



AUSTRALIAN SENATE

CLERK OF THE SENATE

PARLIAMENT HOUSE
CANBERRA A.C.T. 2600
TEL: (02) 6277 3350
FAX: (02) 6277 3199
E-mail: clerk.sen@aph.gov.au

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hc/let/14696

Mr Alistair Sands
Secretary
Finance and Public Administration References Committee
The Senate
Parliament House
CANBERRA ACT 2600



Dear Mr Sands

**GALLIPOLI PENINSULA INQUIRY —
REQUEST FOR LEGAL ADVICE FROM DFAT**

You asked for comments on the response dated 14 July 2005 from the Department of Foreign Affairs and Trade relating to the committee's request for a copy of a legal advice held by the department.

The letter does not contain a claim of public interest immunity, simply a refusal to provide the advice on the basis of an alleged "longstanding practice".

The letter states that the minister has considered and refused the request. Presumably this is so, and the committee can take it as a refusal by the minister. It would have been preferable for the chair of the committee to write directly to the minister and to elicit a response from the minister, but there would seem to be no point in doing that now.

As for the alleged "longstanding practice", it is surprising that there has been such a practice but that it has not been heard of hitherto. I know of no previous occasion of any government stating that legal advice would not be disclosed "unless there are compelling reasons to do so in a particular case". There have been many instances of governments disclosing legal advice without any indication that there were any "compelling reasons to do so", and when the only reason for doing so appeared to be that the advice supported a case being made out by government at the time. The statement in the letter therefore appears to be a completely new declaration in relation to the disclosure of legal advice. The committee should ask the minister whether this declaration now represents government policy on the disclosure of advice. I would be surprised if the minister were to answer in the affirmative. Such an answer would prove to be inconvenient to government in the future when it wished to disclose legal advice simply to support some government position and in the absence of "compelling reasons".

Please let me know if I can be of any further assistance in relation to this matter.

Yours sincerely

(Harry Evans)