

## Spiliopoulos, Maria

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**From:** [REDACTED]@treasury.gov.au>  
**Sent:** Monday, 30 August 2021 9:46 AM  
**To:** [REDACTED]  
**Cc:** Tsr DLOs; [REDACTED]  
**Subject:** RE: Question on notice - Michael Brennan presentation to National Cabinet [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Hi [REDACTED],

Apologies for the delay in coming back you. [REDACTED] is comfortable with the PC's proposed response.

Kind regards

[REDACTED]  
Senior Departmental Liaison Officer  
Office of the Treasurer, the Hon Josh Frydenberg MP  
t: [REDACTED]@treasury.gov.au

OFFICIAL:Sensitive

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**From:** [REDACTED]  
**Sent:** Friday, 27 August 2021 3:19 PM  
**To:** [REDACTED]@treasury.gov.au>  
**Subject:** FW: Question on notice - Michael Brennan presentation to National Cabinet [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Thanks [REDACTED], here is the email to [REDACTED].

[REDACTED]

[REDACTED]  
Executive Officer to the Chair  
**Productivity Commission**  
Level 8, 2 Melbourne Quarter, 697 Collins St Docklands 3008 | Locked Bag 2 Collins Street East, Melbourne VIC 8003  
p. [REDACTED] | [www.pc.gov.au](http://www.pc.gov.au)

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**From:** [REDACTED]  
**Sent:** Tuesday, 24 August 2021 4:10 PM  
**To:** [REDACTED]  
**Subject:** Question on notice - Michael Brennan presentation to National Cabinet [SEC=OFFICIAL:Sensitive]

OFFICIAL:Sensitive

Dear [REDACTED],

This email is to seek your feedback about a Question on Notice received by the Productivity Commission from Senator Gallagher, Chair of the Senate Select Committee on Covid-19, on 6 August 2021. The response to the QON is due by this Friday, 27 August. The material below sets out the history of the QON.

#### **Michael Brennan presentation to National Cabinet**

- On 8 July 2020 Michael Brennan, Chair of the Productivity Commission gave a presentation to National Cabinet.

#### **Senate Select Committee hearing appearance**

- On 10 September 2020, Michael Brennan and Nina Davidson (PC Head of Office) appeared before the Senate Select Committee on Covid-19.
- Members of the Committee questioned Mr Brennan on his presentation to National Cabinet.
- Senator Gallagher requested a copy of Mr Brennan's presentation as a Question on Notice (below).
- Following engagement with Treasury and the TO, the Commission responded to the QON.
- Hansard Link  
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommsen%2Fd37dac99-c40f-47ff-be91-2905bdb90c78%2F0000%22>

#### **Question on notice**

Senator **Gallagher**: Mr Brennan, did you provide a presentation to national cabinet?

Mr **Brennan**: I did, yes.

Senator **Gallagher**: Could the committee have a copy of that?

Mr **Brennan**: I'd have to take that on notice because it is a cabinet document, so it's not really my election, in a way, to determine. But I'm happy to take that on notice.

#### **Answer:**

Mr Brennan's presentation is an official National Cabinet document and is therefore Cabinet-in-confidence. Providing the document would disclose the deliberations of Cabinet.

#### **Committee response to PC answer**

- On 20 November 2020, Senator Gallagher, in her capacity as Chair of the Committee wrote to Mr Brennan and requested:  
'that the commission review its answer to the committee and either provide the information requested or refer the matter to the responsible minister to consider whether a formal public interest immunity claim should be made.'

#### **Public Interest Immunity claim**

- On 3 December 2020, Senator Birmingham wrote to Senator Gallagher to claim Public Interest Immunity 'on the basis that the documents informed, and were the subject of, Cabinet deliberations, and that the information sought would or could reasonably be expected to disclose the deliberations of the Cabinet'.

#### **Administrative Appeals Tribunal determination**

- In September 2020, Senator Patrick commenced action in the Administrative Appeals Tribunal (AAT) in relation to his requests for National Cabinet documents.
- On 5 August 2021, the AAT granted Senator Patrick access to certain National Cabinet documents.

#### **Written Question on Notice following the Patrick AAT decision**

- On 6 August 2021, Senator Gallagher sent a written question on notice to the Productivity Commission.
- The response to the QON is due by Friday 27 August.

#### **Question**

Noting the Administrative Appeals Tribunal determination of 5 August 2021 in *Rex V. Scott*:

1. At a hearing on 10 September 2020 the Chair of the Productivity Commission, Mr Michael Brennan, was asked for a copy of a presentation he provided to National Cabinet.  
Please provide a copy of the presentation. (Senate Select Committee on COVID-19: QON document reference #418)

#### Advice from PM&C

- The Commission sought advice from Treasury on how to respond to the QON. On 23 August, the Treasury Parliamentary team forwarded advice from the Department of Prime Minister and Cabinet:

One option which we are considering is for queries which require a response prior to the expiration of the appeal period from the AAT to the Federal Court, to the effect:

The Department notes the decision of the Administrative Appeals Tribunal in *Patrick v Secretary Department of Prime Minister and Cabinet* handed down 5 August 2021. It is not appropriate to comment further while the orders of the AAT are currently stayed, pending the expiry of the appeal period.

This will not be appropriate after 2 September 2021, but perhaps for your back pocket depending on the urgency of your request.

#### PC proposed response to the QON

- The PC is proposing to use the words suggested by PM&C to respond to the QON:


The Productivity Commission notes the decision of the Administrative Appeals Tribunal in *Patrick v Secretary Department of Prime Minister and Cabinet* handed down 5 August 2021. It is not appropriate to comment further while the orders of the AAT are currently stayed, pending the expiry of the appeal period.

We would appreciate any advice on this matter before the deadline of Friday 27 August.

Regards,

  
Executive Officer to the Chair

**Productivity Commission**

Level 8, 2 Melbourne Quarter, 697 Collins St Docklands 3008 | Locked Bag 2 Collins Street East, Melbourne VIC 8003  
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*The Productivity Commission acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to their Cultures, Country and Elders past and present.*

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