



Australian Government



Senator Raff Ciccone
Chair of Foreign Affairs, Defence and Trade Legislation Committee
Parliament House
Canberra
ACT 2600

5 September 2024

Tourism Australia Public Interest Immunity Claim

Dear Senator Ciccone

I am writing to you in relation to your correspondence dated 22 August 2024 regarding Tourism Australia's Questions on Notice responses. The purpose of this letter is to claim, and to articulate the basis of a claim, for Public Interest Immunity (**PII**) pursuant to Senate Order of 13 May 2009 (the **Order**).

A claim for PII can be based on the argument that revealing the information would prejudice law enforcement investigations. That position is confirmed by statements in Odger's 14th edition and at page 663, '*prejudice to law enforcement investigation*' is referred to under '*potentially acceptable grounds*.' This ground should only be involved if:

"it should be established that there are investigations in progress by a law enforcement agency, such as the police, and the provision of the information sought could interfere with those investigations." Odger's 14th edition, page 663.

The use of the word '*could*' indicates that it need not be established that the provision of the information *would* interfere with the investigation, but that it is possible to do so. In addition, I refer to paragraph 4.6.1 of the *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters* that states:

"There are several generally accepted grounds on which a minister or, in appropriate circumstances, a statutory office holder, may rely when claiming PII. For example, PII claims may be made in relation to information and documents the disclosure of which would, or might reasonably be expected to:

(d) prejudice the investigation of a possible breach of the law or the enforcement of the law in a particular instance."

In relation to questions on notice following the previous senate estimates hearing, the Australian Federal Police (**Attachment A**) advised Tourism Australia on 18 July 2024 as follows:

"As this matter is subject to an ongoing investigation by the AFP it would not be appropriate to comment further. Any further questions on this matter should be referred to the AFP."

Subsequently on 4 September 2024, the AFP Deputy Commissioner Ian McCartney (**Attachment B**) wrote to Tourism Australia stating that:

"I can confirm the matter remains an ongoing investigation by the AFP, having been referred by Tourism Australia on 13 June 2024, and the release of certain information would

prejudice the investigation. This includes details of individuals allegedly involved in the matter or the particulars of the investigation, as requested in the following Questions on Notice (Appendix B):

- *Question 1;*
- *Question 3;*
- *Question 4;*
- *Question 9;*
- *Question 11 (1) - (6) inclusive; and*
- *Question 12 (11), (12) and (15).*

I support Tourism Australia claiming PII in relation to the above questions. I suggest you advise the Committee that the AFP is currently investigating a possible breach of the criminal law in relation to the matters raised in these questions, and disclosure of the information would, or might reasonably be expected to, prejudice the effectiveness of the AFP's investigation, and in these circumstances, Tourism Australia considers it is not in the public interest for this information to be made public.

As the investigation has continued to progress (since the last time Tourism Australia was in contact with the AFP), I can advise that the disclosure of information to respond to the following Questions on Notice would not prejudice the investigation and it is a matter for Tourism Australia to respond to the Committee accordingly:

- *Question 11 (7) - (10) inclusive; and*
- *Question 12 (13), (14), (16) - (21) inclusive."*

The advice from the AFP on 18 July 2024 and subsequently on 4 September establishes that there is an ongoing AFP investigation in progress, that revealing the information in question could prejudice the investigation, and that disclosure of such information will not be in the public interest.

Given the AFP's updated advice, Tourism Australia has provided responses to Question 11 (7) – (10) inclusive and Question 12 (13), (14), (16) – (21) inclusive.

Yours faithfully,

Phillipa Harrison
Managing Director
Tourism Australia

From: @afp.gov.au>
Sent: Thursday, July 18, 2024 1:01 PM
To: @tourism.australia.com>
Cc: @afp.gov.au>; @nacc.gov.au; @afp.gov.au>
Subject: RE: Questions on Notice [SEC=OFFICIAL]

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Hi

Apologies for the delay. The AFP's standard line in these types of matters is:

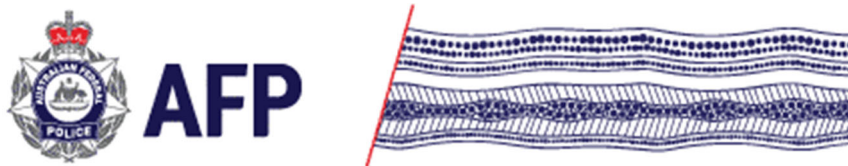
As this matter is subject to an ongoing investigation by the AFP it would not be appropriate to comment further. Any further questions on this matter should be referred to the AFP.

This standard line would apply to Cadell QONs - **questions 1 – 7, 11-18, 20 – 21**, QONs taken at Estimates – **1,4,9**.

I have included from NACC to comment on the questions relating to NACC.

Thanks
Ellen

ACTING MANAGER GOVERNMENT AND EXECUTIVE ADVICE



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Our reference: EC24-003261

4 September 2024

Ms Phillipa Harrison
Managing Director
Tourism Australia

Via email:

Dear Ms Harrison

Thank you for your correspondence dated 27 August 2024 regarding a claim of Public Interest Immunity (PII) by Tourism Australia in relation to an investigation being undertaken by the Australian Federal Police (AFP).

I note that since tabling Tourism Australia's responses to relevant Questions on Notice from the Budget Estimate hearing on 4 June 2024, the Senate Foreign Affairs, Defence and Trade Legislation Committee has requested either particularisation of the PII claim, or the provision of answers to the stated questions.

I can confirm the matter remains an ongoing investigation by the AFP, having been referred by Tourism Australia on 13 June 2024, and the release of certain information would prejudice the investigation. This includes details of individuals allegedly involved in the matter or the particulars of the investigation, as requested in the following Questions on Notice (Appendix B):

- Question 1;
- Question 3;
- Question 4;
- Question 9;
- Question 11 (1) - (6) inclusive; and
- Question 12 (11), (12) and (15).

I support Tourism Australia claiming PII in relation to the above questions. I suggest you advise the Committee that the AFP is currently investigating a possible breach of the criminal law in relation to the matters raised in these questions, and disclosure of the information would, or might reasonably be expected to, prejudice the effectiveness of the AFP's investigation, and in these circumstances, Tourism Australia considers it is not in the public interest for this information to be made public.

As the investigation has continued to progress (since the last time Tourism Australia was in contact with the AFP), I can advise that the disclosure of information to respond to the following

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Questions on Notice would not prejudice the investigation and it is a matter for Tourism Australia to respond to the Committee accordingly:

- Question 11 (7) - (10) inclusive; and
- Question 12 (13), (14), (16) - (21) inclusive.

I trust this information is of assistance.

Yours sincerely

Ian McCartney APM
Deputy Commissioner Crime

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