



7 November 2020

Secretariat
Senate Select Committee on Administration of Sports Grants
Parliament House
Canberra 2600

Dear Ms Cohen

I recently considered correspondence to the Committee from the Attorney-General, Mr Christian Porter, concerning the provision to the Senate of legal discussions (the word advice or opinion was not used by Mr Porter) on the capacity of the former sports minister to make grant decisions.

The Attorney-General there outlined the need to protect the doctrine of legal professional privilege and he drew from High Court and Federal Court judgements to support that view. One could infer from Mr Porter's comments that courts would not support a Senate demand that Government legal advice be provided.

On the face of it, this advice appeared to conflict with my testimony to the Committee, on Monday, 2 November.

So, if the Senate, as a body, required the government to table cabinet documents or documents that the government claimed were legally privileged, I am confident, looking at the past judgements by the High Court, 7-0, that the government would be obliged to table those documents in the Senate.

In revisiting material related to my evidence, I have discovered an error in my evidence. A better expression of my views is below.

In *Egan v Willis and Cahill* (1998, 195 CLR 424), the High Court held, with one dissenting judgement, that the NSW Legislative Council could demand government documents if that were reasonably necessary for the Council's legislative and oversighting roles. The judgements did not canvass matters of public interest immunities.

In a subsequent case, *Egan v Chadwick and Others* (1999, NSWLR 563), the NSW Court of Appeal considered the power of the upper house when the government documents it required were the subject of legal professional privilege. The Appeal Court unanimously held that the Legislative Council had the power to demand such documents.

I believe these judgements would apply to the powers of the Senate.

Yours sincerely

A C Harris