



National Anti-Corruption Commission

Public disclosure

Public disclosure of information about the outcome of a preliminary investigation relating to the settlement between Ms Brittany Higgins and the Commonwealth

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Introduction

The settlement between Ms Brittany Higgins and the Commonwealth (the Settlement) has been the subject of scrutiny and speculation, including as to whether the Settlement involved corrupt conduct.

The National Anti-Corruption Commission (the Commission) conducted an extensive preliminary investigation into the Settlement and found no reason to think that there had been any corrupt conduct by any public official.

The *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act) imposes limits on what the Commission can publicly state about a preliminary investigation. The Commission is not required to report on preliminary investigations, and ordinarily does not do so. However, given the widespread publicity about the matter, the fact that the matter has been referred to the Commission is in the public domain, and the speculation about potential corrupt conduct, the Commission has determined it is in the public interest to make a disclosure to the public of information about the outcome of the preliminary investigation, under subsection 230(1) of the NACC Act. In these circumstances where, after an extensive preliminary investigation has been conducted, no corruption issue has emerged, it is appropriate for the Commission to clear the air.

Background

The Commission received several referrals regarding aspects of the Settlement of Ms Higgins' compensation claims (the Claims) against the Commonwealth.

The Commission conducted a [preliminary investigation](#) under section 42 of the NACC Act to confirm whether there was a corruption issue in connection with the Settlement.

The Commission conducts preliminary investigations to confirm the existence or nature of a corruption issue. A preliminary investigation may result in the Commission deciding to proceed to a corruption investigation, or it may result in a conclusion that no corruption issue exists, with the result that no further action is taken.

Jurisdiction of the Commission

The [Commission's jurisdiction](#) is concerned with Commonwealth public officials. A corruption issue exists if there is a viable hypothesis that a person has engaged in corrupt conduct. [Corrupt conduct](#) means conduct of a Commonwealth public official that involves a breach of public trust, an abuse of public office or a misuse of official information, or conduct by any person to cause a public official to behave other than honestly or impartially.

Conduct of the preliminary investigation

The Commission conducted a preliminary investigation to determine whether there could have been any corrupt conduct by a Commonwealth public official in the Settlement process.

The Commission issued multiple notices to produce under section 58 of the NACC Act, to the Attorney-General's Department, the Department of Finance and the solicitors and senior counsel who represented and advised the Commonwealth.

All notices issued were complied with. Thousands of documents were provided to the Commission that traced the history of the consideration of the Claims and negotiation of the Settlement. These documents were reviewed and analysed by the Commission.

Many of the documents the Commission obtained are subject to legal professional privilege. Their contents remain privileged and are therefore not detailed in this public disclosure.

Legal advice and process

Ms Higgins' claims were first notified to the Commonwealth in December 2021 and further detailed in March 2022.

The Commonwealth was advised and represented during the mediation process by independent external senior and junior counsel, who were instructed by independent external solicitors. Senior and junior counsel were briefed by the

Commonwealth in February 2022 and first provided advice in April 2022. Engagement of senior and junior counsel and the receipt of that advice, occurred during the period of the Liberal-National Coalition government, before the May 2022 election.

About a year elapsed between the initial notification of the Claims and the Settlement in December 2022. Further advice provided after the election took into account later developments, including the aborted criminal trial, but the conclusions did not materially differ from the initial April 2022 advice.

A critical consideration during the Settlement process was avoiding ongoing trauma to Ms Higgins.

It is not unusual for sensitive personal injury claims to be settled without formal litigation proceedings being commenced.

The Legal Services Directions 2017 (Cth) (Legal Services Directions) apply to the management and settlement of monetary claims against the Commonwealth (including for personal injury compensation). The Attorney-General's Department, through the Office of Legal Services Coordination (OLSC), administers the Legal Services Directions.

Given the size, nature and parties involved in the Claims, the Settlement fell within the Legal Services Directions' definition of a 'significant issue'. As such, the OLSC or the Attorney-General was required to be informed of the matter, and the Attorney-General's approval for the Settlement was required.

Documents provided by the Attorney-General's Department to the Commission demonstrate that this process was adhered to. Decisions made in relation to the Settlement were informed by advice from independent external solicitors, senior counsel with extensive experience in claims of this nature, junior counsel, and officers from the Attorney-General's Department and Comcover. The approach to the matter, including the maximum settlement amount, was approved by the former Attorney-General in accordance with the recommendation of the Attorney-General's Department. There was no identifiable difference in the approach to the matter before and after the change in government in May 2022.

