



D22/273256

4 November 2022

Senator Sarah Henderson  
Suite SG.61  
Parliament House

By email:

Dear Senator Henderson

### **Estimates - Obligations of statutory authorities**

You have asked for advice about the obligation of organisations such as the Australian Broadcasting Corporation (ABC), the Special Broadcasting Service (SBS), NBN Co. and Australia Post to answer questions at Senate estimates hearings. In doing so, you have raised two specific subject areas: questions about remuneration and questions about employees bullying others in their workplace.

This advice goes to the obligations of statutory authorities to answer questions at estimates before turning to the two subject areas you have raised.

#### **Statutory authorities and estimates**

*Odgers' Australian Senate Practice* states:

On several occasions the Senate has, by resolution, asserted the principle that, while statutory authorities may not be subject to direction or control by the executive government in their day-to-day operations, they are accountable to the Senate for their expenditure of public funds and have no discretion to withhold from the Senate information concerning their activities.

[14<sup>th</sup> ed., p.671]

Some of these resolutions have been directed to statutory authorities generally (including [continuing order 47](#) of 9 December 1971 "...there is no area of expenditure of public funds by statutory authorities which cannot be examined by Parliament or its committees...") and one to the ABC specifically ([continuing order 52](#) of 19 November 1986), asserting "...that the ABC and any other witnesses before Senate committees have an obligation to co-operate and to answer questions within the terms of reference of Senate standing committees and Senate estimates committees alike...".

The passage in *Odgers* continues:

Officers of statutory authorities, therefore, so far as the Senate is concerned, are in the same position as other witnesses, and have no particular immunity in respect of giving evidence before the Senate and its committees. [14<sup>th</sup> ed., p.671]

Accordingly, the scope of questioning at estimates is the same for officers of statutory agencies as for other entities:

The only substantive rule of the Senate relating to the scope of questions is that questions must be relevant to the matters referred to the committees, namely the estimates of expenditure. Any questions going to the operations or financial positions of departments or agencies are relevant questions. [Odgers, 14th ed., p.482]

Similarly, officers do not have an independent discretion to withhold information. As with any other witness, if officers of the ABC or the other entities you have mentioned consider that information sought by senators at estimates ought not be disclosed, they should raise a public interest immunity (PII) claim to that effect. This obligation and the proper process for doing so is set out in a resolution of the Senate of 13 May 2009. It is then a matter for the committee (in the first instance) and ultimately for the Senate to determine whether to press for the information.

Ordinarily, where a PII claim is mooted, it is for the responsible or representing minister to determine whether the claim should be maintained. It is increasingly accepted that it is appropriate for statutory office-holders to make PII claims directly, “where it would not be appropriate for a minister to do so because of the relationship (or lack thereof) between the authority and the minister”: Odgers, 14<sup>th</sup> ed., p.671. This position is reflected in paragraph (8) of the 2009 order, and may be taken into account by a committee in deciding whether or not to accept a public interest immunity claim.

### **Remuneration levels**

In your request for advice you raise concerns about the ABC declining to provide details in relation to the payment of high salaries ‘beyond what is reported in Annual Reports, citing privacy concerns’.

The question whether details of executive remuneration or remuneration of high-paid employees of the organisations you have mentioned should be published has been a frequent feature of estimates (and similar) hearings over many years. The situation you describe echoes the experience of the Environment and Communications Legislation Committee in 2017. The committee received answers to questions on notice setting out the numbers of ABC staff who received salary within particular salary bands. The then managing director declined to identify individual recipients, citing possible breaches of the Privacy Act. It should be noted that the Privacy Act does not restrict parliamentary committees in seeking information or the provision of information to such committees. Of course, a committee may agree that the principles in that Act should inform its consideration of relevant PII claims.

As noted above, officers do not have an independent discretion to withhold information sought by senators during estimates. If they consider that such information ought not be disclosed, they should raise a public interest immunity (PII) claim to that effect for the committee to determine. It is open to the committee to negotiate a position whereby information can be provided in a form that seeks to limit the harm to the public interest identified in the claim. If a senator is not satisfied with the committee’s decision on a PII claim, that senator can raise the matter in the Senate, including by proposing an order for the production of the information sought.

Occasionally, committees have received this kind of information on a confidential basis, although this option is not immediately available during estimates, where evidence must be taken in public session: standing order 26(2). As noted in Odgers, however, committees inquiring into ABC estimates have on at least two occasions accepted that information about the salaries of ABC television presenters was ‘commercially sensitive’ and elected instead to receive it as in camera evidence in the course of other inquiries: 14<sup>th</sup> ed. p.502.

