

From: s47F
To: [Monica Vagg](#)
Cc: [Cassie Botha](#); [Vanessa MacBean](#); s47F
Subject: Fair Work Ombudsman - MAT-13416-N7M7 [SEC=OFFICIAL]
Date: Thursday, 5 August 2021 5:35:42 PM
Attachments: [image001.png](#)
[image002.jpg](#)
[image003.png](#)
[20210805_FWO Request for further information.pdf](#)
Importance: High

OFFICIAL

Dear Ms Vagg,

Further to our meeting on the 19th June, 2021 – please see attached correspondence.

Kind regards,

s47F

Enforcement

FAIR WORK OMBUDSMAN

s47F

GPO Box 9887 Adelaide SA 5001 | Level 2, 148 Frome Street, Adelaide SA 5000



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5 August 2021

Monica Vagg
Acting Chief People Officer – People & Culture
Australian Broadcasting Corporation

By email: Vagg.Monica@abc.net.au

Dear Ms Vagg

MAT-13416-N7M7 – AUSTRALIAN BROADCASTING CORPORATION (ABC)

I refer to our meeting on 19 July 2021 between representatives of the Fair Work Ombudsman (FWO), PricewaterhouseCoopers (PwC) and ABC (Meeting) wherein we discussed the review into potential underpayments arising from errors associated with:

- employees on 'Buyout' arrangements;
- employees previously classified as Band 1 employees; and
- the application of a transitional meal allowance, (the Review).

Information requested

As foreshadowed in the meeting, the FWO is requesting further written information with regards to the Review, as outlined below.

1. Further information regarding the 'Buyout' arrangements

In respect of the employees on 'Buyout' arrangements, please provide the following further information:

- A full description of the cohort of impacted employees on 'Buyout' arrangements including a table or document which identifies the total number of employees on 'Buyout' arrangements, each employees' name, date of commencement, position, division, location and employment status under the relevant ABC Enterprise Agreement, and the type of 'Buyout' arrangement and the date it was entered into.
- An explanation as to precisely what caused the underpayments or what conduct lead to the underpayments, and the clauses of the ABC Enterprise Agreements which were contravened.
- Preliminary samples (for at least two employees at this stage) of documentation relevant to 'Buyout' arrangements including:
 - o 'Buyout' contracts (at least one sample contract which contains market allowance provisions, and one which does not contain market allowance provisions);
 - o documents illustrating the way in which the 'Buyout' arrangement was offered; and
 - o subsequent communications with the relevant employee in respect of the 'Buyout' arrangement

and documentation regarding any review or assessment of the 'Buyout' arrangement.

2. Clarification in respect of the Band 1 employees

In respect of the misclassification of Band 1 employees, please provide the following:

- A full description of the cohort of employees impacted by the Band 1 misclassification including a table or document which identifies the total number of employees misclassified, each employees' name, date of commencement, position, division, location and employment status under the relevant ABC Enterprise Agreement.
- Details of how each category of the affected employees were and are classified.
- An explanation as to how the affected employees were inaccurately classified as Band 1.

3. Access to PwC's full calculation methodology and approach to the Review

The FWO requests access to the document(s) which detail, in full, the methodologies and assumptions relied on in the Review to calculate employment entitlements, including but not limited to:

- An updated version of the 'current status' tables in the **s47(1)(b), s47G** document prepared by PwC for the Meeting to include the data for the 2020/2021 Financial Year.
- The methods applied to address missing or potentially inaccurate time and attendance data for employees on 'Buyout' arrangements, including:
 - o documents identifying the cohorts of employees affected by the missing or inaccurate time and attendance records and the full context for each cohort as to how the time and attendance records became missing or inaccurate;
 - o confirmation of what alternative or supplementary data sources are being relied on;
 - o a full explanation of which cohort of employees the 'Generic schedules' apply to and the rules and assumptions relevant to each;
 - o a full explanation of the **s47(1)(b)** referred to within the **s47(1)(b), s47G** document prepared by PwC for the Meeting; and
 - o the availability and use of any building access records are data to supplement the incomplete data.

4. Clarification regarding the Review's approach to set-off

The FWO requests further clarification on the ABC's approach to set-off and the process for calculating entitlements for employees on 'Buyout' arrangements; in particular:

- the use of contractual payments such as market allowances, including how they are calculated, how ABC proposes to use them to set-off entitlements derived from the ABC Enterprise Agreements, and which entitlements the ABC proposes to set them off against;
- further clarification as to the reviews or assessments for employees on 'Buyout' arrangements; in particular:
 - o whether it is correct that the majority of assessments occur (or should occur) on each employee's anniversary period or at the time of short-term distant assignments such as overseas

postings;

- o whether these assessments have already been completed or remain outstanding; and
- o what is involved in the assessments and who initiates them; and
- whether the ABC considers that all or most 'Buyout' arrangements displace the entitlement to the transitional meal allowances under the ABC Enterprise Agreements and whether any employees on 'Buyout' arrangements are expected to have been underpaid the transitional meal allowance.

5. Confirmation of remedial measures to ensure ongoing compliance

The FWO requests confirmation of remedial measures in place, to be implemented, or being considered to ensure ongoing compliance. This may include measures adopted following reviews and/or audits undertaken as part of the ABC's existing Enforceable Undertaking.

6. Clarification and assurances regarding the employee consultation process

The FWO requests further information about the proposed staff consultation process for employees on Buyout arrangements, specifically:


- whether employees and their representatives will be provided an opportunity to review the rules and assumptions applied where time and attendance data is missing or potentially inaccurate;
- whether employees and their representatives will be able to provide evidence in support of any claims regarding the times actually worked or entitlements owed where there are concerns about missing or potentially inaccurate employment data; and
- how the ABC will manage claims from employees and their representatives where they do not agree with the rules and assumptions that have been applied in a particular situation.

Next steps

Please provide the information requested in this letter by return email by 27 August 2021.

Should the ABC choose not to provide any of the information and/or documents requested on the basis of legal professional privilege, please identify which information and/or document has not been disclosed on this basis and the particulars of the privilege claim.

Finally, I note that the Fair Work Act 2009 (Cth) prohibits a person from knowingly or recklessly providing false or misleading information or documents to a Fair Work Inspector exercising powers or performing functions under the Commonwealth law. You may be liable to a civil penalty or civil remedy if you give false or misleading information or provide false or misleading documents. The provision of false and misleading information or documents is also a serious offence under the Criminal Code Act 1999 (Cth).

Should you wish to discuss any of the matters raised in this correspondence, please contact me on 

Yours sincerely

s47F

Director – Enforcement
Fair Work Ombudsman