PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

Freedom of speech in Australia

FRIDAY, 17 FEBRUARY 2017

Question No. 1

Mr Leeser asked the following question on 17 February 2017:

Mr LEESER: Perhaps I could take you to some parts of your submission that deal with the conciliation process, just to get a better understanding of that. In relation to the conciliation process, one of the things you have updated in this submission compared with the previous one is particularly on the chart, where you have included where 18D is considered, and my colleague Senator Reynolds particularly wanted to have a sense of that. Is there a conciliation manual, as it were, that the commission might be prepared to share with the committee, or a public document that the committee might—

Prof. Triggs: We do not have a manual as such, but we do have a guide to our processes, and we are very, very happy to provide to this committee all of that narrative guide, which essentially is reflected in the submission narration in the supplementary submission.

The answer to the Member's question is as follows:

The Commission has provided the Committee with a detailed description of its complaint handling process, including in:

- paragraphs 233 to 254 of its submission dated 9 December 2016
- paragraphs 63 to 89 of its supplementary submission dated 15 February 2017.

The Commission also publishes guides to the complaint-handling process on its website.[1] These guides are described at paragraphs 257 to 259 of the Commission's submission dated 9 December 2017.

A compilation of the guides relating to complaints of unlawful discrimination is provided along with the answers to these questions.

[1] Australian Human Rights Commission, *Complaint Guides*. At http://www.humanrights.gov.au/complaints/complaint-guides (viewed 23 February 2017).

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Question No. 2

Mr Leeser asked the following question on 17 February 2017:

Mr LEESER: I suppose I am asking a slightly different question. I am asking really, given Justice Kiefel's quite narrow test there, to what extent does somebody who is coming to make a complaint understand that it is quite a limited protection? That just says, 'I've experienced racial hatred' or 'I've been discriminated against because of my race.' That is a much lower threshold than what the courts are dealing with in 18C, and I am trying to understand the extent to which the commission is applying the law as determined by the court and saying to people coming with complaints, 'Actually, this is a narrower test', through the documents it produces.

Mr Edgerton: I think there are probably two steps to that. And I take the point that that detail does not appear in the complaint form. And perhaps we can take on notice whether there needs to be an amendment to the complaint form to more clearly indicate the elements of the test there. But certainly once the complaint has actually been made to the commission then advice is given to complainants—not legal advice, but they are given a realistic idea of what the law says. And, as the president has said, they are given access to examples of cases that have been found to be in breach of the law and cases that have not been. But absolutely the commission does test with complainants the strength of their case, and I think we have described in our supplementary submission that process of a preliminary assessment. Often once the commission has had that discussion with complainants about what the law actually says then some complainants decide to withdraw their complaint and some complainants decide to discontinue their complaint.

The answer to the Member's question is as follows:

The Commission's standard complaint form contains a range of check boxes in Part C that allows a complainant to indicate why they are complaining.[2]

As set out at paragraph 65 of the Commission's supplementary submission, these include the following boxes:

> □ **I have been discriminated against because of my race**
> This includes race, colour, national origin, descent, ethnicity and immigrant status.
>
> □ **I have experienced racial hatred**

There are also other boxes that relate to discrimination or harassment on other grounds and to other breaches of human rights.

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[2] Australian Human Rights Commission, *Make a complaint*. At http://www.humanrights.gov.au/complaints/make-complaint (viewed 23 February 2017).

The second of the boxes identified above relates specifically to complaints under section 18C. Part IIA of the *Racial Discrimination Act 1975* (Cth) (RDA) is titled 'Prohibition of offensive behaviour based on racial hated'.

The first of the boxes identified above relates to racial discrimination more generally. However, people sometimes check this box if they have been subjected to conduct that more appropriately falls within section 18C of the RDA than other sections of the RDA.

It is not necessary for a person to use the Commission's complaint form to make a complaint and it is not necessary for them to check a particular box in order to make a complaint under section 18C. The Commission will assess the whole of the written complaint, including the description of the conduct complained of, in order to assess whether a person is making a complaint that comes within the jurisdiction of the Commission and, if so, to identify the nature of the complaint.

The Commission's complaint form does not describe all of the elements of a cause of action under section 18C. However, the Commission's Investigator/Conciliators will discuss these issues with complainants.