While a committee may be willing to adopt this approach where it has a relevant inquiry on foot, one consequence is that only members and participating members of the committee would be have access to the information, and they would not be able to communicate it unless the committee resiled from its original decision to receive the information in camera.

By contrast, in 2017 the Environment and Communications Legislation Committee published details of executive remuneration at Australia Post, which that organisation sought to provide on a confidential basis. The committee rejected belated public interest immunity claims made on the grounds of privacy, contractual obligation and commercial-sensitivity, finding an overriding public interest in publishing the information. The committee published its correspondence, a copy of which is attached.

### **Bullying allegations**

In your request for advice you raise the possibility of an employee being found to have bullied others in the workplace, and the ABC again declining to provide details citing privacy concerns.

To repeat what I have said above, officers seeking to withhold information sought at estimates on these and other questions should do so by raising a public interest immunity claim for the committee to determine.

The Senate has accepted that there are circumstances in which a claim based on unreasonable invasion of privacy might be accepted. On this point, Odgers says:

It is in the public interest that private information about individuals not be unreasonably disclosed. It is usually self-evident whether there is a reasonable apprehension of this form of harm. It is also usually possible to overcome the problem by disclosing information in general terms without the identity of those to whom it relates. [14<sup>th</sup> ed., p. 665]

That advice doesn't quite capture the circumstance that you have raised, but may be relevant to a committee in determining whether to accept a PII claim. You put the view that:

The privacy of the perpetrator should not be considered more important than the public interest in shining a light on this unacceptable, and potentially unlawful, behaviour including the way an organisation responds to such complaints.

Again, consideration of this perspective might be expected to inform a committee's consideration of a PII claim. However, a committee may wish to be circumspect on such matters, in case disclosure of the identity of an alleged perpetrator also discloses the identity of those subjected to bullying behaviour. An additional consideration might be that a witness may be able to be more forthcoming if processes for investigating complaints and mediating outcomes have been completed.

For completeness, given that your questions have mainly focussed on the ABC, this advice would apply equally in relation to the other organisations you mentioned.

Let me know if I can be of any further assistance.

Yours sincerely,



(Richard Pye)



D22/273877

10 November 2022

Senator Grogan  
Chair, Environment and Communications Legislation Committee  
Suite S1.94  
Parliament House

By email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

Dear Senator Grogan

### **Estimates – Consideration of public interest immunity claim**

The committee has asked for advice about a public interest immunity (PII) claim made by the Managing Director of the Australian Broadcasting Corporation (ABC) during the committee's estimates hearing on 8 November 2022. This advice focuses on the question whether the claim meets the Senate's requirements. The question whether claims ought be accepted are for the committee, in the first instance. Committee members will be familiar with much of this advice, some of which is derived from advice provided to Senator Henderson on 4 November 2022, which I understand has been shared with the committee.

While much of the Senate's practice in relation to public interest immunity claims reflects its dealings with the executive government, the same principles apply in relation to statutory authorities. It is useful to touch on the accountability of the ABC to the Senate before turning to the PII claim.

#### **The ABC and estimates**

The Senate has repeatedly asserted that:

while statutory authorities may not be subject to direction or control by the executive government in their day-to-day operations, they are accountable to the Senate for their expenditure of public funds and have no discretion to withhold from the Senate information concerning their activities. [*Odgers' Australian Senate Practice*, 14<sup>th</sup> ed., p. 671]

This principle underpins in particular the accountability of statutory authorities to the Senate through its estimates process. As with other entities, any questions going to the operations or financial positions of statutory authorities appearing at estimates are relevant questions.

The passage in Odgers continues:

Officers of statutory authorities, therefore, so far as the Senate is concerned, are in the same position as other witnesses, and have no particular immunity in respect of giving evidence before the Senate and its committees. [14<sup>th</sup> ed., p.671]

Those officers do not have an independent discretion to withhold information. As with other witness, if officers of the ABC consider that information sought by at estimates ought not be disclosed, they should raise a public interest immunity claim to that effect. This obligation and the proper process for doing so is set out in a Senate resolution of 13 May 2009. It is then a matter for the committee (in the first instance) and ultimately for the Senate to determine whether to press for the information.

While PII claims are usually made by ministers, it is increasingly accepted that independent statutory office-holders may make PII claims directly: Odgers, 14<sup>th</sup> ed., p.671. I understand the committee has been happy to consider PII claims made by the Managing Director of the ABC in previous parliaments. That practice is supported by the 2009 resolution.

