



Australian Government
Attorney-General's Department

Access to Justice Division

10/17806

23 November 2010

Ms Julie Dennett
Committee Secretary
Senate Standing Committee on Legal and
Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Ms Dennett

Inquiry into Evidence Amendment (Journalists' Privilege) Bills 2010

Thank you for the opportunity to participate in the public hearing last week for the Committee's inquiry into the Evidence Amendment (Journalists' Privilege) Bills 2010. Please find attached responses to the questions on notice raised by the Committee at the public hearing on 18 November 2010.

In addition to these responses, the Committee requested that the Department draw to its attention any case law that may be relevant to the definitional issues canvassed during the hearing. I noted during the hearing that the New South Wales case of *NRMA v John Fairfax* [2002] NSWSC 563 discussed the meaning of 'professional capacity' (see page 20 of the Committee Hansard). That case referred to *Prestia v Aknar* (1996) 40 NSWLR 165, which considered the meaning of 'professional activity'.

The action officer for this matter is _____ who can be contacted on _____

Yours sincerely

Matt Minogue
A/g First Assistant Secretary
Access to Justice Division

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
INQUIRY INTO EVIDENCE AMENDMENT (JOURNALISTS' PRIVILEGE) BILLS

Responses to Questions on Notice from Public Hearing, 18 November 2010

Senator Brandis asked the following question:

On what date were officers of your department first asked by the government to examine each of these two bills?

The answer to the honourable senator's question is as follows:

The Government referred a draft of the Evidence Amendment (Journalists' Shield) Bill 2010 to the Department on 22 September 2010. The Department became aware of the content of the Evidence Amendment (Journalists' Shield) Bill 2010 (No. 2) when it was introduced on 29 September 2010.

Senator Brandis asked the following questions:

- (i) Were those drafting instructions ever sent to the Office of Parliamentary Counsel?
- (ii) Could the drafting instructions be produced?

The answers to the honourable senator's questions are as follows:

- (i) The initial drafting instructions were sent to the Office of Parliamentary Counsel on 15 September 2010.
- (ii) The Department is not able to produce the drafting instructions on the basis that the Attorney-General considers disclosure would not be in the public interest. Public interest immunity is claimed on the grounds that the drafting instructions would disclose matters relating to advice prepared and consultation that took place for the purposes of the deliberative processes involved in the functions of Government. Disclosure of policy considerations about potential alternative legislative measures would be contrary to the public interest.