

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

**Group: 2**

**Program: 1.8**

**Question No. AE15/093**

**Senator Collins asked the following question at the hearing on 27 March 2015:**

Senator JACINTA COLLINS: Let's just say that the government might want to consider the quality of their response to a public interest immunity claim and not simply turn up to estimates with a commercial-in-confidence assertion.

CHAIR: I have more regard for Senator Cormann's economic and financial ability.

Senator JACINTA COLLINS: Anyway, we digress.

CHAIR: We do.

Senator Scullion: Just to correct the record, I made it clear that the claim of public interest immunity is not available to the officers. So you cannot ask them questions—

Senator JACINTA COLLINS: I have not.

Senator Scullion: I am saying that the public interest immunity claim is available to the minister. I want to clarify for the record that it is available in two areas. One is the commercial-in-confidence area. There is an element of that that exposes the Commonwealth to financial difficulty. That is the commercial-in-confidence element. The other is that it exposes it potentially to litigation. That is the second thing I was bringing forward. I have made a public interest immunity claim, and they are the two reasons for that.

Senator JACINTA COLLINS: And I have reserved my rights as to the degree to which I am satisfied with that claim.

Senator Scullion: That is usually a matter for the Clerk of the Senate.

Senator JACINTA COLLINS: It is not usually a matter for the Clerk of the Senate; it is a matter for a senator, Senator Scullion.

Senator Scullion: It usually is in these matters. As you indicated earlier, I have been here for a while. For those matters of standing orders—

Senator JACINTA COLLINS: Yes, and it is good to see you have now taken some advice.

Senator Scullion: it seems to me that, if there are some issues around that, what you normally do is seek clarification from the Clerk of the Senate. So it is not a matter for a senator. This is a matter where I have claimed public interest immunity. If you think that public interest immunity claim is insufficient you should check with the Clerk of the Senate. That is the advice I am providing you.

Senator JACINTA COLLINS: I can seek advice from the Clerk of the Senate, but it is the Senate that determines these things. Anyway, we digress. Let's move on to the issues of

substance here. Were the contracts that I referred to previously that you have indicated maximum allowable amounts—is that an acceptable phrase?—published on AusTender within 42 days as required by the Commonwealth procurement rules?

Ms Fitzgerald: I would need to confirm that.

Senator JACINTA COLLINS: If the answer is not, could you also please indicate why not?

Ms Fitzgerald: Certainly.

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

The start date of the original contract with Minter Ellison was 31 March 2014 and it was published on AusTender on 23 May 2014. This was 11 days outside the reporting timeframe (the reporting timeframe expired on 12 May 2014).

The original contract has been amended twice. The first amendment was signed on 16 May 2014 and took effect on 31 May 2014. It was published on AusTender on 2 June 2014. This was within the reporting timeframe (the reporting timeframe expired on 12 July 2014).

The second amendment was signed on 23 December 2014 and took effect on 1 January 2015. It was published on AusTender on 6 March 2015. This was 22 days outside the reporting timeframe (the reporting timeframe expired on 12 February 2015).

Both the original contract and second amendment were not published on AusTender within the 42 day timeframe due to administrative oversights. The first amendment to the contract was published on AusTender within the specified time.