### **Public interest immunity claims**

To sketch the rationale for the 2009 resolution on PII claims, Odgers says 'It has long been recognised that there is information held by government that it would not be in the public interest to disclose.' It goes on to outline 'potentially acceptable grounds' for claims of public interest immunity, based on cases in the Senate, but cautions that, while those grounds have attracted 'some measure of acceptance in the Senate', this is:

...subject to the circumstances of particular cases, the inclusion of an explanation of the harm to be caused [by disclosure], and without acceptance of distorted or exaggerated versions of the grounds. [14<sup>th</sup> ed., p. 662]

This emphasises that the Senate does not accept an approach based on the categorisation of documents but seeks to identify the public interest on a case-by-case basis.

The 2009 order applies these principles to the proceedings of Senate committees. It provides that claims to withhold information or documents may only be raised on public interest grounds and must be supported by a statement specifying the harm to the public interest that could result from the disclosure of the information.

### **The claim on staff remuneration**

Mr Anderson provided the committee with a written PII claim, responding to a letter from Senator Henderson foreshadowing questions seeking details of remuneration of ABC employees, contractors, sub-contractors or workers paid \$230,000 per annum or more. Mr Anderson's letter provides contextual information about the ABC's reporting on remuneration and his reasons for making the claim. The claim itself is made on four bases:

- (a) unreasonable invasion of privacy,
- (b) protection of staff from work health and safety risks, particularly in the form of online abuse,
- (c) the statutory independence and role of the ABC warrants additional caution in assessing requests for the production of information and particularly personal information
- (d) damage to commercial interests.

Odgers recognises the first and last of those grounds – privacy and commercial confidentiality – as having attracted some measure of acceptance: 14<sup>th</sup> ed., pp 664-5. I am not sure that the second and third grounds mentioned are grounds, per se, rather than arguments in support of the privacy claim. Of course, it is entirely a matter for the committee how to assess the material put before it here.

In relation to privacy, Odgers says:

It is in the public interest that private information about individuals not be unreasonably disclosed. It is usually self-evident whether there is a reasonable apprehension of this form of harm. It is also usually possible to overcome the problem by disclosing information in general terms without the identity of those to whom it relates. [14<sup>th</sup> ed., p. 665]

In advice to Senator Henderson I noted that:

...the Privacy Act does not restrict parliamentary committees in seeking information or the provision of information to such committees. Of course, a committee may agree that the principles in that Act should inform its consideration of relevant PII claims.

In relation to commercial confidentiality, Odgers mentions a standalone Senate resolution from 2003 (a precursor in many ways to the 2009 resolution) that makes it clear that ‘a claim on this ground must be based on specified potential harm to commercial interests’, rather than a blanket claim that information is commercial and therefore confidential.

### **Consideration of the claim**

The Senate generally expects that PII claims be raised on established grounds and specify the harm to the public interest that might be occasioned by the provision of the information sought. It would seem that Mr Anderson’s claim meets these requirements. It is for the committee to determine whether to accept the claim.

In 2014 my predecessor, Dr Rosemary Laing, explained to the Legal and Constitutional Affairs References Committee that the process established by the 2009 resolution is:

...a means to balance competing public interest claims by government on the one hand, that certain information should not be disclosed because disclosure would harm the public interest in some way, and by parliament’s claim, as a representative body in a democratic polity, to know particular things about government administration, so that the parliament can perform its proper function of scrutinising and ensuring accountability for expenditure and administration of government programs.

Where such claims are made, a committee may explore whether the provision of the information in a different form, or in camera (where available), may satisfy its requirements. The process allows committees and witnesses to negotiate on the scope of any request for information and is intended to ensure that committees have enough information to determine where the public interest in a particular matter lies.

My advice to Senator Henderson canvassed how the committee dealt with similar matters in previous parliaments. This has varied from agreeing to receive information in camera, on the basis of commercial sensitivity, to declining requests for confidentiality and PII claims in relation to remuneration of Australia Post executives.

The committee will be aware that it must receive all estimates evidence in public. If it wished to receive in camera information from the ABC it would need to do so outside the estimates process.

The committee has before it letters from Senator Henderson and from Mr Anderson arguing the public interest for and against disclosure of the information sought. Parts of the discussion at Tuesdays hearing also fleshed out these arguments. The information in Odgers, and senators' own experience of PII claims in other settings, provide some guidance to the committee in assessing these claims.

Let me know if I can be of any further assistance to the committee.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'R Pye'.

(Richard Pye)



CORPORATE SECRETARY  
GPO Box 1777  
MELBOURNE VIC 3001  
111 BOURKE STREET  
MELBOURNE VICTORIA 3000

[www.auspost.com.au](http://www.auspost.com.au)

14 December 2016

Ms Christine McDonald  
Secretary, Standing Committee on  
Environment and Communications  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Ms McDonald

I make reference to the Senate Estimates Hearing on 18 October 2016, and the Questions on Notice received by Australia Post.

