

SENATE ESTIMATES COMMITTEE  
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**  
What is the position in regard to legislative changes in connection with section 16G and section 135.2 of the code?

**I am advised that the answer to the honourable Senator's question is as follows:**  
Amendments have now been made in the Crimes Legislation (People Smuggling, Firearms Trafficking and Other Measures) Act 2002

SENATE ESTIMATES COMMITTEE  
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**  
Provide full details of the product of operation Tubu.

**I am advised that the answer to the honourable Senator's question is as follows:**

This question was answered by the Director of Public prosecutions before the Committee (at page 101)

SENATE ESTIMATES COMMITTEE  
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QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

Did the DPP conduct any prosecutions for breaches of immigration law in the building industry in the last financial year?

If there were any prosecutions for breaches, can you advise the committee how many there were, and the number that resulted in a successful prosecution which led to a conviction?

**I am advised that the answer to the honourable Senator's question is as follows:**

No

SENATE ESTIMATES COMMITTEE  
OFFICE OF PARLIAMENTARY COUNSEL  
QUESTIONS ON NOTICE

**Senator Kirk asked the following question at the hearing of 20 November 2002:**

Provide to the committee the drafting directions on gender specific and gender neutral language in bills, commencement provisions and provisions about public employment, and also details of when these came into effect?

**I am advised that the answer to the honourable Senator's question is as follows:**

- 1 OPC first issued a Drafting Direction on gender-specific language in 1984. A number of revisions of that Direction have been issued since then. All have followed the same basic approach. Each of the Directions has applied to Bills introduced after the Direction was issued. A copy of each of the Directions is attached.
- 2 The Drafting Direction on the drafting of commencement provisions introduced a new approach to the drafting of commencement provisions and consolidated a number of earlier Directions related to the drafting of commencement provisions. The Direction was issued in May 2002. It made minor technical changes to a previous Direction that was issued in November 2001. The Direction has applied to all Bills introduced since the 2001 election. A copy of the Direction is attached.
- 3 OPC first issued a Drafting Direction on provisions relating to public employment in 1997. A revision of that Direction was issued in 2002. Each of the Directions has applied to Bills introduced after the Direction concerned was issued. A copy of each of the Directions is attached.

SENATE ESTIMATES COMMITTEE  
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**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

Has a bill for union secret ballots been drafted?

- (a) if so, when was the instruction provided?
- (b) if the bill has been drafted has it been finalised and returned to the Department?
- (c) if so when was that?

**I am advised that the answer to the honourable Senator's question is as follows:**

The Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 was introduced into the House of Representatives on 13 November 2002.

SENATE ESTIMATES COMMITTEE  
OFFICE OF PARLIAMENTARY COUNSEL  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

Of the phantom bills that were requested to be drafted could we have a list?

- (a) how many instructions come forward from the relevant department?
- (b) what happens to the phantom bills do they sit on a list awaiting instructions?
- (c) if so, how long do they sit?
- (d) when are they purged from the list?
- (e) does the Department tell the office that the bills are no longer required and if so, how many and which ones and when?

**I am advised that the answer to the honourable Senator's question is as follows:**

- 1 OPC is not aware of "phantom" Bills on the legislation program.
- 2 The legislation program is set by the Parliamentary Business Committee of Cabinet having regard to bids lodged by Ministers in a process coordinated by the Department of Prime Minister and Cabinet. The program is set for each sittings at the end of the previous sittings or, after an election, at a special meeting of the Committee some time before the sittings begins. The Committee may vary the program, by adding or omitting Bills, by changing the priority accorded to Bills already on the program, or by rearranging the content of Bills, at any time during the sittings.
- 3 For each sittings, OPC keeps a list, reflecting the legislation program, on which we record progress on Bills on the program. In general, First Parliamentary Counsel does not allocate drafting projects to drafting teams until written instructions are received. However there are some cases in which oral instructions are accepted. Such instructions need to deal with the same matters as would be covered in written instructions, and reach the same level of detail—the only difference is that they may be given in face-to-face meetings rather than on paper. OPC does not attempt to draft Bills without instructions from those responsible for the policy.
- 4 A Bill on the legislation program remains on that program throughout the sittings, unless the Minister concerned formally notifies the Prime Minister that the Bill should be removed from the program. When a new program is set at the end of each sittings, the old program lapses; there is no "purging" of the program, but a Bill does not "roll over" onto the new program unless the Minister bids for it again when the new program is being developed.

5 This programming approach has been used for many years. OPC has been reporting by reference to Bills introduced and Bills for which no instructions were received since at least 1994. Bills for the next sittings must be lodged several months before the beginning of that sittings, and circumstances often change between then and the beginning of the sittings. This means that every legislation program has a significant proportion of Bills that do not proceed during the sittings concerned, as well as a proportion of Bills that are added to the program during the sittings.

