



**Australian Government**  
**Attorney-General's Department**

21/268

8 November 2022

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Committee Secretary

**Clarification of evidence – Estimates hearing on 7 November 2022**

I am writing to clarify an aspect of the evidence I gave to the Senate Standing Committee on Legal and Constitutional Affairs during the Estimates hearing on 7 November 2022.

In response to questioning from Senator Cash, I gave evidence to the effect that, in my experience, the Attorney-General had not instructed an agency to not enforce a costs order.

After reviewing departmental records following the Estimates hearing, I wish to clarify my evidence.

On 8 September 2022, the Attorney-General provided approval under paragraph 3.2 of the *Legal Services Directions 2017* (Directions) to the Australian Building and Construction Commission (ABCC) to seek to settle the matter of *Construction, Forestry, Maritime, Mining and Energy Union v Australian Building and Construction Commissioner & Ors*. The matter had been reported as significant under paragraph 3.1 of the Directions, meaning under paragraph 3.2 the ABCC could not settle the matter without the Attorney-General's approval.

The approval by the Attorney-General allowed the ABCC to agree to settlement of the proceedings on the following terms: appeal proceedings commenced by the Construction, Forestry, Maritime, Mining and Energy Union to be discontinued, there be no order as to costs in the appeal proceedings, and the ABCC not enforce a costs order granted in its favour at the first instance phase of the proceedings.

Please let me know if you require any further information.

Yours sincerely

Michael Johnson  
Assistant Secretary  
Office of Legal Services Coordination