



Australian Government
Attorney-General's Department

Secretary

EC23-000294

12 February 2023

Senator the Hon Michaelia Cash
Shadow Minister for Employment and Workplace Relations
Senator for Western Australia
Parliament House
CANBERRA ACT 2600

Dear Senator Cash

Senate Estimates evidence regarding *CFMMEU v ABCC*

Thank you for your letter dated 7 February 2023 requesting further information about the matter of *Construction, Forestry, Maritime, Mining and Energy Union vs Australian Building and Construction Commissioner & Ors (CFMMEU v ABCC)*.

To assist, the following is the chronology of this matter:

- the ABCC reported the first instance proceeding of *Lendlease v ABCC* to the department as a significant issue under paragraph 3.1 of the *Legal Services Directions 2017* on 24 February 2020
- the ABCC reported the appeal proceeding of *CFMMEU v ABCC* to the department as a significant issue on 18 October 2021
- the department advised the Attorney-General of the existence of this matter on 8 June 2022
- the ABCC provided a settlement request on 29 July 2022 (prior to which there had been no indication to the department of intention to settle the matter)
- the department advised the Attorney-General's office that we had received the settlement request on 29 July 2022
- a submission seeking the Attorney-General's approval for the Commonwealth to settle this matter was sent to the Attorney-General on 9 August 2022
- the Attorney-General approved terms for the Commonwealth to seek to settle this matter on 8 September 2022.

Mr Michael Johnson, Assistant Secretary of the Office of Legal Services Coordination in the department, is the responsible SES officer for the management of settlement approvals by the Attorney-General, and was the officer best placed to answer questions about this matter at the November Estimates hearing. As evidenced by the correction of evidence made, Mr Johnson mis-remembered certain details of this matter, and acted promptly and appropriately to correct his evidence to the Senate Committee.

On the day following the Estimates hearing, Mr Johnson thought it prudent to review material related to the matters he had in mind, in light of questions that were taken on notice. Upon reviewing the material, Mr Johnson realised that his recollection of the *CFMMEU v ABCC* matter – that the approval terms included a term for the Commonwealth to not *seek costs* from the CFMMEU – was mistaken, and instead the approval term was for the Commonwealth to *not enforce* a costs order against the CFMMEU obtained in the first instance phase of the proceedings. Mr Johnson then appropriately took immediate steps to clarify his evidence.

Mr Johnson and I would be pleased to further assist the Committee should additional detail be requested by the Committee. If required, we will be prepared to table relevant documents in accordance with the usual Committee practices.

The action officer for this matter is Rebecca Carpenter who can be contacted on 02 6141 3260.

Yours sincerely

Katherine Jones PSM