

Statement

Chair – given the existence of a Public Interest Immunity Claim in relation to all matters that are the subject of this investigation and the fact that the Registered Organisations Commission’s investigation of the AWU is the subject of court proceedings and is therefore sub-judice, I would like to explain how I, the Registered Organisations Commission and the Fair Work Ombudsman are able to assist the Committee with its inquiry today.

1. AFP Investigation

On 26 October 2017, the Australian Federal Police commenced an investigation into the alleged unauthorised disclosure of information concerning the execution of search warrants obtained by the Registered Organisations Commission.

The AFP wrote to my office to confirm there is an investigation in progress over all matters that are the subject of this investigation.

This letter has been provided to the committee.

On 27 October 2017, during a supplementary budget estimates hearing of this Committee, the Attorney-General, Senator the Hon George Brandis QC, claimed public interest immunity over all matters that are the subject of this investigation.

In his claim for public interest immunity, Senator Brandis stated in his letter to the Chair of the Committee that:

“ ... Detective Superintendent Andrew Smith of the Australian Federal Police has written to Senator Cash’s Office in the following terms: As this matter (the unauthorised disclosure) is under investigation, it would not be appropriate to discuss the matter further”.

The letter goes on to say that the statement by Detective Superintendent Smith establishes that there is an Australian Police investigation in progress.

It further establishes that provision of information in relation to the matters that are the subject of investigation would have the potential to affect the conduct of that investigation.

The letter states, “It should be inferred that a senior officer of the AFP such as Detective Superintendent Smith would not make such a judgement lightly or without good cause. Detective Superintendent Smith is in a better position to judge likely prejudice to an investigation than members of the Senate Committee”.

The Attorney’s claim for public interest immunity also went on to say that:

- “...Were the Committee to continue to inquire and seek evidence regarding matters that are subject of the investigation, such disclosure may:
- inhibit the provision of information by potential witnesses;
 - influence lines of inquiry by police or the evidence of witnesses (in that witnesses may tailor their evidence in response to matters discussed by the committee); or
 - disclose avenues of inquiry, including potential suspects”.

Consistent with the Attorney’s claim, neither I, nor any officer who may be called before the Committee, will be answering questions in relation to that matter, as it may prejudice the AFP’s ongoing investigation.

This includes discussions about what information may or, may not, be within the scope of the investigation and which individuals may, or may not, be within the scope of the investigation

In conformity with that claim, and the advice of the AFP – we will not be commenting on any assertions that something or other is, or is not, related to the AFP investigation.

Until the conclusion of the investigation, we are unable to discuss these matters.

2. Legal proceedings between AWU, ROC and AFP

It is a matter of public record that on 12 August 2017, *The Weekend Australian* published a story about AWU donations to the political organisation *Get Up*.

It is also on the public record that on 15 August 2017, I wrote to the Registered Organisations Commissioner, Mr Mark Bielecki, and requested that consideration be given to investigating a donation made by the Australian Workers’ Union to the political organisation *Get Up*.

As the basis for the Commission's investigation of this matter is currently being contested before the Federal Court – the sub judice rule precludes discussion of matters which are the subject of the proceedings or evidence or contention before that Court.

It would therefore be inappropriate for me, or officers at the table, to canvass any of those matters.

To avoid the significant risk of prejudicing or prejudging matters that are before the Court, I and the officers at the table will not answer questions about matters before the court or if necessary, we will take on notice any questions that go to the ROC's investigation into the AWU or that litigation – and take legal advice before responding to them.

Obviously, neither I nor officers at the table will be answering questions that could prejudice investigations carried out by these agencies pursuant to their enabling statutes, or prejudice legal proceedings that might arise from those investigations.

This would include questions that could identify any confidential source of information in relation to the enforcement or administration of the law, or disclose lawful methods or procedures for preventing, detecting or dealing with matters arising out of breaches or evasions of the law, where to do so would be reasonably likely to prejudice the effectiveness of those methods or procedures.

If in doubt, I and the officers will take the question on notice, with a view to obtaining appropriate legal advice.

Thank you.