

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2016 - 2017

Outcome 2 - Workplace Relations and Economic Strategy

Department of Employment Question No. EMSQ17-001584

Senator Cameron asked on 02 March 2017 on proof Hansard page 123

Question

Answering questions as a solicitor

Senator CAMERON: Mr O'Sullivan, can you provide in writing to this committee the reasons you believe you may not answer questions on the basis of being a solicitor? Take that on notice, will you.

Ms Leon: Yes, Senator.

Mr O'Sullivan: Yes.

Answer

The fact a witness before the Committee is employed as a legal adviser does not in itself preclude that witness from giving evidence to the Committee. However, if the question relates to advice provided by a witness in his or her capacity as a legal adviser, the witness may not be in a position to answer without further consultation within the Department and with the relevant Minister. This is reflected in the *Government Guidelines for Official Witnesses Before Parliamentary Committees and Related Matters* (February 2015) at 4.8.1:

Legal advisers owe a duty to their clients not to disclose the existence or content of any advice. It would therefore be inappropriate for any official who has provided legal advice to government ... to disclose that advice. All decisions about disclosure of legal advice reside with the minister or agency who sought and received that advice.

Disclosure of information that is subject to legal professional privilege may be resisted on the grounds that such disclosure would be contrary to the public interest, and therefore amenable to a claim for public interest immunity, based on the well-recognised public interest underpinnings of the privilege itself.

The Office of Legal Services Coordination in the Attorney-General's Department has been consulted in the preparation of, and agrees with, this response.