



INQUIRY INTO THE AEC ANALYSIS OF THE FWA REPORT ON THE HSU

I refer to the hearing of the Joint Standing Committee in Electoral Matters that took place on 16 July 2012.

At the hearing I was requested to provide the Committee with copies of correspondence relating to the status of the Health Services Union National Office as an “associated entity” under subsection 287(1) of the *Commonwealth Electoral Act 1918* (Electoral Act).

I have located the relevant documents and attached are copies of the following documents:

1. A letter from Ms Elias Hallaj of the ALP National Secretariat to the AEC dated 10 March 2009 setting out his understanding of which entities were associated entities of the ALP National Secretariat.
2. A letter from the AEC to Ms Kathy Jackson dated 12 May 2009 requesting the lodging of a disclosure return for the 2007-08 financial year. This letter refers to both the associated entity annual returns and the third party political expenditure return.
3. A letter from the AEC to a number of addressees including the ALP National Secretary dated 18 May 2009 seeking details of associated entities.
4. An email from me to Ms Kathy Jackson dated 20 May 2009 seeking an associated entity return and a third party political expenditure return.
5. A letter from Ms Kathy Jackson to the AEC dated 26 May 2009 stating why she was unable to lodge the disclosure returns at that time. I note that this letter refers to a letter from Ms Sayer dated 14 May 2009.
6. A letter from Mr Elias Hallaj to the AEC dated 27 May 2009 correcting his earlier advice concerning which union bodies were associated entities of the ALP National Secretariat.

7. A letter from Ms Kathy Jackson to the AEC dated 13 October 2009 setting out the basis for her argument that the Health Services Union National Office was not an associated entity and enclosing three disclosure returns. This document was tabled at the hearing of 16 July 2012.

Comments

The reference to letters from me dated 14 May 2009 in the letters from Ms Kathy Jackson dated 26 May 2009 and 13 October 2009 appear to be an incorrect reference to the letter from Ms Sayer to her dated 12 May 2009. I have been unable to locate any letter from the AEC to Ms Kathy Jackson dated 14 May 2009.

There is no letter from me to Ms Kathy Jackson dated 14 May 2009. I am able to state this categorically as I have rechecked my diary for 2009 which indicates that I was in Canada from 4 May 2009 to 15 May 2009 and did not return to work until 18 May 2009. Indeed, on 14 May 2009 I was on a flight from Los Angeles to Sydney which did not land until 15 May 2009.

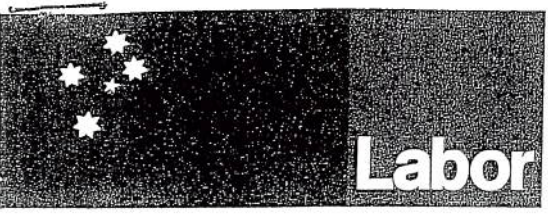
I trust that the above information is of assistance.

Yours sincerely

Paul Pirani
Chief Legal Officer

17 July 2012


206



National Secretariat

10 March 2009


 Mr Alan Page
 Assistant Director
 Funding and Disclosure
 Australian Electoral Commission
 PO Box 6172
 KINGSTON ACT 2604

*see later list
 rec'd 27/5/09.
 only 3 AEs
 not 14*


Dear Mr Page

In reference to your letter of 4 March 2009 please find attached the list of Associated Entities as requested.

If you have any questions please do not hesitate to contact me.

Yours sincerely

Elias Hallaj ✓
 Assistant National Secretary

✓ Australian Manufacturing Workers Union (AMWU)

Dave Oliver
National Secretary
PO Box 160
Granville NSW 2142

205

✓ Australian Services Union (ASU)

Paul Slape
National Secretary
Ground Floor, 116 Queensberry Street
Carlton South VIC 3053

✓ Australian Workers Union (AWU) - NO

Paul Howes
National Secretary
Level 10, 377-383 Sussex Street
Sydney NSW 2000

✓ Communications, Electrical and
Plumbing Union of Australia (CEPU)

Peter Tighe
National Secretary
Suite 701, Level 7
5-13 Rosebery Avenue
Rosebery NSW 2018

Construction, Forestry, Mining
And Energy Union (CFMEU)

John Sutton
National Secretary
PO Box Q235 QVB PO
Sydney NSW 1230

Health Services Union (HSU)

Kathy Jackson
National Secretary
208-212 Park Street
South Melbourne VIC 3205

✓ Liquor, Hospitality and Miscellaneous Union (LHMU)