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Question No. 3

Senator Paterson asked the following question on 17 February 2017:

Senator PATERSON: Professor Triggs, thank you for coming back to the committee for a second time. I particularly appreciate your advice to the committee yesterday that you will not be making a public interest immunity claim about the QUT matter. I am very grateful for the time line of events that you provided, because that will assist us. It would have been very difficult for us to complete our work if we had not had your side of the story on this, so I do very much appreciate that.

My first question is one that I will ask up-front because I know you will definitely have to take it on notice, and I will provide you with a copy of the documents or refer to documents I am seeking. Are you familiar with a freedom of information request from Hedley Thomas of *The Australian* about this matter?

Prof. Triggs: Indeed, yes.

Senator PATERSON: I have here a letter from the Human Rights Commission to Mr Thomas—there is a copy for Professor Triggs and for the committee—in which it responds to his request and provides some documents in full, provides some documents in part and refuses access to some documents. I would like to make a request on notice for you to please provide to the committee the documents that you have refused Mr Thomas access to. I ask you to provide them to the committee. I ask you to grant us access in full to the documents that you provided to him that have been redacted, with the exception of any personal information. I understand why that would need to be redacted.

Prof. Triggs: I will take that on notice.

The answer to the Senator's question is as follows:

1 The Request

The Freedom of Information request made by Mr Thomas sought access to the Commission's confidential briefing material for one of its appearances at this committee and two of its appearances at the Senate Estimates committee in the following terms:

> all documents relating to the strategies, preparation, briefing and debriefing of the President, fellow commissioners and staff of the AHRC for appearances by the president, fellow commissioners and staff at the Senate Legal and Constitutional Affairs Committee Meeting (October and December 2016) and the Parliamentary Joint Committee's Inquiry into Freedom of Speech in Australia (December 2016):
>
> - including those concerning 'primer' Q & As, advice, workshopping on strategy, key messages
> - excluding duplicates and documents that are publically available.

The scope of the FOI request extends beyond the terms of reference for the present inquiry being conducted by this Committee.

On the basis that full disclosure of the documents was contrary to the public interest the Commission's response to the FOI request:

- granted access in full to some documents;
- granted access in part to a number of documents, with deletion of deliberative matter;
- granted access in part to a number of documents, with deletion of matter the disclosure of which would have a significant adverse effect on the operations of the agency;
- granted access in part to a number of documents, with deletion of personal information;
- refused access to some documents under section 42 of the *Freedom of Information Act 1982* (Cth) (FOI Act) as they were subject to legal professional privilege.

That response was provided to Mr Thomas on 15 February 2017. Mr Thomas immediately sought internal review of that decision pursuant to s 54B of the FOI Act. The Commission is currently considering that request and will respond, as required, by 15 March 2017.

The request made by Senator Paterson on 17 February 2017 for the same documents was made after that process of internal review had commenced.

2 Public interest immunity

The *Government Guidelines For Official Witnesses Before Parliamentary Committees And Related Matters* recognise that:

> 4.9.1. The *Freedom of Information Act 1982* (FOI Act) establishes minimum standards of disclosure of documents held by the Commonwealth. The FOI Act has no application as such to parliamentary inquiries, but it may be considered a general guide to the grounds on which a parliamentary inquiry may reasonably be asked not to press for particular information.

Cognisant of this guidance, the Commission makes a public interest immunity claim in relation to the information redacted in the attached documents. The public interest immunity claim is made on the basis that it would not be in the public interest to disclose the information or documents that remains redacted, as disclosure would harm the public interest.

However, in recognition of the accountability of the Commission to the Parliament and the fact that the public interest in providing information to a parliamentary inquiry may be greater than the public interest in releasing information under the FOI Act, the Commission has removed some redactions from the documents previously provided to Mr Thomas. This additional disclosure also reflects the fact the Commission has now given detailed evidence to the Committee in relation to some matters the subject of previous redactions.

The remaining material that the Commission considers should not be produced is the kind of material that the Commonwealth has previously considered should not be produced in legal

proceedings because production would be contrary to the public interest. Odgers makes reference to the following cases:[3]

> [I]n *Australian Communications Authority v Bedford*, the Federal Magistrates Court held that briefs prepared for Senate estimates hearings are immune from production in a criminal matter.[4] In *Community and Public Sector Union v Commonwealth* a claim by the Commonwealth that a document prepared for Senate estimates hearings should not have been admitted into evidence in the Federal Court was not contested, and orders were made by consent to strike out references to the document in the evidence.[5] In *Niyonsaba v Commonwealth* the Commonwealth claimed immunity from production in the Federal Court for briefing notes for Senate question time and estimates hearings, and this claim was not contested.[6] In two cases in 2012 in which a Senate estimates brief prepared by a department had been tendered in evidence, the Full Federal Court ordered that no regard be had to the brief and that a later affidavit containing the same data be accepted as evidence in its place.[7]

2.1 Grounds

The public interest immunity claim is made, variously, on the following grounds:

1. Disclosure of the documents would have a substantial adverse effect on the proper and efficient conduct of the operation of the Commission.
2. Some documents are subject to legal professional privilege.

