

Archived: Thursday, 19 August 2021 2:22:21 PM
From: Smith Philip
To: HALLINAN David
Subject: Public Interest Immunity [SEC=UNOFFICIAL]
Sensitivity: Normal

UNOFFICIAL

Dave – quick update on PII.

47C

Happy to discuss

Phil Smith

First Assistant Secretary • Infrastructure Investment Division
Philip.Smith2@infrastructure.gov.au
P +61 2 6274 7209 • 47F
GPO Box 594 Canberra, ACT 2601

Department of Infrastructure, Transport, Regional Development and Communications
CONNECTING AUSTRALIANS • ENRICHING COMMUNITIES • EMPOWERING REGIONS

infrastructure.gov.au



*I would like to acknowledge the traditional custodians of this land on which we meet, work and live.
I recognise and respect their continuing connection to the land, waters and communities.
I pay my respects to Elders past and present and to all Aboriginal and Torres Strait Islanders.*

UNOFFICIAL

Archived: Monday, 23 August 2021 1:07:21 PM
From: SAVAGE James
To: Smith Philip
Subject: Tabling of legal advice [SEC=OFFICIAL]
Sensitivity: Normal

OFFICIAL

Are you happy with:

s47C



OFFICIAL

From: MANSON Hilary <Hilary.Manson@infrastructure.gov.au>
Sent: Friday, 16 July 2021 9:48 AM
To: HALLINAN David <David.Hallinan@infrastructure.gov.au>
Cc: Smith Philip <Philip.Smith2@infrastructure.gov.au>; SAVAGE James <James.Savage@infrastructure.gov.au>
Subject: RE: Letter to Secretary Atkinson [SEC=OFFICIAL]

OFFICIAL

Hi Dave

s42 - LPP



Regards

Hilary

OFFICIAL

From: HALLINAN David <David.Hallinan@infrastructure.gov.au>
Sent: Thursday, 15 July 2021 4:51 PM
To: MANSON Hilary <Hilary.Manson@infrastructure.gov.au>
Cc: Smith Philip <Philip.Smith2@infrastructure.gov.au>; SAVAGE James <James.Savage@infrastructure.gov.au>
Subject: FW: Letter to Secretary Atkinson [SEC=OFFICIAL]

OFFICIAL

Hello

Please see attached request from Senator Rice seeking we table certain documents or information. s42 [REDACTED]

Many thanks

D

OFFICIAL

From: SEDGWICK Ashley <Ashley.Sedgwick@infrastructure.gov.au>
Sent: Thursday, 15 July 2021 3:41 PM
To: HALLINAN David <David.Hallinan@infrastructure.gov.au>; Smith Philip <Philip.Smith2@infrastructure.gov.au>; SAVAGE James <James.Savage@infrastructure.gov.au>
Cc: s22 [REDACTED]
Subject: FW: Letter to Secretary Atkinson [SEC=OFFICIAL]

OFFICIAL

Hi all

Please see attached request from Sen Rice ahead of Monday's hearing, for your consideration/advice please.

Thanks,
Ashley

OFFICIAL

From: Senate Estimates <senate.estimated@infrastructure.gov.au>
Sent: Thursday, 15 July 2021 3:20 PM
To: s22 [REDACTED]; SEDGWICK Ashley <Ashley.Sedgwick@infrastructure.gov.au>
Cc: Senate Estimates <senate.estimated@infrastructure.gov.au>
Subject: FW: Letter to Secretary Atkinson [SEC=OFFICIAL]

OFFICIAL

Hi Ashely and s22

The attached was sent to the Secretary directly, but just forwarding to you both for visibility.

Would you like me to forward through to James Savage?

Regards,

s22

Assistant Director • Ministerial and Parliamentary Services • People, Governance, Parliamentary and Communication Division

s22

GPO Box 594 Canberra, ACT 2601

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OFFICIAL

From: Dale, Tarek (Sen J. Rice) <Tarek.Dale@aph.gov.au>

Sent: Thursday, 15 July 2021 3:07 PM

To: ATKINSON Simon <Simon.Atkinson@infrastructure.gov.au>

Cc: Senate Estimates <senate.estimated@infrastructure.gov.au>; RRAT, Committee (SEN) <RRAT.Sen@aph.gov.au>; Rice, Janet (Senator) <Senator.Rice@aph.gov.au>

Subject: Letter to Secretary Atkinson

Dear Secretary Atkinson

Please find attached a letter from Senator Rice, ahead of the hearing on Monday. If you or your department require anything further, please let us know.