Louise Tarrant
National Secretary
Locked Bag 9
Haymarket NSW 1240

Maritime Union of Australia (MUA)

Paddy Crumlin
National Secretary
Level 2, 365 Sussex Street
Sydney NSW 2000

National Union of Workers (NUW)

Charlie Donnelly
National Secretary
PO Box 343
North Melbourne VIC 3051

Rail, Tram & Bus Union (RTBU)

Greg Harvey
National Secretary
83-89 Renwick Street
Redfern NSW 2016

Shop Distributive and Allied
Employees Association (SDA)

Joe De Bruyn
National Secretary
6th Floor, 53 Queen Street
Melbourne VIC 3000

Textile, Clothing and Footwear
Union of Australia (TCFUA)

Michele O'Neill
National Secretary
PO Box 441
Carlton South VIC 3053

Transport Workers Union (TWU)

Tony Sheldon
National Secretary
PO Box 47
Parramatta NSW 2124

United Firefighters Union of Australia (UFUA)

Peter Marshall
National Secretary
410 Brunswick Street
Fitzroy Vic 3065

Ms Kathy Jackson
National Secretary
HSU
208-212 Park Street
SOUTH MELBOURNE Vic 3205

Dear Ms Jackson

Re: Associated Entity Annual Disclosure Obligation – 2007- 08 Financial Year

I am writing to advise that it has come to our attention that your entity has a disclosure obligation under Part XX of the *Commonwealth Electoral Act 1918* (the Act) for the 2007-08 financial year. The due date for lodging a return was 20 October 2008.

The Australian Electoral Commission (AEC) recently contacted all branches of the Australian Labor Party requesting a complete list of all associated entities. HSU was included on the list.

The financial controller of each associated entity has a responsibility to lodge a disclosure return for the 2007-08 financial year in accordance with Part XX of the Act unless the financial details of the entity are included in a disclosure return for a related entity. If the information for your associated entity has been included on the return of another associated entity, or your associated entity has already submitted a return under a different name, please contact the AEC on (02) 6271 4552 so our records can be updated

Failure to lodge the required disclosure return is a serious criminal offence which may result in the AEC referring this matter to the Commonwealth Director of Public Prosecutions.

A return form is included with this letter to assist you in meeting your disclosure obligation.

Signed forms, including any attached spreadsheets, can be lodged with the AEC via:

- Email to fad@aec.gov.au;
- Fax to (02) 6271 4555; or
- Post to:

Australian Electoral Commission
Funding and Disclosure Section
PO Box 6172
KINGSTON ACT 2604

Important information to note is provided below.

Disclosure Threshold

The disclosure threshold for the 2007-08 financial year is 'more than \$10, 500.' Transactions below this threshold are not usually required to be reported individually.

Third Party Return of Political Expenditure

A *Third Party Return of Political Expenditure* is also required to be lodged by Associated Entities where they incur political expenditure in excess of the \$10, 500 threshold in 2007-08. Copies of the return form and handbooks are available from the AEC website (www.aec.gov.au).

Donor Returns

The AEC uses information from associated entity returns to identify donors. Please ensure that the detailed information on your return is sufficient for the AEC to contact the person or organisation that has made the donation to advise them of their reporting obligation.

Further general information about completing the return can be obtained from the *Funding and Disclosure Handbook for Associated Entities*, available on the AEC website (www.aec.gov.au) or by contacting the Funding and Disclosure Section on (02) 6271 4552 or by emailing fad@aec.gov.au

Yours sincerely

Sue Sayer
Director, Funding and Disclosure
Australian Electoral Commission

12 May 2009



Our Ref:

Title First Name Last Name
Party
Address Line 1
Address Line 2
Address Line 3

Dear Title Last Name

RE: Associated Entities of Federally Registered Political Parties

As you would be aware, bodies and organisations that satisfy the definition of 'Associated Entity' in section 287(1) of the *Commonwealth Electoral Act 1918* (the Act) have a disclosure obligation in relation to a given financial year. The definition of an associated entity is set out on the reverse of this letter.

The Australian Electoral Commission (AEC) requires an accurate and up to date list of all associated entities of federally registered political parties in order to inform them of their disclosure obligations under Part XX of the Act. To assist the AEC with this would you please provide a list of all organisations that are affiliated with your party for the 2008/2009 financial year, including:

- The name of a current contact for each organisation; and
- Full address details of each associated entity.

