

Statement – Senator Cash

On 12 September 2017, Mr Nigel Hadgkiss and the CFMEU signed an agreed statement of facts regarding the Federal Court proceeding that the CFMEU had brought, alleging that Mr Hadgkiss had breached the Fair Work Act.

The statement of agreed facts was formally filed in the court on 13 September 2017.

The statement of agreed facts included admissions to the effect that Mr Hadgkiss had contravened the Fair Work Act.

At all times the conduct of this proceeding was a matter for Mr Hadgkiss.

Aside from what I will now set out, I played no part in how Mr Hadgkiss handled the proceeding - nor did he discuss it with me.

My office was first made aware of the allegations on 22 August 2016, when a member of the media team from Fair Work Building and Construction (FWBC) – the predecessor to the ABCC - telephoned my media adviser and followed up with an email to inform him that the CFMEU had made allegations against Mr Hadgkiss.

On 23 August 2016, my media adviser read an AAP article entitled “Union withdraws media statement” which and I quote said: *“the construction union had withdrawn a media statement in which it claimed taxpayer funded information being handed out by the Building Industry watchdog is reckless and illegal”*.

My office received no further queries in relation to these allegations and as such my media advisor took no further action.

At this stage it would have been open to the Opposition – or anyone else – to raise the matter with me if they had genuinely held concerns in relation to the alleged actions of Mr Hadgkiss.

They chose not to do so.

On 5 September 2016, an advisor in my office received a copy of a notification of the proceedings from the FWBC.

On 6 October 2016, the Department notified my office that the CFMEU sought to join the Commonwealth in litigation against Mr Hadgkiss.

I first became aware of the allegations that were the subject of this proceeding on 11 October 2016.

On that date, my staff briefed me on the matter, following legal advice from the Department’s Chief Counsel.

I was also advised at this time that Mr Hadgkiss denied contravening the Fair Work Act and would be defending the proceedings.

On 18 October 2016, the Commonwealth was joined as a respondent to the proceedings.

On 9 November 2016, Mr Hadgkiss wrote to me seeking approval for an indemnity for his legal costs. He did not seek assistance for any penalties that may be ordered. He reiterated that he denied any contravention of the Fair Work Act.

Mr Hadgkiss filed a defence in these proceedings on 14 November 2016. A copy of the defence was provided to my office on 15 November 2016.

In that defence, Mr Hadgkiss again denied the contraventions alleged against him by the CFMEU.

On 16 November 2016, my office received a brief from the Department on Mr Hadgkiss' request for indemnity against his costs.

On 9 December 2016, I approved the request by Mr Hadgkiss for assistance by way of an indemnity for his costs, in accordance with the standard process set out in Appendix E of the Legal Services Directions.

It is long standing practice, maintained by successive Governments, for Commonwealth employees and officials to be indemnified where proceedings are brought against them, in accordance with the requirements of the Legal Services Directions.

Following my decision on 9 December 2016 to provide a partial indemnity to Mr Hadgkiss, I otherwise was not further involved in this matter in any way until September this year.

I note that the Commonwealth was removed as a respondent on 8 September this year.

By way of further background, on 19 October 2016, Mr Hadgkiss and I appeared at the Supplementary Budget Estimates.

At this stage – being 86 days since any concerns were first expressed by the CFMEU – it would have been open to any Opposition Senator to raise this matter with either of us if they considered it to be sufficiently important.

They chose not to do so.

I note that Senator Cameron asked approximately 102 questions of Mr Hadgkiss at this Estimates hearing. Not one of them related to this matter.

On 14 November 2016, Mr Hadgkiss filed his defence in the matter in which he denied the allegations in the CFMEU's statement of claim.

At this stage – being 112 days since any concerns were first expressed by the CFMEU – it would have been open to either the CFMEU or the Opposition – or anyone else – to raise the matter with me if they had genuinely held concerns in relation to the alleged actions of Mr Hadgkiss. They chose not to do so.

In the months leading up to December 2016 there was an extensive Parliamentary and media debate in relation to the legislation to re-establish the Australian Building and Construction Commission.

