

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

Group: 2

Program: 1.1

Question No. AE15/115

Senator Wright asked the following written question from the 24 February and 27 March 2015 hearings:

1. What actions has the department taken in response to the High Court's decision *William v Commonwealth of Australia (No 2)* June 2014?
2. Has the department undertaken a program-by-program analysis to determine if funding for its programs are at risk following the above case?
 - a. If so, which programs are regarded as high risk?
 - b. If not, why has the analysis not been undertaken?
3. Has the Attorney General's Department or Australian Government Solicitor undertaken any whole-of-government process to consider the risks associated with existing government programs?
4. How are any potential constitutional issues addressed when the government is considering or developing new policy proposals?
 - a. Has this process changed since *William v Commonwealth of Australia (No 2)* June 2014?
 - b. If this process has changed since *William v Commonwealth of Australia (No 2)* June 2014, how has it changed?

The answers to the honourable senator's questions are as follows:

1. The Attorney-General's Department co-ordinated programme-by-programme assessments by the Australian Government Solicitor of relevant spending activities following the decisions in *Williams v Commonwealth of Australia [2012] HCA 23* and *Williams v Commonwealth of Australia [2014] HCA 23*. The whole-of-government processes were conducted by reference to technical legal criteria in order to facilitate further consideration of the activities in question.
2. Attorney-General's Department programmes were covered by the whole-of-government processes referred to in the answer to question 1.
 - a. The Government generally does not disclose the content of legal advice received by the Government or its agencies.
 - b. Not necessary to answer.
3. Please see question one.

4. The formulation of new policy proposals often involves complex issues and is routinely undertaken having regard to a range of constitutional and other legal considerations, including developments in the background law such as the High Court's decisions in *Williams v Commonwealth of Australia* [2012] HCA 23; and *Williams v Commonwealth of Australia* [2014] HCA 23.
 - a. The general requirement to consider constitutional issues has been refined by reference to technical aspects of the decisions in *Williams v Commonwealth of Australia* [2012] HCA 23 and *Williams v Commonwealth of Australia* [2014] HCA 23.
 - b. Please see question 4a.