Australia Post wishes to provide responses to the below questions under Standing Order 25(2) as the information requested contains personal and sensitive information and the disclosure of such information in the public domain may be prejudicial against those individuals to which the information relates.

As such, please refer to [Attachment 1](#) for Australia Post's response to the following Questions on Notice, which are provided to the Committee as *Commercial-in-Confidence*, and should be treated as 'In-Camera' evidence.

- QoN 90 Executive pay breakdown
- QoN 96 Termination/Retirement benefits

Yours sincerely

Erin Kelly



**COMMERCIAL IN CONFIDENCE - 'IN-CAMERA' EVIDENCE**

**QUESTION ON NOTICE 90 – EXECUTIVE PAY BREAKDOWN**

**Senator Dastyari asked:**

**CHAIR:** Senator Dastyari, you do not actually have the call.

**Senator DASTYARI:** I am sorry. I will wait for my opportunity.

**CHAIR:** Senator Urquhart.

**Senator URQUHART:** What I was asking for was for you to provide specific details of these salaries. I would like that broken down and I would like it attached to each of those positions.

**Mr Fahour:** Yes. We are very happy to give the information on notice and we will do that when we get the exact data for you.

**Senator URQUHART:** So how long will that take you?

**Mr Fahour:** When we get back to the office we will do the work and we will follow the customary process of how it works.

Answer:

Senior Executive and Director Remuneration – Year Ended 30 June 2016

	Short-term employee benefits	Post-employment benefits	Other long-term benefits (b)	Termination/retirement benefits	Total
Senior Executives (a)	11,966,029	1,461,821	4,067,430	368,052	17,863,332
Directors	764,949	74,372	-	-	839,321
<b>TOTAL</b>	<b>12,730,978</b>	<b>1,536,193</b>	<b>4,067,430</b>	<b>368,052</b>	<b>18,702,653</b>

Notes:

- (a) The senior executives remuneration total includes short-term employee benefits of \$4,388,131 and post-employment benefits of \$1,239,829 for the Managing Director & Group CEO.
- (b) Other long-term benefits comprises long-service leave accruals and the accrued cost of long-term incentive programs implemented for a number of senior executives which require performance against Board approved hurdles over a number of years.

**COMMERCIAL IN CONFIDENCE - 'IN-CAMERA' EVIDENCE**

**QUESTION ON NOTICE 96 – TERMINATION/RETIREMENT BENEFITS**

**Senator Dastyari asked:**

**Senator DASTYARI:** There is termination/retirement benefits here. How many people on senior executive level were terminated and retired in the past year?

**Mr Fahour:** There was no-one terminated but for retirements in that 2016 year I can think of at least probably one person, I suspect.

**Senator DASTYARI:** So, we think that one person is the \$368,000 but it may be more? You can take that on notice.

**Mr Fahour:** Whatever their benefit is but I will find that out.

Answer:

The “termination and retirement benefits” of \$368,052 included in Australia Post’s 2015/16 Annual Report comprise a retirement benefit for the Chief Operating Officer.



THE SENATE

## ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

13 January 2017

Mr Ahmed Fahour  
Managing Director & Group CEO  
Australia Post  
GPO Box 1777  
MELBOURNE VIC 3001

Dear Mr Fahour

### **Request for confidentiality: senior executive remuneration**

I refer to the letter dated 14 December 2016 from Ms Erin Kelly, Corporate Secretary, Australia Post, seeking to provide evidence to the Committee on a confidential basis under standing order 25(2)(a). The evidence relates to questions taken on notice (nos. 91 and 97) during the supplementary budget estimates 2016–17 hearing on 18 October 2016. The questions sought information about the remuneration of senior executives at Australia Post.

Senate estimates is a key accountability mechanism that is open and transparent. This is reflected in the rules of the Senate that all committees considering estimates must take all their evidence in public.

Australia Post has not made a claim of public interest immunity to *withhold* information from the Committee. Instead, Australia Post has provided some of the information sought under standing order 25(2)(a), rather than as part of the estimates process, and has requested that the information not be published. This occurred at Australia Post's initiative; the Committee did not invite Australia Post to provide evidence under standing order 25(2)(a), as is standard committee practice.

Australia Post's 14 December 2016 letter is now a Committee document and it is open to the Committee, and the Senate, to authorise the publication of it.

