across all of the government expenditure.

Senator DASTYARI: I know this is in relation to asset recycling. My more specific question, then, is: was the legal advice sought as to the constitutionality of the entire Asset Recycling Fund or as to whether or not there is the ability to make direct appropriation payments outside of the fund, which is what the Treasurer has been talking about?

Ms Reinhardt: I think I would need to take that one on notice.

Senator DASTYARI: Someone seems to know a bit more about this, though.

CHAIR: I suspect they are endeavouring to try to find out some information.

Mr Ray: To be fair, you are going to questions about legal advice.

Senator DASTYARI: No, I am not asking for the content of the advice.

Mr Ray: I know, but you are asking us about what the question is. What question we asked is very important to legal advice. We would want to check exactly what the question was.

Mr Legg: I would like to take it on notice.

Senator DASTYARI: You are taking on notice in terms of when. Are we talking this year or last year? Do you even know to that extent?

Mr Legg: I am reasonably confident it would be last year, but let us just check that.

CHAIR: Are you going to pursue this line of questioning?

Senator DASTYARI: Not much longer.

CHAIR: Obviously they want to take advice on it.

Senator DASTYARI: That is fine. I am just getting my head around it. I just want to confirm this. None of this is revolutionary or shocking or it should not be. Last year you sought post Williams (No. 2) advice from the Australian Government Solicitor as to the constitutional impact of that court case decision as it would relate to asset recycling?

Mr Ray: I do not think that we said that. What we sought from the Australian Government Solicitor, post Williams (No. 2), were questions around the mechanism that might be available to make these payments without the passage of the legislation.

CHAIR: That is additional evidence from what you have given. You said that you did seek legal advice post Williams (No. 2).

Mr Ray: Yes. We sought legal advice post Williams (No. 2), not about the impact of Williams (No. 2). That is the point that I am trying to clarify.

Senator DASTYARI: I will leave it at that for this line of questioning

Answer:

Treasury sought legal advice from the Australian Government Solicitor in both February and August 2014 about the National Partnership Agreement on Asset Recycling.