

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Supplementary Budget Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ15-000486

Senator McKenzie provided in writing.

Question

FWC - Carrigan dispute

During Estimates before the Committee on Thursday 22 October, President Ross stated:

a)“Ms Carrigan was informed in early June 2014 that the vice-president had commenced an extended period of absence during illness.” (Hansard, page 59)

b)“On Vice-President Lawler's return, my chambers referred, in March, Ms Carrigan's complaint to him for a response. I received a response on 8 April. The response addressed some, but not all, of the matters raised by Ms Carrigan.” (Hansard, page 59)

c)“I responded to further correspondence from Ms Carrigan informing her that the vice-president had resumed a period of sick leave.” (Hansard, page 59)

d)“In checking the chronology during one of the breaks I think I had indicated to you that I had not corresponded with Ms Carrigan after she had referred the complaint to the minister. I think there was a letter shortly after; I am not sure of the timing.” (Hansard, page 78)

1.Can you please provide a copy of each of the aforementioned pieces of correspondence?

2.Can you also provide copies of any items of correspondence to which the items (a) and (c) above are in reply?

3.Was the complaint of Ms Carrigan provided to any other member of the Commission, other than Vice President Lawler?

4.Has the President conducted investigations into any complaints against former Presidential members of the AIRC?

5.Does the President have power to investigate complaints against former members of the AIRC?

Answer

1. In responding to question on notice EMSQ15-000333, the Fair Work Commission (Commission) set out its serious concerns about providing the Committee with “full correspondence” between Justice Ross and Vice President Lawler. As with that earlier request for correspondence, the Commission appreciates that the Committee has the power to require production of correspondence referred to above, but nevertheless wishes to raise the Commission’s serious concerns about providing the correspondence at this time.

The Commission understands 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 the independent investigation into complaints against Vice President Lawler, which is presently being conducted by the Hon Peter Heerey AM QC. The requested correspondence has been provided to Mr Heerey by the Commission and/or other persons.

The Commission is 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 personal information about Vice President Lawler and Ms Carrigan that is not presently in the public domain.

In a context where the issues of public concern are to be considered fully by Mr Heerey, the Commission is concerned that the revelation now of personal information about the Vice President and Ms Carrigan could be damaging to them, without any corresponding public benefit.

Minister Cash indicated in the hearing on 22 October 2015 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 and Ms Carrigan, 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 the Vice President's and Ms Carrigan's 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.

2. The Commission refers to and repeats its response to question one above.
3. The Commission understands the question to be whether it has provided Ms Carrigan's complaint to any Member of the Commission other than Vice President Lawler.

Ms Carrigan made her original complaint in a letter of 30 May 2014 to Vice President Lawler (copied to the President of the Commission) and a letter to the

President of the same date. Ms Carrigan provided further details in a statement she sent to the President on 13 June 2014.

To the best of the President's recollection, the President has not provided copies of these documents to any Member of the Commission other than Vice President Lawler.

The administrative arm of the Commission has not provided copies of these documents to any Member.

The Commission notes that extensive details of Ms Carrigan's complaint and of her correspondence with Vice President Lawler and with the President in relation to her complaint, were published in the *Weekend Australian* on 20 June 2015. In correspondence to the President of 17 July 2015, the then Minister for Employment, Senator Abetz, assured the President that neither the Minister's office nor his Department had provided details of the complaint or its content to the media. In a reply dated 23 July 2015, the President assured the then Minister, that, to the best of the President's knowledge, the published details had not come from the Commission.

4. The President of the Commission has on a number of occasions investigated complaints against Members of the Commission who are former Presidential members of the AIRC.

The statutory framework for the President to deal with complaints about Members of the Commission is in s.581A of the *Fair Work Act 2009* (FW Act). This framework is confined to complaints "about the performance by another FWC Member of his or her duties".

The procedure that generally will be followed in dealing with a complaint within that statutory framework, is documented in the *Procedure for dealing with complaints about Members* which is published on the Commission's website at <https://www.fwc.gov.au/about-us/contact-us/complaints-feedback/procedure-dealing-with-complaints-about-members>.

5. The statutory framework for the President to deal with complaints about Members of the Commission is in s.581A of the FW Act.

The Commission understands that this framework applies to complaints about Members who are former members of the AIRC.