

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN GOVERNMENT SOLICITOR

Question No. 56

Senator Brandis asked the following question at the hearing on 24 May 2012:

Senator BRANDIS: I would like to ask questions about Mr James Ashby's proceedings against the Commonwealth of Australia and the Speaker of the House of Representatives in relation to workplace sexual harassment. Mr Slipper is not being represented by the Australian Government Solicitor, is he?

Mr Govey: No, that is right.

Senator BRANDIS: But the Commonwealth of Australia is?

Mr Govey: That is correct.

Senator BRANDIS: Who is the principal solicitor with the conduct of the matter?

Mr Govey: Do you mean the actual person?

Senator BRANDIS: Yes.

Mr Govey: I know that Damien O'Donovan is one of our key people involved. Whether he is the principal person, I am less certain.

Senator BRANDIS: I was a little surprised to read, when the matter came on for directions in the Federal Court last Friday week, that the Commonwealth was being represented by Mr Julian Burnside QC. Who made the decision to retain Mr Burnside?

Mr Govey: I do not know the specific answer to that... Whether the specific recommendation for Mr Burnside to be appointed was made by AGS or not, I am not sure.

Senator BRANDIS: Can you find out for me. I would like to know who made the decision to brief Mr Burnside.

Mr Govey: I will take that on notice.

...

Senator BRANDIS: You will no doubt have to take this on notice as well: I would like to know what Mr Burnside's fees are.

Mr Govey: I am happy to take it on notice, but I think it would be useful to note at this point that my understanding is that it is not the normal practice to disclose the fees paid for Commonwealth counsel, and that is a practice which extends back over successive governments.

Senator BRANDIS: Well, that is certainly not right, because I remember when I used to act for the Commonwealth. It was a commonplace thing that annually the amount of money paid to counsel acting on behalf of the Commonwealth was published, and sometimes republished in the newspaper.

Mr Govey: I think you will find that related to the total amount rather than the daily rate, and if you were asking for the total amount then, obviously, that will be something that we will not know for some time to come.

Senator BRANDIS: If the Commonwealth can publish the total amount of taxpayers' monies paid by way of counsel's fees to a particular barrister, it can certainly inform the Senate of the amount paid in a particular case to a particular barrister. I am asking you—you will take it on notice, no doubt—to reveal that to the committee. I want to know what Mr Burnside's fee on brief is, I want to know what his daily refresher fee is, I want to know his hourly rate for preparation and other work incidental to the case and how much Mr Burnside has charged the Commonwealth thus far.

Mr Govey: I will, as I have said, need to take that on notice, but I note that it is regarded as exceptional to disclose some of that information.

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

A shortlist of appropriate counsel was provided to the Attorney-General's Department by AGS. After the first barrister engaged to provide advice on the matter was not available to appear at the first directions hearing, AGS was instructed to approach the remaining counsel to check availability and engage one of them as soon as possible. Two when approached were unavailable or unable to confirm availability. Two were available including Mr Burnside QC.

Mr Burnside QC was the first of the available counsel approached and he was willing to accept the brief.

It has been the longstanding policy of successive governments generally not to disclose daily or hourly rates of counsel. This information is regarded as commercial-in-confidence and disclosure could jeopardise the Commonwealth's ability to engage counsel at the best possible rate.

Consistent with previous practice, AGS is able to disclose the total fees paid to Mr Burnside QC with respect to this matter. To 11 October 2012, AGS had received invoices from Mr Burnside QC amounting to \$139,600 (including GST) for professional fees.