



Senator the Hon Michaelia Cash
SHADOW MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS
DEPUTY LEADER OF THE OPPOSITION IN THE SENATE
SENATOR FOR WESTERN AUSTRALIA

7 February 2023

Ms Katherine Jones PSM
Secretary - Attorney-General's Department
3/5 National Circuit
BARTON ACT 2600

Dear Ms Jones,

I write on behalf of the Opposition Senators ahead of the 2022-2023 Senate Supplementary Budget Estimates hearings for the Legal and Constitutional Affairs Legislation Committee which will take place on Monday 13 and Tuesday 14 February 2023.

I request that your Department provide further information about an issue that was discussed in the previous Senate Estimates hearing regarding the Attorney-General's decision to instruct a Commonwealth agency from pursuing a successful costs order in relation to the matter of *Construction, Forestry, Maritime, Mining and Energy Union vs Australian Building and Construction Commissioner & Ors*.

We are particularly concerned with evidence from the Senate Estimates hearing on 7 November 2022, where Mr Michael Johnson, Assistant Secretary, Office of Legal Services Coordination, said he was unaware of any instance where the Attorney-General had prohibited an agency from pursuing a successful costs order.

As you would be aware, Mr Johnson clarified his evidence the next day in writing to state that the Hon. Mark Dreyfus MP had in fact prohibited the Australian Building and Construction Commission from pursuing a costs order against the Construction, Forestry, Maritime, Mining and Energy Union.

It seems very unusual that no one in the Department were aware of this matter at the time of the previous Estimates hearing, despite the apparently unusual circumstance of an Attorney-General specifically prohibiting a Commonwealth agency from pursuing a successful costs order in its favour. We would request that an explanation be given to the Committee why there was no one available to answer questions on this matter when it was first raised on 7 November 2022 given the highly significant and unusual nature of this issue.

As such, I am requesting that the Department provide the following information to the Committee prior to the Estimates hearing, ideally by 5pm on Sunday 12 February 2023:

- When did the Department first become aware of the ABCC's approach to seek approval to settle the matter under the *Legal Services Directions 2017*?
- When did the Department first advise the Attorney-General's office of this matter?
- When did the Department first send a written brief to the Attorney-General on this matter?
- Please list the dates and times of all discussions between Departmental officials and the Attorney-General or his office prior to this brief being sent to the office and provide a copy of any written correspondence.
- How many Departmental officials were aware of this brief prior to the brief being sent to the Attorney-General's Office?
- Please list every Departmental Official who was aware of this brief? (the names of junior officers can be redacted)
- When was this brief provided to the Secretary or her office?
- When did the Secretary sign off on this brief going to the Attorney-General's Office?
- Which Departmental officials discussed this matter with the Attorney-General's office prior to the brief being signed?
- Please provide all correspondence between the Attorney-General's Office and within the Department of Attorney-General relating to this matter after the Attorney-General made the decision to not allow the ABCC to pursue the costs order (which Mr Johnson states was on 8 September 2022).
- When did the Secretary, relevant Deputy Secretary or other SES officer become aware that the Attorney-General had made the decision to instruct the ABCC not to pursue the cost order?
- Please outline the total cost to the Commonwealth of not pursuing the cost order.
- Please provide a copy of all Senate Estimates briefs prepared for the November 2022 hearings relating to this matter.
- When did Mr Johnson become aware that he needed to clarify his evidence from 7 November 2022?
- How did Mr Johnson become aware of his need to clarify his evidence?
- Please provide a copy of any internal correspondence about the correction of evidence provided on 8 November 2022.

I also request that Mr Michael Johnson and any SES officer in the Attorney-General's Department who had any knowledge of this matter be available to answer questions on this matter during Senate Estimates next week.

Yours sincerely,

Senator the Hon. Michaelia Cash

cc. Committee Secretariat