The Commission also notes that the documents are the subject of a request under the FOI Act which provides various avenues of review, one of which has been taken up by Mr Thomas and is currently under consideration.

Substantial adverse effect on the proper and efficient conduct of the operation of the Commission

Disclosure of the documents marked ‘s 47C’ and/or ‘s 47E’ would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Commission.

The Australian Human Rights Commission is a body corporate established pursuant to s 7 of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act). Pursuant to s 11 of the *Public Governance, Performance and Accountability Act 2013* (Cth) the Commission is a corporate Commonwealth entity. Pursuant to section 8 of the AHRC Act, the Commission consists of the President and seven specified Commissioners.

Pursuant to section 8(2) of the AHRC Act the Members of the Commission must act in a way that promotes the collegiate nature of the Commission. To do this, the Members of the Commission meet regularly and reach collective decisions on matters relating to the

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3 Odger’s Australian Senate Practice, as revised by Harry Evans, Fourteenth Edition edited by Rosemary Laing, Clerk of the Senate (2016), Department of the Senate, Canberra, p 62.

4 Unreported, Federal Magistrates Court, 28 March 2006.

5 Unreported, Federal Court of Australia, 11 July 2007.

6 Unreported, Federal Court of Australia, 2007.

7 *Nojin v Commonwealth* [2011] FCA 1066, 16 September 2011, *Prior v Commonwealth* (VID1111/11), unreported, Federal Court of Australia, 5 December 2012.

operations of the Commission and the fulfilment of its functions. These deliberations are recorded in documents held by the Commission. In addition, as a result of the travel commitments of the 7 Commissioners, the President and the Executive director, many decisions of the Commission are deliberated on and made through the exchange of emails.

Many of the issues and matters discussed at these meetings and through these exchanges go to the core functions of the Commission and its effective, efficient and productive management and operation. Many involve competing considerations, sensitive issues and information regarding other stakeholders.

The President and Commissioners participate in these meetings to reach a collective decision, deliberating on diverse options and considerations and offering frank and candid comments and opinions. They do so in the anticipation that these deliberations will not be published to the world at large.

On 18 October and 12 December 2016 the Commission appeared before the Senate Legal and Constitutional Affairs Legislation Committee in relation to a Senate Estimates hearing and this Committee. Prior to those hearings the Commission Members sought and were provided with legal and policy advice about a range of issues which it anticipated would be the subject of questioning at the hearings. Pursuant to their obligation to act in a collegiate manner and to comply with their respective obligations under the *Public Governance Performance and Accountability Act 2013* (Cth) and the Public Service Code of Conduct, the Members and their staff discussed, deliberated, gave opinions and sought advice in relation to the subject matter of those documents.

The documents falling within this category of exemption include:

1. Emails between, variously, the Commissioners, the President, the Executive Director, members of the Commission's policy unit, the Media Advisers for the President and the Commissioners, their advisers, the Director and Deputy Director of the Legal Section and a senior lawyer of the legal section. The documents record deliberations by the Commission as to:

    a. The appropriate evidence that should be given to the committee.

    b. The factual and legal background and details of matters that were anticipated to be the subject of questioning by the committee.

2. Documents prepared by the commission lawyers, advisers, managers and complaints staff to assist the Members in their deliberations on various issues, and recording those deliberations, in preparation for the three hearings.

3. Drafts of the above documents recording the deliberations of the Members.

Each of these documents, record the Commission's thinking processes—the processes of reflection, upon the wisdom and expediency of a proposal, a particular decision or a course of action. Those deliberations were in the course of, or for the purposes of, the deliberative processes involved in the functions of the Commission and in anticipation of the appearances before parliamentary committees.

It is critical to the operations of the Commission that the President and Commissioners be able to conduct deliberations in relation to all its activities in this manner to ensure its decisions are appropriately informed, considered and robust. Any reduction in the ability to

do that will have a significant adverse effect on the operations of the Commission and will cause consequent harm to the public interest.

