

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ16-000223

Senator McKenzie provided in writing.

Question

FWC - Royal Commission Referrals – Transport Workers Union

The Heydon Royal Commission has made a number of referrals to various civil and criminal agencies arising from matters uncovered by the Royal Commission.

Transport Workers Union officials James McGiveron and Richard Burton who, amongst other things, it is alleged used union funds without proper authorisation to purchase pick-up trucks worth \$150,000 each, and potentially dishonestly hid the transactions from the union.

The Royal Commission referred them for investigation of alleged breaches of duties under ss 285, 286 and 287 of the Registered Organisations Act.

- What steps have been taken in relation to this referral?
- When does the FWC anticipate this investigation will be finalised?
- Was the FWC aware of the allegations now being investigated before they were highlighted by the Royal Commission?
- If the FWC was aware, what was done before the referral?
- If the FWC was aware, why wasn't anything been done before the referral?
- If the FWC was not aware, should the FWC have been aware?

Answer

1. In a letter dated 22 December 2015 the Trade Union Royal Commission (TURC) advised the Fair Work Commission (FWC) that it was proposing to refer matters in relation to the Western Australian Branch of the Transport Workers Union of Australia (TWU-WA) to the FWC including:
 - Whether proceedings should be commenced against Richard Burton for possible contraventions of sections 285, 286 and/or 287 of the *Fair Work (Registered Organisations) Act 2009*; and
 - Whether proceedings should be commenced against James McGiveron for possible contraventions of sections 295, 286 and/or 287 of the *Fair work (Registered Organisations) Act 2009* (the RO Act).

The letter was not received by the FWC until 1 February 2016 because it had been incorrectly addressed.

The supporting material in relation to the two (2) former office holders of the TWU-WA (more than 6,378) pages was received on 2 February 2016.

While the FWC continues to plan, scope and manage the extensive documents referred by the TURC in relation to this and other matters, Counsel has also been engaged to provide advice, amongst other issues, about the sufficiency of the referred TWU-WA materials in terms of any potential contraventions of the RO Act. The FWC has also continued to engage with the TWU, including in relation to Federal Court proceedings commenced by the TWU against Mr Burton in relation to the conduct which was the subject of the TURC referral.

2. It is not presently possible to anticipate when this matter will be finalised.
3. The FWC became aware of the allegations at the same time as the TURC. On 12 November 2014 legal representatives of the TWU delivered an investigation report to the FWC which had been prepared by the Hon Wayne Haylen QC into the TWU WA. On the same day, the same investigation report was provided to the TURC. On 2 February 2015 a meeting occurred between representatives of the TURC and the FWC during which, at the request of the TURC, the FWC agreed that it would not commence any formal inquiry or investigation until the TURC had published its report into this matter.
4. See response to 3.
5. See response to 3.
6. The legislative scheme of the RO Act is directed at ensuring that organisations discharge their obligations of accountability to their members in relation to the financial affairs of the organisation through proper and regular disclosure of financial information.

Inquiries are conducted under section 330 of the RO Act into whether Part 3 of Chapter 8 of the RO Act, the reporting guidelines made under that Part, regulations made for the purposes of that Part, or the rules of an organisation relating to its finances or financial administration have been, or are being, complied with.

If there are reasonable grounds for doing so, an investigation into whether a civil penalty provision has been contravened can be conducted.

It appears from the materials that the issues which are the subject of the referral are alleged to have occurred in TWU-WA between 2012 and 2013 and that they became known to a broader range of TWU officials in 2014 leading to an investigation by the Hon Wayne Halen QC. Following that investigation, the TWU provided the investigation report to the FWC and the TURC. The FWC is not aware of any fact or circumstance which indicates that it should or could have been aware of any of the information or material.