



D22/274190

14 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 2**

On 10 November 2022 I provided the committee with advice on a public interest immunity (PII) claim by the Managing Director of the Australian Broadcasting Corporation (ABC), responding to questions asked by Senator Henderson relating to ABC staff remuneration. The committee has now sought advice about a second PII claim, dated 10 November 2022, responding to questions from Senator Henderson relating to ABC staff roles, gender, location and remuneration.

The two claims are substantially the same. However, the second request requires information by position title and description, rather than against individual names. I am asked whether that would alter my advice. It does not affect my advice, although it may affect senators' assessment of the claim.

My advice on the first claim was that it met the Senate's procedural requirements, as set out in the 2009 resolution on PII claims before committees. It identified public interest grounds, including grounds that had attracted some measure of acceptance in the Senate, and sought to explain the apprehended harm to the public interest that might flow from the disclosure of the information in the form sought. The second claim also meets those requirements.

Beyond that, it is a matter for the judgement of senators whether in all the circumstances the claims should be accepted. My earlier advice set out some of the considerations senators might apply in weighing up the claims. Those considerations also apply here.

#### **The claim on staff roles, gender, location and remuneration**

Senator Henderson is seeking, for every ABC employee, a list showing their position title, gender (where available), place of employment and 'total remuneration band in forty thousand dollar increments'; categorised into departments etc.

The claim from Mr Anderson is essentially made on the same four grounds as the earlier claim:

- (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.

The Senate has recognised the first and last of those grounds – privacy and commercial confidentiality – as attracting some measure of acceptance: *Odgers' Australian Senate Practice*, 14<sup>th</sup> ed., pp 664-5. My earlier advice discussed Odgers' observations about those grounds, so I won't repeat that here.

Of course, senators may form a different view of a claim where, for instance, a request does not seek the same degree of personal information; apprehending a lesser risk of harm to the public interest. Senators would also be aware, however, that de-identifying information does not necessarily protect privacy, particularly where small cohorts are involved. No doubt there are also circumstances where such data remains commercially sensitive.

As I noted in my previous advice, I am not sure that the second and third grounds mentioned are grounds, per se, rather than arguments in support of the privacy claim. Mr Anderson also provides what he describes as a fifth ground: that examining the specific allegation raised by Senator Henderson 'is a more appropriate, and direct, way to deal with the Senator's allegation and concern'. While this does not itself seem to be a public interest immunity ground, senators may conclude that it is an acceptable way to approach the matter.

As with the first claim, the committee has before it letters from Senator Henderson and from Mr Anderson. Senator Henderson places her request in the context of debates about the size of the ABC's staffing budget and the adequacy of ABC funding, including in regional Australia. She argues that 'it is a matter of acute public interest that the ABC provides greater transparency about the role, gender, place of work and remuneration band of ABC Employees as well as how various departments, divisions, program and offices are resourced.'

In making his claim on the grounds discussed above, Mr Anderson argues that the request 'well exceeds established disclosure practice in Australia' and would unreasonably disclose personal information 'where a significant amount of aggregated information is publicly available'. He attaches extracts from ABC reports on remuneration for senior executives and other highly paid staff, and on gender distribution of its workforce by occupational group; and undertakes to provide the committee with workforce statistics in accordance with the *Workplace Gender Equality Act 2012*.

Senator Henderson adds that her request seeks to 'strike a balance between the privacy of ABC Employees with the right of the Parliament to scrutinise more comprehensively the expenditure of the ABC, and the manner in which the ABC is resourced.' In many ways, the task of the committee is to assess whether that balance has been appropriately struck. It remains a matter for the committee, in all the circumstances, whether to accept the PII claim or to press for the information as requested.

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

Yours sincerely,



(Richard Pye)