



The Hon Stuart Robert MP
Minister for the National Disability Insurance Scheme
Minister for Government Services

13 August 2020

Senator Rachel Siewert
Chair
Community Affairs References Committee
Parliament House
CANBERRA ACT 2600

Dear Chair

A handwritten signature in black ink that reads 'Rachel' in a cursive script, written over the printed name 'Rachel Siewert'.

Public Interest Immunity Claim – Income Compliance Programme – Additional information

During the Committee hearing on 31 July 2020, Ms Kathryn Campbell AO CSC, Secretary of the Department of Social Services, tabled my letter dated 29 July 2020 claiming public interest immunity on behalf of the Government in respect of any requests for information about legal advice relating to the Income Compliance Programme (PII letter).

I note that at the hearing the Committee did not accept the claim and decided to refer this to the Senate.

During the hearing, Members sought additional information about the specific harm to the public interest that may arise if information about relevant legal advice (including the cost, timing and provider of such legal advice) was disclosed, in the context of the current *Prygodicz & Ors v Commonwealth* class action in the Federal Court (the class action). That additional information is set out below.

Specific harm to the public interest from disclosure

As stated in the PII letter, disclosure of legal advice could result in undue prejudice to the Commonwealth in the class action. Disclosure would also result in the loss of confidentiality of interactions between the Commonwealth and its legal advisers. For these reasons, disclosure would not be in the public interest.

I acknowledge that in many circumstances information about legal advice (such as the cost, timing and provider of such advice) can be disclosed to a Senate Committee without specific harm to the public interest flowing from that disclosure. However, that position is different in these circumstances because of the issues that are central to the class action.

As set out in the PII letter, the claims of the applicants in the class action include a negligence claim for damages. Possible additional claims for exemplary damages and misfeasance in public office have also been foreshadowed.

The applicants have said, in public hearings of the litigation, that the legal knowledge of the Commonwealth or Commonwealth officials at particular times would be relevant to determination of these claims. Information about the cost, timing and provider of relevant legal advice relates directly to that issue. While any evidence given to the Committee would be covered by Parliamentary Privilege and not admissible in the Federal Court to prove the matters to which the evidence relates, the disclosure of this information under these specific circumstances could potentially prejudice the Commonwealth's position in the litigation. It would therefore not be in the public interest for the information to be publicly disclosed.

I have considered whether the possible harm to the public interest could be avoided if information about relevant legal advice was provided to the Committee as in camera evidence. Even if evidence is taken in camera, the evidence may later be published. I have decided that, given the potential magnitude of the applicants' claims in the class action, there may still be harm to public interest if the relevant information was provided as in camera evidence.

I trust this additional detail will be of assistance for any further consideration by the Committee of the public interest immunity claim as set out in the PII letter.

Yours sincerely

Stuart Robert