Senators will recall this was one of the most complex and hotly contested debates in this place in recent years.

A very wide range of matters were canvassed in this debate on the ABCC, including the role of Mr Hadgkiss.

I note that the Hansard records that, in the course of this debate, Senator Cameron mentioned Mr Hadgkiss on 11 occasions.

At this stage – being 120 days since any concerns were first expressed by the CFMEU – it would have been open to any Opposition Senator to raise this matter with me or express their concerns in the Parliament if they considered it to be sufficiently important.

They chose not to do so.

Mr Hadgkiss and I subsequently appeared at Budget Estimates on 30 May.

At this stage – being 309 days since any concerns were first expressed by the CFMEU – it would have been open to any Opposition Senator to raise this matter with me if they considered it to be sufficiently important.

They chose not to do so.

I note that Senator Cameron asked approximately 171 questions of Mr Hadgkiss at this Estimates hearing. Not one of them was directed to this matter.

There was also an extensive Parliamentary debate in August 2017, in relation to a disallowance motion moved by Senator Cameron to disallow the Building Code that I had issued under the ABCC legislation.

At this stage – being 380 days since any concerns were first expressed by the CFMEU – it would have been open to any Opposition Senator to raise this matter with me if they considered it to be sufficiently important.

They chose not to do so.

I note that during the debate on the disallowance motion on Wednesday, 9 August 2017, Senator Cameron mentioned Mr Hadgkiss on 2 occasions.

Senator Cameron could have raised this matter during the course of this debate if he considered it sufficiently important.

He chose not to do so.

On 12 September this year, my office was advised by the Chief Counsel of my Department that Mr Hadgkiss intended to agree to a statement of agreed facts in which, amongst other things, he would admit he had contravened section 503 of the Fair Work Act.

I was provided with a copy of the statement of agreed facts on 12 September 2017.

The statement of agreed facts was then filed in the court on 13 September.

Upon my receipt of the statement of agreed facts on 12 September I alerted the Prime Minister's office to the statement and ultimately discussed the matter with the Prime Minister later that evening.

Both the Prime Minister and I were of the view that the position of Mr Hadgkiss was no longer tenable in light of his admissions.

This was the first occasion on which I had raised this matter with the Prime Minister.

I note that it was also prior to the first occasion on which any member of the Opposition had raised the issue with either me or the Prime Minister.

Between the date of the CFMEU first expressing its concerns on 25 July 2016 and my discussion with the Prime Minister on 12 September 2017, a total of 414 days had elapsed.

On no occasion during that time had any member of the Opposition raised this matter with me, either in the Parliament or otherwise, despite the numerous opportunities available to them to do so.

On 12 September I also advised the Public Service Commissioner of the admissions 2017 by Mr Hadgkiss and conveyed to him the Government's view in relation to Mr Hadgkiss' position that it was untenable.

It was entirely unremarkable that I should involve the Public Service Commissioner.

As Commissioner, he has a range of relevant responsibilities including promoting and upholding the professionalism, conduct and integrity of the APS.

As has been indicated by the Public Service Commissioner, he subsequently conveyed to Mr Hadgkiss the Government's view that Mr Hadgkiss' position was untenable and that he consider his position.

I was advised by Mr Lloyd late on the evening of 12 September 2017, that Mr Hadgkiss had considered his position and had decided to resign and would formally tender his resignation the following day.

Mr Hadgkiss tendered his resignation in writing on 13 September 2017 which I accepted.

There has been some suggestion that I should have informed other members of the Government, and sought Mr Hadgkiss' resignation, the moment I became aware of the allegations.

That is an absurd suggestion. It is particularly absurd coming from the Labor Party.

Up until September 2017, Mr Hadgkiss repeatedly denied these allegations, including in his defence filed in court.

He was entitled to due process in relation to these allegations - As are the legion of CFMEU officials accused of hundreds of contraventions of the Fair Work Act are entitled to due process.

Just as are members of the CFMEU picket line who threatened to rape children are entitled to due process.

Just as the person who mailed a bullet to a CFA employee in Victoria is so entitled.

