

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

Group 2

Output 1.1

Question No. 29

Senator Xenophon asked the following question at the hearing on 29 May 2013:

Senator XENOPHON: I guess that those who are involved in the DART process—the Defence abuse process—feel that there is an appreciable difference in the way that they can access the cost of legal representation.

Mr Wilkins: You see, it is an inquisitorial type of process. I am not quite sure that the idea that somebody needs to be represented is necessarily of the essence in the same way that it may be in cases where somebody is actually being investigated, in the same way that police would investigate, in relation to the royal commission. Let me just say that the scheme does not include that.

Senator XENOPHON: Perhaps you could take on notice what the actual policy of the government is in relation to defending claims where there is a limitation of time—point taken—in relation to the Defence Abuse Response Taskforce.

Mr Wilkins: Yes.

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

The Commonwealth's policy in relation to applications to a court for an extension of a limitation period for the commencement of court proceedings is contained in paragraph 8 of the *Legal Services Directions 2005 (Attachment A)*. Paragraph 8 provides that agencies must obtain approval from the Attorney-General before waiving or agreeing to extend limitation periods.

Legal Services Directions 2005

8 Reliance on limitation periods

Agencies are to get approval before waiving or agreeing to extend limitation periods

8.1 A defence based on the expiry of an applicable limitation period is to be pleaded by an FMA agency, unless approval not to do so is given by the Attorney-General. Approval will normally be given only in exceptional circumstances, for example, where the Commonwealth has through its own conduct contributed to the delay in the plaintiff bringing the claim.

8.2 An application for an extension of a limitation period is to be opposed by the agency unless approval to consent to the application is given by the Attorney-General. Approval will normally be given only in exceptional circumstances which would justify not pleading a limitation defence or where it is expected that the application will succeed (in which case not consenting would be likely to result in unnecessary costs and delay.)

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