Where an associated entity operates under alternative names or abbreviations, please provide all details. Precise and accurate records will allow the AEC to contact and advise associated entities of their financial disclosure obligations for this financial year in a timely and efficient manner.

Should you have any queries in relation to this matter please do not hesitate to contact the funding and disclosure section on (02) 6271 4552 or via email at fad@aec.gov.au.

Your assistance in providing this information by 29 May 2009 is appreciated.

Yours sincerely

Sue Sayer
Director
Party Registration and Financial Disclosure

18 May 2009

Mr Karl Bitar
Australian Labor Party (ALP)
PO Box 6222
KINGSTON ACT 2604

Paul Pirani

From: Paul Pirani
Sent: Wednesday, 20 May 2009 1:44 PM
To: kathy.jackson@hsu.org.au
Cc: Sue Sayer; Brad Edgman
Subject: Disclosure obligations under the Commonwealth Electoral Act [SEC=IN-CONFIDENCE]

Categories: IN-CONFIDENCE

IN-CONFIDENCE

Kathy

I have attempted to contact you twice today and am unable to access your voicemail to leave a message.

I would appreciate having a quick telephone conversation with you to discuss a way forward for ensuring that the National Branch of the HSU has complied with the obligations under sections 314AEA of the Commonwealth Electoral Act 1918 (ie the annual return of an associated entity for 2007-08) and section 314 AEB (the third party political expenditure return for 2007-08 which includes the November 2007 general election).

I am aware of the various articles in the Sydney Morning Herald about the HSU and the expenditure in Dobell that was apparently authorised by Mr Craig Thomson and is alleged to have involved HSU funds. I am also aware of media reports indicating that you have already taken action to refer this matter to BDO Kendall and Slater and Gordon. I also understand from media reports that the Industrial Registrar may also be investigating this matter.

Yesterday I had a discussion with Mr Michael Williamson who confirmed that the existing third party political expenditure return that we have published only relates to the NSW Branch of the HSU and does NOT include any information about the National Branch of which you are the National Secretary. Similarly, the associated entity returns that we have published apparently do not include the National Branch of your union.

No doubt I will be questioned at Senates Estimates hearing next Thursday 28 May on this matter and would appreciate the opportunity to discuss this matter with you on a without prejudice basis. I just want to be clear about what proactive action you are taking to address this matter (including the proposed timeframes) and to meet the statutory reporting obligations contained in Part XX of the Act.

Paul Pirani
Chief Legal Officer
Chief Legal Officer Unit
Australian Electoral Commission

IN-CONFIDENCE

Sue Sayer

AEC

Director Funding and Disclosure

BY E-MAIL: fad@aec.gov.au

26 May 2009

Dear Ms Sayer

Re: Associated Entity Annual Disclosure Obligation 2007 – 09

Thank you for your letter dated 14 May 2009

The HSU has not yet lodged a return as it is not yet able to determine whether expenditure was disclosurable.

Like most unions, it is customary for the Health Services Union to conduct an exit audit following a change of leadership within the Union or within one of its branches. An exit audit was conducted within the National office of the Union in 2008.

During the audit, the Union's National Auditor raised some issues, which were extensively reviewed by the Union.

The National Executive of the Union then unanimously resolved that the issues required further independent investigation.

The Union appointed a national law firm, Slater & Gordon, and an independent auditor, national accounting firm, BDO Kendall to conduct that investigation and make recommendations. A copy of the letter to Slater and Gordon is attached.

That investigation is continuing and no conclusions have been reached regarding the matters the subject of the investigation or the conduct of any officers of the Union.

The Industrial Registrar and the HSU National Executive have remained apprised of the progress of the investigation.



Health Services Union

Until the investigation is completed we are not in the position to accurately disclose political expenditure.

I am advised that Slater & Gordon expect to provide a report by early June.

We will inform you of any developments.

I will provide you with further advice when it comes to hand.

Yours Sincerely

Kathy Jackson

National Secretary

27 May 2009

Ms Sue Sayer
Director
Party Registration and Financial Disclosure
Australian Electoral Commission
PO Box 6172
KINGSTON ACT 2604

Note: Does not include
HSU as an AE.
22/5/09.

Dear Ms Sayer

Thank you for your correspondence of 18 May 2009 regarding associated entities.

