



Friday 16 February 2024

Senator Karen Grogan  
Chair of Environment and Communications Legislation Committee  
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Senate  
Parliament House  
Canberra ACT 2600  
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Dear Senator

**2023-24 ADDITIONAL ESTIMATES: PUBLIC INTEREST IMMUNITY CLAIM –  
PREJUDICE TO LEGAL PROCEEDINGS**

1. During the 2023-24 Additional Estimates hearing on 13 February 2024, I undertook to submit a public interest immunity claim to the Committee by 16 February 2024 in respect of the Committee's questions concerning the engagement by the ABC of Ms Antoinette Lattouf for work in December 2023.
2. Ms Lattouf has commenced legal proceedings against the ABC alleging that her employment with the ABC was terminated for unlawful reasons. The ABC is concerned to not prejudice the impartial adjudication of the legal proceedings or the proper administration of justice by publicly commenting on matters relevant to the proceedings and that fall for determination by the Fair Work Commission and, potentially, the Federal Court of Australia. Accordingly, the information over which the ABC seeks to claim public interest immunity is the circumstances of Ms Lattouf's employment with the ABC during December 2023 and how and why it ended. This spans from Ms Lattouf's engagement through to the end of the week of 22 December 2024.
3. For the reasons set out below, the ABC maintains that it would not be in the public interest to answer questions relevant to the matters in issue in the dispute while legal proceedings remain on foot. While this letter sets out the ABC's key concerns regarding providing information while legal proceedings are on foot, there may be other public interest immunity grounds and harms in relation to which the ABC may wish to make a submission if required.

## Harms to the public interest

4. Both Odgers' Australian Senate Practice (14th ed) (Odgers) and the *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters* (Witness Guide) identify prejudice to legal proceedings as a ground for making a public interest immunity claim.
5. Odgers acknowledges that the disclosure of information to a Senate committee could cause prejudice to legal proceedings on foot by influencing magistrates, jurors or witnesses in their evidence or decision-making (see Chapter 19 - Orders to ministers and public interest immunity claims). The Witness Guide at paragraph 4.6, provides that the disclosure of information that would, or might reasonably be expected to, prejudice the impartial adjudication of a particular case is a recognised ground for public interest immunity claims. Neither Odgers nor the Witness Guide restrict the public interest immunity grounds described in this paragraph to Courts.
6. Ms Lattouf has made a claim of unlawful termination under the *Fair Work Act 2009* (Cth). The matter is currently scheduled for hearing in the Fair Work Commission on 8 March 2024, where the Commission Member will need to impartially adjudicate on a significant jurisdictional issue.
7. Hearings in the Fair Work Commission are formal legal processes and apply procedural rules similar to those of courts, including in respect of adducing evidence and examining witnesses, to protect a party's right to a fair hearing. The ABC also notes that for a claim of this kind, bringing an application in the Fair Work Commission is a necessary step before a claimant can commence proceedings in the Federal Court.
8. As the proceedings are currently on foot and have not yet been heard or finally determined, the ABC is concerned that answering questions relevant to the facts in issue in the proceedings would harm the public interest by interfering with the proper administration of justice in respect of the proceedings. Of particular concern is the harm that could result from a party to the proceedings being forced to publicly comment on matters relevant to the issues in dispute in advance of any substantive hearing of the matter and where the public disclosure of that information could influence the evidence given by witnesses or deter potential witnesses from coming forward. The ABC notes that witness evidence is being given in the Fair Work Commission and that at the time of writing this public interest immunity claim, not all written evidence has been filed.

9. As at the date of writing this public interest immunity claim, the transcript of the Senates Estimates hearing at which these questions concerning the proceedings commenced by Ms Lattouf were asked has not been published. The ABC is concerned that at least some of the questions posed assume that Ms Lattouf's employment was terminated by the ABC. This is a matter in issue between the parties and which will be determined by the Fair Work Commission.
10. The ABC also considers that a party to the proceedings being forced to publicly comment on matters relevant to the issues in dispute while proceedings are still on foot has the potential to harm the public interest by undermining public confidence in the administration of justice. Seeking to pre-judge matters that are the subject of ongoing legal proceedings risks undermining the integrity of, and confidence in, the Fair Work Commission process and may give rise to a public perception of Commission Members and witnesses being subject to improper pressure.
11. From the discussion during the Senate Estimates hearing on 13 February 2024, the ABC understands that Senator Faruqi has been provided with advice which seems to concern the restrictions on material subject to parliamentary privilege being used in evidence before a court or tribunal. The ABC notes the restrictions on use under the *Parliamentary Privileges Act 1987* (Cth). However, that does not mean that the evidence given before Senate Estimates cannot have the effect of interfering with proceedings or the impartial adjudication of legal proceedings for the reasons identified above in paragraphs 8 and 10, including;
  - a. the impact on witnesses; and
  - b. the importance of the Fair Work Commission being able to conduct these proceedings without improper pressure and the public perception that it has been able to do so.
12. For the reasons set out above, the ABC claims public interest immunity in respect of the questions concerning matters which are the subject of the proceedings between the ABC and Ms Lattouf.

Yours sincerely

David Anderson  
Managing Director