6 The following tables are the same as the tables shown in OPC's 2001-2002 Annual Report, except that they include an extra column showing a further category of Bill, namely those not covered by the other columns. This column covers:

- Bills that were finished but not introduced; and
- Bills on which work had previously been done but for which no instructions were received during the sittings; and
- Bills for which instructions were received too late in the sittings for them to be drafted for introduction that sittings (this description covers cases in which initial instructions were received very late in the sittings, and cases in which some work was done on a Bill but further instructions continued to arrive until late in the sittings or even after the end of the sittings).

Category	Bills introduced	Bills for which no instructions were received	Bills which were not able to be finished even though timely instructions were received	Other Bills
Spring 2001				
T	37	0	0	1
A	13	10	*	34
B	2	10	*	15
C	0	11	*	6
Autumn 2002				
T	46	0	0	0
A	37	9	3	19
B	6	36	9	5
C	0	14	1	2
Winter 2002				
T	21	0	0	1
A	34	20	1	19
B	6	25	2	11
C	0	12	0	1

7 The following comments are relevant to interpreting this table:

- The early dissolution of the House of Representatives in preparation for the 2001 federal election meant that it was impossible to make a sensible assessment of the numbers of A, B and C Bills that would not have been finished even though timely instructions were received. This means that for the Spring 2001 sittings, the "Other Bills" column includes Bills that might in fact have been reported as unable to be finished, if the Spring sittings had run until December as scheduled.
- While the table covers all Bills on the program, the figures produced by totalling the columns horizontally will not necessarily reconcile with any figures produced outside OPC for Bills on the legislation program. This is because the contents of a Bill are not



fixed until the Bill is introduced; it is common for a project identified on the legislation program as a single Bill to be split into 2 or more Bills in the course of drafting, for constitutional or other reasons, and it is also common for parts of 2 or more Bills to be combined into a single Bill before introduction. In such circumstances, OPC's lists might show a different number of Bills from the number on the official legislation program.

- As well, the figures on the lists (except the figures for Bills introduced) should not be totalled vertically. This is because the same Bill might show up in the other categories for 2 or even all 3 sittings during the year (eg the Bill might be "No instructions received" in the first sittings, "Other Bills" in the second sittings (because instructions were received, but too late in the sittings) and "Not able to be finished even though timely instructions were received" in the third sittings).

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN GOVERNMENT SOLICITOR  
QUESTIONS ON NOTICE

**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

Detail what work the AGS has provided to the Department of Employment and Workplace Relations as part of the building industry task force and the cost of that and the nature of the work.

**I am advised that the answer to the honourable Senator's question is as follows:**

Following consultation with its client, the Department of Employment and Workplace Relations (DEWR), AGS is able to advise that AGS is one of several legal firms on the panel for the provision of legal services to DEWR. Under the panel arrangements, AGS has provided advice on various matters related to the Interim Taskforce on the Building and Construction Industry within DEWR. Advice has been provided in relation to the establishment of the Interim Taskforce and in relation to a prosecution by the Taskforce.

For a period from early September 2002 to late October 2002, an AGS lawyer was located in the Workplace Relations Policy and Legal Group of DEWR. During this period, the AGS lawyer provided legal advice in relation to the establishment and operation of the Taskforce, as well as on matters unrelated to the Taskforce. It is estimated that fifty per cent of the AGS lawyer's time was spent on Taskforce work.

The total costs incurred to AGS, to date, for those services are \$34,154.50 (exclusive of GST) plus \$6,892.91 disbursements (inclusive of GST).

Recently, an AGS lawyer has taken leave without pay from AGS and has been employed by the Taskforce for a period of three months.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN GOVERNMENT SOLICITOR  
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**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

Detail the costs incurred to date by the AGS for work done for the Commonwealth in respect of the Ansett administration, including things like the establishment of the special employees entitlement scheme for Ansett group employees.

**I am advised that the answer to the honourable Senator's question is as follows:**

AGS has provided services to three Commonwealth clients in relation to the Ansett administration - the Department of Employment and Workplace Relations, Department of Transport and Regional Services, and Department of Finance and Administration.

Following consultation with these clients, AGS is able to advise that the total costs incurred or attributed by AGS, to 19 December 2002, for services provided to the Commonwealth in relation to Ansett administration issues are \$541,092.25.

SENATE ESTIMATES COMMITTEE  
AUSTRALIAN GOVERNMENT SOLICITOR  
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**Senator Kirk asked the following question at the hearing of 20 November 2002:**

Did the AGS represent two witnesses in the Federal Court case of *Hamberger v. Williamson and CFMEU* (the Abigroup case), namely Messrs Lyten and Carson, in a costs application brought by the CFMEU.

