



Tuesday 8 November 2022

Senator Karen Grogan
Chair of Environment and Communications Legislation Committee
PO Box 6100
Senate
Parliament House
Canberra ABC 2600
c/- senator.grogan@aph.gov.au

Dear Senator,

2022-23 BUDGET ESTIMATES: PUBLIC INTEREST IMMUNITY CLAIM IN RESPECT OF STAFF REMUNERATION

1. I refer to a letter from Senator the Hon Sarah Henderson dated 4 November 2022 advising the ABC of her intention to seek answers to the following question at the Senate estimates hearing before the Environment and Communications Legislation Committee on Tuesday 8 November 2022:

For this financial year and the previous financial year, please provide:

- (a) *the name and title of each ABC employee, contractor, sub-contractor or other worker who has or is being paid total remuneration (as defined in the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule)) that is equal to or greater than \$230,000 per annum (**Highly Paid Staff**); and*
- (b) *the amount of total remuneration per annum paid to each Highly Paid Staff including a breakdown of this remuneration into the following categories:*
 - i. base salary;*
 - ii. performance pay and bonuses;*
 - iii. other benefits and allowances (including overtime);*
 - iv. employer superannuation contributions;*

v. long-service leave;
vi. other long-term benefits; and
vii. termination benefits.

2. The purpose of this correspondence is to advise you of the ABC's position and set out a claim for public interest immunity in respect of the requested information.
3. The ABC is mindful of its obligations under the *Australian Broadcasting Corporation Act 1983* and does not wish to compromise its independence, its obligations to employees, or the proper functioning of the ABC. Further details of the ABC's concerns are set out below.

Remuneration reporting

4. As a Commonwealth entity, the ABC is already required to disclose executive remuneration in its annual report in accordance with the *Public Governance, Performance and Accountability Rule 2014 (PGPA Rule)*.
5. The ABC's executive remuneration reporting pursuant to the PGPA Rule is set out on pages 210-214 of the ABC's latest annual report. It shows 127 staff (key management personnel (already named, along with Board Directors), senior executives and other highly paid staff) with total remunerations above \$235,000. The total remuneration reporting is also broken down by category very similar to those listed in part (b) of the question.
6. Senator Henderson's letter also references assessing any gender pay gap as a reason for seeking the requested information.
7. The ABC conducts an annual gender pay equity review and has reported on the Gender Pay Gap on page 77 of the ABC's latest annual report. The ABC has also voluntarily reported to the Workplace Gender Equality Agency (WGEA) in line with the reporting methodology under the *Workplace Gender Equality Act 2012*.
8. A gender pay analysis was conducted in 2021 across the ABC workforce to identify meaningful pay gaps (defined as +/- 3%) unfavourable to women at any level in the ABC. There is only one meaningful pay gap of 3.9% at Band 9, and this is favourable to women. This gap has significantly reduced from 7.9% in 2020 and is closing. Based on these results, the ABC believes its pay practices are equitable and that it

pays fairly for roles at each level in the organisation. There continues to be a whole-of-organisation pay gap of 5.3% favourable to men. This reflects the higher representation of women in the lower-paid bands in the ABC's structure, rather than inequitable pay practices or bias during pay decisions.

Claim of public interest immunity

9. *Odgers' Australian Senate Practice* (14th ed) (Odgers) acknowledges that the disclosure of some information can damage the commercial interests of participants in the marketplace, and potentially compromise the privacy of individuals (see Chapter 19-Orders to ministers and public interest immunity claims). See also *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters*, specifically Attachment A (at paragraph 13) which provides that it may be appropriate to decline to provide information if to do so would unreasonably disclose personal information.
10. The ABC considers that revealing the names and salary information of persons not identified as Key Management Personnel exceeds established disclosure practice in Australia and unreasonably discloses personal information in circumstances where a significant amount of aggregated salary information is publicly available.
11. The ABC does not make a practice of disclosing salary information with respect to named individuals, aside from the remuneration information published for Key Management Personnel and Board members in the ABC's annual report in line with the ABC's obligations under the PGPA Rule.
12. As such, assuming the question contemplated in Senator Henderson's letter is put to the ABC, the ABC will be seeking to make a public interest immunity claim to the Committee on the following grounds:
 - (a) First, that the disclosure of the names and titles of staff members would clearly identify those individuals and the remuneration they receive. Disclosure of this personal information would be an unreasonable invasion of privacy for those affected individuals and goes beyond what is necessary to ensure that the ABC is accountable for its expenditure of taxpayer funds. It is in the public interest that private

information about individuals not be unreasonably disclosed. That is the basis for the *Privacy Act 1988*. The ABC considers that the requested disclosure places individuals, such as on-air talent, in precisely the situation which the Privacy Act intends to guard against as it would unduly impinge on the privacy of individuals. In that respect, the ABC is concerned that care be taken in assessing potential damage from allowing the circumvention of an established area of law (privacy law) that is of increasing importance to the Australian community, and the knock-on effects if similar requests are made in the future.

- (b) Second, the protection of ABC staff from work health and safety risks, including unwarranted public criticism or targeted online abuse that may arise from the disclosure of individual staff members' salary information. A significant number of ABC staff already experience abuse on a regular basis. Unfortunately, it is likely that such disclosure will amplify abuse for those staff and also increase the number of staff experiencing abuse. The ABC is taking steps to support staff in this area, and disclosure of the requested information will only serve to undercut that work. ABC staff members remain accountable to the public for their performance without this information.
- (c) Third, the ABC is distinguishable from many other entities and agencies. Its statutory independence and role as Australia's largest public broadcaster and member of the fourth estate, mean that requests for the production of information (including the personal information of its employees), should be assessed with an additional degree of caution.
- (d) Fourth, the information requested is commercially sensitive and disclosure would damage the ABC's commercial interests. The ABC competes with the private sector for talent. The requested level of disclosure would give commercial competitors an unfair advantage as they will have full visibility of the ABC's remuneration strategies and structures. This will inevitably undermine the ABC's ability to attract and retain quality talent, including by actually increasing the overall running costs of the ABC (by increasing the cost to the ABC to secure talent in the future) which would not be in the public interest.

13. For the reasons set out at paragraph 12 above, the ABC claims public interest immunity in relation to requested remuneration information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Anderson', with a horizontal line underneath it.

David Anderson
Managing Director