

From: s47F
To: [Monica Vagg](#)
Cc: [Cassie Botha](#); [Vanessa MacBean](#); s47F
Subject: Fair Work Ombudsman - MAT-13416-N7M7 [SEC=OFFICIAL]
Date: Friday, 16 April 2021 5:00:08 PM
Attachments: [image001.png](#)
[image003.png](#)
[image004.png](#)
[image002.png](#)
[FWO to ABC 16 April 2021.pdf](#)

OFFICIAL

Dear Ms Vagg

Please see attached correspondence.

Regards



s47F

Enforcement

FAIR WORK OMBUDSMAN



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16 April 2021

Monica Vagg
Chief People Officer (a/g) – People & Culture
Australian Broadcasting Corporation

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

Dear Ms Vagg,

MAT-13416-N7M7 – AUSTRALIAN BROADCASTING CORPORATION

I refer to your correspondence dated 23 December 2020 regarding the Australian Broadcasting Corporation's (ABC) self-initiated review (**the Review**) into potential underpayments of employees classified as Band 1 or who have been engaged on a Buyout arrangement under the *ABC Enterprise Agreement 2019-2022* and its predecessor agreements (collectively, **the EAs**).

I also refer to the meeting on 27 January 2021 between representatives of the Fair Work Ombudsman (FWO) and ABC wherein the current status of the Review was discussed (**January Meeting**).

We confirm that the FWO is investigating the additional disclosures that are the subject of the Review. As such, the additional disclosures, and any outcomes arising out of the FWO's investigation fall outside the terms of the ABC's Enforceable Undertaking entered 16 June 2020 (EU).

Information requested

As foreshadowed in the January Meeting, the FWO requests further information to understand the Review's progress. The FWO seeks the below information from the ABC:

1. Technologists as Band 1 employees

We confirm that as of 6 August 2020, the ABC has provided the FWO with evidence of rectification made, and those that would be shortly rectified, to 50 of its employees engaged as 'Technologists' and classified as Band 1. Those employees have now been reclassified as Band 2 and received back payments for the periods during which they were paid as Band 1. As a result, this aspect of the Review has been finalised, and does not form part of the FWO's current investigation.

2. Update on Review

The 'proposed methodology' document prepared for the Review by PwC and provided to the FWO on 7 August 2020, indicates that s47(1)(b) was projected to be at or near completion.

Please provide any update on the status of the Review, including the current phase, and whether there are any delays or anticipated delays to the progress of each the Review phases.

3. Employment records for employees on Buyout arrangements

At the January Meeting, the ABC advised that it may not have made and/or kept records for all employees on Buyout arrangements. The FWO requests an update on how this has affected the Review, including:

- further details on the extent to which records were not held for these employees;
- any alternative or supplementary sources of data identified by the ABC that will be used to determine hours worked by these employees; and

- any assumptions under consideration where employment records do not exist and the way in which these assumptions will be applied to determine the likely hours worked.

Calculations methodology

As outlined in the January Meeting, the FWO will request that the ABC provide its proposed methodology for calculating the employee underpayments, which should include the ABC's interpretation of the relevant EA provisions. The FWO will ask that this proposed methodology be provided as soon as it is available. Access to this information will provide an opportunity for the ABC and the FWO to address any issues (such as approaches to set-off) before the calculation models are implemented and any back payments are made.

Any additional underpayments identified

The FWO also expects to receive prompt notification of any additional underpayments identified in the course of this Review, the independent audits under the EU, or via any other channel.

Next steps

Please provide the above requested information by no later than close of business **10 May 2021**.

Should the ABC wish to make a claim of legal professional privilege in respect of any of the information and/or documents requested, please identify the information and/or documents which have not been disclosed, and the particulars of the privilege claim.

Please also 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. If you give false or misleading information or provide false or misleading documents, you may be liable to a civil penalty or civil remedy. 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 **s47F**

on **s47F** or at **s47F**

Yours sincerely



Fair Work Ombudsman