

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates

29 May – 31 May 2012

**Question: BET 454-455**

**Topic: Payment to the Australian Government Solicitor**

**Hansard Page: Written**

**Senator BUSHBY asked:**

In relation to the entry in Treasury's 2010-11 annual report for "legal advice in relation to Roy Morgan Pty Ltd v Commissioner of Taxation", can Treasury confirm if:

- 454. This is a standard practice for Treasury to obtain legal advice when a case is being taken through the courts, particularly if Treasury is not a party to the case?
- 455. Can Treasury outline the reasons why this legal advice was sought?

**Answer**

454. No.

455. The Treasury portfolio includes policy responsibility for Australia's taxation and retirement income arrangements, which are administered by the Commissioner of Taxation. In this role Treasury works with the Australian Taxation Office (ATO), to monitor developments, and identify and analyse risks to these arrangements, and advise its portfolio ministers of options to address such risks.

The Roy Morgan case involved a challenge to the constitutional validity of the legislation that establishes the superannuation guarantee scheme (the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee Administration Act 1992*). Had the challenge been upheld by the High Court, the adverse consequences would have been substantial. Treasury therefore worked, in consultation with the Australian Government Solicitor (AGS) and the ATO, to identify possible workable options, which the Government could introduce in the event of an adverse decision.