**I am advised that the answer to the honourable Senator's question is as follows:**

Yes. On instructions from the Office of the Employment Advocate, AGS acted on behalf of the Employment Advocate and Messrs Lyten and Carson with respect to a Notice of Motion filed by the Construction, Forestry, Mining and Energy Union (CFMEU), on its own and Mr Ian Williamson's behalf, seeking orders that the CFMEU's and Mr Williamson's costs in relation to the Federal Court of Australia proceeding *Jonathan Hamberger, the Employment Advocate v Ian Williamson, Construction Forestry Mining and Energy Union* (No V82 of 1999), be ordered to be paid on a solicitor/client basis by the Employment Advocate, or alternatively, by either Mr Lyten or Mr Carson.

SENATE ESTIMATES COMMITTEE  
 AUSTRALIAN GOVERNMENT SOLICITOR  
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**Senator Ludwig asked the following question at the hearing of 20 November 2002:**

Are you familiar with the Federal Court case *Hamberger v Williamson and CFMEU* in which the AGS represented the Employment Advocate?

- (a) did the AGS also represent two witnesses in that case, Messrs Lyten and Carson, in a cost application brought by the CFMEU?
- (b) On how many other occasions has the AGS represented a private individual in litigation?
- (c) Did the AGS consider whether it was appropriate to represent both the Employment Advocate and the two witnesses in the cost application, given that they might have separate interests in the application?
- (d) What were the legal costs of the AGS representing those witnesses before the court?
- (e) Who paid those costs? Was it the witness or the Employment Advocate?
- (f) If it was the Employment Advocate why did the Employment Advocate pay them?

**I am advised that the answer to the honourable Senator's question is as follows:**

AGS has familiarity with the case as it acted on behalf of the Employment Advocate.

(a) Yes. On instructions from the Office of the Employment Advocate, AGS acted on behalf of the Employment Advocate and Messrs Lyten and Carson with respect to a Notice of Motion filed by the Construction, Forestry, Mining and Energy Union (CFMEU), on its own and Mr Ian Williamson's behalf, seeking orders that the CFMEU's and Mr Williamson's costs in relation to the Federal Court of Australia proceeding *Jonathan Hamberger, the Employment Advocate v Ian Williamson, Construction Forestry Mining and Energy Union* (No V82 of 1999), be ordered to be paid on a solicitor/client basis by the Employment Advocate, or alternatively, by either Mr Lyten or Mr Carson.

(b) AGS may provide services to a private individual (including the representation of that private individual in litigation) if a determination has been issued under either section 55N(3) or section 55N(4) of the *Judiciary Act 1903*. Under section 55N(4), the CEO of AGS has the authority to determine that AGS may provide services to a person or body not referred to in sections 55N(1) or (2), provided that the provision of services would be within the functions of AGS which are set out in section 55K of the Act.

Since becoming a statutory authority and government business enterprise on 1 September 1999, AGS has provided services to 19 private individuals in litigation or in preparation for litigation.

(c) In deciding whether to issue a determination under section 55N(4) of the *Judiciary Act* for AGS to provide services to a private individual, the CEO considers if

there is any actual or potential conflict of interest. In this particular matter, Messrs Lyten and Carson agreed, as a condition of their being indemnified by the Commonwealth in respect of any reasonable legal costs incurred by the Commonwealth in representing them in relation to the CFMEU's application, that their defence would be controlled by the Office of Employment Advocate with AGS and counsel representing Messrs Lyten and Carson and the Employment Advocate jointly. Accordingly, the CEO was satisfied that there was no conflict of interest.

(d) The total cost to the Commonwealth of opposing the costs application brought by the CFMEU against the Employment Advocate, Mr Lyten and Mr Carson, was \$8,113.75, comprising \$4,155.50 (AGS professional fees), \$3,746.50 (counsel fees) and \$211.75 (disbursements). Of this total amount, \$1,256 is estimated to be solely attributable to the representation of Messrs Carson and Lyten.

An additional \$1,289.30, comprising \$1,215 (AGS professional fees), and \$74.30 (disbursements), was incurred in negotiating the indemnity costs order.

(e) The Office of the Employment Advocate paid the costs of AGS representing the Employment Advocate and Messrs Lyten and Carson in the Notice of Motion.

(f) The Office of the Employment Advocate paid the costs because the Commonwealth had granted an indemnity to Messrs Lyten and Carson in respect of any reasonable legal costs incurred by the Commonwealth in representing them in the Notice of Motion.