

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ16-000225

Senator McKenzie provided in writing.

Question

FWC - Royal Commission Referrals – National Union of Workers

The Royal Commission into Trade Union Governance and Corruption made referrals in respect of a number of National Union of Workers officials who are alleged to have breached the registered organisations laws including by using union funds to pay for corporate box tickets, tattoos, jewellery and online dating services.

1. What steps have been taken in relation to this referral?
2. When does the FWC anticipate this investigation will be finalised?
3. Was the FWC aware of the allegations now being investigated before they were highlighted by the Royal Commission?
4. If the FWC was aware, what was done before the referral?
5. If the FWC was aware, why wasn't anything been done before the referral?
6. 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 relating to the National Union of Workers (NUW) to the FWC including:
 - Whether proceedings should be commenced against Nicklouse (Nick) Belan for a possible breach of sections 285, 286 and/or 287 of the *Fair Work (Registered Organisations) Act 2009*; and
 - Whether proceedings should be commenced against Darack (Derrick) Belan for a possible breach of sections 285, 286 and 287 of the *Fair Work (Registered Organisations) Act 2009*;
 - Whether proceedings should be commenced against Wayne Meaney for a possible breach of sections 285, 286 and 287 of the *Fair Work (Registered Organisations) Act 2009*;
 - Whether proceedings should be commenced against Marilyn Issanchon for a possible breach of sections 285, 286 and 287 of the *Fair Work (Registered Organisations) Act 2009*.

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 four (4) current and former office holders of the NUW (more than 10,600 pages) was received on 28 January 2016. Planning, scoping, document management and increasing resources to deal with all the referrals is underway. This is a very significant undertaking. To date, more than 37,000 pages have been provided to the FWC. Each document that may evidence contraventions of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) and fall within the 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.

In relation to the 4 current and former office holders of the NUW, further referrals were simultaneously made to the NSW Industrial Relations Commission, the Director of Public Prosecutions of NSW and the Commissioner of the NSW Police.

The FWC will work closely with these agencies to ensure that appropriate sequencing of investigations or other actions occur. The Australian Government has established a working group of Commonwealth regulators, in part to facilitate this coordination. For example, in general terms, criminal investigations and prosecutions take precedence over civil investigations and prosecutions.

2. It is not presently possible to anticipate when this matter will be finalised.
3. No. A preliminary overview of some of the supporting material referred to the FWC on 28 January 2016 in relation to current and former members of the NUW, indicates that the majority of the allegations appear to relate to conduct by current and former officials in their roles as office holders in the NUW NSW which is an employee organisation registered under the *Industrial Relations Act 1996* (NSW) over which the FWC has no jurisdiction. It appears that the matters first emerged following compulsory notices issued by the TURC to the NUW NSW in September 2015.
4. See response to Q3.
5. See response to Q3.
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.

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FWC is not aware of any fact or circumstance which indicates that it should or could have been aware of any of that information or material.