Just as Mr Luke Collier was entitled to the presumption of innocence in respect of domestic violence offences, charges of assault occasioning bodily harm, charges of common assault and charges of affray.

I take the opportunity to note that in a recent media story involving allegations of assault charges against Mr Collier, who is currently employed as an official by the CFMEU in WA, that the CFMEU said that the matter was before the courts and "*everyone is innocent until proven guilty*".

It would be absurd for a Minister to require an official's resignation merely because they are the subject of legal proceedings.

If the CFMEU adhered to that standard, it would be doubtful if it would have any officials left.

It has been suggested by members of the Opposition, including Mr O'Connor, that some kind of action should have been taken by me against Mr Hadgkiss during the time in which allegations had been made against him, even though those allegations were denied and were yet to be determined by the court.

If the position of the Opposition is that it now believes that individuals are not entitled to a presumption of innocence and should be removed from their position as soon as allegations are made against them, then I trust that they will now express this view to the National

Secretary of the CFMEU, the other Mr O'Connor, and demand that he apply this same standard to every official of the CFMEU who is currently facing allegations of unlawful conduct in a court.

According to the most recent reports, there are currently a total of 84 such CFMEU officials currently facing allegations before the courts that are yet to be proven or admitted.

If this standard is to be applied, then I trust that the O'Connor Brothers, as representatives of the industrial and political wings of the CFMEU, will now demand the resignation of various CFMEU officials including John Setka and Shaun Reardon, facing serious criminal charges of blackmail, Michael Ravbar, facing serious civil charges of coercion, and Luke Collier, facing yet another criminal charge of a violent assault, amongst many, many others.

I also wish to deal with an allegation made this week by members of the Opposition that I have not met the obligations of the Cabinet Handbook pertaining to appointments, because I did not tell the Prime Minister about the allegations the CFMEU had made against Mr Hadgkiss.

I can assist those members now and hopefully save them their breath.

As all members know, or at least ought to know, I did not personally appoint Mr Hadgkiss to the position of ABC Commissioner.

The legislation to re-establish the ABCC, which was passed by the Parliament on 30 November 2016, automatically transitioned Mr Hadgkiss from his previous office as Director, Fair Work Building and Construction, to the office of Commissioner of the ABCC.

It also transitioned every existing staff member of FWBC to the ABCC in a similar fashion.

As such, no new appointments were necessary for Mr Hadgkiss or any other FWBC staff.

In this situation, it was not open to me to make any appointments and the appointment process in the Cabinet handbook did not apply.

Claims that there was a "*failure to follow Cabinet process regarding appointment*" are therefore self-evidently incorrect and misconceived.

For completeness, the instrument that appointed Mr Hadgkiss to the position of Director of the FWBC was made by Cabinet in October 2013, almost 3 years before any allegations were made by the CFMEU against him and prior to me even being the Minister.

As earlier alluded to, the Parliamentary debate on the ABCC legislation was of a particularly intense and detailed nature.

If any Member or Senator believed that Mr Hadgkiss was not appropriate to fill the role of ABC Commissioner then they could have moved an amendment to the legislation to remove the provision which automatically transferred his existing appointment to this role.

However, not one of the 226 members of the House of Representatives or the Senate sought to do so.

I note that the Opposition has suggested that the Government establish an independent inquiry into my alleged appointment of Mr Hadgkiss.

Such a demand is not made in good faith, and such an inquiry would have nothing to inquire into given that no such appointment process was required.

The Government will not be lectured on standards of compliance with workplace laws by the Opposition, which continues to accept millions of dollars in donations from Australia's most corrupt and lawless union.

This is the same union that was recently reported as being involved in an industrial dispute in Queensland where members of its picket line were recorded as threatening "*I'll attack you with a crow bar*", and "*I'll f---ing rape your kids*".

Those are of course only allegations at this stage but it bears repeating that until 12 September this year, the claims against Mr Hadgkiss were also only allegations, which he refuted, and those proceedings needed to run their course.

The same day after he formally admitted contravening the Fair Work Act, Mr Hadgkiss resigned from his position.

Ends.