Warm regards

22

22 | Policy and Parliamentary Adviser

Office of Senator Janet Rice

Australian Greens Senator for Victoria

Pronouns – He/Him

Shop 2-3, 26 Lygon St Brunswick East 3057 T (03) 9381 1446 / 22

Suite S1 58, Parliament House, Canberra T 22

22 W janet-rice.greensmps.org.au

Facebook - facebook.com/Janet.Rice.Greens

Twitter - [@Janet_Rice](https://twitter.com/Janet_Rice)

The Office of Senator Janet Rice respectfully acknowledges the Traditional Owners and Custodians of the Country on which we work.

s22

From: MANSON Hilary
Sent: Friday, 23 July 2021 11:05 AM
To: SAVAGE James
Cc: Smith Philip; **s22**
Subject: RE: Draft brief for Minister Fletcher - Public Interest Immunity on ANAO UCF audit [SEC=PROTECTED, CAVEAT=SH:CABINET]
Attachments: MS - FLETCHER - Letter for Submisison - MP or Senatorhm.DOCX; Min Fletcher UCF CCF Brief July 2021hm.docx

PROTECTED, SH:CABINET

Hi James – **s42**
Regards
Hilary

PROTECTED, SH:CABINET

From: SAVAGE James <James.Savage@infrastructure.gov.au>
Sent: Friday, 23 July 2021 9:42 AM
To: MANSON Hilary <Hilary.Manson@infrastructure.gov.au>
Cc: Smith Philip <Philip.Smith2@infrastructure.gov.au>; **s22** <**s22**@infrastructure.gov.au>
Subject: FW: Draft brief for Minister Fletcher - Public Interest Immunity on ANAO UCF audit [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED, SH:CABINET

s42

s42

James Savage

A/g Assistant Secretary • Program, Policy and Budget • Infrastructure Investment Division

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PROTECTED, SH:CABINET

From: s22 <[REDACTED]@infrastructure.gov.au>

Sent: Thursday, 22 July 2021 7:13 PM

To: SAVAGE James <James.Savage@infrastructure.gov.au>

Subject: Draft brief - Public Interest Immunity [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED, SH:CABINET

Hi James

See attached for your review a draft brief and letter re public interest immunity. s47C

Cheers



Director • Strategic Communications and Implementation Policy
Program, Policy and Budget Branch • Infrastructure Investment Division



GPO Box 594 Canberra, ACT 2601

Department of Infrastructure, Transport, Regional Development and Communications
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https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Brief_Guides_to_Senate_Procedure/No_12

https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/d00/Procedural_orders_of_continuing_effect/d04#Procedural-orders_10

https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_19

PROTECTED, SH:CABINET

s42



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PARLIAMENT OF AUSTRALIA • HOUSE OF REPRESENTATIVES

PAUL FLETCHER MP

Federal Member for Bradfield
Minister for Communications,
Urban Infrastructure,
Cities & the Arts

MS21-001186

Senator Susan McDonald
Chair
Rural and Regional Affairs and Transport Legislation Committee
Parliament House
Canberra ACT 2600

Dear Senator ^{Susan}

Public Interest Immunity Claim – Documents relating to the National Commuter Carpark Fund

I refer to letters to the Secretary of the Department of Infrastructure, Transport, Regional Development and Communications, Mr Simon Atkinson, from Senator Rice and Senator Sterle, requesting the tabling of legal advice and spreadsheets related to administration of the National Commuter Carpark Fund at the Rural and Regional Affairs and Transport Legislation Committee Hearing of 19 July 2021.

I understand that the Department has tabled information in response to Senator Rice's request for the Benefit Cost Ratio tool and details from the Infrastructure Management System on carpark projects.

Request for spreadsheets referred to in the Auditor General's Report no. 47 of 2020-21 'Administration of Commuter Car Park Projects within the Urban Congestion Fund'

I claim public interest immunity over the requested spreadsheets on the grounds that release of those spreadsheets would disclose the deliberations of Cabinet.

