



**The Hon Christian Porter MP**  
Attorney-General  
Minister for Industrial Relations  
Leader of the House

Senator Amanda Stoker  
Chair  
Senate Standing Committee on Legal and Constitutional Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Senator Stoker

A handwritten signature in blue ink, appearing to read 'Amanda', written over the typed name 'Senator Stoker'.

I write to you in relation to questions that Senator the Hon Kim Carr has indicated by letter to the Secretary of the Attorney-General's Department, Mr Chris Moraitis PSM, dated 15 October 2020 that the Opposition will ask during the Budget estimates hearing of the Senate Standing Committee on Legal and Constitutional Affairs on 21 October 2020.

Specifically, Senator Carr has indicated the Opposition is interested in resources expended by the Commonwealth through its intervention in *Palmer v Western Australia* (High Court No B26/2020) regarding the Western Australian border restrictions. In particular, Senator Carr indicated the Opposition will ask questions in relation to:

- payments made to external lawyers, including the Australian Government Solicitor
- disbursements paid to external counsel, and
- any other expenses incurred by the Commonwealth.

I claim public interest immunity over the answers to those questions.

There is a public interest in not disclosing the Commonwealth's actual or estimated expenditure in *Palmer v Western Australia* while the matter is ongoing. The harm to the public interest that could result from the disclosure of that information arises because there is a risk that disclosure may prejudice the Commonwealth's legal position. For example, disclosure of the Commonwealth's legal costs may affect the Commonwealth's position in negotiations with the other parties on the payment of costs post-hearing, or the Commonwealth's position in any subsequent litigation on costs if negotiations fail.

On 25 August 2020, the Federal Court of Australia handed down judgment in relation to the factual matters remitted to it by the High Court of Australia, and in relation to issues considered at a case management hearing on 7 August 2020. Among other things, the Federal Court ordered that the Commonwealth pay the parties' costs of and incidental to the hearing of 7 August 2020 (*Palmer v Western Australia (No 3)* [2020] FCA 1220). The Court also ordered that costs in relation to the hearing of the remitted issue be reserved to the High Court (*Palmer v Western Australia (No 4)* [2020] FCA 1221).

More generally, the executive government generally does not comment on matters before courts and tribunals. This is to avoid possible prejudice to legal proceedings.

Accordingly, I claim public interest immunity over the answers to the questions.

*Palmer v Western Australia* is set down for hearing by the Full Court of the High Court on 3 and 4 November 2020. Following the finalisation of this and any related matters, including questions of costs, my department would be able to provide further details about costs to the Committee.

Yours sincerely

**The Hon Christian Porter MP**  
Attorney-General  
Minister for Industrial Relations  
Leader of the House