



AUSTRALIAN SENATE

FINANCE AND PUBLIC ADMINISTRATION

REFERENCES COMMITTEE

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21 June 2005

Mr Jeremy Newman
First Assistant Secretary
Americas and Europe Division
Department of Foreign Affairs and Trade
R G Casey Building
BARTON ACT 0221

Dear Mr Newman

Inquiry into matters relating to the Gallipoli Peninsula

I refer to your two letters of 17 June 2005 relating to two matters taken on notice at the hearing of that day and your response that under Senate standing order 73 the department is unable to provide legal advice to the committee.

As conveyed to your staff, standing order 73 does not apply to committees but to questions put by senators to ministers and other senators at question time in the Senate. Nor does it prevent a request for the tabling or provision of legal advice in the government's possession. I have attached advice from the Clerk of the Senate that sets out the matter clearly.

I also draw your attention to the Clerk's advice that if the department believes there is a public interest ground for a claim that the legal advice should not be provided to the committee, the department should refer the matter to the minister for a ministerial response.

Accordingly, I ask that you reconsider the committee's request for the department to provide the two sets of legal advice concerning the Lausanne Treaty to which you referred in evidence and advice on the meaning of the word 'free' under that treaty.

Please contact me on 6277 3530 should you wish to discuss this matter further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alistair Sands', with a long horizontal flourish extending to the right.

Alistair Sands
Secretary



AUSTRALIAN SENATE

CLERK OF THE SENATE

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hc/let/14666

20 June 2005

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

Dear Mr Sands

GALLIPOLI PENINSULA INQUIRY — RESPONSE BY DFAT

You asked for a note on the response by the Department of Foreign Affairs and Trade to a request by the committee for a copy of legal advice provided in relation to the Gallipoli Peninsula matter.

I understand that the department has declined to provide a copy of the advice on the basis that Senate standing order 73 prohibits questions which ask for legal opinions.

Standing orders 72, 73 and 74, as their language makes abundantly clear, apply to questions put by senators to ministers and other senators at question time in the Senate. The suggestion that they apply to questions asked in the course of committee inquiries or to requests by committees for information is bizarre and ridiculous. Even in relation to question time, standing order 73 only prohibits a question asking for a legal opinion; it does not prevent a question which asks for the tabling of a copy of legal advice in the possession of the government

In any event, the application of the standing orders is not a question of law on which legal advice can appropriately be given, but a question of the application and interpretation of the rules of the Senate, which are a matter for the Senate itself.

Questions at committee hearings and requests by committees frequently ask for copies of legal advices available to government, and they are frequently provided, unless the responsible minister thinks that there is some public interest ground for a claim that the advice should not be provided, for example, that disclosure of the advice would prejudice legal proceedings or the Commonwealth's position in legal proceedings.

If the Department of Foreign Affairs and Trade thinks that there is some such ground for declining to provide the advice in question, they should refer the matter to the minister for a ministerial response. As both the procedures of the Senate and the government guidelines for public service witnesses before parliamentary committees make clear, such a claim should be made only by a minister.

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

Yours sincerely

(Harry Evans)