The confidence of Ministers now and into the future in the confidentiality of the Cabinet process would be diminished if the details of past Cabinet deliberations were to be disclosed prior to the open access period provided for in the *Archives Act 1983*. Disclosure of cabinet information prior to the open access period risks harm through a weakening of adherence by current and future Ministers to the formal process for confidentiality of policy proposals for consideration by Cabinet, draft and final Cabinet documents, briefing and record keeping of Cabinet.

Furthermore, unless Ministers can be assured of the confidentiality of Cabinet meetings, they may not speak freely or honestly between themselves and may be more likely to suppress their views on present policies that may be unpopular or politically challenging. Any of these outcomes would ultimately impact negatively on Australia's national interest.

Compromise of the confidentiality of Cabinet would cause current and future Ministers, as well as officials tasked to brief them about matters to be discussed, to apprehend that what was written for the purpose of Cabinet and what was discussed in meetings may not remain confidential, and therefore temper what they wrote or said in the course of Cabinet. This would undermine the process of decision-making and policy deployment in Australia, and could have a particularly chilling effect on the ability of Cabinet meetings to provide a forum in which comprehensive and candid discussion by Ministers could take place.

Request for legal advice received in relation to the treatment of carparks

I also claim public interest immunity over legal advice the Department has received in relation to the treatment of carparks under the *National Land Transport Act 2014*. These documents would be exempt from production in legal proceedings on the basis of legal professional privilege.

It has been the long-standing practice of successive Australian Governments not to disclose legal advice. This practice has previously been outlined by the Hon Gareth Evans QC:

...[n]or is it the practice or has it been the practice over the years for any government to make available legal advice from its legal advisers made in the course of normal decision making process of government, for good practical reasons associated with good government and also as a matter of fundamental principle... (Senate Hansard, 28 August 1995, page 466)

Then Senator, the Hon Joe Ludwig, put the position as follows:

To the extent that we are now going to go to the content of the advice, can I say that it has been a longstanding practice of both this government and successive governments not to disclose the content of advice. (Senate Legal and Constitutional Affairs Legislation Committee, Hansard of Estimates Hearing, 26 May 2011, page 161)

Similarly, the Hon Philip Ruddock MP stated:

...It is not the practice of the Attorney to comment on matters of legal advice to the Government. Any advice given, if it is given, is given to the Government... (House of Representatives Hansard, 29 March 2004, page 27405).

The Government maintains that it is not in the public interest to depart from this established position. It is essential that legal advice provided to the Commonwealth remains confidential. Access by Government to such confidential advice is, in practical terms, critical to the development of sound Commonwealth policy and robust law-making. Similarly, the disclosure of privileged legal advice may compromise the Commonwealth's legal position.

The specific harm that the doctrine of legal professional privilege seeks to prevent is the harm to the administration of justice that would result from the disclosure of confidential interactions between lawyer and client. Both the High Court of Australia and Federal Court of Australia have confirmed that legal professional privilege promotes the public interest by enhancing the administration of justice, facilitating freedom of consultation and encouraging full and frank disclosure between clients and their legal advisers.


Yours sincerely

A handwritten signature in blue ink, appearing to read 'P M Fletcher', with a stylized flourish at the end.

Paul Fletcher

4 / 8 / 2021

PROTECTED Sensitive: Cabinet

 <p>Australian Government Department of Infrastructure, Transport, Regional Development and Communications</p>	<p>Dispatched to MO</p> <p>02 AUG 2021</p>	<p>Ministerial Submission MS21-001186</p> <p>RECEIVED</p> <p>- 3 AUG 2021</p> <p>Office of the Minister for Communications and the Arts</p>

To: Minister for Communications, Urban Infrastructure, Cities and the Arts,
the Hon Paul Fletcher MP (for decision)

Cc: The Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development,
the Hon Barnaby Joyce MP

Subject: Request for release of Urban Congestion Fund Commuter Carpark Fund documents

Critical Date: Please action as soon as possible to table in the Senate

Recommendations for Minister Fletcher: That you:

<p>1. Sign the letter to the Chair of the Rural and Regional Affairs and Transport Legislation Committee at Attachment A.</p> <p>Minister's Signature:..... </p>	<p>Signed / Not Signed</p> <p>Date: 6/8/2021</p>
Minister's Comments	Quality Rating
	<p>1. Very Poor</p> <p>2. Poor</p> <p>3. Satisfactory</p> <p>4. Good</p> <p>5. Excellent</p>

Purpose:

1. To address the requests of the Rural and Regional Affairs and Transport Legislation Committee in relation to release of documents to which the Department of Infrastructure, Transport and Regional Development has indicated public interest immunity may apply.

