

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Sub Program 1.1.2

Question No. 8

Senator Barnett asked the following question at the hearing on 8 February 2010:

In relation to the \$10.117 million cost of legal assistance to Sydney terrorists referred to in answer to Question no. 51 from last October 2009:

- a. Provide a breakdown of how much was spent defending each of the accused, and list the charges against each of the accused. Is the \$10 million included in the \$55 million budgeted for legal aid costs?
- b. What has been done, or what is being done, to avoid such a situation again?

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

- a. Costs incurred by Legal Aid NSW in representing those persons charged with terrorism offences were met from the Expensive Commonwealth Criminal Cases Fund (ECCCF) and total expenditure to 23 February 2010 was \$10.764 million. This is an update on the expenditure figure of \$10.117 million as at 30 September 2010 provided in response to Question no. 51 from 19 October 2009.

Providing a more detailed breakdown of expenditure for each of the accused would not be consistent with the longstanding policy that neither the Attorney-General nor the Department comments on legal assistance provided in individual cases. This practice is consistent with obligations imposed by the *Privacy Act 1988* and the confidentiality provisions imposed by the various State and Territory legal aid acts. It also protects information provided by applicants which would otherwise be subject to solicitor-client confidentiality.

The defendants were charged with conspiring to do an act in preparation/planning for a terrorist act under s11.5(1) and s101.6(1) of the Criminal Code Act 1995 (Cwlth).

Funding provided from the ECCCF is separate from and does not impact on Commonwealth Budget funding for individual legal aid commissions, and is not reflected in the Budget allocations for each State and Territory.

- b. The Australian Government separately funds the ECCCF to ensure that Commonwealth criminal trials do not impact on the ability of legal aid commissions to provide legal assistance to disadvantaged and vulnerable Australians, especially in family law matters. The ECCCF is available to reimburse costs arising from high cost Commonwealth criminal matters such as terrorism, drug importation, and people trafficking cases.

If an accused person in a serious criminal trial is unable to get proper legal representation, the Court could decide that the trial cannot proceed, following the High Court's decision in *Dietrich v R* (1992) 177 CLR 292. The result is that a trial could be stayed indefinitely and the accused never brought to justice.

The Department administers the ECCCF in accordance with the established ECCCF guideline, which has been in operation since the commencement of the ECCCF on 1 January 2000. The ECCCF guideline operates together with other Commonwealth criminal law guidelines, including the guidelines covering Superior court criminal prosecutions and criminal law costs

management. The ECCCCF guideline requires that a commission must consider possible ways to minimise costs, including representing defendants in-house, engaging public defenders and, where necessary, allocating legal aid commission staff to assist with the work of the defence. However, legal aid commissions are responsible for deciding whether to grant legal aid to a particular individual through means and merits tests, and for establishing the terms of any grant. This includes determining the appropriate level of representation, based on the nature and complexity of each matter.