

Brandis and Turnbull stay mum on what the Attorney-General told the Solicitor-General

Written by Michelle Grattan, Professorial Fellow, University of Canberra

Attorney-General George Brandis has declined to say whether he told then Solicitor-General Justin Gleeson not to run a particular argument in a High Court case that saw Western Australian government legislation declared unconstitutional.

Brandis said he would not disclose legal advice. “But when there is a large matter before any court including the High Court, of course you have discussions with your barrister and of course you discuss a range of options and the posture and strategy that you should take,” he said on Sky.

In a day of argument about his role in the case, Brandis did deny effectively telling Gleeson to run dead.

“That is not the truth and he did not,” he said in response to a question at a news conference, following his detailed statement to parliament about the affair.

What Brandis did or did not tell Gleeson is at the heart of a major political row embroiling him and the federal and WA governments. Before it rises for the year later this week, the Senate may set up an inquiry into the issue.

Last week the [West Australian newspaper reported](#) there had been a secret deal between the federal and WA governments to let WA retrieve \$1 billion from Alan Bond’s collapsed Bell Group.

But the deal had been torpedoed by a constitutional argument advanced by Gleeson on behalf of the Australian Taxation Office (ATO), the paper said. The ATO was seeking to retrieve \$300 million.

The paper reported that a senior federal source had told it that Brandis had instructed Gleeson not to run the particular argument. But Gleeson did so and WA lost the case.

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Brandis tabled letters between then-treasurer Joe Hockey and the WA treasurer Mike Nahan in April 2015 about legislation WA was bringing in to end decades-long legal proceedings over the Bell Group's insolvency process. The legislation potentially put WA ahead of the ATO in the line of creditors.

In his letter of April 13 2015 Nahan, following a discussion with Hockey, said he trusted "you would ... see no need for the Commonwealth to contest the legislation we plan".

Hockey in a letter dated April 29 2015 acknowledged the WA government's desire "to see an efficient and timely conclusion" to the process.

Brandis denied this amounted to a "deal", although he acknowledged that some WA ministers had a different view.

The WA government expected to have a free run in seeking to retrieve the revenue and was furious at how events unfolded.

Brandis said he did not have any personal involvement in the issue until March this year, when he was approached by Christian Porter. Porter is now a federal minister but formerly was a WA treasurer and attorney-general.

Porter urged him to speak to the WA Attorney-General, Michael Mischin. Brandis said Mischin and Nahan gave him "the West Australian government's perspective of its dealings with Mr Hockey".

Brandis said he had supported the Taxation Office's intervention in the case, which had been launched by creditors. Initially he had not considered there was a need for the Commonwealth to intervene separately but had been persuaded by Gleeson that it should and gave instructions for it to do so.

“I was not involved in, and at the time they took place, had no knowledge of the discussions between Mr Hockey and WA ministers,” he told the Senate. “I have no knowledge of what passed between Mr Hockey and Dr Nahan other than what is revealed by the April 2015 exchange of letters.”

“There was never any agreement between me and Mr Mischin in relation to the High Court proceedings.”

He rejected Opposition allegations that he had failed to protect the interests of the Commonwealth.

“Every decision I made in the matter did protect the interests of the Commonwealth, by supporting the decision of the ATO to intervene in the matter and by deciding to accept Mr Gleeson’s advice that the Commonwealth of Australia should also intervene in the matter.”

Opposition Senate leader Penny Wong said Brandis had thrown Hockey under a bus. “How convenient that you go after the bloke who can’t defend himself,” she said. Hockey is now Australian ambassador in Washington.

“Senator Brandis was involved in all the discussions with lawyers and the attorney-general from Western Australia - well actually it was all Joe’s fault. Very convenient.”

In Question Time in the House of Representatives Shadow Attorney-General Mark Dreyfus asked Malcolm Turnbull whether Brandis had verbally instructed Gleeson not to run a particular argument in the case. Turnbull refused to be drawn, saying “obviously I do not know what transpired between them”.

Bill Shorten asked Turnbull, if he were unaware, to report back, but Turnbull declined, declaring he could not assist Shorten “with respect to further details of conversations to which I was not a party”.

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Dreyfus said there had been a “dirty deal” to favour the government’s West Australian Liberal “mates” over the Australian taxpayer.

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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