



29 November 2018

Senator Slade Brockman
Chair
Senate Education and Employment Legislation Committee
Senator for Western Australia
Parliament House
CANBERRA ACT 2600

Dear Senator Brockman

2018–2019 Supplementary Budget Estimates

I write to you in relation to certain questions asked of the Australian Building and Construction Commission (ABCC) by Senator the Hon Doug Cameron, Senator for New South Wales, during the 2018–19 Supplementary Budget Estimates hearing on 24 October 2018.

I make the claim for public interest immunity in respect to questions on notice EMSQ18-000508 and EMSQ18-000490 as outlined below.

Question on Notice – EMSQ18-000508 – Royal Hobart Hospital Redevelopment – Cooperation from Subcontractors

At page 92 of the Hansard proof, Senator Cameron asked whether the ABCC had received co-operation from subcontractors. Senator Cameron noted he was not asking for precise details. That question was taken on notice. At page 93 of Hansard proof, Senator Cameron again asked the question clarifying that he was not asking for details.

No claim for public interest immunity is made over whether the ABCC has received cooperation. The ABCC will provide its answer to this Question on Notice in the ordinary course.

At page 94 of the Hansard proof, Senator Cameron asked questions about the substance of allegations being investigated by the ABCC.

A claim for public interest immunity is made over information about the substance of allegations being considered and information gathered in a current and ongoing investigation. The allegations concern the Royal Hobart Hospital Project. There has been media commentary on the ABCC's investigation.

To publicly disclose details of information obtained in, and about, an active and ongoing investigation or to publicly express a view on whether sufficient information has been obtained to establish certain contraventions of the law, may prejudice aspects of an ongoing investigation.

Information that reveals, or from which it can be inferred, who the ABCC has spoken to, what assistance or information they may have provided, and from which it becomes apparent what other avenues the ABCC proposes to pursue, may result in commercial or industrial reprisal against those that have co-operated with the ABCC (including victims), and may result in others not coming forward to assist with the investigation.

Further, in circumstances where specific allegations about specific entities have been aired in the press, it is not appropriate for the regulator investigating that conduct to publicly comment on whether it is likely contraventions of the law will be established before the investigation has been finalised. To do so may impact on the later conduct of civil penalty proceedings and the ability of the agency to obtain civil penalties for any proven contraventions (see *Fair Work Ombudsman v The Meatball And Wine Bar Pty Ltd* [2018] FCCA 2288). Such public comments may also prejudice the likelihood that those with relevant information will come forward and provide it to the ABCC.

Accordingly, a claim for public interest immunity is made over questions that ask the ABCC to confirm whether specific allegations made in the press have been substantiated, or to provide details of same, while the investigation is ongoing.

Question on Notice EMSQ18-000490 – Royal Hobart Hospital redevelopment – Reports from site visits

At page 83 of the Hansard proof, Senator Cameron asked '*can you provide details of any file notes and any reports relating to the Royal Hobart Hospital site in the last 12 months?*'.

The ABCC will provide details relating to concluded enquiries at the Royal Hobart Hospital site since September 2017.

For the same reasons outlined above, a claim for public interest immunity is made over reports and other documents which relate to the substance of allegations that are under active investigation.

Yours sincerely

Commissioner Stephen McBurney
Australian Building and Construction Commission

