Australian Government

Attorney-General's Department

Access to Justice Division

Military Court of Australia Bill 2012 and Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill 2012

Senate Legal and Constitutional Affairs Legislation Committee

Question on Notice

Senator Brandis asked the following question at the hearing on 14 September 2012

Senator BRANDIS: Now, the government took advice from the Commonwealth Solicitor-General in relation to that question, didn't it?
Ms Meibusch: The government has taken advice in relation to that question and in relation to the bill generally.
Senator BRANDIS: I understand that. Do you have that advice here?
Ms Meibusch: We do have the advice but it is usual practice, for sides of both political persuasions, that we do not disclose those advices.
Senator BRANDIS: It is also my practice to ask for it, because sometimes an exception is made. I have read that advice, because in the course of the first iteration of this bill the then Defence minister, Senator Faulkner, gave me and Senator Johnston, the shadow minister for defence, a private briefing. And in the course of that private briefing he produced to me in his office Mr Gageler's advice and allowed me to read it, but not to take it away. So, given that the then minister was prepared to share the advice with the opposition, I think that puts the position on a slightly different footing. So I am going to ask you again whether you are prepared to share with the committee the advice of the Solicitor-General, which was shared with Senator Johnston and me.
Mr Fredericks: Noting that the context in which you received the previous advice was clearly a decision that had been made by a minister, that is not a decision that anyone at this table—as officials—is able to make.
Senator BRANDIS: I understand. Will you take my request on notice?
Mr Fredericks: I will take that request on notice.

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

The provision of very limited access to the advice in question for the strictly limited purpose of a private briefing involves an understanding that there would be no further or broader disclosure of the advice. The general and longstanding practice of successive governments is to maintain confidentiality in legal advice. The risk that disclosure may prejudice the Commonwealth's legal position must be considered on each occasion the question of disclosure arises.