

## **Senate Standing Committee on Education and Employment**

### **QUESTIONS ON NOTICE Supplementary Budget Estimates 2015 - 2016**

#### **Agency - Fair Work Commission**

**Department of Employment Question No. EMSQ15-000333**

**Senator McKenzie asked on 22 October 2015 on proof Hansard page 57**

#### **Question**

#### **FWC - Correspondence between Justice Ross and Vice President Lawler**

CHAIR: Thank you very much for your comprehensive statement, Justice Ross, and for tabling some of the correspondence between you and Vice-President Lawler. You did make comment that it was not the complete record of your correspondence. On notice I seek for you to table full correspondence between you and the Vice-President.

Justice Ross: I do not think I will be doing that. I will provide all the correspondence to the independent inquiry. Some of it relates to personal matters associated with his illness.

Senator McKENZIE: We do have capacity to receive documents in a variety of ways.

Justice Ross: I will take it on notice and take some advice. To be clear, I will provide all of the correspondence to Mr Heerey.

#### **Answer**

The Fair Work Commission (Commission) appreciates that the Committee has the power to require the production of the correspondence, but nevertheless wishes to raise the Commission's serious concerns about providing the correspondence at this time.

From the context of the question, we understand Senator McKenzie's request to be for provision of all correspondence between the President of the Commission and Vice President Lawler during 2014 and 2015 relating to the Vice President's sick leave and his activities whilst on sick leave from the Commission.

We understand that the Committee must conduct its Estimates proceedings in public.

The Commission has two major concerns about provision of the requested correspondence to the Committee at this time.

First, the subject matter of the requested correspondence falls squarely within the terms of reference of the independent investigation into complaints against Vice President Lawler, which is presently being conducted by the Hon Peter Heerey AM QC. Mr Heerey has also requested the correspondence and the Commission will provide it to him shortly.

We are concerned that Mr Heerey's investigation may be prejudiced if material being considered by Mr Heerey was to be made public before the completion of his inquiry, or if the Committee was to conduct an inquiry of its own in parallel to Mr Heerey's inquiry. It is important to protect the integrity of Mr Heerey's investigation, and to ensure that there is a proper basis for any subsequent consideration by the Parliament of the Vice President's position, should that become appropriate, as well as to ensure that any such consideration is not compromised by the appearance of pre-judgment.

Secondly, the requested correspondence includes sensitive personal information about Vice President Lawler that is not presently in the public domain, including the full content of a report from his treating psychiatrist.

In a context where the issues of public concern are to be considered fully by Mr Heerey, we are concerned that the revelation now of sensitive personal information about the Vice President could be very damaging to his health, without any corresponding public benefit. We are also concerned about the risk of making a spectacle of the Vice President's mental illness.

Senator Cash indicated in the hearing that she will decide whether to make Mr Heerey's report public once she receives it, but that her understanding is that she will make Mr Heerey's findings public by tabling them in the Senate at an appropriate time.

The possibility that Mr Heerey's report and/or findings may ultimately be published does not affect the potential prejudice to his inquiry, or to Vice President Lawler, by making the correspondence public at this point. Further, Mr Heerey's report and/or findings may in fact involve little or no further disclosure of Vice President Lawler's sensitive personal information.

The Commission respectfully submits that the Committee ought not press for the requested correspondence to be provided at this time, in the circumstances set out above.

For the same reasons, the Commission respectfully submits that the Committee ought not decide that the circumstances warrant an order for the production of the correspondence, for the purpose of Resolution 1(2) agreed to by the Senate on 25 February 1988.