



## **Inquiry into the Centenary House Lease**

27 September 2004

### **THE COMMISSIONER:**

#### **Second Decision on Public Interest Immunity Claims**

1. On 20 September 2004, I gave my Decision on Public Interest Immunity Claims, in which:

- (a) I upheld the claim made by the Commonwealth in relation to a number of documents;
- (b) I rejected the claim in relation to two documents, and
- (c) I ordered the Commonwealth to provide a more detailed description of a number of further documents to enable proper consideration to be given to whether the claim should be upheld or rejected or whether it was necessary to inspect them as a preliminary step towards the exercise of balancing the competing public interests.

I said that the two documents for which the claim had been rejected may be disclosed generally after seven days. I also said that, in the event that the Commonwealth applied to a court of competent jurisdiction by 24 September to have my orders reviewed, the filing of such an application would operate as a stay of that order.

2. Late last Thursday, 23 September, a fax was received from the Australian Government Solicitor identifying two further documents – one being a different version of, and the other containing similar material to, the documents which I had considered and for which I had rejected the claim for immunity. I was asked whether my ruling upon them would be the same. If that were so, a request was made that all four documents not be disclosed generally, but rather made a confidential exhibit at this stage to which the parties to the Inquiry would be given access subject to certain requirements.

3. The procedure proposed by the Commonwealth of receiving exhibits on a confidential basis is one often adopted in Royal Commissions, and its effect is to reduce the possibility of harm being caused to the public interest by any disclosure of Cabinet documents and the like

beyond what is necessary for the purposes of the Commission.<sup>1</sup> Because of the tight time frame under which this Inquiry is operating, I directed the Inquiry's Executive Officer on Friday to inform the Australian Government Solicitor that (i) upon the basis of the descriptions given, my ruling upon the two further documents would be the same, and (ii) such a procedure would be followed in the case of all four documents.

4. The two further documents have today been produced to the Inquiry.<sup>2</sup> Having now read these documents, I reject the claim for immunity made by the Commonwealth against their production, for the same reasons as those given in relation to the two documents referred to in my previous Decision.<sup>3</sup> All four documents will become Exhibit 92, which will remain confidential at this stage. Those documents are:

- (i) Letter from the Minister for Finance to the Prime Minister dated 5 May 1994.
- (ii) Unsigned and undated draft of document (i).
- (iii) Cabinet Briefing from a senior officer of the Department of Prime Minister and Cabinet to the Prime Minister dated 6 May 1994.
- (iv) Internal Minute by a senior officer of the Department of Prime Minister and Cabinet dated 6 May 1994.

5. Access to Exhibit 92 is to be granted to each of John Curtin House Ltd and Bovis Lend Lease Pty Ltd upon a written undertaking being given on behalf of that company by a responsible officer that the documents will not be disclosed by it generally without my leave. Such leave will be granted only after the Commonwealth has been given an opportunity to express its views.

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<sup>1</sup> Even where the public interest immunity claim is made in court proceedings held in public, certain material in the relevant document may be covered up before it becomes an exhibit where it is irrelevant to those court proceedings or where it would be contrary to the public interest if it were to be published: *Sankey v Whitlam* (1978) 142 CLR 1 at 109; *NT Power Generation Pty Ltd v Power and Water Authority* (2000) ATPR § 41-746 at par 56.

<sup>2</sup> The more detailed descriptions required of the remaining documents have not yet been received.

<sup>3</sup> Paragraphs 45-47 and 50-51.