Legal Professional Privilege

Those documents redacted and marked with 's 42' in the attached bundle of documents are the subject of legal professional privilege. Each of the documents were created for the dominant purpose of giving of legal advice to the Commission or obtaining legal advice by the Commission.

In the *Government Guidelines For Official Witnesses Before Parliamentary Committees And Related Matters* both Houses have recognised that 'Legal advisers owe a duty to their clients not to disclose the existence or content of any advice. It would therefore be inappropriate for any official who has provided legal advice to government, who has obtained advice from an external lawyer or who possesses legal advice provided to another agency, to disclose that advice'.[8]

The Commission relies on legal advice from both internal and external advisers to, amongst other things, ensure it operates within the law and consistent with its statutory obligations. It seeks and obtains that advice in circumstances where it anticipates that legal professional privilege will be maintained.

As confirmed by the Federal Court in *AWB v Cole (No 5),*[9] the concept of legal advice 'extends to professional advice as to what a party should prudently or sensibly do in the relevant legal context'.

Disclosure of this advice would adversely impact on the Commission's ability to adequately and appropriately inform itself in relation to its legal obligations and obtain legal advice as to what it should prudently and sensibly do in relevant legal contexts.

It is also likely that such disclosure would discourage other Commonwealth entities from seeking or obtaining advice on legal matters.

This would cause consequent harm to the public interest in the likely reduction in the quality of decisions made by Government officials forced to make decisions without appropriate legal advice. It is also likely to result in less compliance with legal obligations and identification, assessment and resolution of risks by Commonwealth agencies.

Current request under the *Freedom of Information Act 1982*

The FOI Act provides a regime for members of the public to access information held by the Commonwealth. Parliament intended that the rights of the public to access that material would be subject to specified exemptions provided for in the FOI Act. Parliament also intended that if an applicant was dissatisfied with an initial decision they may avail themselves of a number of forms of review. Initially they may seek internal review by the agency concerned, or a review by the Office of the Australian Information Commissioner. If they are still dissatisfied they may apply to the Administrative Appeals Tribunal and ultimately may seek judicial review. There is no formal process within the FOI Act for an applicant who is dissatisfied with an initial decision to seek to have a member of Parliament

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8 At [4.8]

9 *AWB Limited v Cole (No 5)* (2006) 155 FCR 30 at 45.

seek production of those documents through a parliamentary committee in the same terms on his or her behalf.

As noted above, while the FOI Act has no application to parliamentary inquiries, it may be considered a general guide to the grounds on which a parliamentary inquiry may reasonably be asked not to press for particular information.

It may be that in the course of a parliamentary inquiry, a Committee seeks access to a particular document that is relevant to its consideration. Such a request would need to be considered on its merits and it would not be an appropriate answer to refuse to provide the document merely because the same document falls within an existing FOI request.

This case is significantly different. Here, the request is not for particular documents by reference to matters falling within the terms of reference for the current inquiry by this Committee. Rather, the request is one for the production of all documents called for in an FOI request still under consideration, the terms of which extend beyond matters relevant to this Committee's inquiry.

Utilisation of parliamentary privilege in this manner undermines the operation of the FOI Act and runs contrary to the intention of Parliament. The public interest is likely to be harmed through the thwarting of the intention of Parliament, and the creation of an additional administrative burden on Commonwealth agencies who will be required not only to process FOI claims in accordance with clear statutory criteria, but also to consider whether claims for public interest immunity should be made in relation to parallel requests for the same documents through parliamentary Committee processes, potentially with much shorter timeframes. If such requests become routine this will also create an additional burden on Parliament.

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FRIDAY, 17 FEBRUARY 2017

Question No. 4

Senator McKim asked the following question on 17 February 2017:

Senator McKIM: Are you able to inform the committee what date in May the commission made the decision to intervene and set the matter for conciliation? You do not have a date there; it is just down as May 2015. I am happy for you to take it on notice if you do not have—

Prof. Triggs: Yes, that is a fact that we did not include. I will make sure that we do include it, and it can be added to your chronology.

The answer to the Senator's question is as follows:

By 5 May 2015, it appeared to the Commission from discussions with the lawyers for QUT that private negotiations between Ms Prior and QUT were not progressing. In a call with the lawyers for QUT that day, the Commission said that it would raise again with Ms Prior what she wanted to do in relation to the students. In a call the same day with the lawyers for Ms Prior, the Commission raised the issue of Ms Prior's complaint against the students.

