

Tabled Document

By: Australian Government  
Solicitor

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Ian Govey - Statement

Senator Brandis was kind enough to give me advance notice on Friday last week that he wished to ask AGS some questions about the Fair Work Australia investigations into the Health Services Union. He also asked that AGS lawyers involved in assisting FWA in this matter attend the hearing today.

I responded to Senator Brandis yesterday after consultation with FWA and AGD, to explain AGS's position in relation to this request.

On instructions from FWA, and consistent with the government policy about what legal advice can be disclosed and who is responsible for this disclosure, there is very little that AGS is able to say about our role in this matter.

The starting position is that we (ie AGS) cannot say anything about our role - this is a matter for FWA. This is consistent with the long-standing position as set out by former Attorney-General Daryl Williams AM QC in letters to the then President of the Senate on 12 May 1999, and again on 17 November 2000. Mr Williams made 5 major points in this correspondence in relation to the role of AGS in providing advice and assistance to Parliamentary Committees:

- The principal function of AGS is to provide legal services to the Commonwealth, its Ministers and agencies.
- 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.
- AGS' legal obligations, such as the maintenance of legal professional privilege and avoidance of conflicts of interest, make it appropriate for questions about clients' matters to be the responsibility of the relevant client agencies rather than AGS.
- If AGS were required to provide such comments or advice, AGS' solicitor-client relationship and AGS' effectiveness as a source of legal advice for the Commonwealth, its Ministers and agencies may be compromised.
- Accordingly, questions about AGS' client matters should be addressed directly to the client agency.

This position is supported by more recent correspondence.

In May 2008, the Department of Prime Minister and Cabinet (PM&C) wrote to the Attorney-General's Department setting out the Government's position in relation to disclosure of advice. That letter was tabled before the Committee on 27 May 2008. In July 2008 AGD sought confirmation from PM&C that questions about advice should be answered by the agency which had requested the advice. That confirmation was provided by PM&C in September 2008.

One of the key points made by then Attorney-General Williams in his correspondence in 2000 was that " I am concerned that AGS would be placed in an untenable position if it were required to provide comments or advice to a Parliamentary Committee on issues such as:

- [2 points not of direct relevance]
- AGS' conduct, or AGS' client's conduct, in handling particular client matters."

FWA has authorised me to explain in general terms our role, but beyond that, other questions about the legal services AGS has provided should be directed to FWA. I am not suggesting that FWA will necessarily be in a position to answer them but that it is a matter within their ambit of responsibility.

FWA's investigations involve serious matters. Comments by AGS about the investigations would have the potential to compromise FWA's role.

Because of the sensitivities involved I want to set out in this opening statement what I can say about AGS's role in this matter, but also to emphasise that neither I - nor anyone else at AGS - is in a position to go beyond this explanation.

AGS was engaged in relation to the HSU matter in April 2009. At that point the engagement was to assist the then Industrial Relations Registrar in 2 inquiries he was conducting.

The delegate of the General Manager of Fair Work Australia (FWA) has undertaken 2 investigations pursuant to s.331 of the *Fair Work (Registered Organisations) Act 2009* into the financial affairs of the Victoria No 1 Branch and the National Office of the Health Services Union (HSU)

- a) the National Office investigation was commenced by FWA on 27 March 2010
- it followed on from an inquiry into the financial affairs of the National Office of the HSU commenced by the then Industrial Registrar on 6 April 2009, which was continued by the General Manager of FWA under s.330 of the Fair Work



(Registered Organisations) Act RO Act (after 1 July 2009). This followed the enactment of the Act with effect from 1 July 2009 and the transfer of the relevant powers of inquiry and investigation to the General Manager of Fair Work Australia by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

- b) the Victoria No 1 Branch investigation was commenced by FWA on 27 April 2010
  - it followed on from an inquiry into the financial affairs of the Victoria No 1 Branch of the HSU commenced by the then industrial Registrar on 29 January 2009, which was continued by the General Manager of FWA under s.330 of the Act (after 1 July 2009).

AGS was retained in April 2009 to provide legal advice and related services to the Industrial Relations Registrar and then by FWA and has done so in relation to both these matters.

AGS's work has been led throughout this period by a Senior Executive Lawyer from our Dispute Resolution Group, Mr Craig Rawson. Mr Rawson is from our Melbourne office. He has been assisted at various times by a number of other AGS lawyers. I could provide a full list if the Committee wishes but given that many are junior lawyers with only limited involvement my preference would be not to do so.

The general nature of the work performed has included oral and written advice relevant to the investigation. This has included being present for certain interviews conducted by FWA.

Mr Rawson and his colleagues continue to be closely involved in the matter.

In light of some media reports, I can also make 2 further comments:

- at no time has it been suggested to AGS that it had been retained to shield the inquiry/investigations from political interference
- AGS is not aware of any political interference in the inquiries undertaken by the Industrial Registrar or the inquiries and investigations undertaken by FWA.

In accordance with usual practice, FWA has asked that AGS not provide any further information about any advice or other legal services that AGS has provided so I am not in a position to take questions on our role any further. I am however happy to refer any questions to FWA and liaise with them in providing a response. I understand that FWA is appearing before their Estimates Committee tomorrow.