

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
ADDITIONAL BUDGET ESTIMATES 2010-2011
Finance and Deregulation Portfolio

Department/Agency: Australian Electoral Commission

Outcome/Output Group: 1/ 1.2

Topic: When was the Director of Public Prosecutions' advice received on the matters relating to the Health Services Union and expenditure incurred in the lead up to the November 2007 Federal Election?

Senator: Ronaldson

Question reference number: F39

Type of question: Hansard F&PA 72-74, 22 February 2011

Date set by the committee for the return of answer: Friday, 15 April 2011

Number of pages: 2

Question:

Senator Ronaldson asked that the Committee be provided with a copy of the advice from the Director of Public Prosecutions (DPP) in relation to whether the allegations published by the Sydney Morning Herald about expenditure from the Health Services Union (HSU) being used to fund the election campaign of Mr Craig Thomson, the member for Dobell, in 2007 disclosed a breach of section 315 of the *Commonwealth Electoral Act 1918* (Electoral Act).

Answer:

In accordance with the Senate Order of 13 May 2009, the Special Minister of State has formed the view that it is not in the public interest to disclose the advice from the Director of Public Prosecutions (DPP).

This view is based on the following grounds:

- 1) Fair Work Australia is still to complete its investigation under the *Fair Work (Registered Organisations) Act 2009* in relation to whether there is evidence that discloses that the financial resources of the HSU were unlawfully used by Mr Thomson, and that this may need to be considered by the DPP in due course.
- 2) Advice was circulated from the Department of Prime Minister and Cabinet in May 2008 indicating a position on the disclosure of legal advice to Senate Estimates Committees. That advice indicated that the Government will not generally disclose the content of legal advice unless it considers that there is some clearly identified public interest that would be served by the disclosure of that legal advice when weighed up against the public interest in preserving legal professional privilege in Commonwealth legal advice.

- 3) As the limitation period has now expired for the taking of prosecutorial action under section 315 of the *Commonwealth Electoral Act 1918* there is no clear public interest that could be served in publishing the DPP advice in circumstances where Mr Thomson is unable to respond to matters by defending actual criminal proceedings. Further, given the settlement of the defamation proceedings in the Supreme Court of New South Wales (which arose from the related allegations published by the Sydney Morning Herald), Mr Thomson would also be denied the opportunity to respond to matters which, even at the lesser civil standard of proof, have been settled on terms which remain confidential.
- 4) It is also noted that the Senate has been provided with a range of specific information from the Australian Electoral Commission (both in hearings, in response to questions on notice, in letters to Senator Ronaldson and on the AEC's website) in relation to previous questions raised about this matter which sets out in detail, the evaluation of the current available material against the elements of the relevant offence contained in section 315 of the Electoral Act. Given the existence of this detailed information, there is no identifiable public interest that could be served in disclosing the DPP advice about this matter.