Although the Committee may decide to receive evidence on a confidential basis under standing order 25(2)(a), this mechanism is not intended to keep valuable information from parliamentary and public scrutiny, but is intended to ensure that confidential information may remain confidential in those exceptional cases in which it can be justified.

The Committee has considered the reasons given in Ms Kelly's letter to support the request for confidentiality. Based on the information before it, and the principles and rules of the Senate outlined above, the Committee's view is that it is appropriate for it to publish the document in question. Prior to finalising its decision, however, the Committee has agreed to provide you with an opportunity to put forward reasons for the Committee to consider if Australia Post wishes to maintain that the document should not be made public.

If you conclude that it would not be in the public interest for the document in question to be published, you will need to provide to the Committee a statement of the ground(s) for that conclusion, specifying the harm to the public interest that could result from the publication of the document by the Committee. The Committee will consider your statement and advise you of its final decision. Alternatively, if Australia Post does not object to the publication of the document, the Committee would appreciate receiving a statement to that effect.

To enable the timely finalisation of this matter, the Committee seeks your response by 24 January 2017.

Finally, the Committee has noted that question 91 sought information regarding the remuneration of all Australia Post senior executives. Ms Kelly's 14 December 2016 letter provided specific details regarding only the remuneration of the Managing Director and CEO and it did not provide information regarding the remuneration of other senior executives, as was requested. On behalf of the Committee, I request that this information be provided.

Yours sincerely

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Senator James Paterson  
**Chair**



CORPORATE SECRETARY  
GPO Box 1777  
MELBOURNE VIC 3001  
111 BOURKE STREET  
MELBOURNE VICTORIA 3000

24 January 2017

[www.auspost.com.au](http://www.auspost.com.au)

Ms Christine McDonald  
Secretary, Standing Committee on  
Environment and Communications  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Ms McDonald

I make reference to Senator James Paterson's letter to Australia Post's Managing Director & Group CEO, Mr Ahmed Fahour, dated 13 January 2017, regarding information provided to the Standing Committee on Environment and Communications (Committee) under Standing Order 25(2).

Australia Post maintains that the information provided in response to Question on Notice 91 and 97 regarding executive remuneration should remain confidential and not be released publicly. The reasons for this position are detailed below:

#### *Legislative requirements*

Australia Post's requirements for the reporting of senior management personnel remuneration were altered in 2015 with the introduction of the Public Governance, Performance and Accounting ("PGPA") (Financial Reporting) Rule 2015, which came into force on 1 July 2015.

PGPA Rule 27 sets out the disclosure requirements which Australia Post, as a reporting entity, must meet for senior management personnel (senior executive and director) remuneration.

The information which Australia Post must disclose to comply with PGPA requirements after 1 July 2015 has been published in the Corporation's Annual Reports (see for example, the current 2016 Annual Report at page 91). These disclosures fully provide the necessary information to comply with our public interest accountability.

#### *Public Interest immunity claims*

Strong corporate governance processes exist around the level of remuneration paid to senior executives at Australia Post which are outlined in the Corporation's Annual Reports (see for example, the current 2016 Annual Report at page 52-63). The Board is responsible for setting the remuneration arrangements for the Managing Director & Group CEO. Remuneration arrangements for other senior executives are reviewed and determined by the Nomination & Remuneration Committee of Australia Post and approved by the Board based on recommendations by the Managing Director & Group CEO.

Advice is sought annually from independent specialised remuneration consultants on the structure of remuneration packages applying in the external market and the quantum of increases that have occurred in comparable Australian corporations over the previous 12 months. On the basis of this advice, the Managing Director & Group CEO ensures that payments to senior executives are in line with market practice, and that they are competitively placed to attract and retain the necessary talent for the work required by these roles.

The public disclosure of executive remuneration would involve the unreasonable disclosure of personal information. In making this determination, consideration has been given to public interest in the free flow of information to the public, balanced with the public interest in the protection of personal information and the efficient functioning of a government business enterprise. It is Australia Post's view that there is no public interest in the disclosure of the personal information pertaining to senior executive and officers of Australia Post. In making this decision, we are cognisant that the release of the personal information would not promote or inform debate of issues of public importance.

The public disclosure of executive remuneration may be prejudicial against those Australia Post and those individuals to which the information relates. Australia Post and/or those individuals may become targets for unwarranted media attention. This may lead to brand damage for Australia Post, which, when operating in a competitive market, may be significantly detrimental to our business and future profitability. This will impact all our key stakeholders, including those that rely heavily on our business for their own sustainability. Additionally, consideration must be given to issues around personal safety and security that may arise.

