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

Senator Anthony Chisholm
Chair of the Select Committee of the Administration of Sports Grants
Parliament House
CANBERRA ACT 2600

Dear ~~Senator Chisholm~~,

I write to you in relation to a number of questions taken on notice by my department during the hearing of the Select Committee of the Administration of Sports Grants.

On 2 September 2020, Senator Nita Green and Senator Janet Rice asked questions relating to the Minister for Sport's role in funding decisions under the Community Sport Infrastructure Program. Some of the questions asked went to the nature and content of my, and my Office's, consultation with lawyers of the Australian Government Solicitor with respect to the issue of the Minister for Sport's legal authority.

It has been the long-standing practice of successive Australian Governments not to disclose privileged legal discussions. This practice has previously been outlined by the Hon Gareth Evans QC:

> …[n]or 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 … (*Senate Hansard,* 28 August 1995, page 466);

Former Senator, the Hon Joe Ludwig, put the position as follows:

> To the extent that we are now going to go to the content of the advice, can I say that is has been a longstanding practice of both this government and successive governments not to disclose the content of advice. (Senate Legal and Constitutional Affairs Legislation Committee, *Hansard* of Estimates hearing, 26 May 2011, page 161); and

The Hon Philip Ruddock MP stated:

> …It is not the practice of the Attorney to comment on matters of legal advice to the Government. Any advice given, if it is given, is given to the Government… (*House of Representative Hansard*, 29 March 2004, page 27405)

The Government maintains that it is not in the public interest to depart from this established position. It is integral that privileged legal discussions between Ministers, their officers and

government lawyers remain confidential. The confidential nature of such discussions is, in practical terms, critical to the development of sound Commonwealth policy and robust law-making.

The specific harm that the doctrine of legal professional privilege seeks to prevent is the harm to the administration of justice that would result from the disclosure of confidential interactions between lawyer and client. Both the High Court of Australia and the Federal Court of Australia have confirmed that legal professional privilege promotes the public interest by enhancing the administration of justice, facilitating freedom of consultation and encouraging full and frank disclosure between clients and their legal advisers.[1]

Yours sincerely

[redacted]

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

[1] *Grant v Downs* (1976) 135 CLR 674, *Waterford v Commonwealth* (1986) 163 CLR 54, *Esso Australia Limited v Federal Commissioner of Taxation* (1999) 201 CLR 49.