

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
AUSTRALIAN GOVERNMENT SOLICITOR

**Question No. 21**

**Senator Brandis asked the following question at the hearing on 18 February 2008:**

- a) Is the Australian Government Solicitor the source of the legal advice provided to the government regarding the apology to the stolen generation?
- b) When did the Australian Government Solicitor receive instructions to provide advice to the government concerning the potential liability of the Commonwealth to compensate the stolen generation in the event of a parliamentary apology?
- c) Please provide the date on which the request for advice from the Australian Government Solicitor was received.
- d) Was the request for advice received orally or in writing?
- e) If the advice was received orally, from whom, and, if it was in writing, please produce a copy of the document which constituted the instructions to the Australian Government Solicitor.
- f) On what date was the advice provided by the Australian Government Solicitor to the government and please provide a copy of the advice produced.
- g) Was external counsel briefed by the Australian Government Solicitor to provide their opinion in relation to this matter? If so, please advise the date on which counsel was briefed; provide a copy of the instructions and a copy of the opinion received from external counsel.

**The answer to the honourable senator's question is as follows:**

AGS is a statutory authority and a government business enterprise. It operates on a fully commercial and competitive basis in providing legal and related services primarily to Australian Government departments and agencies. AGS does not receive any budget funding or other appropriations.

AGS is in a solicitor-client relationship with its government clients and has, in relation to those clients and to the courts, essentially the same legal obligations as are owed by private sector lawyers to their clients and the courts: s 55Q(2) of the *Judiciary Act 1903*. These obligations, such as the maintenance of legal professional privilege and avoidance of conflict of interest, require AGS to maintain confidentiality with respect to its clients' matters. In matters where it is not on the public record that AGS is acting on behalf of a government client, it could be a breach of client confidentiality for AGS even to acknowledge that it was instructed by a client in relation to a matter.

In view of the aforementioned issues, it would normally be considered more appropriate for questions about a legal matter to be put to the relevant department or agency. In accordance with the undertaking given at the hearing of 18 February 2008, the CEO of AGS has consulted the Attorney-General who has indicated that there is no reason to depart from this practice.

a)-g) The Attorney-General has indicated that it would not be appropriate for AGS to provide the information sought.