

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
AUSTRALIAN GOVERNMENT SOLICITOR

**Question No. 22**

**Senator Brandis asked the following question at the hearing on 18 February 2008:**

- a) Did the Australian Government Solicitor provide advice to the government concerning arrangements for the proposed sitting of the House of Representatives on Fridays without decisions, quorums or question time?
- b) Please advise the date on which the legal advice in relation to this matter was sought and confirm if it was sought orally or in writing, if orally, by whom; and, if in writing, please provide a copy of the letter of instructions to the Australian Government Solicitor.
- c) Please provide the date upon which the Australian Government Solicitor provided the advice to the government concerning this matter and provide a copy of this advice.
- d) Was external counsel briefed to advise in relation to this matter. If external counsel was briefed, please provide a copy of the instructions to counsel and a copy of counsel's opinion.

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

AGS is a statutory authority and a government business enterprise. It operates on a fully commercial and competitive basis in providing legal and related services primarily to Australian Government departments and agencies. AGS does not receive any budget funding or other appropriations.

AGS is in a solicitor-client relationship with its government clients and has, in relation to those clients and to the courts, essentially the same legal obligations as are owed by private sector lawyers to their clients and the courts: s 55Q(2) of the *Judiciary Act 1903*. These obligations, such as the maintenance of legal professional privilege and avoidance of conflict of interest, require AGS to maintain confidentiality with respect to its clients' matters. In matters where it is not on the public record that AGS is acting on behalf of a government client, it could be a breach of client confidentiality for AGS even to acknowledge that it was instructed by a client in relation to a matter.

In view of the aforementioned issues, it would normally be considered more appropriate for questions about a legal matter to be put to the relevant department or agency. In accordance with the undertaking given at the hearing of 18 February 2008, the CEO of AGS has consulted the Attorney-General who has indicated that there is no reason to depart from this practice.

- a)-d) The Attorney-General has indicated that it would not be appropriate for AGS to provide the information sought.