



Australian Government

Department of the Prime Minister and Cabinet

ANDREW FISHER BUILDING
ONE NATIONAL CIRCUIT
BARTON

Ms Julie Dennett
Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Dennett

I refer to the Department's appearance on 24 May 2013 at the public hearing of the Committee's inquiry into the Public Interest Disclosure Bill 2013.

During the Department's appearance, I took a question on notice, as indicated in the proof Committee Hansard at page 33. The Department's response to the question is attached.

Yours sincerely

Renée Leon
Deputy Secretary – Governance

29 May 2013

Enclosed: response to question on notice.

Senate Legal and Constitutional Affairs Legislation Committee Hearing: Question on Notice

Public Interest Disclosure Bill 2013 - Friday 24 May

Response from the Department of the Prime Minister and Cabinet

Question: Dr Appleby and Dr Bannister have raised the problem that clause 24 of the bill possibly runs afoul of High Court decisions on the attempts to limit implied repeal. Could you take on notice your response to the concerns that those ladies raise with respect to the legislation, please.

The Department's response is:

The purpose of clause 24 is to make clear that the protections given in clauses 10, 14, 15 or 16 should not be affected unless there is clear legislative intention to do so. Clause 24 does not purport to oust the Parliament's power to legislate in respect of these protections in later legislation, and expressly contemplates that a later Act may make provision in connection with the protections.

As the submission received from Drs Appleby and Bannister, and Ms Olijnyk states, the High Court has previously held that such provisions are not sufficient to prevent an Act being repealed by implication if it is inconsistent with a later Act on the same topic (*Rose v Hyric* (1963) 108 CLR 353; *South-Eastern Drainage Board (SA) v Savings Bank of South Australia* (1939) 62 CLR 603).

The terms of clause 24 would assist in clarifying the relationship between protections within the Act and other legislation. It provides an indication of a statutory intention that cll 10, 14, 15 and 16 are generally to operate to the exclusion of other Commonwealth laws. This intention would be taken into account in determining whether cll 10, 14, 15 or 16 and a later Commonwealth law were capable of operating together or were actually inconsistent.