Mediation

Parties enter mediation and settlement to avoid the risks and costs of litigation, which must be assessed based on what is known at the time and not what emerges later. The Settlement was negotiated at a time when a criminal trial had been aborted, a decision had been made not to proceed to a second trial, and the subsequent defamation proceedings by Mr Bruce Lehrmann had not been commenced.

The whole process took approximately a year from notification of the Claims until the mediation and Settlement. This is not unusual in the context of non-litigated personal injury claims. Nor is it unusual for the mediation conference to be concluded within a day.

It is unexceptional for sensitive claims to be settled at mediations in private, without witnesses having been examined. Mediations are negotiations, not forums for hearing and testing evidence. It is precisely to avoid the risks and costs associated with the trial process that litigation is settled. Witnesses are not called at mediations and there is nothing remarkable about the fact that the mediation did not hear evidence from anyone.

Independent external legal advice was provided in relation to who should be present during the mediation. The Commonwealth engaged in the mediation consistent with that legal advice. The decision to take control of the senators' defences and exclude them from the mediation, in circumstances where the Commonwealth had agreed to their request to fund their defences, was made upon Departmental advice informed by legal advice, to facilitate resolution of the Claims in an efficient manner, consistent with a trauma-informed approach. It is common where the Commonwealth is the respondent joined with another party and is funding the other party's defence for the Commonwealth to control the proceedings, similar to an insurer taking control of the defence of an insured.

The participation and presence of the senators was not necessary because witnesses do not give evidence in mediations, and their interests were not compromised: no obligation was incurred on their behalf, nor any admission

made, though they obtained the benefit of releases. As described below, the Settlement was on a 'no admission of liability' basis.

The Settlement

The Settlement was the product of a process which commenced almost a year earlier, in December 2021. Throughout, the matter was managed by independent external solicitors. The hypothesis that the Settlement was the result of corrupt conduct under the incumbent government is refuted by the circumstance that the legal advice on prospects and settlement, which provided the basis for the Settlement, had been sought from and provided by independent external counsel in April 2022, while the previous government was in office, as well as by the absence of any inappropriate intervention by or on behalf of any minister.

Counsel provided the critical advice. The quantum of the Settlement was below the maximum amount recommended by senior and junior counsel. In approving the recommendation put to him, the former Attorney-General followed Departmental advice. Legal advice was provided that there was a meaningful prospect of liability.

Senior counsel, who has much experience in the field of sexual harassment and sexual assault claims, informed the Commission that the process and Settlement was consistent with other cases in which they had acted and was not aware of any intervention by any minister of either government, other than the final settlement approval by the then Attorney-General.

The Settlement did not involve any acknowledgement of liability by or on behalf of any party, including the senators. The deed of release, dated 13 December 2022, expressly states that the parties agreed to resolve all claims between them 'without any admissions of liability'.

Conclusion

The preliminary investigation found no evidence that the Settlement process and outcome, including the legal advice provided, who was present at the mediation, or the amount of the Settlement, was subject to any improper influence by any Commonwealth public official. To the contrary, the evidence obtained reflected a process that was managed by Departmental officials and based on independent external legal advice, without any inappropriate intervention by any minister of either government. No corruption issue arises, and so there is no basis for any further action by the Commission.

The preliminary investigation was concerned with the probity and integrity of the process by which the Settlement was reached, and does not involve any conclusion about the validity or otherwise of Ms Higgins' claims. As has been noted, the Settlement was on the basis of no admission of liability.

Whether Ms Higgins made misrepresentations during the negotiations is not within the scope of the Commission's jurisdiction, as at the relevant time she was not a Commonwealth public official. That question therefore was not and could not be covered by this preliminary investigation.

A preliminary investigation into whether a corruption issue exists is a different question from whether there has been any breach of fiduciary duty or duty of care as alleged in the proceedings initiated by Senator Linda Reynolds on 24 April 2025 against the Commonwealth and HWL Ebsworth. That question therefore also was not and could not be covered by this preliminary investigation.

The time taken to complete the preliminary investigation has been affected by its interrelationship with other matters and court proceedings, the emergence of new issues requiring the Commission's consideration, and [procedural fairness](#) for individuals involved.