



STANDING COMMITTEE ON COMMUNITY AFFAIRS
References Committee

Centrelink's compliance program

Interim report

This interim report is to inform the Senate about a claim for public interest immunity received in the course of the Senate Community Affairs References Committee (committee) inquiry into Centrelink's compliance program.

On 16 December 2019, the committee held a public hearing for the inquiry and received evidence from the then Department of Human Services, now Services Australia. Following this hearing, the committee placed further written questions on notice to Services Australia. Answers to all questions on notice were due on 24 January 2020, however an extension was granted until 7 February 2020 in consideration of Services Australia's involvement in bushfire emergency relief.

On 24 January 2020, the committee received correspondence from the Hon Stuart Robert MP, Minister for Government Services (minister), concerning questions taken on notice regarding legal advice sought and received in relation to the compliance program.¹ The minister sets out a claim of public interest immunity in relation to:

... the confidential legal advice ... and the details surrounding any such advice, including the frequency at which that legal advice has been sought, the source of any such advice and the dates it may have been provided.

The committee considers that the correspondence outlining the minister's claim, which appears to be made on the grounds of legal professional privilege and prejudice to legal proceedings, does not sufficiently justify that the provision of this information to the committee would cause harm to the public interest.

The committee notes that legal professional privilege has not been accepted in the Senate as grounds for refusing to provide information or documents. The Senate has rejected government claims that there is a long-standing practice of not disclosing legal advice; legal advice to the federal government is often disclosed by the government itself.²

¹ [The Hon Stuart Robert MP, Public Interest Immunity Claim, received 24 January 2020.](#)

² *Odgers' Australian Senate Practice*, 14th edition, p. 669.

Regarding prejudice to legal proceedings, the committee recognises that this may be an accepted ground for refusing to provide documents.³ The committee notes the minister's claim that disclosure of the information may materially affect the Commonwealth's position in the proceedings of a class action currently before the Federal Court. However, the committee is not satisfied that the minister's correspondence explains the specific harm to the public interest that would result.

The committee also notes that the minister's correspondence does not conform with the requirements for public interest immunity claims under Procedural Order 10(4), as it fails to address whether the perceived harm to the public interest could result only from the publication of the information, or could result equally or in part from *in camera* disclosure to the committee.

As a result, the committee has resolved that the minister's claim for public interest immunity does not sufficiently justify withholding the information requested by the committee.

The committee considers that the requested information is vital evidence for the inquiry into Centrelink's compliance program, as it goes to the legal foundation of the program and its administration.

Recommendation

The committee recommends that the Senate adopt the following resolution requiring the production of documents:

That there be laid on the table by the Minister representing the Minister for Government Services no later than 10 am on 24 February 2020, responses to all questions placed on notice by Senators Siewert and O'Neill relating to legal advice and Centrelink's compliance program. This includes, but is not limited to, questions about:

- **meetings and/or briefings between the Minister and Services Australia in relation to the current legal proceedings regarding Centrelink's compliance program;**
- **the frequency and dates of legal advice obtained by Services Australia from the Solicitor-General, Australian Government Solicitor, departmental lawyers, and external counsel and/or solicitors in relation to any aspect of the compliance program and, specifically, whether a debt or debt components is able to be founded on extrapolations from Australian Taxation Office records;**
- **legal advice about the lawfulness of debt or debt components solely based on extrapolations from Australian Taxation Office records;**
- **legal advice in relation to liability for the death of any Australian who received a debt notice under the compliance program; and**

³ Odgers' *Australian Senate Practice*, 14th edition, p. 662–3.

- the cost of legal advice in relation to the compliance program.

Senator Rachel Siewert
Chair