



9 February 2016

Committee Secretary
Senate Standing Committees on Education and Employment
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Request to correct testimony in Senate Estimates – 22 October 2015

Justice Ross, President of the Fair Work Commission (the Commission) has asked me to write to you to make corrections to information he provided in the 22 October 2015 Senate Estimates hearing.

As recorded at Hansard page 85, the President stated he was not provided with a copy of Ms Carrigan's complaint to the then Minister for Employment. On reviewing Ms Carrigan's correspondence, Justice Ross has found that on 6 July 2015, Ms Carrigan emailed to his chambers a copy of her complaint to the then Minister. While Justice Ross has no independent recollection of seeing that document, in the usual course of events his Associate would have brought such correspondence to his attention. Consequently, Justice Ross considers it likely that he was provided with a copy of the complaint.

As recorded at Hansard page 111, Justice Ross provided a correction to information provided earlier in the 22 October Estimates hearing regarding correspondence with Ms Carrigan. Justice Ross stated "Chair, can I correct one matter. 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, and I think the date of the referral of her complaint to the minister was 7 July".

On reviewing Ms Carrigan's correspondence, Justice Ross has found that, as at 22 October 2015, he had corresponded with Ms Carrigan on three occasions after she had referred her complaint to the then Minister:

1. on 30 July 2015 Ms Carrigan wrote a letter addressed to both the then Minister and Justice Ross, and Justice Ross responded by letter dated 13 August 2015;
2. on 18 August 2015 Ms Carrigan wrote to Justice Ross and Justice Ross responded by letter dated 20 August 2015;
3. on 11 September 2015 Ms Carrigan wrote to the then Minister copying her letter to Justice Ross' chambers; and on 11 September 2015 Ms Carrigan wrote to Justice Ross copying her letter to the then Minister and Justice Ross responded by letter dated 16 September 2015.

The correct date of referral of Ms Carrigan's complaint to the then Minister is 6 July 2015.

As recorded at Hansard page 78, Justice Ross identified items of correspondence that he had tabled in the hearing and indicated "The third is a letter from me of 29 May 2014". The correct date of the letter is 29 May 2015.

As recorded at Hansard page 82, Justice Ross indicated that sick leave for Members of the Commission who are not former AIRC Members is regulated by the *Fair Work Act 2009* (FW Act) and the Remuneration Tribunal. Justice Ross took on notice to provide a more comprehensive response. The correct position was set out in the Commission's more comprehensive response, in question on notice EMSQ15-000334. In brief, sick leave for such Members may be granted pursuant to s.639 of the FW Act. Remuneration Tribunal determinations regulate the recreation leave of such Members, but not their sick leave.

As recorded at Hansard pages 85, 87 and 89, Justice Ross referred respectively to Ms Carrigan's complaint being provided to Vice President Lawler: "in March"; "when he resumed from sick leave in early 2015", and "when he returned from sick leave". Justice Ross would like to make clear that the timing was: Vice President Lawler returned from sick leave in December 2014; he took further sick leave from 5 January 2015 to 9 January 2015; and Justice Ross' chambers referred Ms Carrigan's complaint to the Vice President for response in March 2015.

As recorded at Hansard page 93, Justice Ross referred to Vice President Lawler providing his response to Ms Carrigan's complaint on "7 April". The correct date is 8 April 2015.

Yours sincerely

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Fair Work Commission