



**SENATOR THE HON LINDA REYNOLDS CSC
MINISTER FOR THE NATIONAL DISABILITY INSURANCE SCHEME
MINISTER FOR GOVERNMENT SERVICES
SENATOR FOR WESTERN AUSTRALIA**

MB21-000053

Senator Rachel Siewert
Senator for Western Australia
Chair of Community Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Senator ~~Siewert~~ *Rachel*

Public Interest Immunity Claim – Income Compliance Program

I am writing to reiterate the former Minister for Government Services', the Hon Stuart Robert MP, claim for public interest immunity in respect of information about legal advice relating to the Income Compliance Program that may be made by Senators arising out of the 2021 Additional Estimates spill over hearings. In addition, I also reiterate the claim for Public Interest Immunity in respect of any deliberations of Cabinet in relation to the Income Compliance Program.

Disclosure of information relating to Legal Advices

The claim over information relating to legal advices has been made on two grounds. The first being the possible prejudice to the Commonwealth in relation to its conduct of litigation relating to the Income Compliance Program. The second being the long held practice of claiming privilege over legal advice (and associated documents) obtained in the course of normal decision making processes of government.

I note that even though the class action has resolved, as recognised by the Federal Court on 11 June 2021, not all potential claims arising out of the Income Compliance Program will be resolved though the class action. This is because a significant number of class members opted out of the class action and are free to bring their own individual claim, should they wish to.

The second ground for claiming privilege is grounded in the importance of government being able to obtain legal advice in relation to normal decision making functions, without the risk of that advice or the information relating to that advice being disclosed. If such a risk existed it could prevent governments from appropriately seeking and obtaining such legal advice. The availability of frank legal advice to decision makers within government is a core plank of good decision making and should be protected as a fundamental principle of good government.

Accordingly, I am reiterating the public interest immunity claim covering all legal advice (including drafts) provided by internal or external lawyers to Ministers, departments and agencies in relation to the Income Compliance Program or in connection with the class action or potential litigation (including administrative review matters) relating to the Income Compliance Program.

The claim extends to but is not limited to:

- the dates legal advice was sought and provided
- the identity of the person, agency or firm who provided legal advice
- the costs of legal advice where issues remain to be resolved
- the dates and content of any briefings or meetings (including Ministerial briefings and Ministerial meetings) that relate to legal advice
- instructions to lawyers; and
- any legal advice provided in relation to the modification or enhancement of the Income Compliance Program.

This position is consistent with past practice over many years and under different governments.

Former Attorney-General, the Hon Gareth Evans QC, told the Senate:

Nor is it the practice or has it been the practice over the years for any government to make available legal advice from its legal advisers made in the course of the normal decision making process of government, for good practical reasons associated with good government and also as a matter of fundamental principle.

More recently, former Attorney-General, Mr George Brandis QC said:

What it represents is both a statement of the universal practice of all Australian governments since Federation in relation to legal advice, subject in exceptional circumstances to waiver, I acknowledge, but that is something that is seldom done and is never done, nor should be done, if the advice to government is that the publication of the advice would prejudice the legal position of the Commonwealth.

Disclosure of the deliberations of Cabinet

There have been previous requests made by the Senate Community Affairs References Committee (the Committee) and the Senate, for a copy of the Executive Minute to the Minister for Social Services, dated 12 February 2015 (the Minute) that was referred to in the Commonwealth Ombudsman's 2017 report into Centrelink's automated debt raising and recovery system.

Providing a copy of the Minute or information about the content of the Minute would or could reasonably be expected to disclose the deliberations of the Cabinet. On that basis, I reiterate the Public Interest Immunity claim in relation to any request for a copy of the Minute or for information about the content of the Minute.

It is in the public interest for the deliberations of the Cabinet not to be made public. The deliberations of the Cabinet and its committees should be conducted in secrecy so that the freedom of those deliberations can be preserved. It is not in the public interest to disclose information about the Cabinet's deliberations as it may impact on the Australian Government's ability to receive confidential information and make appropriate decisions impacting on the Australian community. This is a well-established basis for a Public Interest Immunity claim.

Further, I note that in interlocutory hearings in the class action, the Australian Federal Court upheld claims of Public Interest Immunity in relation to documents such as Cabinet materials, including the Minute.

Yours sincerely

Linda Reynolds