

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

Group: 3

Program: General

Question: BE14/007

Senator Xenophon asked the following question at the hearing on 26-29 May 2014:

Senator Brandis: Senator Xenophon, your question is a perfectly proper question in relation to costs incurred by any Commonwealth agency or department as a result of the settlement of legal proceedings, but I think what the commissioner is concerned about is that there was a confidentiality clause in the deed of settlement. That being so, if your questions are directed to matters covered by the confidentiality clause, it is really in the nature of a commercial-in-confidence matter. But for that I would not have any hesitation in having the commissioner answer your question. If your question is directed to something specified by the deed of settlement to be a confidential term of the settlement, then you can understand the difficulty the commissioner is under.

Senator XENOPHON: I think the difficulty is obviated by virtue of the deed of settlement, saying that they are subject to an exemption if the committee so requests this information.

Mr Negus: That is why I raise it. If the chair is comfortable, I can go ahead with it.

CHAIR: My first inclination was to refer to more eminent legal brains, and we have one of them sitting opposite me in the role of the Attorney-General, who has given us his view. I do note what you say, Senator Xenophon, that the way for governments to avoid this is to make sure that all settlements are subject to secrecy clauses. Obviously I have no idea why it was done with this. I would be reluctant to ask the commissioner to disclose that if it is the subject of a secrecy agreement. Perhaps it is something that needs to be determined by the Senate or to be discussed with the Attorney.

Senator Brandis: I have just read the relevant clause in the brief. I do not think it is good practice, as a lawyer, to make judgements about what a clause means in the absence of the instrument in which it appears, so I am not confident without looking at the entire deed of settlement to tell you that the exemption would necessarily apply to your question. If you do not mind, I think we will take the question on notice and I will have a proper look at the deed of settlement itself. If I consider that an answer can be given consistent with its terms, that is what we will do.

Senator XENOPHON: My view is that it ought to be public, but are we at least able to see the deed of settlement without any figures reflected in it?

Senator Brandis: No, because it is a confidential settlement.

CHAIR: Perhaps Senator Xenophon would be happy if you could say to him 'it did not reach \$500,000' or 'it did not reach \$1 million dollars' or 'it did not reach \$5 million'?

Mr Negus: With respect, I think I got into trouble last time by saying less than five, which became up to five, which then became something else. I would much rather pursue the Attorney's course.

CHAIR: The Attorney has taken it on board.

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

The quantum of the legal costs paid to Seven West and Schapelle Corby is subject to a confidentiality agreement.

The Australian Federal Police's legal costs were \$235,000.00.

Mr Negus indicated the investigation costs were \$128,000.