Additionally, Australia Post is a self-funded government business enterprise that does not rely on any government funding. This is despite providing a community service obligation that loses money. In fact, Australia Post has actually provided over \$6.3bn (see [Attachment 1](#)) to the Government in the form of dividend payments, income taxes, GST and community service obligations in the last 10 years. Given the fact that no public money or resources are used to fund the company and its executive remuneration, the public disclosure of such would in no way be of any relevance.

#### *Commercial Confidentiality*

With over 70 per cent of the Australia Post business operating in a commercial environment, the information that the Senate Committee is requesting be publicly disclosed relates to the commercial activities of Australia Post. The disclosure of such information may harm the commercial interests of Australia Post (as mentioned above) and the senior executive team.

Furthermore, the Managing Director & Group CEO and each executive are employed under individual contracts of employment which sets out the terms on which they are employed including details of their duties and responsibilities, rights and remuneration entitlements. One of these rights pertains to confidentiality, which if this information is disclosed, will be in breach of the terms of their employment.

Lastly, I note the Senate's request for additional information to be provided in response to Question on Notice 91. Please refer to [Attachment 2](#) for an updated response to Question on Notice 91 and 97. This information is again provided under Standing Order 25(2) and should be treated as 'in-camera' evidence. As you will note, salary payments over the last three years have remained flat, whilst short-term incentive payments have moved in-line with the performance of the business and board or management discretion.

We would appreciate the Committee informing us of their final decision on the disclosure of the information pertaining to executive remuneration. Should the Committee's position be different to Australia Post's, we would appreciate the opportunity to be provided with a week's notice before the information is made publicly available so that we can manage and plan for any issues that will arise from a stakeholder perspective.

Yours sincerely

Erin Kelly

Cash Payments made to the Federal Government & CSO costs (2007-2016)

\$m	Dividends Paid*	Income Tax Paid / (Refunded)*	GST Paid*	Community Service Obligation	TOTAL
2007	279.4	125.3	208.2	93.4	706.3
2008	306.3	186.0	215.6	108.6	816.5
2009	427.8	142.4	208.4	113.8	892.4
2010	171.9	77.5	217.7	147.7	614.8
2011	78.5	54.1	225.7	144.7	503.0
2012	193.9	-2.2	230.2	165.9	587.8
2013	243.7	51.3	236.0	173.9	704.9
2014	142.3	59.7	250.8	205.8	658.6
2015	0.0	14.7	247.8	211.6	474.1
2016	0.0	-18.5	258.8	182.5	422.8
<b>TOTAL</b>	<b>1,843.8</b>	<b>690.3</b>	<b>2,299.2</b>	<b>1,547.9</b>	<b>6,381.2</b>

\* Source = Australia Post Annual Reports 2007 - 2016

'IN-CAMERA EVIDENCE – COMMERCIAL IN CONFIDENCE'

QUESTION ON NOTICE 91 – EXECUTIVE PAY BREAKDOWN

Senator Dastyari asked:

CHAIR: Senator Dastyari, you do not actually have the call.

Senator DASTYARI: I am sorry. I will wait for my opportunity.

CHAIR: Senator Urquhart.

Senator URQUHART: What I was asking for was for you to provide specific details of these salaries. I would like that broken down and I would like it attached to each of those positions.

Mr Fahour: Yes. We are very happy to give the information on notice and we will do that when we get the exact data for you.

Senator URQUHART: So how long will that take you?

Mr Fahour: When we get back to the office we will do the work and we will follow the customary process of how it works.

Answer: Refer below.

QUESTION ON NOTICE 96 – TERMINATION/RETIREMENT BENEFITS

Senator Dastyari asked:

Senator DASTYARI: There is termination/retirement benefits here. How many people on senior executive level were terminated and retired in the past year?

Mr Fahour: There was no-one terminated but for retirements in that 2016 year I can think of at least probably one person, I suspect.

Senator DASTYARI: So, we think that one person is the \$368,000 but it may be more? You can take that on notice.

Mr Fahour: Whatever their benefit is but I will find that out.

Answer: Refer below.



