

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ16-000129

Senator Reynolds asked on 11 February 2016 on proof Hansard page 144

Question

FWC - Referrals

Senator REYNOLDS: Did you say 13 matters are in the process of being referred? So you have had a list of them up-front and now you are getting the supporting material. Is it 13 individual matters or more than that?

Mr Enright: It is 13 individuals.

Senator REYNOLDS: Thirteen individuals.

Mr Enright: Thirteen individual people and the AWU as a separate entity. With those individuals and the AWU—the AWU involves seven matters, with Cleanevent being one of them, but there are six other matters—there are multiple matters being referred to each of them.

Senator REYNOLDS: So you have 13 individuals and the AWU. The AWU has got Cleanevent plus six other matters to refer, and the 13 will also similarly concertina out into a number of other issues.

Mr Enright: That is so.

Ms O'Neill: Senator, you asked a moment ago whether any of the investigations relate to the allegations in the Cleanevent matter or the 'scandalous' matter, as you described it. I just want to be clear that the powers available to conduct inquiries and investigations are only in relation to specified matters. There is no free ranging power to commence investigations into any matters. In the example that you gave, my understanding is that we would have no power.

Mr Enright: We expect the matters relating to the AWU will, by and large, be around membership records and membership issues. Separately to that, one of the 13 individuals is a former member of that union and there are allegations about that particular member. Can I put this in context: the police—

CHAIR: Senator Reynolds, it is time—

Senator REYNOLDS: I have got a couple more questions.

Mr Enright: It is important just to understand there are multiple referrals.

Senator REYNOLDS: Can you perhaps put that on notice, because you have provided very fulsome responses—thank you—and I have got more questions.

Answer

The Trade Union Royal Commission (TURC) published a final report in December 2015. The extensive TURC report foreshadowed that referrals would be made to the Fair Work Commission (FWC) relating to thirteen (13) individuals and one trade union as a separate legal entity. These extensive referrals relate to individuals from six (6) trade unions or branches of trade unions in various states including Western Australia, NSW and Victoria and allege contraventions spanning a period of more than 10 years between 2005 and 2015. Since the publication of the TURC final report, supporting material in relation to each the matters foreshadowed in the final report has been incrementally provided to the FWC. The

provision of the supporting material has occurred between January 2016 and 2 March 2016. As of 1 March 2016 more than 60,000 pages of supporting material have been provided to the FWC. The supporting materials provided to the FWC on 2 March 2016 have not yet been calculated although that material is anticipated to be substantial and is likely to mean that the number of pages of supporting material provided to the FWC in relation to the referrals will exceed 100,000.

In addition to the formal referrals emerging from the Final Report of the TURC published in December 2015, three further complex matters relating to two trade unions have been referred by the TURC to the General Manager for further evaluation and investigation. These further three matters were not the subject of public case studies published by the TURC although they are similarly complex, involve a range of allegations of regulatory contraventions which were canvassed in private TURC hearings and some have also been referred to other agencies including the NSW Industrial Relations Commission and the NSW Police.

Planning, scoping, document management and increasing resources to deal with all the referrals is underway. Each document that may evidence contraventions of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) and fall within FWC's jurisdiction to investigate or otherwise bring proceedings in respect of, needs to be examined. This includes identifying how the material was obtained by the TURC. This is because any evidence (oral or documentary) obtained compulsorily by the TURC from a person may not be used in evidence in civil proceedings against that person. Any such material could not be used by the FWC to decide whether, for example, to commence proceedings in respect of any contraventions.

It is not presently possible to anticipate the finalisation of any of the matters referred to the FWC by the TURC.