

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 2.2

Question No. 69

Senator Stott-Despoja asked the following question at the hearing on 31 October 2005:

- (a) Has the Attorney taken advice in relation to the constitutionality of using judges in their personal capacity to approve executive action, rather than judges exercising judicial power?
- (b) If yes, what was that advice?

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

- (a) Yes.
- (b) It is not appropriate to discuss the legal advice to government in relation to this legislation. It is the established practice accepted by this Government and previous governments not to disclose legal advice which has been provided to the Government unless the Government decides in a particular case to do so.

I can say that the Chief General Counsel was involved in the development of the proposals and regularly provided advice on all relevant aspects of the package. The Commonwealth Solicitor-General was also consulted on particular aspects of the advice and has examined the views expressed by State and Territory Solicitors-General in the COAG-related consultations. On the basis of advice from the Solicitor-General and the Chief General Counsel, the Government is satisfied about the constitutionality of the measures in the Anti-Terrorism Bill 2005.