

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Supplementary Budget Estimates

2016 - 2017

**Division/Agency:** Australian Taxation Office  
**Question No:** 295  
**Topic:** Western Australian legislation - AGS advice  
**Reference:** Hansard page 67 (19 October 2016)  
**Senator:** Watt, Murray

**Question:**

Senator WATT: You mentioned that you felt it was your responsibility to obtain advice about the constitutionality of that legislation.

Mr Mills: Yes.

Senator WATT: Who did you obtain that advice from?

Mr Mills: In that kind of situation the requirement is to go to the Australian Government Solicitor, and that is who we went to.

Senator WATT: Did they brief counsel?

Mr Mills: I cannot tell you, off the top of my head. I would have to go back over the records. If you would like me to take that on notice I am happy to do so.

Senator WATT: Sure. It seems that that kind of thing, a constitutional challenge, would be the sort of thing where AGS would ordinarily seek an opinion from the Solicitor-General. Do you know whether an opinion was obtained?

Mr Mills: I just do not recall at this stage. I would have to check the records.

Senator WATT: Mr Jordan, do you recall?

Mr Jordan: No.

Mr Mills: It may well have been that, given the stage that things were at, the Australian Government Solicitor was prepared to undertake that work without necessarily getting an opinion. But I would have to check.

**Answer:**

The ATO sought advice on the constitutionality of the proposed Western Australian legislation from the Australian Government Solicitor (AGS) in May 2015. To our knowledge AGS did not brief external counsel at that stage.

After the constitutional challenge commenced, the ATO again sought advice from AGS. The AGS sought advice from the Solicitor-General during the period prior to the Commissioner filing the application to intervene.