Senior Executive and Director Remuneration  
Detail

	Number of senior executives	Short-term employee benefits (a)	Post-employment benefits (b)	Total
<b>Year ended 30 June 2016</b>				
<i>Senior Executives</i>				
Less than \$735,000	1	686,594	19,308	705,902
\$855,000 to \$884,999	1	844,794	43,102	887,896
\$915,000 to \$944,999	2	1,820,264	38,616	1,858,880
\$1,305,000 to \$1,334,999	1	1,303,014	19,308	1,322,322
\$1,485,000 to \$1,514,999	1	1,478,426	19,308	1,497,734
\$1,515,000 to \$1,544,999	1	1,444,806	82,350	1,527,156
\$5,625,000 to \$5,654,999	1	4,388,131	1,239,829	5,627,960
<b>SUB-TOTAL</b>	<b>8</b>	<b>11,966,029</b>	<b>1,461,821</b>	<b>13,427,850</b>
		Other long-term benefits (c)		4,067,430
		Termination/retirement benefits (d)		368,052
<b>TOTAL SENIOR EXECUTIVES</b>				<b>17,863,332</b>

(a) Short-term employee benefits includes cash salary, accrued annual leave, and accrued short term incentives as follows (with comparative figures shown for FY2014 and FY2015):

	FY2014	FY2015	FY2016
Cash salary	5,875,013	5,776,084	6,159,375
Annual Leave	442,238	420,954	441,578
Accrued short term incentives	5,896,428	1,433,505	5,365,076
<b>TOTAL</b>	<b>12,213,679</b>	<b>7,630,543</b>	<b>11,966,029</b>

(b) Post-employment benefits comprises superannuation contributions.

(c) The cost of "other long term benefits" comprises long service leave accruals and the accrued cost of long term incentive programs implemented for a number of senior executives which require performance against Board-approved hurdles over a number of years.

(d) The "termination and retirement benefits" of \$368,052 comprise a retirement benefit for a senior executive.

	Number of directors	Short-term employee benefits (a)	Post-employment benefits (b)	Total
<b>Year ended 30 June 2016</b>				
<i>Directors</i>				
Less than \$15,000	3	24,561	2,334	26,895
\$15,000 to \$44,999	1	14,351	1,363	15,714
\$45,000 to \$74,999	4	244,525	23,391	267,916
\$75,000 to \$104,999	2	180,467	17,144	197,611
\$105,000 to \$134,999	1	118,525	12,801	131,326
\$195,000 to \$224,999	1	182,520	17,339	199,859
<b>TOTAL DIRECTORS</b>	<b>12</b>	<b>764,949</b>	<b>74,372</b>	<b>839,321</b>
<b>TOTAL</b>	<b>20</b>	<b>12,730,978</b>	<b>1,536,193</b>	<b>18,702,653</b>



## ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

7 February 2017

Mr Ahmed Fahour  
Managing Director & Group CEO  
Australia Post  
GPO Box 1777  
MELBOURNE VIC 3001

Dear Mr Fahour

### **Request for confidentiality: senior executive remuneration**

I refer to the letters dated 14 December 2016 and 24 January 2017 from Ms Erin Kelly, Corporate Secretary, Australia Post, seeking to provide evidence to the Committee on a confidential basis.

As I noted in my letter to you of 13 January 2017, Senate estimates is a key accountability mechanism that is open and transparent. This is reflected in the rules of the Senate that all committees considering estimates must take all their evidence in public. It is only in extraordinary circumstances that the Committee will agree to receive information sought during estimates on a confidential basis under another process.

After considering the nature of the information contained in the correspondence and the grounds against publication provided in the letter of 24 January 2017, the Committee remains of the view that the answers to the questions on notice should be made publicly available as part of the estimates process. Fundamentally, the Committee considers there are no compelling reasons for this particular information about the remuneration of senior executives at Australia Post to be hidden from public scrutiny.

In accordance with Senate standing order 26(2), the documents have been authorised for publication and will be made available on the Committee's website and to anyone on request.

In addition, the Committee has also agreed to make public Australia Post's and the Committee's correspondence relating to this matter. This correspondence has been published as additional information on the Committee's website.

As noted above, in coming to its decision the Committee considered the claims put forward in Ms Kelly's letter of 24 January 2017. The Committee's response to these claims and its expectations regarding future disclosure of such information are outlined below.

#### *Claim relating to legislative requirements*

Ms Kelly's letter refers to changed requirements for the reporting of senior management personnel remuneration made by the Public Governance, Performance and Accountability (Financial Reporting) Rule 2015. The Committee wishes to emphasise that the approach taken

to the disclosure of senior executive remuneration as prescribed in financial reporting rules made by the Government from time to time has no status as far as the rules of the Senate are concerned and it cannot be presumed that the Senate or its committees will not insist on public disclosure of such information.

In addition, the Committee has previously been assured by the Minister for Finance that, despite the changes to financial reporting requirements made by the Government, Commonwealth entities are able to provide details of remuneration to the Committee upon request. As the Committee conducts the overwhelming majority of its activities in public, the Committee's expectation is that any information provided upon request would similarly intended for publication.

