

Senate report calls for disallowance of Brandis's direction to Solicitor-General

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A Senate inquiry has called for Attorney-General George Brandis to be censured for misleading parliament, and for the disallowance or withdrawal of his order that all requests for advice from the Solicitor-General go through his office.

The non-government majority on the Senate's legal and constitutional affairs references committee, in scathing comments, said Brandis's actions in issuing the direction about advice were "a gross infringement on the independence of the Solicitor-General, and call into question the professional integrity and judgement of the Attorney-General".

But the committee, in its report tabled Tuesday, split along party lines with the two government senators fully supporting Brandis.

The bitter row between then Solicitor-General Justin Gleeson and Brandis over the direction led to Gleeson resigning his position, declaring the relationship was irretrievably broken .

Gleeson claimed the direction was illegal and said that he was not consulted before it was made, as required. Brandis insisted he had met the requirement for consultation.

The Senate is expected to disallow the direction later this week. The Labor-Green majority report said: "In asserting that he acted properly, the Attorney-General relies on a fanciful definition of 'consultation'". Brandis appeared to argue that the relevant legislation "does not actually require the person who is consulted to be specifically aware of any precise intention or lack of intention of a rule-maker", it said.

It said Brandis had misled parliament by stating in the explanatory statement with the direction that there had been consultation.

"The lack of respect that the Attorney-General has displayed towards the Solicitor-General, and the state of their relationship prior to the Solicitor-General's resignation – one of the most critical in his portfolio – demonstrates his lack of competence to hold the office of Attorney-General,"

the report said.

It said the fact the Brandis continued to assert that he had acted appropriately, and had taken no steps to correct the record, or amend the direction, in spite of the overwhelming contradictory view of experts about it, “provides further evidence that he should be discharged from his responsibilities”.

In the dissenting report, the government senators led by deputy chair Ian Macdonald said Gleeson’s position had become untenable and he took the commendable and perhaps unavoidable course in resigning. They said they regretted that the inquiry, set up by Labor, “has in the end destroyed the career of the Solicitor-General”.

The government senators accused Gleeson of an “idiosyncratic understanding” of what constituted consultation. They said the consultation that occurred drew on the knowledge and expertise of those with expertise in the relevant field, to the extent such consultation was required under the law.

Brandis clearly consulted Gleeson, was advised by his department he had met the consultation requirements, and did not mislead parliament, the dissenting report said. “There is no evidence that the direction has affected, or is affecting, the operation of the office of the Solicitor-General.”

Michelle Grattan does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond the academic appointment above.

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