



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

Ref: MS20-000931

23 October 2020

Senator Wendy Askew  
Chair  
Community Affairs Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Chair

**Public Interest Immunity Claim – Income Compliance Program**

Thank you for your letter of 30 April 2020 confirming the Senate Community Affairs Legislation Committee accepted the Government's claim of public interest immunity (PII) in relation to legal advice about the Income Compliance Program (the Program).

Further requests for information about legal advice relating to the Program may arise out of the Budget Estimates 2020-21 hearing, including questions on notice.

The Government understands and accepts that there is significant public interest in the matters related to the Program. I note that I have submitted a number of PII claims in relation to information requested by Senators on the administration of the Program. I have also endeavoured to keep the Senate and its Committees updated about matters relevant to the PII claims.

As you would be aware, there is currently a legal proceeding in relation to the Program before the Federal Court, *Prygodicz & Ors v Commonwealth of Australia* (class action), and the number of claims continue to evolve through this Federal Court action.

In considering the evolving nature of the class action, the Commonwealth has continued to review its position in relation to the prejudice it may face in defending the claims if certain documents were made public.

In light of this, I reiterate the PII claim made over the matters set out in my letter to you as Chair of the Committee of 2 April 2020. The Government continues to take the view that it would not be in the public interest for the matters covered by the claim to become public on the basis of:

- undue prejudice to the Commonwealth in relation to the class action currently before the Federal Court
- the need to maintain confidentiality of interactions between lawyers and Government clients.

Since my letter of 2 April 2020, on 16 September 2020, the Applicants in the class action were given leave by the Federal Court to file a second further amended statement of claim. This amended statement of claim alleges that the Commonwealth had actual knowledge that the Program was not lawful. The Applicants have alleged that particular Ministers and senior APS employees had such knowledge.

Given the nature of the allegations now being made by the Applicants in the class action, the content and timing of any legal advice provided in relation to the Program is directly relevant to the issues to be considered by the Federal Court in the proceedings in the clearest possible way. Disclosing the content of any legal advice, or the date any legal advice was given, would obviously have the potential to prejudice the Commonwealth's ability to defend itself in relation to the claims made by the Applicants.

The practice of not disclosing legal advice that may have been received where this would prejudice litigation has been the practice of successive governments. For example, similar concerns were highlighted by then Attorney-General, the Hon Nicola Roxon, in 2012 when she stated:

I am really not able to go into each stage of the legal advice that we have been provided with at different times. It is before the court. The legal advice is subject to legal professional privilege... (House of Representatives Hansard, 11 October 2012, page 12100)

#### Disclosure of the deliberations of Cabinet

There have also been requests made by the Community Affairs References Committee 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. I note that on 13 August 2020, I submitted a PII claim in relation to the requests made by the References Committee for the Minute.

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 am making a PII claim in relation to the provision of the Minute and for information about the content of the Minute.

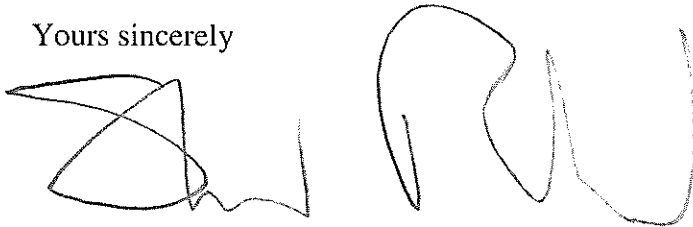
It is in the public interest for the deliberations of the Cabinet not to be made public. The deliberations of the Cabinet and its committees should be conducted in secrecy so that the freedom of those deliberations can be preserved. It is not in the public interest to disclose information about the Cabinet's deliberations as it may impact on the 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.

This type of claim for public interest immunity in relation to materials supporting Cabinet deliberation and decision making has also been consistent practice across successive governments, and was supported by the then Minister for Climate Change and Water, Senator the Hon Penny Wong in 2008 when she stated:

*Last week the government opposed a motion for a Senate order for me to produce departmental documents relating to management options for the lower lakes. The government did so on the basis of extensive precedents including those set by the previous government where advice to government of a similar nature—that is, for the purposes of government's deliberative processes—had not been provided on the order of the Senate. Those opposite cannot possibly take issue with that. (Senate Hansard, 1 September 2008, page 4176)*

Further, I note that in interlocutory hearings in the class action, the Federal Court has upheld claims of public interest immunity in relation to documents such as the Minute.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stuart Robert', with a large, stylized initial 'SR' to the right.

**Stuart Robert**