



**Senator Chris Evans**  
Leader of the Government in the Senate  
Minister for Tertiary Education, Skills, Science and Research

Senator Helen Polley  
Chair, Senate Finance and Public Administration Committee  
Parliament House  
CANBERRA ACT 2600

Dear Senator Polley *Helen*

**Documents sought at the Finance and Public Administration Estimates hearings on 15 October 2012**

At the Estimates hearings on 15 October 2012, a member of the Committee asked the Official Secretary to the Governor-General for access to documents relating to the Order of Australia.

On 18 October 2012, the Clerk of the Senate provided me with advice specifically in relation to the making of claims of public interest immunity by, or on behalf of, the Official Secretary to the Governor-General. In particular, I note the Clerk's advice that the position of Official Secretary is a unique one and that the position is established under section 6 of the *Governor-General Act 1974*. I also note the Clerk's advice that it would be more consistent with Senate practice and constitutional principle for the Official Secretary to offer any claim of public interest immunity directly to the committee, rather than a Minister of State making the claim on his behalf.

However, having given careful consideration to the request, I consider that it is not appropriate or necessary to make a claim of public interest immunity.

Senate Standing Order 165 states, in part, that when the royal prerogative is concerned in any document required by the Senate an address shall be presented to the Governor-General requesting that the document be laid before the Senate. I note that Odgers' *Senate Practice* states that this procedure is of ancient origin and has not been used since 1914.

The Order of Australia is established by royal prerogative. Her Majesty the Queen issued Letters Patent in 1975 to establish the Order. The Constitution of the Order of Australia, made under the Letters Patent, provides that the Governor-General of the Commonwealth of Australia shall be the Chancellor of the Order and the Principal Companion in the General Division. The Chancellor is charged with the administration of the Order. The Constitution of the Order also establishes the Council for the Order of Australia (the Council).

The Council considers nominations of Australian citizens for appointment to the Order and for the award of the Medal of the Order; makes recommendations to the Governor-General in relation to those nominations; and advises the Governor-General on such other matters concerning the Order as the Governor-General may refer to the Council for consideration.

The Constitution of the Order provides that there shall be a Secretary of the Order who shall be appointed by the Governor-General. The role of the Secretary is to maintain the records of the Order and of the Council and to perform such other functions in respect of the Order as the Governor-General directs. The Secretary of the Order is currently Mr Stephen Brady CVO. The role of Secretary of the Order is distinct from the office of Official Secretary to the Governor-General.

The Constitution of the Order also states that 'Nothing in this Constitution limits the right of the Governor-General to exercise all powers and authorities of the Sovereign in respect of the Order' (s. 10).

I note that the Office of the Official Secretary has sought to assist the committee by providing a range of publicly available material including the Constitution of the Order and related Ordinances. I also note that the Office has also published a range of other information and documents regarding the Australian honours system and processes to enhance transparency and accountability to the maximum extent possible without compromising the confidentiality of the system itself.

I understand that the documents being sought are 'working manuals, policy guidelines and other criteria ...in relation to assessment of a recommendation to the Order of Australia'. The nature of the documents being sought has been canvassed at Estimates hearings on a number of occasions.

It is clear that the documents being sought relate to the Order of Australia, which is established by royal prerogative.

Noting the Clerk's advice, I am not seeking to make a claim of public interest immunity. However, noting the availability of SO 165, I consider that is inappropriate for the Committee to persist in seeking documents concerning the royal prerogative.

Yours sincerely

Chris Evans

27 November 2012