As you are aware, the provisions of the *Commonwealth Electoral Act 1918* relating to the definition of an associated entity were substantially changed by the previous government. This created a degree of confusion among political parties, as well as the AEC, over which organisations fell within the definition of an associated entity for each political party.

The ALP (National) has the following associated entities affiliated to it:

- John Curtin House Pty Ltd
- ALP Legacies and Gifts Pty Ltd
- Chifley Research Centre Pty Ltd

In each case, the current contact and address for the associated entities is Mr Paul David Wilkinson, PO Box 6222, Kingston ACT 2604.

In the first year of the new laws being in operation, the ALP National Secretariat assisted the AEC to contact unions affiliated with the ALP at state level. This was done to assist the AEC to deal with a new piece of complex legislation

To ensure that there are no errors in the reporting under these provisions, you should however direct correspondence to the state branches of the ALP now and in the future.

Apart from the entities listed in this correspondence, all unions and some other entities are affiliated at state level only, there is no process of national union affiliation and unions do not have voting rights at the national level.

Yours sincerely

Elias Hallaj
Assistant National Secretary

13 October 2009



Mr. Paul Pirani
Chief Legal Officer
Australian Electoral Commission
By Email: Paul.Pirani@aec.gov.au
By: Fax 02 6271 4552

Dear Sir

I refer to your letter of 14 May 2009 to me and the subsequent exchanges of correspondence between you and the Union's lawyer Mr Ken Fowle.

Please find enclosed:

1. Annual Return relating to Political Expenditure for Financial Year 2006 – 2007;
2. Annual Return relating to Political Expenditure for Financial Year 2007 – 2008;
and
3. Donor Return for Financial Year 2007 – 2008.

Associated Entity

In your letter of 14 May you indicated that you regarded the HSU as an associated entity. Respectfully, we take a different view.

By virtue of s27 of the Fair Work (Registered Organisations) Act 2009 ("Act"), the Health Services Union is an incorporated entity. As you know, the Union is divided into a number of separate branches, each of which, pursuant to the rules of the Union and the operation of the Act, operate autonomously, including with respect to their financial affairs and reporting with respect to those affairs. This is particularly governed by s242 of the Act. A number of the branches of the Union, specifically the NSW Branch, the Tasmanian Branch, the West Australian Branch and several of the Victorian Branches are Associated Entities of the Australian Labor Party. In each case, they are affiliated to the Australian Labor Party in their respective states and they provide delegates to the conferences of those state branches of the ALP.

Pursuant to s242(5) of the Act, the National Office of the Union is regarded by the Act as a separate branch for the purpose of reporting. However, unlike the state branches of the Union described above, the HSU National Office, is not affiliated with the ALP and does not provide delegates to any forum of the ALP. It seems to us, in those circumstances, that the National Office of the HSU cannot be an Associated Entity having regard for the definition within the Australian Electoral Commission Act.

Naturally, we are happy to discuss this with you. We understand that the National office of the ALP is of the same view.

Please do not hesitate to contact me if you have any further questions.

Yours faithfully

Kathy Jackson
National Secretary

National Office

208-212 Park Street, South Melbourne, Victoria 3205, Postal address PO Box 3078, South Melbourne, Victoria 3205
Telephone: (03) 9341 3328, Facsimile: (03) 9341 3329, www.hsu.net.au, Email: hsu@hsu.net.au. ABN 68 243 768 561

From: Paul Pirani
Sent: Tuesday, 21 August 2012 3:12 PM
To: Mannette, Samantha (REPS)
Cc: Ed Killesteyn; Brad Edgman; MPIS Mailbox; Tom Rogers
Subject: RE: JSCEM: Request [DLM=For-Official-Use-Only]

For-Official-Use-Only

Dear Ms Mannette

I refer to your email of today's date.

In relation to item 1, please find attached copies of my email exchanges with Mr Ken Fowlie of Slater & Gordon in 2009 and the copy of his letter to me of 30 June 2009.

In relation to item 2 the AEC published the outcome of the HSU East compliance review on our website on the following link:

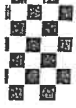
http://www.aec.gov.au/Parties_and_Representatives/compliance/AEC_Advice/2012-hsu-east.htm

I trust that the above information is of assistance to the Committee.

