

Standing Committee on Finance and Public Administration

ANSWER TO QUESTION ON NOTICE

Finance and Administration Portfolio

Department of Finance and Administration

Supplementary Budget Estimates Hearing – 31 October 2006

Question: F54

Outcome 1, Output 1.2.3

Topic: Legal advice – superannuation entitlements of Telstra employees

Hansard Page: F&PA 97

Senator Sherry asked:

Can that legal advice be made available to me?

Answer:

The Australian Government Solicitor has provided the following conclusions in relation to two possible legal issues concerning the cessation of contributory membership of the Commonwealth Superannuation Scheme (CSS) when majority ownership of Telstra passes out the Commonwealth's hands.

(1) Impact on accrued benefits

The cessation of eligible employee status is purely prospective and does not affect accrued contributions and earnings. There is no impact on accrued benefits which would bring regulation 13.16 of *Superannuation Industry (Supervision) Regulations 1994* into operation.

(2) Constitutional issues

Section 9L of the *Telstra (Transition to Full Private Ownership) Act 2005* is a valid exercise of Commonwealth power. As it is removing a contingent and purely statutory right, it does not operate to effect an acquisition of property in the sense contemplated by section 51(xxxi) of the Constitution.