Key Issues:

2. In support of the hearing of the Rural and Regional Affairs and Transport Legislation Committee on 19 July 2021, Senator Sterle and Senator Rice separately wrote to the Secretary of the Department, Mr Simon Atkinson (see **Attachment B** and **Attachment C**), to request tabling of the following documents referred to in the Australian National Audit Office Performance Audit 'Administration of Commuter Car Park Projects within the Urban Congestion Fund' **47C** [REDACTED]:

- i. All spreadsheets referred to in the report, including the multiple versions passed between the Department and the Office of the Minister and Prime Minister in late 2018 and early 2019.
- ii. Any legal advice the Department has received (either from internal or external sources) in relation to the treatment of car parks under the *National Land Transport Act 2014*.

PROTECTED Sensitive: Cabinet

- iii. The Benefit Cost Ratio calculation tool for commuter car parks, and associated instructions, developed by the Major Infrastructure Projects Office, and referred to in paragraph 4.51 of the report.
- iv. The latest records from the Infrastructure Management System in relation to all car park projects, including milestone details, both for car park projects within the National Commuter Car Park Fund (NCCPF), and any other car park projects outside the NCCPF.

47C

4. Consistent with the order of the Senate of 13 May 2009, a decision on whether release of the documents is in the public interest has been referred to you, as the Department in proceedings of the Committee on Monday 19 July 2021 advised the Committee that the documents may properly be subject to a claim of public interest immunity on the basis that production of the documents may cause harm to the public interest.

5. If you, as the responsible minister, conclude that it would not be in the public interest to disclose the information to the committee, Senate procedure requires you to provide the committee a statement of the grounds for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information and documents. A draft letter to the Chair of the Committee, Senator McDonald, is at **Attachment A** for your signature.

47C

8. In relation to Senator Rice's request regarding the Benefit Cost Ratio tool for commuter carparks, and records from the Infrastructure Management System, relevant information was tabled by the Department at the Committee hearing on 19 July 2021.

Sensitivities:

9. The committee has the option to report the matter to the Senate if it is not regarded that the statement provided sufficiently justifies withholding the information.

Financial Implications: N/A

Background/Issues: N/A

Communication/Media Activities: N/A

Consultation:

10. Legal Services, Governance, Parliamentary and Integrity Branch

Attachments:

Attachment A: Draft letter to Senator Susan McDonald, Chair of the Rural and Regional Affairs and Transport Legislation Committee

Attachment B: Letter from Senator Rice

Attachment C: Letter from Senator Sterle

47C

Contact Officer: James Savage
Position: A/g Assistant Secretary
Branch: Program, Policy and Budget
Phone/Mobile: 47F

Cleared by: Phil Smith
Position: First Assistant Secretary
Division: Infrastructure Investment Division
Phone/Mobile: 47F

Instructions for MAPS: Nil

22

Distribution CC List: Mr Simon Atkinson, Mr David Hallinan, Mr Phil Smith, Adviser

s47C



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s47C



SENATOR JANET RICE

Greens Senator for Victoria



ELECTORATE OFFICE

Shop 2-3, 26 Lygon St
Brunswick East VIC 3057
P: (03) 9381 1446

SENATE OFFICE

Parliament House
Canberra ACT 2600
P: (02) 6277 3225

Secretary Simon Atkinson
Department of Infrastructure, Transport, Regional Development and
Communications
111 Alinga Street
Canberra, ACT 2601
Via email: Simon.Atkinson@infrastructure.gov.au
cc: senate.estimated@infrastrure.gov.au

Dear Secretary Atkinson

I am writing in advance of the Department's appearance before the Rural and Regional Affairs and Transport Legislation Committee on 19 July 2021. To assist the Committee with its inquiries, I ask that you come prepared to table the following documents and information, referred to in the Australian National Audit Office's (ANAO's) report into the *Administration of Commuter Car Park Projects within the Urban Congestion Fund*:

- Any legal advice the Department has received (either from internal or external sources) in relation to the treatment of car parks under the *National Land Transport Act 2014*;
- The Benefit Cost Ratio(BCR) calculation tool for commuter car parks, and associated instructions, developed by the Major Infrastructure Projects Office, and referred to in paragraph 4.51 of the ANAO report, and;
- The latest records from the Infrastructure Management System (IMS) in relation to all car park projects, including milestone details, both for car park projects within the National Commuter Car Park Fund (NCCPF), and any other car park projects outside the NCCPF.