Yours sincerely

Paul Pirani
Chief Legal Officer
Legal and Compliance Branch
Australian Electoral Commission

For-Official-Use-Only



30 June 2009

Mr Paul Pirani
Chief Legal Officer
Australian Electoral Commission
PO Box 6172
KINGSTON ACT 2604
And By Facsimile: 6271 4457

Level 11
51 Druitt Street
Sydney NSW 2000

www.slatergordon.com.au

GPO Box 1584
SYDNEY NSW 2001

DX 1163 SYDNEY

Direct Ph: +61 2 8267 0603
Fax: + 61 2 8267 0650
Email: kfowlie@slatergordon.com.au

Dear Sir

Health Services Union

I am instructed by the National Executive of the Health Services Union ("Union").

Along with directors from BDO Kendalls, I recently concluded an investigation and made findings in relation to expenditure within the National Office of the Union in the period 2002 – 2007.

As part of the investigation we made certain findings in relation to expenditure incurred by the National Office of the Union which may require disclosure under the Commonwealth Electoral Act 1918 ("CEA").

The full findings of our investigation have now been provided to the Industrial Registrar.

I understand that the Industrial Registrar has initiated inquiries pursuant to s330 of the RAO Schedule to the Workplace Relations Act 1996.

So as not to prejudice those investigations my client proposes to await the conclusion of the Industrial Registrar's inquiries before finalising any disclosure under the CEA.

Whilst I do not know how long it will take before Industrial Registrar reaches a conclusion to his investigation, I will ensure that you are provided with a further update by 31 July 2009.

Please contact me if I can be of any further assistance in relation to this matter in the interim.

Yours faithfully

Ken Fowlie
Executive Director
Practice Group Leader
SLATER & GORDON

Paul Pirani

From: Paul Pirani
Sent: Tuesday, 11 August 2009 10:14 AM
To: 'Ken Fowlie'
Cc: Sue Sayer; Brad Edgman
Subject: RE: Health Services Union [SEC=LEGAL-IN-CONFIDENCE]
Categories: LEGAL-IN-CONFIDENCE

LEGAL-IN-CONFIDENCE

Dear Mr Fowlie

Thanks for the update. I look forward to being kept informed of the progress in this matter.

While I acknowledge the reason why your client is unable to lodge amended disclosure returns and a third party return at this time due to the particular circumstances of this matter, I note that this delay cannot continue indefinitely.

Accordingly, your clients are hereby placed on notice that if the delay in addressing the requirements contained in Part XX of the Commonwealth Electoral Act 1918 continues for any undue length of time, the AEC will be forced to consider exercising the power contained in subsection 316(3) of the Commonwealth Electoral Act 1918 and to direct notices to produce to both the HSU and to individual members of the HSU Executive.

Yours sincerely

Paul Pirani
Chief Legal Officer
Chief Legal Officer Unit
Australian Electoral Commission

LEGAL-IN-CONFIDENCE

From: Ken Fowlie
Sent: Monday, 10 August 2009 2:14 PM
To: Paul Pirani
Subject: RE: Health Services Union [SEC=LEGAL-IN-CONFIDENCE]

PRIVILEGED & CONFIDENTIAL

Mr Pirani

Thank you for your email. I refer also to my letter dated 30 June 2009.

Unfortunately, I have not received any further advices from the Industrial Registrar (now, General Manager, Fair Work Australia) regarding its examination of the matters I was instructed by the Union to investigate. Consequently, my client proposes to continue to refrain from providing information to your office at this time. It remains concerned that to do otherwise, could prejudice the inquiries being made by Fair Work Australia.

will provide you with a further update by the end of August 2009.

Yours Faithfully

Ken Fowlie
Executive Director
Practice Group Leader
Slater & Gordon
Sydney Office

From: Paul Pirani
Sent: Tuesday, 4 August 2009 09:18 AM
To: Ken Fowlie
Subject: Health Services Union [SEC=LEGAL-IN-CONFIDENCE]

LEGAL-IN-CONFIDENCE

Mr Ken Fowlie
Slater & Gordon Lawyers

Dear Mr Fowlie

I refer to previous correspondence relating to your client the Health Services Union and the reporting of electoral expenditure under Part XX of the *Commonwealth Electoral Act 1918*. I also particularly refer to your letter to me of 30 June 2009 in which you indicated that you would provide an update by 31 July 2009.

I am now proceeding to prepare various briefing documents for the Special Minister of State for use when the Parliament resumes on 11 August 2009. It is essential that I receive the previously foreshadowed update from you and your client in relation to the timeframes in which a response is to be provided to the Australian Electoral Commission which meets the reporting requirements contained in Part XX.

