

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
BUDGET ESTIMATES 2011-2012

Prime Minister and Cabinet portfolio

Department/Agency: Australian Public Service Commission

Outcome/Program:

Topic: Termination of employment of Ms Wolfe

Senator: Ronaldson

Question reference number: 97

Type of question: Hansard, F&PA, p 28, 24 May

Date set by the committee for the return of answer: 8 July 2011

Number of pages: 2

Question: How often did you seek advice in relation to this matter, do you know? Can you provide me with a copy of that advice, please?

Answer:

The three respondents to the proceedings were: Dr Stephen Gumley, the delegate of the Secretary of the Department of Defence, who decided to terminate the employment of Ms Wolfe; Ms Lynelle Briggs, the then Public Service Commissioner who decided to issue a certificate under s 38 of the *Public Service Act 1999* in relation to the termination of Ms Wolfe's employment proposed by Dr Gumley; and the Commonwealth of Australia, the employer of Ms Wolfe.

The Commonwealth was responsible for and had control of the defence of the proceedings on behalf of the three respondents. The Defence Materiel Organisation (DMO) was responsible for the Commonwealth's conduct of the defence of the proceedings on behalf of Dr Gumley and the Commonwealth. The Australian Public Service Commission (the Commission) was responsible for the Commonwealth's defence of the proceedings on behalf of Ms Briggs.

The Australian Government Solicitor (AGS) represented all the respondents in the proceedings. AGS's legal services were provided jointly to DMO and the Commission as the elements of the Commonwealth responsible for the respondents' conduct of the proceedings. DMO had the lead role in conduct of the proceedings. The Commission was kept informed and provided instructions about carriage of the proceedings as required and appropriate.

Throughout the defence of the proceedings, AGS regularly sought instructions from the Commonwealth and provided advice to the Commonwealth.

The Commission jointly received or was copied in on a large volume of communications, a significant proportion of which included legal advice to the Commonwealth. The Commission is entitled to access the AGS files relating to carriage of the proceedings.

In addition to the legal advice which was jointly received by DMO and the Commission, the Commission did on occasion seek legal services from AGS which were not otherwise required by DMO.

Having regard to the large volume of legal advice provided to the Commonwealth in this matter, it would not be possible for the Commonwealth to satisfy itself that disclosure of any part of this advice would not prejudice the public interest without a substantial and unreasonable diversion of resources. Accordingly, the Minister declines to disclose the legal advice provided to the Commonwealth in relation to this matter. The public interest considerations relevant to the possible disclosure of this advice are principally that

- disclosure could prejudice the Commonwealth's position in potential future litigation
- disclosure could prejudice a current inquiry process that is being undertaken in the Department of Defence
- disclosure of sensitive personal information about Ms Wolfe and others contained in the legal advice would be an unreasonable interference with their privacy
- disclosure of sensitive appraisal information about senior staff provided by APS managers on a confidential basis could affect their willingness to provide such information in the future, thereby prejudicing the future performance of agencies' functions in relation to the effective management of their staff and the development of their leadership groups.