

Senate Estimates February 2012

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By: Fair Work Australia

## HSU Investigations

I am able to provide the Committee with further information on the status and progress of the two investigations concerning the HSU.

Two investigations have been undertaken. One in relation to the HSU Victoria No. 1 Branch and one in relation to the HSU National Office. The investigations are discrete, but have largely been conducted concurrently. To be clear, the relevant dates are:

- No. 1 Branch: Inquiry 29 January 2009; Investigation 27 April 2010
- National Office: Inquiry 6 April 2009; Investigation 27 March 2010

Both investigations have been conducted by the General Manager's Delegate, Mr Nassios. Mr Nassios has at all times been responsible for the conduct of both investigations.

The current status of the investigations is as follows:

### No. 1 Branch

The investigation into the Health Services Union Victoria No. 1 Branch has concluded. The investigation conducted under section 331 of the FW (RO) Act 2009 into compliance by the Branch with its financial reporting obligations commenced in April 2010. This investigation followed an inquiry under section 330 of the RO Act which began in January 2009.

Mr Nassios completed his investigation on 23 December 2011. This investigation report was given to me shortly after Xmas, and was awaiting my return from leave on 9 January 2012.

The report made findings of 25 contraventions of the Registration and Accountability of Organisations Schedule and/or the Rules of the Health Services Union. In broad terms the findings relate to the keeping and lodgement of required financial records and statements, and the general duties in relation to the financial management of organisations.

My task now is to independently be satisfied that the contraventions have occurred, and if so satisfied, under section 336 of the FW (RO) Act notify the

reporting unit. In addition the General Manager may do all or any of the following:

- (a) Issue a notice to the reporting unit requesting that the reporting unit take specified action within a specified period to rectify the matter;
- (b) Apply to the Federal Court for an order under Part 2 of Chapter 10 (civil penalty provisions);
- (c) Refer the matter to the Commonwealth Director of Public Prosecutions for action in relation to possible criminal offences.

I anticipate being in a position to make decisions as to the action that I will take shortly. I also anticipate that notices of contravention will shortly be issued to the relevant persons.

The investigation report was produced for the sole purpose of enabling me as Acting GM to undertake my responsibilities under the legislation.

I have considered whether to make the Delegate's report publicly available. However, I have decided not to do so. The reason for this decision is that the report contains material in respect of the individuals concerned that may be considered to be defamatory. The FWA GM has no express statutory immunity or protection against actions in defamation. I am therefore not prepared to voluntarily publish that report. However, I am aware that the report may be subject of a request for production under Freedom of Information legislation or an order for production by this Committee.

### **National Office**

Prior to the last Estimates in October 2011, Mr Nassios' advice to me was that he still expected to complete his investigations by the end of 2011. That advice was genuinely held at the time, but has not proved to be the case in respect of the National Office investigation.

The investigation into the HSU National Office is at the concluding stage. Letters have been sent to individuals and reporting units concerned as to potential contraventions, and providing an opportunity to respond prior to the investigation being concluded. Given the large number of potential contraventions and the volume of evidence and supporting documentation involved (totalling more than 6500 pages), the timeframes required to afford natural justice to those concerned has meant that the investigation was unable to be concluded by the end of 2011. Five letters were sent on 12 and 14

December 2011. Varying deadlines to respond were given depending on the volume of material to which a response was invited. Three persons were granted limited extensions by the Delegate, and the final response is now due on 5 March 2012.

It took longer than anticipated to complete the letters setting out the possible findings of contraventions. This later issuing of the letters, together with the volume of material involved and the intervention of the Xmas and New Year period led to providing the persons concerned with a longer period in which to provide a response than originally planned.

The investigation will be concluded by the Delegate as soon as practicable after taking into consideration any responses provided.

I have not and would not direct the Delegate to complete the investigation by a particular date. It is critical that the integrity of the investigation be maintained and not be undermined, so that any proceedings that may ensue are properly instituted and substantiated. This is essential to ensure that if parties have contravened the law they are held to account and don't avoid responsibility because of defects in the investigation.

### **Independent Review**

I acknowledge that on the face of it, the inquiries and subsequent investigations have taken an unreasonably long time, raising legitimate questions.

The staff involved in the investigations are senior and experienced and I have confidence that they have acted in good faith at all times. It is important to understand that the investigations relating to the HSU are the only two investigations that have been undertaken under the legislation. Under the previous legislation, as I understand it, there was only one other investigation undertaken, which took 18 months to conclude.

The HSU investigations are unprecedented in terms of size and complexity with the National Office investigation significantly bigger than the Branch investigation. Given this, there is little doubt in my mind that there are significant lessons to be learned and improvements to be made as to the conduct of inquiries and investigations under the RO Act.

Accordingly, I have decided to undertake an independent review of the conduct of the investigations. The review will be undertaken by KPMG and I will make

the outcome of the review public. Before commencing the review, KPMG will undertake a detailed scoping exercise which is expected to take approximately one week. That work will commence shortly. The substantive review will commence after the conclusion of the National Office investigation so that the review can encompass both investigations. It would be inappropriate to commence such a review when the National Office investigation has not been concluded.

I am aware of the allegations that there has been political interference in the investigations, and take them very seriously.

I have absolutely no reason to conclude that there has been any such interference in the investigations.

As the conduct of the investigations has been the responsibility of the Delegate from commencement, had there been any interference of any kind it would appear to me that it would have to have been manifested to the Delegate in some way, such as withholding resources.

I have asked Mr Nassios whether there has been any attempt to or actual interference in the conduct of his investigations and he has advised me that there has not. This is in relation to both his role as the General Manager's Delegate and also the extended period in 2010 whilst Acting General Manager whilst Mr Lee was undergoing cancer treatment.

I have asked Mr Lee whether there has been any attempt to interfere or any actual interference in relation to the investigations whilst he was General Manager, and he has assured me that there was not.

I, and all FWA officers, will continue to try to assist this Committee with any questions they may have, without prejudicing the current investigation.

My overriding concern at all times has been to maintain the integrity of the investigations and any proceedings that may ensue. It is paramount that organisations or individuals are held to account for any offences or contraventions that may have occurred. I will continue to be cautious in providing detail about the investigations as I will not allow, through inadvertent disclosures here, any proceedings to be jeopardised.