On 11 and 13 May 2015, the Commission made calls to one of the lawyers for Ms Prior who said that he had been unable to progress the matter as he had been interstate and that there were aspects of Ms Prior's complaint that he needed to clarify.

On 18 May 2015, in a call with the lawyers for Ms Prior, they said that Ms Prior intended to put a counter offer to QUT, that they 'expect that there won't be much happening on the file for another 4 weeks' and that they could be in touch with the Commission then. The Commission raised the possibility of conducting a conciliation conference. Later that day, the lawyers for Ms Prior sent the Commission an email thanking the Commission for the offer of a conciliation conference to assist the parties to resolve the matter and saying that they would seek instructions.

On 23 June 2015, the Commission called the lawyers for each of Ms Prior and QUT separately. The lawyers for QUT said that they had not received an offer from Ms Prior. The Commission noted that the parties had been trying to resolve the matter privately for over a year and that it was appropriate for the Commission to intervene. The Commission officer said that she would set the matter down for a conciliation conference in August in Brisbane. She said that she would also ask Ms Prior whether she still wanted to pursue her complaint against the students. The lawyers for QUT said that QUT would like to manage the notification process for the students.

In the call with the lawyers for Ms Prior the same day, the Commission was informed that the lawyer who previously had carriage of the matter for Ms Prior had left the firm. They asked that the Commission send an email about conciliation.

On 24 June 2015, the Commission sent emails to the lawyers for each of Ms Prior and QUT seeking confirmation that they and their clients are available for a conciliation conference in Brisbane on 3 August 2015, in six weeks' time.

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FRIDAY, 17 FEBRUARY 2017

Question No. 5

Senator McKim asked the following question on 17 February 2017:

Senator McKIM: You made the suggestion to the committee, Professor Triggs, that there should be a 'seeking leave' process in the event that the commission dismisses or terminates a case or a complaint. Did you hear the Minter Ellison evidence earlier, where there was a slightly different submission, where they said there would be capacity for a change that gave the capacity for courts to make, in effect, a pre-emptive order for costs? I guess there are two different approaches to trying to address the same issue. Can I offer the opportunity for you to reflect on the Minter Ellison suggestion in terms of access to justice? This may be slightly outside your role but not your professional expertise, in my view.

Prof. Triggs: Can I say firstly that I thought the evidence given by Mr Williams, I believe, was really extremely helpful.

Senator McKIM: Yes, I do too.

Prof. Triggs: That is not a particular approach that we have taken, but, when you have reasoned discussion and understanding about this issue, it is possible to come up with some sensible proposals. What I would like to do, if I may, is, with the commission staff, to examine that in a little bit more detail and perhaps come back to you with that one. I think all we are really trying to do is to put some ideas up to this committee that might meet what are perceived to be some of the problems. That may be a solution—it is not one that I think we promoted—but, on consideration, we will look at it and perhaps come back to you. Could we do that in the next day or so?

Senator McKIM: Absolutely.

The answer to the Senator's question is as follows:

Minter Ellison has made some recommendations for changes to the Commission's processes that are similar to the Commission's Recommendation 3 contained in the Commission's submission dated 9 December 2016. Both sets of recommendations are aimed at providing some additional protection to respondents from unmeritorious legal proceedings.

The Minter Ellison recommendations are contained in paragraph 36 of its written submission (#237) and are as follows:

(a) An amendment to be made to sub-section 46PF(5) of the AHRC Act to provide that the President may decide not to inquire into complaints that are trivial, vexatious, misconceived or lacking in substance.

(b) For an amendment to be made so that if this occurs, the complaints are then dealt with in the same way as complaints that are terminated by the President under section 46PH of the AHRC Act. This would mean an affected person would retain the right to bring an application in the Federal Court or Federal Circuit Court in relation to the

complaint and the President's determination would not be final or binding on the parties.

(c) If the President has either decided not to inquire into a complaint on these grounds, or, alternatively has decided after inquiring to terminate a complaint on this basis, the President be required to issue a certificate which records that decision and the reasons for it.

(d) Consistent with the submission made to this Inquiry by the AHRC, and subject to consideration of whether the amendment would be constitutionally valid, the Complainant then be permitted to file court proceedings only by leave of the Court.

(e) Alternatively (or in combination) the default position in relation to costs which would apply unless varied at the Court's discretion should then be that the applicant should pay the respondent's costs of Court proceedings if they are unsuccessful or the respondent has at an early stage provided or offered to provide the remedy at least as beneficial as any remedy which is ultimately awarded.

