

Senate Select Committee on Administration of Sports Grants
Attorney-General's Department

Hearing date: 02 September 2020

Question type: Spoken

Hansard page: 27

Senator Nita Green asked the following questions:

Question 1

Senator GREEN: Who did the Attorney-General seek advice from? I'm not interested in the legal advice itself, but I'm keen to understand who in the department, if anyone, actually provided assistance in seeking that advice for the Attorney-General to then give to the Prime Minister.

Mr Kingston: What the Prime Minister has said publicly is that the advice came from the Attorney, but he provided that after having consulted with AGS. Regarding the consultation with AGS, the individuals concerned were Guy Aitken QC and Leo Hardiman.

Senator GREEN: Do you know the dates and times he sought that advice from AGS?

Mr Kingston: No. I do not have the dates with me. I would be able to take that on notice and provide an answer.

Senator GREEN: Thank you.....

Question 2

Senator GREEN: I'm interested in what the question actually was that the Attorney-General sought advice about. Was it specifically whether Senator McKenzie, as the sports minister, had legal authority to authorise grants under the Community Sport Infrastructure Grant Program?

Mr Kingston: For me to talk about what the Attorney actually asked us about, in terms of legal content or, indeed, what we then responded, would go to matters that are normally the subject of legal professional privilege. I appreciate that's not a basis for not answering the question, but it would potentially lead to a government minister claiming public interest immunity with respect to the answer. So, what I would ask to do in relation to that is to take the question on notice so I can consult with our client—in this case, the minister, the Attorney—and ask if he wishes to claim public interest immunity. I say that conscious that the Attorney has claimed that with respect to the advice itself, in response to a Senate order for the production of the document, as I understand it.

The response to the honourable Senator Nita Green's questions is as follows:

(i) There were two face to face meetings. Guy Aitken QC and Leo Hardiman of AGS met with two members of the Attorney-General's staff on 22 January 2020, and subsequently met with the Attorney-General and members of his staff on 31 January 2020. In addition to the two face to face meetings, there were also a number of telephone discussions about this matter between members of the Attorney-General's staff and AGS.

(ii) The remainder of this question relates to the content of what the Attorney-General consulted AGS about in respect of the legal advice the Attorney-General provided to the Prime Minister.

By letter of 16 September 2020 to the Chair of the Senate Select Committee on Administration of Sports Grants, the Attorney-General made a claim for public interest immunity in respect of this matter.

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Hansard page: 27 - 29

Senator Janet Rice asked the following questions:

Question 3

Senator RICE: Thanks, gentlemen. I'm still a bit confused about the basic sequence of when and what advice. There was a meeting. Can you talk me through this? There were meetings that you had with the Attorney-General?

Mr Kingston: Yes. There was at least one discussion, which I think was a meeting. I can check whether it was a meeting or over the phone, but there was at least one discussion with the Attorney.

Senator RICE: Can you tell me the date that was?

Mr Kingston: No. I'm sorry. As I said to the senator before, I can take the date on notice.

Question 4

Senator RICE: Okay. Did the AGS provide written advice, to your knowledge?

Mr Kingston: Again, what we actually did in response to the request for consultation from the Attorney I would normally treat as confidential between us and our client and would seek to consult with the client about disclosing that, so could I take that question on notice to allow me to do that, please?

The response to the honourable Senator Janet Rice's questions is as follows:

(i) There were two face to face meetings. Guy Aitken QC and Leo Hardiman of AGS met with two members of the Attorney-General's staff on 22 January 2020, and subsequently met with the Attorney-General and members of his staff on 31 January 2020. In addition to the two face to face meetings, there were also a number of telephone discussions about this matter between members of the Attorney-General's staff and AGS.

(ii) To the extent the remainder of this question relates to the nature of the Australian Government Solicitor's advice to the Attorney-General in respect of the Community Sport Infrastructure Grant Program, by letter of 16 September 2020 to the Chair of the Senate Select Committee on Administration of Sports Grants, the Attorney-General has made a claim for public interest immunity. The matters raised in this question fall within the scope of that claim.