The delay in progressing this matter is becoming a concern and will no doubt lead to questions being raised in the Parliament.

I look forward to receiving your prompt advice as to the progress of this matter.

Yours sincerely

Paul Pirani
Chief Legal Officer
Chief Legal Officer Unit
Australian Electoral Commission

LEGAL-IN-CONFIDENCE

DISCLAIMER:

Paul Pirani

From: Paul Pirani
Sent: Thursday, 10 September 2009 12:56 PM
To: 'Ken Fowlie'
Cc: Sue Sayer; Brad Edgman
Subject: RE: Health Services Union [SEC=LEGAL-IN-CONFIDENCE]

Categories: LEGAL-IN-CONFIDENCE

LEGAL-IN-CONFIDENCE

Mr Fowlie

I observe that yet another month has now gone by without this matter apparently being resolved.

I would appreciate your urgent update on where this matter is at including the contact details of the person in Fair Work Australia who is handling the investigations.

The AEC is currently scheduled to attend Senate Estimates hearings in the week beginning 19 October 2009. If this matter is not resolved with the required annual returns and amended returns being lodged by your client before 12 October 2009, the AEC will be forced to issue the previously foreshadowed notices under subsection 316(3) of the *Commonwealth Electoral Act 1918* in preparation of preparing a brief of evidence to be referred to the Director of Public Prosecutions.

I look forward to your urgent response.

Yours sincerely

Paul Pirani
Chief Legal Officer
Chief Legal Officer Unit
Australian Electoral Commission

LE~~GA~~-IN-CONFIDENCE

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Yours sincerely


Paul Pirani

Chief Legal Officer
Chief Legal Officer Unit
Australian Electoral Commission

LEGAL-IN-CONFIDENCE

From: Ken Fowlie [mailto:kfowlie@slatertgordon.com.au]

Sent: Monday, 10 August 2009 2:14 PM

 Paul Pirani

Subject: RE: Health Services Union [SEC=LEGAL-IN-CONFIDENCE]

PRIVILEGED & CONFIDENTIAL

Mr Pirani

Thank you for your email. I refer also to my letter dated 30 June 2009.

Unfortunately, I have not received any further advices from the Industrial Registrar (now, General Manager, Fair Work Australia) regarding its examination of the matters I was instructed by the Union to investigate. Consequently, my client proposes to continue to refrain from providing information to your office at this time. It remains concerned that to do otherwise, could prejudice the inquiries being made by Fair Work Australia.

I will provide you with a further update by the end of August 2009.

Yours Faithfully

Ken Fowlie
Executive Director
Practice Group Leader
Slater & Gordon
Sydney Office

From: Paul Pirani [mailto:Paul.Pirani@aec.gov.au]

Sent: Tuesday, 4 August 2009 09:18 AM

To: Ken Fowlie

Subject: Health Services Union [SEC=LEGAL-IN-CONFIDENCE]

LEGAL-IN-CONFIDENCE

Mr Ken Fowlie
Slater & Gordon Lawyers

Dear Mr Fowlie


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I look forward to receiving your prompt advice as to the progress of this matter.

Yours sincerely

 Pirani
Chief Legal Officer
Chief Legal Officer Unit
Australian Electoral Commission

LEGAL-IN-CONFIDENCE

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Slater & Gordon Lawyers - <http://www.slatergordon.com.au>

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This e-mail message has been scanned for Viruses and Content and cleared by MailMarshal

Paul Pirani

From: Paul Pirani
Sent: Friday, 11 September 2009 9:34 AM
To: Ed Killesteyn; Paul Dacey
Cc: Sue Sayer; Brad Edgman
Subject: RE: Health Services Union [SEC=LEGAL-IN-CONFIDENCE]

Categories: LEGAL-IN-CONFIDENCE

LEGAL-IN-CONFIDENCE

Ken Fowlie from Slater and Gordon solicitors just phoned.

The HSU Exec is currently working on a return that will be lodged before 12 October 2009. Apparently the FWA investigation is still not complete and will be likely to continue until at least December.

Paul Pirani
Chief Legal Officer
Chief Legal Officer Unit
Australian Electoral Commission

LEGAL-IN-CONFIDENCE

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Sent: Thursday, 10 September 2009 12:56 PM
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Cc: Sue Sayer; Brad Edgman
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Chief Legal Officer Unit

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Unfortunately, I have not received any further advices from the Industrial Registrar (now, General Manager, Fair Work Australia) regarding its examination of the matters I was instructed by the Union to investigate. Consequently, my client proposes to continue to refrain from providing

information to your office at this time. It remains concerned that to do otherwise, could prejudice the inquiries being made by Fair Work Australia.

