



SENATOR THE HON JENNY McALLISTER
ASSISTANT MINISTER FOR CLIMATE CHANGE AND ENERGY

Senator Raff Ciccone
Chair of Foreign Affairs, Defence and Trade Legislation Committee
Senate
Parliament House
CANBERRA ACT 2600

Dear Chair

PUBLIC INTEREST IMMUNITY CLAIM – QUESTIONS ON NOTICE 8 AND 12

Please find enclosed a letter from the Deputy Prime Minister and Minister for Defence, the Hon Richard Marles MP, relating to Senate Estimates Portfolio Questions on Notice 8 and 12 from Senators Lambie and Roberts asked during the May 2023 Budget Estimates hearings.

Yours sincerely

Senator the Hon Jenny McAllister
Assistant Minister for Climate Change and Energy

Enclosure:
Attachment A – Senate Estimates Portfolio Questions on Notice 8 and 12 PII



**THE HON RICHARD MARLES MP
DEPUTY PRIME MINISTER
MINISTER FOR DEFENCE**

Senator the Hon. Jenny McAllister
Assistant Minister for Climate Change and Energy
PO Box 6100
Senate
Parliament House
Canberra ACT 2600

Dear Senator McAllister, *Jenny*

Pursuant to the Order of the Senate, 13 May 2009, Public Interest Immunity Claims, I write regarding the questions asked by Senators Lambie and Roberts during the Budget Estimates hearing of the Senate Foreign Affairs, Defence and Trade Legislation Committee on 30 and 31 May 2023.

The Senators requested information relating to the Chief of the Defence Force's (CDF) consideration of honours and awards presented to individuals who held command positions during Australia's involvement in the Afghanistan conflict.

Specifically, Senator Lambie sought copies of the correspondence between the CDF and the individuals subject to the CDF's review. Senator Roberts sought information on the category of honours subject to review, and whether the Distinguished Service Cross was among them.

The questions were taken on notice by you as the representing Minister at the table (portfolio questions 8 and 12). The information and documents requested directly relate to a matter of state currently under consideration and the public interest in their disclosure to the Senate is outweighed by the public interest in preserving the secrecy or confidentiality of the information.

Harm to the public interest

The Albanese Government is committed to implementing the recommendations of the Inspector-General of the Australian Defence Force's Afghanistan Inquiry Report (The Brereton Report) to the fullest extent possible. The CDF undertook his consideration of this matter following a direction from me to develop a pathway to address the remaining recommendations.

Following his consideration, the CDF has provided his recommendations to me, in my capacity as Minister for Defence. My consideration of this matter remains ongoing. My ability to consider this matter and make a decision and recommendation to the Governor-General will be prejudiced with the premature publication of the identity of these individuals, or details relating to the circumstances of their medal.

Due to the personalised nature and specificity of the correspondence, appropriate redactions to protect the privacy of the individuals concerned are not possible. Redactions of the nature required to ensure their identity is not inadvertently revealed would render the correspondence of little or no value to the Committee.

Details relating to the advice provided to me is directly relevant to the decision on foot. The possible prejudice to the Government's ability to consider the advice and make a recommendation exists even if the documents were redacted or provided to the Committee in confidence.

I am advised that the identification of these individuals may cause them to be subject to reprisals from various groups potentially causing a physical harm to them, given the nature of the issues at hand.

The specific harm that the public interest immunity convention seeks to prevent is the harm to the administration of justice that would result from the disclosure of this information. In relation to this matter it would cause considerable harm to the integrity of this ongoing process. This is particularly the case for the individuals whom I may choose to not make a recommendation for cancellation, including those who may be currently serving in the Australian Defence Force.

Noting the above, the Government is of the view that it would not be in the public interest for the matters covered by this public interest immunity claim to become public.

I trust this information is of assistance to the Committee and I would appreciate your assistance in conveying this letter to the Chair.

Yours sincerely

RICHARD MARLES

11/9/23