

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

TREASURY

Australian Taxation Office

(Additional Estimates 15 February 2006)

Topic: Timing of advice provided to Commissioner by Crown Solicitor
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Senator Sherry asked:

Is there anything to prevent, of which you are aware, a commissioner acknowledging or saying that legal proceedings are afoot once they have commenced, and legal proceedings for which the papers and documents have been lodged in a court? Is there anything to prevent the tax commissioner disclosing that that process has occurred?

Mr D'Ascenzo—I am not sure about the answer to that. The area of what is in the public domain, what can be used and what has been acquired by an officer in the ordinary course of their duties is actually quite complex. I continually go to the Crown Solicitor to get advice on some of these matters to ensure that there is no breach of our secrecy provisions. I am not quite sure about that answer. My own view had been that, once information had become public and was on the public register, it would be no longer necessarily advice acquired in the course of our duties, even if we had acquired it that way; being public, the secrecy provisions would not apply. I have recently received advice from the Crown Solicitor that takes a different view.

Senator SHERRY— Can you recall approximately when this legal view was presented to you, or the tax office?

Mr Farr—Not exactly, but well and truly over 12 months ago—18 months or more.

Senator SHERRY— Over 12 months ago?

Mr Farr— Yes.

Senator SHERRY— You would be aware that the Treasurer's office made a request of the tax commissioner in early 2003 in regard to the tax affairs of Mr Gerard; are you aware of that?

Mr Farr— Yes.

Senator SHERRY— That was in early 2003. Was that before this opinion was received?

Mr Farr— No, that would have been well after it.

Senator SHERRY— After?

Mr Farr— We would have had the opinion well before that.

Mr D'Ascenzo— Sorry, is that right, in the sequence sense?

Mr Farr— I would have to take that on notice. It might be around the same time.

Answer:

The advice from the Solicitor-General referred to is dated 21 December 2004 and was received by the Tax Office on 23 December 2004.