I will provide you with a further update by the end of August 2009.

Yours Faithfully

Ken Fowlie
Executive Director
Practice Group Leader
Slater & Gordon
Sydney Office

From: Paul Pirani

Sent: Tuesday, 4 August 2009 09:18 AM

 Ken Fowlie

Subject: Health Services Union [SEC=LEGAL-IN-CONFIDENCE]

LEGAL-IN-CONFIDENCE

Mr Ken Fowlie
Slater & Gordon Lawyers

Dear Mr Fowlie

I refer to previous correspondence relating to your client the Health Services Union and the reporting of electoral expenditure under Part XX of the *Commonwealth Electoral Act 1918*. I also particularly refer to your letter to me of 30 June 2009 in which you indicated that you would provide an update by 31 July 2009.

I am now proceeding to prepare various briefing documents for the Special Minister of State for use when the Parliament resumes on 11 August 2009. It is essential that I receive the previously foreshadowed update from you and your client in relation to the timeframes in which a response is to be provided to the Australian Electoral Commission which meets the reporting requirements contained in Part XX.

The delay in progressing this matter is becoming a concern and will no doubt lead to questions being raised in the Parliament.

I look forward to receiving your prompt advice as to the progress of this matter.

Yours sincerely

Paul Pirani
Chief Legal Officer
Chief Legal Officer Unit
Australian Electoral Commission

LEGAL-IN-CONFIDENCE

HSU EAST – Disclosures for 2009/10

This advice sets out the AEC's conclusion in relation to the matters described below:

The matter

The 2009/10 annual disclosure return for the associated entity Health Services Union East (HSU East) was lodged by the financial controller on 19 October 2010, a day before the final date for lodgement. This return disclosed total amounts received of \$0.00 and total amounts paid of \$22,225.

On 30 August 2011 the financial controller of HSU East lodged with the AEC a request to amend figures appearing in the 2009/10 annual return to \$17,935,800 for total amounts received and \$16,284,546 for total amounts paid. A further request for amendment was lodged on 1 September 2011 changing these figures to \$24,989,315 for total amounts received and \$24,894,014 for total amounts paid. These 1 September 2011 figures remain current as the disclosure record for HSU East.

The AEC sought to establish whether the amended annual disclosure return for HSU East now provides an accurate disclosure record.

When matter raised

An article titled 'Expenses probe for Health Services Union' appeared in The Australian newspaper on 31 August 2011.

Legislation

Part XX of the *Commonwealth Electoral Act 1918* (the Act). The pertinent section is s.314AEA that requires annual disclosures to be lodged by entities that meet the Act's definition of 'associated entity' found at s.287(1).

AEC process

This inquiry has taken six months to complete.

For this matter, the AEC corresponded with Barry Gibson, the Chief Financial Controller, and Peter Mylan, the acting General Secretary, of HSU East. The AEC also consulted with Natalie Bradbury the National Senior Assistant Secretary of HSU National Office.

Two officers of the AEC attended the premises of HSU East in November 2011 under the authority of a notice of investigation issued under s.316(2A). As part of this visit the AEC officers examined reports of receipt and payment figures generated from HSU East's accounting system. These figures were reconciled to the (amended) disclosure return.

AEC conclusion

The amendments to the 2009/10 annual return of HSU East were initiated by the financial controller prompted by his examination of that return in preparation for compiling the return for the 2010/11 financial year. Two amendments to the figures occurred in the course of three days as a result of the first amendment having been incorrectly prepared from accrual figures.

The explanation offered for the original incorrect return was that the figures had been prepared by a new employee of HSU East who must not have correctly understood what was required. The AEC is of the view that, in those circumstances, the financial controller was not entitled to rely on the return so drafted and the figures prepared should have been checked by a more experienced officer in HSU East before being lodged.

After its inquiries and examination of accounting records, the AEC is satisfied that the 2009/10 annual return lodged for HSU EAST, as it stands following the amendment effected on 1 September 2011, is a complete and accurate disclosure record of HSU East's finances as required by Part XX of the Act.

Source: http://www.aec.gov.au/Parties_and_Representatives/compliance/AEC_Advice/2012-hsu-east.htm#process, viewed 21 August 2012