

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
AUSTRALIAN GOVERNMENT SOLICITOR

**Question No. 50**

**Senator Brandis asked the following question at the hearing on 30 May 2013:**

**Senator BRANDIS:** Mr Govey, can you confirm for me, please, that earlier this month your office—specifically Mr Nigel Oram—wrote to the solicitors acting for the Federal Circuit Court judges in their litigation, going back to the days of the Federal Magistrates Court, with the Commonwealth, in the course of discussing settlement of the matter? In that letter he indicated that the Commonwealth's party/party costs to date had been \$1,114,000.

**Mr Govey:** I do not have that correspondence. I am able to confirm that there was correspondence. What I do not know—and I might need to seek some guidance from my colleagues in the department—is whether or not the correspondence was privileged.

**Senator BRANDIS:** We had this discussion yesterday afternoon—and no doubt Mr Wilkins will jump on me if he thinks I am not describing this correctly—but I think it would be fair to say that objection was taken on behalf of the Commonwealth to the disclosure of details of correspondence in the course of, potentially, the settlement of litigation, to which I responded that all I was after was a confirmation that those are in fact the Commonwealth's assessed party/party costs to date. There was information volunteered from the department that a cost assessor had been engaged and had made an assessment of the Commonwealth's costs to date. So the only question is: what is the figure? I have given you the context in which that figure has been proffered, but, really, the only question I am asking is: is it not the case that the Commonwealth says that, as at May, its party/party costs in this litigation was \$1,114,000?

**Mr Govey:** Yes, but for the reasons you have outlined, Senator, I am not in a position to disclose what that figure is or provide any form of confirmation, because it is privileged and because negotiations are going on or discussions are going on—

**Senator BRANDIS:** I am not asking about the negotiations. I am asking you whether in fact the Commonwealth has incurred a certain amount of costs in a particular matter. That is all. The fact that I may have become aware of this in a particular context is neither here nor there. You are answerable to the committee in relation to the Commonwealth's legal expenditure, as I think is uncontroversial. I am asking whether the Commonwealth's legal expenditure in a particular case has so far been in a particular sum, which, as we have already heard evidence, has been assessed by a cost assessor.

**Mr Govey:** I would want to refer that to the Attorney-General's Department, because the instructions I have are that disclosure of matters relating to the handling of the costs settlement are being treated as confidential.

**Senator BRANDIS:** But whether or not the Commonwealth has spent a certain amount of money in a case is not confidential, is it?

**Mr Govey:** Ordinarily not, but I think in the situation where the Full Court of the Federal Court has made a costs award and there are discussions going on and there is correspondence between solicitors for both sides, it is not something that I, as the solicitor, or as the chief executive of the solicitor for the Commonwealth, would want to disclose without discussing it with the department.

**Senator BRANDIS:** So you want to take it on notice?

**Mr Govey:** We are certainly happy to do that.

**Senator BRANDIS:** All right.

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

The amount of party/party costs claimed by the Commonwealth in the Federal Court proceedings *Baker & Ors v Commonwealth of Australia* No NSD 1658 of 2011 is in dispute and is the subject of confidential negotiations between the parties. AGS has been instructed by its client, the Attorney-General's Department, not to disclose details of the Commonwealth's costs in this matter as to do so may prejudice the Commonwealth's position in those negotiations.