(f) The default position also be that the applicant must provide security for those costs at the point of issuing Court proceedings.

(g) The Court be provided with the discretion to waive the above default restrictions in exceptional cases if required in the interests of justice.

In relation to (a)-(c), it is important to recognise that the President's existing power under s 46PH(1)(c) to terminate a complaint on the basis that he or she is satisfied that it is trivial, vexatious, misconceived or lacking in substance may be exercised at any time. If this power is exercised, the President must notify the complainants in writing of the decision and the reasons for the decision (s 46PH(2)). As a result, the Commission does not consider that an amendment to s 46PF(5) is necessary.

The recommendation in (d) is consistent with the Commission's Recommendation 3.

In relation to (e), the Commission notes that the usual rules in civil litigation (including discrimination litigation in the Federal Circuit Court and Federal Court) are that:

- if an applicant is unsuccessful, they are required to pay the respondent's costs on a party/party basis;
- if an applicant rejects an offer of settlement from a respondent and ultimately does not achieve a better result, they are required to pay the respondent's costs on an indemnity basis from the date the offer was made.

The Commission does not consider that any change to these ordinary costs principles is required.

In his evidence to the Committee, Mr Williams said that if Minter Ellison's recommendations in relation to costs were adopted, it would provide a better foundation for the Commission to provide advice to complainants about the costs risks involved in litigation. He said:

> In my view it would be useful for applicants know from the outset that if they make a claim which is assessed as being of no merit, then they will pay the costs. At the moment there is no facility for that advice to be given and it would perhaps be inappropriate under the current framework for the president or any delegate of the commission to make any statement about costs.

The Commission does not consider that it is inappropriate under the current framework for the Commission to provide advice about the costs risks of litigation. Complaint handling staff at the Commission can, and do, provide advice to complainants that if they make an application to the court and are unsuccessful they will be liable to pay both their own legal costs and the costs of the respondents.

In relation to (f), the Commission does not support a requirement that applicants be required as a matter of course (or as a default position) to provide security for costs before commencing court proceedings. The reasons for this position are set out in the document tabled by the Commission on 12 December 2016 in relation to a similar proposal by Mr Julian Leeser MP.

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Question No. 6

Senator Paterson asked the following question on 17 February 2017:

Senator PATERSON: I want to return to a matter we discussed last time, Professor Triggs, which is your interview on *7.30*, particularly the comment you made when you were asked a question by Leigh Sales. You had said:

> And in good faith we tried for 13 or 14 months.

Leigh Sales asked:

> And why did it take so long?

You gave a couple of explanations, and I will quote you directly for the record. You first said:

> Well, I think this one was difficult because the parties took different points of view.

Secondly, you said:

> There were a number of students that had said different things and so the issues in relation to each of them was different.

No. 3:

> There were complaints not only about the university but the university staff.

No. 4:

> Some students had gone away on holidays, were difficult to connect and so on.

I am interested in particular in your comment about the fact that students were on holidays and were difficult to connect. Which student was on holidays which caused this to take so long?

Prof. Triggs: I am not sure which one that applied to, but I was advised that that was the case. Whether it ultimately was or not, I really do not know, but that was certainly the advice that I had received.

Senator PATERSON: Who provided that advice to you?

Prof. Triggs: I do not recall now.

Senator PATERSON: Could you take on notice who provided that advice?

Prof. Triggs: I am certainly happy to take it, yes.

Senator PATERSON: Do you remember if it was in the form of an email or phone call or a verbal—

Prof. Triggs: I think it was a verbal advice.

Senator PATERSON: And was it from within the commission or outside the commission?

Prof. Triggs: I will take that on notice.

Senator PATERSON: Thank you.

Mr Edgerton: Senator Paterson, I might be able to provide clarification—and I am not sure if this refreshes your memory—but one of the students was not able to attend the conciliation conference because he was in the United Kingdom. My understanding is that he was not on holidays, that he was there pursuing business opportunities. The notification went to his address in Australia and was signed for there but ultimately did not reach him. I am not sure whether that is what the president had in mind when she was thinking about people being away and not being able to be contacted.

The answer to the Senator's question is as follows:

The President's opening statement on 17 February 2017 gives a detailed explanation of why the complaint by Ms Prior lasted as long as it did.

There were difficulties in contacting one student who was overseas at the time that the notification of the conciliation conference was sent out. The Commission does not say that this was one of the factors that contributed to the delay in the matter overall.