Thank you for your assistance.

Yours sincerely

Senator Janet Rice
Australian Greens spokesperson for Transport and Infrastructure



GLENN STERLE

Shadow Assistant Minister for Road Safety

Chair, Senate Rural, Regional Affairs & Transport References Committee

Labor Senator for Western Australia

Mr Simon Atkinson
Secretary
Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 594
CANBERRA ACT 2601

Via email: simon.atkinson@infrastructure.gov.au

Dear Mr Atkinson

As is my usual practice, I am writing to you on behalf of Opposition Senators ahead of forthcoming Spillover Estimates hearing scheduled for next week.

Since Budget Estimates in May, the Auditor-General has released Report no. 47 of 2020–21, the Administration of Commuter Car Park Projects within the Urban Congestion Fund. Labor senators will be focusing their questioning on this concerning report.

I ask that you personally attend these hearings ready to answer Senators' questions relating to government decisions around this program and the broader administration of this fund by your department.

Please come to the hearing prepared to table all spreadsheets referred to in the Report, including the multiple versions passed between the Department and the office of the Minister and Prime Minister in late 2018 and early 2019.

To ensure efficient use of the Committee's time, I request that you table these documents at the beginning of the hearing.

Finally, I wish to take this opportunity to again remind you of your obligation, and the obligation of senior officials from your Department, to directly answer questions asked by Senators during Estimates hearings.

Consistent with the resolution of the Senate on [25 June 2014](#):

- there are no areas in connection with the expenditure of public funds where a person has the discretion to withhold details or explanations from the Parliament or its committees unless the Parliament has expressly provided otherwise;
- any claim to withhold information must be on an established ground (noting the Senate Order of 13 May 2009 which sets out the proper process for raising public interest immunity claims);

- the statutory values which Australian Public Service agency heads and employees are required to uphold which include a requirement to be open and accountable; and
- the constitutional framework of checks and balances which places the Parliament in prime position as the agent of accountability.

In relation to Cabinet matters, [Odgers Australian Senate Practice](#) provides the following:

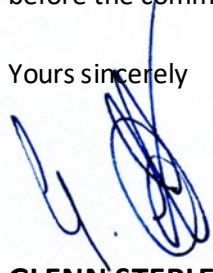
It is accepted that deliberations of the Executive Council and of the cabinet should be able to be conducted in secrecy so as to preserve the freedom of deliberation of those bodies. This ground, however, relates only to disclosure of deliberations. There has been a tendency for governments to claim that anything with a connection to cabinet is confidential. A claim that a document is a cabinet document should not be accepted; as has been made clear in relation to such claims in court proceedings, it has to be established that disclosure of the document would reveal cabinet deliberations. The claim cannot be made simply because a document has the word "cabinet" in or on it.

[Government guidelines for official witnesses before Parliamentary Committees and related matters](#) provide further guidance on the making of public interest immunity related to advice to Government:

4.6.2. The Senate Order of 13 May 2009 made it clear that committees will not accept a claim for public interest immunity based only on the ground that the document in question has not been published, is confidential, or is advice to or internal deliberations of government; a minister must also specify the harm to the public interest that may result from the disclosure of the information or document that has been requested.

I thank you in advance for your cooperation with this request and look forward to your attendance before the committee.

Yours sincerely



GLENN STERLE

SHADOW ASSISTANT MINISTER FOR ROAD SAFETY

CHAIR – SENATE RURAL, REGIONAL AFFAIRS & TRANSPORT REFERENCES COMMITTEE

LABOR SENATOR FOR WESTERN AUSTRALIA

13th July 2021

Attachment D

[REDACTED]

47C

[REDACTED]

Remainder of pages exempt in full s34(3) - not provided.

s34

s34

s34