



Inquiry into the Centenary House Lease

8 October 2004

THE COMMISSIONER:

Fourth Decision on Public Interest Immunity Claims

1. This Decision is the final stage of the determination of a claim by the Commonwealth for public interest immunity against the disclosure of Document 49 referred to in the second affidavit of Dr Shergold for use in this Inquiry. That claim was the subject of the *Third Decision on Public Interest Immunity Claims*,¹ and it was based upon the fact that the document reveals Cabinet deliberations. In that Decision, I ordered the Department of Finance and Administration to produce a copy of the document for my inspection.² Such a copy has now been produced.

2. In determining the immunity claim in accordance with the decision of the High Court in *Commonwealth v Northern Land Council*,³ I must:

(a) weigh the very high public interest in the maintenance of the confidentiality of Cabinet deliberations against the public interest in the proper administration of justice, recognising the paramountcy of a claim for immunity against disclosure of this class of documents in all but quite exceptional circumstances, and

(b) satisfy myself that, even in those quite exceptional circumstances, the relevance of the contents of this particular document to this Inquiry is sufficient to justify their disclosure and that such disclosure is crucial to the proper determination of the issues in these proceedings.

¹ *Third Decision on Public Interest Immunity Claims*, 1 October 2004.

² *Ibid* at par 17, Order 2(b).

³ *Commonwealth v Northern Land Council* (1993) 176 CLR 614 at 618-619.

3. I determined earlier that the *subject matter* of that document was one of substantial importance to this Inquiry.⁴ Having now inspected the document, I am not satisfied that the disclosure of its actual *contents* is crucial in that way. It is therefore unnecessary for me to determine the remaining issues required by the test now laid down in the *Northern Land Council* case.

4. Accordingly, I uphold the claim by the Commonwealth for public interest immunity against the disclosure of Document 49 referred to in the second affidavit of Dr Shergold for use in the Inquiry. The copy produced to me has been destroyed under my supervision.

⁴ *Third Decision on Public Interest Immunity Claims, supra* at par 7.