*Claim relating to the unreasonable disclosure of personal information and commercial confidentiality*

Ms Kelly's letter claims that the public disclosure of executive remuneration would involve the unreasonable disclosure of personal information that:

- would not promote or inform debate of issues of public importance;
- may have commercial implications for Australia Post; and
- may present issues of personal safety and security.

The public disclosure of senior executive remuneration is a common feature of accountability within the public sector and for listed companies. While information about the salaries and bonuses paid to individual senior executives for major Australian companies and other postal services globally is freely available to senators and the Australian public, similar information is not available for Australia Post. The Committee also notes that the information sought was available in the Australia Post annual report up to 2013–14 and was reported against individual senior executives, by name, in the 2010–11 annual report. Accordingly, any potential issues of personal safety and security do not appear to be compelling reasons to withhold publication.

The Committee also disagrees with the assertion that disclosure of the information would not promote or inform debate about issues of public importance. As a government business enterprise governed by Act of Parliament, Australia Post is accountable to the Parliament, and its committees, for the use of the public resources with which it has been entrusted. As Ms Kelly's letter acknowledges, Australia Post also, at times, declares a dividend to the Australian Government as its shareholder. The shareholder ministers are the Minister for Communications and the Minister for Finance, who are accountable to the Parliament.

The provision of information is in itself a necessary, but not sufficient, condition of accountability. Senators must also have the opportunity to seek explanations about information provided regarding expenditure and other aspects of administration. It is only in public session that financial and performance information about the public sector can be effectively scrutinised and that the public sector's compliance with accountability requirements to the Parliament, and the Australian people, can be clearly demonstrated.

Ms Kelly's letter also notes that Australia Post is a self-funded government business that does not rely on any government funding and, therefore, Ms Kelly asserts that the public disclosure of information about Australia Post's expenditure on senior executive remuneration is not relevant when considering public expenditure.



This statement is of particular concern to the Committee. As part of the estimates process, the Committee is empowered to take evidence from any bodies that have an impact on the expenditure of public funds. Even if an organisation does not receive money through the appropriation bills, its operations may have significant implications for the expenditure of public funds. In this regard, the Committee notes that operations of Australia Post have a very large financial significance to the Commonwealth. The Committee also notes that Australia Post has a statutory monopoly for reserved services and is subject to community service obligations.

#### *Breach of contractual confidentiality rights*

Ms Kelly's letter advises that the Managing Director & Group CEO and other senior executives are employed under individual contracts that include confidentiality obligations.

Confidentiality agreements in contracts do not apply to the taking and giving of evidence before a Senate committee and, because of parliamentary privilege, a party to a settlement cannot be liable for disclosing the terms of a contract to a committee.

#### *Other matters and future approach*

For your future reference, the Committee emphasises that it will not agree to information being provided on a confidential basis outside of the estimates process unless a compelling case has been made that public disclosure would harm the public interest. Even in cases where there may appear to be valid reasons for not publishing particular information, there can still be an overriding public interest in the information being made public.

Furthermore, the Committee remains concerned that, despite your assurances to the Committee that the information senators sought regarding senior executive remuneration would be provided on notice promptly (*Committee Hansard*, 18 October 2016, p. 76), Australia Post instead sought to provide answers to those questions outside of the estimates process and on a confidential basis without the Committee's prior agreement.

As noted above, there may be extraordinary circumstances where the Committee is willing to receive confidential evidence, either in response to a claim of public interest immunity or where it is otherwise apparent that particular information should not be publicly disclosed. It is a fundamental principle, however, that it is the Committee which must decide whether initiating such a course of action is appropriate, not Australia Post.

Moreover, the Committee considers that Australia Post should be considering ways to increase transparency about its operations and expenditure. In particular, the Committee notes that NBN Co, another wholly-government owned business enterprise, publishes detailed information about the remuneration paid to its senior executives as part of its annual report. Questions from the Committee seeking basic facts about senior executive remuneration could be avoided in future, and the public interest better served, if Australia Post were to follow NBN Co's example.

Finally, the Committee notes that Ms Kelly has requested that Australia Post be provided with a week's notice to 'manage and plan for any issues that will arise from a stakeholder perspective'. Beyond this statement, no further explanation is given as to why one week is required and what management and planning is required. The opportunity given to Australia Post by the Committee to provide reasons as to why publication of the evidence should not occur, and the time taken by the Committee to consider its response, has given Australia Post adequate time to prepare for any necessary stakeholder management. Given that Committee

members initially sought this information at a public hearing in October 2016, and that publication of estimates evidence occurs automatically on receipt, a delay will not be provided.

Yours sincerely

Senator James Paterson  
**Chair**