

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO**

Program: Australian Human Rights Commission

Question No. SBE16/112

Senator Fawcett asked the following question at the hearing on 12 December 2016:

Senator FAWCETT: I understand the context that you are outlining. My understanding from 46PO is that any affected person the commission has an obligation to engage with. So my question stands, albeit in the context of a large organisation, a number of named individuals, you have an obligation, is 14 months or more than 12 months an acceptable period in your view for the commission to not contact any affected person in relation to a claim?

Prof. Triggs: I reject the premise of your question. Again, I will not answer questions in relation to the QUT case. At a general level, however, I could say that we almost always advise the respondents, bearing in mind that the organisation may want to protect their privacy, bearing in mind also that the details of the individuals named in a complaint are often available only to the main organisation and not available to the commission and may not always be made available for reasons that are beyond our control.

CHAIR: And to the complainant's solicitor.

Prof. Triggs: But I will, if I may complete answering the question, take on notice those very rare cases where a respondent may not have been notified. I am very happy to explain what those cases are and how they have arisen.

Senator FAWCETT: You made the comment in that answer and also in answers to Senator Di Natale how a couple of cases are outliers and the majority fit within the broad parameters you have indicated. How would you know? Because of the cases you have previously talked about, nobody gets to actually understand how those cases work. My question to you is: if this committee were to inquire in camera—so not on the public record—and to require those answers of the commission, would you be able to provide them?

Prof. Triggs: I will take that question on notice but it is something that we have discussed as a possibility within the commission because obviously we are very keen to support a wider understanding, particularly by this committee, of the processes of the commission because they have been much misrepresented in the media, and we are concerned that members of the committee will make recommendations which are based on the limited information and inaccurate information in the media rather than on the true facts. We have discussed the possibility of asking that you might be willing to consider us presenting the facts of these cases in camera. I would like to take that on notice and come back to you on that question. But, ultimately, whether you chose to do that would be a matter for you.

The answer to the honourable senator's question is as follows:

1. Section 46PO of the *Australian Human Rights Commission Act 1986* (AHRC Act) is within Part IIB, Division 2 of the AHRC Act which relates to Proceedings in the Federal Court and the Federal Circuit Court.

Section 46PO sets out the criteria for making an application to the court if a complaint is terminated by the Commission and uses the language of 'an affected person' to describe who may make an application to the Federal Court or the Federal Circuit Court alleging unlawful discrimination. 'Affected person' is defined in s 3 of the AHRC Act, in relation to a complaint, as meaning 'a person on whose behalf the complaint was lodged'.

When a complaint is first made to the Commission, there may be a delay in notifying all of the respondents listed in the complaint because the complaint needs to be clarified. The initial complaint that comes to the Commission may change during the course of the process. For example, a complainant may be unclear if they wish to pursue the complaint at all, or if they wish to pursue the complaint against all individuals initially listed in the complaint at the time of lodgement. As such, the Commission does not, in every case, immediately notify all initially named respondents to a complaint at the time of lodgement.

There are cases where the Commission is unable to notify someone listed as a respondent in a complaint. For example, this may occur where the complainant has not provided contact details for the respondent and contact details cannot readily be obtained.

In some particular situations, one respondent may undertake to the Commission that they will notify other named respondents, with whom they have a relationship, about the complaint. This may occur for example in an employment context where the Commission has been provided with contact details for the respondent employer but not for all the individual employees who have also been named as respondents.

- Please note this answer relates to the processes in place prior to the amendments to the AHRC Act that came into force on 13 April 2017.
2. On 17 February 2017, the President provided a chronological description of what occurred in the QUT case to the Parliamentary Joint Committee on Human Rights, Freedom of Speech Inquiry. The President stated to the Joint Committee (at 45):

I have decided that, as the Queensland University of Technology matter is of significant public importance and may inform any recommendations made by this inquiry, I will explain how the Commission dealt with the case. My decision to do so is exceptional. Usually, the Commission does not comment on complaints because our conciliation processes depend upon confidentiality.

The President also tabled a chronology of the QUT case at that hearing on 17 February 2017.

On 23 February 2017, the President wrote to the Committee Secretary, Senate Legal and Constitutional Affairs Committee enclosing both the transcript from that hearing and a copy of the chronology. A copy of the letter (without attachments) is attached for reference.