

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

**Supplementary Budget Estimates**

20 – 21 October 2010

**Question: SBT 217**

**Topic: AGS advice re constitutionality of proposed RSPT**

**Senator Brandis asked:**

**Senator BRANDIS**—We could cut to the chase here. I withdraw the question, Mr Parker, so you do not need to worry about it. Minister, let me direct the question to you. You now know that at the time Mr Rudd announced the RSPT the government had been advised by the AGS that there was a risk that it was unconstitutional. If you read those portions of the advice that have been put into the public domain by Mr Parker's decision on 1 October—and I am paraphrasing here—a fair reading of that advice is that the view of the Australian Government Solicitor was that there was a substantial risk that this proposal was unconstitutional, in particular in relation to the rebating of royalties question. Why did the then government, the then Prime Minister, announce a major taxation measure knowing that in the view of the government's own legal advisers it was probably unlawful?

**Senator Sherry**—We had a discussion about this yesterday at the resources committee hearing and obviously again some further discussion this afternoon. I do not have anything further to add about the development and finalisation of government policy. That was a matter for the Prime Minister and the Treasurer and other ministers of the day, and I was not involved. I cannot assist you directly. What I can do is take your question on notice and respond appropriately on behalf of the government.

**Answer:**

The advice provided by the Australian Government Solicitor did not consider the Resource Super Profits Tax (RSPT) to be unlawful. Rather, this legal advice was sought to ensure that the RSPT was designed in a way that complied with the Constitution.

The request for legal advice from the Australian Government Solicitor, as well as the identification and existence of legal risks, was not unique to the RSPT and is common in tax policy development.